City of Carroll

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Mike Pogge-Weaver, City Manager MSPW

FROM: Laura A. Schaefer, Finance Director/City Clerk las

DATE: February 6, 2020

SUBJECT: Bond Counsel Engagement Agreement

For many years the City has engaged Ahlers & Cooney, P.C. ("Ahlers") as bond counsel for the issuance of bonds, notes or other obligations. Currently, the City works with Kristin Cooper for these services.

Ahlers has requested the City to formalize this relationship with a written engagement agreement that specifically outlines what services are/are not provided for a debt issuance.

This engagement is not specific to one particular debt issuance but would remain in effect until necessary to change it. This engagement agreement is being requested to be in place by Ahler's insurance carrier.

RECOMMENDATION: Council discussion and approval of the resolution accepting the Bond Counsel Engagement Agreement with Ahlers & Cooney, P.C. for the issuance of bonds, notes and other obligations.

RESOLUTION NO. _____

RESOLUTION ACCEPTING A BOND COUNSEL ENGAGEMENT AGREEMENT WITH AHLERS & COONEY, P.C.

WHEREAS, Chapter 17, of the Code of Ordinances of the City of Carroll, Iowa, provides that all contracts made by the City be reduced to writing and approved by the City Council by resolution; and

WHEREAS, a Bond Counsel Engagement Agreement is attached as Exhibit A.

WHEREAS, it is determined that the approval of the attached Bond Counsel Engagement Agreement with Ahlers & Cooney, P.C. is in the best interest of the City of Carroll, Iowa;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carroll, Iowa, that the Bond Counsel Engagement Agreement with Ahlers & Cooney, P.C. is accepted.

Passed and approved by the Carroll City Council this 10th day of February, 2020

CITY COUNCIL OF THE
CITY OF CARROLL, IOWA

By: _____
Eric P. Jensen, Mayor

ATTEST:

By: _____
Laura A. Schaefer, City Clerk

AHLERS COONEY
ATTORNEYS

Ahlers & Cooney, P.C.
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515.246.0330
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February 4, 2020

Mayor and City Council
C/O Laura Schaefer
City Clerk/Finance Director
City of Carroll
112 E. 5th Street
Carroll, Iowa 51401

RE: Bond Counsel Engagement Agreement

Dear Mayor and Council:

The purpose of this Engagement Agreement (the "Agreement") is to disclose and memorialize the terms and conditions under which services will be rendered by Ahlers & Cooney, P.C. as bond counsel to the City of Carroll, Iowa (the "Issuer") in connection with the issuance of bonds, notes, or other obligations ("Bonds"). We understand the Issuer currently retains, and expects to continue to obtain the advice of, a Municipal Advisor properly registered with the MSRB in connection with the issuance of its Bonds. Please notify us should your intentions to rely on a Municipal Advisor to advise the Issuer on financial matters change. While additional members of our firm may be involved in representing the Issuer on other matters unrelated to the Bonds, the undersigned will be primarily responsible for the bond counsel services described herein.

SCOPE OF ENGAGEMENT

In the role of Bond Counsel, we will provide the following services:

(1) Subject to the completion of proceedings and execution of documents to our satisfaction, render our legal opinion (the "Bond Opinion") regarding the validity and enforceability of the Bonds, the source of payment and security for the Bonds, and the tax status of the Bonds for federal and state of Iowa, if applicable, income tax purposes.

(2) Prepare and review documents necessary or appropriate to the authorization, issuance and delivery of the Bonds, including election proceedings, if necessary, and coordinate the authorization and execution of such documents.

(3) Review legal issues relating to the structure of the Bond issue.

(4) Review or prepare those sections of the official statement, private placement memorandum or other form of offering or disclosure document (the "Offering Documents") to be disseminated in connection with the sale of the Bonds that describe the terms of the Bonds, Iowa and federal law pertinent to the validity of the Bonds, the tax status of interest on the Bonds, the Bond Opinion and the Issuer's Continuing Disclosure Certificate, if applicable.

(5) Upon request, assist the Issuer in presenting information to bond rating organizations and providers of credit enhancement relating to the issuance of Bonds.

(6) Prepare the notice of sale relating to the competitive sale of Bonds.

(7) Draft the Continuing Disclosure Certificate of the Issuer, if applicable.

(8) File an appropriate Form 8038 with the IRS after Closing.

As Bond Counsel, our examination will extend to the actions and approvals necessary to authorize the issuance and initial delivery of the Bonds to the original purchaser thereof. Our Bond Opinion does not extend to any re-offering of the Bonds by the original purchaser or other persons. The Bond Opinion will be delivered by us on the date the Bonds are exchanged for their purchase price (the "Closing") and will be based on facts and law existing as of its date. In rendering our Bond Opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation, and we will assume continuing compliance by the Issuer with applicable laws relating to the Bonds. During the course of this engagement, we will rely on the Issuer, and authorized officials, to provide us with complete and timely information on all developments pertaining to any aspect of the Bonds and their security.

Our duties under this engagement are limited to those expressly set forth above. This Engagement Agreement (and any fee estimate provided for a series of Bonds hereunder) do not include the following services, or any other matter not required to render our Bond Opinion:

(a) Except as described in paragraph (4) above, assisting in the preparation or review of the Offering Documents with respect to the Bonds, or performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document or rendering advice that the Offering Documents do not contain any untrue statement of material fact or omit to state a material fact necessary to make the

statements contained therein, in light of the circumstances under which they were made, not misleading.

(b) Preparing requests for tax rulings from the Internal Revenue Service, or "no action" letters from the Securities and Exchange Commission.

(c) Drafting state constitutional or legislative amendments.

(d) Pursuing test cases or other litigation, such as contested validation proceedings.

(e) Except as described in paragraph (7) above, assisting in the preparation of, or opinion on, a continuing disclosure undertaking pertaining to the Bonds, or after Closing, providing advice concerning any actions necessary to assure compliance with any continuing disclosure undertaking, including monitoring Issuer's continued compliance with the undertaking.

(f) Representing the Issuer in Internal Revenue Service examinations or inquiries, or Securities and Exchange Commission investigations.

(g) After Closing, providing continuing advice to the Issuer or any other party concerning actions necessary to assure that interest paid on the Bonds will continue to be excludable from gross income for federal income tax purposes (e.g. this Bond Counsel engagement for the Bonds does not include rebate calculations, nor continuing post-issuance compliance activities).

We will provide one or more of the services listed in (a)–(g) upon your request, however, a separate, written Engagement Agreement will be required before we assume one or more of these duties. The remaining services in this list, specifically those listed in subparts (h)–(k) below, are not included in this Agreement, nor will they be provided by us at any time.

(h) Acting as an underwriter, or otherwise marketing the Bonds.

(i) Acting in a financial advisory role.

(j) Preparing blue sky or investment surveys with respect to the Bonds.

(k) Making an investigation or expressing any view as to the creditworthiness of the Issuer or of the Bonds.

ATTORNEY-CLIENT RELATIONSHIP

Upon execution of this Agreement and upon notification that bond counsel services are requested of us hereunder, the Issuer will be our client and an attorney-client relationship will exist between us with respect to the issuance of each series of the Bonds. We assume that all other parties will retain such counsel as they deem necessary and appropriate to represent their interests. We further assume that all parties understand that in we represent only the Issuer, we are not counsel to any other party, and we are not acting as an intermediary among the parties. Our services as Bond Counsel are limited to those contracted for in this Agreement; the Issuer's

execution of this Agreement will constitute an acknowledgement of those limitations. Our representation of the Issuer will not affect, however, our responsibility to render an objective Bond Opinion.

Our representation of the Issuer and the attorney-client relationship created by this Engagement Agreement with respect to a series of Bonds will be concluded upon issuance of such Bonds. Nevertheless, subsequent to Closing, we will mail the appropriate completed Internal Revenue Service Form 8038 and, if requested by the Issuer, prepare and distribute to the participants in the transaction a transcript of the proceedings pertaining to the Bonds.

OTHER REPRESENTATIONS

As you are aware, our firm represents many political subdivisions, companies and individuals. It is possible that during the time that we are representing the Issuer, one or more of our present or future clients will have transactions with the Issuer. We do not believe such representation, if it occurs, will adversely affect our ability to represent you as provided in this Agreement, either because such matters will be sufficiently different from the issuance of the Bonds so as to make such representations not adverse to our representation of you, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the issuance of the Bonds. We will decline to participate in any matter where the interests of our clients, including the Issuer, may differ to the point where separate representation is advisable. The firm historically has arranged its practice to hold such occasions to a minimum, and intends to continue doing so. Execution of this Agreement will signify the Issuer's consent to our representation of others consistent with the circumstances described in this paragraph.

FEES

Bond Fees:

We will charge a flat fee for services rendered under this Agreement for each series of Bonds for which we give a Bond Opinion based upon: (i) our current understanding of the terms, structure, size and schedule of the financing represented by the Bonds; (ii) the duties we will undertake pursuant to this Agreement; (iii) the time we anticipate devoting to the financing; and (iv) the responsibilities we will assume in connection therewith. We will communicate our anticipated fee to the Issuer's finance team, including your Municipal Advisor, as applicable, for purposes of sizing each new Bond issue. It is anticipated that our fee will be capitalized in the Bond issue unless you direct otherwise. It is understood that the City Finance Director is delegated authority to approve our fees. If, at any time, we believe that circumstances require an

adjustment of our original fee estimate, we will advise you as soon as possible Such adjustment might be necessary in the event: (a) the principal amount of Bonds actually issued differs significantly from the amount anticipated at the time we advised the City of our fee estimate; (b) material changes in the structure or schedule of the financing occur; or (c) unusual or unforeseen circumstances arise which require a significant increase or decrease in our time or responsibility. It is not anticipated that it will be necessary for us to personally attend meetings in order to provide the Bond Counsel services outlined above but we will do so in the event that circumstances require.

In addition to our Bond fee, we will bill for all customary client charges made or incurred on your behalf, such as travel costs reimbursement, photocopying, deliveries, computer-assisted research, bond printing, and other related expenses. We estimate that such charges will not exceed $500 (per issue). We will contact you prior to incurring expenses that exceed this amount.

Billing Matters:

We will submit a summary invoice for the professional services described herein after Closing for each Bond issue. In the event of a substantial delay in completing the financing, we reserve the right to present an interim statement for payment. Unless other arrangements have been agreed upon in advance, we anticipate our statements to be paid in full within thirty (30) days of receipt.

If, for any reason, the financing represented by an issue of Bonds is not consummated or is completed without the delivery of our Bond Opinion, or our services are otherwise terminated, we will expect to be compensated at our normal hourly rates, plus client charges, as described above (not to exceed the fee we would have received if we had rendered our Bond Opinion). My current hourly rate is $265. Work performed by other attorneys will be billed at their current hourly rate. Associate attorneys begin at $210, and work by legal assistants will be billed at $120. The hourly rates reflected herein are as of 1/1/2020 and are subject to our periodic review and adjustment – typically annually.

RECORDS

In the interest of facilitating our services to you, we may send documents, information or data electronically or via the Internet or store electronic documents or data via computer software applications hosted remotely or utilize cloud-based storage. Your confidential electronic documents or data may be transmitted or stored using these methods. We may use third party service providers to store or transmit these documents or data. In using these electronic

communication and storage methods, we employ reasonable efforts to keep such communications, documents and data secure in accordance with our obligations under applicable laws, regulations, and professional standards; however, you recognize and accept that we have no control over the unauthorized interception or breach of any communications, documents or data once it has been transmitted or if it has been subject to unauthorized access while stored, notwithstanding all reasonable security measures employed by us or by our third party vendors. By your acceptance of this letter, you consent to our use of these electronic devices and applications and submission of confidential client information to or through third party service providers during this engagement.

At your request, papers and property furnished by you will be returned promptly upon receipt of payment for outstanding fees and client charges. Our own files, including lawyer work product, pertaining to the transaction will be retained by us. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to dispose of any documents or other material retained by us after the termination of this Agreement. It is our practice to retain transcripts for each financing for at least the life of the Bonds. You will be notified prior to destruction of our file, and will have the option to request them, should you desire.

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[This space intentionally left blank – approval to follow]

Please carefully review the terms and conditions of this Agreement. If the above correctly reflects our mutual understanding please obtain necessary approvals, execute, date and return to me an executed copy of this letter. Please retain also an original for the Issuer's file.

If you have questions regarding any aspect of the above or our representation as Bond Counsel, please do not hesitate to write or call.

It has been a pleasure to serve you in the past, and we look forward to our continued relationship.

Very truly yours,

Ahlers & Cooney, P.C.

Kristin Cooper

Kristin Billingsley Cooper
FOR THE FIRM

KBC:seb

Accepted by:

City of Carroll, Iowa*

By _____ Date: _____

*Approved by action of the governing body on _____, 2020.

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