

**EXTRACT OF MINUTES OF MEETING OF THE  
SCHOOL BOARD OF BROOKINGS SCHOOL DISTRICT 05-1  
BROOKINGS AND MOODY COUNTIES, SOUTH DAKOTA**

Pursuant to due call and notice thereof, a meeting of the Brookings School District 05-1, Brookings and Moody Counties, State of South Dakota, was held on June \_\_\_\_, 2023, at \_\_\_\_\_ o'clock p.m.

The following members were present:

and the following were absent:

Thereupon the President declared that a quorum was present and the meeting opened for transaction of business.

Member \_\_\_\_\_, introduced the following resolution and moved its adoption:

## RESOLUTION

### **RESOLUTION AUTHORIZING THE EXECUTION, TERMS, ISSUANCE, SALE AND PAYMENT OF LIMITED TAX CAPITAL OUTLAY CERTIFICATES IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED TWENTY-FIVE MILLION DOLLARS (\$25,000,000) OF THE BROOKINGS SCHOOL DISTRICT 05-1 OF BROOKINGS AND MOODY COUNTIES, SOUTH DAKOTA.**

WHEREAS, the Brookings School District 05-1 is authorized by the provisions of SDCL §13-16-6.2 to issue Limited Tax Capital Outlay Certificates to fund the acquisition or construction of real property, plant and equipment; and

WHEREAS, the School Board has determined that is necessary and in the best interest of the School District to issue Limited Tax Capital Outlay Certificates of the School District for the purpose of financing school improvements including the remaining funds needed for the renovation and construction of new school facilities including Medary Elementary School and Hillcrest Elementary School, furnishing and equipping of the same and financing costs of issuance including, but not limited to, Underwriter's discount, credit enhancement and rating agency fees.

**NOW THEREFORE, BE IT RESOLVED BY THE SCHOOL BOARD OF THE BROOKINGS SCHOOL DISTRICT 05-1 OF BROOKINGS AND MOODY COUNTIES, SOUTH DAKOTA AS FOLLOWS:**

#### **ARTICLE I**

##### ***DEFINITIONS***

###### **Section 1.1. Definition of Terms.**

In addition to the words and terms elsewhere defined in this Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meanings, unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

“Act” means collectively SDCL Chapter 6-8B and Title 13, as amended.

“Authorized Officer of the School District” means the President of the School Board and the Business Manager, or, in the case of any act to be performed or duty to be discharged, any other member, officer, or employee of the School District then authorized to perform such act or discharge such duty.

“Blanket Letter of Representation” means the Blanket Issuer Letter of Representation to DTC of the School District.

“Bond Counsel” means Meierhenry Sargent LLP, a firm of attorneys recognized as having experience in matters relating to the issuance of state or local governmental obligations.

“Bond Insurance Commitment” means the commitment(s) of the Bond Insurer, if any, to insure one or more series, or certain principal maturities thereof, all or a portion of the Bonds.

“Bond Insurance Policy” means the policy(ies) of municipal bond insurance, if any, delivered by the Bond Insurer at the time of issuance and delivery of Bonds to be insured pursuant to the Bond Insurance Commitment.

“Bond Insurer” means an insurance company or consortium of insurance companies that issues Bond Insurance Policy to guarantee the payment of principal of and/or interest on Certificates.

“Book-Entry Form” or “Book-Entry System” means a form or system, as applicable, under which physical bond certificates in fully registered form are issued to a Depository or to its nominee as Registered Owner, with the certificated bonds being held by and “immobilized” in the custody of such Depository, and under which records maintained by persons, other than the School District or the Registrar and Paying Agent, constitute the written record that identifies, and records the transfer of the beneficial “book-entry” interests in those Certificates.

“Business Manager” means the Business Manager of the School District appointed pursuant to the provisions of South Dakota Codified Laws Title 13 or, in the absence of such appointment or in the event the person so appointed is unable or incapable of acting in such capacity, the person appointed by the School Board to perform the duties otherwise performed by the Business Manager, or his or her designee.

“Capital Outlay Fund” means the District’s capital outlay fund provided by SDCL §13-16-6.

“Certificates” means not to exceed \$25,000,000 in aggregate principal amount of Limited Tax Capital Outlay Certificates, Series 2023, dated the Closing Date, or such other designation or date as shall be determined by the School Board pursuant to Section 8.1 hereof, authorized and issued under this Certificate Resolution.

“Certificate Payment Date” means each date on which interest, or both principal and interest, shall be payable on the Certificates so long as any of the Certificates shall be outstanding.

“Certificate Purchase Agreement” means the agreement between the School District and the Underwriter for the purchase of the Certificates.

“Certificate Resolution” means this Resolution, duly adopted by the School Board on the date hereof, as it may be amended from time to time.

“Certificateholder”, “Holder” and “Registered Owner” means the registered owner of a Certificate, including any nominee of a Depository.

“Closing Date” means the date the Certificates are exchanged for value.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the United States Department of Treasury promulgated thereunder as in effect on the date of issuance of the Certificates.

“Costs of Issuance” means all costs, fees, charges and expenses incurred in connection with the issuance of the Bonds, including costs for bond insurance, surety insurance, and rating agency fees.

“Depository” means any securities depository that is a clearing agency under federal laws operating and maintaining, with its participants or otherwise, a Book-Entry System, including, but not limited to DTC.

“District” means the Brookings School District 05-1.

“DTC” means the Depository Trust Company, a limited purpose company organized under the laws of the State of New York, and its successors and assigns.

“DTC Participant(s)” means securities brokers and dealers, banks, trust companies and clearing corporations that have access to the DTC system.

“Improvements” means school improvements including the renovation and construction of new school facilities including Medary Elementary School and Hillcrest Elementary School, furnishing and equipping of the same; and any other school improvements identified by the District.

“Interest Payment Dates” means each date on which interest shall be payable on the Certificates so long as any of the Certificates shall be outstanding.

“Mail” means delivery through the United States Postal Office or other delivery service, e-mail or delivery through other electronic means.

“Official Statement” and “Preliminary Official Statement” means that Official Statement and Preliminary Official Statement described in Section 8.2 hereof pertaining to the sale of the Certificates.

“Original Issue Discount or OID” means an amount by which the par value of a security exceeds its public offering price at the time of its original issuance.

“Original Issue Premium or OIP” means the amount by which the public offering price of a security at the time of its original issuance exceeds its par value.

“Outstanding,” “Certificates Outstanding,” or “Outstanding Certificates” means, as of a particular date all certificates issued and delivered except: (1) any certificates paid or redeemed or otherwise canceled by the School District at or before such date; (2) any certificate for the payment of which cash, equal to the principal amount thereof with interest to date of maturity, shall have theretofore been deposited prior to maturity by the School District for the benefit of the Owner thereof; (3)

any certificate for the redemption of which cash, equal to the redemption price thereof with interest to the redemption date, shall have theretofore been deposited with the Registrar and Paying Agent and for which notice of redemption shall have been mailed in accordance with this Resolution; (4) any certificate in lieu of or in substitution for which another certificate shall have been delivered pursuant to this Resolution, unless proof satisfactory to the School District is presented that any certificate, for which a certificate in lieu of or in substitution therefor shall have been delivered, is held by a bona fide purchaser, as that term is defined in Article 8 of the Uniform Commercial Code of the State, as amended, in which case both the Certificate in lieu of or in substitution for which a new certificate has been delivered and such new certificate so delivered therefor shall be deemed Outstanding; and, (5) any certificate deemed paid under the provisions of Article VII of this Resolution, except that any such certificate shall be considered Outstanding until the maturity or redemption date thereof only for the purposes of being exchanged, transferred, or registered.

“Paying Agent” means a commercial bank or regulated financial institution which is serving as the Registrar and Paying Agent under Sections 4.3(c), 4.5, and 4.6, and Article VI of this Resolution and who is also party to the State Pledge Agreement in the capacity of the “Paying Agent.”

“Person” means an individual, partnership, corporation, trust, or unincorporated organization, or a governmental entity or agency or political subdivision thereof.

“Policy” shall mean the Bond Insurance Policy, if so issued, that guarantees the scheduled payment of principal of and interest on the Insured Obligations when due.

“President” means the president of the School Board elected pursuant to the provisions of SDCL Chapter 13-8 or his or her designee acting on his or her behalf.

“Program” or “Pledged State Aid Program” means the Authority’s State Aid Pledge Program authorized under SDCL §13-19-27 and SDCL §1-16A-97.

“Purchase Agreement” means the Certificate Purchase Agreement authorized pursuant to and described in Section 8.1 hereof by and between the School District and the Underwriter.

“Rating Agency” means one or more of the following rating agencies: S&P Global Ratings, Moody’s Investors Service Inc. and Fitch IBCA, Inc.

“Record Date” means the close of business on the fifteenth/first day (whether or not a business day) of the calendar month next preceding an interest payment date.

“Registrar and Paying Agent” means First Bank & Trust, Brookings, South Dakota, or its successor or successors hereafter appointed in the manner provided in Article VI hereof.

“Resolution” means this Certificate Resolution.

“Schedule” means the schedule which indicates the principal and interest payments on the Certificates.

“School Board” means the School Board of the School District elected pursuant to the provisions of the SDCL Title 13.

“School District” means the Brookings School District 05-1.

“Underwriter” means D.A. Davidson & Co., Omaha, Nebraska, acting for and on behalf of it and such securities dealers as it may designate.

“Vice-President” means the Vice-President of the School Board who may act for the President in the absence of the President.

### **Section 1.2. References to Resolution.**

The words “hereof”, “herein”, “hereunder”, and other words of similar import refer to this Certificate Resolution as a whole.

### **Section 1.3. References to Articles, Sections, Etc.**

References to Articles, Sections, and other subdivisions of this Resolution are to the designated Articles, Sections, and other subdivisions of this Resolution as originally adopted.

### **Section 1.4. Headings.**

The headings of this Resolution are for convenience only and shall not define or limit the provisions hereof.

## **ARTICLE II *FINDINGS***

### **Section 2.1.**

It is hereby found and determined by the School Board as follows:

- (a) The principal amount of the Certificates does not exceed one and one half percent (1 1/2%) of the taxable valuation of the District;
- (b) The District has developed and maintained a five-year plan on the annual projected revenues and annual projected expenditures for the capital outlay fund;
- (c) The School District hereby determines that all limitations upon the issuance of Certificates have been met and the Certificates are being authorized, issued and sold in accordance with the provisions of the Act and this Resolution.

## **ARTICLE III**

## ***AUTHORITY, PLEDGE, AND LEVY***

### **Section 3.1. Authority.**

In order to (i) fund the acquisition and construction of the Improvements and (ii) pay costs incident to the sale and issuance of the Certificates, there shall be issued pursuant to, and in accordance with, the provisions of the Act, this Resolution, and other applicable provisions of law Limited Tax Capital Outlay Certificates, Series 2023 of the School District in the aggregate principal amount of not to exceed \$25,000,000.

### **Section 3.2. Pledge.**

The taxing powers, not to exceed three dollars per thousand of taxable valuation, of said School District shall be and they are hereby irrevocably pledged to the prompt and full payment of the principal of and interest on each and all of the Certificates as such principal and interest respectively become due. Pursuant to SDCL § 13-16-10, the School District does hereby pledge and provide for an annual tax sufficient to pay principal and interest on the Certificates when due.

### **Section 3.3. Levy of Taxes.**

The District does hereby provide for an annual levy, not to exceed three dollars per thousand of the taxable valuation of the School District, to produce collected taxes, taking into consideration an amount necessary to provide for delinquencies, reasonable reserve and mandatory early redemption, to pay principal and interest on the Certificates when due. The Business Manager is directed to provide the County Auditors of Brookings and Moody Counties with the Schedule. The Schedule is made a part of this Resolution as if stated in full and shall be open to public inspection at the office of the Business Manager. Said levies shall be irrevocable so long as any of the Certificates or interest thereon shall remain unpaid, except that the School Board of the District and the Auditors shall have the power to reduce the levy as provided by SDCL §13-16-11.

## **ARTICLE IV**

### ***FORM, TERMS, EXECUTION, AND TRANSFER OF CERTIFICATES***

#### **Section 4.1. Authorized Certificates.**

The aggregate principal amount of Certificates that may be issued under this Certificate Resolution shall not exceed Twenty-Five Million and No/100 Dollars (\$25,000,000).

#### **Section 4.2. Form of Certificates; Execution.**

(a) The Certificates are issuable only as fully registered Certificates, without coupons, in any denomination and one single Certificate may represent installments of principal maturing on more than one date. All Certificates issued under this Resolution shall be substantially in the form set

forth in Exhibit A attached hereto, and by this reference incorporated herein as fully as though copied.

(b) The Certificates shall be executed in such manner as may be prescribed by applicable law in the name and on behalf of the School District with the manual or facsimile signature of the President of the School Board, attested by the manual or facsimile signature of the Business Manager, and approved as to form and countersigned by a Resident Attorney by his manual or facsimile signature.

(c) In the event any officer whose manual or facsimile signature shall appear on any Certificate shall cease to be such officer before the delivery of such Certificates, such manual or such facsimile signature shall nevertheless be valid and sufficient for all purposes as if he or she had remained in office until such delivery. Any Certificate may bear the facsimile signature of, or may be manually signed by, such individuals who, at the actual time of the execution of such Certificate, were the proper officers of the School District to sign such Certificates, although on the date of the adoption by the School District of this Resolution, such individuals may not have been such officers.

#### **Section 4.3. Maturities, Interest Rates, and Certain Other Provisions of Certificates.**

(a) The Certificates shall become due and payable as set forth in the Certificate Purchase Agreement.

(b) The Certificates shall be designated “Limited Tax Capital Outlay Certificates, Series 2023,” or such other designation as shall be determined by the School Board pursuant to Section 8.1 hereof. The Certificates shall bear interest from their date or from the most recent interest payment date to which interest has been paid or duly provided for, until the principal amount of the Certificates is paid, such interest (computed upon the basis of a 360-day year of twelve 30-day months) being payable on Interest Payment Dates. Interest on each Certificate shall be paid by wire transfer, check or draft of the Paying Agent, payable in lawful money of the United States of America, to the person in whose name such Certificates is registered at the close of business on the Record Date. The principal of the Certificates shall be payable in lawful money of the United States of America at the principal office of the Paying Agent on the Certificates Payment Date. Each Certificate shall state that it is issued pursuant to SDCL 6-8B.

(c) The Registrar and Paying Agent shall make all interest payments with respect to the Certificates on each interest payment date directly to the registered owners as shown on the Certificate registration records maintained by the Registrar and Paying Agent as of the close of business on the Record Date by wire transfer, check or draft mailed to such owners at their addresses shown on said Certificate registration records, without, except for final payment, the presentation or surrender of such registered Certificates, and all such payments shall discharge the obligations of the School District in respect of such Certificates to the extent of the payments so made. Payment of principal of and premium, if any, on the Certificates shall be made upon presentation and surrender of such Certificates to the Registrar and Paying Agent as the same shall become due and payable.

**(d) Additional Certificates.** This Resolution authorizing the issuance of the Certificates permits the issuance of additional certificates payable from the Capital Outlay Fund of the District, provided that the School Board first determines that a Capital Outlay Fund tax levy of not more than \$3 per \$1,000 of taxable valuation will afford debt service coverage for all Outstanding Capital Outlay Certificates, plus the additional capital outlay certificates proposed to be issued, of at least 1.25 times. The property tax levy for any such additional certificates, together with the levy for then all Outstanding Capital Outlay Certificates described herein and any other Capital Outlay Fund purposes, would be limited to \$3 per \$1,000 in total. Such additional certificates would have a parity claim with all the then Outstanding Capital Outlay Certificates against property tax revenues received into the Capital Outlay Fund of the District.

#### **Section 4.4. Negotiability of Certificates.**

All Certificates issued under this Resolution shall be negotiable, subject to the provisions for registration and transfer contained in this Resolution and in the Certificates.

#### **Section 4.5. Registration, Transfer and Exchange of Certificates.**

(a) The Certificates are transferable only by presentation to the Registrar and Paying Agent by the registered owner, or his legal representative duly authorized in writing, of the registered Certificate(s) to be transferred with the form of assignment on the reverse side thereof completed in full and signed with the name of the registered owner as it appears upon the face of the Certificate(s) accompanied by appropriate documentation necessary to prove the legal capacity of any legal representative of the registered owner. Upon receipt of the Certificate(s) in such form and with such documentation, if any, the Registrar and Paying Agent shall issue a new Certificate or Certificates to the assignee(s) in \$5,000 denominations, or integral multiples thereof, as requested by the registered owner requesting transfer. The Registrar and Paying Agent shall not be required to transfer or exchange any Certificate during the period commencing on a Record Date and ending on the corresponding interest payment date of such Certificate, nor to transfer or exchange any Certificate after the publication of notice calling such Certificate for redemption has been made, nor to transfer or exchange any Certificate during the period following the receipt of instructions from the School District to call such Certificate for redemption; provided, the Registrar and Paying Agent, at its option, may make transfers after any of said dates. No charge shall be made to any registered owner for the privilege of transferring any Certificates, provided that any transfer tax relating to such transaction shall be paid by the registered owner requesting transfer. The person in whose name any Certificate shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and neither the School District nor the Registrar and Paying Agent shall be affected by any notice to the contrary whether or not any payments due on the Certificates shall be overdue. Certificates, upon surrender to the Registrar and Paying Agent, may, at the option of the registered owner, be exchanged for an equal aggregate principal amount of Certificates of the same maturity in any authorized denomination or denominations.

(b) Except as otherwise provided in this subsection, the Certificates shall be registered in the name of Cede & Co., as nominee of DTC, which will act as securities depository for the Certificates. References in this Section to a Certificate or the Certificates shall be construed to mean the

Certificate or the Certificates that are held under the Book-Entry System. One Certificate for each maturity shall be issued to DTC and immobilized in its custody. Unless otherwise provided herein, a Book-Entry System shall be employed, evidencing ownership of the Certificates in authorized denominations, with transfers of beneficial ownership effected on the records of DTC and the DTC Participants pursuant to rules and procedures established by DTC.

Each DTC Participant shall be credited in the records of DTC with the amount of such DTC Participant's interest in the Certificates. Beneficial ownership interests in the Certificates may be purchased by or through DTC Participants. The holders of these beneficial ownership interests are herein referred to as the "Beneficial Owners." The Beneficial Owners shall not receive the Certificates representing their beneficial ownership interests. The ownership interests of each Beneficial Owner shall be recorded through the records of the DTC Participant from which such Beneficial Owner purchased its Certificates. Transfers of ownership interests in the Certificates shall be accomplished by book entries made by DTC and, in turn, by DTC Participants acting on behalf of Beneficial Owners. SO LONG AS CEDE & CO., AS NOMINEE FOR DTC, IS THE REGISTERED OWNER OF THE CERTIFICATES, THE REGISTRAR AND PAYING AGENT SHALL TREAT CEDE & CO., AS THE ONLY HOLDER OF THE CERTIFICATES FOR ALL PURPOSES UNDER THIS RESOLUTION, INCLUDING RECEIPT OF ALL PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE CERTIFICATES, RECEIPT OF NOTICES, VOTING AND REQUESTING OR DIRECTING THE REGISTRAR AND PAYING AGENT TO TAKE OR NOT TO TAKE, OR CONSENTING TO, CERTAIN ACTIONS UNDER THIS CERTIFICATE RESOLUTION.

Payments of principal, interest, and redemption premium, if any, with respect to the Certificates, so long as DTC is the only owner of the Certificates, shall be paid by the Registrar and Paying Agent directly to DTC or its nominee, Cede & Co., as provided in the Letter of Representation. DTC shall remit such payments to DTC Participants, and such payments thereafter shall be paid by DTC Participants to the Beneficial Owners. Neither the School District nor the Registrar and Paying Agent shall be responsible or liable for payment by DTC or DTC Participants, for sending transaction statements or for maintaining, supervising or reviewing records maintained by DTC or DTC Participants.

In the event that (1) DTC determines not to continue to act as securities depository for the Certificates or (2) the School District determines that the continuation of the Book-Entry System of evidence and transfer of ownership of the Certificates would adversely affect their interests or the interests of the Beneficial Owners of the Certificates, the School District may discontinue the Book-Entry System with DTC. If the School District fails to identify another qualified securities depository to replace DTC, the School District shall cause the Registrar and Paying Agent to authenticate and deliver replacement Certificates in the form of fully registered Certificates to each Beneficial Owner.

NEITHER THE SCHOOL DISTRICT NOR THE REGISTRAR AND PAYING AGENT SHALL HAVE ANY RESPONSIBILITY OR OBLIGATIONS TO ANY DTC PARTICIPANT OR ANY BENEFICIAL OWNER WITH RESPECT TO (i) THE CERTIFICATES; (ii) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY DTC PARTICIPANT; (iii) THE

PAYMENT BY DTC OR ANY DTC PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL OF AND INTEREST ON THE CERTIFICATES; (iv) THE DELIVERY OR TIMELINESS OF DELIVERY BY DTC OR ANY DTC PARTICIPANT OF ANY NOTICE DUE TO ANY BENEFICIAL OWNER THAT IS REQUIRED OR PERMITTED UNDER THE TERMS OF THIS CERTIFICATE RESOLUTION TO BE GIVEN TO BENEFICIAL OWNERS, (v) THE SELECTION OF BENEFICIAL OWNERS TO RECEIVE PAYMENTS IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE CERTIFICATES; OR (vi) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC, OR ITS NOMINEE, CEDE & CO., AS OWNER.

SO LONG AS A BOOK-ENTRY SYSTEM OF EVIDENCE OF TRANSFER OF OWNERSHIP OF ALL THE CERTIFICATES IS MAINTAINED IN ACCORDANCE HEREWITH, THE PROVISIONS OF THIS RESOLUTION RELATING TO THE DELIVERY OF PHYSICAL BOND CERTIFICATES SHALL BE DEEMED INAPPLICABLE OR BE OTHERWISE SO CONSTRUED AS TO GIVE FULL EFFECT TO SUCH BOOK-ENTRY SYSTEM. IF THE PROVISIONS OF THE LETTER OF REPRESENTATION SHALL BE IN CONFLICT WITH THE PROVISIONS OF THIS RESOLUTION AS SAID PROVISIONS RELATE TO DTC, THE PROVISIONS OF THE LETTER OF REPRESENTATION SHALL CONTROL.

**Section 4.6. Mutilated, Lost, Stolen, or Destroyed Certificates.**

(a) In the event any Certificate is mutilated, lost, stolen, or destroyed, the School District may execute, and upon the request of an Authorized Officer of the School District the Registrar and Paying Agent shall authenticate and deliver, a new Certificate of like maturity, interest rate, and principal amount, and bearing the same number (but with appropriate designation indicating that such new Certificate is a replacement Certificate) as the mutilated, destroyed, lost, or stolen Certificate, in exchange for the mutilated Certificate or in substitution for the Certificate so destroyed, lost, or stolen. In every case of exchange or substitution, the Certificateholder shall furnish to the School District and the Registrar and Paying Agent: (1) such security or indemnity as may be required by them to save each of them harmless from all risks, however remote; and, (2) evidence to their satisfaction of the mutilation, destruction, loss, or theft of the subject Certificate and the ownership thereof. Upon the issuance of any Certificate upon such exchange or substitution, the School District and the Registrar and Paying Agent may require the Owner thereof to pay a sum sufficient to defray any tax or other governmental charge that may be imposed in relation thereto and any other expenses, including printing costs and counsel fees, of the School District and the Registrar and Paying Agent. In the event any Certificate which has matured or is about to mature shall become mutilated or be destroyed, lost, or stolen, the School District may, instead of issuing a Certificate in exchange or substitution therefor, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Certificate) if the Owner thereof shall pay all costs and expenses, including attorney's fees, incurred by the School District and the Registrar and Paying Agent in connection herewith, as well as a sum sufficient to defray any tax or other governmental charge that may be imposed in relation thereto and shall furnish to the School District and the Registrar and Paying Agent such security or indemnity as they may require to save them harmless and evidence to the satisfaction of the School District and the

Registrar and Paying Agent the mutilation, destruction, loss, or theft of such Certificate and of the ownership thereof.

(b) Every Certificate issued pursuant to the provisions of this section shall constitute an additional contractual obligation of the School District (whether or not the destroyed, lost, or stolen Certificate shall be found at any time to be enforceable) and shall be entitled to all the benefits of this Resolution equally and proportionately with any and all other Certificates duly issued under this Resolution.

(c) All Certificates shall be held and owned upon the express condition that the provisions of this Section are exclusive, with respect to the replacement or payment of mutilated, destroyed, lost, or stolen Certificates, and, to the maximum extent legally permissible, shall preclude all other rights or remedies, notwithstanding any law or statute now existing or hereafter enacted to the contrary.

#### **Section 4.7. Authentication.**

The Registrar and Paying Agent is hereby authorized to authenticate and deliver the Certificates to the Underwriter or as it may designate upon receipt by the School District of the proceeds of the sale thereof, to authenticate and deliver Certificates in exchange for Certificates of the same principal amount delivered for transfer upon receipt of the Certificate(s) to be transferred in proper form with proper documentation as hereinabove described. The Certificates shall not be valid for any purpose unless authenticated by the Registrar and Paying Agent by the manual signature of an officer thereof on the certificate set forth herein on the Certificate form.

#### **Section 4.8. Qualification for DTC.**

The Registrar and Paying Agent is hereby authorized to take such actions as may be necessary from time to time to qualify and maintain the Certificates for deposit with DTC, including but not limited to, wire transfers of interest and principal payments with respect to the Certificates, utilization of electronic book entry data received from DTC in place of actual delivery of Certificates and provision of notices with respect to Certificates registered by the DTC (or any of its designees identified to the Registrar and Paying Agent) by overnight delivery, courier service, telegram, telecopy or other similar means of communication. No such arrangements with DTC may adversely affect the interest of any of the Owners of the Certificates, provided, however, that the Registrar and Paying Agent shall not be liable with respect to any such arrangements it may make pursuant to this section. The Business Manager is hereby authorized to execute the Blanket Letter of Representation.

#### **Section 4.9. Underwriter.**

The President and Business Manager are authorized to retain D.A. Davidson & Co., Omaha, Nebraska, as Underwriter upon such terms as they approve.

#### **Section 4.10. Bond Counsel.**

The President and Business Manager are authorized to retain Meierhenry Sargent LLP as Bond Counsel upon such terms as they approve.

**Section 4.11. Rating Agency.**

The President and Business Manager are authorized to retain the Rating Agency upon such terms as they approve.

**Section 4.12. Dissemination Agent.**

The District authorizes the Authorized Officer of the District to retain a dissemination agent with regard to the written undertaking authorized in Section 9.7 hereof.

**Section 4.13. Bond Insurance, Surety Bond, Insurance Policy.**

If it is determined to obtain Bond Insurance with respect to the Certificates, the Authorized Officers of the School District are authorized to take all actions necessary to obtain such municipal bond insurance for all or a portion of the Certificates, and/or a surety bond and/or a insurance policy with respect to all or a portion of the reserve requirement, if any, with respect to the Certificates and/or any and all outstanding certificates issued pursuant to the Resolution. The Authorized Officers of the School District are authorized to agree to such additional provisions as the Bond Insurer may reasonably request and which are acceptable to the Authorized Officers of the School District including provisions regarding restrictions on investment of Certificates proceeds, the payment procedure under the Bond Insurance Policy, the rights of the Bond Insurer in the event of default and payment of the Certificates by the Bond Insurer and notices to be given to the Bond Insurer. In addition, any reference required by the Bond Insurer to the Bond Insurance Policy shall be made in the form of Certificates provided herein. Any provisions which may be required by the Bond Insurer to be included in this Resolution with respect to a Bond Insurance Policy, surety bond, or insurance policy shall be attached hereto, and be included herein as if stated in full.

**ARTICLE V**

***REDEMPTION OF CERTIFICATES PRIOR TO MATURITY***

**Section 5.1. Redemption.**

The Certificates shall be redeemable as set forth in the Certificate Purchase Agreement.

**Section 5.2. Notice of Redemption.**

Notice of call for redemption, whether optional or mandatory, shall be given by the Registrar and Paying Agent on behalf of the District not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption by sending an appropriate notice to the registered owners of the Certificates to be redeemed by first-class mail, postage prepaid, at the addresses shown on the bond registration records of the Registrar and Paying Agent as of the date of the notice; but neither

failure to mail such notice nor any defect in any such notice so mailed shall affect the sufficiency of the proceedings for redemption of any of the Certificates for which proper notice was given. As long as DTC, or a successor depository, is the registered owner of the Bonds, all redemption notices shall be mailed by the Registrar and Paying Agent to DTC, or such successor Depository, as the registered owner of the Bonds, as and when above provided, and neither the District nor the Registrar and Paying Agent shall be responsible for mailing notices of redemption to DTC Participants or Beneficial Owners. Failure of DTC, or any successor depository, to provide notice to any DTC Participant or Beneficial Owner will not affect the validity of such redemption. The Registrar and Paying Agent shall mail said notices, in the case of mandatory redemption of term Certificates, as and when provided herein and in the Certificates, and, in the case of optional redemption, as and when directed by the District pursuant to written instructions from an Authorized Representative of the District given at least forty-five (45) days prior to the redemption date (unless a shorter notice period shall be satisfactory to the Registrar and Paying Agent).

### **Section 5.3. Payment of Redeemed Certificates.**

(a) If notice of redemption shall have been given in the manner and under the conditions provided in Section 5.2 hereof and if on the date so designated for redemption the Registrar and Paying Agent shall hold sufficient monies to pay the redemption price of, and interest to the redemption date on, the Certificates to be redeemed as provided in this Resolution, then: (1) the Certificates so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Certificates on such date; (2) interest on the Certificates so called for redemption shall cease to accrue; and, (3) such Certificates shall no longer be Outstanding or secured by, or be entitled to, the benefits of this Resolution, except to receive payment of the redemption price thereof and interest thereon from monies then held by the Registrar and Paying Agent.

(b) If on the redemption date, monies for the redemption of all Certificates or portions thereof to be redeemed, together with interest thereon to the redemption date, shall not be held by the Registrar and Paying Agent so as to be available therefor on such date, the Certificates or portions thereof so called for redemption shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption and shall continue to be secured by and be entitled to the benefits of this Resolution.

## **ARTICLE VI**

### ***REGISTRAR AND PAYING AGENT***

### **Section 6.1. Appointment and Acceptance of Duties.**

(a) The School District hereby authorizes the Business Manager to appoint the Registrar and Paying Agent with respect to the Certificates and authorizes and directs the Registrar and Paying Agent to maintain Certificate registration records with respect to the Certificates, to authenticate and deliver the Certificates as provided herein, either at original issuance, upon transfer, or as otherwise directed by the School District, to effect transfers of the Certificates, to give all notices of redemption as required herein, to make all payments of principal and interest with respect to the

Certificates as provided herein, to cancel and destroy Certificates which have been paid at maturity or upon earlier redemption or submitted for exchange or transfer, to furnish the School District at least annually a certificate of destruction with respect to Certificates canceled and destroyed, and to furnish the School District at least annually an audit confirmation of Certificates paid, Certificates Outstanding and payments made with respect to interest on the Certificates. The President and the Business Manager, or either of them is hereby authorized to execute and the Business Manager is hereby authorized to attest such written agreement between the School District and the Registrar and Paying Agent as they shall deem necessary or proper with respect to the obligations, duties and rights of the Registrar and Paying Agent. The payment of all reasonable fees and expenses of the Registrar and Paying Agent for the discharge of its duties and obligations hereunder or under any such agreement is hereby authorized and directed.

### **Section 6.2. Permitted Acts and Functions.**

The Registrar and Paying Agent may become the Owner of any Certificates, with the same rights as it would have if it were not a Registrar and Paying Agent. The Registrar and Paying Agent may act as a purchaser or fiscal agent in connection with the sale of the Certificates or of any other securities offered or issued by the School District.

## **ARTICLE VII *DEFEASANCE OF CERTIFICATES***

If the School District shall pay and discharge the indebtedness evidenced by any of the Certificates in any one or more of the following ways, to wit:

(a) By paying or causing to be paid, by deposit of sufficient funds as and when required with the Registrar and Paying Agent, the principal of and interest on such Certificates as and when the same become due and payable;

(b) By depositing or causing to be deposited with any trust company or financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or similar federal agency and which has trust powers (“an Agent”; which Agent may be the Registrar and Paying Agent) in trust or escrow, on or before the date of maturity or redemption, sufficient money or Federal Obligations, as hereafter defined, the principal of and interest on which, when due and payable, will provide sufficient moneys to pay or redeem such Certificates and to pay premium, if any, and interest thereon when due until the maturity or redemption date (provided, if such Certificates are to be redeemed prior to maturity thereof, proper notice of such redemption shall have been given or adequate provision shall have been made for the giving of such notice);

(c) By delivering such Certificates to the Registrar and Paying Agent, for cancellation by it;

and if the School District shall also pay or cause to be paid all other sums payable hereunder by the School District with respect to such Certificates, or make adequate provision therefor, and by resolution of the Governing Body instruct any such Escrow Agent to pay amounts when and as required to the Registrar and Paying Agent for the payment of principal of and interest and

redemption premiums, if any, on such Certificates when due, then and in that case the indebtedness evidenced by such Certificates shall be discharged and satisfied and all covenants, agreements and obligations of the School District to the holders of such Certificates shall be fully discharged and satisfied and shall thereupon cease, terminate and become void.

If the School District shall pay and discharge the indebtedness evidenced by any of the Certificates in the manner provided in either clause (a) or clause (b) above, then the registered owners thereof shall thereafter be entitled only to payment out of the money or Federal Obligations deposited as aforesaid.

Except as otherwise provided in this Section, neither Federal Obligations nor moneys deposited with the Registrar and Paying Agent pursuant to this Section nor principal or interest payments on any such Federal Obligations shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal and premium, if any, and interest on said Certificates; provided that any cash received from such principal or interest payments on such Federal Obligations deposited with the Registrar and Paying Agent, (A) to the extent such cash will not be required at any time for such purpose, shall be paid over to the School District as received by the Registrar and Paying Agent and (B) to the extent such cash will be required for such purpose at a later date, shall, to the extent practicable, be reinvested in Federal Obligations maturing at times and in amounts sufficient to pay when due the principal and premium, if any, and interest to become due on said Certificates on or prior to such redemption date or maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the School District, as received by the Registrar and Paying Agent. For the purposes of this Section, Federal Obligations shall mean direct obligations of, or obligations, the principal of and interest on which are guaranteed by, the United States of America, or any agency thereof, obligations of any agency or instrumentality of the United States or any other obligations at the time of the purchase thereof are permitted investments under South Dakota Law for the purposes described in this Section, which Certificates or other obligations shall not be subject to redemption prior to their maturity other than at the option of the registered owner thereof.

## **ARTICLE VIII**

### ***SALE OF CERTIFICATES AND DEPOSIT OF PROCEEDS***

#### **Section 8.1. Sale of Certificates.**

The Certificates shall be sold to the Underwriter at a price to be set forth in the Certificate Purchase Agreement. The President and the Business Manager, or either of them, are authorized to make such changes in the structuring of the terms and sale of the Certificates as they shall deem necessary. The form of the Certificate set forth in Exhibit A attached hereto shall be conformed to reflect any changes, if any, as hereinbefore mentioned. The President and the Business Manager, or either of them, are hereby authorized to execute and the Business Manager is authorized to attest the Certificate Purchase Agreement with the Underwriter providing for the purchase and sale of the Certificates. The Certificate Purchase Agreement shall be in form and content acceptable to the President and Business Manager, the execution thereof by either of them to constitute conclusive evidence thereof; provided the Certificate Purchase Agreement effects the sale of the

Certificates in accordance with the provisions of this Resolution and is not inconsistent with the terms hereof. The President and the Business Manager are authorized to cause the Certificates to be authenticated and delivered by the Registrar and Paying Agent to the Underwriter and to execute, publish, and deliver all certificates and documents, including the Official Statement, and closing certificates and documents, as they shall deem necessary in connection with the sale and delivery of the Certificates.

### **Section 8.2. Official Statement.**

The President, Business Manager, and the Underwriter are hereby authorized and directed to provide for the preparation and distribution of a Preliminary Official Statement describing the Certificates (the "Preliminary Official Statement"). After the Certificates have been sold, the President and Business Manager shall make such completions, omissions, insertions and changes in the Preliminary Official Statement not inconsistent with this Resolution as are necessary or desirable to complete it as a final Official Statement for purposes of Rule 15c2-12(e)(3) of the Securities and Exchange Commission.

To comply with paragraph (b) (3) of Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule") and with Rule G-32 and all other applicable rules of the Municipal Securities Rulemaking Board, the School District agrees to deliver to the Underwriter, the Official Statement (which shall be a final official statement, as such term is defined in the Rule, as of its date) in an electronic format as prescribed by the MSRB.

### **Section 8.3. Disposition of Certificate Proceeds.**

The proceeds of the sale of the Certificates shall be deposited in the Capital Outlay Fund and shall be used by the School District to provide funds for school improvements including: the renovation and construction of new school facilities including Medary Elementary School and Hillcrest Elementary School, furnishing and equipping of the same and financing costs of issuance including, but not limited to, Underwriter's discount, credit enhancement and rating agency fees.

### **Section 8.4. Tax Matters.**

(a) The School District covenants and agrees with the registered owners from time to time of the Certificates that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Certificates to become includable in gross income for federal income tax purposes under the Code and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the basic interest on the Certificates will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

(b) The President and the Business Manager, being the officers of the District charged with the responsibility for issuing the Certificates pursuant to this Resolution are hereby authorized and directed to execute and deliver to the Underwriter thereof a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on

the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Certificates, it is reasonably expected that the proceeds of the Certificates will be used in a manner that would not cause the Certificates to be “arbitrage bonds” within the meaning of Section 148 of the Code and the Regulations.

(c) The District shall file with the Secretary of the Treasury a statement concerning the Certificates containing the information required by Section 149(e) of the Code.

## **ARTICLE IX**

### ***MISCELLANEOUS***

#### **Section 9.1. Failure to Present Certificates.**

(a) Subject to the provisions of Section 4.6 hereof, in the event any Certificate shall not be presented for payment when the principal or redemption price hereof becomes due, either at maturity or at the date fixed for prior redemption thereof or otherwise, and in the event monies sufficient to pay such Certificate shall be held by the Registrar and Paying Agent for the benefit of the Owner thereof, all liability of the School District to such Owner for the payment of such Certificate shall forthwith cease, determine, and be completely discharged. Whereupon, the Registrar and Paying Agent shall hold such monies, without liability for interest thereon, for the benefit of the Owner of such Certificate who shall thereafter be restricted exclusively to such monies for any claim under this Resolution or on, or with respect to, said Certificates.

(b) If any Certificate shall not be presented for payment within a period of six years following the date when such Certificate becomes due, whether by maturity or otherwise, the Registrar and Paying Agent shall, subject to the provisions of any applicable escheat or other similar law, pay to the School District any monies then held by the Registrar and Paying Agent for the payment of such Certificate and such Certificate shall (subject to the defense of any applicable statute of limitation) thereafter constitute an unsecured obligation of the School District.

#### **Section 9.2. Payments Due on Saturdays, Sundays, and Holidays.**

In any case where the date of maturity or interest on or principal of any Certificates, or the date fixed for redemption of any Certificates, shall be a Saturday or Sunday or shall be, at the place designated for payment, a legal holiday or a day on which banking institutions similar to the Registrar and Paying Agent are authorized by law to close, then the payment of the interest on, or the principal, or the redemption price of, such Certificate need not be made on such date but must be made on the next succeeding day not a Saturday, Sunday, or a legal holiday or a day upon which banking institutions similar to the Registrar and Paying Agent are authorized by law to close, with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

#### **Section 9.3. Miscellaneous Acts.**

The appropriate officers of the School District are hereby authorized, empowered, and directed to do any and all such acts and things, and to execute, acknowledge, deliver, and, if applicable file or

record, or cause to be filed or recorded, in any appropriate public offices, all such documents, instruments, and certifications, in addition to those acts, things, documents, instruments, and certifications hereinbefore authorized and approved, as may, in their discretion, be necessary or desirable to implement or comply with the intent of this Resolution, or any of the documents herein authorized and approved, or for the authorization, issuance, and delivery by the School District of the Certificates.

#### **Section 9.4. Amendment.**

The School Board is hereby authorized to make such amendments to this Resolution as will not impair the rights of the Certificateholders.

#### **Section 9.5. No Recourse Under Certificate Resolution or on Certificates.**

All stipulations, promises, agreements, and obligations of the School District contained in this Resolution shall be deemed to be the stipulations, promises, agreements, and obligations of the School District and not of any officer, director, or employee of the School District in his or her individual capacity, and no recourse shall be had for the payment of the principal or interest on the Certificates or for any claim based thereon or this Resolution against any officer, director, or employee of the School District or against any official or individual executing the Certificates.

#### **Section 9.6. Partial Invalidity.**

If any one or more of the provisions of this Resolution, or of any exhibit or attachment thereto, shall be held invalid, illegal, or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, or of any exhibit or attachment thereto, but this Resolution, and the exhibits and attachments thereto, shall be construed the same as if such invalid, illegal, or unenforceable provision had never been contained herein, or therein, as the case may be.

#### **Section 9.7. Continuing Disclosure.**

The School District hereby covenants and agrees that it will provide financial information and material event notices as required by Rule 15c2-12 of the Securities Exchange Commission for the Certificates. The President is authorized to execute at the Closing of the sale of the Certificates, an agreement for the benefit of and enforceable by the owners of the Certificates specifying the details of the financial information and material event notices to be provided and its obligations relating thereto. Failure of the School District to comply with the undertaking herein described and to be detailed in said closing agreement, shall not be a default hereunder, but any such failure shall entitle the owner or owners of any of the Certificates to take such actions and to initiate such proceedings as shall be necessary and appropriate to cause the School District to comply with its undertaking as set forth herein and in said agreement, including the remedies of mandamus and specific performance.

#### **Section 9.8. Conflicting Resolutions Repealed.**

All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

**Section 9.9. Post Issuance Compliance.**

The School District does hereby adopt Meierhenry Sargent Post-Issuance Compliance Policy and Tax-Advantaged Obligations and Continuing Disclosure with regard to the Certificates attached hereto. The School District appoints the Business Manager as its chief post issuance compliance officer.

**Section 9.10. Effective Date.**

This Resolution shall take effect from and after its adoption, the welfare of the School District requiring it.

Said motion was seconded by Member \_\_\_\_\_ and upon vote being taken the following voted AYE: \_\_\_\_\_

\_\_\_\_\_ and the following voted NAY: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
President

\_\_\_\_\_  
Business Manager

EXHIBIT A-(FORM OF CERTIFICATES)

UNITED STATES OF AMERICA  
STATE OF SOUTH DAKOTA  
BROOKINGS SCHOOL DISTRICT 05-1  
BROOKINGS AND MOODY COUNTIES, SOUTH DAKOTA  
LIMITED TAX CAPITAL OUTLAY CERTIFICATES, SERIES 2023

REGISTERED

REGISTERED

No.

\$ .00

Interest Rate  
%

Maturity Date

Certificate Date  
, 2023

CUSIP No.

Registered Owner: **Cede & Co.**  
**55 Water Street, 1<sup>st</sup> Floor.**  
**New York, New York 10041**  
**Tax ID #13-2555119**

Principal Amount: **AND NO\100 DOLLARS**

**REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THE CERTIFICATE SET FORTH ON THE FOLLOWING PAGES, WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH AT THIS PLACE.**

It is hereby certified and recited that all conditions, acts and things required by law to exist or to be done precedent to and in the issuance of this Certificate did exist, have happened, been done and performed in regular and due form and time as required by law.

This Certificate shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Resolution until it shall have been authenticated by the execution by the Registrar of the certificate of authentication endorsed hereon.

IN WITNESS WHEREOF, the School District has caused this Certificate to be signed by the manual or facsimile signature of its President of the School Board of the Brookings School District 05-1 and to be countersigned by the manual or facsimile signature of its Business Manager all as of the Certificate Date specified above.

ATTEST:

**BROOKINGS SCHOOL DISTRICT 05-1,  
SOUTH DAKOTA**

Business Manager

By: President of the School Board

COUNTERSIGNED:

Resident Attorney

**CERTIFICATE OF AUTHENTICATION**

This Certificate is a Certificate of the series designated therein and has been issued under the provisions of the within-mentioned Resolution and the date of its authentication is \_\_\_\_\_, 2023.

First Bank & Trust,  
Brookings, South Dakota  
Certificate Registrar and Paying Agent  
By: \_\_\_\_\_  
Authorized Officer

KNOW ALL MEN BY THESE PRESENTS: That the Brookings School District 05-1, Brookings (the "School District"), in Brookings and Moody Counties, South Dakota, hereby acknowledges itself to owe and for value received promises to pay the Principal Amount, to the Registered Owner mentioned above in lawful money of the United States of America, together with interest thereon from the Certificate Date mentioned above at the Interest Rate mentioned above calculated on the basis of twelve 30 day months (30/360). The interest hereon is payable \_\_\_\_\_, and semiannually thereafter on \_\_\_\_\_ and \_\_\_\_\_ (each an "Interest Payment Date") in each year to maturity or earlier redemption by wire transfer, check or draft mailed to the Registered Owner at its address as it appears on the Certificate registration books of the School District maintained by First Bank & Trust, Brookings, South Dakota, as Certificate registrar and paying agent (the "Registrar"), on the close of business on the \_\_\_\_\_ day (whether or not a business day) of the calendar month next preceding each interest payment date. The principal hereof due at maturity or upon redemption prior to maturity is payable at the office of Registrar upon presentation and surrender of this Certificate at maturity or upon earlier redemption. The principal of, premium (if any) and interest on this Certificate is payable in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts.

This Certificate is one of an authorized issue of Certificates limited in aggregate principal amount to a maximum of \$\_\_\_\_\_ (the "Certificates") all of like date and tenor except as to maturity, interest rates and privileges of redemption, the proceeds of which, combined with interest earnings, will be used to fund school improvements including the renovation and construction of new school facilities including Medary Elementary School and Hillcrest Elementary School, furnishing and equipping of the same and financing costs of issuance including, but not limited to, Underwriter's discount, credit enhancement and rating agency fees pursuant to a resolution duly and regularly adopted by the School District (the "Certificate Resolution"), and are subject to all the provisions and limitations of the Resolution and Chapters 13-16 and 6-8B, South Dakota Codified Laws, as amended. The District has levied an irrevocable Capital Outlay levy in an amount not to exceed three dollars per thousand of taxable valuation for the payment of the Certificates.

#### **Bond Insurance Provisions**

#### **Redemption Provisions**

#### **Additional Certificates**

The Resolution authorizing the issuance of the Certificates permits the issuance of additional capital outlay certificates payable from the Capital Outlay Fund of the District, provided that the School Board first determines that a Capital Outlay Fund tax levy of not more than \$3 per \$1,000 of taxable valuation will afford debt service coverage for all Outstanding Capital Outlay Certificates, plus the additional capital outlay certificates proposed to be issued, of at least 1.25 times. The property tax levy for any such additional certificates, together with the levy for then all Outstanding Capital Outlay Certificates described herein and any other Capital Outlay Fund purposes, would be limited to \$3 per \$1,000 in total.

This Certificate is transferable by the registered holder hereof in person or by his attorney duly authorized in writing at the office of the Certificate Registrar in Brookings, South Dakota, but only in the manner, subject to the limitations and upon payment of the charges provided in the Certificate Resolution, and upon surrender and cancellation of this Certificate. Upon such transfer a new Certificate or Certificates of authorized denomination of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange therefore.

The School District and the Certificate Registrar may deem and treat the registered holder hereof as the absolute owner hereof and neither the School District nor the Certificate Registrar shall be affected by any notice to the contrary.

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**CERTIFICATE OPINION**

Brookings School District 05-1  
Brookings and Moody Counties, South Dakota  
\$ \_\_\_\_\_ Limited Tax Capital Outlay Certificates, Series 2023

Ladies and Gentlemen:

We have acted as bond counsel in connection with the issuance by the Brookings School District 05-1 (the "Issuer") of \$ \_\_\_\_\_ Limited Tax Capital Outlay Certificates, Series 2023, dated \_\_\_\_\_, (the "Certificates"). We have examined such certified proceedings and other papers as we deem necessary to render this opinion.

We have not been engaged or undertaken to review the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Certificates and we express no opinion relating thereto.

As to questions of fact material to our opinion, we have relied upon the certified proceedings and other certifications of public officials furnished to us, without undertaking to verify such facts by independent investigation.

Based upon the foregoing, we are of the opinion that, under existing law:

1. The Issuer is duly created and validly existing as a body corporate and politic and public instrumentality of the State of South Dakota with the corporate power to adopt and perform the Resolution and issue the Certificates.
2. A Resolution has been duly adopted by the Issuer on June \_\_\_\_, 2023 and constitutes a valid and binding limited obligation of the Issuer enforceable upon the Issuer.
3. The Resolution levies ad valorem taxes not in excess of three dollars per thousand annually upon all of the taxable property in the District, for the capital outlay fund of the District, from which fund, said Certificates and interest thereon are payable.
4. The Certificates have been duly authorized, executed and delivered by the Issuer and are valid and binding limited obligations of the Issuer, payable solely from the sources provided therefore in the Resolution.
5. The interest on the Bond is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax; however, such interest is taken into account in determining the annual adjusted financial statement income of certain corporations for the purpose of computing the alternative minimum tax imposed on such corporations. The opinions set forth in the preceding sentence are subject to the condition that the Issuer comply with all requirements of the Internal Revenue Code of 1986 as amended, that must be satisfied subsequent to the issuance of the Certificates in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The Issuer has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest on the Certificates in gross income for federal income tax purposes to be retroactive to the date of issuance of the Certificates. We express no opinion regarding other federal tax consequences arising with respect to the Certificates.
6. Under existing law, the interest on the Bonds is includible in "taxable income" for the State of South Dakota income tax purposes when the recipient is a "financial institution" as defined by Chapter 10-43, South Dakota Codified Laws, according to present state laws, regulations and decisions. We express no further opinions regarding other South Dakota tax consequences arising with regard to the Bonds.

It is to be understood that the rights of the holders of the Certificates and the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that their enforcement may be subject to the exercise of judicial discretion in accordance with general principles of equity and subject to regulatory requirements under the laws of the United States and of the State of South Dakota.

Meierhenry Sargent LLP

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**AS PROVIDED IN THE RESOLUTION REFERRED TO HEREIN, UNTIL THE TERMINATION OF THE SYSTEM OF BOOK-ENTRY-ONLY TRANSFERS THROUGH DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (TOGETHER WITH ANY SUCCESSOR SECURITIES DEPOSITORY APPOINTED PURSUANT TO THE RESOLUTION, "DTC"), AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE RESOLUTION TO THE CONTRARY, A PORTION OF THE PRINCIPAL AMOUNT OF THIS CERTIFICATE MAY BE PAID OR REDEEMED WITHOUT SURRENDER HEREOF TO THE REGISTRAR. DTC OR A NOMINEE, TRANSFEREE OR ASSIGNEE OF DTC OF THIS CERTIFICATE MAY NOT RELY UPON THE PRINCIPAL AMOUNT INDICATED HEREON AS THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID. THE PRINCIPAL AMOUNT HEREOF OUTSTANDING AND UNPAID SHALL FOR ALL PURPOSES BE THE AMOUNT DETERMINED IN THE MANNER PROVIDED IN THE RESOLUTION.**

**UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED OFFICER OF DTC (A) TO THE REGISTRAR FOR REGISTRATION OF TRANSFER OR EXCHANGE OR (B) TO THE REGISTRAR FOR PAYMENT OF PRINCIPAL, AND ANY CERTIFICATE ISSUED IN REPLACEMENT HEREOF OR SUBSTITUTION HEREFOR IS REGISTERED IN THE NAME OF DTC AND ANY PAYMENT IS MADE TO DTC OR ITS NOMINEE, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL BECAUSE ONLY THE REGISTERED OWNER HEREOF, DTC OR ITS NOMINEE, HAS AN INTEREST HEREIN.**

(Form of Assignment)

**FOR VALUE RECEIVED** the undersigned hereby sells, assigns and transfers unto

the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints

attorney to transfer the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

Dated:

**NOTICE:** The signature to this Assignment must correspond with the name as it appears upon the face of the within Certificate in every particular, without alteration or enlargement or any change whatever.

ATTACHMENT TO RESOLUTION \_\_\_\_\_

**Post-Issuance Compliance Policy for Tax-Exempt and  
Tax-Advantaged Obligations and Continuing Disclosure**

**Definitions**

“Compliance Officer” means the Business Manager of the Issuer.

“Issuer” means the Brookings School District 05-1.

**Statement of Purpose**

This Post-Issuance Compliance Policy (the “Policy”) sets forth specific policies of the Issuer designed to monitor post-issuance compliance:

- (i) with applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and regulations promulgated thereunder (“Treasury Regulations”) for obligations issued by the Issuer on tax-exempt or tax-advantaged basis (“Obligations”); and
- (ii) with applicable requirements set forth in certificates and agreement(s) (“Continuing Disclosure Agreements”) providing for ongoing disclosure in connection with the offering of obligations to investors (“Offerings”), for obligations (whether or not tax-exempt/tax-advantaged) subject to the continuing disclosure requirements of Rule 15c2-12 (the “Rule”) promulgated by the Securities and Exchange Commission (“SEC”) under the Securities Exchange Act of 1934.

This Policy documents practices and describes various procedures and systems designed to identify on a timely basis facts relevant to demonstrating compliance with the requirements that must be satisfied subsequent to the issuance of Obligations in order that the interest on such Obligations continue to be eligible to be excluded from gross income for federal income tax purposes or that the Obligations continue to receive tax-advantaged treatment. The federal tax law requirements applicable to each particular issue of Obligations will be detailed in the arbitrage or tax certificate prepared by bond counsel and signed by officials of the Issuer and the post-closing compliance checklist provided by bond counsel with respect to that issue. This Policy establishes a permanent, ongoing structure of practices and procedures that will facilitate compliance with the requirements for individual borrowings.

This Policy similarly documents practices and describes various procedures and systems designed to ensure compliance with Continuing Disclosure Agreements, by preparing and disseminated related reports and information and reporting “material events” for the benefit of the holders of the Issuer's obligations and to assist the Participating Underwriters (within the meaning of the Rule) in complying with the Rule.

The Issuer recognizes that compliance with pertinent law is an on-going process, necessary during the entire term of the obligations, and is an integral component of the Issuer's debt management. Accordingly, the analysis of those facts and implementation of the Policy will require on-going monitoring and consultation with bond counsel and the Issuer's accountants and advisors.

### **General Policies and Procedures**

The following policies relate to procedures and systems for monitoring post-issuance compliance generally.

- A. The Compliance Officer shall be responsible for monitoring post-issuance compliance issues.
- B. The Compliance Officer will coordinate procedures for record retention and review of such records.
- C. All documents and other records relating to Obligations issued by the Issuer shall be maintained by or at the direction of the Compliance Officer. In maintaining such documents and records, the Compliance Officer will comply with applicable Internal Revenue Service (“IRS”) requirements, such as those contained in Revenue Procedure 97-22.
- D. The Compliance Officer shall be aware of options for voluntary corrections for failure to comply with post-issuance compliance requirements (such as remedial actions under Section 1.141-12 of the Regulations and the Treasury's Tax-Exempt Bonds Voluntary Closing Agreement Program) and take such corrective action when necessary and appropriate.
- E. The Compliance Officer will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually.

### **Issuance of Obligations - Documents and Records**

With respect to each issue of Obligations, the Compliance Officer will:

- A. Obtain and store a closing binder and/or CD or other electronic copy of the relevant and customary transaction documents (the “Transcript”).
- B. Confirm that bond counsel has filed the applicable information report (e.g., Form 8038, Form 8038-G, Form 8038-CP) for such issue with the IRS on a timely basis.
- C. Coordinate receipt and retention of relevant books and records with respect to the investment and expenditure of the proceeds of such Obligations with other applicable staff members of the Issuer.

## Arbitrage

The following policies relate to the monitoring and calculating of arbitrage and compliance with specific arbitrage rules and regulations.

The Compliance Officer will:

- A. Confirm that a certification of the initial offering prices of the Obligations with such supporting data, if any, required by bond counsel, is included in the Transcript.
- B. Confirm that a computation of the yield on such issue from the Issuer's financial advisor or bond counsel (or an outside arbitrage rebate specialist) is contained in the Transcript.
- C. Maintain a system for tracking investment earnings on the proceeds of the Obligations.
- D. Coordinate the tracking of expenditures, including the expenditure of any investment earnings. If the project(s) to be financed with the proceeds of the Obligations will be funded with multiple sources of funds, confirm that the Issuer has adopted an accounting methodology that maintains each source of financing separately and monitors the actual expenditure of proceeds of the Obligations.
- E. Maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures. This procedure shall include an examination of the expenditures made with proceeds of the Obligations within 18 months after each project financed by the Obligations is placed in service and, if necessary, a reallocation of expenditures in accordance with Section 1.148-6(d) of the Treasury Regulations.
- F. Monitor compliance with the applicable "temporary period" (as defined in the Code and Treasury Regulations) exceptions for the expenditure of proceeds of the issue, and provide for yield restriction on the investment of such proceeds if such exceptions are not satisfied.
- G. Ensure that investments acquired with proceeds of such issue are purchased at fair market value. In determining whether an investment is purchased at fair market value, any applicable Treasury Regulation safe harbor may be used.
- H. Avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such issue without determining in advance whether such funds must be invested at a restricted yield.
- I. Consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions or investments in guaranteed investment contracts.

- J. Identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.
- K. Monitor compliance with six-month, 18-month or 2-year spending exceptions to the rebate requirement, as applicable.
- L. Procure a timely computation of any rebate liability and, if rebate is due, to file a Form 8038-T and to arrange for payment of such rebate liability.
- M. Arrange for timely computation and payment of “yield reduction payments” (as such term is defined in the Code and Treasury Regulations), if applicable.

### **Private Activity Concerns**

The following polices relate to the monitoring and tracking of private uses and private payments with respect to facilities financed with the Obligations.

The Compliance Officer will:

- A. Maintain records determining and tracking facilities financed with specific Obligations and the amount of proceeds spent on each facility.
- B. Maintain records, which should be consistent with those used for arbitrage purposes, to allocate the proceeds of an issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.
- C. Maintain records allocating to a project financed with Obligations any funds from other sources that will be used for otherwise non-qualifying costs.
- D. Monitor the expenditure of proceeds of an issue and investment earnings for qualifying costs.
- E. Monitor private use of financed facilities to ensure compliance with applicable limitations on such use. Examples of potential private use include:
  - 1. Sale of the facilities, including sale of capacity rights;
  - 2. Lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;
  - 3. Management contracts (in which the Issuer authorizes a third party to operate a facility, e.g., cafeteria) and research contracts;

4. Preference arrangements (in which the Issuer permits a third party preference, such as parking in a public parking lot);
5. Joint-ventures, limited liability companies or partnership arrangements;
6. Output contracts or other contracts for use of utility facilities (including contracts with large utility users);
7. Development agreements which provide for guaranteed payments or property values from a developer;
8. Grants or loans made to private entities, including special assessment agreements; and
9. Naming rights arrangements.

Monitoring of private use should include the following:

1. Procedures to review the amount of existing private use on a periodic basis; and
2. Procedures for identifying in advance any new sale, lease or license, management contract, sponsored research arrangement, output or utility contract, development agreement or other arrangement involving private use of financed facilities and for obtaining copies of any sale agreement, lease, license, management contract, research arrangement or other arrangement for review by bond counsel.

If the Compliance Officer identifies private use of facilities financed with tax-exempt or tax-advantaged debt, the Compliance Officer will consult with the Issuer's bond counsel to determine whether private use will adversely affect the tax status of the issue and if so, what remedial action is appropriate. The Compliance Officer should retain all documents related to any of the above potential private uses.

### **Qualified Tax-Exempt Obligations**

If the Issuer issues qualified tax-exempt obligations in any year, the Compliance Officer shall monitor all tax-exempt financings (including lease purchase arrangements and other similar financing arrangements and conduit financings on behalf of 501(c)(3) organizations) to assure that the \$10,000,000 "Small Issuer" limit is not exceeded.

## **Federal Subsidy Payments**

The Compliance Officer shall be responsible for the calculation of the amount of any federal subsidy payments and the timely preparation and submission of the applicable tax form and application for federal subsidy payments for tax-advantaged obligations such as Build America Bonds, New Clean Renewable Energy Bonds and Qualified School Construction Bonds.

## **Reissuance**

The following policies relate to compliance with rules and regulations regarding the reissuance of Obligations for federal law purposes.

The Compliance Officer will identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of Obligations which could potentially be treated as a reissuance for federal tax purposes.

## **Record Retention**

The following policies relate to retention of records relating to the Obligations issued. The Compliance Officer will:

- A. Coordinate with staff regarding the records to be maintained by the Issuer to establish and ensure that an issue remains in compliance with applicable federal tax requirements for the life of such issue.
- B. Coordinate with staff to comply with provisions imposing specific recordkeeping requirements and cause compliance with such provisions, where applicable.
- C. Coordinate with staff to generally maintain the following:
  1. The Transcript relating to the transaction (including any arbitrage or other tax certificate and the bond counsel opinion);
  2. Documentation evidencing expenditure of proceeds of the issue;
  3. Documentation regarding the types of facilities financed with the proceeds of an issue, including, but not limited to, whether such facilities are land, buildings or equipment, economic life calculations and information regarding depreciation.
  4. Documentation evidencing use of financed property by public and private entities (e.g., copies of leases, management contracts, utility user agreements, developer agreements and research agreements);

5. Documentation evidencing all sources of payment or security for the issue; and
  6. Documentation pertaining to any investment of proceeds of the issue (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received by the investment of proceeds, guaranteed investment contracts, and rebate calculations).
- D. Coordinate the retention of all records in a manner that ensures their complete access to the IRS.
- E. Keep all material records for so long as the issue is outstanding (including any refunding), plus seven years.

### **Continuing Disclosure**

Under the provisions of SEC Rule 15c2-12 (the “Rule”), Participating Underwriters (as defined in the Rule) are required to determine that issuers (such as the Issuer) have entered into written Continuing Disclosure Agreements to make ongoing disclosure in connection with Offerings subject to the Rule. Unless the Issuer is exempt from compliance with the Rule or the continuing disclosure provisions of the Rule as a result of certain permitted exemptions, the Transcript for each issue of related obligations will include a Continuing Disclosure Agreement executed by the Issuer.

In order to monitor compliance by the Issuer with its Continuing Disclosure Agreements, the Compliance Officer will, if and as required by such Continuing Disclosure Agreements:

- A. Assist in the preparation or review of annual reports ("Annual Reports") in the form required by the related Continuing Disclosure Agreements.
- B. Maintain a calendar, with appropriate reminder notifications, listing the filing due dates relating to dissemination of Annual Reports, which annual due date is generally expressed as a date within a certain number of days (e.g., 365 days) following the end of the Issuer's fiscal year (the “Annual Report Due Date”), as provided in the related Continuing Disclosure Agreements.
- C. Ensure timely dissemination of the Annual Report by the Annual Report Due Date, in the format and manner provided in the related Continuing Disclosure Agreements, which may include transmitting such filing to the Municipal Securities Rulemaking Board (“MSRB”) through the Electronic Municipal Market Access (“EMMA”) System at [www.emma.msrb.org](http://www.emma.msrb.org) in the format prescribed by the MSRB.
- D. Monitor the occurrence of any “Material Event” (as defined in the Continuing Disclosure Agreements) and timely file notice of the occurrence of any such Material Event in the manner provided under the Continuing Disclosure Agreements. To be

timely filed, such notice must be transmitted within 10 days (or such other time period as set forth in the Continuing Disclosure Agreements) of the occurrence of such Material Event.

- E. Ensure timely dissemination of notice of any failure to perform under a Continuing Disclosure Agreement, if and as required by the Continuing Disclosure Agreement.
- F. Respond to requests, or ensure that the Issuer Contact (as defined in the Continuing Disclosure Agreement) responds to requests, for information under the Rule, as provided in the Continuing Disclosure Agreements.
- G. Monitor the performance of any dissemination agent(s) engaged by the Issuer to assist in the performance of any obligation under the Continuing Disclosure Agreements.

PASSED and ADOPTED by the Brookings School District 05-1, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
President of the School Board

ATTEST:

\_\_\_\_\_  
Business Manager