

ORDINANCE NO. 762

AN ORDINANCE PROVIDING FOR BORROWING MONEY AND ISSUING GENERAL OBLIGATION BONDS OF THE CITY OF NOKOMIS, MONTGOMERY COUNTY, ILLINOIS, IN THE AMOUNT OF \$100,000, AND PROVIDING FOR THE LEVY AND COLLECTION OF A DIRECT ANNUAL REAL ESTATE TAX FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST OF SAID BONDS.

WHEREAS, the City of Nokomis, Montgomery County, Illinois, is a duly organized City created and operated in accordance with the applicable provisions of the laws of the State of Illinois and is not a home rule unit under the Constitution of 1970; and

WHEREAS, the assessed valuation for the year 1987 for the area included within the City of Nokomis is \$7,463,136; and

WHEREAS, the needs of the City require the expenditure at this time of not more than One Hundred Thousand Dollars (\$100,000) for the purpose of paying an agreed amount to satisfy a judgment and costs entered February 13, 1986 in Zueck v. the City of Nokomis, Illinois, and post-judgment interest and attorney fees resulting therefrom in Case No. 83-L-26 in the Circuit Court of Montgomery County, Illinois (herein collectively the "Judgment") and part of the cost of issuance of these bonds, all being pursuant to and in all respects in compliance with the provisions of paragraph 9-105 of Chapter 85, Ill. Rev. Stat., 1985, and paragraphs 8-4-1(2) of the "Illinois Municipal Code", approved May 29, 1961, and, to the extent applicable, paragraph 8-5-16 of the "Illinois Municipal Code", and all acts amendatory thereof and supplementary thereto; and

WHEREAS, there are not sufficient funds on hand and available for the purpose of paying the cost of such Judgment, and in order to obtain the funds required to pay such Judgment, it will be necessary and to the best interests

of the City to borrow money to pay such Judgment in an amount not in excess of One Hundred Thousand Dollars (\$100,000), and for said purpose to issue bonds of the City therefor;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Nokomis, Montgomery County, Illinois, as follows:

Section 1. That the City Council hereby finds and determines that the facts and statements contained in the preamble to this Ordinance are true and correct and hereby adopts the same as part of this Ordinance.

Section 2. That there be borrowed by and for and on behalf of the City of Nokomis the sum of One Hundred Thousand Dollars (\$100,000) for the purpose of paying an agreed amount to satisfy a judgment and costs entered February 13, 1986 in Zueck v. the City of Nokomis, Illinois, and post-judgment interest and attorney fees resulting therefrom in Case No. 83-L-26 in the Circuit Court of Montgomery County, Illinois (herein collectively the "Judgment") and part of the cost of issuance of these Bonds, as referred to and hereinabove described in the preamble of this Ordinance, and for the payment of expenses incident thereto, and to evidence said loan, Bonds of this City be issued.

The Bonds shall be designated "General Obligation Bonds" (the "Bonds") and shall be in the principal amount of One Hundred Thousand Dollars (\$100,000) and shall be dated as of March 15, 1988, and shall also bear the date of authentication thereof. Each Bond issued hereunder shall be in the denomination of \$5,000 or any integral multiple thereof and shall be numbered consecutively in such fashion as shall be determined by the Bond Registrar.

Interest on the Bonds shall be computed on the basis of a 360 day year and shall be payable from the Dated Date on December 1, 1988, and semi-annually thereafter on the first days of June and December in each year, and

both principal and interest shall be payable in lawful money of the United States of America. The Seal of the City of Nokomis shall be affixed by impression or imprinting to the Bonds and said Bonds shall be executed on behalf of the City by the manual or duly authorized facsimile signature of the Mayor and Clerk of said City. The Bonds shall bear interest and shall mature on December 1 in each of the years and the amounts as follows:

<u>YEAR</u>	<u>AMOUNT</u>	<u>RATE</u>
1990	10,000	8.00%
1991	10,000	8.00%
1992	10,000	8.00%
1993	10,000	7.95%
1994	10,000	7.65%
1995	10,000	7.10%
1996	10,000	7.20%
1997	15,000	7.30%
1998	15,000	7.40%

Section 3. Bonds after December 1, 1994 shall be subject to redemption and payment prior to maturity, at the option of the City of Nokomis, in whole from time to time, on any interest payment date on and after December 1, 1994, at par and accrued interest to such date of redemption. Written notice of the exercise of its option to redeem the Bonds shall be given by the City to the holders of said Bonds by registered or certified mail sent at least thirty (30) days prior to the date of redemption. Such notice of redemption shall designate the date and place of redemption of the Bonds, which place shall be at the First National Bank of Nokomis and shall indicate that on the designated date of redemption that the principal amount of such Bonds will be paid together with accrued interest thereon. When the Bonds shall have been called for redemption and payment made or provided for, interest on the Bonds shall cease from and after the date so specified in the notice of redemption.

Section 4. The said Bonds shall be transferable only upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar executed by the registered owner thereof or by the registered owner's duly authorized attorney. Upon such transfer, a new general obligation Bond shall be issued, both principal and interest of which shall be payable to the transferee, in the principal amount of the surrendered Bonds.

Section 5. That the Bonds shall be in substantially the following form:

(Form of Bond)

UNITED STATES OF AMERICA
STATE OF ILLINOIS, COUNTY OF MONTGOMERY
CITY OF NOKOMIS
GENERAL OBLIGATION BOND

REGISTERED

REGISTERED

NUMBER R- _____

PRINCIPAL AMOUNT \$ 100,000.⁰⁰

INTEREST RATE _____

MATURITY DATE _____

DATED DATE March 15, 1988

KNOW ALL MEN BY THESE PRESENTS, that the City of Nokomis, Montgomery County, Illinois, hereby acknowledges itself to owe, and for value received promises to pay the Registered Owner hereof, as hereinafter provided, the principal amount identified above in lawful money of the United States of America on the Maturity Date specified above, together with interest on said sum from Dated Date hereof (which date is printed on the face hereof) until paid at the Interest Rate per annum specified above.

Interest shall be computed on the basis of a 360 day year and shall be payable on December 1, 1988 and semi-annually thereafter on the first days of June and December in each year, and both principal and interest shall be

payable in lawful money of the United States at the principal office of The First National Bank of Nokomis, Illinois as paying agent (the "Paying Agent"). Payment of interest shall be made to the registered owner hereof as shown on the registration books of the City maintained by the First National Bank of Nokomis as bond registrar (the "Bond Registrar"). The Seal of the City of Nokomis shall be affixed by impression or imprinting to the said Bond and said Bond shall be executed on behalf of the City by affixing the manual or facsimile signature of the Mayor and Clerk of said City. For the prompt payment of this Bond, both principal and interest, as aforesaid, at maturity, and the levy of taxes sufficient for that purpose, the full faith, credit and resources of said City are hereby irrevocably pledged.

Bonds maturing after December 1, 1994 are subject to redemption and payment prior to maturity at the option of the City of Nokomis, in whole, from time to time, on any interest payment date on and after December 1, 1994, at par and accrued interest to such date of redemption. Written notice of the exercise of its option to redeem this Bond shall be given by the City to the holder hereof by registered or certified mail sent at least thirty (30) days prior to the date of redemption. Such notice of redemption shall designate the date and place of redemption of this Bond which place shall be The First National Bank of Nokomis and shall indicate that on the designated date of redemption that the principal amount hereof shall be paid with accrued interest thereon. When this Bond shall have been called for redemption, pursuant to the terms hereof, and payment made or provided for, interest on this Bond shall cease from and after the date so specified in the notice of redemption.

This Bond is issued in fully registered form by the City for the purpose of paying an agreed amount to satisfy a judgment and costs entered February 13, 1986 in Zueck v. the City of Nokomis, Illinois, and post-judgment interest and attorney fees resulting therefrom in Case No. 83-L-26 in the Circuit Court of Montgomery County, Illinois (herein collectively the "Judgment") and part of the cost of issuance of these Bonds, pursuant to and in all respects in compliance with the provisions of paragraph 9-105 of Chapter 85, Ill. Rev. Stat., 1985, and paragraphs 8-4-1(2) of the "Illinois Municipal Code", approved May 29, 1961, and to the extent applicable, paragraph 8-5-16 of the "Illinois Municipal Code", and all acts amendatory thereof and supplementary thereto and is authorized and in compliance with an ordinance duly passed by the City Council of said City, and published in all respects as by law provided.

This Bond is transferable as provided in the Bond Ordinance only upon surrender hereof for cancellation together with a written instrument of transfer satisfactory to the Bond Registrar executed by the registered owner hereof or the registered owner's duly authorized attorney. Upon such transfer, a new General Obligation Bond will be issued, both principal and interest of which will be payable to the transferee, in the principal amount hereof. THE CITY HAS DESIGNATED THIS BOND AS A "QUALIFIED TAX-EXEMPT OBLIGATION" PURSUANT TO SECTION 265(b)(3) OF THE INTERNAL REVENUE CODE OF 1986.

This Bond shall not become obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by the Bond Registrar.

It is hereby certified and recited that all acts, conditions and things required by the Constitution and laws of the State of Illinois, to exist, or to be done, precedent to and in the issuance of this Bond, have existed and have been properly done, happened and performed in regular and due form and time as required by law; that the indebtedness of said City of Nokomis, represented by this Bond, and including existing indebtedness of said City, howsoever evidenced and incurred, does not exceed any Constitutional limitation, and that provision has been made for the collection of a direct annual tax, in addition to all other taxes, on all of the taxable property in said City sufficient to pay the interest hereon as the same falls due and also to pay and discharge the principal hereof at maturity.

IN WITNESS WHEREOF, said City of Nokomis, Montgomery County, Illinois, by its City Council, has caused its corporate seal to be hereunto affixed and this Bond to be signed by the Mayor of said City and by its City Clerk, all as of the ____ day of _____, 1988.

Gene Addin
Mayor

Mary Jean Scheller
City Clerk

This Bond is one of the Bonds described in the within mentioned Ordinance and is one of the General Obligation Bonds having a Dated Date of March 15, 1987 of the City of Nokomis, Montgomery County, Illinois.

First National Bank,
as Bond Registrar

By: *Roger E. Blankenship*
Authorized Officer

Section 6. That the Bonds authorized by this Ordinance shall be executed by the Mayor and City Clerk, as in this Ordinance provided, and delivered to the Treasurer of the City. The Bonds shall then be delivered by the Treasurer of the City to the Columbian Securities, Inc. upon payment of the purchase price, which shall be not less than the par value of said Bonds, there being no accrued interest, since the interest on the Bonds is payable from the date of delivery thereof.

Section 7. That for the purpose of providing the funds required to pay the interest on said Bonds promptly when and as the same falls due and also to pay and discharge the principal thereof at maturity there be and there is hereby levied upon all the taxable property in said City, in addition to all other taxes, the following direct annual real estate tax, to wit:

<u>For the Year</u>	<u>A Tax Sufficient to Produce the Sum of:</u>
1988	\$16,793.39 for interest up to and including June 1, 1990
1989	17,195.00 for principal and interest
1990	16,395.00 for principal and interest
1991	15,595.00 for principal and interest
1992	14,797.00 for principal and interest
1993	14,017.00 for principal and interest
1994	13,280.00 for principal and interest
1995	12,565.00 for principal and interest
1996	16,657.00 for principal and interest

That principal and interest coming due at any time when there are insufficient funds on hand to pay the same be paid promptly when due from current funds on hand in advancement of the collection of said taxes herein levied, and when said taxes shall have been collected, reimbursement shall be made to the said funds in the amounts thus advanced.

Section 8. In the event the amount of funds collected from any year's real estate tax levy provided for in Section 7 of this Ordinance exceeds the amount required from such levy to pay and discharge the principal and interest on said Bonds, the City Council shall adopt a resolution and timely file the

same with the proper authorities requiring the abatement of the following year's levy provided for herein to the extent of such excess funds collected.

Section 9. That forthwith as soon as this Ordinance becomes effective, a copy hereof certified by the Clerk of said City, which certificate shall recite that this Ordinance has been passed by the City Council of said City, and published, shall be filed with the County Clerk of Montgomery County, Illinois, who shall in and for each of the years 1988 to 1997, inclusive, ascertain the rate percent required to produce the aggregate tax hereinbefore provided to be levied in each of said years, respectively, and extend the same for collection on the tax books in each of said tax years in like manner as taxes would be levied by the City for general corporate purposes, and in each of said years, such annual tax shall be levied and collected by said City in like manner as taxes would be levied and collected for general corporate purposes for each of said years, and when collected, such taxes shall be used solely for the purpose of paying principal and interest upon the Bonds herein authorized as the same matures.

Section 10. That the principal proceeds of the sale of said Bonds shall be devoted to and used with due diligence for the payment of the Judgment for which said Bonds are hereby authorized to be issued, and the City Council represents and certifies that:

(1) The City Council expects that over eighty-five percent (85%) of the spendable proceeds of said Bonds, including investment proceeds, will be expended, for the purpose of paying the Judgment, within ninety (90) days of the date of issue of said Bonds;

(2) All of the principal proceeds of the Bonds are needed for the purpose stated in the form of bond above set out, including expenses incidental to such purpose and to the issuance of the Bonds;

(3) The accrued interest, if any, received upon the sale of the Bonds will be applied to the first interest due thereon and that the balance of the proceeds of sale of the Bonds will be applied to the cost of said project and of issuing the Bonds;

(4) The City Council has not accumulated and does not expect to accumulate amounts of money in a fund to pay or to be held as security for the payment of principal and interest on the Bonds, other than (a) amounts expected to be spent within thirteen (13) months from the date of the deposit thereof into such fund and (b) interest earned by such fund which is to be spent within twelve (12) months from date of receipt; and

(5) To the best of the knowledge and belief of the City Council, there are no facts or circumstances that would materially change the conclusions and representations set out in this Section, and the expectations set out in this Section are reasonable.

Said City Council also certifies and further covenants with the purchaser and holder of said Bonds that so long as any portion of the Bonds remains outstanding, monies on deposit in any fund or accounts in connection with said Bonds, whether or not such monies were derived from the proceeds of the sale of said Bonds or from any other sources, will not be used in a manner which will cause such Bonds to be an "arbitrage bond" within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended, and any lawful regulations promulgated or proposed thereunder, including Treas. Reg. Sections 1.103-13, 1.103-14 and 1.103-15, as the same presently exist, or may

from time to time hereafter be amended, supplemented or revised. The City Council reserves the right, however, to make any investment of such money permitted by state law if, when and to the extent that said Section 103(c) or regulations promulgated thereunder shall be repealed or relaxed or shall be held void by final decision of a court of competent jurisdiction, but only if any investment made by virtue of such repeal, relaxation or decision would not, in the opinion of counsel of recognized competence in such matters, result in making the interest on said Bonds subject to federal income taxation.

Section 11. That the said City Council also certifies and further covenants with the purchaser and holder of the Bonds that so long as said Bonds remain outstanding in whole or in part, that it will comply in all respects with such statutes, laws and regulations as the same presently exist, or may from time to time hereafter be amended, supplemented or revised, which if not complied with would render the Bonds invalid or which if not complied with would prevent said City from collecting any portion or all of the real estate taxes levied by the terms of this Ordinance.

Section 12. That the funds derived from the levy made herein be and the same are hereby appropriated and set aside for the sole and only purpose of paying principal of and interest on said Bonds when and as they become due. That the funds derived from the sale of said Bonds be and they are hereby appropriated and set aside for the purpose hereinbefore set out.

Section 13. None of the Bonds is a "private activity bond" as defined in Section 141(a) of the Code. In support of such conclusion, the City certifies, represents and covenants as follows:

A. None of the proceeds of the Bonds are to be used, directly or indirectly, in any trade or business carried on by any person other than a state or local governmental unit.

B. No direct or indirect payments are to be made on any Bond with respect to any private business use by any person other than a state or local governmental unit.

C. None of the proceeds of the Bonds are to be used, directly or indirectly, to make or finance loans to persons other than a state or local governmental unit.

Section 14. The City recognizes that the provisions of Section 148 of the Code require a rebate to the United States in certain circumstances. An exemption to rebate requirements appears at Section 148(f)(4)(C) of the Code and applies to this issue. No rebate is required or planned by the City. In support of this conclusion, the City covenants, represents and certifies as follows:

A. The City is a governmental unit with general taxing powers.

B. No Bond in this issue is a "private activity bond" as defined in Section 141(a) of the Code.

C. All the net proceeds of the Bonds are to be used for the local government activities of the City described in this Ordinance (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the City).

D. The aggregate face amount of all tax-exempt bonds (other than "private activity bonds" as defined in the Code) issued by the City (and all subordinate entities thereof) during calendar year 1988 is not reasonably expected to exceed \$5,000,000.

Section 15. The City recognizes the provisions of Section 265(b)(3) of the Code which provide that a "qualified tax-exempt obligation" as therein defined may be treated by certain financial institutions as if it were acquired on August 7, 1986, for certain purposes. The City hereby designates each of the Bonds as may be from time to time outstanding for purposes of Section 265(b)(3) of the Code as a "qualified tax-exempt obligation" as provided therein.

In support of such designation, the City certifies, represents and covenants as follows:

A. The Bonds are not "private activity bonds" as defined in Section 141(a) of the Code.

B. Including the Bonds, the City (including any entities subordinate thereto) has not and does not reasonably expect to issue in excess of \$10,000,000 in "qualified tax-exempt obligations" during calendar year 1988.

C. Including the Bonds, not more than \$10,000,000 of obligations issued by the City (including any entities subordinate thereto) during calendar year 1988 have been to date or will be designated by the City for purposes of said Section 265(b)(3).

Section 16. The City agrees to comply with all provisions of the present Code which, if not complied with by the City, would cause the Bonds not to be tax-exempt. In furtherance of the foregoing provisions, but without limiting their generality, the City agrees:

A. through its officers, to make such further specific covenants, representations as shall be truthful, and assurances as may be necessary or advisable;

B. to comply with all representations, covenants and assurances contained in certificates or agreements as may be prepared by counsel approving the Bonds;

C. to consult with such counsel and to comply with such advice as may be given;

D. to pay to the United States, if subsequently determined to be necessary, such sums of money representing required rebates of excess arbitrage profits relating to the Bonds;

E. to file such forms, statements and supporting documents as may be required and in a timely manner; and

F. if deemed necessary or advisable by its officers, to employ and pay fiscal agents, financial advisors, attorneys and other persons to assist the City in such compliance.

Section 17. The City recognizes that Section 149 of the Code requires the Bonds to be issued and to remain in fully registered form in order to be and remain tax-exempt. In this connection, the City agrees that it will not take any action to permit the Bonds to be issued in, or converted into, bearer or coupon form.

Section 18. The City reserves the right to use or invest monies in connection with the Bonds in any manner, notwithstanding the representations and covenants in Sections 14 through 19 herein, provided it shall first have received an opinion from an attorney or a firm of attorneys of nationally recognized standing in matters pertaining to tax-exempt bonds to the effect that use or investment of such monies as contemplated will not result in loss or impairment of tax-exempt status for the Bonds.

Section 19. If requested by the Bond Registrar and Paying Agent, any officer of the City is authorized to execute the Bond Registrar's and Paying Agent's standard form of agreement between the City and the Bond Registrar and Paying Agent with respect to the obligations and duties of the Bond Registrar and Paying Agent hereunder. In addition to the terms of such agreement or agreements and subject to modification thereby, the Bond Registrar and Paying Agent by acceptance of duties hereunder agree:

A. to act as bond registrar, paying agent, authenticating agent, and transfer agent as respectively provided herein;

B. for the Bond Registrar, to maintain a list of Bondholders as set forth herein and to furnish such list to the City upon request, but otherwise to keep such list confidential to the extent permitted by law;

C. for the Bond Registrar, to cancel and/or destroy Bonds which have been paid at maturity or upon redemption or submitted for exchange or transfer;

D. for the Bond Registrar, to furnish the City at least annually a certificate with respect to Bonds cancelled and/or destroyed; and

E. for the Bond Registrar, to furnish the City at least annually an audit confirmation of Bonds paid, Bonds outstanding and payments made with respect to interest on the Bonds.

The First National Bank of Nokomis is hereby appointed Bond Registrar and Paying Agent for the Bonds issued pursuant to this Ordinance. The Mayor and City Clerk are hereby authorized and empowered to enter into such agreements as may be necessary to perfect the appointment of Bond Registrar and Paying Agent.

The City Clerk of the City is hereby directed to file a certified copy of this Ordinance with the Bond Registrar and the Paying Agent.

Section 20. That all ordinances, resolutions and orders, or parts thereof in conflict herewith, be and the same are hereby repealed, and this Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

PASSED this 22 day of Feb., 1988.

APPROVED this 22 day of Feb., 1988.

AYES: 4

NAYES: 0

ABSENT: 1

Gene Addin
Mayor

ATTEST:

Mary Jean Scholler
City Clerk

PUBLISHED: March 2, 1988

STATE OF ILLINOIS)
) SS.
COUNTY OF MONTGOMERY)

CITY CLERK'S CERTIFICATE

I, Mary Jean Scheller, City Clerk of the City of Nokomis, in the State aforesaid and keeper of the records and files of said Montgomery County, do hereby certify that there was filed in my office on the 22nd day of February, 1988, "AN ORDINANCE providing for borrowing money and issuing a General Obligation Bond of the City of Nokomis, Montgomery County, Illinois, in the amount of \$100,000, and providing for the levy and collection of a direct annual real estate tax for the payment of the principal and interest of said Bonds", published by me, all of which appears from the records and files of my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said City at my office in the City of Nokomis in said City, this 23rd day of February, 1988.

Mary Jean Scheller
City Clerk