

RESOLUTION NO. 2014-020

RESOLUTION AMENDING RESOLUTION NO. 2013-060

WHEREAS, the City of Rapid City, South Dakota (the "City") has previously, by Resolution No. 2013-060 (the "Original Resolution"; together with this Amending Resolution, the "Resolution"), authorized the issuance of its Gross Receipts Tax Revenue Refunding Bonds (the "Bonds") for the purpose of refunding the City's Gross Receipts Tax Revenue Bonds, Series 2008, dated, as originally issued, as of August 1, 2008, maturing in the years 2016 through 2028 (the "Refunded Bonds");

WHEREAS, the City Council desires to amend the Resolution administratively for the purpose of providing for the private placement of the Bonds with one or more purchasers (the "Purchaser") selected by the City in consultation with Dougherty & Company LLC, acting as financial advisor (the "Financial Advisor"), without the use of an indenture of trust and upon the terms described herein;

WHEREAS, all terms defined in the Resolution and used herein shall have the meanings given in the Original Resolution, and the Original Resolution shall continue in full force and effect except as otherwise provided herein;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City, as follows:

SECTION 1. SALE OF BONDS.

1.01. Approval and Execution of Documents. The Mayor, Finance Officer and City Attorney are hereby authorized and directed to execute and deliver (a) a term sheet or bond purchase agreement with the Purchaser (any such agreement or agreement, the "Purchase Agreement") in substantially the form made available to the City Council for review prior to this meeting, (b) the documents required thereunder, (c) the Bonds and (d) any other documents required to complete the financing contemplated hereby. The Mayor or Finance Officer is also authorized to execute and deliver an agreement with the Financial Advisor. Execution and delivery of such documents by the Mayor, Finance Officer and City Attorney shall constitute evidence that such items are consistent with the terms of the Resolution and have been duly authorized, executed and delivered by the City and are enforceable against the City in accordance with their terms, subject to customary exceptions relating to bankruptcy, reorganization, insolvency and other laws affecting creditors' rights.

SECTION 2. TERMS, EXECUTION AND DELIVERY.

2.1. Date, Maturities and Interest Rates. The Bonds are to be issued in a principal amount not to exceed \$4,415,000 and bear interest at a rate of 3.10% per annum. The Bonds will mature on June 1, 2028. The Bonds shall be originally dated as of the date of delivery, shall bear interest from the date of original issue until paid or duly called for redemption on June 1 and December 1, commencing June 1, 2014. The Bonds shall be issuable only in fully registered form. The interest thereon and, upon surrender of each Bond, the principal amount thereof, shall be payable by check or draft issued by the Registrar described herein.

2.2. Dates and Interest Payment Dates. Upon the initial delivery of the Bonds pursuant to Section 2.6 and upon any subsequent transfer or exchange pursuant to Section 2.6, the date of authentication shall be noted on each Bond so delivered, exchanged or transferred.

2.3. Redemption. The Bonds are subject to optional redemption by the City prior to maturity annually on or after June 1, 2021, in whole or in part, in such order of maturity dates as the City may select and, within a maturity, by lot as selected by the Registrar (or, if applicable, by the bond depository in accordance with its customary procedures) at a redemption price equal to 100% of their principal amount, plus accrued interest to the redemption date.

The Bonds are term bonds and shall be subject to mandatory sinking fund redemption prior to maturity as described in the Purchase Agreement.

The Finance Officer shall cause notice of the call for redemption of any Bonds to be published as and if required by law, and, at least thirty days prior to the designated redemption date, shall cause notice of the call thereof for redemption to be mailed, by first class mail (or, if applicable, by the bond depository in accordance with its customary procedures), to the registered owners of any Bonds to be redeemed at their addresses as they appear on the bond register described in Section 2.5 hereof, but no defect in or failure to give such mailed notice shall affect the validity of proceedings for the redemption of any Bond not affected by such defect or failure. The notice of redemption shall specify the redemption date, redemption price, the numbers, interest rates and CUSIP numbers of the Bonds to be redeemed and the place at which the Bonds are to be surrendered for payment, which is the principal office of the Registrar. Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of the Bonds shall cease to bear interest. Upon partial redemption of any Bond, a new Bond or Bonds will be delivered to the registered owner without charge, representing the remaining principal amount outstanding.

2.4. Appointment of Initial Registrar. The City Finance Officer will act as bond registrar, transfer agent and paying agent (the Registrar) for the Bonds. The City reserves the right to appoint a successor Registrar, in which event the predecessor Registrar shall deliver all cash and Bonds in its possession to the successor Registrar and shall deliver the bond register to the successor Registrar. On or before each principal or interest due date, without further order of the City Council, the Finance Officer shall transmit to the Registrar moneys sufficient for the payment of all principal and interest then due. No resignation or removal of the Registrar shall become effective until a successor Registrar has been appointed and has accepted such appointment.

2.5. Registration. The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:

(a) Register. The Registrar shall keep a bond register in which the Registrar shall provide for the registration of ownership of Bonds and the registration of transfers and exchanges of Bonds entitled to be registered, transferred or exchanged.

(b) Transfer of Bonds. Upon surrender for transfer of any Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Bonds of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer after the fifteenth day of the month preceding each interest payment date and until such interest payment date.

(c) Exchange of Bonds. Whenever any Bonds are surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver one or more new Bonds of a like aggregate principal amount, interest rate and maturity, as requested by the registered owner or the owner's attorney duly authorized in writing.

(d) Cancellation. All Bonds surrendered upon any transfer or exchange shall be promptly canceled by the Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When any Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owners. The City and the Registrar may treat the person in whose name any Bond is at any time registered in the bond register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. For every transfer or exchange of Bonds, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Registrar shall deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond or in lieu of and in substitution for any

such destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to it that such Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the City and the Registrar shall be named as obligees. All Bonds so surrendered to the Registrar shall be canceled by it and evidence of such cancellation shall be given to the City. If the mutilated, destroyed, stolen or lost Bond has already matured or been called for redemption in accordance with its terms it shall not be necessary to issue a new Bond prior to payment.

2.6. Execution, Authentication and Delivery. The Bonds shall be prepared under the direction of the Finance Officer and shall be executed on behalf of the City by the signatures of the Mayor and the Finance Officer and countersigned by an attorney actually residing in the State of South Dakota and duly licensed to practice therein, provided that all signatures may be printed, engraved or lithographed facsimiles of the originals. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of any Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery. Notwithstanding such execution, no Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until a certificate of authentication on such Bond has been duly executed by the Registrar by the manual signature of its authorized representative. Certificates of authentication on different Bonds need not be signed by the same representative. The executed certificate of authentication on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Resolution. When the Bonds have been so prepared, executed and authenticated, the Finance Officer shall deliver the same to the Purchaser thereof upon payment of the purchase price in accordance with the provisions of the Resolution. Upon delivery of the Bonds to the Finance Officer shall file, or cause to be filed, with the Secretary of State, on the form provided by the Secretary of State, the information required by SDCL, Section 6-8B-19.

2.7. Form of Bonds. The Bonds shall be prepared in substantially the form presented to and approved by the Council and on file in the office of the Finance Officer.

2.8. Securities Depository. At the direction of the Finance Officer, the Bond may be issued in book-entry only form, in which case the following provisions shall apply.

For purposes of this section the following terms shall have the following meanings:

‘Beneficial Owner’ shall mean, whenever used with respect to a Bond, the person in whose name such Bond is recorded as the beneficial owner of such Bond by a Participant on the records of such Participant, or such person’s subrogee.

‘Cede & Co.’ shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Bonds.

‘DTC’ shall mean The Depository Trust Company of New York, New York.

‘Participant’ shall mean any broker-dealer, bank or other financial institution for which DTC holds Bonds as securities depository.

‘Representation Letter’ shall mean the Representation Letter pursuant to which the sender agrees to comply with DTC’s Operational Arrangements.

The Bonds shall be initially issued as separately authenticated fully registered bonds, and one Bond shall be issued in the principal amount of each stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the bond register in the name of Cede & Co., as nominee of DTC. The Registrar and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, if any, giving any notice permitted or required to be given to registered owners of Bonds under this Resolution, registering the transfer of Bonds, and for all other purposes whatsoever; and neither the Registrar nor the City shall be affected by any notice to the contrary. Neither the Registrar nor the City shall have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant, or any other person which is not shown on the bond register as being a registered owner of any Bonds, with respect to the accuracy of any records maintained by DTC or any Participant, with respect to the payment by DTC or any Participant of any amount with respect to the principal of or interest on the Bonds, with respect to any notice which is permitted or required to be given to owners of Bonds under this Resolution, with respect to the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Bonds, or with respect to any consent given or other action taken by DTC as registered owner of the Bonds. So long as any Bond is registered in the name of Cede & Co., as nominee of DTC, the Registrar shall pay all principal of and interest on such Bond, and shall give all notices with respect to such Bond, only to Cede & Co. in accordance with DTC’s Operational Arrangements, and all such payments shall be valid and effective to fully satisfy and discharge the City’s obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than DTC shall receive an authenticated Bond for each separate stated maturity evidencing the obligation of the City to make payments of principal and interest. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the Bonds will be transferable to such new nominee in accordance with paragraph (e) hereof.

In the event the City determines that it is in the best interest of the Beneficial Owners that they be able to obtain Bonds in the form of bond certificates, the City may notify DTC and the Registrar, whereupon DTC shall notify the Participants of the availability through DTC of Bonds in the form of certificates. In such event, the Bonds will be transferable in accordance with paragraph (e) hereof. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the City and the Registrar and discharging its responsibilities with respect thereto under applicable law. In such event the Bonds will be transferable in accordance with paragraph (e) hereof.

The execution and delivery of the Representation Letter to DTC by the Mayor or Finance Officer is hereby authorized and directed.

In the event that any transfer or exchange of Bonds is permitted under paragraph (b) or (c) hereof, such transfer or exchange shall be accomplished upon receipt by the Registrar of the Bonds to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee in accordance with the provisions of this Resolution. In the event Bonds in the form of certificates are issued to owners other than Cede & Co., its successor as nominee for DTC as owner of all the Bonds, or another securities depository as owner of all the Bonds, the provisions of this Resolution shall also apply to all matters relating thereto, including, without limitation, the printing of such Bonds in the form of bond certificates and the method of payment of principal of and interest on such Bonds in the form of bond certificates.

### SECTION 3. USE OF PROCEEDS; REDEMPTION OF REFUNDED BONDS.

3.1. Use of Proceeds. Upon payment for the Bonds by the Purchaser, a portion of the proceeds of the Bonds are irrevocably appropriated in the amount necessary for the payment of all principal and interest to become due on the Refunded Bonds to and including June 1, 2015 (the "Redemption Date"). The Finance Officer is authorized to deposit such proceeds in escrow with The First National Bank in Sioux Falls, Sioux Falls South Dakota, as escrow agent (the "Escrow Agent"), such funds so deposited to be invested in securities authorized for such purpose by Chapter 6-8B, South Dakota Codified Laws. The Mayor and Finance Officer may enter into an escrow agreement with the Escrow Agent establishing the terms and conditions for such escrow account (the "Escrow Account") in accordance with Chapter 6-8B, South Dakota Codified Laws. Any proceeds of the Bonds remaining after payment of costs of issuance of the Bonds shall be deposited in the Bond Account created in Section 4.2 hereof.

3.2. Redemption of Refunded Bonds. The Finance Officer is directed to call the Refunded Bonds for redemption and prepayment on the Redemption Date and to give, or cause to be given, notice of redemption in accordance with the provisions of the Indenture of Trust authorizing the issuance of the Refunded Bonds.

### SECTION 4. FUND AND ACCOUNTS.

4.1. Gross Receipts Tax Revenue Fund. The Finance Officer shall establish and will maintain a Gross Receipts Tax Revenue Fund (the "Revenue Fund") as a separate and special fund in the financial records of the City until all Bonds issued and made payable therefrom, and interest due thereon, have been duly paid or discharged. All collections of the Gross Receipts Tax shall be credited, as received, to the Revenue Fund. Within the Revenue Fund are various separate accounts to be maintained by the City.

4.2. Bond Account. So long as any of the Bonds and Additional Bonds are outstanding and any principal of or interest thereon unpaid, a separate debt service fund shall be maintained within the Revenue Fund to be known as the Gross Receipts Tax Revenue Bond Account (the "Bond Account") and the principal and interest on the Bonds and any Additional Bonds shall be payable from the Bond Account. The City shall deposit in the Bond Account amounts sufficient to pay the principal of, premium, if any, and interest on the Bonds when due whether at maturity or call for redemption. The moneys on hand in the Bond Account from time to time shall be used solely to pay the principal of and interest on the Bonds and any Additional Bonds.

4.3. Deposit and Investment of Funds. The Finance Officer shall cause all moneys in the Revenue Fund to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of Chapter 4-6A, SDCL, in a deposit account or accounts, which shall be maintained separate and apart from all other account of the City, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No moneys shall at any time be withdrawn from such deposit accounts except for the purposes of the respective funds as authorized in this Resolution, except that moneys from time to time on hand in the respective funds may at any time, in the discretion of the City Council, be invested in securities permitted by the provisions of Section 4-5-6, SDCL. Income received from the deposit or investment of moneys shall be credited to the account from whose moneys and deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys in that account. The investment of the moneys on deposit in the Bond Account is further restricted by the provisions of Section 8 hereof.

4.4. Gross Receipts Tax; Other Uses. The remaining Gross Receipts Tax proceeds may be (i) used for paying other costs which the City is legally authorized to undertake and/or the payment of debt service on other bonds of the City, and contractual obligations of the City incurred for the purpose of paying legally authorized costs of or (ii) transferred to the general fund of the City, to the extent then permitted by South Dakota law.

## SECTION 5. PRIORITIES AND ADDITIONAL BONDS.

5.1. Priority of Bond Payments. Each and all of the Bonds and Additional Bonds shall be equally and ratably secured by and payable out of Gross Receipts Tax revenues without preference or priority of any one Bond over any other by reason of serial number or otherwise, provided that if at any time the collections of Gross Receipts Tax are insufficient to pay principal and interest then due on all Bonds, any and all moneys then on hand shall be first used to pay the interest accrued on all outstanding Bonds, and the balance shall be applied toward payment of the maturing principal of Bonds in order of their maturities, the earliest maturing Bonds to be paid first, and pro-rata in payment of Bonds maturing on the same date.

5.2. Refunding Revenue Bonds. The City reserves the right and privilege of refunding any or all of the Bonds or Additional Bonds, but only subject to the following terms and conditions:

(a) Any matured Bonds may be refunded if moneys available for the payment thereof at maturity, within the limitation prescribed in Section 5.1 hereof, should at any time be insufficient to make such payment in full.

(b) Any Bonds may be refunded prior to maturity, as and when they become prepayable according to their terms.

(c) Provision may be made for the payment and refunding of any unmatured Bonds by the deposit with a duly qualified depository bank, as escrow agent, of a sufficient amount of cash, or of Bonds or other general obligations of the United States, or of securities whose principal and interest payments are guaranteed by the United

States, to pay the principal amount of such outstanding Bonds with interest to the earliest subsequent date, if any, upon which the same may be called for redemption and prepayment, and with interest to the maturity of any such Bonds which are not subsequently prepayable.

(d) Any refunding revenue bonds issued for the above purposes may be made payable from the collections of Gross Receipts Tax on a parity as to interest with all then outstanding Bonds, provided that (1) the maturity of each refunding revenue bond shall be subsequent to the last maturity of any then outstanding Bonds which are not refunded or to be refunded out of moneys on deposit with such escrow agent, and (2) no bondholder shall be required to accept a refunding revenue bond in exchange for any Bond owned by such holder.

(e) So long as (i) the final maturity of the refunding bonds does not exceed the final maturity of the bonds being refunded, and (ii) maximum annual debt service on the refunding bonds is not more than 125% of the maximum annual debt service on the bonds being refunded, the refunding bonds need not meet the test for Additional Bonds set forth in Section 5.3.

5.3. Other Parity Bonds. The City reserves the right to issue Additional Bonds, payable from the Bond Account, on a parity as to both principal and interest with the Bonds, if (i) no default has occurred and is continuing under this Resolution, (ii) the collections of the Gross Receipts Tax for each of the two full fiscal years of the City immediately preceding the date of issue of the Additional Bonds were at least 125% of the maximum Annual Debt Service in any future fiscal year, on all then outstanding Bonds, excluding debt service on the Additional Bonds proposed to be issued; and (iii) the collections of the Gross Receipts Tax for the full fiscal year of the City immediately preceding the date of issue of the Additional Bonds were at least 125% of the maximum Annual Debt Service in any future fiscal year, on all then outstanding Bonds and on the Additional Bonds proposed to be issued. For the purposes of this subsection, the phrase “any future fiscal year” shall be the period ending in the fiscal year the last maturity date scheduled for any Bond issued hereunder, assuming no earlier prepayment or redemption; and if Gross Receipts Tax revenues have not been collected during any fiscal year for which information is required, the City shall provide instead the relevant information about non-ad valorem sales taxes levied on substantially the same items and uses, and at the same rate, as Gross Receipts Tax.

In no event shall any Additional Bonds be issued and made payable from the Bond Account if the City is then in default in any payment of principal or interest deficiency in the balances required by this Resolution to be maintained in any of the funds created under this Resolution.

“Annual Debt Service” shall mean the amount required to pay the principal of and interest on all outstanding Bonds and Additional Bonds during a fiscal year, calculated as follows:

(a) The amount payable for principal in any fiscal year shall include the principal of any Bonds required to be redeemed in such fiscal year from a sinking fund or other analogous fund for the retirement of Bonds; subject to the foregoing, the



amount payable for principal in any fiscal year shall be the principal of Bonds having a Stated Maturity in such fiscal year.

(b) There shall be excluded from Annual Debt Service the principal of and interest on any Bonds which are no longer outstanding under this Indenture.

(c) There shall be excluded from Annual Debt Service until the "cross-over" date, the principal of and interest on Additional Bonds issued to refund outstanding Bonds in a "cross-over" refunding

5.4. Subordinate Lien Bonds. Notwithstanding the above provisions of this Section 5, nothing contained in this Resolution or in the Bonds shall be construed to preclude the City from issuing bonds or other obligations secured by a pledge of Gross Receipts Tax if their lien on the Gross Receipts Tax is made expressly subordinate to the pledge thereof to all Bonds issued hereunder.

SECTION 6. COVENANTS OF THE CITY. The City hereby covenants with each and every Owner of the Bonds that so long as any Bonds remain Outstanding and unpaid:

(a) The City will administer, enforce and collect, or cause to be administered, enforced and collected, the Gross Receipts Tax and shall take all reasonable action necessary to collect delinquent payments or to cause delinquent payments to be collected in accordance with law.

(b) The City will keep or cause to be kept books and records showing the proceeds of the Gross Receipts Tax, in which complete entries shall be made in accordance with standard principles of accounting, and any owner of any of the Bonds shall have the right at all reasonable times to inspect such books and records.

(c) The City shall continue to impose and collect the Gross Receipts Tax on the value of goods and services subject to such tax, and the City shall not exempt any item or transaction from the Gross Receipts Tax which is subject to the Gross Receipts Tax on the date of execution of this amending resolution.

(d) The City shall, to the extent permitted by law, defend the validity and legality of the Gross Receipts Tax and the Resolution, and all amendments thereto, against all claims, suits and proceedings which would diminish or impair the Gross Receipts Tax as security for the Bonds.

(e) The City, acting by and through its officers, or otherwise, shall faithfully and punctually perform, or cause to be performed, all duties with respect to the Gross Receipts Tax required by the Constitution and laws of the State and the various ordinances, resolutions and contracts of the City, including, without limitation, the proper segregation of the proceeds of the Bonds and the Gross Receipts Tax and their application from time to time to the respective funds provided therefor.

(f) At any and all times the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge, deliver and file or record all and every such further instruments, acts, deeds, conveyances, assignments, transfers, other documents and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, the Gross Receipts Tax and other funds and accounts hereby pledged or assigned, or intended so to be, or which the City may hereafter become bound to pledge or to assign, or as may be reasonable and required to carry out the purposes of this Indenture. The City, acting by and through its officers, or otherwise, shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Gross Receipts Tax and other funds and accounts pledged hereunder and all the rights and every owner of any of the Bonds against all claims and demands of all persons whomsoever.

(g) The City, its officers, agents and employees, shall not take any action in such manner or to such extent as might prejudice the security for the payment of the Bonds according to the terms thereof. No contract shall be entered into nor any other action taken by which the rights of any Registered Owner of any Bond or other security payable from Gross Receipts Tax might be prejudicially and materially impaired or diminished.

(h) Each City officer or employee having custody of any Gross Receipts Tax, or responsible for their handling, shall be bonded at all times, which bond shall be conditioned upon the proper application of said moneys.

## SECTION 7. DEFEASANCE.

7.1. General. When the liability of the City on all Bonds issued under and secured by this Resolution and all interest thereon has been discharged as provided in this section, all pledges, covenants and other rights granted by this Resolution to the registered owners of such Bonds shall cease.

7.2. Payment. The City may discharge its liability with reference to any Bonds which are due on any date by depositing with the Registrar for such Bonds on or before the date a sum sufficient for the payment thereof in full; or if any Bond shall not be paid when due, the City may nevertheless discharge its liability with reference thereto by depositing with the Registrar a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit.

7.3. Redemption. The City may also discharge its liability with reference to any Bonds which are called for redemption on any date in accordance with their terms, by depositing with the Registrar on or before that date an amount equal to the principal, interest and redemption premium, if any, which are then due thereon, provided that notice of such redemption has been duly given as provided in this Resolution.

7.4. Escrow. The City may also at any time discharge its liability in its entirety with reference to any Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by calling such Bonds for redemption on the next date when they may be

prepaid in accordance with their terms, by giving the notice required for such redemption or giving irrevocable instructions to the escrow agent described below to give such notice, and by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities which are direct non-callable obligations of the United States and are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal, interest and redemption premiums, if any, to become due on such Bonds on or before said redemption date. No defeasance shall be made pursuant to this section unless there has first been presented to the escrow agent (i) a verification report as to the adequacy of the escrow prepared by an independent nationally-recognized certified public accountant and (ii) a written opinion of nationally-recognized bond counsel that such defeasance shall not cause the interest on any outstanding Bonds to be included in the gross income of the registered owners thereof for federal income tax purposes.

## SECTION 8. TAX MATTERS.

8.1. General Covenant. The City covenants and agrees with the registered owners from time to time of the Bonds 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 Bonds 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 interest on the Bonds will not become includable in gross income for federal income tax purposes under the Code and the Regulations. The City shall not enter into any lease, management contract, operating agreement, use agreement or any other contract relating to the use or operation of the facilities refinanced with the Bonds, or any portion thereof, or security for the payment of the Bonds which might cause the Bonds to be considered "private activity bonds" or "private loan bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code").

8.2. Certification. The Mayor and the Finance Officer, being the officers of the City charged with the responsibility for issuing the Bonds pursuant to this Resolution are hereby authorized and directed to execute and deliver to the Purchaser 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 Bonds, it is reasonably expected that the proceeds of the Bonds will be used in a manner that would not cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations.

8.3. Arbitrage Rebate. The City acknowledges that the Bonds are subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Regulations unless the Bonds qualify for an exception from the rebate requirement pursuant to one of the spending exceptions set forth in Section 1.148-7 of the Regulations and no "gross proceeds" of the Bonds (other than amounts constituting a "bona fide debt service fund") arise during or after the expenditure of the original proceeds thereof.

SECTION 9. EFFECTIVE DATE; REPEALS. This Resolution shall become effective twenty days following publication and all provisions of ordinances, resolutions and other actions and proceedings of the City which are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

Dated this \_\_\_\_\_ day of February, 2014.

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

Adopted: February \_\_, 2014.

Published: \_\_\_\_\_, 2014.

Effective Date: \_\_\_\_\_, 2014.