RESOLUTION 2021-008

A RESOLUTION AUTHORIZING THE ISSUANCE OF GROSS RECEIPTS REVENUE REFUNDING BONDS, SERIES 2021, OF THE CITY; PLEDGING THE REVENUES OF THE GROSS RECEIPTS TAX OF THE CITY TO THE PAYMENT OF SAID BONDS; AUTHORIZING OFFICERS OF THE CITY TO APPROVE, EXECUTE AND DELIVER CERTAIN AGREEMENTS AND DOCUMENTS RELATING TO THE BONDS

BE IT RESOLVED by the City Council (the “Council”) of the City of Rapid City, South Dakota (the “City”), as follows:

SECTION 1. RECITALS, AUTHORIZATION AND SALE.

1.01. Recitals and Authorization. It is hereby found, determined and declared that:

(A) The City of Rapid City, in the County of Pennington and State of South Dakota (the “City”), is a political subdivision of the State of South Dakota and a body corporate and politic.

(B) Under the laws of the State of South Dakota, the City is possessed of all powers which are necessary, requisite or proper for the government and administration of its local and municipal matters, and all rights and powers that now or hereafter may be granted to municipalities by the laws of the State of South Dakota.

(C) The City is authorized by Chapter 10-52A-2, South Dakota Codified Laws (the “Gross Receipts Tax Act”), to levy an additional “non-ad valorem tax” (as defined by the Gross Receipts Tax Act) of one percent upon the gross receipts of all leases or rentals of hotel, motel, campsites or other lodging accommodations within the City for periods of less than 28 consecutive days, or sales of alcoholic beverages as defined in Section 35-1-1, South Dakota Codified Laws, or establishments where the public is invited to eat, dine or purchase and carry out prepared food for immediate consumption, or ticket sales or admissions to places of amusement, athletic and cultural events, or any combination thereof (the “Gross Receipts Tax”).

(D) The City may issue municipal non-ad valorem tax revenue bonds pursuant to Section 10-52A-14 of the Gross Receipts Tax Act and Chapter 6-8B, South Dakota Codified Laws (the “Bond Act”; together with the Gross Receipts Tax Act, the “Act”), in anticipation of the collection of the Gross Receipts Tax. Such bonds are required to be payable solely from collections of the Gross Receipts Tax, and the City is required to covenant that it will continue to impose and collect the Gross Receipts Tax so long as such bonds are outstanding.

(E) Pursuant to the Act, Section 3.16.040 (the “Original Ordinance”) of the Rapid City Municipal Code (the “Code”) and an Indenture of Trust dated August 1, 2008, between the City and The First National Bank in Sioux Falls, in Sioux Falls, South Dakota, as trustee (the “Trustee”), the City previously issued its Gross Receipts Tax Revenue Bonds, Series 2008, dated, as originally issued, as of August 1, 2008 (the “Series 2008 Bonds”), payable as to principal, premium, if any, and interest from the Gross Receipts Tax, for the purpose of financing improvements to the existing Rushmore Plaza Civic Center. The City further issued, pursuant to the Original Ordinance and the Act, its Gross Receipts Revenue Refunding Bonds, Series 2014, dated, as originally issued, as of March 25, 2014 (the “Series 2014 Bonds”), the proceeds of which refunded the Series 2008 Bonds.
Pursuant to Ordinance No. 6015 adopted October 20, 2014, the City repealed the Original Ordinance and added Chapter 3.18 to the Code (the “Ordinance”), which Ordinance provides for the imposition of the Gross Receipts Tax and the allocation thereof, with 25% allocated to Visit Rapid City and 75% (the “Pledged Gross Receipts Tax”) allocated to the Rushmore Plaza Civic Center Board (the “Board”).

The Board is created and governed by Chapter 2.76 of the Code and South Dakota Codified Laws, Chapter 9-52 (the “Board Governance Provisions”). Section 2.76.100 of the Code provides that funds pertaining to the Civic Center shall be placed in the custody of the Finance Director, and South Dakota Codified Laws, Section 9-52-26 provides that actions of the Board shall at all times be governed by and subject to all covenants, agreements and limitations contained in the resolutions of the City Council authorizing outstanding revenue bonds.

As authorized by the Ordinance, the Act, the 2014 Resolution and the Board Governance Provisions, the City has determined that it is necessary and desirable to issue additional gross receipts tax revenue bonds, in one or more series, to be designated “City of Rapid City, South Dakota, Gross Receipts Revenue Refunding Bonds, Series 2021” (the “Bonds”), the proceeds of which would be used, together with any additional funds of the City which might be required, (i) to refund in advance of maturity and redeem on June 1, 2021 or such other date as is selected by the Finance Director (the “Redemption Date”), the Series 2014 Bonds (the “Refunded Bonds”), aggregating $2,295,000 in principal amount, and (ii) to pay the costs of issuance of the Bonds (including an original issue discount not to exceed 2% of the par amount of the Bonds and any bond insurance premium as may be required).

1.02. Sale and Bond Purchase Agreement. The Bonds authorized hereby shall be sold to Colliers Securities (the “Purchaser”), in an aggregate principal amount not to exceed the amount necessary to provide for the refunding of the Refunded Bonds and paying costs of issuance of the Bonds, including original issue discount, the underwriter’s discount and any bond insurance premium, the Bonds to bear interest at a rate or rates per annum resulting in an average yield not to exceed 2.00% per annum and to mature over a period not to exceed eight (8) years. Such proposal is hereby approved and the Mayor and Finance Director are hereby authorized and directed to agree with the Purchaser upon the exact purchase price, principal amount, maturities, redemption provisions and interest rate or rates for the Bonds, within the parameters set forth in this Section 1.02. The execution of a Bond Purchase Agreement setting forth such final terms or any similar document (a “Bond Purchase Agreement”) by the Mayor and Finance Director is hereby approved and authorized and such execution shall be conclusive evidence of such agreement and shall be binding upon the City. The provisions of the Bond Purchase Agreement as so executed, including any and all Exhibits and Appendices thereto, are incorporated herein by reference. The law firm of Dorsey & Whitney LLP, in Minneapolis, Minnesota, is hereby appointed as bond counsel and disclosure counsel for purposes of this issue of Bonds.

1.03. City Officers Authorized to Execute Documents. The Mayor, Finance Director and City Attorney are hereby authorized and directed to execute and deliver the Bond Purchase Agreement and the documents required thereunder, the Official Statement, the Bonds and any other documents required to complete the financing contemplated hereby. Execution and delivery of such documents by the Mayor, Finance Director and City Attorney shall constitute evidence that such items are consistent with the terms of this 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. The Mayor, Finance Director and City Attorney are further authorized to take such other actions as may be required to effectuate the terms
and intent of this Resolution. In the event of the absence or disability of the Mayor, Finance Director or City Attorney, the acting Mayor, the acting Finance Director or the acting City Attorney are hereby authorized to act in the place and stead of the Mayor, Finance Director and City Attorney, and to take all actions and execute all documents approved hereby.

1.04. Official Statement. The Mayor, Finance Director and the City Attorney are authorized, in cooperation with the Municipal Advisor, to prepare an Official Statement to be distributed to prospective purchasers of the Bonds. The Mayor and the Finance Director are hereby authorized and directed to approve, and, if requested, to execute the final Official Statement.

SECTION 2. BOND TERMS, EXECUTION AND DELIVERY.

2.01. Execution, Authentication and Delivery. The Bonds shall be prepared under the direction of the Finance Director and shall be executed and authenticated on behalf of the City by the signatures of the Mayor and the Finance Director and countersigned by an attorney resident and licensed to practice in the State of South Dakota. All signatures may be printed, lithographed, photocopied or engraved facsimiles of the original. 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 such officer 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 the Bond has been duly executed by the manual signature of an authorized representative of the Registrar. 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. After the Bonds have been so prepared and executed, the Finance Director shall deliver them to the Registrar for delivery to the Purchaser on receipt of the purchase price heretofore agreed upon, and the Purchaser shall not be required to see to the application thereof.

2.02. Maturities and Interest Rates. The Bonds shall be issued in the denomination of $5,000 each, or any integral multiple thereof, shall mature on the dates and in the respective years and amounts, and shall bear interest from date of original issue until paid or duly called for redemption at the respective annual rates stated opposite such maturity years as shown in the final Official Statement. The Bonds shall be issuable only in fully registered form and may be issued either in book-entry only form or in physical 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; provided if the Bonds are registered in the name of a securities depository, or a nominee thereof, in accordance with Section 2.08 hereof, principal and interest shall be payable in accordance with the operational arrangements of the securities depository.

2.03. Dates and Interest Payment Dates. Each Bond shall bear a date of original issue as set forth in the Bond. Upon the initial delivery of the Bonds pursuant to Section 2.01 and upon any subsequent transfer or exchange pursuant to Section 2.06, the date of authentication shall be noted on each Bond so delivered, exchanged or transferred. The interest on the Bonds shall be payable on the dates shown in the final Official Statement, to the owner of record thereof as the close of business on the fifteenth day of the immediately preceding month, whether or not such day is a business day. Interest shall be computed on the basis of a 360 day year composed of twelve 30 day months.
2.04. **Redemption.** The Bonds shall be subject to redemption prior to maturity, at the option of the City, in the years and at the redemption prices set forth in the final Official Statement in such order of maturities as may be designated by the City and, within any maturity, in $5,000 principal amounts selected by the Registrar by lot, assigned in proportion to their principal amounts. The Finance Director shall cause notice of the call for redemption thereof 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 2.06 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 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.

2.05. **Appointment of Initial Registrar.** The City hereby appoints U.S. Bank National Association, St. Paul, Minnesota, as bond registrar, transfer agent and paying agent (the “Registrar”). The Mayor and the Finance Director are authorized to execute and deliver, on behalf of the City, a contract with the Registrar. Upon merger or consolidation of the Registrar with another corporation, if the resulting corporation is a bank or trust company authorized by law to conduct such business, such corporation shall be authorized to act as successor Registrar. The City agrees to pay the reasonable and customary charges of the Registrar for the services performed. The City reserves the right to remove the Registrar upon thirty (30) days’ notice and upon the appointment of 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 Council, the Finance Director shall transmit to the Registrar, from the accounts described in Section 4, moneys sufficient for the payment of all principal and interest then due.

2.06. **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 at its principal corporate trust office 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 and maturity, as requested by the registered owner or the owner’s attorney 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 Bond 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.

2.07. **Bond Form.** The Bonds shall be prepared in substantially the form presented to and approved by this Council and on file in the office of the Finance Director.

2.08. **Securities Depository.**
(a) 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.

(b) 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 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.

(c) 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.

(d) The execution and delivery of the Representation Letter to DTC by the Mayor or Finance Director, if not previously filed with DTC, is hereby authorized and directed.

(e) 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.

3.01. Use of Proceeds. Proceeds of the Bonds, together with any other funds of the City, shall be deposited in the Bond Account established for the Refunded Bonds to be applied to their payment on the Redemption Date and proceeds of the Bonds shall also be used to pay costs of issuance of the Bonds.

3.02. Redemption of Refunded Bonds. The Finance Director is directed to call the Refunded Bonds for redemption and prepayment on the Redemption Date and to give notice of redemption substantially in the form attached hereto as Exhibit A in accordance with the provisions of the Resolution authorizing the issuance of the Refunded Bonds.

SECTION 4. FUND AND ACCOUNTS.

4.01. Gross Receipts Tax Revenue Fund. There has been established in connection with the Refunded Bonds, and the Finance Director will continue to 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 obligations 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.

4.02. Bond Account. So long as any of the Bonds and Additional Bonds (together, the “Parity 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 Parity Bonds shall be payable from the Bond Account. The City shall deposit in the Bond Account, from proceeds of the Pledged Gross Receipts Tax, amounts sufficient to pay the principal of, premium, if any, and interest on the Parity Bonds when due (on each Interest Payment Date and 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 Parity Bonds. So long as the Bonds shall be outstanding, either as to principal or interest, or both, the Pledged Gross Receipts Tax revenues shall be set aside and deposited:
(A) into a separate subaccount hereby created and to be known as the Interest Account (the “Interest Account”), monthly, commencing on the first day of the first month following the delivery of the Bonds, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the next maturing installment of interest on Parity Bonds then outstanding and monthly thereafter on the first day of each month commencing on said interest payment date, one-sixth (1/6th) of the amount necessary to pay the next maturing installment of interest on the outstanding Parity Bonds; and

(B) into a separate subaccount hereby created and to be known as the Principal Account (the “Principal Account”), monthly, commencing on the first day of the first month following delivery of the Bonds, an amount in equal monthly installments necessary, together with any moneys therein and available therefor, to pay the next maturing installment of principal on the outstanding Parity Bonds and monthly thereafter on the first day of each month commencing on said principal payment date, one-twelfth (1/12th) of the amount necessary to pay the next maturing installment of principal on the Parity Bonds.

(C) After and subordinate to the payments required by subparagraphs (A) and (B) hereof, any balance of the Pledged Gross Receipts Tax in the Revenue Fund shall be used to pay principal of, interest on and any reserve fund for Subordinate Bonds (provided that such payments may be made at any intervals as may be provided in the ordinance or resolution authorizing such Subordinate Bonds, but in no event more frequently than payments are made pursuant to subparagraphs (A) and (B) hereof) or applied in accordance with the Ordinance and Act.

Nothing herein shall prevent the City, in its discretion, from making any of the foregoing deposits from other legally available funds. If prior to any interest payment date or principal payment date, there has been accumulated in the Bond Account the entire amount necessary to pay the next maturing installment of interest or principal, or both, the payment required in subparagraph (A) or (B) (whichever is applicable) of this Section 4.02, may be appropriately reduced and the required annual or semiannual amounts again shall be so credited to such subaccount commencing on such interest payment date or principal payment date (whichever is applicable). The moneys in the Bond Account are irrevocably and exclusively pledged to the payment of principal of and interest on the Parity Bonds.

4.03. Deposit and Investment of Funds. The Finance Director 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.

SECTION 5. PRIORITIES AND ADDITIONAL BONDS.
5.01. **Priority of Bond Payments.** Each and all of the Parity Bonds shall be equally and ratably secured by and payable out of Pledged Gross Receipts Tax revenues without preference or priority of any Parity Bond over any other by reason of serial number or otherwise, provided that if at any time the collections of the Pledged Gross Receipts Tax are insufficient to pay principal and interest then due on all Parity Bonds, any and all moneys then on hand shall be first used to pay the interest accrued on all outstanding Parity Bonds, and the balance shall be applied toward payment of the maturing principal of Parity Bonds in order of their maturities, the earliest maturing Parity Bonds to be paid first, and pro-rata in payment of Parity Bonds maturing on the same date.

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

(a) Any matured Parity Bonds may be refunded if moneys available for the payment thereof at maturity, within the limitation prescribed in Section 5.01 hereof, should at any time be insufficient to make such payment in full.

(b) Any Parity 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 Parity Bonds by the deposit with a duly qualified depository bank, as escrow agent, of a sufficient amount of cash, or 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 Parity 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 Parity Bonds which are not subsequently prepayable.

(d) Any refunding revenue bonds issued for the above purposes may be made payable from the collections of Pledged Gross Receipts Tax on a parity as to interest with all then outstanding Parity Bonds, provided that (1) no bondholder shall be required to accept a refunding revenue bond in exchange for any Bond owned by such holder and (2) maximum annual debt service on the refunding bonds is not more than 125% of the maximum annual debt service on the Parity Bonds being refunded.

5.03. **Other Parity Bonds.** In addition to refunding bonds authorized by Section 5.02(d), 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 Parity Bonds, if (i) no default has occurred and is continuing under this Resolution, and (ii) the collections of the Pledged 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 200% of the maximum annual debt service in any future fiscal year, on all then outstanding Parity Bonds and on the Additional Bonds proposed to be issued.

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 described in this Resolution.

5.04. **Subordinate Lien Bonds; No Senior 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 (“Subordinate Bonds”) secured by a pledge of Pledged Gross Receipts Tax if (a) their lien on the Pledged Gross Receipts Tax is made expressly subordinate to the
pledge thereof to all Parity Bonds, (b) no default has occurred and is continuing under this Resolution and (c) the collections of the Pledged Gross Receipts Tax for each of the two full fiscal years of the City immediately preceding the date of issue of the Subordinate Bonds were at least 200% of the maximum annual debt service in any future fiscal year, on all then outstanding Parity Bonds and on the Subordinate Bonds proposed to be issued. Nothing in this Resolution shall be construed so as to permit the City to issue bonds payable from the Pledged Gross Receipts Tax revenues having a lien thereon prior and superior to the Parity Bonds herein authorized to be issued.

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 adoption 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 and subaccounts 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 Resolution. 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 Pledged 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 the Pledged Gross Receipts Tax might be prejudicially and materially impaired or diminished.

SECTION 7. **DEFEASANCE.**

7.01. **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.

7.02. **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.

7.03. **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.

7.04. **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.

SECTION 8. **TAX MATTERS.**

8.01. **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”).
8.02. **Certification.** The Mayor and the Finance Director, 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.

8.03. **Arbitrage Rebate.** The City acknowledges that the Bonds may be 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.

8.04. **Not Bank Qualified.** The Bonds will not be designated as “qualified tax exempt obligations” for purposes of Section 265(b)(3) of the Code.

**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 ___. 2021.

_______________________________
Mayor

(SEAL)

ATTEST:

_______________________________
Finance Director
Published: __________, 2021.
Effective: __________, 2021.
Exhibit A

Notice of Redemption

Gross Receipts Tax Revenue Refunding Bonds
Series 2014
Dated, as originally issued, as of March 25, 2014
City of Rapid City, South Dakota

NOTICE IS HEREBY GIVEN that the City of Rapid City, South Dakota (the “City”), has called for redemption and prepayment on June 1, 2021 (the “Redemption Date”), the outstanding term bond of the above-referenced issue maturing on June 1, 2028 and having the interest rate of 3.100% (the “Bond”)*.

The Bond will be redeemed at a price of 100% of its principal amount plus accrued interest to the date of redemption. The Holder of the Bond should present it for payment to the City Finance Director (the “Paying Agent”), at the address below, on or before the Redemption Date, when it will cease to bear interest. It is recommended that you mail your Bond by registered or certified mail to guard against loss.

City of Rapid City, South Dakota
Attn: Finance Director
300 Sixth Street
Rapid City, South Dakota 57701

Withholding of 28% of gross redemption proceeds of any payment made within the United States may be required by the Economic Growth and Tax Relief Reconciliation Act of 2001 (the “Act”) unless the Paying Agent has the correct taxpayer identification number (social security number) or exemption certificate of the payee. Please furnish a properly completed form W-9 or exemption certificate or equivalent when presenting your Bond.


BY ORDER OF THE CITY OF RAPID CITY, SOUTH DAKOTA

By: City Finance Director

*Indicates Full Call