

RESOLUTION NO. 2021-020

RESOLUTION AMENDING THE RESOLUTION 2021-008 RELATING TO GROSS RECEIPTS REVENUE REFUNDING BONDS, SERIES 2021; AUTHORIZING THE SALE BY PRIVATE PLACEMENT

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

SECTION 1. RECITALS AND AUTHORIZATION.

(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 Tax 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.

(F) 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”).

(G) 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.

(H) As authorized by the Ordinance, the Act, the 2014 Resolution, the Board Governance Provisions, and a Resolution adopted on February 2, 2021 (the “Original Resolution”), the City 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).

(I) Pursuant to Sections 1.02, 1.03, and 1.04 of the Original Resolution, the Bonds were authorized to be sold to Colliers Securities (the “Underwriter”), and the Mayor, Finance Director and the City Attorney were authorized, in cooperation with the Underwriter, to execute certain documents and prepare an Official Statement to be distributed to prospective purchasers of the Bonds.

(J) The City desires to amend the Original Resolution administratively to provide for the Bonds to be sold either publicly or in a private placement and issued on either a taxable or tax-exempt basis.

(K) The Bonds have not yet been issued.

## SECTION 2. AMENDMENTS.

2.01. Amendments. Underlining in the text indicates additions to sections in the Original Resolution. Strike through indicates deletions to the present sections in the Original Resolution.

2.02. Amendment of Section 1.02. Section 1.02 of the Original Resolution is hereby amended as follows:

“The Bonds authorized hereby may be taxable or tax-exempt and shall be sold to or placed by Colliers Securities (the “Purchaser”) with U.S. Bank National Association or such other entity as the City shall select (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~~ purchase agreement, loan agreement, placement agreement or such other document setting forth such final terms or any similar document, including any offering document with respect to the issuance of the Bonds (a ~~“Bond Purchase Agreement”~~ the “Placement Documents”) 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~~ Placement Documents 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.”

2.03. Amendment of Section 1.03. Sections 1.03 of the Original Resolution is hereby amended as follows:

“The Mayor, Finance Director and City Attorney are hereby authorized and directed to execute and deliver the ~~Bond Purchase Agreement~~ Placement Documents 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.”

2.04. Amendment of Section 1.04. Section 1.04 of the Original Resolution is hereby amended as follows:

Official Statement. If necessary to sell the Bonds, ~~the Mayor, Finance Director and the City Attorney are authorized, in cooperation with the Municipal Advisor~~ Colliers Securities, 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.

2.05. Replacement of “final Official Statement” with “Placement Documents”. References to the “final Official Statement” in Sections 2.02, 2.03, and 2.04 of the Original Resolution shall be replaced with “Placement Documents.”

SECTION 3. TAX-EXEMPT PROVISIONS INAPPLICABLE IF BONDS TAXABLE. If the Bonds are issued as taxable Bonds, the provisions in Section 8 of the Original Resolution shall be inapplicable.

SECTION 4. INCORPORATION OF ORIGINAL RESOLUTION. The Original Resolution, as amended by this resolution (this “Amending Resolution”), is hereby confirmed and incorporated herein by reference. The Original Resolution shall continue in full force and effect except as otherwise provided herein.

SECTION 5. SEVERABILITY. That the provisions of this Amending Resolution are declared to be separable, and if any section, phrase or provisions shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

Dated this \_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
Finance Director