

RESOLUTION 2021-029

A RESOLUTION AUTHORIZING THE ISSUANCE OF SALES TAX REVENUE REFUNDING BONDS OF THE CITY; PLEDGING A PORTION OF THE SALES TAX RECEIPTS 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 of the City of Rapid City, South Dakota, as follows:

Section 1. Findings. 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 10-52, South Dakota Codified Laws (the "Sales Tax Act") to levy a "non-ad valorem tax" (as defined by the Sales Tax Act) on the sale, use, storage and consumption of items taxed under Section 10-45 and 10-46 of the South Dakota Codified Laws, subject to certain exceptions; and the City has adopted and enacted Chapter 3.16 of the Rapid City Municipal Code, as amended through Ordinance No. 6195 (said Chapter 3.16 as so amended, the "Sales Tax Ordinance"), imposing and providing for the administration of the taxes authorized by the Sales Tax Act within the City, such tax being hereinafter referred to as the "Sales Tax."

(D) The City may issue municipal non-ad valorem tax revenue bonds pursuant to Section 10-52-2.10 of the Act and Chapter 6-8B, South Dakota Codified Laws in anticipation of the collection of the Sales Tax. Such bonds are required to be payable solely from collections of the Sales Tax, and the City is required to covenant that it will continue to impose and collect the Sales Tax so long as such bonds are outstanding.

(E) The City is authorized under Section 3.16.060 of the Sales Tax Ordinance to deposit 50% of the Sales Tax (the "Pledged Sales Taxes") in the Rapid City Capital Improvements & Vision Fund (the "Fund"), and to finance projects eligible under the Sales Tax Ordinance.

(F) The City has established two accounts within the Fund, the Capital Improvements Account and the Vision Account, and provided that approximately 58% of the Sales Tax deposited in the Fund shall be allocated to the Capital Improvements Account and 42% shall be

allocated to the Vision Account, provided that in any given month, such allocation may vary, with the account which is underfunded to be reimbursed from the other account over such time period as the Council shall determine.

(G) The City has previously issued its Sales Tax Revenue Bonds, Series 2018 (the “Series 2018 Bonds”), in the original aggregate principal amount of \$100,685,000, pursuant to an Indenture of Trust, dated as of August 15, 2005 (the “Original Indenture”), as supplemented by a First Supplemental Indenture, dated as of February 1, 2013 (the “First Supplement”), as further supplemented by a Second Supplemental Indenture dated as of October 1, 2018 (the “Second Supplement”), as further supplemented by a Third Supplemental Indenture dated as of December 1, 2018 (the “Third Supplement”), between the City and U.S. Bank National Association, as successor to The First National Bank in Sioux Falls, in Sioux Falls, South Dakota (the “Trustee”). The Series 2018 Bonds are secured by the Pledged Sales Taxes, as defined in the Second Supplement, and expected to be paid from the portion of the Pledged Sales Taxes deposited in the Vision Account of the Fund (the “Vision Account Revenues”).

(H) The City has also previously issued its Taxable Sales Tax Revenue Bonds, Series 2020 (the “Series 2020 Bonds”), in the original aggregate principal amount of \$10,630,000, pursuant to the Original Indenture, as amended by the First Supplement, the Second Supplement, the Third Supplement and a Fourth Supplemental Indenture dated as of October 1, 2020 (the “Fourth Supplement”). The Series 2020 Bonds are secured by the Pledged Sales Taxes and expected to be paid from the portion of the Pledged Sales Taxes deposited in the Capital Improvements Account (the “Capital Improvements Account Revenues”).

(I) Other than the Series 2018 Bonds and the Series 2020 Bonds, no other obligations are outstanding which are payable from the Pledged Sales Taxes.

(J) As authorized by the Sales Tax Ordinance and the Act, the City has determined that it is necessary and desirable to issue obligations (the “Sales Tax Obligations”; together with the Series 2018 Bonds and Series 2020 Bonds, the “Bonds”) payable from the Pledged Sales Taxes for the purpose of refunding in advance of maturity and redeeming on December 1, 2026, the Series 2018 Bonds maturing in the years 2027 through 2048 (the “Refunded Bonds”), outstanding in the aggregate principal amount of \$85,485,000 (the “Refunding”). The Sales Tax Obligations will be issued pursuant to the Original Indenture, as amended through and including by a Fifth Supplemental Indenture of Trust (the “Fifth Supplement”; the Original Indenture as so amended, the “Indenture”), between the City and the Trustee. As provided in the Indenture, if at any time the proceeds of Pledged Sales Taxes are not sufficient to pay when due all debt service on the Bonds, the City shall nevertheless provide moneys to cure any such deficiency, but only to the extent of funds then legally available for that purpose, and then only if such legally available funds are appropriated for such purpose by the City’s governing body. The governing body of the City is not obligated to appropriate funds to cure a deficiency.

(K) The Sales Tax Obligations shall be issued in an aggregate principal amount not to exceed the amount necessary to provide for the refunding of the Refunded Bonds, plus amounts necessary to pay costs of issuance of the Sales Tax Obligations, including a discount not

exceeding 2% of the principal amount of the Sales Tax Obligations, bond insurance premium, if necessary, and original issue discount (not to exceed 2% of the principal amount of the Sales Tax Obligations), if any.

(L) The Sales Tax Obligations may be issued in one or more series; on a taxable or tax-exempt basis (or convertible); may mature on any date on or prior to twenty-eight (28) years following the date of issuance; shall be secured by or made payable from the Pledged Sales Taxes; shall bear interest at the rate or rates provided in such Sales Tax Obligations, provided that the average initial yield on the Sales Tax Obligations shall not exceed 3.30% and shall be issued on such other terms as the officers of the City executing such Sales Tax Obligations shall approve.

(M) If required, the Sales Tax Obligations may be insured by a municipal bond insurance policy.

Section 2. Authorization of Sales Tax Obligations.

(A) The Mayor, Finance Director and City Attorney are hereby authorized and directed to execute and deliver (a) a term sheet, commitment letter or bond purchase agreement (any such agreement, the "Purchase Agreement") with Colliers Securities and R.W. Baird & Co., Inc. (together, the "Underwriter"), (b) the Fifth Supplement and the documents required thereunder, (c) the Sales Tax Obligations, and (d) 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 such Purchase Agreement 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. In the event of the absence or disability of the Mayor or City Finance Director, such other officers of the City as may, in the opinion of the City Attorney, act in the absence of such officers, are hereby authorized to act in the place and stead of the Mayor and City Finance Director, and to take all actions and execute all documents approved hereby

(B) The Sales Tax Obligations shall be special, limited obligations of the City, payable solely from the Pledged Sales Taxes and other moneys pledged therefor, if any. The Sales Tax Obligations shall not be payable from any general or other fund of the City, and the Sales Tax Obligations shall not constitute general obligations of the City.

Section 3. Pledge of Pledged Sales Tax. The Pledged Sales Taxes shall be pledged or may be appropriated to the payment of the unrefunded Series 2018 Bonds, the Series 2020 Bonds, the Sales Tax Obligations and any additional obligations payable therefrom to the extent permitted by the Sales Tax Ordinance and documents entered into in connection with the Sales Tax Obligations.

Section 4. Offering Documents. The Mayor, the Finance Director and the City Attorney are authorized, in cooperation with the Underwriter for the Sales Tax Obligations, to prepare one

or more offering documents, term sheets, requests for proposals or other disclosure materials to be distributed to prospective purchasers of the Sales Tax Obligations (whether one or more, the “Official Statement”). The Mayor and the Finance Director are hereby authorized and directed to approve, and, if requested, to execute the Official Statement.

Section 5. Ratification. All actions heretofore taken by the City or any of its officers in connection with the Sales Tax Obligations are hereby ratified and confirmed.

Section 6. Amendment. This resolution may be amended at any time prior to the issuance of the Bonds by adoption of an administrative resolution.

Dated this ____ day of _____, 2021.

(SEAL)

Mayor

ATTEST:

Finance Director

Adopted: _____, 2021.

Published: _____, 2021.

Effective Date: _____, 2021.

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