

CITY OF FIFE, WASHINGTON

ORDINANCE NO. 1894

**AN ORDINANCE OF THE CITY OF FIFE RELATING TO THE INCURRENCE OF INDEBTEDNESS; PROVIDING FOR THE ISSUANCE AND SALE OF LIMITED TAX GENERAL OBLIGATION AND REFUNDING BONDS, 2014, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$4,300,000 TO OBTAIN FUNDS NECESSARY TO REIMBURSE THE CITY FOR A PORTION OF THE COST OF ACQUIRING THE HOLT PROPERTY, TO REFUND AND DEFEASE A PORTION OF THE CITY'S OUTSTANDING LIMITED TAX GENERAL OBLIGATION BONDS, 2007, AND TO PAY INCIDENTAL COSTS AND COSTS RELATED TO THE SALE AND ISSUANCE OF SUCH BONDS; PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF THE SALE OF SUCH BONDS; AND DELEGATING AUTHORITY TO ACCEPT AN OFFER FROM D.A. DAVIDSON & CO., SEATTLE, WASHINGTON, TO PURCHASE SUCH BONDS.**

WHEREAS, pursuant to Resolution No. 1609, adopted on July 22, 2014, the City Council of the City of Fife (the "City") authorized the acquisition of certain improved real property located at 3820 Freeman Road East (the "Holt Property") in lieu of condemnation; and

WHEREAS, the City acquired the Holt Property on September 19, 2014, for the sum of \$3,481,500; and

WHEREAS, pursuant to Resolution No. 1619, adopted on October 14, 2014, the City Council declared its intent to issue up to \$9,296,494 in tax-exempt bonds to finance all or a portion of the costs of various capital projects, including the acquisition of improved real property for use by various City departments, and to reimburse itself from the proceeds of those bonds for any capital expenditures made in connection with those projects prior to the issuance of such bonds, consistent with Treasury Regulations Section 1.150-2; and

WHEREAS, pursuant to Ordinance No. 1614-06, the City has heretofore issued and sold its Limited Tax General Obligation Bonds, 2007 (the "2007 Bonds"), of which \$4,390,000 in aggregate principal amount are currently outstanding; and

WHEREAS, pursuant to Ordinance No. 1614-06, the City reserved the right to call the 2007 Bonds maturing on or after December 1, 2017 (the "Callable 2007 Bonds") for optional redemption prior to maturity in whole or in part on any date beginning on December 1, 2016, at a price of par plus accrued interest to the date of redemption, and to refund and defease all or a portion of the 2007 Bonds pursuant to a refunding or defeasance plan; and

WHEREAS, D.A. Davidson & Co. of Seattle, Washington (the "Underwriter"), has advised the City that undertaking a refunding and defeasance plan (the "Refunding Plan") to redeem and defease all or a portion of the Callable 2007 Bonds may effect a debt service savings to the City; and

WHEREAS, the City Council deems it to be in the best interest of the City that the City incur indebtedness and issue and sell its limited tax general obligation and refunding bonds for the purpose of obtaining part of the funds necessary to reimburse the City for a portion of the cost of acquiring the Holt Property and to undertake the Refunding Plan; and

WHEREAS, the incurrence of such indebtedness will not cause the total indebtedness of the City incurred without the assent of the voters of the City to exceed the limitations set forth in chapter 39.36 RCW; and

WHEREAS, the City Council intends that such limited tax general obligation and refunding bonds be sold by negotiated sale to the Underwriter, pursuant to the terms of this ordinance; and

WHEREAS, the City Council has determined to delegate authority to the Interim City Manager or the Finance Director/Treasurer (each, an "Authorized Officer"), for a limited time, to accept an offer from the Underwriter to purchase such limited tax general obligation and refunding bonds consistent with the terms and conditions established by this ordinance; now, therefore,

THE CITY COUNCIL OF THE CITY OF FIFE, WASHINGTON  
DO ORDAIN AS FOLLOWS:

Section 1. Findings. The City Council has heretofore authorized the acquisition of the Holt Property, which has occurred, and declared its intent to reimburse itself from bond proceeds for capital expenditures made therefor prior to the issuance of such bonds. The City Council hereby finds that undertaking a Refunding Plan that will effect a debt service savings to the City will be in the best interest of the City.

Section 2. Authorization, Purpose and Description of Bonds. The City authorizes the incurrence of indebtedness and the issuance of its "Limited Tax General Obligation and Refunding Bonds, 2014" (the "Bonds") for the purpose of obtaining part of the funds necessary to reimburse the City for a portion of the cost of acquiring the Holt Property, to undertake the Refunding Plan and to pay incidental costs and costs related to the sale and issuance of the Bonds.

The Bonds shall be dated the date of delivery of the Bonds (the "Date of Issue"); shall be issued in fully registered form as to both principal and interest; shall be in the denomination of \$5,000 each or any integral multiple thereof within a single maturity; and shall be numbered separately in such manner and with any additional designation as the fiscal agency of the State of Washington (the "Registrar"), may deem necessary for purpose of identification. The Bonds shall be issued in an aggregate principal amount not to exceed \$4,300,000, shall bear interest at the rates per annum (computed on the basis of a 360-day year of twelve 30-day months), and be payable in the amounts and on the dates all as shall be determined pursuant to Section 14 hereof.

The Bonds shall be negotiable instruments to the extent provided by RCW 62A.8-102 and RCW 62A.8-105.

On the Date of Issue, all Bonds maturing in the same maturity year and bearing the same initial CUSIP number shall be issued in the form of a single certificate, which certificate shall be registered in the name of The Depository Trust Company or any successor thereto engaged to operate a book-entry system for recording the beneficial ownership of the Bonds, as Custodian (the "Custodian"), or its nominee, and delivered to the Custodian. The Custodian shall hold each such Bond certificate in fully immobilized form for the benefit of the beneficial owners of the Bonds (the "Beneficial Owners") pursuant to the Issuer Letter of Representations (the "Letter of Representations"), from the City to the Custodian pertaining to the payment of the Bonds and the book-entry system, until the earliest to occur of either (1) the date of maturity of the Bonds evidenced by such certificate, at which time the Custodian shall surrender such certificate to the Registrar for payment of the principal of and interest on such Bonds coming due on such date, and the cancellation thereof; (2) the fifth business day following the date of receipt by the Registrar of the City's request to terminate the book-entry system of registering the beneficial ownership of the Bonds (the "Book-Entry Termination Date"); or (3) the date the City determines to utilize a new Custodian for the Bonds, at which time the old Custodian shall (provided the City is not then in default of any payment then due on the outstanding Bonds) surrender the immobilized certificates to the Registrar for transfer to the new Custodian and cancellation as herein provided.

For so long as any outstanding Bonds are registered in the name of the Custodian or its nominee and held by the Custodian in fully immobilized form as described in this Section 2, the rights of the Beneficial Owners shall be evidenced solely by an electronic and/or manual entry made from time to time on the records established and maintained by the Custodian in accordance with the Letter of Representations, and no certificates evidencing such Bonds shall be issued and registered in the name of any Beneficial Owner or such Beneficial Owner's nominee.

The City may terminate the "book-entry" system of registering ownership of the Bonds at any time (provided the City is not then in default of any payment then due on the outstanding Bonds) by delivering to the Registrar: (a) a written request that it issue and deliver Bond certificates to each Beneficial Owner or such Beneficial Owner's nominee on the Book-Entry Termination Date; (b) a list identifying the Beneficial Owners as to both name and address; and (c) a supply of Bond certificates, if necessary, for such purpose. Upon surrender to the Registrar of the immobilized certificates evidencing all of the then outstanding Bonds, the Registrar shall issue and deliver new certificates to each Beneficial Owner or such Beneficial Owner's duly appointed agent, naming such Beneficial Owner or such Beneficial Owner's nominee as the registered owner (the "Owner") thereof. Such certificates may be in any integral multiple of \$5,000 within a single maturity. Following such issuance, the Owners of such Bonds may transfer and exchange such Bonds in accordance with Section 8 hereof.

Neither the City nor the Registrar shall have at any time any responsibility or liability to any Beneficial Owner of any Bonds or to any other person for any error, omission, action or failure to act on the part of the Custodian with respect to payment, when due, to the Beneficial Owner of the principal and interest on the Bonds, proper recording of beneficial ownership of

Bonds, proper transfers of such beneficial ownership, or any notices to Beneficial Owners or any other matter pertaining to the Bonds.

Section 3. Place, Manner and Medium of Payment. Both the principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Prior to the Book-Entry Termination Date, the principal of and interest on the Bonds shall be paid by the Registrar to the Custodian as the sole Owner thereof, for the benefit of the Beneficial Owners thereof, in accordance with the Letter of Representations.

From and after the Book-Entry Termination Date, interest on the Bonds shall be paid by check or draft mailed by the Registrar on or before the interest payment date, to the persons identified as the Owners on the fifteenth day of the month preceding the interest payment date at the addresses shown for the Owners on the registration books for the Bonds (the "Bond Register") maintained by the Registrar. From and after the Book-Entry Termination Date, the principal of the Bonds shall be payable upon presentation and surrender of the Bonds by the Owners upon maturity or prior redemption at the principal corporate trust office of the Registrar.

Section 4. Redemption and Purchase of Bonds. By accepting and executing the Purchase Agreement (defined in Section 14 hereof) as provided in Section 14 hereof, the Authorized Officer may designate those maturities of the Bonds, if any, as being subject to redemption at the City's option prior to their respective maturities and may approve the designation of certain maturities of the Bonds, if any, as "term bonds" subject to partial mandatory redemption prior to maturity, all as provided in the Purchase Agreement.

Any Bond in the principal amount of greater than \$5,000 may be partially redeemed in any integral multiple of \$5,000. Prior to the Book-Entry Termination Date, Bonds shall be partially redeemed in accordance with the Letter of Representations. From and after the Book-Entry Termination Date, in the event of a partial redemption of a Bond, upon surrender of such Bond at the principal corporate trust office of the Registrar, a new Bond or Bonds (at the option of the Owner) of the same maturity and interest rate and in the aggregate principal amount remaining unredeemed shall be authenticated and delivered to the Owner, without charge to the Owner therefor, in any denomination authorized by this Ordinance and selected by the Owner.

If fewer than all of the outstanding Bonds within a maturity are to be redeemed prior to maturity, Bonds shall be selected for redemption randomly within a maturity in such manner as the Registrar shall determine. Notwithstanding the foregoing, prior to the Book-Entry Termination Date, Bonds shall be selected for redemption in accordance with the Letter of Representations.

Prior to the Book-Entry Termination Date, the Registrar shall give, or cause to be given, notice of a call for redemption of any Bonds to the Custodian, as the Owner thereof, for the benefit of the Beneficial Owners thereof, in accordance with the Letter of Representations. From and after the Book-Entry Termination Date, and unless waived by the Owner of any Bond to be redeemed, notice of any such intended redemption shall be given by or on behalf of the City not less than 20 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the Owner of each Bond to be redeemed at the address appearing on the Bond Register on the day the notice is mailed. The requirements of this section shall be deemed to be

complied with when notice is mailed as herein provided, whether or not it is actually received by any Owner.

In the case of an optional redemption, the notice may state that the City retains the right to rescind the redemption notice and the related optional redemption of Bonds by giving a notice of rescission to the affected Owners at any time prior to the scheduled optional redemption date. Any notice of optional redemption that is so rescinded shall be of no effect, and the Bonds for which the notice of optional redemption has been rescinded shall remain outstanding.

If such notice to the Owners shall have been given and not rescinded, and the City shall have set aside sufficient money for the payment of all Bonds called for redemption on the date fixed for redemption, the Bonds so called shall cease to accrue interest after such redemption date, and all such Bonds shall be deemed not to be outstanding hereunder for any purpose, except that the Owners of such Bonds shall be entitled to receive payment of the redemption price and interest accrued on the principal of the Bonds to the redemption date from the money set aside for such purpose.

The City reserves the right to purchase any or all of the Bonds in the open market or otherwise from any willing seller at any time and at any price.

All Bonds purchased or redeemed by the City shall be surrendered to the Registrar for cancellation.

Section 5. Form of Bonds. The Bonds shall be word processed, printed or lithographed on good bond paper in a form consistent with this Ordinance and State of Washington (the "State") law.

Section 6. Execution of Bonds. The Bonds shall be executed on behalf of the City by the facsimile or manual signatures of the Mayor of the City and the City Clerk and shall have the seal of the City impressed or a facsimile thereof imprinted thereon.

In the event any officer who shall have signed or whose facsimile signatures appear on any of the Bonds shall cease to be such officer of the City before said Bonds shall have been authenticated or delivered by the Registrar or issued by the City, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issuance, shall be as binding upon the City as though said person had not ceased to be such officer. Any Bond may be signed and attested on behalf of the City by such persons who, at the actual date of execution of such Bond shall be the proper officer of the City, although at the original date of such Bond such persons were not such officers of the City.

Section 7. Authentication and Delivery of Bonds by Registrar. The Registrar is authorized and directed, on behalf of the City, to authenticate and deliver Bonds initially issued or transferred or exchanged in accordance with the provisions of such Bonds and this Ordinance.

Only such Bonds as shall bear thereon a "Certificate of Authentication" manually executed by an authorized signatory of the Registrar shall be valid or obligatory for any purpose or entitled to the benefits of this Ordinance. Such Certificate of Authentication shall be

conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Ordinance.

The Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Bonds.

Section 8. Registration; Transfer and Exchange. The City covenants that, until all Bonds shall have been surrendered and cancelled, it will cause the Registrar to maintain a system of recording the ownership of each Bond that complies with the provisions of the Internal Revenue Code of 1986, as amended (the "Code"). To that end, the Registrar shall keep, or cause to be kept, the Bond Register at its principal corporate trust office.

The City and the Registrar, each in its discretion, may deem and treat the Owner of each Bond as the absolute owner thereof for all purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 3 hereof, but such registration may be transferred as herein provided. All such payments made as provided in Section 3 hereof shall be valid and effectual to satisfy and discharge the liability of the City upon such Bond to the extent of the amount or amounts so paid.

The registered ownership of any Bond may be transferred. Prior to the Book-Entry Termination Date, the beneficial ownership of the Bonds may only be transferred on the records established and maintained by the Custodian. On and after the Book-Entry Termination Date, no transfer of any Bond shall be valid unless it is surrendered at the principal corporate trust office of the Registrar, with the assignment form appearing on such Bond duly executed by, or accompanied by a written instrument of transfer in form satisfactory to the Registrar duly executed by, the Owner or such Owner's duly authorized agent, in a manner satisfactory to the Registrar. Upon such surrender, the Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Owner or transferee therefor (other than governmental fees or taxes payable on account of such transfer), a new Bond or Bonds (at the option of the new Owner), of the same maturity and interest rate and for the same aggregate principal amount, in any authorized denomination, naming as Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and cancelled Bond.

From and after the Book-Entry Termination Date, any Bond may be surrendered at the principal corporate trust office of the Registrar and exchanged, without charge, for an equal aggregate principal amount of Bonds of the same maturity and interest rate, in any authorized denomination as selected by the Owner. The Registrar shall not be obligated to transfer or exchange any Bond during the fifteen days preceding any principal or interest payment or redemption date.

The Registrar may become the Owner of any Bond with the same rights it would have if it were not the Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of the Owners of the Bonds.

Section 9. Mutilated, Lost, Stolen or Destroyed Bonds. If any Bond becomes mutilated, lost, stolen or destroyed, the Registrar may authenticate and deliver a new Bond of the same maturity and interest rate and of like tenor and effect in substitution therefor, all in accordance with applicable law. If such mutilated, lost, stolen or destroyed Bond has matured, the City may, at its option, pay the same without the surrender thereof. However, no such substitution or payment shall be made unless and until the applicant shall furnish (a) evidence satisfactory to the Registrar of the destruction or loss of the original Bond and of the ownership thereof, and (b) such additional security, indemnity or evidence as may be required by or on behalf of the City. No substitute Bond shall be furnished unless the applicant shall reimburse the City and the Registrar for their respective expenses in the furnishing thereof. Any such substitute Bond so furnished shall be equally and proportionately entitled to the security of this Ordinance with all other Bonds issued hereunder.

Section 10. Debt Limit Not Exceeded. The City finds and covenants that the Bonds are issued within all constitutional and statutory debt limitations presently applicable to the City.

Section 11. Pledge of Full Faith, Credit and Resources. The Bonds are limited tax general obligations of the City. The City hereby irrevocably covenants that, unless the principal of and interest on the Bonds are paid from other sources, so long as any Bonds are outstanding, it will include in its budgets and make annual levies of taxes within the constitutional and statutory tax limitations provided by law without a vote of the voters of the City upon all property within the City subject to taxation in amounts which, together with any other money legally available therefor, shall be sufficient to pay the principal and interest on the Bonds as the same shall become due. The City hereby irrevocably pledges its full faith, credit and resources to the annual levy and collection of such taxes and for the prompt payment of such principal and interest.

Section 12. Tax Exemption Covenants. The City covenants that it will not take or permit to be taken on its behalf any action that would adversely affect the exclusion of the interest on the Bonds from gross income for purposes of federal income taxation, and will take or require to be taken such acts as may be permitted by, and as may from time to time be required under, applicable law to continue the exclusion of the interest on the Bonds from gross income for purposes of federal income taxation. Without limiting the generality of the foregoing, the City will not invest or make or permit any use of the proceeds of the Bonds or of its other money at any time during the term of the Bonds that will cause any Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code.

The City covenants that it shall calculate or cause to be calculated, and shall rebate to the United States, all earnings from the investment of the Bond proceeds that are in excess of the amount that would have been earned had the yield in such investments been equal to the yield in the Bonds, plus income derived from such excess earnings, to the extent and in the manner required by Section 148 of the Code.

The City has not been notified of any listing or proposed listing by the Internal Revenue Service (the "IRS") to the effect that the City is a bond issuer the arbitrage certifications of which may not be relied upon.

The City will take no actions and will make no use of the proceeds of the Bonds or any other funds held under this Ordinance that would cause any Bond to be treated as a "private activity bond" (as defined in Section 141(b) of the Code) subject to treatment under said Section 141(b) as an obligation not described in Section 103(a) of the Code, unless the tax exemption thereof is not affected.

The City does not reasonably expect to issue more than \$10,000,000 of tax-exempt obligations (other than obligations described in Section 265(b)(3)(C)(ii) of the Code) during calendar year 2014. The City hereby designates the Bonds as "qualified tax-exempt obligations" for purposes of Section 265 of the Code (relating to the deduction by financial institutions of the interest incurred to carry tax-exempt debt) and authorizes and directs the proper City officials to execute and deliver all documents necessary to evidence such designation to any and all interested parties.

Section 13. Defeasance. If money and/or "Government Obligations" (as such obligations are defined in chapter 39.53 RCW, as now in existence or hereafter amended) maturing at such times(s) and bearing such interest to be earned thereon (without any reinvestment thereof) as will provide a series of payments which shall be sufficient, together with any money initially deposited, to provide for the payment of all of the principal of and interest on all or a designated portion of the Bonds, when due in accordance with their respective terms or upon the earlier redemption thereof in accordance with a refunding plan adopted by the City, are set aside in a special fund (hereinafter called the "trust account") to effect such payment or redemption and are pledged irrevocably for the purpose of effecting such payment or redemption, then no further payments need be made into the Bond Fund (hereinafter defined) for the payment of the principal of and the interest on such Bonds, the Owners thereof shall cease to be entitled to any lien, benefit or security of this Ordinance, except for the covenants in Section 12 of this Ordinance which shall survive the defeasance hereof until the actual payment of the Bonds and any required arbitrage rebate, and except for the right to receive the money and the principal and interest proceeds on the obligations set aside in the trust account, and such Bonds shall no longer be deemed to be outstanding hereunder.

Section 14. Negotiated Sale of Bonds. The City Council hereby authorizes and directs either Authorized Officer, but not both, to negotiate the sale of the Bonds to the Underwriter. The Bonds shall be sold pursuant to a Purchase Agreement for the Bonds consistent with the terms of this Ordinance (the "Purchase Agreement"), to be dated the date of sale, by and between the Underwriter and the City, in substantially the same form as the draft dated November 3, 2014, a copy of which is on file with the City Clerk and is incorporated herein by this reference; provided, that the sale date of the Bonds shall be no later than December 31, 2014. The City Council hereby approves the Purchase Agreement. The Bonds shall be in the aggregate principal amount, mature on such dates, bear interest at such rates per annum, be subject to such redemption provisions, and be sold at such purchase prices as are set forth in the Purchase Agreement; provided, that:

- (a) The aggregate principal amount of the Bonds may not exceed \$4,300,000;

(b) One or more rates of interest may be fixed for the Bonds, which rate(s) must be in multiples of  $1/8^{\text{th}}$  or  $1/20^{\text{th}}$  of 1% or both, and no rate of interest for any maturity of the Bonds may exceed 5.50%;

(c) The true interest cost to the City for the Bonds may not exceed 4.50%;

(d) The purchase price for the Bonds may not be less than 98% nor greater than 130% of the initial aggregate principal amount of the Bonds;

(e) The Bonds shall be issued subject to optional and mandatory redemption provisions consistent with Section 4 of this Ordinance;

(f) The specific Callable 2007 Bonds to be redeemed and defeased as part of the Refunding Plan (the "Refunded 2007 Bonds") shall be identified in the Purchase Agreement, and the undertaking of the Refunding Plan will result in a minimum net present value savings to the City of 3.00% of the Refunded 2007 Bonds; and

(g) The final maturity date of the Bonds may be not later than December 1, 2029.

The City Council hereby authorizes and directs either Authorized Officer to accept and execute, for and on behalf of the City, the Purchase Agreement for the Bonds conforming to the requirements of this Ordinance, with such changes as the Authorized Officer executing the same may deem to be in the best interests of the City and not inconsistent with the provisions of this Ordinance, which acceptance shall be conclusively presumed by the execution thereof, and to deliver the executed Purchase Agreement to the Underwriter.

Section 15. Delivery of Bonds; Temporary Bonds; Closing. The Bonds will be printed at City expense and will be delivered to the Underwriter on the Date of Issue in exchange for payment in full therefor (the "Closing") in accordance with the Purchase Agreement, accompanied by the approving legal opinion of Hillis Clark Martin & Peterson P.S., bond counsel, relative to the issuance of the Bonds. Bond counsel has not been engaged to review or express any opinion concerning the completeness or accuracy of the official statement or other disclosure documentation used in connection with the offer or sale of the Bonds by any person, and bond counsel's opinion shall so state. Bond counsel has not been retained to monitor, and shall not be responsible for monitoring, the City's compliance with any federal law or regulations to maintain the tax-exempt status of the interest on the Bonds.

If definitive Bonds are not ready for delivery by the date established for closing, either Authorized Officer, upon the approval of the Underwriter, may cause to be issued and delivered to the Underwriter one or more temporary Bonds with appropriate omissions, changes and additions. Any temporary Bond or Bonds shall be entitled and subject to the same benefits and provisions of this Ordinance with respect to the payment, security and obligation thereof as definitive Bonds authorized hereby. Such temporary Bond or Bonds shall be exchangeable without cost to the Owners thereof for definitive Bonds when the latter are ready for delivery.

The proper City officials, including but not limited to, the Authorized Officers, are authorized and directed to approve and/or execute all documents, including, but not limited to, the final official statement pertaining to the Bonds, and to do everything necessary for the

preparation and delivery of a transcript of proceedings pertaining to the Bonds, and the printing, execution and delivery of definitive Bonds to the Underwriter, each without unreasonable delay.

Section 16. Conditional Call of Refunded 2007 Bonds for Redemption. The City hereby calls the Refunded 2007 Bonds for redemption on December 1, 2016 (the "Refunded 2007 Bond Redemption Date"), at a redemption price of par plus accrued interest to the date of redemption. Such call for redemption shall become irrevocable upon delivery of the Bonds at Closing; provided, however, that if the Bonds are not delivered to the Underwriter at Closing, or if the Underwriter fails to pay the full purchase price therefor at Closing for any reason, then this call of such Refunded 2007 Bonds for redemption shall be hereby automatically revoked and shall be null and void.

Section 17. Escrow Agreement. The Escrow Agreement (the "Escrow Agreement"), to be dated the date of Closing, by and between the City and U.S. Bank National Association, as escrow agent (the "Escrow Agent"), in substantially the same form as the draft dated November 5, 2014, a copy of which is on file with the City Clerk and is incorporated herein by this reference, is hereby approved in order to accomplish the refunding and defeasance of the Refunded 2007 Bonds pursuant to the "Refunding Plan" defined and described therein. Any one or more of the Authorized Officers are authorized and directed: (a) to execute and to deliver said Escrow Agreement, on behalf of the City, to the Escrow Agent on or before Closing, with such changes as are deemed by such Authorized Officers as actually execute such document to be in the best interests of the City; and such execution and delivery of the Escrow Agreement shall evidence irrevocably the approval of the executed Escrow Agreement by the City; and (b) to cause the Escrow Agent to deliver notices of defeasance and redemption of the Refunded 2007 Bonds in accordance with the Escrow Agreement.

Section 18. Acquisition of Escrow Obligations. Any one or more of the Authorized Officers shall, at or prior to Closing, make appropriate arrangements for the payment for and delivery of any Escrow Obligations (defined in the Escrow Agreement) in accordance with the terms of the Escrow Agreement, including through, prior to Closing, delivery to the Federal Reserve Bank, subscriptions for any Escrow Obligations which are to be acquired from the United States Bureau of Public Debt pursuant to the Refunding Plan. The maturing principal of and the interest on such Escrow Obligations, together with the initial cash to be provided to the Escrow Agent pursuant to the Refunding Plan, shall be sufficient to pay all of the interest to become due on the Refunded 2007 Bonds from Closing to and including the Refunded 2007 Bond Redemption Date, when due, and to redeem on said date, all of the Refunded 2007 Bonds at a redemption price of par plus accrued interest to the Refunded 2007 Bond Redemption Date.

The Escrow Agent shall designate in any such subscriptions that all the principal of and interest on the Escrow Obligations subscribed for with the United States Bureau of Public Debt shall be payable to the Escrow Agent. Such subscription may be amended as permitted by federal law.

Section 19. Verification of Sufficiency of Escrow. Any one or more of the Authorized Officers are authorized and directed to obtain, prior to Closing, independent verification of the sufficiency of the cash flow scheduled to be received from the Escrow Obligations, together with any uninvested initial cash, to make the payments described in Section 18 hereof. At Closing, if

there has been any change in Escrow Obligations or cash deposited with the Escrow Agent under this Ordinance and the Escrow Agreement, the Authorized Officers shall cause the sufficiency of the Escrow Fund (defined in the Escrow Agreement) to be re-verified in such manner as they shall deem necessary.

Section 20. Establishment of Bond Fund; Disposition of Bond Proceeds. There is hereby created and established in the office of the Finance Director/Treasurer a special fund to be designated as the “Limited Tax General Obligation and Refunding Bond Fund, 2014” (the “Bond Fund”), to be maintained separate and apart from the other funds and accounts of the City. The City shall deposit into the Bond Fund all accrued interest received, if any, and any rounding amount received from the Underwriter upon the sale and delivery of the Bonds, and all taxes collected for and allocated to the payment of the Bonds. The money and investments in the Bond Fund shall be used by the City, together with any other money legally available and designated therefor, to pay the principal of and interest on the Bonds, when due.

Proceeds received from the sale of the Bonds (including any net original issue premium but net of the underwriter’s discount) shall be applied on the Date of Issue as follows:

(a) The sum of \$1,000,000.00 shall be applied to reimburse the City for a portion of the cost of acquiring the Holt Property; and

(b) The remainder shall be paid to the Escrow Agent and applied as set forth in the Escrow Agreement.

Section 21. Preliminary and Final Official Statement. The City Council hereby authorizes and directs either Authorized Officer to cause a preliminary official statement pertaining to the Bonds to be prepared and distributed in electronic and/or printed form to prospective purchasers of the Bonds and others, and to deem such preliminary official statement final, on behalf of the City, for purposes of the Rule (hereinafter defined). The City Council hereby authorizes and directs either Authorized Officer to review and approve, on behalf of the City, a final official statement pertaining to the Bonds in substantially the form of the preliminary official statement, with such changes, if any, as may be deemed by him to be appropriate, and to approve the distribution of the final official statement in electronic and/or printed form in connection with the offer and sale of the Bonds.

Section 22. Undertaking to Provide Continuing Disclosure. This Section 22 constitutes the City’s written undertaking (the “Undertaking”) for the benefit of the Owners and Beneficial Owners of the Bonds required by subsection (b)(5)(i) of Rule 15c2-12 (the “Rule”) of the United States Securities and Exchange Commission (the “SEC”).

The City hereby agrees to provide or cause to be provided annually to the Municipal Securities Rulemaking Board (the “MSRB”) the following annual financial information and operating data (collectively, the “Annual Financial Information”) for each prior fiscal year, commencing with the fiscal year ending December 31, 2014, on or before the last day of the ninth month following the end of such prior fiscal year, commencing September 30, 2015:

(a) Annual financial statements prepared in accordance with the generally accepted accounting principles applicable to governmental units, as such principles may be changed from time to time and as permitted by State law; which statements will not be audited, except that, if and when audited financial statements are otherwise prepared and available to the City, they will be provided (the "Annual Financial Statements");

- (b) The assessed valuation of taxable property in the City;
- (c) *Ad valorem* taxes due and the percentages of taxes collected;
- (d) Property tax levy rates per \$1,000 assessed valuation; and
- (e) A statement of authorized, issued and outstanding indebtedness of the City.

In its provision of such financial information and operating data, the City may cross-reference to any "final official statement" (as defined in the Rule) available to the public on the MSRB's internet web site or filed with the SEC.

If not submitted as part of the Annual Financial Information, then when and if available, the City shall provide its Annual Financial Statements, which shall have been audited by such auditor as shall be then required or permitted by State law, to the MSRB.

The City further agrees to provide or cause to be provided to the MSRB, in a timely manner not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the Bonds:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of the Owners of the Bonds, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances of the Bonds;
10. Release, substitution or sale of property securing repayment of the Bonds, if material;

11. Rating changes;
12. Bankruptcy, insolvency, receivership, or similar event of the City;
13. The consummation of a merger, consolidation or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

The City also agrees to provide or cause to be provided to the MSRB, in a timely manner, notice of its failure to provide the Annual Financial Information for the prior fiscal year on or before the last day of the ninth month following the end of such prior fiscal year.

The City agrees that all documents provided to the MSRB pursuant to this Undertaking shall be provided in an electronic format and accompanied by such identifying information, each as prescribed by the MSRB.

The City may amend its obligations under, or waive any provision of, this Undertaking upon receipt of a favorable opinion of nationally recognized bond counsel or other counsel familiar with the federal securities law, or pursuant to a favorable “no-action letter” issued by the SEC. In the event of any amendment or waiver of the City’s obligations under this Undertaking, the City agrees to describe such amendment in the Annual Financial Information for such fiscal year and shall include, as applicable, a narrative explanation of the reason for such amendment or waiver and its impact of the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (A) notice of such change will be given in the same manner as for a material event, and (B) the Annual Financial Information for the fiscal year in which the change is made shall present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

The City’s obligations to provide Annual Financial Information and notices of certain events shall terminate without amendment upon the defeasance, prior redemption or payment in full of all of the then outstanding Bonds. This Undertaking, or any provision hereof, shall be null and void if the City (i) obtains an opinion of nationally recognized bond counsel or other counsel familiar with the federal securities laws to the effect that those portions of the Rule which require this Undertaking or any such provision are invalid, have been repealed retroactively or otherwise do not apply to the Bonds; and (ii) notifies and provides the MSRB with copies of such opinion.

The right of each Owner or Beneficial Owner of Bonds to enforce the provisions of this Undertaking shall be limited to the right to obtain specific enforcement of the City’s obligations under this Undertaking, and any failure by the City to comply with the provisions of this Undertaking shall not be a default with respect to the Bonds under this Ordinance.

The Authorized Officers are authorized and directed to take such further action on behalf of the City as may be necessary, appropriate or convenient to carry out the requirements of this Undertaking.

Section 23. Contract; Savings Clause. The covenants contained in this Ordinance and in the Bonds shall constitute a contract between the City and the Owner of each and every Bond. If any one or more of the covenants or agreements provided in this Ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction and after final appeal (if any appeal be taken) to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements in this Ordinance and shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds.

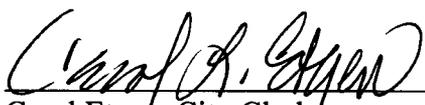
Section 24. Effective Date. This Ordinance shall take effect from and after its passage and five days following its publication as required by State law. A summary of this Ordinance may be published in lieu of the entire Ordinance as authorized by State law.

Introduced the 12<sup>th</sup> day of Nov, 2014.

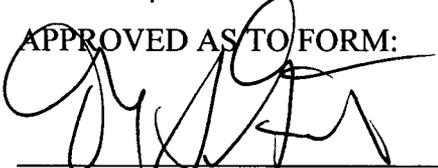
Passed by the City Council on the 12<sup>th</sup> day of Nov, 2014.

  
Subir Mukerjee, Interim City Manager

ATTEST:

  
Carol Etgen, City Clerk

APPROVED AS TO FORM:

  
Daniel S. Gottlieb, Bond Counsel to the City

Published: Nov 14, 2014  
Effective Date: Nov 19, 2014