



Legislation Details (With Text)

|                        |            |                      |          |
|------------------------|------------|----------------------|----------|
| <b>File #:</b>         | 16-0075R   | <b>Name:</b>         |          |
| <b>Type:</b>           | Resolution | <b>Status:</b>       | Passed   |
| <b>File created:</b>   | 1/15/2016  | <b>In control:</b>   | Finance  |
| <b>On agenda:</b>      | 2/8/2016   | <b>Final action:</b> | 2/8/2016 |
| <b>Enactment date:</b> |            | <b>Enactment #:</b>  |          |

**Title:** RESOLUTION PROVIDING FOR THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION DECC IMPROVEMENT REFUNDING BONDS, SERIES 2016A, IN THE APPROXIMATE AMOUNT OF \$33,440,000; ESTABLISHING THE TERMS AND FORM THEREOF; AND PROVIDING FOR AWARDDING THE SALE THEREOF.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A, 2. Exhibit B, 3. Exhibit C

| Date     | Ver. | Action By    | Action   | Result |
|----------|------|--------------|----------|--------|
| 2/8/2016 | 1    | Mayor        | approved |        |
| 2/8/2016 | 1    | City Council | adopted  |        |

RESOLUTION PROVIDING FOR THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION DECC IMPROVEMENT REFUNDING BONDS, SERIES 2016A, IN THE APPROXIMATE AMOUNT OF \$33,440,000; ESTABLISHING THE TERMS AND FORM THEREOF; AND PROVIDING FOR AWARDDING THE SALE THEREOF.

CITY PROPOSAL:

BE IT RESOLVED, by the City Council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Bond Purpose and Authorization.

1.01 The City has previously issued its \$40,635,000 General Obligation DECC Improvement Bonds, Series 2008A, dated August 7, 2008 (the "2008 Bonds"). The 2008 Bonds were authorized and issued pursuant to the provisions of Minnesota Laws 1974, Chapter 130, Minnesota Statutes, Chapter 475 and all other enabling statutes. The 2008 Bonds were issued to finance a portion of the costs of capital improvements at the Duluth Entertainment Convention Center, which included a new arena (the "Project").

1.02 Under and pursuant to the provisions of Minnesota Statutes, Chapter 475 (the "Act") and Section 475.67, Subdivisions 1 through 12 of the Act, the City is authorized to issue and sell its general obligation bonds to refund certain maturities of the 2008 Bonds in advance of their scheduled maturities, if consistent with covenants made with the holders thereof, when determined by the City

to be necessary or desirable for the reduction of debt service cost to the City or for the extension or adjustment of maturities in relation to the resources available for their payment and if the refunding satisfies the savings test set forth in Section 475.67, Subdivision 12 of the Act.

1.03 It is necessary and desirable that the City issue and sell approximately \$33,440,000 General Obligation DECC Improvement Refunding Bonds, Series 2016A (the "Bonds"), in order to reduce debt service costs, to refund the outstanding 2008 Bonds maturing on and after February 1, 2019, of which \$36,810,000 in principal amount is outstanding (the "Refunded Bonds"). The 2008 Bonds maturing on and after February 1, 2019, are called for prepayment and redemption on February 1, 2018 (February 1, 2018 is herein referred to as the "Redemption Date"); such sale of the Bonds shall be contingent upon favorable market conditions and eligibility for advance refunding under the Act, as determined by the chief administrative officer or by the chief financial officer, as further described below. The 2008 Bonds maturing on February 1, 2017 and February 1, 2018 and interest thereon are not being refunded and shall remain outstanding.

1.04 The City Council hereby finds and determined as follows:

(a) The Bonds shall be dated the date of issuance and shall bear interest at the rates determined by the successful proposer. Interest shall be payable on February 1 and August 1 (each an "Interest Payment Date") commencing on August 1, 2016.

(b) The Bonds shall mature on the dates and in the amounts set forth in the Official Terms and Conditions of Bond Sale attached hereto as Exhibit A (as may be adjusted) and as described in a Certificate as to Terms of Bond Sale to be executed by the chief financial officer; provided, however, the total amount of the Bonds shall not exceed \$40,500,000, subject to adjustment for a premium sale price as permitted by Section 475.60 of the Act and the final maturity of the Bonds shall not be later than February 1, 2034. The City, through the chief administrative officer, reserves the right to issue or to not issue the Bonds based on applicable market conditions.

1.05 The Official Terms and Conditions of Bond Sale as set forth on Exhibit A hereto are approved, subject to the changes permitted below. Proposals for the Bonds will be received on a date and time determined by the chief administrative officer on the terms and conditions set forth in the Official Terms and Conditions of Bond Sale, which terms and conditions may be modified by the chief administrative officer after consulting with the City's municipal advisor, based on market conditions, so long as the sale of the Bonds occurs on or before April 28, 2016, and so long as the issuance of the Bonds results in a present value savings of at least 3.0% computed in the manner required by Section 475.67, Subdivision 12 of the Act. As authorized by Section 475.60 of the Act, the City Council hereby delegates to the chief administrative officer and the chief financial officer, or either of them, authority to consider the proposals and award the sale of the Bonds, and upon acceptance of the best proposal meeting the requirements of this resolution, the chief administrative officer and the chief financial officer, or either of them, shall execute on behalf of the City an agreement to sell the Bonds to the successful proposer.

1.06 The City has retained Public Financial Management, Inc., Minneapolis, Minnesota ("PFM"), as an independent municipal advisor to the City, and pursuant to Section 475.60, Subd. 2,

paragraph (9) of the Act, PFM is hereby authorized to solicit proposals for the sale of the Bonds on behalf of the City in accordance with the directions of the chief administrative officer.

1.07 The City staff, in cooperation with PFM, is authorized and directed to prepare on behalf of the City an official statement for the sale of the Bonds and to obtain ratings of the Bonds.

Section 2. Terms of Bonds.

2.01 (a) The Bonds maturing in the years 2019 through 2026 shall not be subject to optional redemption and prepayment before maturity, but those maturing in the year 2027 and in subsequent years shall each be subject to redemption and prepayment at the option of the City on February 1, 2026, and on any date thereafter, in whole or in part, and if in part, in such order of maturities as selected by the City and by lot as to the Bonds maturing in the same year, at a price equal to the principal amount thereof plus accrued interest to the redemption date.

(b) In the event any of the Bonds are called for redemption, notice thereof identifying the Bonds to be redeemed will be given by the Bond Registrar by mailing a copy of the redemption notice by first class mail (postage prepaid) at least 30 days but not more than 60 days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed at the address shown on the registration books kept by the Bond Registrar; provided however, that so long as the Bonds are registered in the name of Cede & Co. as nominee of The Depository Trust Company, Jersey City, New Jersey ("DTC"), notice of redemption shall be given in accordance with the terms of the Representation Letter hereinafter described. Failure to give notice by mail to any registered owner, or any defect therein, will not affect the validity of any proceeding for the redemption of Bonds not affected by such defect or failure. Bonds so called for redemption will cease to bear interest after the specified redemption date, provided that the funds for the redemption are on deposit with the place of payment at that time.

(c) If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest.

2.02 Interest will be computed on the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the municipal securities rulemaking board. The Bond Registrar designated below shall make all interest payments with respect to the Bonds by check or draft mailed to the registered owners of the Bonds shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15<sup>th</sup> day (whether or not a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on

such bond registration records.

2.03 (a) The Bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the city clerk. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be an officer before delivery of the Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

(b) The city clerk is authorized and directed to obtain a copy of the approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, and cause the opinion to be attached to each Bond.

2.04 The City hereby appoints U.S. Bank National Association, in St. Paul, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially set forth in Section 2.11 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.05 (a) In order to make the Bonds eligible for the services provided by DTC, the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

(b) Notwithstanding any provision herein to the contrary, so long as the Bonds shall be in Book-Entry Form, the provisions of this Section 2.05 shall govern.

(c) All of the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Bond registered in the name of Cede & Co. shall be made by wire transfer or New York Clearing House or equivalent same day funds by 10:00 a.m. CT or as soon as possible thereafter following the Bond Registrar's receipt of funds from the City on each Interest Payment Date to the account of Cede & Co. on each Interest Payment Date at the address indicated in or pursuant to the Representation Letter.

(d) DTC (or its nominees) shall be and remain recorded on the Bond Register as the holder of all Bonds which are in Book-Entry Form. No transfer of any Bond in Book-Entry Form shall be made, except from DTC to another depository (or its nominee) or except to terminate the Book-Entry Form. All Bonds of such stated maturity of any Bonds in Book-Entry Form shall be issued and remain in a single Bond certificate registered in the name of DTC (or its nominee); provided, however, that upon termination of the Book-Entry Form pursuant to the Representation Letter, the City shall, upon delivery of all Bonds of such series from DTC, promptly execute, and the Bond

Registrar shall thereupon authenticate and deliver, Bonds of such series to all persons who were beneficial owners thereof immediately prior to such termination; and the Bond Registrar shall register such beneficial owners as holders of the applicable Bonds.

The Bond Registrar shall maintain accurate books and records of the principal balance, if any, of each such outstanding Bond in Book-Entry Form, which shall be conclusive for all purposes whatsoever. Upon the authentication of any new Bond in Book-Entry Form in exchange for a previous Bond, the Bond Registrar shall designate thereon the principal balance remaining on such bond according to the Bond Registrar's books and records.

No beneficial owner (other than DTC) shall be registered as the holder on the Bond Register for any Bond in Book-Entry Form or entitled to receive any bond certificate. The beneficial ownership interest in any Bond in Book-Entry Form shall be recorded, evidenced and transferred solely in accordance with the Book-Entry System. Except as expressly provided to the contrary herein, the City and the Bond Registrar may treat and deem DTC to be the absolute owner of all Bonds of each series which are in Book-Entry Form (i) for the purpose of payment of the principal of and interest on such Bond, (ii) for the purpose of giving notices hereunder, and (iii) for all other purposes whatsoever.

(e) The City and the Bond Registrar shall each give notices to DTC of such matters and at such times as are required by the Representation Letter, including the following:

(i) with respect to notices of redemption; and

(ii) with respect to any other notice required or permitted under this Bond Resolution to be given to any holder of a Bond.

All notices of any nature required or permitted hereunder to be delivered to a holder of a Bond in Book-Entry Form shall be transmitted to beneficial owners of such Bonds at such times and in such manners as shall be determined by DTC, the participants and indirect participants in accordance with the Book-Entry System and the Representation Letter.

(f) All payments of principal, redemption price of and interest on any Bonds in Book-Entry Form shall be paid to DTC (or Cede & Co.) in accordance with the Book-Entry System and the Representation Letter in same day funds by wire transfer.

2.06 The City shall cause to be kept by the Bond Registrar a bond register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the City shall provide for the registration of the Bonds and the registration of transfers of the Bonds entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the City Council. Upon surrender for transfer of any Bond at the principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this resolution, and deliver, in the name(s) of the

designated transferee or transferees, one or more new Bonds of the like aggregate principal amount, as requested by the transferor.

2.07 Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Bond. Each Bond shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption or to make any such exchange or transfer of the Bonds during the 15 days next preceding the date of the mailing of the notice of redemption in the case of a proposed redemption of the Bonds.

2.08 The City and the Bond Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of principal of and interest on such Bond and for all other purposes whatsoever, whether or not such Bond be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

2.09 The principal of and interest on the Bonds shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

2.10 Delivery of the Bonds and payment of the purchase price shall be made at a place mutually satisfactory to the City and the purchaser. Printed or typewritten and executed Bonds shall be furnished by the City without cost to the purchaser. The Bonds, when prepared in accordance with this Resolution and executed, shall be delivered by or under the direction of the treasurer to the purchaser upon receipt of the purchase price plus accrued interest.

2.11 The Bonds shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF ST. LOUIS

CITY OF DULUTH  
GENERAL OBLIGATION DECC IMPROVEMENT REFUNDING BOND, SERIES 2016A

R-\_\_\_ \$ \_\_\_\_\_

Interest Rate      Maturity Date      Date of Original Issue      CUSIP

February 1, \_\_\_\_\_, 2016

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2016. Both principal and interest are payable in lawful money of the United States of America by check or draft at the office of U.S. Bank National Association, in St. Paul, Minnesota, as the registrar, paying agent, transfer agent and authenticating agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the City Council. The Bond Registrar shall make the interest payment with respect to this Bond directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15<sup>th</sup> day of the month next preceding the Interest Payment Date (whether or not a business day), at such owner's address shown on said bond registration records, without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Bond to the Bond Registrar when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

This Bond is one of a series issued by the City in the aggregate amount of \$ \_\_\_\_\_, all of like date and tenor, except for number, denomination, maturity date and interest rate, pursuant to the authority contained in Minnesota Statutes, Chapter 475, and Section 475.67, Subdivisions 1 through 12, and all other laws thereto enabling and pursuant to a resolution adopted on February 8, 2016, by the governing body of the City (the "Resolution"), and is issued to refund on an advance refunding basis the outstanding principal amount of certain maturities of the City's \$40,635,000 General Obligation DECC Improvement Bonds, Series 2008A, dated August 7, 2008.

The principal hereof and interest hereon are payable primarily from food and beverage tax revenues and revenues of the Duluth Entertainment and Convention Center Authority as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred.

The Bonds maturing in the years \_\_\_\_ and \_\_\_\_ shall be subject to mandatory redemption and redeemed in installments as provided in the Resolution, at par plus accrued interest to the date of redemption.

The Bonds of this series maturing in the years 2019 through 2026 are not subject to

redemption before maturity, but those maturing in the year 2027 and in subsequent years are each subject to redemption and prepayment at the option of the City on February 1, 2026, and on any date thereafter upon 30 days' notice, in whole or in part, and if in part, in such order of maturities as selected by the City, and by lot as to Bonds maturing in the same year, at a price equal to the principal amount plus accrued interest to the redemption date.

Not less than 30 nor more than 60 days prior to the date fixed for redemption and prepayment of any Bonds, notice of redemption shall be mailed to each registered owner of a Bond to be redeemed; provided, however, that so long as the Bonds are registered in the name of Cede & Co., as nominee for The Depository Trust Company, Jersey City, New Jersey ("DTC"), notice of redemption shall be given in accordance with the terms of the Blanket Issuer Letter of Representations executed by the City and DTC.

If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest. If any Bond is redeemed in part, upon surrender of the Bond being redeemed, the City shall deliver or cause to be delivered to the registered owner of such Bond, a Bond in like form in the principal amount equal to that portion of the Bond so surrendered not being redeemed.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate, if required by law and the Resolution, and deliver, in exchange for this Bond, one or more new fully registered bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Bond, of the same maturity and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of Minnesota to be done and to exist precedent to and in the issuance of this Bond, in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time and manner as so required; that all taxable property within the corporate limits of the City is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest hereon when due, without limitation as to rate or amount; and that the issuance of this Bond does not cause the

indebtedness of the City to exceed any constitutional, statutory or charter limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the City of Duluth, by its City Council, has caused this Bond to be executed in its name by the facsimile signatures of the Mayor and the City Clerk.

Attest:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor

Date of Authentication: \_\_\_\_\_

**BOND REGISTRAR'S AUTHENTICATION CERTIFICATE**

The Bond Registrar confirms that the books reflect the ownership of a Bond registered in the name of the owner named above, in the principal amount stated above, and this Bond is one of the Bonds of the series issued pursuant to the Resolution hereinabove described.

U.S. BANK NATIONAL ASSOCIATION  
Bond Registrar

By \_\_\_\_\_  
Authorized Representative

**REGISTRATION CERTIFICATE**

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by U.S. Bank National Association, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of U.S. Bank National Association as Bond Registrar, in the name of the registered owner last noted below.

|              |   |                                    |
|--------------|---|------------------------------------|
| <u>Date</u>  | <u>Registered Owner</u>   | <u>Signature of Bond Registrar</u> |
| ___/___/2016 | Cede & Co. c/o The Depository Trust<br>Company 570 Washington Blvd. Jersey<br>City, NJ 07310 Federal Taxpayer I.D. No.:<br>13-2555119 |                                    |

**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto

(Name and Address of Assignee)

\_\_\_\_\_  
\_\_\_\_\_  
Social Security or Other  
Identifying Number of Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
(Bank, Trust Company, member of  
National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 3. Escrow Agreement; Escrow Agent.

3.01 U.S. Bank National Association of St. Paul, Minnesota, which is a suitable financial institution within the State of Minnesota whose deposits are insured by the Federal Deposit Insurance

Corporation whose combined capital and surplus is not less than \$500,000, is hereby designated escrow agent (the “Escrow Agent”) with respect to the Refunded Bonds.

3.02 On or prior to the delivery of the Bonds, the mayor and the clerk are hereby authorized and directed to execute on behalf of the City an escrow agreement (the “Escrow Agreement”) with the Escrow Agent in the form attached hereto as Exhibit B. The execution and delivery of the Escrow Agreement by the mayor and the clerk, in the form presented to the City Council with such changes, omissions, insertions and revisions as the mayor and the clerk deem advisable is hereby approved, and the execution by such officers shall be conclusive evidence of such approval. All essential terms and conditions of the Escrow Agreement, including payment by the City of reasonable charges for the services of the Escrow Agent, are hereby approved and adopted and made a part of this Resolution, and the City covenants that it will promptly enforce all provisions thereof in the event of default thereunder by the Escrow Agent.

#### Section 4. Covenants, Accounts and Representations.

4.01 The City imposes sales taxes on certain sales of food and beverages within the City pursuant to Minnesota Laws 1980, Chapter 511, Section 1, Subdivision 2 and Section 3, as amended, including Minnesota Laws 2008, Chapter 154, Article 5, Section 2 authorizing use of certain sales tax for the Project, and Section 42A-2(b) of the Duluth City Code (the “Food and Beverage Tax”). The Food and Beverage Tax on certain sales of food and beverages is 2.25% on gross receipts described in such sections. (Revenues received from 0.75% of the Food and Beverage Tax authorized by Section 42A-2(b) are herein referred to as the “0.75% Food and Beverage Tax.”) Pursuant to Section 42A-2(b), the tax revenues from the 0.75% Food and Beverage Tax shall be used solely to pay principal of and interest on the outstanding 2008 Bonds and the Bonds (and any refunding bonds), the proceeds of which financed or refinanced the Project.

4.02 (a) In connection with the issuance of the 2008 Bonds, the City and the Duluth Entertainment and Convention Center Authority (the “Authority”) entered into a Pledge Agreement dated as of August 7, 2008 (the “Pledge Agreement”). All essential terms and conditions of the Pledge Agreement, including the Authority’s pledge of DECC Lodging Tax, as hereinafter defined, and its other revenues for payment of a portion of the principal of and interest on the 2008 Bonds and the Bonds (as a refunding of the 2008 Bonds), when due, are hereby approved and adopted and made a part of this resolution.

(b) The City imposes the 3% excise tax on lodging within the City pursuant to Section 54(D) of the city charter (the “Lodging Tax”). 65% of the Lodging Tax is dedicated to be used for the support and maintenance of the Arena-Auditorium of Duluth (i.e. the Duluth Entertainment Convention Center) (the “DECC Lodging Tax”). The Authority has requested and agreed in the Pledge Agreement that the City shall retain and use so much of the DECC Lodging Tax as is necessary, when combined with the 0.75% Food and Beverage Tax revenues, to pay the principal of and interest on the 2008 Bonds and the Bonds when due.

(c) The City has created Fund No. 281 (the “DECC Revenue Fund”), which is the City’s fund to account for the Authority’s revenues received pursuant to the Pledge Agreement. The

City shall deposit the DECC Lodging Tax, and other revenues of the Authority paid pursuant to the Pledge Agreement, in the DECC Revenue Fund. Sums from the DECC Revenue Fund are available for the following purposes: (i) payment (including prepayments) of all principal of and interest on the 2008 Bonds and the Bonds; (ii) reimbursement to the Authority for payments of amounts by the Authority to the City in excess of those listed as “UMD Lease Revenue” and the “Authority Contribution” on Exhibit C of the Pledge Agreement, all in accordance with Section 2.2 of the Pledge Agreement; and (iii) payment of capital improvements to the Duluth Entertainment Convention Center, subject to approval of the city council.

4.03 A separate debt service account is hereby created and designated as the “G.O. DECC Improvement Refunding Bonds, Series 2016A Debt Service Account” (the “Debt Service Account”) within the City’s Debt Service Fund. The 0.75% Food and Beverage Tax shall be periodically deposited into the Debt Service Account in accordance with the policies established by the City’s chief financial officer. There shall be transferred from the DECC Revenue Fund, amounts sufficient to provide for the payment of all interest and principal then due on the 2008 Bonds and on the Bonds and all charges due to the Bond Registrar; such transfers shall be made at the times and in the amounts determined by the chief financial officer, in accordance with policies established by the city council. In addition to the amounts set forth above, the following amounts shall be deposited in the Debt Service Account: (i) any amount of additional interest permitted by Minnesota Statutes Section 475.56 paid by the purchaser not credited to the Escrow Account, if any; (ii) all investment earnings on monies in the Debt Service Account; and (iii) any collections of ad valorem taxes hereafter levied, if any, for the payment of the Bonds. The money in the Debt Service Account shall be used for no purpose other than the payment of principal and interest on the Bonds; provided, however, that if any payment of principal or interest shall become due when there is not sufficient money in the Debt Service Account, the city treasurer shall pay the same from the DECC Revenue Fund and then from any other funds of the City and said funds shall be reimbursed for such advance out of the Debt Service Account.

4.04 It is estimated that the 0.75% Food and Beverage Tax and the revenues under the Pledge Agreement, including the DECC Lodging Tax deposited in the DECC Revenue Fund and pledged and appropriated to said Debt Service Account, will be received at the times and in amounts not less than 5% in excess of the amounts needed to meet when due the principal and interest payments thereon and, accordingly, no tax is presently levied for this purpose. It is recognized, however, that the City’s liability on the Bonds is not limited to the revenues so pledged, and the city council covenants and agrees that it will levy upon all taxable property within the City, and cause to be extended, levied and collected, any taxes found necessary for full payment of the principal of and interest on the Bonds, without limitation as to rate or amount.

4.05 The full faith and credit and taxing power of the City are irrevocably pledged for the prompt and full payment of the Bonds and the interest thereon, in accordance with the terms set forth in this resolution.

4.06 Proceeds of the Bonds on deposit in the Debt Service Account and amounts on deposit in the DECC Revenue Fund shall be invested in securities permitted by Minnesota Statutes, Chapter

118A; provided, that any such investment shall mature at such time and in such amounts as will permit the payment of the principal and interest on the 2008 Bonds or the Bonds when due. Investment income shall be credited to the fund or account from which the monies were invested.

4.07 (a) The City hereby creates an Escrow Account for payment of the Refunded Bonds. To the Escrow Account there is hereby pledged and irrevocably appropriated and there shall be credited: (i) the proceeds of the Bonds received from the purchaser in the amount set forth in a Certificate as to Terms of Bond Sale, and (ii) funds of the City in an amount set forth in a Certificate as to Terms of Bond Sale, which with investment earnings, is sufficient to pay the interest due on August 1, 2016, February 1, 2017 and August 1, 2017 on the Refunded Bonds and to prepay and redeem the principal of and interest on the Refunded Bonds on the Redemption Date (the "Escrow Account Obligations").

(b) The Escrow Account shall be maintained with the Escrow Agent pursuant to the Escrow Agreement and this Resolution. The Escrow Account shall be invested in accordance with the Act, the Escrow Agreement and this Section, in securities specified in Section 475.67, Subdivision 8(a) of the Act.

(c) From the Escrow Account there shall be paid the Escrow Account Obligations on the dates set forth in subparagraph (a) above.

(d) The Escrow Account for the Refunded Bonds as set forth above is irrevocably appropriated to the payment of interest on and the prepayment and redemption of the principal of the Refunded Bonds on the Redemption Date. The monies in the Escrow Account for the Bonds shall be used solely for the purposes herein set forth and for no other purpose, except that any surplus in the Escrow Account may be remitted to the City all in accordance with the Escrow Agreement. Any monies remitted to the City upon termination of the Escrow Agreement shall be deposited in the Debt Service Fund.

(e) Securities purchased for the Escrow Account shall be purchased simultaneously with the delivery of and payment for the Bonds. The mayor and clerk or their designee are authorized and directed to purchase such securities.

(f) The construction fund created for the 2008 Bonds has previously been terminated and all bond proceeds therein have been expended.

(g) The City treasurer is authorized to pay the costs of issuance of the Bonds from proceeds of the Bonds.

4.08 If the balance in the Debt Service Account is ever insufficient to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from the Debt Service Account when the balance therein is sufficient. It is estimated that the revenues herein pledged and appropriated to the Debt Service Account will be received at the times and in amounts not less than five percent in excess of the amounts needed to meet when due the

principal and interest payments thereon and, accordingly, no tax is presently levied for this purpose. It is recognized, however, that the City's liability on the Bonds is not limited to the revenues so pledged, and the City Council covenants and agrees that it will levy upon all taxable property within the City, and cause to be extended, levied and collected, any taxes found necessary for full payment of the principal of and interest on the Bonds, without limitation as to rate or amount.

Section 5. Refunding, Findings, Prepayment of Refunded Bonds.

5.01 It is hereby found and determined that based upon information presently available from the City's municipal advisors, the issuance of the Bonds is consistent with covenants in the Council's resolution authorizing the 2008 Bonds and is necessary and desirable for the reduction of debt service cost to the City.

5.02 It is hereby found and determined that the Proceeds and other available funds appropriated to the Escrow Account in Section 4.07 will be sufficient to pay the Escrow Account Obligations on the dates set forth in Section 4.07(a).

5.03 The Refunded Bonds shall be redeemed and prepaid in accordance with their terms and in accordance with the terms and conditions set forth in the forms of notice of call for redemption attached to the Escrow Agreement, which terms and conditions are hereby approved and incorporated herein by reference. The Escrow Agent is hereby authorized and directed to forthwith, no later than 30 days prior to the Redemption Date, to send written notice of call to the registered owners and paying agent and to the bond insurance company, if any, of the Refunded Bonds in accordance with the terms of the Escrow Agreement.

5.04 The Escrow Agent is authorized and directed to cause to be provided a material event notice regarding the refunding of the Refunded Bonds in accordance with the continuing disclosure certificate of the City dated August 7, 2008, and delivered in connection with the 2008 Bonds.

Section 6. Tax Covenants; Miscellaneous.

6.01 The City covenants and agrees with the holders of the Bonds that the City will (i) take all action on its part necessary to assure that the interest on the Bonds will be excluded from gross income for federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Bonds and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Bonds to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Bonds and investment earnings thereon on certain specified purposes.

6.02 (a) No portion of the proceeds of the Bonds shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds were issued, and (ii) in addition to the above, in an amount not greater than the lesser of 5% of the proceeds of the Bonds or \$100,000. To this effect,

any proceeds of the Bonds and any sums from time to time held in the Debt Service Account (or any other City account which will be used to pay principal and interest to become due on the Bonds) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods of minor portion made available under the federal arbitrage regulations.

(b) In addition, the proceeds of the Bonds and money in the Debt Service Account shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code").

(c) The City hereby covenants not to use the proceeds of the Bonds, or to cause or permit them to be used, in such a manner as to cause the Bonds to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code.

6.03 (a) The City covenants and certifies to and for the benefit of the owners of the Bonds that no use will be made of the proceeds of the Bonds, which will cause the Bonds to be arbitrage bonds within the meaning of Section 148(a) of the Code and the Treasury Regulations promulgated thereunder. Pursuant to such covenant, the City hereby agrees to comply throughout the term of the Bonds with the requirements of Section 148 of the Code and any Treasury Regulations promulgated thereunder; to this end, the city shall:

(1) maintain records identifying all "gross proceeds" (as defined in Section 148(f)(6)(B) of the Code) attributable to the Bonds, the yield at which such gross proceeds are invested, any arbitrage profit derived therefrom (earnings in excess of the yield on the Bonds) and any earnings derived from the investment of such arbitrage profit;

(2) make, or cause to be made as of the end of each Bond Year, the annual determinations of the amount, if any, of excess arbitrage required to be paid to the United States by the city (hereinafter, the "Rebate Amount");

(3) pay, or cause to be paid, to the United States at least once every five Bond Years the amount, if any, which is required to be paid to the United States, including the last installment which shall be made no later than 60 days after the day on which the Bonds are paid in full;

(4) not invest, or permit to be invested, "gross proceeds" in any acquired non purpose obligations so as to deflect arbitrage otherwise payable to the United States as a "prohibited payment" to a third party;

(5) retain all records of the annual determinations of the foregoing amounts until six years after the Bonds have been fully paid; and

(6) in order to comply with the foregoing paragraph, the City shall determine

the Rebate Amount within 30 days after the close of each Bond Year and upon payment in full of the Bonds; upon each such determination, the City shall deposit in the Rebate Fund the Rebate Amount so determined; the City shall separately account for the earnings from the investment of the Rebate Amount and such earnings shall become part of the Rebate Amount.

Section 7. Continuing Disclosure. The City acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. §240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the Bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate in the form of Exhibit C attached hereto.

Section 8. Certificate of Proceedings.

8.01 The city clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Bonds herein authorized have been duly entered on his register.

8.02 The officers of the City are authorized and directed to prepare and furnish to the purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bonds and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Bonds as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

8.03 The officers of the City are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the sale of the Bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

STATEMENT OF PURPOSE: This resolution authorizes the sale of tax-exempt general obligation refunding bonds to refund the City's General Obligation DECC Improvement Bonds, Series 2008A, maturing on and after February 1, 2019. The general obligation refunding bonds will be issued in the approximate amount of \$33,440,000, and based on rates as of January 14, 2016, will result in \$4,183,921.69 of estimated present value savings (present value savings of refunded bonds - 11.36%). The resolution allows the chief administrative officer to select the date to offer the refunding bonds for sale, authorizes the City's municipal advisor, Public Financial Management, to solicit proposals and authorizes the chief administrative officer and the chief financial officer, or either of them, to award the sale so long as the refunding achieves the 3% savings test under Minnesota Statutes. The bonds are payable from the 0.75% Food and Beverage Tax, the DECC's portion of the

Lodging Tax and other revenues of the DECC.