

South Portland City Council
Position Paper of the City Manager

Subject:

RESOLVE #3-13/14 - Pursuant to Section 612 of the City Charter determining details of issue of \$41,500,000 principal amount of bonds authorized by bond ordinance finally passed and enacted September 8, 2010. Passage requires majority vote.

Position:

The City Council placed before the voters in November of 2010 a \$41,500,000 bond referendum to finance additions to and renovations of the South Portland High School. This bond issue was approved by the voters and the Section 612 resolve gives approval to formally issue the bonds. This is the third 612 resolve for the High School project, with the City previously issuing bonds for \$30,000,000 in May 2012 and again under the State of Maine's School Revolving Renovation Fund for \$465,115 issued in December of 2013. You will note that the amount to be currently financed is \$9,000,000 which is anticipated to provide financing for the final phase of the project. The resolve also provides notice of official intent and relevant disclosure on the financing. The City's Finance Director, Greg L'Heureux, will be available to answer any questions on the resolve.

Requested Action:

Council passage of RESOLVE #3-13/14.


City Manager



CITY OF SOUTH PORTLAND

GERARD A. JALBERT
Mayor

JAMES H. GAILEY
City Manager

SUSAN M. MOONEY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

IN CITY COUNCIL

RESOLVE #3-13/14

District One
MICHAEL R. POCK

District Two
PATRICIA A. SMITH

District Three
MELISSA E. LINSKOTT

District Four
LINDA C. COHEN

District Five
GERARD A. JALBERT

At Large
MAXINE R. BEECHER

At Large
THOMAS E. BLAKE

Resolution pursuant to Section 612 of the City Charter Determining Details of Issue of \$41,500,000 Principal Amount of Bonds Authorized by Bond Ordinance finally Passed and Enacted September 8, 2010.

WHEREAS, the City Council of the City of South Portland, Maine, pursuant to applicable provisions of the City Charter, finally passed and enacted on September 8, 2010 Ordinance No. 3-10/11 entitled "Bond Ordinance to Appropriate \$41,500,000(*) for Additions to and Renovations of South Portland High School and to authorize \$41,500,000(*) Principal Amount of Bonds to Finance Such Appropriations; and

WHEREAS, the legal voters of the City of South Portland at a municipal election held on November 2, 2010 approved the issuance of \$41,500,000 principal amount of bonds for such project; and

WHEREAS, the City has previously issued \$30,465,115 of its bonds for such project; and

WHEREAS, the City Council wishes at this time to issue an additional \$9,000,000 of bonds for such project; and

WHEREAS, Section 612 of the City Charter, as amended, provides in substance that all matters in connection with the authorization, sale and issuance of .bonds not specifically required to be provided in a Bond Ordinance may be determined or provided by resolutions adopted after final passage of a Bond Ordinance by the affirmative votes of at least a majority of the members of the City Council.

NOW, THEREFORE, IT IS HEREBY RESOLVED:

(1) That, pursuant to Section 612 of the City Charter, as amended, and the aforesaid Bond Ordinance finally passed and enacted by the City Council of the City of South Portland on September 8, 2010, \$9,000,000 aggregate principal amount of bonds of the City shall be issued to pay the costs of such project.

(2) That such bonds shall be dated the date of their delivery and shall mature \$450,000 principal amount on April 15th in each of the years 2015 through 2034.

(3) That all such bonds shall be fully registered bonds in the denomination of \$5,000 and any multiple thereof, shall bear interest at such rate or rates as may be designated by the successful bidder therefore and approved unanimously by the Mayor and Chairman of the City Council, the City Manager and the Director of Finance, payable semi-annually on the fifteenth day of October and April of each year, beginning October 15, 2014 to the registered owner on the record date provided in the bonds and shall be in such form and contain such terms and provisions not inconsistent with said Bond Ordinance and this Resolution as the Director of Finance may approve, and said bonds shall be executed in the name and on behalf of the City of South Portland by its Director of Finance, shall bear the corporate seal of the City of South Portland, Maine and the manual or facsimile signature of the Mayor and Chairman of the City Council; and the Director of Finance of the City of South Portland, Maine be and hereby is authorized and empowered to sell said \$9,000,000 aggregate principal amount of bonds of the City of South Portland, Maine, to be dated their date of delivery, at public sale pursuant to the provisions of Section 623 of the City Charter.

(4) That the Director of Finance be and hereby is authorized to engage Moors & Cabot, Inc. as financial advisor to the City in connection with the issuance and sale of the Bonds.

(5) That the Director of Finance be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement for use in the offering and sale of the Bonds heretofore authorized, such Preliminary Official Statement and Official Statement to be in such form and contain such information as may be approved by the Director of Finance, with the advice of the bond counsel for the City, and that the use and distribution of the Preliminary Official Statement and the Official Statement in the name of and on behalf of the City in connection with offering the Bonds for sale be and hereby is approved.

(6) That the Bank of New York Trust Company, N.A., Boston, Massachusetts, its successors and assigns, or such other qualified financial institution as may be approved by the Mayor and Chairman of the City Council and the Director of Finance be and hereby is appointed Registrar, Transfer Agent and Paying Agent (the "Transfer Agent") for said \$9,000,000 aggregate principal amount of bonds of the City of South Portland.

(7) That said \$9,000,000 aggregate principal amount of bonds of the City of South Portland shall be transferable only on registration books of the City kept by the Transfer Agent, and said bonds of one maturity may be exchanged for an equal aggregate principal amount of bonds of the same maturity (but not of other maturities) in the denomination of \$5,000 or any multiple thereof, upon surrender thereof at the principal office of the Transfer Agent, with a written instrument of transfer satisfactory to the Transfer Agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of bonds, the City of South Portland and the Transfer Agent may make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of which shall be borne by the City, the cost of preparing new bonds upon exchanges or transfers thereof shall be paid by the person requesting the same.

(8) That the Director of Finance, Mayor and Chairman of the City Council from time to time shall execute such Bonds as may be required to provide for exchanges or transfers of Bonds as heretofore authorized, all such Bonds to bear the original signature of the Director of Finance, Mayor and Chairman of the City Council, and in case any officer of the City whose signature appears on any Bond shall cease to be such officer before the delivery of said Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery thereof.

(9) That the Director of Finance be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such Bonds heretofore authorized in book-entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph above regarding physical transfer of Bonds, and the Director of Finance be and hereby is authorized and empowered to enter into a Letter of Representation or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Bonds for and participate in the Depository Trust Company Book-Entry Only System.

(10) That the Director of Finance be and hereby is authorized and directed to covenant and certify on behalf of the City that no part of the proceeds of the issue and sale of the Bonds authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such Bonds to be "arbitrage bonds" or "private activity bonds" within the meaning of Sections 148 and 141 of the Internal Revenue Code of 1986, as amended.

(11) That if the Bonds or any part of them, are issued on a tax-exempt basis, the officers or officials executing the Bonds be and hereby are individually authorized to covenant and agree, on behalf of the City, for the benefit of the holders of such Bonds, that the City will file any required reports and take any other action that may be necessary to insure that interest on the notes will remain exempt from federal income taxation, and that the City will refrain from any action that would cause interest on the Bonds to be subject to federal income taxation.

(12) That the officers executing the Bonds be and hereby are individually authorized to covenant, certify and agree, on behalf of the City, for the benefit of the holders of such Bonds, that the City will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met.

(13) That any or all of the Bonds issued hereunder may be consolidated with and become a part of any other issue of temporary notes or general obligation bonds authorized to be issued by any previous or subsequent order of the City Council of the City of South Portland.

(14) That the Director of Finance, Mayor and Chairman of the City Council, City Manager and Clerk and other proper officials of the City be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds hereinabove authorized.

(15) That if any of the officers or officials of the City who have signed or sealed the Bonds shall cease to be such officers or officials before the Bonds so signed and sealed shall have been actually authenticated or delivered by the City, such Bonds nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such Bonds, shall be the proper officers and officials of the City, although at the nominal date of such Bonds any such person shall not have been such officer or official.

(16) That if the Director of Finance, Mayor and Chairman of the City Council, City Manager or Clerk are for any reason unavailable to approve and execute the Bonds or any other documents necessary or convenient to the issuance, execution and delivery of the Bonds, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or

otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.

(17) That the investment earnings on the proceeds of the Bonds, if any, and the excess proceeds of the Bonds (including premium), if any, be and hereby are authorized to be used to pay interest on the Bonds and to pay issuance costs for the Bonds to the extent permitted by the Internal Revenue Code and regulations and rulings thereunder.

(18) That during the term any of the Bonds (or bonds issued to refund such Bonds) are outstanding, the Director of Finance be and hereby is authorized to issue and deliver refunding bonds to refund on either a current or advance refunding basis some or all of the Bonds then outstanding, to the extent allowed by the Internal Revenue Code, and to determine the date, form, interest rate, maturities and all other details of such refunding bonds, including the form and manner of their sale and award. The Director of Finance be and hereby is further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond issued hereunder shall be signed by the Director of Finance and by the Mayor and Chairman of the City Council, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof.

(19) That the Director of Finance be and hereby is authorized to covenant and agree, on behalf of the City, for the benefit of the holders of the bonds, that the City will file any required reports and take any other action that may be necessary to ensure that interest on the bonds will remain exempt from Federal income taxation, and that the City will refrain from taking any action that would cause interest on the bonds to be subject to Federal income taxation.

(20) The Bonds and notes herein authorized shall be either sold at public sale upon sealed bid, as provided in Section 623 of the City Charter, or by negotiated sale in such manner as the Director of Finance deems appropriate and in the best interest of the City, and the Director of Finance be and hereby is authorized to provide that any of the Bonds and Notes herein authorized be made callable, with or without premium, prior to their maturity.

(21) That the Issuer expects to incur expenditures on the Projects prior to the issuances of the Proposed bonds (the "Prior Expenditures"). The Issuer intends to reimburse itself for the Prior Expenditures from the proceeds of the Proposed Bonds in an amount not to exceed \$9,000,000. Expenditures made prior to the issuance of the Proposed Bonds are expected to be funded either with operating and non-operating revenues of the Issuer or with the proceeds of an interim loan. This Declaration of Official Intent shall be maintained as a public record of the Issuer.

Fiscal Note: \$9,000,000 Principal
 \$3,402,000 Interest
 \$12,402,000 Total

Dated: February 19, 2014