

October 24, 2018

The City Council of the City of Hawarden/Hawarden Municipal Utilities, State of Iowa, met in regular session, in the City of Hawarden Council Chambers, at 5:30 P.M., on the above date. There were present Mayor Porter, in the chair, and the following named Council Members:

Klocke, Bergsma, Feldhacker, Olson,

Kurth Mayor Porter

Absent: None

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Council Member Travis Olson introduced the following Resolution and moved its adoption. Council Member Rob Klocke seconded the motion to adopt. The roll was called, and the vote was:

AYES: Kurth, Olson, Klocke, Bergsma

Feldhacker

NAYS: None

Whereupon the Mayor declared the following Resolution duly adopted:

**RESOLUTION NO.2018-31**

**A RESOLUTION AUTHORIZING THE PURCHASE OF NATURAL GAS FROM PEFA, INC.; APPROVING THE EXECUTION AND DELIVERY OF A GAS SUPPLY AGREEMENT AND OTHER DOCUMENTS RELATING TO SAID PURCHASE; APPROVING THE ISSUANCE OF BONDS BY PEFA, INC.; AND ADDRESSING RELATED MATTERS**

WHEREAS, the City is a Member of the Public Energy Facilities Authority pursuant to that certain Amended and Restated Agreement Establishing the Public Energy Facilities Authority dated as of June 1, 2008 as an Iowa joint powers agency (the "Agency") organized under Chapter 28E of the Iowa Code (the "Agency Agreement"), and in connection with the undertakings described therein, the City previously approved the formation of PEFA, Inc., an Iowa non-profit corporation ("PEFA, Inc."), and approved the form of a Gas Supply Contract for a gas purchase transaction which did not go forward; and

WHEREAS, the City is now desirous of proceeding with a new gas purchase transaction as further described herein; and

WHEREAS, PEFA, Inc. is a non-profit corporation duly organized and existing under the laws of the State of Iowa and, in particular, Iowa Code Chapter 504, as amended from time to time; and

WHEREAS, PEFA, Inc. has planned and developed a project to acquire long-term gas supplies from J. Aron & Company LLC, a New York limited liability company and an affiliate

of The Goldman Sachs Group, Inc., pursuant to a Prepaid Natural Gas Sales Agreement, to meet a portion of the requirements of the City of Hawarden/Hawarden Municipal Utilities (the "Gas Purchaser"), and other public gas distribution systems that elect to participate (each, a "Project Participant", and collectively, the "Project Participants") through a prepayment (the "Prepaid Project"); and

WHEREAS, PEFA, Inc. will issue its Gas Project Revenue Bonds, Series 2018 (the "PEFA, Inc. Bonds") to finance the acquisition of gas supplies under the Prepaid Project; and

WHEREAS, PEFA, Inc. will sell all the gas purchased under the Prepaid Project to the Project Participants; and

WHEREAS, Gas Purchaser is a public body and political subdivision organized and existing under and by virtue of the constitution and laws of the State of Iowa, acting by and through its City Council of the City of Hawarden/Hawarden Municipal Utilities for and on behalf of its municipal gas utility; and

WHEREAS, Gas Purchaser has determined that it is in the best interest of its customers to be a Project Participant and thereby purchase a portion of Gas Purchaser's natural gas requirements from PEFA, Inc. pursuant to a natural gas supply contract to be entered into by PEFA, Inc. and Gas Purchaser (the "Gas Supply Agreement"); and

WHEREAS, under the Gas Supply Agreement, Gas Purchaser will agree to purchase from PEFA, Inc. the amounts of gas specified in the Gas Supply Agreement, at the prices specified in the Gas Supply Agreement, for a term specified in the Gas Supply Agreement; and

WHEREAS, the PEFA, Inc. Bonds will be issued pursuant to a Trust Indenture between PEFA, Inc. and a corporate trustee (the "Indenture") and purchased by the underwriters or original purchasers of the PEFA, Inc. Bonds (the "Underwriters") pursuant to one or more bond purchase agreements or similar agreements; and

WHEREAS, PEFA, Inc. will pledge to the payment of the PEFA, Inc. Bonds certain assets of PEFA, Inc., including the Gas Supply Agreement between PEFA, Inc. and Gas Purchaser; and

WHEREAS, Gas Purchaser shall have no financial liability with respect to the PEFA, Inc. Bonds, and Gas Purchaser's only obligations relating to the Prepaid Project herein shall be as set forth in the Gas Supply Agreement; and

WHEREAS, in order to authorize the purchase of natural gas from PEFA, Inc. and the execution of the Gas Supply Agreement, to consent to the pledge of the Gas Supply Agreement to secure the PEFA, Inc. Bonds, to authorize the sale of the gas purchased from PEFA, Inc., and to authorize and take such other necessary and appropriate action in furtherance of the Prepaid Project, Gas Purchaser adopts this Resolution.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Hawarden/Hawarden Municipal Utilities, Iowa (the "Governing Body"), as follows:

SECTION 1: Gas Purchaser is authorized to enter into a Gas Supply Agreement with PEFA, Inc., pursuant to which Gas Purchaser will purchase natural gas from PEFA, Inc. as provided in the Gas Supply Agreement. The Gas Supply Agreement shall (a) have a term of not greater than 366 months, (b) provide for the purchase by Gas Purchaser of not more than 457 MMBtu per day, and (c) provide for a projected minimum savings (prior to payment of the project administration fee as set forth in the Gas Supply Agreement) through monthly and annual discounts of not less than 35 cents per MMBtu to Gas Purchaser for the initial rate period and not less than 24 cents per MMBtu in any reset period, unless Gas Purchaser elects to purchase gas at a lesser discount during any reset period, as set forth in the Gas Supply Agreement. Gas Purchaser's obligation to make payments under the Gas Supply Agreement shall be an operating expense of its municipal gas utility and is payable solely from the revenues of its gas system and other monies legally available and is not a general obligation of the City or a debt or charge against the City within the meaning of any constitutional or statutory debt limit provision.

SECTION 2: The Gas Supply Agreement shall be in substantially the form submitted and attached hereto as Exhibit A, which such form is hereby approved, with such completions, deletions, insertions, revisions, and other changes as may be approved by the officers executing same with the advice of counsel, their execution to constitute conclusive evidence of their approval of any such changes.

SECTION 3: The gas purchased by Gas Purchaser from PEFA, Inc. shall be resold by Gas Purchaser to its retail customers in its service area, pursuant to published tariffs or pursuant to qualified requirements contracts approved by special tax counsel to PEFA, Inc.

SECTION 4: The Mayor (the "Authorized Officer") is hereby authorized to execute and deliver the Gas Supply Agreement and the City Clerk (the "Attesting Officer") is hereby authorized to attest the Gas Supply Agreement.

SECTION 5: The officers, employees, and agents of Gas Purchaser (including, without limitation, Clayton Energy) are hereby authorized and directed to take such actions and do all things necessary to cause the purchase of said gas to take place, including the payment of all amounts required to be paid in order to purchase the gas in accordance with the Gas Supply Agreement.

SECTION 6: The Governing Body approves the Prepaid Project undertaken by PEFA, Inc. and the portion of the PEFA, Inc. Bonds issued by PEFA, Inc. on behalf of the Gas Purchaser, and consents to the pledge of all of PEFA, Inc.'s right, title and interest under the Gas Supply Agreement, including the right to receive performance by Gas Purchaser of its obligations thereunder, to secure the payment of principal of and interest on the

PEFA, Inc. Bonds.

SECTION 7: The officers and employees of Gas Purchaser, as well as any other agent or representative of Gas Purchaser (including, without limitation, Clayton Energy), are hereby authorized and directed to cooperate with and provide PEFA, Inc., the underwriters of the PEFA, Inc. Bonds, and their agents and representatives with such information relating to Gas Purchaser as is necessary for use in the preparation and distribution of a preliminary official statement or other disclosure document used in connection with the sale of the PEFA, Inc. Bonds. After the PEFA, Inc. Bonds have been sold, any officer or employee of Gas Purchaser, or any agent or representative designated by Gas Purchaser, shall make such completions, deletions, insertions, revisions, and other changes in the preliminary official statement relating to Gas Purchaser not inconsistent with this Resolution as are necessary or desirable to complete it as a final official statement for purposes of Rule 15c2-12 of the Securities and Exchange Commission (the "Rule"). The Governing Body hereby covenants and agrees that Gas Purchaser will cooperate with PEFA, Inc. in the discharge of PEFA, Inc.'s obligations to provide annual financial and operating information and notification as to material events with respect to Gas Purchaser as may be required by the Rule. Any officer or any employee of Gas Purchaser, or such other agent or representative of Gas Purchaser as shall be appropriate (including, without limitation, Clayton Energy), is hereby authorized and directed to provide such information as shall be required for such compliance, and such officer or employee may execute a continuing disclosure agreement with respect to the provision of such information if requested to do so by the underwriters of the PEFA, Inc. Bonds.

SECTION 8: The PEFA, Inc. Bonds are not obligations of Gas Purchaser but are special limited obligations of PEFA, Inc. payable solely from the revenues and receipts pledged by PEFA, Inc. under the Indenture, including the revenues and receipts arising from the sale of gas to Project Participants. By consenting to the pledge of the Gas Supply Agreement and agreeing to provide information for inclusion in the official statement, Gas Purchaser is not incurring any financial liability with respect to the PEFA, Inc. Bonds. The principal, redemption price and purchase price (to the extent payable by PEFA, Inc. upon tender for purchase in accordance with the provisions of the financing documents authorizing issuance of the PEFA, Inc. Bonds, or any loan agreement, trust agreement or other agreements of PEFA, Inc. required thereby (the "Financing Documents")) of the PEFA, Inc. Bonds and the interest thereon, shall be payable solely from, and secured solely by, the revenues, funds and other assets of PEFA, Inc. pledged therefor under the applicable Financing Documents and shall not constitute a special or general obligation of the City, or a charge against the general credit or other funds of the City. The PEFA, Inc. Bonds shall not be secured by a legal or equitable pledge of, or lien or charge upon or security interest in, any property of the City or any of its income or receipts. Neither the faith and credit nor the taxing power of the State of Iowa (the "State") or the City or any other public agency shall be pledged to the payment of the principal, redemption price or purchase price of, or the interest on, the PEFA, Inc. Bonds. The issuance by PEFA, Inc. of the PEFA, Inc. Bonds shall not directly, indirectly or contingently obligate the State, or the City or any other public agency, to levy or pledge

any form of taxation or to make any appropriation for the payment of the PEFA, Inc. Bonds. The payment of the principal, redemption price or purchase price of, or interest on, the PEFA, Inc. Bonds shall not constitute a debt, liability or obligation of the State, the City, or any other public agency.

SECTION 9: All acts and doings of the officers and employees of Gas Purchaser or any other agent or representative of Gas Purchaser which are in conformity with the purposes and intent of this Resolution and in furtherance of the execution and delivery of and performance under the Gas Supply Agreement, and in furtherance of the issuance and sale of the PEFA, Inc. Bonds, shall be and the same hereby are in all respects approved and confirmed, including without limitation the execution and delivery by the officers of Gas Purchaser of all certificates and documents as they shall deem necessary in connection with the Gas Supply Agreement and the PEFA, Inc. Bonds.

SECTION 10. The City Council understands and agrees that Ahlers & Cooney, P.C, represents the Agency and PEFA, Inc., in connection with the Agency Agreement, the Gas Supply Agreement, the PEFA, Inc. Bonds, and associated documents and transactions, and, hereby consents to such representation and to the extent such representation might be an actual, potential, or perceived conflict of interest, the Council waives any such conflict and consents to said representation.

SECTION 11: If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

SECTION 12: All other resolutions or orders, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed and this Resolution shall be in immediate effect from and after its adoption.

SECTION 13: This Resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED this 24 day of October, 2018.

Richard R Porter  
Mayor

ATTEST:

Michael DeBree  
City Clerk

(SEAL)