

Special Meeting, Ethan Town Board, 4-14-14

The Town of Ethan board met in special session on April 14, 2014 at the Ethan City Hall at 5:00 pm. Members present were Nancy Schoenfelder, Robert Fitzgerald and Howard Caylor. Lisa Hjellum was absent. City personnel present were Sonya Hespe & Brett Scott. Others present were Justin Hofer (left 5:05pm), Joe Long and Dale Meinke.

Vice-Chairman Schoenfelder called the meeting to order and led the pledge of allegiance. All motions were unanimously voted as aye unless stated otherwise.

Motion Fitzgerald, second Caylor to approve the agenda with an addition for open discussion.

BUSINESS

Justin Hofer asked the board for permission to have another street dance at Chubby's on Fri, June 13th. Justin will be responsible for security, insurance and clean up and will provide the city with this information. Main Street will be blocked off to traffic for the dance.

The election results were presented to the board. Motion Caylor, second Fitzgerald to approve the canvass for the 2014 municipal election as: for the 3-year term, Joe Long 37, Gallus Thill 21 and for the 1-year term, Nancy Schoenfelder 28, Dale Meinke 32.

Motion Caylor, second Fitzgerald to adopt resolution 2014-2.

RESOLUTION 2014-2

RESOLUTION GIVING APPROVAL TO CERTAIN DRINKING WATER FACILITIES IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF A REVENUE BOND TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE FACILITIES; APPROVING THE FORM OF THE LOAN AGREEMENT AND THE REVENUE BOND AND PLEDGING REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND.

WHEREAS, one of the purposes of SDCL Chapter 9-40 (the "Act") as found and determined by the Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of any system of waterworks for the purpose of providing water and water supply for domestic, municipal, and industrial purposes; or any system for the collection, treatment and disposal of sewage and other domestic, commercial and industrial wastes; or any system for the control of floods and drainage; or any combination thereof, together with extensions, additions, and necessary appurtenances; and,

WHEREAS, a municipality is authorized to issue revenue bonds to fund improvements, extensions and additions to its water system by SDCL 9-40-6; and,

WHEREAS, the Town of Ethan (the "Town") currently operates a water distribution system to supply municipal, industrial and domestic water to its inhabitants and has determined that improvements to the drinking water facilities are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its drinking water system; and,

WHEREAS, the Town has determined to issue its revenue bonds to finance the improvements to its system for the purpose of providing water and water supply for domestic, municipal, and industrial purposes (the "System") and has applied for a Loan to finance the improvements;

NOW THEREFORE BE IT RESOLVED by the Town as follows:

1. Declaration of Necessity and Determination of Facilities Financed. The Town desires and hereby determines it is necessary to construct improvements to its drinking water facilities within its System, as described in Exhibit A hereto (the "Project"). The Town hereby expressly finds that if the Project is not undertaken, the System will continue to experience significant water loss. Because of the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with state and federal laws, including SDCL Chapter 34A-3A, and the nature of the improvements financed, the Town hereby determines that the Projects will substantially benefit the entire System and all of its users within the meaning of SDCL 9-40-15 and SDCL 9-40-17.

2. Approval of Loan. The Town hereby determines to finance up to \$75,000 of the costs of the Project through the issuance of utility revenue bonds (the "Revenue Bond").

3. Approval of Loan Agreement. The execution and delivery of the Revenue Obligation Loan Agreement (the "Loan Agreement") between the Town as Borrower and the South Dakota Board of Water and Natural Resources (the "Board"), is hereby in all respects authorized, approved and confirmed, and the Town Board President and Finance Officer are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content attached hereto, with such changes as the Attorney for the Town deems appropriate and approves, for and on behalf of the Town. The Town Board President and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the Town set forth in or required by the Loan Agreement. The Loan Agreement herein referred to and made a part of this Resolution is on file in the office of the Finance Officer and is available for inspection by any interested party.

4. Approval of Revenue Bonds. The issuance of the Revenue Bond in aggregate principal amount not to exceed \$75,000 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the Town Board President, Finance Officer, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the Board, for and on behalf of the Town, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The Town Board President and Finance Officer are hereby authorized to approve the final terms of the Revenue Bond and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapter 9-40 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided in SDCL 9-40-19.

5. Paying Agent/Registrar. The Revenue Bond shall be payable at the office of the Board of Water and Natural Resources. The Finance Officer is hereby designated as paying agent and registrar.

6. System Fund Accounts. For the purpose of application and proper allocation of the income of the System and to secure the payment of principal of and interest on the Revenue Bond, the following mandatory segregation accounts shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Revenue Bond:

(a) Revenue Account. There shall be deposited in the Revenue Account as received the entire gross revenues derived from the operation of the System collected pursuant to the ordinances or regulations of the Town Board of the Town of Ethan, South Dakota (the "Rate Ordinance") including future improvements, enlargements, extensions and repairs thereto (the "Gross Revenues"). Moneys from the System Revenue Account shall be transferred periodically into separate accounts as provided below.

(b) Operation and Maintenance Account. There shall be established the General Operation and Maintenance Account. Out of the remaining revenues of the System Revenue Account after application described in (c) and (d) below, there shall be set aside each month into the General Operation and Maintenance Account, a sum sufficient to provide for the payment of the next month's current expenses of administration and operation of the remainder of the System and such current expenses for the maintenance thereof as may be necessary to preserve the remainder of such System in good repair and working order. The term current expenses shall be construed to include all reasonable and necessary costs of operating, repairing, maintaining and insuring the System, including without limitation salaries, supplies and rent t, but shall exclude General Depreciation Account and System Debt Service Account.

(c) System Debt Service Account. Out of the revenues in the System Revenue Account, there shall be set aside no later than the 25th day of each month into the account designated System Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal and interest on, the Revenue Bond and any reserve determined by the Town Board to be necessary. The amount set aside monthly shall be not less than one-sixth of the total principal, interest, and other amounts payable on the following May 1 or November 1, and if there shall be any deficiency in the amount previously set aside, then the amount of such deficiency shall be added to the current requirement.

(d) Depreciation Account. There shall be established a General Depreciation Account. Out of the revenues of the System Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the Town Board to be a proper and adequate amount for repair and depreciation of the System.

(e) Surplus Account. There shall be established the General Surplus Account. Revenues remaining in the System Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be credited to the General Surplus Account. If at any time there shall exist any default in making any periodic transfer to the System Debt Service Account, the Town Board shall authorize the Town Finance Officer to rectify such default so far as possible by the transfer of money from the General Surplus Account. If any such default shall exist as to more than one account at any time, then such transfer shall be made in the order such accounts are listed above.

When not required to restore a current deficiency in the System Debt Service Account, moneys in the General Surplus Account from time to time may be used for any of the following purposes and not otherwise:

- i. To redeem and prepay the Revenue Bond when and as such Revenue Bond become prepayable according to its terms;
- ii. To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the System Debt Service Account and the Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then:
- iii. To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or
- iv. To be used for any other authorized municipal purpose designated by the Town Board.

No moneys shall at any time be transferred from the General Surplus Account or any other account to any other account of the Town, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as allowed by this Section.

7. Pledge of Revenues. The Revenue Bond, together with the interest thereon, shall not constitute a charge against the Town's general credit or taxing power, but shall be a limited obligation of the Town payable solely out of the System Debt Service Account, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Revenue Bond and shall be used for no other purpose than to pay the principal of and interest on the Revenue Bond, except as may be otherwise expressly authorized in the Loan Agreement (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The Town covenants and agrees to charge rates for all services from the System or establish special charges or surcharges which will be sufficient to provide for the payments upon the Revenue Bond issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the System, and depreciation, and the Rate Ordinance shall be revised from time to time so as to produce these amounts. The Town hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Revenue Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene the covenant of the Town set forth in this Section 8 or any other covenant or agreement in the Loan Agreement.

8. Additional Bonds. As permitted by SDCL 9-40-8 and SDCL 9-40-9, additional Bonds payable from revenues and income of the System may be issued, as permitted in the Loan Agreement and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements. The Town shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond pursuant to the Loan Agreement.

9. General Covenants.

(a) The Town hereby covenants and agrees with the Board and other owners of the Revenue Bond that it will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this Resolution.

(b) The Town agrees and covenants that it will promptly construct the improvements included in the Project.

(c) The Town covenants and agrees that pursuant to SDCL 9-40-28 and SDCL 9-40-29, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the System and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal, interest, and Administrative Surcharge on the Revenue Bond, and the Town agrees not to sell or otherwise dispose of the System, the Project, or any substantial part thereof, except as provided in the Loan Agreement and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the collection and treatment of wastewater for municipal, industrial, and domestic purposes within the Town.

(d) The Town covenants and agrees with the Board and other owners of the Revenue Bond that it will maintain the Project and the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remain outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements and accounts as provided for in this Resolution and the Loan Agreement. The Revenue Bond shall refer expressly to this Resolution and the Act and shall state that it is subject to all provisions and limitations thereof pursuant to SDCL 9-40-19.

(e) The Finance Officer shall cause all moneys pertaining to the Accounts to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of SDCL Ch. 4-6A, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the Town, so long as any of the Revenue Bond and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Accounts as authorized in this Resolution; except that moneys from time to time on hand in the Accounts may at any time, in the discretion of the Town's governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Account may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the Account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys therein.

(f) In the event of mismanagement of the System, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the Project or System are dissipated, wasted or diverted from their proper application as set forth in the Loan Agreement, Revenue Bond, or herein, the Town hereby consents to the appointment of a receiver pursuant to SDCL 9-40-33, and agrees that the receiver will have the powers set forth therein, and in SDCL 9-40-34 and SDCL 9-40-35 to operate and administer the System, and charge and collect rates as described therein.

10. Issuance without Election. The Town hereby determines that because the Revenue Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to SDCL 9-40-15 no election is required to issue the Revenue Bond.

11. Severability. If any section, paragraph, clause or provision of this Resolution, the Loan Agreement, the Revenue Bond, or any other Loan Document shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Resolution or said Loan Agreement, Revenue Bond, or any other Loan Document.

12. Authorization of Town Officials. The Town Board President, Finance Officer, Town Attorney and Town officials shall be and they are hereby authorized to execute and deliver for and on behalf of the Town any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the actions authorized herein.

13. Definitions. All terms used in this Resolution which are not defined herein shall have the meanings assigned to them in the Loan Agreement unless the context clearly otherwise requires.

14. Effective Date. This Resolution shall take effect on the 20th day following its publication, unless suspended by a referendum.

Adopted at Town of Ethan, South Dakota, this 14th day of April 2014.

Lisa Hjellum, Board Chairperson
ATTEST: Sonya Hesse, Finance Officer

An estimate was received for the trees that are to be planted as part of the wastewater project. Motion Caylor, second Fitzgerald to approve the estimate and have the land worked in 2014 and trees planted in 2015.

Motion Caylor, second Fitzgerald to adjourn at 6:12 pm.

Sonya Hesse
Finance Officer

Nancy Schoenfelder
Vice-Chairman

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