

**THE MEETING OF THE COMMON COUNCIL OF THE CITY OF WAGNER,  
CHARLES MIX COUNTY, SOUTH DAKOTA**

**PURSUANT TO DUE CALL AND NOTICE THEREOF**, the special May meeting was held on Friday, May 15<sup>th</sup>, 2020 at the Wagner City Hall at 4:30 pm. Present were: Mayor Donald R Hosek, City Administrator/Finance Officer, Rebecca Brunsing, City Attorney, Ken Cotton and the following councilpersons: Ron Cuka, Scott Honomichl, Tom F Beeson, Colby Kirwan, Roger Schroeder and John Tyler. Absent: None.

Due to COVID-19 and the social distancing guidelines, the city had made available a conference call line for citizens to participate. The meeting was open to the public as well as long as the group did not exceed 10 people.

The meeting was opened with the Pledge of Allegiance.

The conflict of interest declaration statement was recited. No conflicts were cited.

The meeting was called to order and the Mayor called for the approval of the special meeting agenda. A motion was made by Beeson, second by Tyler to approve the special meeting agenda. Upon roll call vote being taken, the following voted aye: Cuka, Honomichl, Kirwan, Beeson, Schroeder and Tyler. The following voted nay: None. The following abstained: None. The following were absent: None. Motion carried.

**NEW BUSINESS**

The following resolution was read:

**RESOLUTION NO. 2020-04**

**A RESOLUTION AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF NOT TO EXCEED \$1,726,000 SEWER AND WATER PROJECT REVENUE BOND OF THE CITY OF WAGNER; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; PROVIDING FOR A SPECIAL CHARGE OR SURCHARGE FOR THE PURPOSE OF PAYING PRINCIPAL OF AND INTEREST ON SAID BOND AS MAY BECOME DUE; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

BE IT RESOLVED by the City Council of the City of Wagner, South Dakota (the "City"), as follows:

SECTION 1. Bond Purpose and Authorization.

1.01. The City currently operates a municipal water utility and sewer utility under SDCL 9-40 (collectively the "Utility"), consisting of a system or part of a system, for the purpose of providing water for municipal, industrial and domestic purposes and a system for the collection, treatment, and disposal of sewage and other domestic, commercial, and

industrial wastes. The City determines it necessary and expedient to issue Sewer and Water Project Revenue Bond (the "Bond") for the purpose of defraying the cost of the improvements and hereby declares the necessity, therefore. The Bond is issued as part of a loan from the United States of America action through USDA for a combination of sewerage and water facilities as authorized specifically under 9-40-4.2.

1.02. The City is authorized to borrow money and issue its revenue bonds under SDCL Chapter 9-40 and 6-8B (the "Act"), in order to defray the cost of acquiring and constructing the improvements to the Utility, consisting of the improvements generally described on Exhibit A hereto (the "Improvements").

1.03. The City is authorized to acquire the Improvements, to issue its Bond, in order to defray the cost thereof, and to make all pledges, covenants and agreements authorized by law for the protection of the owners of the Bond, including, without limitation, those covenants set forth in Sections 9-40-15 through 9-40-17 of the Act. The Bond is payable solely from the revenue or income derived from the operation of the improvements and shall not constitute an indebtedness of the City within the meaning of South Dakota constitution Article 13 § 4 or any statutory provisions or limitations.

## SECTION 2. Terms of the Bond.

2.01. The Bond shall be issued in an aggregate principal amount not exceeding \$1,726,000 and shall be sold to the United States of America. The Bond will bear interest at a rate or rates per annum resulting in an interest rate not greater than 2.125% per annum and will mature over a period not to exceed forty (40) years. The Bond shall be issued in one series. The Mayor and Finance Officer are hereby authorized and directed to agree with the United States of America upon the exact purchase price, principal amount, maturities, interest rate or rates, payment dates and redemption provisions for the Bond, within the parameters set forth in this Section.

## SECTION 3. Execution, Authentication, Delivery and Form of the Bond.

3.01. The Bond shall be prepared under the direction of the Finance Officer and shall be executed on behalf of the City by the signatures of the Mayor and the Finance Officer and countersigned by an attorney actually residing in the State of South Dakota and duly licensed to practice therein and shall be sealed with the official corporate seal of the City; provided that all signatures may be printed, engraved or lithographed facsimiles of the originals. In case any officer whose signature or a facsimile of whose signature shall appear on the Bond shall cease to be such officer before the delivery of any Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he/she had remained in office until delivery. The City hereby appoints the Finance Officer of the City as bond registrar, transfer agent and paying agent (the "Registrar") for the Bond.

## SECTION 4. Creation of Accounts, appropriation, pledge and segregation of revenues,

4.01. Accounts. All revenues from the Utility are deposited into the sewer and water fund. The revenues described in Section 4.02 shall be segregated into the restricted asset accounts as provided for in Sections 4.04 through 4.08.

4.02. Project Revenue Segregation and Pledge. Net income derived from the Improvements shall be the excess of revenues or income remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements, and operation including the interest on any general obligation bonds authorized to construct or acquire or improve such original Utility and including the necessary debt service funds required to be provided for the retirement of said bond issues, and including the interest and debt service funds required annually to be paid or set aside on any refunding bonds issued to refund such general bonds issued for the original construction or acquisition or improvement of said Utility, so extended, added to, or improved (hereafter "Project Revenues"). All Project Revenues shall be segregated and subdivided into separate accounts as designated and described in Sections 4.03 to 4.08 and are irrevocably pledged and appropriated for the payment of principal of and interest on the Bond. As described in Section 5.05 hereof, the City shall impose a separate surcharge for the availability, benefit and use of the improvements and shall aggregate the revenues derived from such surcharge for the Improvements, together with the expenses of the operation and maintenance of the Improvements and shall account for them as provided in SDCL Chapter 9-40 and Section XI of the South Dakota Department of Legislative Audit Municipal Accounting Manual.

4.03. Construction Account. An account to be designated as the 2020 Sewer and Water Project Revenue Bond Construction Account ("Construction Account") is established. The Construction Account shall be used only to pay as incurred and allowed costs which under generally accepted accounting principles are capital costs of the Improvements, and of such future acquisitions, reconstructions, improvements, betterments or extensions of the Utility as may be authorized in accordance with law; including but not limited to payments due for work and materials performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands, easements and utility rights, interest accruing on the Bond during the first year following the date of their delivery, if and to the extent that the Debt Service Account is not sufficient for payment of such interest, reimbursement of advances made from other City funds, and all other expenses incurred in connection with the construction and financing of any such undertaking. To the Construction Account shall be credited as received all proceeds of the Bond, except amounts appropriated to the Debt Service Account under Section 4.04 and any amount to be deposited to the Reserve Account under Section 4.05, all other funds appropriated by the City for the improvement of the Utility, and all income received from the claim with respect to the Utility received pursuant to Section 5.03 hereof shall be deposited in the Construction Account and applied to repair, replacement and restoration of the Utility; any proceeds in excess of the amount necessary for that purpose shall be transferred to the Debt Service Account. No amount shall be expended from the construction account unless contracts have been entered into and completion bonds furnished in an amount sufficient to ensure completion of the Improvements at a cost not exceeding the amount then on hand for such purpose.

4.04. Current Debt Service Account. An account to be designated as the 2020 Sewer and Water Project Revenue Bond Current Debt Service Account ("Debt Service Account") is established. Upon each monthly apportionment, there shall be first set aside and credited to the Debt Service Account out of the Project Revenues an amount equal to not less than one-twelfth of the total sum of the principal and interest to become due within the then next succeeding twelve months on the Bond. Moneys from time to time held in the Debt Service Account shall be disbursed only to meet payments of principal and interest on Bond as such payments become due; provided, that on any date when the outstanding Bond is due or prepayable by their terms, if the amount then on hand in the Debt Service Account, together with the balance then on hand in the Reserve Account, is sufficient, with other moneys available for the purpose, to pay the Bond and the interest accrued thereon in full, it may be used for that purpose. If any payment of principal or interest becomes due when moneys in the Debt Service Account are temporarily insufficient therefor, such payment shall be advanced out of any Project Revenues theretofore segregated and then on hand in the Reserve Account, the Replacement and Depreciation Account or the Surplus Account. In the event that sufficient moneys are not available from the aforementioned sources, the City, to the extent it may at the time legally do so, may, but shall not be required to, temporarily advance moneys to the Debt Service Account from other funds of the City on hand and legally available for the purpose, but any such advance shall be repaid from net revenues of the utility as defined by SDCL §9-40-17 within 24 months.

4.05. Reserve Account. An account to be designated as the 2020 Sewer and Water Project Revenue Bond Future Debt Service Reserve Account ("Reserve Account") is established. On a monthly basis, the City shall next deposit into the Reserve Account an amount which a year of monthly deposits will equal 10% of the maximum debt service due in any future calendar year. The deposits shall continue for ten years or until the balance is equal to the total maximum debt service due in any future calendar year. Ten percent of the proposed loan installment would equal \$536 per month; this amount should be deposited monthly until a total of \$64,212 has accumulated. Prior written concurrence from Rural Utilities Service must be obtained before funds may be withdrawn from this account during the life of the loan. When funds are withdrawn during the life of the loan, deposits will continue as designated above until the fully-funded amount is reached.

4.06. Short-Lived Asset Reserve. In addition to the debt service reserve fund, there must be established a short-lived asset reserve fund to pay for repairs and/or replacements of major system assets. Based on a preliminary report the deposit must be at least \$5,500 annually. It is the City's responsibility to assess the facility's short-lived asset needs on a regular basis and adjust the amount deposited to meet those needs. The Short-Lived Asset Reserve shall be funded to meet the needs of the City prior to the Surplus Account.

4.07. Replacement and Depreciation Account. An account to be designated as the 2020 Sewer and Water Project Revenue Bond Contingency (Renewal and Replacement) Account ("Replacement and Depreciation Account") is established. There shall next be set aside and credited, upon each monthly apportionment, to the Replacement and Depreciation Account such portion of the Project Revenues, in excess of the current requirements of the Debt Service Account and the Reserve Account (which portion of the Project Revenues is referred to herein as "Surplus Project Revenues"), as the City

Council shall determine to be required for the accumulation of a reasonable reserve for renewal of worn out, obsolete or damaged properties and equipment of the Utility, which reserve shall be accumulated and maintained. Moneys in this account shall be used only for the purposes above stated or, if so directed by the City Council, to redeem the Bond which is prepayable according to its terms, to pay principal or interest when due thereon as required in Section 4.04 hereof, or to pay the cost of improvements to the Utility. Surplus Project Revenues from time to time received may be segregated and paid into one or more separate and additional accounts from the payment of such bonds and interest thereon, in advance of payments required to be made into the Replacement and Depreciation Account.

4.08. Surplus Account. An account to be designated as the 2020 Sewer and Water Project Revenue Bond Surplus Account ("Surplus Account") is established. Any amount of the Surplus Net Revenues from time to time remaining after the above required applications thereof shall be credited to the Surplus Account, and the moneys from time to time in that account, when not required to restore a current deficiency in the Debt Service Account as provided in Section 4.04 hereof, may only be retained or used to make prepayments on the Bond.

4.09. Accounting. The City shall follow the municipal accounting requirements of the South Dakota Legislative Audit. The above named accounts may be designated in accordance with South Dakota municipal accounting standards.

4.10. Deposit and Investment of Funds. The City Finance Officer shall cause all moneys to be deposited as provided in South Dakota Law and allowed by applicable federal regulations.

4.11. Optional Redemption. The Bond is subject to optional redemption on any date at par plus accrued interest to date of redemption to refinance the unpaid balance, in whole or in part, of its Bond upon the request of the United States Department of Agriculture (the "Government") if at any time it shall appear to the Government that the City is able to refinance its Bond by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as authorized by 7 CFR §1782.11. The City may not have a "defeasance" as it is prohibited by 7 CFR §§ 1782.3 and 1782.16.

4.12. Defeasance and 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, 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; provided the consent of the Government is obtained. The City shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Bond. The City may not defease the Bonds, or borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the Utility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.

4.13. Prepayments and Extra Payments. Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of City. Refunds, extra payments, and loan proceeds obtained from outside sources for the purpose of paying down the Government debt, shall, after payment of interest, be applied to the principal. Partial prepayment shall not affect the obligation of the City to pay the remaining installments as scheduled.

4.14. The Bond is subject to all of the provisions and limitations of Loan Resolution RUS Bulletin 1780-27 (the "Loan Resolution"). Any provision in this resolution conflicting with Loan Resolution RUS Bulletin 1780-27 is null and void.

## SECTION 5. Covenants, Remedies and Rates.

5.01. General. The City covenants and agrees that until the Bond is fully discharged as provided in this Resolution, it will continue to hold, maintain and operate the Utility as a public utility and convenience, free from all liens thereon or on the income therefrom other than the liens herein granted or provided for, will observe prudent utility practices, and will maintain, expend and account for the Fund and the several accounts therein as provided in Section 4. The City will cause the Improvement to be constructed in accordance with plans and specifications previously prepared and will not enter into contracts in excess of the amount provided for such purpose.

5.02. Competing Service. The City will not establish or authorize the establishment of any other system for the public supply of service or services in competition with any or all of the services supplied by the facilities of the Utility.

5.03. Billings. The charges for Utility services will be billed at least monthly, and if the bill is not paid within sixty days of the date of billing, or if the customer fails to comply with all rules and regulations established for the Utility within sixty days after notice of violation thereof (which notice shall be given promptly upon discovery of any such violation), the service to the premises involved shall be discontinued and shall not be resumed until payment of all past-due bills for Utility service and compliance with all such rules and regulations. The City may reduce the number of days before the service will be disconnected from sixty to any lesser number of days by ordinance or resolution. The City shall take all appropriate legal action to collect the unpaid charges. The City shall follow the procedures, if any, set by South Dakota Codified Laws for disconnection of service during the winter months.

5.04. Remedies. The holder of the Bond shall have such remedies as are set forth in SDCL 9-40.

5.05. Rates and Charges. There shall be charged a monthly surcharge for the services provided by the improvement financed by the Bond. The surcharge shall be segregated from other revenues of the utility and shall be used for the payment of principal of and interest on the Bond. Provided that such surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements. The rate herein specified will be collected as a surcharge for

the Improvement. This surcharge shall remain in effect until such time as the Bond is paid in full or discharged. The initial surcharge shall be set by resolution. All users, current and future, shall be charged the surcharge for it has been found that all users benefit from the improvement. The surcharge is found to be equitable for the services provided by the Improvement. The amount of the surcharge shall be reviewed not less than annually and shall be modified in order to provide such funds as are set forth herein. All modifications may be made by resolution. No resolutions setting the surcharge shall be subject to referendum for they are necessary for the support of government.

5.06. Statutory Lien. There shall pursuant to SDCL 9-40-25 be a statutory mortgage lien upon the Improvements in favor of and for the equal benefit of the lawful holders of the Bond issued pursuant to SDCL 9-40, except no such lien shall attach to or become a charge upon or against any property or Utility or any part thereof previously owned by the City. Until the Bond is fully paid with interest, the City shall not sell or otherwise dispose of the Utility and shall not establish, authorize or grant a franchise for the operation of any other Utility in competition with the City. The statutory lien shall continue until the Bond is paid in full.

5.07. Electronic Preauthorized Debit System. All payments of principal of and interest on the Bond shall be made through the electronic preauthorized debit system which will allow payments to be electronically debited from the City's account on the day the payment is due.

5.08. Bond Anticipation Note. The City Council does hereby authorize the issuance and sale of a bond anticipation note in the manner and subject to the limitations set forth in SDCL §§ 6-8B-26 to 6-8B-29, inclusive. The Mayor and Finance Officer are authorized to take such action as is necessary to issue the bond anticipation note.

Dated this 15<sup>th</sup> day of May 2020.

City of Wagner

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Donald R Hosek, Mayor

Attest:

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Rebecca Brunsing, Finance Officer

(SEAL)

A motion was made for the above resolution by Tyler, second by Cuka. Upon roll call vote being taken, those voting AYE: Cuka, Honomichl, Beeson, Kirwan, Schroeder and

Tyler. Those voting NAY: None. Absent: None. Those abstaining: None. Motion carried. Thereupon the Mayor declared Resolution No. 2020-04 duly passed and adopted, affixed his signature thereto in approval thereof and directed the same to be published in the official newspaper.

Resolution Adopted: May 15<sup>th</sup>, 2020

Publication Date: May 20<sup>th</sup>, 2020

Effective Date: June 9<sup>th</sup>, 2020

The following resolution was read:

**RESOLUTION NO. 2020-05**

**RESOLUTION APPROVING LEGAL SERVICES AGREEMENT**

BE IT RESOLVED by the City of Wagner that Meierhenry Sargent LLP be retained as bond counsel for the proposed Sewer and Water Project Revenue Bond and that the Mayor and Finance Officer are authorized to negotiate and execute the form of the Legal Services Agreement on file with the City Finance Officer.

Dated this 15<sup>th</sup> day of May 2020.

City of Wagner

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Donald R Hosek, Mayor

Attest:

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Rebecca Brunsing, Finance Officer

(SEAL)

A motion was made for the above resolution by Schroeder, second by Kirwan. Upon roll call vote being taken, those voting AYE: Cuka, Honomichl, Beeson, Kirwan Schroeder and Tyler. Those voting NAY: None. Absent: None. Those abstaining: None. Motion carried. Thereupon the Mayor declared Resolution No. 2020-05 duly passed and adopted, affixed his signature thereto in approval thereof and directed the same to be published in the official newspaper.

Resolution Adopted: May 15<sup>th</sup>, 2020  
Publication Date: May 20<sup>th</sup>, 2020  
Effective Date: June 9<sup>th</sup>, 2020

The conference call was disconnected to enter executive session.

**EXECUTIVE SESSION**

A motion was made by Tyler, second by Beeson to enter executive session at 5:01 pm for proprietary business SDCL 1-25-2 (5), litigation SDCL 1-25-2 (3) and personnel pursuant to SDCL 1-25-2 (1); all voted aye, motion carried.

The Mayor declared the council out of executive session at 5:20 pm.

A motion was made Schroeder, second by Honomichl to adjourn the meeting at 5:20 pm. All voted aye, motion carried.

APPROVED \_\_\_\_\_  
Donald R Hosek, Mayor

Attest \_\_\_\_\_  
Rebecca Brunsing, Finance Officer

Published once at the approximate cost of \$ \_\_\_\_\_.

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