

RESOLUTION NO. 2014- 57

A RESOLUTION AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF NOT TO EXCEED \$3,200,000 PROJECT REVENUE BONDS OF THE CITY OF STURGIS; 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 BONDS AS THEY BECOME DUE; AUTHORIZING THE REFUNDING OF THE BORROWER BOND (INTERIM FINANCING), SERIES 2011; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

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

SECTION 1. Bond Purpose and Authorization.

1.01. The City currently operates a municipal Water Utility under SDCL 9-40 (the "Utility"), consisting of a system or part of a system, for the purpose of providing Water for municipal, industrial and domestic purposes. The City determines it necessary and expedient to issue Water Revenue Bonds (the "Bonds") for the purpose of defraying the cost of the improvements and hereby declares the necessity therefore.

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 refund the outstanding Borrower Bond (Interim Financing), Series 2011 dated October 14, 2011 (the "Refunded Bonds"). The Bonds are issued in full conformity with SDCL §§ 6-8B-30 through 6-8B-52 and are incontestable for any purpose after delivery for value. The Bonds are 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 Bonds

2.01. The Bonds shall be issued in an aggregate principal amount not exceeding \$3,200,000 and shall be sold to the United States of America. The Bonds will bear interest at a rate or rates per annum resulting in an interest rate not greater than 3.75% per annum and will mature over a period not to exceed forty (40) years. The Bonds 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 Bonds, within the parameters set forth in this Section.

SECTION 3. Execution, Authentication, Delivery and Form of the Bonds.

3.01. The Bonds 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 Bonds 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 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 Bonds.

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

4.01. An account to be designated as the 2014 Water Project Revenue Bond Account (the "Debt Service Account") is established and shall be maintained as a separate and special mandatory asset segregation bookkeeping account on the official books of the City until the Bonds and any additional bonds (together referred to as the "Bonds") payable from the net income from the Project Revenues, as provided in Sections 4.03 through 4.07 hereof and interest and redemption premiums due thereon have been fully paid, or the City's obligation with reference to the Bonds has been discharged.

4.02. 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 4.07 and are irrevocably pledged and appropriated for the payment of principal of and interest on the Bonds. 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. Reserved.

4.04. Current Debt Service Account. An account to be designated as the 2014 Water Project Revenue Bond Current Debt Service Account ("Debt Service Account") is established. Upon each monthly apportionment, there shall be 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 all Bonds. Moneys from time to time held in the Debt Service Account shall be disbursed only to meet payments of principal and interest on Bonds as such payments become due; provided, that on any date when all outstanding Bonds are 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 all Bonds 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 within 24 months.

4.05. Reserve Account. An account to be designated as the 2014 Water Project Revenue Bond Future Debt Service Reserve Account (“Reserve Account”) is established. On a monthly basis, the City shall pay into the Reserve Account an amount equal to 10% of the maximum debt service due in any future calendar year on, the Bonds. Said balance shall be maintained by such additional credits to the Reserve Account as may be necessary. Moneys on hand in the Reserve Account shall be used only to pay maturing principal and interest when other moneys in the Debt Service Account are insufficient therefor.

4.06. Replacement and Depreciation Account. An account to be designated as the 2014 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 Common 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 Common Council, to redeem Bonds which are prepayable according to their 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; provided, that in the event that the City shall hereafter issue bonds for the purpose of financing the construction and installation of additional improvements or additions to the Utility, but which additional bonds cannot, upon the terms and conditions provided herein, be payable from the Debt Service Account. 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.

4.07. Surplus Account. An account to be designated as the 2014 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 be used for any of the following purposes and not otherwise:

To redeem and prepay Bonds when and as such Bonds become prepayable according to their terms;

To purchase Bonds on the open market, whether or not the Bonds so purchased or other such Bonds may then be prepayable according to their terms; and, if the Reserve Account is then funded to the full amount required to be maintained therein, and the balances in the Debt Service Account and the Replacement and Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made therefrom prior to the end of the current fiscal year, then;

To pay for repairs of or for the construction and installation of improvements or additions to the Utility; and, if the Reserve Account is then funded to the full amount required to be maintained therein, and the balances in the Debt Service Account and the Replacement and Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made therefrom prior to the end of the then current fiscal year, then:

To be held as a reserve for redemption and prepayment of the Bonds which are not then but will later be prepayable according to their terms; or

To be used for any other authorized municipal purpose designated by the City Common Council.

No moneys shall at any time be transferred from the Surplus Account or any other account of the Fund to any other fund of the City, 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 provided in this Section 4.07.

4.08. 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.

4.08. Deposit and Investment of Funds. The City Finance Officer shall cause all moneys to be deposited as provided in South Dakota Law.

4.09. Disposition of Bond Proceeds.

The proceeds of the sale of the Bonds shall be disbursed as follows:

(a) An amount representing accrued interest, if any, on the Bonds from the dated date to the Closing Date shall be deposited in Current Debt Service Account to be used to pay interest of the Bonds on the first interest payment date following delivery of the Bonds, as the case may be;

(b) An amount, together with other legally available funds of the City, if any, and investment earnings thereon, which shall be sufficient to pay principal and interest on the Refunded Bonds shall be paid to The First National Bank in Sioux Falls pursuant to an Escrow Agreement dated

October 14, 2011 by and between the South Dakota Conservancy District, the City of Sturgis and the First National Bank in Sioux Falls;

(c) The remaining proceeds of the sale of the Bonds, if any, shall be used to fund a debt service reserve account for the Bonds and to pay the Costs of Issuance of the Bonds including necessary legal, accounting and fiscal expenses, printing, engraving, advertising and similar expenses, administrative and clerical costs, rating agency fees, Registration Agent fees, Trustee fees and other necessary miscellaneous expenses incurred in connection with the issuance and sale of the Bonds. Any funds remaining after payment of said expenses shall be used to pay interest on the Bonds on the first interest payment date following delivery of the Bonds.

SECTION 5. Covenants, Remedies and Rates.

5.01. General. The City covenants and agrees that until all Bonds are 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 hereto 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 Water 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 Water 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 Resolution 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 Bonds 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 Bonds. 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 Bonds. 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 specific will be collected as a surcharge for the Improvement. This surcharge shall remain in effect until such time as the Bonds are 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 bonds 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 all bonds are 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 bonds are paid in full.

5.07. Municipal Utility Board. This Resolution shall be binding on the Municipal Utilities Board of the City in the same manner as it is binding on the City. The City agrees have the Municipal Utilities Board ratify this Resolution and take such action as is required herein.

The above and foregoing Resolution was read by Johnston and was moved for adoption by Johnston seconded by Hersrud and upon roll call vote:

voted aye, Anderson, Bachand, Bestgen, Carstensen, Hersrud, Johnston, and Waterland voted nay

voted nay, None

abstained, Potts

whereupon the Mayor declared the Resolution to be duly passed and adopted.

Mayor

Attest:

Finance Officer

Published: 10-15-14

Effective: 11-05-14

EXHIBIT A
DESCRIPTION OF PROJECT

Water System Improvement Project