

RESOLUTION NO. 2021-14

A RESOLUTION AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF NOT TO EXCEED \$3,214,000 WASTEWATER PROJECT REVENUE BOND OF THE CITY OF MADISON; 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 THEY BECOME DUE; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

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

SECTION 1. Bond Purpose, Authorization and Findings.

- 1.01. The City currently operates a municipal Wastewater utility under SDCL 9-40 (the "Utility"), consisting of a system or part of a system, for the collection, treatment, and disposal of sewage and other domestic, commercial, and industrial wastes.
- 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, ("Improvements") which are established as a separate and segregated set of books and accounts that record revenues, expenses, assets and liabilities attributable to the financed improvements to the Utility generally described on Exhibit A hereto (the "Project").
- 1.03. The City determines it necessary and expedient to issue the Sewer Project Revenue Bond (the "Bond") for the purpose of defraying the cost of the Improvements and hereby declares the necessity therefore. The City shall adopt special rates or surcharges for the Improvements to be pledged, segregated and used for the payment of the Bonds.
- 1.04. 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 attributable to 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. The City does hereby find as follows:
- 1.05. Notwithstanding the segregation of the Improvements for finance and financing purposes, the physical facilities constituting the Improvements are fully incorporated into the integrated water system that is the Utility. Similarly, the surcharge for Improvements services and the connection fees (that produce the Revenues that are pledged to the payment of the Bonds) are components of the Utility's comprehensive rate structure. Consequently, although the revenues and income of the Utility are not pledged to the payment of the Bonds, the water rights, facilities and customer base of the Utility support the financial operation of the Improvements.

SECTION 2. Terms of the Bond.

- 2.01. The Bond shall be issued in an aggregate principal amount not exceeding \$3,214,000 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 1.875% 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 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. Surcharge or Special Charge for Project Revenue Bond; Pledge

There shall be charged a monthly surcharge or special charge for the services provided by the Improvement financed by the Bond pursuant to Section 15 of the Act. 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. The initial surcharge shall be set by resolution. and collected at the same time as other charges of the utility. This surcharge shall remain in effect until such time as the Bond is paid in full or discharged. All users, current and future, shall be charged the surcharge for it has been found that all users benefit from the Improvements. The surcharge is found to be equitable for the services provided by the Improvements. 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. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal of and interest on the Revenue Bond when due. The City shall account for the surcharge as provided in SDCL Chapter 9-40 and Section XI of the South Dakota Department of Legislative Audit Municipal Accounting Manual.

SECTION 5. Creation of Accounts, Appropriation

- 5.01. Project Accounts. For the purpose of application and proper allocation of the income of the Project and to secure the payment of principal and interest on the Project Revenue Bond, the mandatory asset segregations or subaccounts in this Section shall be included in the sewer system account of the City and shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Revenue Bond.
- 5.02. Project Revenue Account. There shall be deposited periodically into the Project Revenue Account all revenues derived from the operation of the Project. (hereafter "Project Revenues"). All Project Revenues shall be segregated and subdivided into separate accounts as designated and described in Sections 5.03 to 5.08 in the order provided and are irrevocably pledged and appropriated for the payment of principal of and interest on the Bond.

- 5.03. Operating Account. No less than monthly, there shall first be set aside and credited to the Operating Subaccount such amounts as may be required over and above the balance then held in the Operating Subaccount to pay the reasonable and necessary Operating Expenses of the Improvements which are then due and payable, or are to be paid prior to the next apportionment. As described in Section
- 5.04. Construction Account. An account to be designated as the Sewer Project 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 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 5.05 and any amount to be deposited to the Reserve Account under Section 5.06, all other funds appropriated by the City for the improvement of the Utility, 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.
- 5.05. Debt Service Account. An account to be designated as the Sewer Project Revenue Bond 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 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.
- 5.06. Reserve Account. An account to be designated as the Sewer Project Revenue Bond 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 one annual debt service payment. Said balance shall be maintained by such additional deposits to the Reserve Account as may be necessary. Prior written concurrence from the Agency 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.

- 5.07. Replacement and Depreciation Account. An account to be designated as the 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, 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 5.13 hereof, or to pay the cost of improvements to the Utility.
- 5.08. Surplus Account. An account to be designated as the Sewer Project Revenue Bond Surplus Account (“Surplus Account”) is established. Any amount of the Project 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 for any lawful purpose.
- 5.09. 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.
- 5.10. 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.
- 5.11. 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.
- 5.12. 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. The City may not 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.

- 5.13. 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.
- 5.14. 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 6. Covenants, Remedies and Rates.

- 6.01. 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 Project Fund and the several accounts therein as provided in Section 4. The City will cause the Improvements 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.
- 6.02. 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.
- 6.03. Billings. The charges for sewer 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 sewer 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.
- 6.04. Remedies. The holder of the Bond shall have such remedies as are set forth in SDCL 9-40.
- 6.05. 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.
- 6.06. 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.

6.07. Bond Anticipation Note. The City Commission 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.

The above and foregoing Resolution was read by Mayor Dennert and was moved for adoption by Commissioner Corbin seconded by Commissioner Wire. Motion carried unanimously, whereupon the Mayor declared the Resolution to be duly passed and adopted.

CITY OF MADISON

/s/Marshall Dennert
Mayor

Attest: /s/Sonya Wilt
Finance Officer

Adopted: May 18, 2021

Published: May 20, 2021

Effective Date: June 9, 2021