

**CHAMBER OF THE BOARD OF CITY COMMISSIONERS
YANKTON, SOUTH DAKOTA
NOVEMBER 23, 2015**

Regular meeting of the Board of City Commissioners of the City of Yankton was called to order by Mayor Carda.

Roll Call: Present: Commissioners Ferdig, Gross, Hoffner, Johnson, Knoff, Miner, Sommer, and Woerner. City Attorney Den Herder and City Manager Nelson were also present. Absent: None. Quorum present.

Action 15-372

Moved by Commissioner Gross, seconded by Commissioner Sommer, to approve the Minutes of the regular meeting of November 9, 2015.

Roll Call: All members present voting "Aye;" voting "Nay:" None.
Motion adopted.

City Manager Nelson submitted a written report giving an update on community projects and items of interest.

Action 15-373

Moved by Commissioner Gross, seconded by Commissioner Woerner, that the following items on the consent agenda be approved.

1. Establish public hearing for renewal of Alcoholic Beverage Licenses
Establish December 14, 2015, as the date for a public hearing and consideration of the applications for renewal of Alcoholic Beverage Licenses for the 2016 (January 1, 2016, to December 31, 2016) licensing period.
2. Establish public hearing for sale of alcoholic beverages
Establish December 14, 2015, as the date for the public hearing on the request for a Special Malt Beverage (on-sale) Retailers License and a Special (on-sale) Wine Retailers License for 1 day, January 9, 2016, from TST, Inc. dba Phinney's Pub & Casino, (John Tuttle, President) Yankton, Yankton, South Dakota.

Roll Call: All members present voting "Aye;" voting "Nay:" None.
Motion adopted.

Action 15-374

This was the time and place for the public hearing on the application for a Special Events Malt Beverage (on-sale) Retailers License and a Special (on-sale) Wine Retailers for one day, December 26, 2015, from The Center (Christy Hauer, Executive Director), 900 Whiting Drive, Yankton, South Dakota. (Memorandum 15-289) No one was present to speak for or against approval of the license application. Moved by Commissioner Johnson, seconded by Commissioner Sommer, to approve the license.

Roll Call: All members present voting "Aye;" voting "Nay:" None.
Motion adopted.

Action 15-375

This was the time and place for the public hearing on the application for a Special Events Malt Beverage (on-sale) Retailers License and a Special (on-sale) Wine Retailers License for one day,

December 31, 2015, from the Center (Christy Hauer, Executive Director), 900 Whiting Drive, Yankton, South Dakota. (Memorandum 15-290) No one was present to speak for or against approval of the license application. Moved by Commissioner Ferdig, seconded by Commissioner Knoff, to approve the license.

Roll Call: All members present voting “Aye;” voting “Nay:” None.
Motion adopted.

Action 15-376

This was the time and place for the public hearing on the application for a Special Events RETAIL (on-sale) Liquor License for one day, December 4, 2015, from Minerva’s Grill & Bar (Janelle Wieseler, Sales and Catering Director) dba Minerva’s Grill & Bar, NFAA, 800 Archery Lane, Yankton, South Dakota. (Memorandum 15-291) No one was present to speak for or against approval of the license application. Moved by Commissioner Johnson, seconded by Commissioner Sommer, to approve the license.

Roll Call: All members present voting “Aye;” voting “Nay:” None.
Motion adopted.

Action 15-377

Moved by Commissioner Ferdig, seconded by Commissioner Johnson, to adopt Resolution 15-76. (Memorandum 15-293)

**RESOLUTION 15-76
A RESOLUTION TO RESTRICT PARKING ON DOUGLAS AVENUE
FROM ANNA STREET TO 31ST STREET**

WHEREAS, Douglas Avenue is a minor arterial street within the City, and

WHEREAS, this roadway will have extensive turning movements to access private homes, apartment complexes and local businesses, and

WHEREAS, the anticipated traffic will include a large volume of vehicles, and

WHEREAS, the expectation of continued development would only increase traffic volumes, and

WHEREAS, the existing two-lane section does not currently provide for on-street parking, and

WHEREAS, the proposed section would allow for two travel lanes with a center turn lane, and

WHEREAS, The Board of City Commissioners of the City of Yankton has the authority to establish and revoke parking restrictions within the City of Yankton;

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners of the City of Yankton, SD, that parking is prohibited on Douglas Avenue from Anna Street to 31st Street.

Roll Call: Members present voting “Aye:” Commissioners Ferdig, Hoffner, Johnson, Knoff, Miner, Sommer, Woerner, and Mayor Carda; voting “Nay:” Commissioner Gross.
Motion adopted.

Action 15-378

Moved by Commissioner Knoff, seconded by Commissioner Sommer, to approve Amendment No. 2 to the Agreement for Engineering Services with HDR, Sioux Falls, South Dakota, to perform additional engineering services for Water Treatment Plant 2 for a not-to-exceed amount of \$422,600.00. (Memorandum 15-295)

Roll Call: All members present voting “Aye;” voting “Nay:” None.

Motion adopted.

Action 15-379

Moved by Commissioner Sommer, seconded by Commissioner Woerner, to adopt Resolution 15-77. (Memorandum 15-294)

RESOLUTION NO. 15-77

RESOLUTION GIVING APPROVAL TO CERTAIN SOLID WASTE 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 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 borrow money and issue its revenue bonds under South Dakota Codified Laws, Chapters 9-40 (the Act) and 6-8B in order to defray the cost of funding improvements, extensions and additions to its solid waste system and is authorized to issue its obligations in order to defray the cost thereof, and to make all pledges, covenants and agreements authorized by law for the protection of the holders of the obligations; and,

WHEREAS, the City of Yankton, South Dakota (the City), together with the City of Vermillion, South Dakota, Yankton County, South Dakota and Clay County, South Dakota (collectively, the Members), owns, administers and operates an integrated solid waste management system (the System), for municipal, industrial and domestic purposes, under a Revised Joint Powers Agreement, dated November 14, 2012, by and among the Members, and has determined that the replacement of the weigh scale for the regional landfill facility in conjunction with reconfiguring the public’s access routes is necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its solid waste system; and,

WHEREAS, the City has determined to issue its revenue bonds to finance the improvements to its solid waste facilities for the purpose collecting and disposing of solid waste from domestic, municipal, and industrial purposes (the “System”) and has applied for a Loan to finance the improvements;

NOW THEREFORE BE IT RESOLVED by the City as follows:

1. Declaration of Necessity and Determination of Facilities Financed. The City desires and hereby determines it is necessary to improve its solid waste facilities within its System, as described in Exhibit A hereto (the "Project"). The City hereby expressly finds that if the Project is not undertaken, the System will pose a health hazard to the City and its inhabitants, and will make the City unable to comply with state and federal law. The City hereby determines that the Project will substantially benefit the entire System and all of its inhabitants within the meaning of SDCL 9-40-15 and SDCL 9-40-17. Therefore the City hereby determines that for the purposes of the Act, including, in particular, SDCL 9-40-17, the net income or revenues of the entire System, as extended, added to, or improved by the Project shall be deemed to be the net income or revenues available to be pledged to the payment of the bonds issued hereunder.

2. Approval of Loan. The City hereby determines to finance up to \$450,000 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 Solid Waste Management Program Loan Agreement (the "Loan Agreement") between the City 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 Mayor 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 City deems appropriate and approves, for and on behalf of the City. The Mayor and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the City 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 \$450,000 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 Mayor, 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 City, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The Mayor 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 City Council (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 City Council 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 June 1 or December 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 City Council 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 City Council shall authorize the City 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 becomes 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 City Council.

No moneys shall at any time be transferred from the General Surplus Account or any other account to any other account 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 allowed by this Section.

7. Pledge of Revenues. The Revenue Bond, together with the interest thereon, shall not constitute a charge against the City's general credit or taxing power, but shall be a limited obligation of the City 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 City 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 City 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 City 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 City 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 City 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 City agrees and covenants that it will promptly construct the improvements included in the Project.

(c) The City 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 and interest on the Revenue Bond, and the City 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 City.

(d) The City 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 remains 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 City, 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 City'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 City 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. 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.

11. Authorization of City Officials. The Mayor, Finance Officer, City Attorney and City officials shall be and they are hereby authorized to execute and deliver for and on behalf of the City 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.

12. 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.

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

EXHIBIT A DESCRIPTION OF THE PROJECT

The city of Yankton is to replace the weigh scale as well as make improvements to the ingress and egress routes to sufficiently handle expected traffic loads at the transfer station.

Roll Call: All members present voting "Aye;" voting "Nay;" None.
Motion adopted.

Action 15-380

Moved by Commissioner Hoffner, seconded by Commissioner Ferdig, to adopt the "Downtown Yankton Facade Grant Program Guidelines and Application." (Memorandum 15-296)

Roll Call: All members present voting "Aye;" voting "Nay;" None.
Motion adopted.

Action 15-381

Commissioner Gross introduced, and Mayor Carda, read the title of ORDINANCE NO. 984, BE IT ORDAINED THAT ORDINANCE NO. 968 APPROPRIATING MONIES FOR DEFRAYING THE NECESSARY EXPENSES AND LIABILITIES OF THE CITY OF YANKTON, SOUTH DAKOTA, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2015, AND ENDING DECEMBER 31, 2015, AND PROVIDING FOR THE LEVY OF THE ANNUAL TAX FOR ALL FUNDS CREATED BY

THE ORDINANCE WITHIN SAID CITY BE AMENDED TO WIT, and set December 14, 2015, as the date for the second reading and public hearing. (Memorandum 15-288)

Action 15-382

Moved by Commissioner Woerner, seconded by Commissioner Ferdig, to adjourn into Executive Session at 7:47 p.m. to discuss Personnel and Contractual Matters under SDCL 1-25-2.

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Regular meeting of the Board of City Commissioners of the City of Yankton was reconvened by Mayor Carda.

Roll Call: Present: Commissioners Ferdig, Gross, Hoffner, Johnson, Knoff, Miner, Sommer, and Woerner. Absent: City Attorney Den Herder and City Manager Nelson. Quorum present.

Action 15-383

Moved by Commissioner Woerner, seconded by Commissioner Sommer, to adjourn at 9:26 p.m.

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

David Carda
Mayor

ATTEST:

Al Viereck
Finance Officer

Published December 8, 2015