

Gregory City Council Meeting
September 21, 2009

The Gregory City Council met in regular session at the Gregory City Hall on Mon., Sept. 21, 2009 at 7:30 p.m. The following members were present: Mayor Dan DeSmet; Council Members, Tim Mills, Gerrie Soper, Chad Peck, Blane Bartling and Maurice Schlaht. Council Member absent was Kevin Mikkelsen. Others present were Finance Officer Al Cerny and News Reporter Colleen Flynn.

AGENDA ADDITIONS:

The following items were added to the agenda: bond counsel contract, Whitney & Hannahs building permits, and proposals to clean sewer line. Motion was made by Council Member Schlaht to approve the agenda with the noted additions. All members voted aye.

APPROVAL OF MINUTES:

Motion was made by Council Member Soper to approve as written the regular minutes of September 8, 2009 with the following correction: The cube storage units will be placed on "lots" across from the bowling alley, with the legal description of the lots being Lots 7-10 of Block 75, Original Town of Gregory. All members voted aye.

VERN ARENS:

Vern Arens met with the council to discuss the proposed outfall sewer line project. The project is expected to cost \$564,500 with \$357,000 coming from a SRF loan and \$207,500 from a CDBG grant. Arens had a contract for the city to sign for his engineering services. Motion was made by Council Member Soper to approve the engineering contract with Arens Engineering for the sewer line project going to the lagoons. All members voted aye.

SEWER LINE CLEANING:

The city received two quotes for cleaning some sewer mains running to the lagoons. Bender's Sewer and Drain quoted \$19,800 and A-Tech Sewer of Watertown quoted \$24,750. Motion was made by Council Member Peck to accept Bender's Sewer and Drain quote of \$19,800 contingent that the written reports provided will be acceptable in giving enough detail. All members voted aye.

DOUG POCHOP/PARK AMPHITHEATER:

Doug Pochop met with the council to ask about getting a site for an amphitheater at the base of the buttes in the city park. He proposed that an area be mowed and a stage erected. Pochop believes he can get enough donations to build and he just wanted permission from the council to proceed. The council agreed that the project should proceed.

BOB MCKEE/STORAGE UNITS:

Bob McKee asked whether the council was going to allow storage units in residential areas. He was told that the council was not allowing commercial type storage units in residential areas. He also inquired about the noise level from street dances. The council will ask the police department to monitor the noise and work with the bar owners about positioning the outdoor speakers.

STEVE MCDOWELL/POLIC DEPT:

Steve McDowell reported that Shawn Claussen had made it through three of the 12 weeks of law enforcement school. The department is doing school patrol daily and McDowell just completed four hours of mental illness training. The council thanked him for the update.

2010 BUDGET:

Ordinance No. 210, the 2010 Annual Budget Ordinance, was placed on its second reading. Motion was made by Council Member Peck to approve the second reading of Ordinance No. 210. All members voted aye.

BOND RESOLUTION:

Motion was made by Council Member Mills to approve following the Bond Resolution allowing for the \$357,000 loan from SRF. All members voted aye.

RESOLUTION

RESOLUTION GIVING APPROVAL TO CERTAIN SEWER 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 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 defray the cost of extensions, additions and improvements to any utility previously owned and is authorized to pledge the net income or revenues from the system in accordance with Section 15 of the Act; and,

WHEREAS, the City of Gregory (the “City”) currently operates a sewer system for the collection, treatment and disposal of sewage and other domestic, commercial and industrial wastes; and for the control of floods and drainage and has determined that improvements to the sewer facilities are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its sewer system; and,

WHEREAS, the City has determined to issue its revenue bonds to finance the improvements to its sewer system for the purpose of collecting, treating and disposing of sewage and other domestic, commercial and industrial wastes (the “System”) and has applied to the South Dakota Conservancy District (the “District”) for a Clean Water State Revolving Fund Loan to finance the improvements;

WHEREAS, the City will adopt rates and charges to be pledged, segregated and used for the payment of the Revenue Bond.

NOW THEREFORE BE IT RESOLVED by the City as follows:

SECTION 1. Definitions. The terms when used in this Resolution shall have the following meanings set forth in this section unless the context clearly requires otherwise. 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.

“**Act**” means South Dakota Codified Laws Chapter 9-40.

“**Loan**” means the Loan made by the South Dakota Conservancy District to the City pursuant to the terms of the Loan Agreement and as evidenced by the Revenue Bond.

“**Project**” means City of Gregory replacement of existing outfall line to Gregory's wastewater lagoon.

“**Revenue Bond**” means the revenue bond or bonds issued the date of the Loan Agreement by the City to the South Dakota Conservancy District to evidence the City’s obligation to repay the principal of and pay interest and Administrative Expense Surcharge on the Loan.

“**System**” means the City’s system of collecting, treating and disposing of sewage and other domestic, commercial and industrial wastes.

SECTION 2. Declaration of Necessity and Findings.

2.1. Declaration of Necessity. The City hereby determines and declares it is necessary to construct and finance improvements to its System described as the Project.

2.2. Findings. The City does hereby find as follows:

2.2.1. 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.

2.2.2. 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-2, and the federal Clean Water Act, and the nature of the improvements financed, the City

hereby finds and determines that the Project will substantially benefit the entire System and all of its users within the meaning of Sections 15 and 17 of the Act.

2.2.3. The City hereby determines and finds that for the purposes of the Act, including, in particular, Sections 15 and 17 of the Act, the only the net income from the system as improved, financed by the Revenue Bond, be pledged for its payment.

SECTION 3. Authorization of Loan, Pledge of Revenue and Security.

3.1. Authorization of Loan. The City hereby determines and declares it necessary to finance up to \$357,000 of the costs of the Project through the issuance of bonds payable from net revenues of the system and other funds secured by the City. The City hereby determines that because the Revenue Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to Section 15 of the Act no election is required to issue the Revenue Bond.

3.2. Approval of Loan Agreement. The execution and delivery of the Revenue Obligation Loan Agreement (the "Loan Agreement"), the form of which is on file with the City Finance Officer (the "Finance Officer") and open to public inspection, between the City as Borrower and the District, are 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.

3.3. Approval of Revenue Bond. The issuance of a revenue bond in a principal amount not to exceed \$357,000 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (the "Revenue Bond") 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 District, 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 Section 19 of the Act.

3.4. 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 Project 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, interest and Administrative Surcharge 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 hereby irrevocably pledges to the South Dakota Conservancy District all income and revenues of the System, including, without limitation, fees, charges to users of the System, penalties and hook-up fees, sign-up fees, proceeds of business interruption insurance, proceeds from the sale of property constituting part of the System and investment income on all such revenues, but only to the extent that the revenues exceed the amounts necessary to operate and maintain the System, provided there shall be excluded from this pledge the proceeds of any federal or state grant or loan, and the investment income therefrom, to the extent such exclusion is a condition of such grant or loan. The City covenants and agrees to charge rates for all services from the System or establish charges or rates 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 3 or any other covenant or agreement in the Loan Agreement.

SECTION 4. Rates, Certification, Segregation and Review.

4.1. Rates and collection There shall be charged rates for each fiscal year which shall ensure that its Net Revenues Available for Debt Service will equal at least 110% of its System Debt Service for such fiscal year.

4.2. Certification. In each fiscal year, or as soon as practicable, and in any event by the date of the delivery of the unaudited financial statements required in the Loan Agreement, the City shall (a) calculate its Net Revenues Available for Debt Service and System Debt Service for the fiscal year, and (b) certify such figures to the South Dakota Conservancy District. The certification described in clause (b) of the preceding sentence shall be substantially in the form of the certificate attached as Appendix E to the Loan Agreement. If the City fails to meet the Rate Covenant set forth in Section 6.4 of the Loan Agreement, the City shall supply the District with quarterly reports on the actions it is taking to correct its coverage deficiency until it delivers an annual coverage certificate showing compliance with the first sentence of this Section.

4.3. Segregation. The Finance Officer shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue.

4.4. Periodic review. The sewer rates shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the Loan Agreement's rate covenant and to pay principal of, interest and Administrative Surcharge on the Revenue

Bond when due. The rates may be set by ordinance or resolution in accordance with this Section. The rate ordinance or resolution shall be necessary for the support of government and shall be effective upon passage.

SECTION 5. Additional Bonds. As permitted by Section 8 and 9 of the Act, 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.

SECTION 6. Project Fund Accounts. For the purpose of application and proper allocation of net income of the System and to secure the payment of principal, Administrative Surcharge and interest on the Revenue Bond, the following mandatory asset segregations 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:

6.1. Project Revenue Account. There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the Ordinances and resolutions of the City of Gregory, South Dakota (collectively the "Rate Ordinance"). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

6.2. Project Debt Service Account. Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25th day of each month into the account designated Project Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal of, interest and Administrative Surcharge on the Revenue Bonds and any reserve determined by the City's governing body to be necessary. The amount set aside monthly shall be not less than one-third of the total principal, interest, and Administrative Surcharge payable on the following January 15, April 15, July 15, or October 15 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.

6.3. Depreciation Account. There shall be established a General Depreciation Account. Out of the revenues of the Project Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the Common Council to be a proper and adequate amount for repair and depreciation of the Project.

6.4. Project Surplus Account. There shall be established the Project Surplus Account. Revenues remaining in the Project 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 transferred to the Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Common Council shall authorize the City Finance Officer to rectify such default so far as possible by the

transfer of money from the Project Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above.

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

- (a) To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;
- (b) To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project 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:
- (c) 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
- (d) To be used for any other authorized municipal purpose designated by the Common Council.
- (e) No moneys shall at any time be transferred from the Project 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.

SECTION 7. Approval of Paying Agent/Registrar. The Revenue Bond shall be payable at the office of The First National Bank in Sioux Falls, Sioux Falls, South Dakota, hereby designated as paying agent and registrar.

SECTION 8. Approval of Bond Counsel. Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

SECTION 9. Tax Matters. The Interest on the Revenue Bond shall be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (“the Code”) and applicable Treasury Regulations (the “Regulations”).

SECTION 10. Covenants. The City hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

10.1. The City 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.

10.2. The City agrees and covenants that it will promptly construct the improvements included in the Project.

10.3. The City covenants and agrees that pursuant to Sections 25 through 27 of the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project 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 distribution of water for municipal, industrial, and domestic purposes within the City.

10.4. The City covenants and agrees with the District and other owners of the Revenue Bond that it will maintain 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 Series 19 of the Act.

SECTION 11. Depositories. The Finance Officer shall cause all moneys pertaining to the Funds and 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 Bonds 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 Funds and Accounts as authorized in this Resolution; except that moneys from time to time on hand in the Funds and 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 Fund 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 Fund or 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.

SECTION 12. Consent to Appointment. In the event of mismanagement of the Project, 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 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 Section 33 of the Act, and agrees that the receiver will have the powers set forth therein, and in Section 34 and 35 of the Act to operate and administer the Project, and charge and collect rates as described therein.

SECTION 13. 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.

SECTION 14. 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.

SECTION 15. Effective Date. This Resolution shall take effect on the 20th day following its publication, unless suspended by a referendum.

Adopted at City of Gregory, South Dakota, this 21st day of September 2009.

APPROVED:

Dan DeSmet, Mayor

(SEAL)

Attest: _____
Al Cerny, City Finance Officer

Published: 10/14/09

Effective: 10/20/09

BOND COUNSEL CONTRACT:

The council reviewed a contract with Meierhenry Sargent LLP for bond council at a cost of \$3,570.00. Motion was made by Council Member Mills to approve of the contract. All members voted aye.

BUILDING PERMITS:

The council reviewed four building permits. Gary and Mary Straight submitted an application to build an addition to their house. No variance is needed. Council approved the permit. Cal and Karen Stukel submitted an application to build a carport. They will need a variance to the north. Motion was made by Council Member Bartling to approve the permit provided that the landowner to the north gives permission. All members voted aye. Clayton and Holly Whitney and Lana Hannahs Bullbear submitted applications to build garages. No variances are need. The council approved both permits.

CHRISTMAS DECORATIONS:

Motion was made by Council Member Schlaht to use \$5,000 of the 3rd cent sales tax funds to purchase some new Christmas decorations. All members voted aye.

AIRPORT ENGINEER PROPOSALS:

The council received engineering proposals to be the city's engineer on all airport projects for the next five years from Helms and Associates of Aberdeen and Brosz Engineering of Pierre. SEH declined to offer a bid because they were too busy. Al Cerny was directed to set up a time to interview the two firms.

INSURANCE ON HAIL DAMAGED BUILDINGS:

The council reviewed the insurance report on the city buildings. It was agreed to re-roof all shingled roofs but wait until next spring to the work.

LIBRARY ASSISTANT:

Roma Jeffords was hired by the library board to help out part-time at the Gregory Library. She will start out at minimum wage or \$7.25 per hour.

CLAIMS:

Motion was made by Council Member Peck to pay the following claims as presented. All members voted aye.

GENERAL FUND:

Ace's Backhoe Service, dig 2 culverts behind Tom's Service	147.96
Appera, towels/hand cleaner/coveralls	22.22
Buche Foods, pool trash bags/city hall cleaning supplies	13.81
Department of Revenue, testing for police dept	87.00
Dockendorf Equipment Co., jet fuel/avgas fuel elements	294.96
General Aviation News, 1 yr magazine subscription	29.95
H & J Sales, mower blades/sharpen chains/grasshopper belts	288.00
HD Supply Waterworks Ltd., pool gripper plug	23.94
Heartland Promotions Inc., airport sign.....	294.00
Jeff's Gregory Body Shop, paint water tank.....	1,224.00
Leidholt McNeeley & Leidholt, replace 3 condenser coils & ductwork/aud.	11,816.00
Michael Todd & Company Inc., gutter brooms.....	272.25
Office Products Center, clean printer/copy paper.....	124.99
Petty cash, postage reimbursement/car wash.....	10.08
Rosebud Electric Cooperative Inc., electricity	2,861.63
Rosebud Farmers Union, gas/diesel fuel/hose clamps/propane oil change/tire repair	1,896.64
SD Municipal League, election workshop registration	15.00
Tri-State Turf & Irrigation, sprinkler heads	36.63
Total \$	19,459.06

SRF LOAN SINKING:

First Nation Bank, SRF loan payment	4,127.57
Total \$	4,127.57

WATER FUND:

Appera, coveralls	7.46
Petty cash, postage reimbursement	1.62
Rosebud Electric Cooperative, Inc., electricity	1,614.46
Rosebud Farmers Union, gas	124.46
Total \$	1,748.00

SEWER FUND:

Ace's Backhoe Service, dig in manhole by elevator	173.47
Department of Revenue, wastewater testing.....	341.00
H & J Sales, haul 2 manholes tops from Sioux Falls.....	500.00
Rosebud Electric Cooperative Inc., electricity	54.80
Total \$	1,069.27
Grand Total \$	26,403.90

PAYROLL OVERTIME APPROVED:

Mark Fortuna, weekend water duty 9/5-6-7/09
Jack Wenger, weekend watery duty 9/12-13/09

9-16-09 PAYROLL:

BankWest, withholdings	3,224.32
SDRS, retirement	1,782.20
Aflac, insurance	122.48
Office of Child Support Enforcement, child support payment	219.23
City of Gregory, extra cell phone charges	78.46
Finance Officer	1,635.20
Police Dept.....	5,928.81
Street Dept	3,526.29
Airport.....	254.04
Library	546.00
Water Dept	2,688.80
Economic Development.....	200.00
General Government Building.....	250.00

AMBULANCE PAYROLL August 2009:

BankWest, withholdings	1,083.71
Ambulance	4,228.50

ADJOURN:

Motion was made by Council Member Schlaht to adjourn. All members voted aye.

Dan DeSmet, Mayor

ATTEST: _____
Al Cerny, Finance Officer