

Unapproved Minutes  
 Gettysburg, South Dakota  
 December 31, 2009

Pursuant to the due call and notice thereof, the City Council met in special session on December 31, 2009 at 12:01 PM at the City Finance Office. Those present included Acting Mayor & Council President Bill Wuttke, Council members Pat Everson, Phil Nagel, Josh Bausch, Fran VanBockel and Peggy Lehman. Also present was Russell Anderson, Maintenance Supervisor, Sharleen Eliason, Finance Officer, and Gayle Kludt, Chief of Police.

VOUCHERS PAYABLE

Payroll Expense by Department:

Total Payroll Expense by Department		
Mayor & Council	December Payroll	00.00
Finance Office	December Payroll	3,932.86
Police	December Payroll	7,353.26
Streets	December Payroll	2,190.36
Snow Removal	December Payroll	4,046.43
Garbage	December Payroll	60.00
Airport	December Payroll	15.80
Swimming Pool	December Payroll	00.00
Parks	December Payroll	236.96
Water	December Payroll	4,043.84
Sewer	December Payroll	2,383.04
Ambulance	December Payroll	4,047.65
West Nile	December Payroll	00.00
Total Payroll Expense by Department		28,310.20

Net Payroll		22,404.11
AFLAC	PAYROLL DEDUCTIONS	103.25
BANK OF THE WEST	WITHHOLDING TAXES	2,736.61
BANK OF THE WEST	WITHHOLDING TAXES	3,330.94
BANYON	PAYROLL SUPPORT	50.00
B & L COMPUTER	2 COMPUTERS	2,272.49
BLIESE MACHINE	SUPPLIES	80.50
BUSINESS FORMS & ACCT	W-2'S AND 1099	102.50
CAM WALL ELECTRIC	WELCOME SIGN	9.75
CENEX FLEET FUEL	AMBULANCE FUEL	84.90
CITY OF GETTYSBURG	PETTY CASH	40.23
CITY OF GETTYSBURG	PETTY CASH	39.39
COMMUNITY CARE CLINIC	HEP B SHOT-JOST	41.00
CUSTOM CAGE	CAGES FOR POLICE CARS	900.00
DAKOTA BACKUP	COMUTER BACKUP	54.99
DAKOTA BACKUP	COMPUTER BACKUP	52.49

DAKOTA FARM & RANCH	SUPPLIES	1,929.82
DAKOTA CARE INS	INSURANCE	5,438.84
DUCKWALLS	SUPPLIES	110.36
ECONOMIC DEVELOPMENT	4 <sup>TH</sup> QUARTER PAYMENT	6,250.00
EMERGENCY AUTO TECH	CONSOLE & MOUNTS	852.00
EMERGENCY AUTO TECH	GUNLOCK MOUNTS	225.80
EMERGENCY MEDICAL PRODUCTS	SUPPLIES	971.70
EXPRESS MOUNTS USA	POLICE SUPPLIES	72.84
FARM PLAN	SUPPLIES	87.20
FLORIDA MICRO	POLICE SUPPLIES	96.84
FRONTIER SIGNS	POLICE SUPPLIES	425.00
GETTYSBURG BAKERY	SUPPLIES	13.06
GETTYSBURG DEV CORP	TRIPLE B	2,217.60
GOLDSMITH & HECK	PROFF FEES	3,350.00
HANSEN PLUMBING	SHOP HEATER	4,100.00
HEARTLAND GARBAGE	GARBAGE	4,097.02
HOLZWARATH SALES	FENCE-PARK	450.30
IN STITCHES	FO SUPPLIES	27.20
LAMB MOTOR CO	MAINT & AMBU	617.92
LAMB MOTOR CO	2010 FORD ESCAPE	24,729.00
LIGHT & SIREN	POLICE SUPPLIES	75.00
LOGAN ELECTRIC	PROF SERVICE	578.24
LOGAN ELECTRIC	SHOP SUPPLIES	47.23
MID DAKOTA WATER	WATER	11,509.44
MIDWAY PARTS	PARTS	773.29
MN WIRELESS	WIRELESS	69.00
MONTANA DAKOTA UTILITES	ELECTRICITY	4,082.38
NEVES UNIFORMS	POLICE SUPPLIES	528.90
NEW CREATIONS	SUPPLIES	146.00
ONE CALL SYSTEMS	LOCATES	8.80
POTTER COUNTY NEWS	PUBLICATION	257.81
POTTS TRUCKING	SUPPLIES	448.00
ROBBENOLT, LAURIE	FUEL-AMBU	121.23
SCHATZ ELECTRIC	SUPPLIES	167.62
SCHATZ ELECTRIC	SUPPLIES	571.94
SCHLACHTER LUMBER	SUPPLIES	66.85
SD DEPT OF REVENUE	WATER CHECKS	156.00
SD DEPT OF REVENUE	GARBAGE FEES	364.31
SD RETIREMENT	RETIREMENT	2,751.06
SERVALL	FO RUGS	62.91
SIRCHIE	SUPPLIES	371.62
SOPERS INC	REPAIRS	164.81
SOVELL, EMILY	LEGAL	270.00
STRYKER	COT-AMBULANCE	10,260.00
TOMAHAWK LIVE TRAP	ANIMAL CONTROL	177.83
TRUE VALUE	SUPPLIES	616.62

US POSTMASTER	POST CARDS	167.72
VENTURE	PHONE	540.12
VERIZONE WIRELESS	CELL PHONES	214.37
VILAS PHARMACY	HEP B	226.99
WESTERN COMMUNICATIONS	TECH-POLICE	3,500.00
ZUBER REFRIGERATION	LABOR	256.73
TOTAL CHECKS		127,918.47

Motioned by Everson, seconded by Van Bockel, motion carried to approve vouchers payable.

Ordinance 2009-12-12 was presented to the council for the 2<sup>nd</sup> reading. This increases the sewer charges by about \$2.00 per month. Due to the sewer relining project we needed to increase the fees. Motioned by Bausch, seconded by Lehman to approve this ordinance with a roll call vote: Bausch-yes, Everson-nay, Nagel-yea, VanBockel-nay Lehman-yea and Wuttke-yea. With 4 yeas and 2 nays it passes and the increases will be in the reading of the water and sewer bills for Feb 24<sup>th</sup> billing cycle. The last time we increased sewer rates was in August 2007.

Police Chief Kludt stated that the new Ford Explorer should be here within 30days. Gayle also helped write a grant for the EMT's for an electric cot and stairchair.

Ordinance 2009-12-13 was presented for the first reading. This increases the fines for parking violations during snow removal. Motioned by Everson, seconded by VanBockel, motion carried to approve this first reading.

The following resolution was presented to the Council for approval for the Revenue Bonds for the sewer-relining project. The Cities loan will be through First National Bank of Sioux Falls. Motioned by VanBockel, seconded by Bausch, motion carried to approve the following resolution.

## **RESOLUTION NO. 2009-11**

**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 Gettysburg (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 Gettysburg Sewer Line Sleeving Project.

“**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 \$624,000 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 \$624,000 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 Gettysburg, 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 25<sup>th</sup> 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. Principal Forgiveness.** In order to qualify for up to 13.3% of the total principal amount of the Loan forgiven in an amount not to exceed \$82,400 City officials are directed to cause the compliance with the following deadline:

- (a) Execute construction contracts on or before February 1, 2010.

**SECTION 16. Effective Date.** This Resolution shall take effect on the 20<sup>th</sup> day following its publication, unless suspended by a referendum.

Adopted at Gettysburg, South Dakota, this 31<sup>st</sup> day of December 2009.

**APPROVED:**

\_\_\_\_\_  
Acting Mayor & Council President  
Bill Wuttke

(SEAL)

Attest: \_\_\_\_\_  
Sharleen Eliason, Finance Officer

Published: \_\_\_\_\_

Effective: \_\_\_\_\_

Resolution 2009-12 was presented to the Council for the loan for the \$152,000.00 from USDA for the sewer-relining project. Motioned by Nagel, seconded by Lehman, motion carried to approve the following resolution:

**RESOLUTION 2009-12  
LOAN RESOLUTION**

A RESOLUTION OF THE GETTYSBURG CITY COUNCIL OF THE CITY OF GETTYSBURG SD AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING AND/OR EXTENDING ITS WASTEWATER FACILITY TO SERVE AN AREA LAWFULLY WITHIN IT'S JURISDICTION TO SERVE.

WHEREAS, it is necessary for the City of Gettysburg,SD (herein after called Association)

to raise a portion of the cost of such undertaking by issuance of its bonds in the principle amount of \$152,000.00 pursuant to the provisions of the laws of the State of SD and

WHEREAS, the Association intends to obtain assistance from the United States Department of Agriculture (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 USC 1921 ct seq) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

**THEREFORE**, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds 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 required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other

instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.

6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.

7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (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.

8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.

9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.

10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0121. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.

12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.

13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.

14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the Government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities

and replacement of short lived assets.

15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA’s concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.

16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.

17. To accept a grant in an amount not to exceed \$ n/a under the terms offered by the Government; that the City of Gettysburg and Acting Mayor of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

The vote was: Yeas 6 Nays 0 Absent 0

IN WITNESS WHEREOF, the City Council of the City of Gettysburg SD has duly adapted this resolution and caused it to be executed by the officers below in duplicate on this 31<sup>st</sup> day of December 2009 to be executed by the officers below in duplicate on this 31<sup>st</sup> day of December 2009

\_\_\_\_\_  
By \_\_\_\_\_

Title: Acting Mayor & Council President

(SEAL)

Attest:

\_\_\_\_\_

Title: Sharleen Eliason, Finance Officer

Council member Nagel stated that he has contacted Schlachter's regarding the door lock at the Firehall as they are not working properly on the South door. The EMT's are not having any problems with their door locks just the South door for the Firehall.

Correspondence included thanks you from the Chris Fischer family for the flowers that Finance Officer Eliason received and a thank you from Bernie Webb for all the City crew does.

In round table discussion Acting Mayor Wuttke stated that the Fireman received a grant for the Firemen for exercise equipment and monies for physicals for the fireman. Council member Bausch stated that the Gettysburg EMT's have not heard anything on the cardiac defibrillation grant they applied for.

Right now the City is a drop off point for Venture Communications and the Finance Officer asked the Council if an additional business could display and be a drop off point. The Council agreed as long as it is just a drop off and no monies are collected or exchanged.

There being no further business before the council motioned by Bausch, seconded by Nagel motion carried to adjourn at 11:45 PM.

ATTEST:

WITNESS:

\_\_\_\_\_  
Sharleen Eliason, Finance Officer

\_\_\_\_\_  
Bill Wuttke, Acting Mayor and Council President

Published once at the total approximate cost of \$