

**CITY OF CUSTER CITY
COUNCIL PROCEEDINGS- REGULAR SESSION
MAY 18th, 2009**

Mayor Harold D. Stickney called to order the second regular meeting of the Common Council for the month of May, 2009 at 5:30 p.m. Present at roll call were Councilpersons Sutton, Reetz, Murphey, Schleining, Pischke, Starr, Chris Beesley, City Attorney, Bob Morrison, Public Works Director, Rex Harris, Community Development Director, and Christine Redden, Finance Officer. The Pledge of Allegiance was stated.

AGENDA

Councilperson Murphey moved, with a second by Councilperson Pischke, to approve the agenda. Councilperson Reetz wondered why Tim Behlings was not on the agenda which Tim was invited but had scheduling conflicts. He will be invited another time. Councilperson Reetz also questioned claims from the previous meeting minutes regarding the BID District and the car wash. The motion unanimously carried.

MINUTES

Councilperson Murphey moved, with a second by Councilperson Sutton, to approve the minutes from the May 14th, 2009 and the May 12th, 2009 Public Hearing. The motion unanimously carried.

CONFLICTS OF INTEREST

No conflicts were stated.

DEPARTMENT HEAD MEETING

Bob discussed the State Water Inspection completed with the City having three small actions which one, the crews need to continue training and two, the water hose was too long at the bulk water dispenser. They also had a wastewater inspection.

Bob stated the Street Shop has been released from testing and the 30 monitoring wells can be officially abandoned; we will have to find all of them first and there isn't a specific time frame to have it completed.

Bob updated the Council on the Way Park Bathroom Project which at this point is on schedule for June 1st and is going good. Councilperson Schleining wondered about cleaning out culverts which Bob stated that is on the list along with many many other spring projects.

Rex updated the Council on the Disc Golf Project with all the pads poured except one that has to be re-poured. The Boot Camp kids will be coming in to take out the smaller trees and then we will put up the baskets and signage. Dave Ressler commented that he had been up there and it looks great. Councilperson Starr wondered about parking which Rex stated they are looking at some spots just off 9th Street and then west; we should be able to mark out an area.

ALCOHOL LICENSE HEARING

The Council was presented with the annual renewal list of malt beverage and one wine license application for this year. After reviewing, Councilperson Starr wondered if all were current on taxes which Christine stated that four were not but they would not receive their license until they were. Councilperson Sutton moved to approved as listed. Seconded by Councilperson Pischke, the motion unanimously carried.

RESOLUTION #05-18-09A – TIF REVENUE BOND FINANCING

Councilperson Starr moved, with a second by Councilperson Schleining, to adopt Resolution #05-18-09A. Councilperson Reetz wondered about the bond stating the Finance Officer and Mayor negotiate the terms; why wouldn't Council be the ones to be involved. Councilperson Starr stated the Council takes action on the Bond but then the Mayor and Staff implement the best terms. Councilperson Murphey also stated that the Bond Resolution states all the parameters so there really isn't anything to negotiate; plus the Council approves all the expenditures and various phases throughout the project. The motion carried. Councilperson Sutton voted no.

RESOLUTION NO. 05-18-09

RESOLUTION GIVING APPROVAL TO THE ISSUANCE OF TAX INCREMENTAL REVENUE BONDS TO FINANCE THE PROJECT AND AUTHORIZING THE SALE OF SAID TAX INCREMENTAL REVENUE BONDS AND THE TERMS THEREOF.

NOW, THEREFORE, BE IT RESOLVED AND RESOLVED by the City of Custer as follows:

SECTION 1. AUTHORITY, FINDINGS, AUTHORIZATION.

1.01 Authority. The City is authorized to issue its Tax Incremental Revenue Bonds, Series 2009 to finance project costs pursuant to Section 11-9-33 of the South Dakota Codified Laws. Pursuant to Chapter 11-9 of the South Dakota Codified Laws (the "Act"), the City proposes to issue tax incremental revenue bonds (as herein authorized, the "Tax Incremental Revenue Bonds" or the "Bonds") to finance a portion of the Project costs as set forth in Tax Increment District #4 project plan. The City is authorized by the Tax Incremental Act to pledge a special fund into which the City will deposit the tax increment (as defined by the Act).

1.02 Findings. The City Council hereby finds and determines as follows:

- (a) It is necessary to construct public works within the District;

- (b) The City intends to provide financing of public works and improvements located in the City of Custer in connection with Tax Increment District #4 the plan on file with the City Finance Officer and open to public inspection (the "Project");
- (c) The Tax Incremental Revenue Bonds authorized hereby are being issued to pay costs of Project, which have not been incurred or paid as of the date hereof and/or which the City has heretofore declared its intention to finance with bond proceeds and for which the City has no other available means or source of financing. The cost of the Project will not exceed \$3,500,000, including capitalized interest;
- (d) It is in the best interests of the City to authorize the borrowing of funds to pay a portion of the costs of the Project by authorizing and issuing the Bonds, in one of more series, consistent with the terms approved hereby for an aggregate sum not in excess of the amount of \$3,500,000; and
- (e) That the Tax Incremental Revenue Bonds are payable only solely out of the special fund created herein and that it does not constitute a general indebtedness of the City or a charge against its general taxing power.

1.03 Authorization to issue the Bonds. It is hereby determined to be necessary and in the best interests of the City and its inhabitants that this City Council authorize, issue and sell the Bonds (the "Bonds") in order to finance a portion of the cost of the Project. The Mayor and City Finance Officer are authorized to negotiate the sale and terms of the Bonds subject to the limitations of the law and this Resolution. The Bonds may be issued by the City without an election pursuant to SDCL §11-9-34.

SECTION 2. SALE, BOND PURCHASE AGREEMENT AND OFFICIAL STATEMENT.

2.01 Sale. The Bonds authorized by this Resolution shall be issued, in one of more series, in an aggregate principal amount not exceeding \$3,500,000 and shall be privately placed due to the unique nature of the Bonds. The Bonds will bear interest at a rate or rates per annum and will mature over a period set forth in the bond purchase agreement or similar document. The City intends to sell the Bonds to First Western Bank and Dacotah Bank or other local or regional financial institution, underwriter or private individual (the "Purchaser").

2.02 Bond Purchase Agreement. The execution of a bond purchase agreement or similar document setting forth the final terms of the Bonds is hereby approved and authorized. The execution of said document by the Mayor and City Finance Officer shall be conclusive evidence of such agreement and shall be binding upon the City.

SECTION 3. TERMS OF BONDS.

3.01 Date and Amount. The Bonds shall be dated in calendar year 2009. The principal amount of the Bonds shall not exceed the lesser of \$3,500,000 or any statutory or constitutional debt limitation.

3.02 Maturities. The term of the Bonds shall not exceed 15 years from the date the District was created.

3.03 Interest Rates. On June 15, 2014 and June 15, 2019, the interest rate will reset for any remaining principal. At the time of the reset, the interest rate will be based on the 5 year Constant Maturity Treasury plus 325 basis points. The Constant Maturity Treasury will be based on the previous business day closing rate. At the time of any reset, the interest rate shall not go below 5% nor shall it exceed 7.5%.

3.04 Form of Bonds. The Bonds shall be prepared in substantially the form on file with the City Finance Officer and open to public inspection.

3.05 Execution. The Bonds shall be signed by the manual or facsimile signatures of the Mayor and City Finance Officer of the City and countersigned by the manual or facsimile signature of an attorney resident in the State of South Dakota and in case any officer whose signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery

3.06 Redemption. The TIF Bond #4 is subject to redemption prior to maturity, in whole or in part. There will be no penalty for early redemption.

3.07 Mandatory Turbo Redemption. On each payment date the City shall apply all Tax Increment Revenue's for TIF #4 to the interest and the remaining amount shall be applied to the principal. This payment will be paid equally among all purchasers of the bond.

3.08 Appointment of Initial Registrar. The City hereby appoints the Finance officer, as Bond registrar, transfer agent and paying agent (the "Registrar") for the Bonds.

3.09 Authentication and Delivery. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until a certificate of authentication on such Bond has been duly executed by the Registrar by the manual signature of its authorized representative. Certificates of authentication on different Bonds need not be signed by the same representative. The executed certificate of authentication on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Resolution. When the Bonds have been so prepared, executed and authenticated, the City Finance Officer shall deliver the same to the Purchaser thereof upon payment of the purchase price in accordance with the provisions of the Bond Purchase Agreement and the Purchaser shall not be obligated to see to the application of the purchase price. Upon delivery of the Bonds to the Purchaser, the City Finance Officer shall file with the Secretary of State, on the form provided by the Secretary of State, the information required by SDCL, Section 6-8B-19.

SECTION 4. SECURITY PROVISIONS; FUNDS AND ACCOUNTS AND OTHER COVENANTS AND DETERMINATIONS.

4.01 Pledge Tax Increments. Pursuant to the Act, the City shall receive Tax Increments. All Tax Increments shall be placed in the Tax Incremental Revenue Bond Fund. The Tax Increment is irrevocably pledged and appropriated to the payment of the Bonds. For purposes of this Resolution, "Outstanding Bonds" shall mean these Bonds and any parity lien bonds heretofore or hereafter issued pursuant to this Resolution. The Tax Incremental Revenue Bond Fund shall be used and applied only in the manner and order hereinafter set forth. The holders of the Outstanding Bonds shall have a lien against the Tax Incremental Revenue Bond Fund for payment of the principal and interest and may either at law or in equity protect and enforce the lien.

4.02 Tax Incremental Revenue Bond Fund. The City Finance Officer is hereby authorized and directed to establish and shall maintain a special fund, the Tax Incremental Revenue Bond Fund, as a separate and special fund in the financial records of the City until all Bonds issued and made payable therefrom, and interest due thereon, have been duly paid or discharged. All collections of the Tax Increments shall be credited, as received, to the Tax Incremental Revenue Bond Fund. Within the Tax Incremental Revenue Bond Fund are various separate accounts to be maintained by the City.

- (a) Construction Account. There is hereby created and established as an account of the Tax Incremental Revenue Bond Fund, a "Construction Account". There shall be credited to the Construction Account the proceeds from the sale of the Bonds remaining after payment of the expenses of issuing the Bonds. All moneys credited to the Construction Account shall be applied solely to the payment of the costs of the Project or reimbursement therefore. For the purposes of this Resolution, "costs of the Project" shall include costs of acquiring, construction, and installing the Project including cost of capitalized interest, labor, services, materials and supplies, financial, architectural, engineering, legal, accounting and other professional expenses relating to the Project, the costs of acquisition or properties, rights, easements, or other interest in properties, insurance premiums, and the costs of publishing, posting or mailing notices in connection with the Project. All sums derived from the investment of moneys in the Construction Account shall remain in and become part of such account. Upon completion of the Project and when all costs of the Project have been paid, any balance remaining in the Construction Account shall be credited to the Principal and Interest Account hereinafter established. All public project costs shall be bid in accordance with South Dakota law.
- (b) Principal and interest Account. There is hereby created and established as an account of the Tax Incremental Revenue Bond Fund, a "Principal and Interest Account." Immediately upon delivery of the Bonds, there shall be credited to the Principal and Interest Account the amount of any accrued interest received from the Purchaser. Periodically, as needed there shall be withdrawn from the Tax Incremental Revenue Bond Fund and credited to the Principal and Interest Account an amount which will equal at least the next principal and interest payment. In all events there shall be credited to the Principal and Interest Account amounts sufficient to pay the principal of and interest on the Outstanding Bonds as the same become due.
- (c) Subordinate Lien Bonds. After making the above required payments, any remaining Tax Increment shall be used for the payment of the principal of and interest on any additional Tax Incremental Revenue Bonds having a lien which is subordinate to the lien of the Outstanding Bonds, and for a reserve fund as additional security for the payment of such subordinate lien bonds.
- (d) Additional Bonds. Any additional bonds based on the TIF revenue will be completely subordinate to TIF Bond #4. The City will not apply any revenue from the District to a subordinate bond until all principal and interest is paid in full on TIF Bond #4.

- (e) Coverage Ratio. The TIF Bond #4 will be amortized with a 1.20 of estimated tax increment revenue over the debt service requirements ("1.20 coverage ratio"). The bond will not be considered in default if the revenue falls below the coverage ratio as long as the debt service payments are current.
- (f) Nothing in this Resolution shall be construed in such manner as to prevent the issuance by the City of additional bonds payable from the Tax Increment and constituting a lien upon the Tax Increment and the Tax Incremental Revenue Fund equal to or on a parity with the lien of the Bonds authorized herein (such additional bonds being referred to herein as "Additional Bonds"), provided that it is feasible and the Bond Holder agrees in writing.
- (g) Nothing herein shall prevent the City from issuing Bonds payable from the Tax Increment or Tax Incremental Revenue Bond fund or having a lien thereon which is junior and subordinate to the lien of the Bonds authorized herein. The City may incur expenses in connection with the Tax Incremental District #4 which shall be reimbursed through the tax increment. Said obligations shall be junior and subordinate to the Bonds whether evidenced by an accounting notation or instrument of indebtedness.

4.03 Pledge of State of South Dakota. Pursuant to SDCL 11-9-39.1, the State of South Dakota does pledge to and agree with the holders of any issued under 11-9 that the state will not alter the rights vested in the bond holders until such bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged.

4.04 Covenants of the City. The City hereby irrevocably covenants and agrees with each and every holder of the Bonds that so long as any of the Bonds remain outstanding:

- (a) It will not amend or repeal the Tax Increment or the allocation of revenues thereof to the Tax Incremental Revenue Bond Fund, or in any way that would adversely affect the amount of Tax Incremental Revenues which would otherwise be collected and deposited to the Tax Incremental Revenue Bond Fund.
- (b) It will administer, enforce, and collect, or cause to be administered, enforced or collected, the real property taxes and shall take such necessary action to collect delinquent payments in accordance with law.
- (c) It will keep or cause to be kept such books and records showing the proceeds of the Tax Incremental, in which complete entries shall be made in accordance with standard principles of accounting, and any owner of any Bond shall have the right at all reasonable times to inspect the records and accounts relating to the collection and receipts of such Tax Incremental.
- (d) In the event the real property taxes of the City is replaced and superseded by the state collected-locally shared tax or taxes, or is replaced and superseded in some other manner from other source or sources, the revenues derived by the City from the replacement source or sources, as received by the City shall be appropriated in the same manner as if the City had levied and imposed a real property tax. From and after the date of a replacement, the Outstanding Bonds shall have a first and prior lien, but not necessarily an exclusive lien, upon such replacement revenues to the extent therein specified.

4.05 Defeasance. When all the Bonds issued have been discharged as provided in this section, all pledges, covenants, and other rights granted by this Resolution to the registered owners of the Bonds shall cease. The City may discharge its obligations with respect to any Bonds which are due on any date by providing to the Paying Agent on or before that date a sum sufficient for the payment thereof in full; or, if any Bond should not be paid when due, it may nevertheless be discharged by providing to the Paying Agent a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit. The City may also discharge its liability with reference to all Bonds which are called for redemption on any date in accordance with their terms by depositing funds with the Paying Agent on or before that date in accordance with their terms by depositing funds with the Paying Agent on or before that date, in an amount equal to the principal, interest, and premium, if any, which are then due thereon, provided that notice of such redemption has been duly given. The City may also at any time discharge this issue of Bonds in its entirety, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or United States government obligations which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required to provide funds (without an reinvestment) sufficient to pay all principal, interest and premiums, if any, to become due on all Bonds on and before maturity, or, if a Bond has been duly called for redemption, on or before the designated redemption date.

4.06 Certification of Proceedings. The officers of the City are authorized and directed to prepare and furnish to the purchasers of the Bonds certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bonds and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and marketability of the Bonds as such facts appear from the officer's books and records or are otherwise known to them. All such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the City as to the correctness of the facts recited therein and the action stated therein to have been taken.

SECTION 5. TAX MATTERS; CERTIFICATION OF PROCEEDINGS AND MISCELLANEOUS.

5.01 Tax Matters. The City covenants and agrees with the registered owners from time to time of the Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Bonds to become subject to taxation under the Internal Revenue Code of 1986, as amended (the "Code"), and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the interest on the Bonds will not become subject to taxation under the Code and the Regulations. The City will cause to be filed with the Secretary of Treasury an information reporting statement in the form and at the time prescribed by the Code.

5.02 The Mayor and Finance Officer, being the officers of the City charged with the responsibility for issuing the Bonds pursuant to this resolution, are authorized and directed to execute and deliver to the purchaser thereof a certificate in accordance with the provisions of Code and Regulations, stating the facts estimates and circumstances in existence on the date of issue and delivery of the Bonds which make it reasonable to expect that the proceeds of the Bonds will not be used in a manner that would cause the Bonds to be arbitrage bonds within the meaning of the Code and Regulations.

5.03 The City recognizes its obligation to comply with the provisions of Section 148(f) of the Code relating to the rebate of certain amounts to the United States, and covenants that it will take or refrain from any actions, the result of which would be to cause the interest on the Bonds to become subject to federal income taxation as a result of the failure to comply with Section 148(f) of the Code and applicable Treasury Regulations. The City will take all actions necessary to comply with the rebate requirement, including making or causing to be made the computations of rebate or penalty amounts. The City will make any payments of rebate or penalty amounts, and will pay the costs of computing any such rebate or penalty amounts.

5.04 It is hereby determined that the Bonds are not and will not be "private activity bonds" as defined in Section 141(a) of the Code, and in support of such conclusion the City Common Council covenants, represents, and certifies as follows:

- (i) none of the proceeds of the Bonds will be used, directly or indirectly, or will be used to replace funds which were used, in any trade or business carried on by any person other than a state or local governmental unit;
- (ii) no direct or indirect payments of the principal of or interest on the Bonds will be derived from payments (whether or not to the City), in respect of property, or borrowed money, used or to be used for a private business use by any person other than a state or local governmental unit;
- (iii) none of the proceeds of the Bonds are to be used, directly or indirectly, to make or finance loans to persons other than a state or local governmental unit; and
- (iv) no user of any facilities or Improvements financed with the proceeds of the Bonds will use the same on any basis other than the same basis as the general public; and no person other than the City will be a user of said, facilities as a result of (i) ownership; (ii) actual or beneficial use pursuant to a lease or a management or incentive payment contract; or (iii) any other arrangement.

5.05 The City reasonably anticipates that the amount of tax exempt obligations which will be issued by the City and all entities subordinate to, or treated as one issuer with, the City during calendar year 2009 will not exceed \$5,000,000. The Bonds are hereby designated as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code. The City will not designate, or cause any subordinate entity or request any other governmental entity to designate on its behalf more than \$30,000,000 of its obligations as "qualified tax-exempt obligations" in calendar year 2009. The City does not reasonably expect that it or any subordinate entity will issue, and will not request any other governmental entity to issue on its behalf, in calendar year 2009, more than \$30,000,000 of obligations which it or any such entity could designate as "qualified tax-exempt obligations".

5.06 If the City agrees to comply with all provisions of the Code, which if not complied with by the City, would cause the interest on the Bonds not to be tax-exempt in the hands of a holder who is a natural person, including, if

determined to be necessary upon advice of bond counsel, the payment of any rebate amount necessary to preserve such tax exemption pursuant to Section 148 of the Code. The City further agrees: (1) through its officers, to make such further specific covenants, representations as shall be truthful, and assurances as may be necessary or advisable; (2) to consult with bond counsel and to comply with such advice as may be given; (3) to file such forms, statements, and supporting documents as may be required and to do so in a timely manner; and (4) if deemed necessary or advisable by its officers, to employ and pay fiscal agents, financial advisors, attorneys, and other persons to assist the City in such compliance.

5.07 Post Issuance Compliance. The City does hereby authorize and adopt written post issuance compliance policies with regard to the Bonds. A copy of the written compliance shall be on file with the finance office.

SECTION 6. INTERPRETATION, AUTHORIZATION OF OFFICERS AND RESOLUTION CONSTITUTES CONTRACT.

6.01 Authorization of Officers. The Mayor, officers of the City and the City Finance Officer of Custer are authorized and directed to prepare and furnish to the purchasers of said Bonds, and to the attorneys passing on the legality of said Bond issue, copies of all proceedings relating to Bonds and other certificates and affidavits showing the facts affecting the legality thereof as shown by the books and records of the City under their custody and control or as otherwise known to them and such copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the City as to the facts therein recited.

6.02 The officers of the City are hereby authorized and directed to take all other action necessary or appropriate to effectuate the provisions of this Resolution, including without limiting the generality of the foregoing, the printing of the Bonds, and the execution of such certificates as may reasonably be required by the Purchaser, including, without limitation, certification relating to the signing of the Bonds, the tenure and identity of the City's officials, the exemption of interest on the Bonds from federal income taxation, the receipt of the Bond purchase price and, if in accordance with the facts, the absence of litigation affecting the validity thereof.

6.03 Resolution Constitutes Contract. After the Bonds have been issued, this Resolution shall constitute a contract between the City and the holder or holders of the Bonds, and shall be and remain irrevocable and unalterable until the Bonds and the interest accruing thereon shall have been duly paid, satisfied and discharged.

6.04 Rules of Construction. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution. The title or caption of each paragraph are for convenience purposes only and do not define scope or intent of paragraph.

Whereupon said Resolution was declared duly passed and adopted.

S/Harold D. Stickney, Mayor

PRELIMINARY & FINAL PLAT

Rex presented the Preliminary and Final Plat for Custer City with the property described as Homestead Addition Phase II, Plat of Lots 1 – 3 (Inclusive) of Homestead Addition, Phase II of Tract 0095 and the Dedicated Public Right of Way of Lot 33 of Homestead Addition of HES 95, All Located in SW ¼, NW ¼ of Section 24, T3S, R4E, BHM, City of Custer City, Custer County, South Dakota. The survey was completed on this property to protect the water tower property; separate out the portion of property the School District is using; and then having one lot left. The easement guarantees access to all lots. Councilperson Sutton moved to approve the plat. Seconded by Councilperson Murphey, the motion unanimously carried.

RESOLUTION #05-18-09B –

The Council received the Resolution to surplus property to the Custer School District. Councilperson Schleining moved, with a second by Councilperson Reetz, to adopt Resolution #05-18-09B. Councilperson Murphey wondered about the public ROW within the Resolution. It was agreed to change the Resolution. Councilperson Schleining amended her motion, with a concurrence from Councilperson Reetz to amend his second, to adopt the Resolution as amended. The motion unanimously carried.

RESOLUTION NO. 05-18-09B

WHEREAS, the City of Custer City has certain property which is not held for public use or is about to be abandoned for public purposes; and

WHEREAS, SDCL 6-5 provides for the disposition and transfer of government property to other political subdivisions or nonprofit corporations.

NOW THEREFORE BE IT RESOLVED by the common council of the City of Custer City, that it is advisable and in the best interest of the public that the following property is declared to be not held for public use or is about to be abandoned for public purposes and shall be transferred and conveyed gratuitously to Custer School District, a political subdivision, for the purpose of athletic field events as set forth in SDCL 6-5-2; Gratuitous Transfers of Real Property to Other Political Subdivisions or Nonprofit Corporations:

Plat of Lot 3 of Homestead Addition Phase II of Tract 0095 of Homestead Addition of HES 95, All Located in SW ¼ NW ¼ of Section 24, T3S, R4E, BHM, City of Custer, Custer County, South Dakota. NOW THEREFORE BE IT FURTHER RESOLVED that the Mayor is hereby authorized to execute a Deed of Conveyance in accordance herewith, with the specific restriction that this property shall only be utilized for public purposes and accommodations and nonprofit purposes and no other use whatsoever. Dated this 18th day of May, 2009.
s/Harold D. Stickney, Mayor

RESOLUTION #05-18-09C –

The Council received the Resolution to surplus lot 1 of the Coffin Pit Property and to auction it at public sale. Councilperson Murphey questioned the need to sell this property at this time when the land market is somewhat down. Other discussion included appraisal, trading, sealed bids, and set on it and wait. Councilperson Starr moved to adopt Resolution #05-18-09C. Seconded by Councilperson Sutton, the motion was unanimously voted down.

FIRST READING ORDINANCE #665 – WIRELESS TELECOMMUNICATIONS FACILITIES

This Ordinance was brought forward from the General Government Committee with recommended of adoption. Councilperson Sutton questioned how the ordinance was written and that it is not reader friendly. Rex stated that this Ordinance is the model ordinance across the State and that it also mirrors Custer County's Ordinance. Councilperson Reetz moved to table this until the next meeting. The motion died for lack of a second. Councilperson Starr moved to adopt Ordinance #665. Seconded by Councilperson Pischke, the motion carried. Councilperson Sutton voted no.

BROWN BAG LICENSE

The Chamber of Commerce submitted a request for the Grand Opening and Ribbon Cutting for Azukibean on June 4th, 2009. Councilperson Murphey moved to approve this Brown Bag request. Seconded by Councilperson Schleining, the motion unanimously carried

CHRONICLE ARTICLE

Councilperson Murphey discussed the article in Custer Chronicle regarding John Culberson's "bad mouth" remarks about the City. We pay a good wage based upon the Wage Survey we completed. If the County is doing well with personnel, why do they have 9 open positions; I believe they should address their own personnel problems. Their people who left, went elsewhere; they didn't come here. I for one, am tired of the County taking pot shots at the City. The Mayor stated that the Wage Committee made recommendations after they did the survey and brought the wages into line based on the positions. The County needs to look at why they are losing their people and the City is not working in a vacuum. Councilperson Murphey stated that John's remarks were a cheap shot; Hot Springs is also looking at a survey and in fact requested our information. Councilperson Starr wondered if the City would be interviewed. Jason Ferguson, Chronicle, stated this was the City's opportunity. Councilperson Reetz said we should be careful and we need to look at cuts and what others are doing; we need a plan so we can defend what we are doing. Councilperson Starr stated we did not do the survey or the wage adjustment blindly; we were under paying so we adjusted. The issue will be looked at Budget time as we do every year. Christine wondered why the wages are looked at as the first place to cut; you have to take of your employees since they are the ones who provide the service; make the employees a priority; the County seems to have made a \$6 million dollar Courthouse a priority over their employees.

GOLD DISCOVERY DAYS REQUEST

The Gold Discovery Days Committee requested the following: July 24th Harbach Park use for Gold Nugget Hunt and Stick Horse Rodeo; July 24th street closure 7th Street from Main going north 1 block to Crook for the Bed races; July 25th street closures from 2nd Street to 9th on Mt. Rushmore Road for the Parade; the use of the City lot behind Lynn's Dakotamart; July 25th Street closure of Washington Street from 6th to 8th and 7th Street north to alley for the Old Fashion Fair; July 24th, 25th, and 26th Way Park usage for the Arts & Craft Fair; and the parking area west of Way Park for the vendors. Bob stated everything looks good with no problems. Councilperson Sutton moved to approve these requests. Seconded by Councilperson Murphey, the motion unanimously carried.

WEB CAMERA COSTS

Rex stated they haven't come back with the final costs yet; they agreed to a break but we still have questions on a few items. The camera function needs to be fixed but the resolution is fine.

DONATION POLICY

The General Government Committee recommended the Policy Form which stated the criteria for organizations to meet in order to receive financial assistance from the Council. Councilperson Murphey moved to adopt this Policy Form. Seconded by Councilperson Schleining, the motion unanimously carried.

LIQUOR STORE/WATER TREATMENT PLANT PROJECT

The Mayor discussed the Public Hearing held May 12th which had a slim turnout. Dave Coppess wanted to know how it is determined that there is a unanimous vote and the Mayor stated an overwhelming majority. Dave wondered what percentage it would take at a public hearing which the Mayor stated there was less than one percent turnout. Councilperson Murphey stated that the problem with public hearings of any kind is that at one you will have everyone in favor and the next one, you could have everyone that against; hearings do bring issues forward but lately it's all been the

same one. Discussion was held on having the phone survey done, the cost involved, the unbiased company, getting factual information to the public, inside the City limits, outside the limits, and only the City's registered voters can vote in an election. Dave questioned why the City won't hold an election which Councilperson Murphey stated it's all because of the previous reasons. Everyone agreed that this is a big subject and the Council needs to get information out and they need good information back. Councilperson Sutton moved, with a seconded by Councilperson Murphey, to approve hiring the company from Pierre to conduct the phone survey of the City voters with a cost of up to \$1000 and it will question if the City stays in the liquor store business or not. Councilperson Starr stated that he has been hearing that the City should stay in business; just don't build a new building. The motion unanimously carried.

IDENTITY THEFT PREVENTION POLICY

The Council received the Identity Theft Prevention Policy which was created by the Committee of Councilperson Starr, Jim Lyons, Dacotah Bank, and the Finance Officer. The Committee reviewed several other draft policies so it could be tailor made for Custer. Councilperson Starr moved to adopt this Policy as submitted. Seconded by Councilperson Schleining, the motion unanimously carried.

CUSTER COMMUNITY GARDEN AGREEMENT & FEE

Bob presented the Agreement created by the Garden Committee and with Attorney Beesley's review. The Mayor stated that he had been approached by several people to institute a Community Garden so then we did a survey; then the Committee was formed from the people who wanted to help organize; the Committee then looked at various samples from other community gardens. We have 33 who still want a plot and they agreed to an organic garden. Councilperson Murphey stated that he is on the list and no one mentioned the Garden being organic which he is fine with but with some difficulties; the time of planting, only certain varieties, time intensive, and how do you deal with squash bugs. Bob stated there was some discussion on certain areas just for organic but the Committee decided not to and as far as the form, we are bringing this forward tonight for the Council's review and approval. Councilperson Reetz moved, with a second by Councilperson Schleining, to accept the Agreement as written. Councilperson Starr wondered if the number of Committee members was good. Bob stated that the ones who wanted to be on are on. Councilperson Starr wondered why we couldn't just open the plot up this year and see how well the people play. Bob stated the problem is, once you have a plot, you usually go back to the same one. Councilperson Reetz, Schleining, and Starr voted yes. Councilperson Murphey, Pischke, and Sutton voted no. The motion carried with the Mayor voting yes.

CASTLE CLEANING CONTRACT

The Council received the Cleaning Contract for City Hall and the Chamber of Commerce with no changes in the cost. Councilperson Pischke moved to approve this Contract. Seconded by Councilperson Starr, the motion unanimously carried.

FINAL DESIGN – WAZI LANE SEWER & WATER

Bob discussed, since we won't be receiving the Stimulus Money from the Economic Recovery Act, pursuing the final design for the Wazi Lane Water and Sewer project which will also pick up the Golf Course and there are several residents who would like to be annexed in so they can acquire services also. The Council referred this to the Public Works Committee for more information.

EMPLOYEE MERIT INCREASE

Bob requested the following well deserved increases which were budgeted: Bill McClellan to Step 7 \$19.02 per hour effective May 19th, 2009 and Ron Lancaster to Step 1 off probation \$13.67 per hour effective May 1st, 2009. Councilperson Schleining moved to approve these increases. Seconded by Councilperson Murphey, the motion unanimously carried.

PLANNING COMMISSION & COMMITTEE APPOINTMENTS

The Mayor, with Council concurrence, appointed Jared Tennyson to the Planning Commission to fulfill the term of Ann Sandvig.

The Mayor, with Council concurrence, appointed the following for the Community Garden Committee: Shala Cullum, Kim Ball, Jim Rodoni, Karla Kirk, Jan Murray, Shawn Dargie, and Bob as City Representative.

RECYCLING FLYERS

Councilperson Starr requested the expenditure of \$600 to \$700 from the Solid Waste Fund for printing Recycling Flyers to be inserts for the Chronicle. The recycling is up and running and getting used very well; so now we have to let everyone know and include it on the City's website. Councilperson Starr moved to spend up to \$700 to promote recycling. Seconded by Councilperson Reetz, the motion unanimously carried.

DISCUSSION ITEMS

CLAIMS

Councilperson Murphey moved, with a seconded by Councilperson Pischke, to approve the claims. The motion unanimously carried.

Advanced Drug Testing, Professional Fees, \$26

BH Mobile Extinguisher, Safety, \$61.75

BH Phones, Utilities, \$50
BH Power, Utilities, \$11193.52
Chadron Wholesale, Supplies, \$764.81
Sturgis City, Cruisin Ads, \$1900
Coca-cola, Supplies, \$248.50
Custer Chamber Commerce, Sales Tax Subsidy, \$21313.27
Custer Do It Best, Supplies, \$179.07
Custer True Value, Supplies, \$451.33
D&B Communications, Repair & Maint., \$67.50
Dakota Supply Group, Supplies, Repair & Maint., \$182.45
Dakotacare, Insurance, \$6576.30
Drivers License Guide, Supplies, \$28.95
Energy Laboratories, Fees, \$46.50
Fisher Beverage, Supplies, \$5513.17
French Creek Supply, Supplies, \$257.87
Golden West Technologies, Repair & Maint., Supplies, \$2270
Gunderson, Palmer, Goodsell, & Nelson, Professional Fees, \$54
HD Supply, Repair & Maint., Supplies, \$1322.18
Hills Materials, Supplies, \$1456.19
Hillyard, Supplies, \$352.77
Honeywell, Repair & Maint., \$5422.50
Laboratory Corporation, Professional Fees, \$25
Mannatec, Supplies, \$32.13
Okoboji Wines, Supplies, \$117.86
One Call Systems, Supplies, \$33.60
Petty Cash, Supplies, Fees, Travel & Conference, \$544.37
Pitney Bowes, Supplies, \$126.50
Quill Corporation, Supplies, \$66.57
Rapid City Telco, Supplies, \$55.20
Republic National, Supplies, \$3989.54
S&B Motor Parts, Supplies, \$198.39
Sander Sanitation Service, Utilities, Repair & Maint., \$10847.55
SD DENR, Professional Fees, \$600
SD State Executive Mgmt, Utilities, \$30.53
Taylor Drilling, Repair & Maint., \$1504.66
Western Wholesale, Supplies, \$6337.69
Cheryl Hadlock, Professional Fees, \$3690.84
Total Claims \$87,939.06

ADJOURNMENT

With no further business, Mayor Stickney adjourned the meeting at 7:14 p.m.

ATTEST:

CITY OF CUSTER CITY

Christine Redden
Finance Officer

Harold D. Stickney
Mayor