

**CITY OF CUSTER CITY
COUNCIL PROCEEDINGS- REGULAR SESSION
APRIL 18th, 2011**

Mayor Harold D. Stickney called to order the second regular meeting of the Common Council for the month of April, 2011 at 5:30 p.m. Present at roll call were Councilpersons Hattervig, Starr, Lipp, Murphey, Herman, Schleining, and Chris Beesley, City Attorney. The Pledge of Allegiance was stated.

AGENDA

Councilperson Murphey moved, with a second by Councilperson Lipp, to approve the agenda. The motion unanimously carried.

MINUTES

Councilperson Lipp moved, with a second by Councilperson Schleining, to approve the minutes from the April 4th, 2011 meeting with the correction of April 4th being proclaimed Loyalty Day. The motion unanimously carried.

CONFLICTS OF INTEREST

No conflicts were stated.

DEPARTMENT HEAD DISCUSSION

Bob Morrison, Public Works Director, updated the Council on road and well issues, bug trees and the drainage channel project.

Rex Harris, Community Development Director, gave Council an update on the downtown TIF project and discussed some potential projects with the creek areas.

ORDINANCE #687 – FIRST READING – ABANDONMENT OF SERVICES

Councilperson Hattervig moved to approve the first reading of ordinance #687, abandonment of services. Seconded by Councilperson Starr, the motion unanimously carried.

RESOLUTION #4-18-11A – TIF #4 FINANCING

Councilperson Herman moved to adopt resolution #4-18-11A, TIF #4 Financing, with a second by Councilperson Lipp. The motion unanimously carried with Councilperson Hattervig, Starr, Lipp, Murphey, Herman and Schleining voting yes.

RESOLUTION NO. 04-18-11A

RESOLUTION AUTHORIZING THE ISSUANCE OF TAX INCREMENTAL REVENUE BONDS (TAX INCREMENT DISTRICT #4), SERIES 2011 IN THE AMOUNT OF NOT TO EXCEED \$1,300,000 TO FINANCE THE REFUNDING OF TAX INCREMENT BONDS (TAX INCREMENT DISTRICT #4), SERIES 2009 AND FINANCE NEW PROJECT COSTS

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 pursuant to Sections 11-9-33, 6-8B-30 through 6-8B-52 of the South Dakota Codified Laws to issue its Tax Incremental Revenue Bonds, Series 2011 (the "Bonds") the proceeds of which will be used to (1) refund the Tax Incremental Revenue Bonds (Tax Increment District #4), Series 2009 (the "Refunded Bonds"), (2) finance project costs pursuant and (3) pay costs associated with the issuance of the Bonds,

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

- (a) It is necessary to construct additional public works and improvements 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 Number Four, the plan on file with the City Finance Officer and open to public inspection (the "Project");
- (c) It is in the best interests of the City to authorize the refunding of the Refunded Bonds and 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 \$1,300,000.
- (d) The Bonds are issued and sold in full compliance with South Dakota Codified Laws Sections 6-8B-30 to 6-8B-52 inclusive and are incontestable for any cause whatsoever after their delivery for value.

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 refund the Refunded Bonds and 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.

1.04 Authorization to refund the Refunded Bonds. The Finance Officer is directed to take such action as is necessary in accordance with SDCL Chapter 6-8B to redeem prior to maturity the Refunded Bonds. The City shall pay the principal and all accrued interest to and including the date of refunding.

1.05 SALE AND BOND PURCHASE AGREEMENT

1.06 Sale. The Bonds authorized by this Resolution shall be issued, in one of more series, in an aggregate principal amount not exceeding \$1,300,000 and shall be privately placed due to the unique nature of the Bonds. The Bonds will bear interest at the 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 a local or regional financial institution, underwriter or private individual or individuals (the "Purchaser").

1.07 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 2. TERMS OF BONDS.

2.01 Date and Amount. The Bonds shall be dated in calendar year 2011. The principal amount of the Bonds shall not exceed the lesser of \$1,300,000 or any statutory or constitutional debt limitation.

2.02 Maturities. The term of the Bonds shall not exceed 20 years from the date the District was created.

3.03. Interest Rates. The initial interest rate will be 5% at the time of closing. Interest will be paid on June 15 and December 15. The first interest payment will December 15, 2011.

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

2.04 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

2.05 Redemption. The Bonds are subject to redemption prior to maturity, in whole or in part. There will be no penalty for early redemption.

2.06 Mandatory Turbo Redemption. On each payment date the City shall apply all Tax Incremental Revenues for the Bonds to interest and the remaining amount shall be applied to the principal. This payment will be paid equally among all purchasers of the bond.

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

2.08 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 3. SECURITY PROVISIONS; FUNDS AND ACCOUNTS AND OTHER COVENANTS AND DETERMINATIONS.

3.01 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 herebefore 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.

3.02 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) 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.
- (d) Nothing herein shall prevent the City from issuing Bonds payable from the Tax Increment or Tax Incremental Revenue Bond fund. The City may incur expenses in connection with the Tax Incremental District Number Four which shall be reimbursed through the tax increment. .

3.03 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 bonds 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.

3.04 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 are 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.

3.05 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 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.

3.06 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 4. TAX MATTERS; CERTIFICATION OF PROCEEDINGS AND MISCELLANEOUS.

4.01 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.

4.02 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 5. INTERPRETATION, AUTHORIZATION OF OFFICERS AND RESOLUTION CONSTITUTES CONTRACT.

5.01 Interpretation. 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.

5.02 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.

5.03 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, certificates 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.

5.04 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.

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.

ATTEST

S/Mayor Harold D. Stickney

ECONOMIC DEVELOPMENT CORP STARTER MONEY

Councilperson Murphey moved to approve \$5,000 for starter money for the Custer Economic Development Corporation. Seconded by Councilperson Schleining, the motion unanimously carried.

MUSEUM BROWN BAG REQUEST

Councilperson Murphey moved to approve the brown bag request for the 1881 Courthouse Museum for May 6th, 2011 from 5:00 pm to 8:00 pm. Seconded by Councilperson Starr, the motion unanimously carried.

THREE HOUR PARKING

Council discussed the survey results from the business members in regards to the enforcement of the 3 hour parking, which was 50% for enforcement and 50% not for enforcement. Councilperson Herman moved to have the three hour parking signs be removed and the resolution regarding the three hour parking removed but leave the fine in the bond schedule. Seconded by Councilperson Starr, the motion unanimously carried.

BILLBOARDS

Councilperson Starr moved to authorize the Mayor to write letters to the billboard companies in regard to a responsible compensation for removal of the billboards. Seconded by Councilperson Schleining, the motion unanimously carried.

AMBULANCE SERVICE – STREET CLOSURE REQUEST

Councilperson Hattervig moved to approve the street closure request for Washington Street from 6th Street to 8th Street on May 14, 2011 from 10 am to 5 pm for the Custer Ambulance Service to host a day in the park for the community for EMS week. Seconded by Councilperson Herman, the motion unanimously carried.

MONTHLY SHERIFF'S REPORT

Council acknowledged receipt of the Sheriff's monthly reports for March.

ELECTION WORKERS PAY

Councilperson Murphey moved to pay the election works for the June election \$10 per hour. Seconded by Councilperson Schleining, the motion unanimously carried.

APPOINTMENT TO ELEMENTARY SCHOOL STEERING COMMITTEE

Mayor Stickney appointed Councilperson Lipp and Herman along with Public Works Director Bob Morrison and Community Development Director Rex Harris to the Elementary School Building Steering Committee.

EMPLOYEE STEP INCREASE

Councilperson Herman moved to approve the wage increases for Lynnette Merritt to Step 10 at \$16.56 effective 4/1/11. Seconded by Councilperson Lipp, the motion unanimously carried

CLAIMS

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

ALSCO, Repair & Maintenance, \$228.98
BH Power & Light, Utilities, \$10703.05
BH Power Equipment, Safety Equipment, \$912.89
Complete Concrete, Capital Improvements, \$35370.94
Culligan, Repairs & Maintenance, \$17.50
Custer Community Health Services, Sales Tax Subsidy, \$26904.84
Chamber of Commerce, Sales Tax Subsidy, \$6137.01
Custer Economic Development, Subsidy, \$5000.00
Custer County Treasurers, Law Enforcement Contract, \$79829.25
Custer Gas Company, Supplies, \$28.30
Custer True Value, Supplies, Repairs & Maintenance, \$525.74
Dakota Supply Group, Supplies, \$43.24
Element, Supplies, \$62.03
Fastenal, Supplies, \$57.97
First Interstate Bank, Supplies, \$86.05
French Creek Supply, Supplies, \$248.05
Golden West Technologies, Professional Fees, \$160.00

HD Supply, Supplies, \$101.82
Hadlock, Cheryl, Professional Fees, \$3915.60
Hawkins, Supplies, \$15.00
Hewitt, Jeri, Safety Equipment, \$100.00
Howe Excavating, Capital Improvements, \$28290.16
Jenner Equipment Company, Repairs & Maintenance, \$45.84
Ketel Thorstenson, Audit, \$11348.95
Lynn's Dakotamart, Supplies, \$24.45
Nelson's Oil & Gas, Supplies, \$790.88
Power House, Repairs & Maintenance, \$42.03
Quill, Supplies, \$53.10
Rapid Delivery, Professional Fees, \$42.57
SRF Loan Payment, \$4639.68
SD One Call, Supplies, \$25.20
S&B Motors, Supplies, \$112.76
Sanitation Products, Repairs & Maintenance, \$35.64
Sander Sanitation, Garbage Collection Contract, \$12032.72
SD Municipal League, Conference, \$240.00
SD State Executive Management, Utilities, \$44.45
Taylor Drilling, Repairs & Maintenance, \$6174.77
Unemployment Insurance, \$2571.06
USDA Loan Payment, \$8910.00
Viewfield Rural Water Assoc., Repairs & Maintenance, \$4830.00
Linahan, Dolores, Utility Deposit Refund, \$46.45
Brickey, Cathy, Utility Deposit Refund, \$10.00
Total Claims \$250,758.97

COMMITTEE REPORTS

Various committee updates were given.

ADJOURNMENT

With no further business, Mayor Stickney adjourned the meeting at 6:56 p.m.

ATTEST:

CITY OF CUSTER CITY

Laurie Woodward
Finance Officer

Harold D. Stickney
Mayor