

June 1st, 2017

Mayor Frank Finney called a special meeting of the Winner City Council to order at 8:00 AM, June 1st, 2017, at the Council Chambers at 325 S. Monroe St. Councilmen attending were Curtis, Meyer, Sherman, Baker, and Schramm; Brozik was absent. Also attending was Finance Officer Rhonda Augspurger.

The meeting was opened with the Pledge of Allegiance.

Motion by Baker, second by Sherman to approve agenda; motion carried.

Motion by Curtis, second by Meyer to approve the following resolution:

RESOLUTION

RESOLUTION, GIVING APPROVAL TO THE ISSUANCE OF SALES TAX REVENUE BONDS TO FINANCE A PORTION OF THE COSTS OF THE EAST EIGHTH STREET REHABILITATION PROJECT AND AUTHORIZING THE SALE OF SAID SALES TAX REVENUE BONDS

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Winner as follows:

Declaration of Necessity. The City of Winner (the "City") desires and deems it necessary to make a capital improvement to and finance the Funds will be used to rehabilitate about three blocks of East Eighth Street within the residential area and adjacent to the Winner Regional Hospital (the "Project"). The City has requested a loan from the United States through the United States Department of Agriculture (the "Government").

Authority. The City is authorized to issue its Sales Tax Revenue Bonds, Series 2017, to finance the capital improvements pursuant to Section 10-52-2.10 of the South Dakota Codified Laws. Pursuant to Chapter 10-52 of the South Dakota Codified Laws (the "Act") the City proposes to issue municipal non-ad valorem revenue bonds (as herein authorized, the Sales Tax Revenue Bonds, Series 2017, or the "Bonds") to finance the Project. The City is authorized by the Sales Tax Act to levy a "non-ad valorem tax" (as defined by the Act) on the sale, use, storage, and consumption of items taxed under Chapters 10-45 and 10-46 of the South Dakota Laws, subject to certain, as amended, exceptions.

Term of Bonds. The City shall issue the Bonds in the principal amount of \$350,000. The Bond shall be signed by the Mayor, attested by the Finance Officer, countersigned by a resident attorney, and shall bear interest from its date, which shall be the date of delivery at a rate not to exceed 3.375% percent per annum; the principal and interest shall be paid over a period of thirty (30) years in accordance with the payment schedule set forth in the promissory note, until the principal and interest are fully paid except the final payment of the entire indebtedness, if not sooner paid, shall be due and payable thirty (30) years from the date of the Bond. Each payment shall be applied first to the payment of the accrued interest and second to the payment of the principal. Prepayments of any installment may be made in any amount at any time at the option of the City.

Sales Tax Ordinance. The City Council has adopted Ordinance #505 which constitutes the City's effective Sales Tax Ordinance (the "Sales Tax Ordinance"). The Sales Tax Ordinance has been duly adopted pursuant to the Act and effectively and validly imposes the sales and use tax authorized by the Act within the City, such tax being hereinafter referred to as the "Sales Tax".

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

The Project constitutes improvements which qualify for the financing under and pursuant to SDCL Chapter 10-52, and the Sales Tax Ordinance; and

The sales tax revenue bonds authorized hereby are being issued to pay costs of the 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. 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 its Sales Tax Revenue Bonds, Series 2017.

No Election Required. The Bonds may be issued by the City without an election pursuant to SDCL §10-52-2.10.

Form of Bonds. The Bonds shall be prepared in substantially the form on file with the Finance Officer and open to public inspection, in final form as approved by the Government.

Security Provisions; Funds and Accounts and Other Covenants and Determinations.

Assignment and Pledge of Revenue. The Bonds hereby authorized to be incurred, together with the interest thereon, shall be payable solely from the collections of Sales Tax, a sufficient portion of which will be sufficient to pay the principal and interest as and when the same shall become due, is hereby assigned, and pledged and shall be set aside for that purpose.

Protection and Disposition of Funds. The City shall be the custodian of all funds of the City. 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. The Finance Officer is hereby directed to establish the following accounts into which the current funds of the City, Bond proceeds, the revenues from the Sales Tax and any other income shall be deposited, which accounts shall be continually maintained, except as otherwise provided, so long as the indebtedness hereby authorized remains unpaid:

Construction Account. The proceeds of the Bonds hereby authorized not disbursed contemporaneously with loan closing for incurred costs, and amounts contributed by the city for the Project, shall be deposited in the Construction Account which shall be established as required by the Government.

Withdrawals from the Construction Account shall be made by the City as authorized by the governing body from time to time, and with prior concurrence of the Government. The City's share of any insurance or liquidated damages and other monies paid by defaulting contractors or their sureties will be deposited in the Construction Account to assure completion of the Project. When all construction costs have been paid in full, any balance remaining in the Construction Account may be applied on to the Bond or used for other authorized purposes that have been approved by the Government and the Construction Account shall be closed.

Sales Tax Fund. All Sales Tax receipts received shall be set aside in the fund required by South Dakota Legislative Audit (the "General Account"), and disbursements and transfers from this account shall be in the following priority: Debt Service, Operations and Maintenance, transfers to Reserve Account. Any income from these accounts will be considered as revenues of the Debt Service Account. Monies deposited in the General Account shall be used only in the manner and order as follows:

(1) The City making monthly Debt Service Payments shall use the General Account for making such payments plus operating and maintenance expenses. Also, funds will be transferred from this account to the Reserve Account in accordance with (d) below.

(2) The City making other than monthly Debt Service Payments shall use the General Account to pay operating and maintenance expenses. Other transfers from this account will be made in the following order:

(i) Transfers to the Debt Service Account will be made in accordance with (c) below,

(ii) Transfers to the Reserve Account will be made in accordance with (d) below.

(c) Debt Service Account. For City's on other than monthly debt service payments, transfers, in proportion to income availability, shall be made from the General Account and set aside in an account designated as the Debt Service Account, in sufficient amounts which will accumulate for the next installment on the Bond.

(d) Reserve Account From the remaining funds in the General Account, after transfers and payments required in (b)(1) or (b)(2) and (c), there shall be set aside into an account designated as the Reserve Account the sum of \$155.10 each month until the sum of \$18,612 is reached. With the prior written approval of the Government, funds may be withdrawn and used for such things as bond principal and/or interest payments, emergency maintenance, extensions to facilities and replacement of short-lived assets, subject to conditions established by the Government. The Reserve Account shall be a subaccount with in the Debt Service Account.

(e) Whenever there shall accumulate in the General Account amounts in excess of those required in subsections (b)(1) and (2), (c), and (d), such excess will be used by the organization to make prepayments on the loan or retained in the General Account.

(f) The accounts required in subsections (b)(1) and (2), (c), and (d) may be established and maintained as bookkeeping accounts or as separate bank accounts at the election of the City, unless otherwise directed by the Government.

Other Covenants and Agreements of the City. The City covenants and agrees that so long as the indebtedness hereby authorized remains unpaid;

- (a) It will indemnify the Government for any payments made or losses suffered by the Government.
 - (b) It will comply with applicable State laws and regulations and continually operate and maintain the Project in good condition.
 - (c) It will impose and collect such rates and charges that gross revenues will be sufficient at all times to provide for payment of the operation and maintenance thereof; the installment payments on the note; and the maintenance of the various funds herein created. All service rendered by or use of the Project shall be subject to the full rates prescribed in the rules and regulations of the City; no free service by or use of the Project will be permitted.
 - (d) It will cause to be levied and collected such assessments as may be necessary to operate and maintain the Project in good condition and meet installment payments on the note when the same become due if, for any reason, gross revenues are insufficient.
 - (e) It will establish and maintain such books and records relating to the its financial affairs, and will provide for the annual audit thereof, in such manner as may be required by the Government; will provide the Government without its request a copy of each such audit; and will make and forward to the Government such additional information and reports as it may from time to time require.
 - (f) It will provide the Government, at all reasonable times, access to all books and records relating to the Project and access to the property of the Project so that the Government may ascertain that the City is complying with the provisions hereof and with the provisions of other instruments incident to the making or insuring of the loan.
 - (g) It will maintain at least such insurance and fidelity bond coverage as may be required by the Government.
 - (h) It will not borrow any money from any source or enter into any contract or agreement or incur any other liabilities in connection with making extensions or improvements to the Project, exclusive of normal maintenance, without obtaining the prior written consent of the Government.
9. Electronic Preauthorized Debit System. All payments of principal of and interest on the Bonds shall be made through the electronic preauthorized debit system which will allow payments to be electronically debited from the City's account on the day the payment is due.
10. Refinancing. If at any time it shall appear to the Government that the City is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources at reasonable rates and terms for loans for similar purposes and periods of time, the City will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take such actions as may be required in connection with such loan.
11. Prepayments. Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the City. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Bonds, shall, after payment of interest, be applied to the installments last to become due under the Bond and shall not affect the obligation of Issuer to pay the remaining installments as scheduled.
12. Additional Bonds. No additional bonds may be issued on a parity or subordinate basis to the Bonds without written approval of the Government.
13. 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.
14. Resolution Becomes Effective Upon Passage. This Resolution shall become effective upon passage.

ATTEST:

Finance Officer Rhonda Augspurger

Mayor Frank Finney

The motion for adoption of the foregoing resolution was made by Curtis duly seconded by Council person Meyer, and upon vote being taken thereof, the following voted YEA: Baker, Meyer, Curtis, Sherman, Schramm. Brozik was absent and the following voted NAY: none Whereupon said resolution was declared duly passed and adopted.
ATTEST:

Finance Officer Rhonda Augspurger

Mayor Frank Finney

Motion by Sherman, second by Meyer to approve the following resolution:

RESOLUTION APPROVING LEGAL SERVICES AGREEMENT

BE IT RESOLVED by the City of Winner that Meierhenry Sargent LLP be retained as bond counsel for the proposed Sales Tax Revenue Bond and that the Mayor and Finance Officer are authorized to negotiate and execute the form of the Legal Services Agreement on file with the City Finance Officer.

Motion by Sherman seconded by Meyer.

Aye: Baker, Meyer, Curtis, Sherman, Schramm and Brozik was absent

Nay: none

Abstained: none

Attest:

Finance Officer Rhonda Augspurger

Mayor Frank Finney

FmHA Instruction 1942-A (Bond Counsel Agreement)
(Guide 14)

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration

LEGAL SERVICES AGREEMENT

This agreement made this 1st day of June 2017 between **WINNER, SOUTH DAKOTA** hereinafter referred to as (the "Municipality"), and **TODD MEIERHENRY**, attorney at law, of Meierhenry Sargent LLP of 315 S. Phillips Ave., Sioux Falls, South Dakota, hereinafter referred to as "Attorney":

WHEREAS, the Municipality is intending to obtain a loan from the United States of America; WHEREAS, the Municipality is intending to issue Sales Tax Revenue Bonds under the provisions of SDCL Chapter 10-52 for the loan with the United States of America under such terms and conditions as are dictated by the Rural Utility Services.

WHEREAS, the Attorney agrees to perform all legal services necessary to give a bond opinion to the United States of America and to perform all other customary legal services necessary to the financing.

WITNESSETH:

That for and in consideration of the mutual covenants and promises between the parties hereto, it is hereby agreed:

SECTION A - LEGAL SERVICES

That the Attorney will perform such services as are necessary to accomplish the above recited objectives including, but not limited to, the following:

examine applicable law; prepare the resolution, indenture or ordinance authorizing and securing the Bonds and other authorizing documents;

consult with the parties to the transaction prior to the issuance of the Bonds; review certified proceedings; undertake such additional duties as are deemed necessary to render the opinion.

render an opinion that:

the Issuer is duly created and validly existing as a body corporate and public instrumentality of the State of South Dakota with authority to adopt the Resolution, perform the agreements on its part contained therein and issue the Bonds;

the Bonds are valid and binding special obligations of the Issuer;

the Bonds have been duly authorized, executed and delivered by the Issuer and are valid and binding special obligations of the Issuer, payable solely from the sources provided therefore in the Resolution;

SECTION B - COMPENSATION

The Municipality will pay to the Attorney for professional services rendered in accordance herewith, fees as follows:

One Percent of the Bond Amount

Said fees to be payable in the following manner and at the following times:

Upon receiving a completed transcript for the loan. If the loan does not close for any reason, there shall be no fee from Attorney.

SECTION C - OTHER PROVISIONS

None.

Motion by Curtis, second by Sherman to adjourn meeting at 8:15 AM; motion carried.

Meeting adjourned.

X _____
Mayor Frank Finney

ATTEST:

Rhonda Augspurger, Finance Officer

For any public notice that is published one time:

Published once at the approximate cost of _____.