

RESOLUTION NO. 348

RESOLUTION, GIVING APPROVAL TO THE ISSUANCE OF A SALES TAX REVENUE BOND TO FINANCE STREET IMPROVEMENTS AND AUTHORIZING THE SALE OF SAID SALES TAX REVENUE BOND

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

1. Declaration of Necessity. The City of Avon (the "City") desires and deems it necessary to make capital improvements and to issue a Bond, the proceeds of which will be used for reconstruction of approximately 1,100 feet of main street (the "Project"). The City has requested a loan from the United States through the Rural Housing Service (the "Government").
2. Authority. The City is authorized to issue its Sales Tax Revenue Bond, Series 2021, 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 Bond (as herein authorized, the Sales Tax Revenue Bond, Series 2021, or the "Bond") 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.
3. Term of Bond. The City shall issue the Bond in the principal amount of \$274,000. 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 2.750% percent per annum; the principal and interest shall be paid over a period of twenty (20) years in accordance with the terms of the Government.
4. Sales Tax Ordinance. The City Council has adopted Ordinance #287 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".
5. Findings. The City Council hereby finds and determines as follows:
 - 5.1. The Project constitutes improvements which qualify for the financing under and pursuant to SDCL Chapter 10-52, and the Sales Tax Ordinance; and
 - 5.2. The sales tax revenue bond authorized hereby is 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.
 - 5.3. 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 Bond, Series 2021.

6. No Election Required. The Bond may be issued by the City without an election pursuant to SDCL §10-52-2.10.
7. Form of Bond. The Bond 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.
8. Security Provisions; Funds and Accounts and Other Covenants and Determinations.
 - 8.1. Assignment and Pledge of Revenue. The Bond is 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.
 - 8.2. 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 the 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:
 - 8.2.1. Construction Account. The proceeds of the Bond 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.
 - 8.2.2. 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:

(a) 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.

(b) 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:

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

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

(c) Debt Service Account. For the City's Debt Service Payments, transfers shall be made from the General Account and set aside in the account designated as the Debt Service Account, in amounts sufficient to pay principal and interest of 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 \$149 each month until the sum of \$17,856 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 within 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.

8.2.3. 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 establish and maintain such books and records relating to 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.

(d) 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.

(e) It will maintain at least such insurance and fidelity bond coverage as may be required by the Government.

9. Electronic Preauthorized Debit System. All payments of principal of and interest on the Bond 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 borrower. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Agency debt, shall, after payment of interest, be applied to the principal. Partial prepayment shall not affect the obligation of the borrower to pay the remaining installments as scheduled.
12. Additional Bond. No additional Bond may be issued on a parity or subordinate basis to the Bond 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 Bond certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bond and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and marketability of the Bond 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. Bond Anticipation Note. The City Council does hereby authorize the issuance and sale of a bond anticipation note in the manner and subject to the limitations set forth in SDCL §§ 6-8B-26 to 6-8B-29, inclusive. The Mayor and Finance Officer are authorized to take such action as is necessary to issue the bond anticipation note.
15. Resolution Becomes Effective Upon Passage. This Resolution shall become effective upon passage.

ATTEST:


Finance Officer


Mayor

Adopted: 10-13-2021
Approved: 10-13-2021
Published: 10-19-2021

The motion for adoption of the foregoing resolution was duly seconded by Councilor Petrik, and upon vote being taken thereof, the following voted YEA:

and the following voted NAY: Ø

Whereupon said resolution was declared duly passed and adopted.

Berndt
Dodge
Petrik
Tjeerdsma

ATTEST:

Mayor

Finance Officer

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF BON HOMME)

I, the undersigned, being the duly qualified and acting Finance Officer of the City of Avon, South Dakota, do hereby certify that the attached and foregoing is a full, true and complete transcript of the Minutes of a meeting of the City Council held on the 13th day of October, 2021, insofar as the original meeting relates to proceedings for the Resolution Authorizing the Sale of said Sales Tax Bond.

WITNESS my hand and official seal of this said City this 13th day of October, 2021

Finance Officer

City of Avon, South Dakota

EXHIBIT A

Description of Project

Reconstruction of approximately 1,100 feet of main street, the proposed improvements will include reshaping and installing the base, curb and gutter, sidewalk, handicap accessibility, light poles and cement surfacing.