

UNAPPROVED MINUTES OF THE REGUAR MEETING OF THE ELK POINT CITY COUNCIL

The Elk Point City Council met in regular session on Monday, January 6, 2014 at 7:00pm in the council chamber of City Hall located at 106 W. Pleasant Street with Mayor Trobaugh presiding and these members present: Verros, Honomichl, Zevenbergen, Boom, McCreary and Fanta. No one was absent. Also present were: City Attorney Thompson, City Engineer McLaury, City Administrator Nelsen, Police Chief Fleek, Public Works Director Boom and Finance Officer Hammitt.

Motion made by McCreary, seconded by Verros to approve the agenda. All in favor.

Honomichl moved and McCreary seconded a motion to approve the minutes from the December 2nd and 17th, 2013 council meetings. Unanimous.

Motion and second, McCreary/Honomichl to approve the following salaries and bills and to instruct the Finance Officer for payment of the same. All in favor. Salaries: General Fund: \$38,508.06; Enterprise Fund: \$23,349.84; Fringe Benefits: General Fund: \$10,029.84; Enterprise Fund: \$5,947.47; Bills: 1st Financial Bank USA-lease payable: \$25,526.50; Appletree Institute-insurance: \$12,180.26; Barnes Distribution-supplies: \$106.70; Bomgaars-uniforms: \$168.45; Cardmember Services-supplies: \$933.94; City of Vermillion-tipping fees: \$3,579.60; DENR-dues: \$60.00; Department of Revenue-water testing: \$26.00; D-P Tools, Inc.-supplies: \$238.51; East River Electric Coop.-travel and conference: \$350.00; Gary's Tree Service-snow removal: \$135.00; Graham Tire Company-tires: \$416.50; Hanson, Mark-utilities: \$20.00; Hawkins, Inc.-supplies: \$791.97; Jensen Insurance Agency-insurance: \$13,675.00; Joint Utility Training School-training: \$400.00; Jones' Food Center-supplies: \$223.72; Leader-Courier-publishing: \$715.91; McLaury Engineering, Inc.-professional fees: \$300.00; Menards-repairs: \$367.00; Mid-American Research Chemical-snow removal: \$595.42; Nygren's True Value-repairs: \$101.78; Ollie's Drive Inn-DARE graduation: \$150.00; O'Reilly Auto Parts-repairs: \$85.83; Perkins Office Solutions-supplies: \$12.95; Pioneer Drug-supplies: \$3.99; SD Association of Code Enforcement-dues: \$40.00; SD Building Officials Association-dues: \$50.00; SD City Managers Association-dues: \$150.00; SD DENR-wastewater dues: \$1,500.00; SD Government Finance Officers Association-dues: \$40.00; SD Human Resource Association-dues: \$25.00; SD Municipal Electric Association-dues: \$1,220.00; SD Municipal Street Maintenance Association-dues: \$35.00; SD Police Chief's Association-dues: \$97.75; SDML Workers Compensation Fund-insurance: \$18,064.00; SEAFOG-dues: \$50.00; SECOG-dues: \$2,946.19; Sioux City Journal-library subscription: \$121.70; Siouxland Humane Society-holding fees: \$111.00; South Dakota Municipal League-dues: \$1,286.65; Southeast Farmer Elevator Coop.-auto expense: \$548.60; Standard Battery, Inc.-repairs: \$76.95; Staples Credit Plan-office expense: \$263.98; Tri-State Overhead Sales, Inc.-repairs: \$132.50; Union County Highway Department-supplies: \$38.46; US Bank Equipment Finance-copier lease: \$162.47; VanRoekel, Troy-utilities: \$20.00; Verizon Wireless-utilities: \$227.57; Welch, Jason-utilities: \$20.00; WOW-utilities: \$9.00

Motion made by Honomichl, seconded by Zevenbergen to adjourn as the City Council and convene as the Board of Adjustment. All in favor.

A public hearing was held at 7:00pm on an application for a 2.03 foot side yard variance request at 510 S. Pinckney Street from Travis Geary. Public hearing was closed. Motion and second, Verros/Fanta to approve the variance as requested. Unanimous.

Zevenbergen moved and Honomichl seconded a motion to adjourn as the Board of Adjustment and reconvene as the City Council. All in favor.

No action was taken on the utility bill appeal for account #03-00001539-00-5.

Stacey Taylor attended the meeting to discuss a stop sign issue at the intersection of Green Street and Washington Street. Mr. Taylor believes the vast majority of traffic travels on Green Street and the stop sign placement is not a natural look into a dead end street. He believes the stop signs should be removed all together. Public Works Director Buum explained the stop sign was installed at the recommendation of a South Dakota Department of Transportation official who did a sign assessment for the city in 1996 and he also referred to the Manual on Uniform Traffic Control Devices, Section 2.06B, Restricted Views. Buum and Police Chief Fleek believe the stop sign is in the correct location. City Engineer McLaury believes a yield sign should be used on Washington Street rather than a stop sign and that there other places in town the city should review. Council agreed to have a traffic study done on the entire city as soon as possible.

Tom Grimmond, Senior Vice President for Dougherty & Company, LLC attended the meeting to discuss refunding the certificates of participation in a lease-purchase agreement between the First National Bank in Sioux Falls and the City of Elk Point. Discussion was held.

Verros moved and Buum seconded a motion to approve the following Resolution as presented. Unanimous.

RESOLUTION #2014-1

RESOLUTION RELATING TO THE ISSUANCE OF
REFUNDING CERTIFICATES OF PARTICIPATION;
AUTHORIZING THE EXECUTION AND DELIVERY OF A
SECOND AMENDMENT TO LEASE-PURCHASE
AGREEMENT AND APPROVING AND AUTHORIZING
EXECUTION OF RELATED DOCUMENTS

BE IT RESOLVED by the City Council of the City of Elk Point, South Dakota (the City), as follows:

Section 1. Recitals.

1.01. The City is authorized by South Dakota Codified Laws, Chapters 9-40 and 9-41, as amended (together, the Act) to acquire real and personal property by lease or purchase that the governing body finds necessary or appropriate to carry out its governmental and proprietary functions.

1.02. The City has previously entered into a Ground Lease and Easement Agreement with The First National Bank of Sioux Falls, South Dakota (the Trustee), dated as of April 1, 2002 (the Ground Lease), whereby the Trustee acquired certain interests in real property (the Land) from the City and the Trustee has leased its interest in the Land and has leased and agreed to sell the Facilities (as defined therein) acquired, renovated, constructed and equipped thereon to the City pursuant to a Lease-Purchase Agreement, dated as of April 1, 2002 (the Original Lease), as amended by a First Amendment to Lease-Purchase Agreement, dated as of December 15, 2006 (the First Amendment to Lease).

1.03. The Trustee has executed and delivered a Declaration of Trust, dated as of April 1, 2002 (the Original Trust Agreement), as supplemented by a First Supplemental Declaration of Trust, dated as of December 15, 2006 (the First Supplement to Trust Agreement), joined in by the City.

1.04. The Trustee has executed and delivered (a) Certificates of Participation in the lease payments to be made by the City under the Original Lease (the Series 2002 Certificates) for the purpose of financing improvements (the Improvements) to the City's electrical utility system (the Utility) and (b) Refunding Certificates of Participation in the lease payments to be made by the City under the First Amendment to Lease (the Series 2006 Certificates) to refinance the lease payments payable under the Original Lease. The Series 2002 Certificates are no longer outstanding.

1.05. The City has determined it to be advantageous to refinance the lease payments under the First Amendment to Lease by refunding in a current refunding the Series 2006 Certificates maturing on and after January 1, 2016, currently outstanding in the aggregate principal amount of \$730,000 (the Refunded Certificates). The refunding of the Refunded Certificates is referred to herein as the "Refunding."

1.06. The City will accomplish the Refunding by entering into a Second Amendment to Lease-Purchase Agreement (the Second Amendment to Lease, together with the Original Lease and the First Amendment to Lease, the Lease) and a Second Supplemental Declaration of Trust (the Second Supplemental Trust Agreement, together with the Original Trust Agreement and the First Supplemental Trust Agreement, the Trust Agreement) with the Trustee, pursuant to which the Trustee will issue Refunding Certificates of Participation, Series 2014 (the Series 2014 Certificates) in the Lease and the payments to be made by the City thereunder. The Series 2014 Certificates shall be issued in the principal amount not to exceed the sum of (i) the amount necessary to refund the Refunded Certificates, (ii) an amount necessary to pay the costs of issuance of the Series 2014 Certificates, including underwriter's discount and (iii) original issue discount (not to exceed 2% of the principal amount of the Series 2014 Certificates) on the Series 2014 Certificates.

1.07. The City has determined that the issuance of Series 2014 Certificates complies with the terms and conditions for the issuance of additional Utility Revenue Obligations set forth in Article XI of the Original Lease.

Section 2. Approvals.

2.01. Authorization and Approval of the Documents. The financing described above is found to be favorable and is hereby approved. The Mayor and Finance Officer are authorized to approve the execution and delivery of the Second Amendment to Lease, the Second Supplemental Trust Agreement and the Series 2014 Certificates, in a principal amount not to exceed the amount determined under Section 1.06, including costs of issuance (including underwriter's discount not exceeding 2.00% of par), and plus any original issue discount (not exceeding 2.00% of par), the Series 2014 Certificates to bear interest at a rate or rates per annum resulting in an average interest rate not greater than 4.00% per annum and to mature over a period of not to exceed 9 years. The Mayor and Finance Officer are directed to enter into a purchase agreement (the Certificate Purchase Agreement) with Dougherty & Company LLC, the Underwriter, whereby the Underwriter will agree to purchase the Series 2014 Certificates; the execution of the Certificate Purchase Agreement by the Mayor and Finance Officer shall be conclusive evidence of their approval of the principal amount, purchase price, interest rates and other terms set forth therein. The Mayor, Finance Officer and City Attorney are authorized to approve the final forms of the Second Amendment to Lease, the Second Supplemental Trust Agreement, the Certificate Purchase Agreement and the Official Statement by which the Underwriter will offer the Series 2014 Certificates for sale to the public (collectively, the Documents). Copies of all Documents shall be delivered, filed and recorded as provided therein. The Mayor, Finance Officer and City Attorney are also authorized and directed to execute such other instruments as may be required to give effect to the transactions herein contemplated. The City will cooperate in the issuance of the Series 2014 Certificates and the Mayor, Finance Officer and the City Attorney shall execute such other instruments as are necessary to the issuance of the Series 2014 Certificates. In the event of the absence or disability of the Mayor, Finance Officer or City Attorney, the acting Mayor, the Assistant Finance Officer or the Assistant City Attorney are hereby authorized to act in the place and stead of the Mayor, Finance Officer and City Attorney, and to take all actions and execute all documents approved hereby.

2.02. Appointment of Bond Counsel. The law firm of Dorsey & Whitney LLP, Minneapolis, Minnesota, is hereby appointed as bond counsel and disclosure counsel with respect to the issuance of the Series 2014 Certificates.

2.03. Additional Utility Revenue Obligations. The City acknowledges that the Lease will contain provisions limiting the City's ability to issue or incur additional Utility Revenue Obligations while the Lease is in force and the Series 2014 Certificates and any additional certificates prepared and delivered by the Trustee pursuant to the Trust Agreement (the Certificates) are Outstanding. The City will not approve or participate in the issuance of any additional Utility Revenue Obligations unless the conditions set forth in the Lease for issuance of additional Utility Revenue Obligations have been satisfied.

2.04. Sufficiency of Net Revenues. The City reasonably anticipates that the gross revenues to be received from the operation of the Utility during the period for which the Lease will be in force and the Certificates will be outstanding will be more than sufficient to pay all costs of the operation and maintenance of the Utility and to provide net revenues adequate to pay the Lease Payments (as defined in the Lease), when due, and to maintain the reserves required by the Lease and the Trust Agreement. The City acknowledges that, while the Lease and the Certificates are not secured by any pledge of or security interest in the revenues of the Utility, and the City's obligation to make payments under the Lease is not limited to the revenues of the

Utility, the City anticipates that the Lease Payments will be made from the net revenues of the Utility.

2.05. Rates and Charges. The City will maintain, revise, charge and collect rates and charges for service furnished and made available by the Utility, according to schedules such that the gross revenues derived there from will be sufficient, when combined with other available funds, to pay when due all expenses of the operation and maintenance of the Utility, and all Lease Payments and other amounts payable under the Lease, to provide for the establishment and maintenance of adequate reserves therefore, and to provide an allowance adequate for recurring renewals and replacements of the Utility, and to fulfill the terms of all other agreements with the Trustee and the owners of the Certificates. Such charges shall at all times be sufficient to produce Net Income Available for Debt Service (as defined in the Lease) for each fiscal year at least equal to 110% of the Lease Payments coming due in such fiscal year.

2.06 Transfers from Utility Fund. The City agrees that, so long as the Lease is in effect, it will not transfer moneys from the Electric Utility Fund to any other fund or account of the City unless the City estimates in writing to the Trustee that the Net Income Available for Debt Service for the fiscal year in which such transfer is to be made, together with the balance on hand in the surplus account of the Electric Utility Fund after the transfer is made, will be at least 125% of the Lease Payments coming due in the fiscal year.

Section 3. Modifications, Absence of Officers. The approval hereby given to the Documents includes an approval of such additional details therein as may be necessary and appropriate and such modifications thereto, deletions there from and additions thereto as may be necessary and appropriate and approved by the City Attorney prior to the execution of the Documents. The execution of any instrument by the appropriate officer or officers of the City herein authorized shall be conclusive evidence of the approval of such documents in accordance with the terms hereof. In the absence of the Mayor or the Finance Officer, any of the Documents authorized by this resolution to be executed may be executed by such officers as, in the opinion of the City Attorney, may execute documents in their stead.

Section 4. Payment of Lease Payments. The City will pay to the Trustee promptly when due, all of the Lease Payments and other amounts required by the Lease. To provide moneys to make such payments, the City will include in its annual budget, for each fiscal year during the term of the Lease, moneys sufficient to pay and for the purpose of paying all Lease Payments and other amounts payable under the Lease, and will take all other actions necessary to provide moneys for the payment of the obligations of the City under the Lease from sources of the City lawfully available for this purpose. The agreements of the City in this section are subject to the provisions for termination set forth in the Lease, which shall provide that the Lease will be subject to termination by the City, without penalty, at the end of any fiscal year of the City, if the City Council notifies the Trustee, not later than July 1 of that fiscal year that it will not budget or appropriate money for the payment of the City's obligations under the Lease for the succeeding fiscal year.

Section 5. Tax and Arbitrage Matters.

5.01. Covenant. The City covenants and agrees with the owners from time to time of the Series 2014 Certificates, 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 component of the Lease Payment to become subject to taxation under the Internal Revenue Code of 1986, as amended (the Code) and any regulations issued there under (the Treasury Regulations), in effect at the time of such action, and that it will take, or it will cause its officers, employees or agents to take, all affirmative action's within its powers which may be necessary to insure that the interest component of the Lease Payment will not become subject to taxation under the Code and the Treasury Regulations, as presently existing or as hereafter amended and made applicable to the Series 2014 Certificates. The City represents and covenants that the City is the owner of the Facilities and uses them for its municipal functions. So long as the Series 2014 Certificates are outstanding, the City will not enter into any lease, use agreement or other contract or agreement respecting the Facilities which would cause the Series 2014 Certificates to be considered "private activity bonds" or "private loan bonds" pursuant to the provisions of Section 141 of the Code.

5.02. Arbitrage Certification. The Mayor and Finance Officer being the officers of the City charged with the responsibility for issuing the Series 2014 Certificates pursuant to this resolution, are authorized and directed to execute and deliver to the Purchaser a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Treasury Regulations, stating the facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2014 Certificates which make it reasonable to expect that the proceeds of the Series 2014 Certificates will not be used in a manner that would cause the Series 2014 Certificates to be arbitrage bonds within the meaning of the Code and Treasury Regulations.

5.03. Arbitrage Rebate. (a) It is hereby found that the City has general taxing powers, that no Series 2014 Certificate is a "private activity bond" within the meaning of Section 141 of the Code, that 95% or more of the net proceeds of the Series 2014 Certificates are to be used for local governmental activities of the City, and that the aggregate face amount of all tax-exempt obligations (other than private activity bonds) issued by the City and all subordinate entities thereof during the year 2014 is not reasonably expected to exceed \$5,000,000. Therefore, pursuant to Section 148(f)(4)(D) of the Code, the City shall not be required to comply with the arbitrage rebate requirements of paragraphs (2) and (3) of Section 148(f) of the Code.

(b) Notwithstanding the provisions of paragraph (a) of this Section 5.03, if the arbitrage rebate provisions of Section 148(f) of the Code apply to the Series 2014 Certificates, the City hereby covenants and agrees to make the determinations, retain records and rebate to the United States the amounts at the times and in the manner required by said Section 148(f) and applicable Regulations.]

5.04. Qualified Tax-Exempt Obligations. It is hereby determined that the portion of the Series 2014 Certificates which is equal to the outstanding principal amount of the Refunded Certificates, \$730,000, is deemed designated as "qualified tax-exempt obligations" as provided in Section 265(b)(3)(D) of the Code, since:

(a) the Refunded Certificates, when issued, were designated by the City as qualified tax-exempt obligations under Section 265(b) of the Code;

(b) the aggregate face amount of the issue of which the Series 2014 Certificates are a part does not exceed \$10,000,000;

(c) the weighted average maturity of the Series 2014 Certificates does not exceed the remaining weighted average maturity of the Refunded Certificates; and

(d) no Series 2014 Certificate has a maturity date which is later than thirty (30) years after the date of issuance of any certificates refunded by the Refunded Certificates which were designated as qualified tax-exempt obligations.

The City Council hereby designates the remaining principal amount of Series 2014 Certificates as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code, and hereby finds that the reasonably anticipated amount of tax-exempt obligations which are not private activity bonds (not treating qualified 501(c)(3) bonds under Section 145 of the Code as private activity bonds for the purpose of this representation) and are not excluded from this calculation by Section 265(b)(3)(C)(ii) of the Code which will be issued by the City and all subordinate entities during calendar year 2014 does not exceed \$10,000,000.

Section 6. Continuing Disclosure. The City represents that the Series 2014 Certificates are exempt from the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Section 7. Amendment. This resolution may be amended from time to time, prior to the issuance of the Series 2014 Certificates, by an administrative resolution adopted by this Council.

Adopted this 6th day of January, 2014.

Isabel Trobaugh
Mayor

ATTEST:

Erika Hammitt
Finance Officer

Motion made by Honomichl, seconded by McCreary to engage Quam and Berglin, CPA to audit the city’s financial statements for the period ending December 31, 2013. Unanimous.

McCreary moved and Honomichl seconded a motion to contract with Jeff’s Lawn Care, Inc. to complete the 2014 Lawn Care Program at City Hall for a cost of \$216.60. All in favor.

Motion and second, Zevenbergen/Verros to approve a 3% cost of living raise for salaried and full-time hourly employees in the Public Works Department, Administrative Department, Head Librarian and Police Chief. Unanimous.

Motion made by Zevenbergen, seconded by Verros to approve a \$15.00/month contract increase for Custodian, Julie Traver. All in favor.

Zevenbergen moved and Verros seconded a motion to approve a \$.25/hour merit increase for City Librarian, Kristie Quam. Unanimous.

Motion and second, Zevenbergen/Verros to approve a \$.25/hour merit increase for City Librarian, Angela Ambrose. All in favor.

Motion made by Zevenbergen, seconded by Verros to approve a \$.25/hour merit increase for City Librarian, Carmen Wilcox. Unanimous.

Motion and second, McCreary/Fanta to advertise for seasonal help including the Swimming Pool Manager, Assistant Manager, Lifeguards, Cemetery Caretaker and Seasonal Public Works seasonal employees. Unanimous.

It was moved and seconded, Honomichl/Buum, to hold a joint Municipal/School election on April 8, 2014. All in favor.

Motion made by Fanta, seconded by Zevenbergen to approve the 2014 animal holding contract with the Siouxland Humane Society. Unanimous.

Verros moved and Fanta seconded a motion to go into executive session at 7:40pm per SDCL 1-25-2, Economic Development. All in favor.

Mayor Trobaugh declared the council out of executive session at 8:22pm.

Motion to adjourn, Verros/Honomichl. Unanimous.

As required by SDCL 6-1-10 the following is a list of salaries and wages of all elected officials and employees of the City of Elk Point, SD as of 1/6/2014. Mayor: \$3,000 annually plus \$40.00 per special meeting attended; Council members: \$2,400 annually plus \$40.00 per special meeting attended. Angela Ambrose, Part-time Assistant Librarian: \$9.25/hour; Mike Antonson, Utility Service Worker II: \$23.22/hour; Jerry Buum, Public Works Director: \$62,480 annually; Michael Christensen, On Call Patrolman: \$16.58/hour; Michelle Fejfar, Assistant Finance Officer: \$18.38/hour; Michelle Fejfar, Cemetery Sexton: \$1,612.15/annually; Jonathan Feller, On Call Patrolman: \$17.00/hour; Ryan Fleek, Police Chief: \$55,435 annually; Frye, Kyle, Patrolman: \$15.40; Todd Gates, Utility Service Worker III: \$24.63/hour; Andrea Geary, Utility Office Manager: \$15.06/hour; Erika Hammitt, Finance Officer: \$52,236.00/annually; Mark Hanson, Equipment Operator II: \$17.66/hour; Dan Hutcheson, Equipment Operator II: \$17.66/hour; Ryan Knutson, On Call Patrolman: \$16.18/hour; Micah Larson, On Call Patrolman: \$16.58/hour; Jacob Limoges, Patrolman: \$16.99/hour; Al Mahin, Landfill &

Recycling Gateman: \$9.30/hour; Thomas J. Moore, On Call Patrolman: \$14.00/hour; Dennis Nelsen, City Administrator: \$66,950.00; Kristie Quam, Part-time Assistant Librarian: \$9.25/hour; Mark Rubida, Utility Service Worker III: \$24.63/hour; Julie Traver, Custodian: \$5,580.00 annually & \$3,750 seasonally; Corey Trudeau, Patrolman: \$15.79/hour; Troy VanRoekel, Utility Service Worker I: \$19.21/hour; Jason Welch, Mechanic: \$18.01/hour; Carmen Wilcox, Part-time Assistant Librarian: \$9.88/hour; Danielle Wilkinson, Librarian: \$13.32/hour.

Attest: Erika Hammitt
Finance Officer

Isabel Trobaugh
Mayor

Publish: January 16, 2014