

JUNE 8, 2021 – GENERAL MEETING

Meeting called to order by Commission Chair Fjeldheim at 8:45 A.M. in the Commission Chambers, Courthouse Annex, Brown County, SD. Present were Commissioners Feickert, Wiese and Kippley. Commissioner Sutton was absent. Commissioner Fjeldheim led the Pledge of Allegiance.

APPROVAL OF AGENDA:

Moved by Kippley, seconded by Wiese to approve the agenda. All members present voting aye. Motion carried.

PRESENTATION COLLEGE REVENUE BOND REFINANCE:

Pursuant to due call and notice thereof, a regular meeting of the Board of Commissioners of Brown County, South Dakota, was duly held in the Brown County Courthouse, located at 25 Market St. Suite 1, Aberdeen, South Dakota on Tuesday, June 8, 2021, at 8:45 a.m. The following Commissioners were present: Fjeldheim, Feickert, Wiese, Kippley and the following were absent: Sutton. The Chair announced that this was the time and place for a public hearing, pursuant to Section 147(f) of the Internal Revenue Code of 1986, on a proposal for the undertaking and financing of an economic development project and the issuance of revenue bonds therefor by the County on behalf of Presentation College, a South Dakota nonprofit corporation. The following persons appeared: No public persons appeared for comments. After all persons present had an opportunity to express their views, the hearing was closed. Commissioner Wiese introduced the following written resolution and moved its adoption, the reading in full thereof having been dispensed with by unanimous consent:

RESOLUTION NO. 33-21

RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF ECONOMIC DEVELOPMENT REFUNDING REVENUE BONDS, TO PROVIDE FUNDS TO REFINANCE AN ECONOMIC DEVELOPMENT PROJECT ON BEHALF OF PRESENTATION COLLEGE, A SOUTH DAKOTA NONPROFIT CORPORATION

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner Kippley, and upon vote being taken thereon the following voted in favor thereof: Feickert, Wiese, Kippley, Fjeldheim and the following voted against the same: NONE. The following commissioner was absent: Sutton whereupon said resolution was declared duly passed and adopted.

RESOLUTION NO. 33-21

RESOLUTION PROVIDING FOR THE ISSUANCE AND SALE OF ECONOMIC DEVELOPMENT REFUNDING REVENUE BONDS, TO PROVIDE FUNDS TO REFINANCE AN ECONOMIC DEVELOPMENT PROJECT ON BEHALF OF PRESENTATION COLLEGE, A SOUTH DAKOTA NONPROFIT CORPORATION

BE IT RESOLVED by the Board of Commissioners (sometimes referred to herein as the "Board" or the "Commission") of Brown County, South Dakota (the "County"), as follows:

1. Legal Authority. The County is, by the Constitution and laws of the State of South Dakota, including South Dakota Codified Laws, Chapter 9-54, as amended, and Chapter 6-8B, as amended (collectively, the "Act"), authorized to issue and sell its revenue bonds for the purpose of financing and refinancing the costs of economic development projects and to enter into agreements necessary or convenient in the exercise of the powers granted by the Act.

2. Project. The County has heretofore issued its Economic Development Revenue Bonds (Presentation College Project), Series 2013, dated as of May 30, 2013, in the original aggregate principal amount of \$10,000,000 (the "Series 2013 Bonds"). Presentation College, a South Dakota nonprofit corporation (the "Borrower"), has proposed to refinance the project funded with proceeds of the Series 2013 Bonds, including the construction and equipping of improvements to the Borrower's existing campus located in the County, with a street address of 1500 North Main Street, Aberdeen South Dakota

(the "Project"). The Project included the construction of a new student residence hall, to be approximately 79,000 square feet in size, and expected to house approximately 158 new students; construction of an approximately 8200 square foot addition to the existing student activity center, to be used as an athletic training and wellness center, including academic space; and acquisition and construction of new parking and site improvements, including landscaping and roads. The Borrower has further proposed that, in order to provide refinancing for the Project, the County issue and sell its Economic Development Refunding Revenue Bonds (Presentation College Project), Series 2021 (the "Bonds"). Proceeds of the Bonds will also be used to fund a reasonably required reserve fund and to pay certain costs of issuing the Bonds.

3. Public Hearing. At the public hearing conducted by the County in accordance with the provisions of Section 147(f) of the Internal Revenue Code of 1986, pursuant to published notice, all persons who appeared were given an opportunity to express their views for or against the proposal to issue the Bonds and the County has determined to proceed with the necessary proceedings relating to the issuance of the Bonds.

4. Documents. The Bonds will be issued in one or more taxable or tax-exempt series pursuant to one of the following document structures, as determined by the Borrower, and as agreed to by the Chair and the County Auditor by execution of such documents pursuant to Section 6 hereof:

(i) The Bonds may be issued by the County pursuant to a Trust Indenture (the "Indenture"), between the County and U.S. Bank National Association, as trustee (the "Trustee"), and the proceeds of the Bonds loaned by the County to the Borrower pursuant to a Loan Agreement (the "Public Loan Agreement"), between the County and the Borrower. Under the Two-Party Loan Agreement, the Borrower will agree to make loan payments sufficient to pay the principal of, premium, if any, and interest on the Bonds. By the Indenture, the County would grant a security interest to the Trustee in certain specified funds and accounts established under the Indenture and in the loan repayments to be made by the Borrower under the Loan Agreement. The Bonds issued under this structure would be purchased by Colliers Securities LLC (the "Underwriter") pursuant to a Bond Purchase Agreement (the "Bond Purchase Agreement"), by and among the County, the Borrower and the Underwriter, after marketing of the Bonds pursuant to a Preliminary Official Statement (the "Preliminary Official Statement") describing the offering of the Bonds and setting forth information with respect to the terms of the Bonds, the Borrower, the Project and other matters, the form of which, together with the insertion of the final underwriting details with respect to the Bonds, shall constitute the form of the final Official Statement (the "Final Official Statement"). A Continuing Disclosure Agreement (the "Disclosure Agreement"), between the Borrower and the Trustee, designed to comply with the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission (this document not to be executed by the County) would also be prepared and executed. The Indenture, the Public Loan Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Preliminary Official Statement and the Final Official Statement are referred to collectively, as the "Public Offering Documents."

(ii) The Bonds may be issued pursuant to this resolution and a Loan Agreement between the City and the Borrower (the "Private Loan Agreement"), whereby the County will agree to make a loan to the Borrower of the gross proceeds of sale of the Bonds and the Borrower will agree to complete the refunding of the Series 2013 Bonds ,and to pay amounts in repayment of the loan sufficient to provide for the full and prompt payment of the principal of, premium, if any, and interest on the Bonds when due. The County would then enter into an Assignment and Pledge Agreement (whether one or more, the "Pledge Agreement") between the City and one or more lender (collectively, the "Lender")

whereby the Issuer, among other things, would grant to the Lender a security interest in all the Issuer's rights, title and interest in and to the Loan Agreement, including, but not limited to, the right to receipt of Loan Repayments (as defined in the Loan Agreement). A Purchase Agreement (whether one or more, the "Purchase Agreement") between the Issuer and the Lender would then be executed whereby the Lender would agree to make the loan of Bond proceeds to the Issuer in exchange for the Bond. The Private Loan Agreement, the Pledge Agreement and the Purchase Agreement are referred to collectively as the "Private Placement Documents."

5. Findings. It is hereby found, determined and declared that:

(a) The refunding of the Series 2013 Bonds and the refinancing of the Project are authorized by the Act.

(b) The issuance of the Bonds will carry out a public purpose and benefit to the citizens of the community and further the purposes of the Act.

(c) There is no litigation pending or, to the best of its knowledge, threatened against the County relating to the Bonds, the Loan Agreement, the Bond Purchase Agreement or the Indenture or questioning the due organization of the County, or the powers or authority of the County to issue the Bonds and undertake the transactions contemplated hereby.

(d) The execution, delivery and performance of the County's obligations under the Bonds, the Indenture, the Bond Purchase Agreement and the Loan Agreement do not and will not violate any order of any court or other agency of government or in which the County is a party, or any indenture, agreement or other instrument to which the County is a party or by which it or any of its property is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument.

(e) It is desirable that the Bonds be issued by the County upon the terms set forth in the Indenture, under the provisions of which the County's interest in the Loan Agreement will be pledged to the Trustee as security for the payment of principal of, premium, if any, and interest on the Bonds.

(f) The Loan Agreement provides for payments by the Borrower to the Trustee for the account of the County of such amounts as will be sufficient to pay the principal of, premium, if any, and interest on the Bonds when due. The Loan Agreement obligates the Borrower to pay or cause to be paid all costs of operation and maintenance of the Project Facilities, including adequate insurance, taxes and special assessments.

(g) Under the provisions of the Act, and as provided in the Loan Agreement and Indenture, the Bonds are not to be payable from nor charged upon any funds other than amounts payable pursuant to the Loan Agreement and moneys in the funds and accounts held by the Trustee which are pledged to the payment thereof; no owners of the Bonds shall ever have the right to compel the exercise of the taxing power of the County to pay any of the Bonds or the interest thereon, nor to enforce payment thereof against any property of the County; the Bonds shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the County (other than the interest of the County in the Loan Repayments to be made by the Borrower under the Loan Agreement); and each Bond issued under the Indenture shall recite

that such Bond is issued pursuant to the Act and that such Bond, including interest thereon, is payable solely from the sources described therein and shall not constitute or give rise to a charge against the general credit or taxing powers of the County.

6. Approval and Execution of Documents. The preparation, execution and delivery of the Public Offering Documents or Private Placement Documents, as the case may be, are hereby authorized, directed and approved. The Public Offering Documents or the Private Placement Documents, as the case may be, to which the County may be a party shall be executed in the name and on behalf of the County by the Chair and the County Auditor, or executed by other officers of the County, in substantially the forms then presented to such offers, which forms are not inconsistent with the Act or other law, as may be approved by such officers executing the same, which approval shall be conclusively evidenced by the execution thereof. In the event of the absence or disability of the Chair or the County Auditor, such other officers of the County as may, in the opinion of the County Attorney or bond counsel, act in the absence of such officers, are hereby authorized to act in the place and stead of the Chair and County Auditor, and to take all actions and execute all documents approved hereby. The parties authorized to execute documents above are hereby further authorized to execute any such other certificates, documents, instruments, forms, etc. as are required for the consummation of the transactions related to the issuance of the Bonds and the refunding of the Series 2013 Bonds.

7. Approval, Execution and Delivery of Bonds. The County shall proceed forthwith to issue the Bonds in an aggregate principal amount of not to exceed \$9,000,000, in the forms and upon the terms set forth in the Indenture or the Public Loan Agreement, as the case may be, which terms are for this purpose incorporated in this resolution and made a part hereof; provided, however, that the maturities of the Bonds, the interest rates thereon, and any provisions for the optional or mandatory redemption thereof shall all be as set forth in the final form of the Bonds to be approved, executed and delivered by the officers of the County authorized to do so by the provisions of this resolution, which approval shall be conclusively evidenced by such execution and delivery; but provided further that, in no event, shall any such maturities exceed 30 years or such rates of interest produce a net interest cost in excess of 6.75% per annum. The Underwriter will agree pursuant to the provisions of the Bond Purchase Agreement, or the Lender will agree pursuant to the provisions of the Purchase Agreement, in either case subject to the conditions to be set forth therein, to purchase the Bonds at the purchase price set forth therein. The Chair, County Auditor and other County officers are authorized and directed to prepare and execute the Bonds as prescribed in the Public Offering Documents or the Private Placement Documents, as the case may be, and to deliver them to the Trustee or the Lender, as the case may be, together with a certified copy of this resolution and the other documents as may be required, for authentication, registration and delivery to the Underwriter or the Lender. Each Bond shall contain a recital that it is issued pursuant to the Act, and such recital shall, to the full extent permitted by law, be conclusive evidence of the validity and regularity of the issuance thereof.

8. Official Statement. If the Bonds are marketed to the public, the County hereby approves the form of and consents to the circulation by the Underwriter of the Preliminary Official Statement and Final Official Statement in offering the Bonds for sale; provided, however, that the County will not participate in the preparation of the Preliminary Official Statement or the Final Official Statement or independently verify the information in the Preliminary Official Statement or the Official Statement and the County will take no responsibility for, and make no representations or warranties as to, the accuracy or completeness of such information.

9. Certificates, etc. The Chair, County Auditor and other officers of the County are authorized and directed to prepare and furnish to bond counsel and others, when issued, certified copies of all proceedings and records of the County relating to the Bonds, and such other affidavits and certificates as may be required to show the facts appearing from the books and records in the officers' custody and control or as otherwise known to them; and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the County as to the truth of all statements contained therein.

10. Qualified Tax-Exempt Obligations. The County hereby designates the Bonds as "qualified tax-exempt obligations," within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and certifies that the Bonds are to be issued on behalf of an organization described in Section 501(c)(3) of the Code, as "qualified 501(c)(3) bonds," within the meaning of Section 145 of the Code.

11. Redemption of Series 2013 Bonds. Officers of the County are hereby authorized and directed to take such action or actions as may be necessary or desirable to cause the redemption in whole of the Series 2013 Bonds, in advance of the stated maturities thereof, in accordance with the terms and provisions of the Trust Indenture entered into in connection with the issuance of the Series 2013 Bonds (the "Series 2013 Indenture"), and as proposed by the Borrower, including the giving of notice of redemption as and to the extent required by the Series 2013 Indenture.

12. Effective Date; Repeals. This Resolution shall become effective twenty days following publication and all provisions of any existing ordinances, resolutions and other actions and proceedings of the County which are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution. Dated: June 8, 2021.

**AVERA ADDICTION CARE CENTER – 2022 BUDGET:**

Angela Pearson and Jordan Mouna with Avera Addiction Care Center met to discuss the 2022 budget request and gave an update on programs and services offered to the community. Avera addiction care center has moved to the Avera St. Luke's main campus. No action taken.

**DEPARTMENT HEAD MEETING:**

Discussion on resuming quarterly department head meetings. Meetings scheduled for June 22<sup>nd</sup>, September 21<sup>st</sup>, and December 14<sup>th</sup>, 2021.

**MINUTES:**

Moved by Feickert, seconded by Kippley to approve the general meeting minutes of June 1, 2021. All members present voting aye. Motion carried.

**CLAIMS/PAYROLL:**

Moved by Wiese, seconded by Feickert to approve the following claims and payroll:

PAYROLL: Commission \$4,327.95; Auditor \$6,968.14; Treasurer \$13,667.48; SA \$24,227.78; SVAWA \$1,730.76; Maintenance \$8,740.41; Assessor \$14,636.39; Register of Deeds \$9,124.94; VSO \$4,187.38; GIS \$2,411.38; IT \$7,500.96; HR \$3,767.33; Sheriff \$39,338.33; Jail \$49,070.38; Court Security \$6,400.90; JDC \$21,859.77; Welfare \$2,982.62; Museum \$7,495.05; Parks/Fairgrounds \$6,175.99; Fair Board \$2,508.91; 4-H \$1,035.44; Weed \$4,110.37; Planning & Zoning \$3,864.71; Highway \$38,735.52; Dispatch \$30,154.55; Emergency \$4,160.96; Teen Court \$566.72; JDAI \$1,786.92; 24/7 Sobriety \$1,292.57;

Landfill \$14,401.55; MATCHING BENEFITS: FICA \$20,075.40, MEDICARE \$4,695.03, Discovers\_HSA \$375.00

CLAIMS: Machinery & Equipment: Roland L. Moerke \$1,562.50. Professional Fees: A to Z World Languages \$3,813.72; Avera St. Lukes \$641.58; City of Aberdeen \$263.81; Devnet \$9,826.25; Financial Services of Aberdeen \$675.00; GBR Interpreting & Translation Services \$60.00; Language Line Services Inc \$1,654.49; Michelle Gaikowski \$68.00; Microfilm Imaging Systems \$1,360.00; Mitch Vilhauer \$3,133.04; NE Mental Health \$1,716.00; Sanford Health Occupational Medicine \$72.00; Schneider Geospatial LLC \$2,475.00; Scott Suedmeier \$3,672.00. Publishing: Fordham Signs & Design \$2,200.00; Groton Independent \$1,049.41; Hub City Radio \$11,710.00. Repairs & Maintenance: Butler Machinery \$1,222.12; Crawford Trucks & Equipment \$519.55; Custom Sheet Metal \$370.77; Dakota Doors \$100.00; Dakota Fluid Power \$4,054.11; Gary Lee Fischer \$239.00; Haar Plumbing & Heating \$1,824.04; Hoven Auto Repair \$39.00; Interstate Power Systems \$2,595.66; McGaugh Family Inc \$190.00; Pierson-Ford-Lincoln-Mercury \$969.13; Poms Tire Service Inc \$61.50; Pro Windmill Inc \$95.00; RDO Equipment \$7,862.50; Roland L. Moerke \$1,303.90. Supplies: Agtegra Coop \$12,281.03; Bakken Building Maintenance \$500.00; Butler Machinery \$260.00; Cash-Wa Distributing \$34.79; Century Business Products \$94.84; Cole Papers \$3,015.74; Crawford Trucks & Equipment \$1,539.98; Dakota Fluid Power \$670.82; Dakota Supply Group \$338.64; Earthgrains \$785.00; East Side Jersey Dairy \$722.76; Great Western Tire \$149.50; Interstate Battery System of SD \$135.95; Jebro Inc \$21,036.41; Jensen Rock & Sand \$96,969.95; Ken's Superfair Foods \$19.15; Leidholdt Tool Sales \$63.36; Mac's Inc \$299.97; MB LLC \$300.00; McGaugh Family Inc \$20,082.00; Menards \$213.29; Pantorium Cleaners \$84.00; Performance Oil & Lubricants \$199.50; Performance Rentals LLC \$24.00; Plumbing & Heating Wholesale Inc \$167.96; Precision Kiosk Technologies \$2,700.00; RDO Equipment \$7,668.44; Roland L. Moerke \$1,416.40; Runnings \$513.79; Satellite Tracking of People LLC \$1,439.75; Uline \$279.41; US Foods \$7,478.64; Van Diest Supply Co \$2,291.80. Travel & Conference: Bary Kusler \$493.76; Gene Loeschke \$114.00; Joe Kraft \$114.00; Mark Milbrandt \$602.00; Russell Metz \$114.00; Stay USA Hotels & Suites \$1,038.00. Utilities: Midcontinent Communications \$373.61; Northern Valley Communication \$3,046.07; Northwestern Energy & Communications \$10,736.96. Rentals: Aramark \$307.68. Others: Lazy J Bar Ranch \$125.00; SD Association of County Commissioners \$5,493.00; SD Dept of Environment & Natural Resources \$4,976.43. All members present voting aye. Motion carried.

#### HR REPORT:

Moved by Kippley seconded by Wiese to approve the HR Office Report, which includes the following:

- Acknowledge resignation of Becky Desens, Brown County Equalization Secretary, effective 7/2/2021 and approve request to fill vacancy.
- Approve hiring of Nico Jung as Brown County Fair intern; wage \$12.48 per hour, effective June 10, 2021.
- Approve hiring of Johann Kolb as Brown County Jail Correctional Officer, full-time; starting wage \$16.82 per hour; effective June 8, 2021.

All members present voting aye. Motion carried.

#### FAIR CONTRACT:

Moved by Feickert, seconded by Wiese to approve the following fair contract: Lewis Fireworks, Inc for fireworks display during the Brown County Fair for \$5,000. All members present voting aye. Motion carried.

#### LEASES:

Moved by Kippley, seconded by Feickert to approve the following leases: 4H Rodeo for lease of Akkerman Arena July 3<sup>rd</sup> – July 4<sup>th</sup>, 2021; SD Quarter Horse Association for lease of Akkerman Arena June

12, 2021; 4H Horse Club for lease of Akkerman Arena June 23<sup>rd</sup>, 2021; 4H Livestock Expo Show for lease of Expo Addition, Petting Zoo, Hog and Sheep Barn June 3-6<sup>th</sup>, 2021; Aberdeen Area Horsemen's Association for lease of Akkerman Open Horse Arena June 6, June 17, July 18 and August 1, 2021; Aaron Johnson for lease of Richmond Lake Youth Camp Lodge July 28<sup>th</sup>, 2021; Sacred Heart Church for lease of Richmond Lake Youth Camp August 21, 2021. All members present voting aye. Motion carried.

**CLAIM ASSIGNMENT:**

Moved by Feickert, seconded by Wiese to authorize Auditor sign documentation to assign claim against an individual to Credit Collection Bureau for the purpose of collection liens. All members present voting aye. Motion carried.

**JDC Cooperative Agreement with Aberdeen School District:**

Moved by Kippley, seconded by Wiese to approve and authorize chair sign cooperative agreement with Aberdeen School District 6-1 to establish an educational program for youth placed in the juvenile detention center effective July 1, 2021 – June 30, 2022. All member present voting aye. Motion carried.

**AUDITOR'S REPORT OF ACCOUNT:**

Moved by Kippley, seconded by Wiese to approve the following Auditor's Report of Account for April, 2021: Total Cash and Checks on Hand 7700 Total Checking Account Balances: 33105591 Total Savings Account Balances: 3975447.42 Grand Total Cash and Balances: 41065536.58 General Fund Cash and Investment Balances by Funds: General Fund 15054512.19 Road & Bridge Fund 1573972.29 Road & Bridge Fund - restricted 423243.27 911 Service 1292545.61 Emergency & Disaster 95611.67 Domestic Abuse 1120 Teen Court 24707.55 Grant 32.11 JDAI -2071.71 Richmond Youth 21916.96 24/7 Sobriety 22986.79 ROD M&P 107963.26 Tif Debt Service 458975.06 Landfill + cash change 3647148.96 Landfill - restricted 1400479.44 Custodial Funds 16942393.13 GRAND TOTAL GENERAL FUND CASH AND INVESTMENTS 41065536.58

**PUBLIC COMMENT:** Commission Kippley inquired about a Burn Ban. No action taken.

**EXECUTIVE SESSION:**

Moved by Wiese, seconded by Kippley to go into executive session to discuss contracts per SDCL 1-25-2(4). All members present voting aye. Motion carried. The chair declared executive session closed with no action taken.

**RECESS:**

The Chair declared the commission recessed session until 10:00 a.m.

**RESUME SESSION:**

Moved by Feickert, seconded by Wiese to end recess and resume County Commission Meeting at 10:00 a.m. All members present voting aye. Motion carried.

**EXECUTIVE SESSION:**

Moved by Kippley, seconded by Feickert to go into executive session to discuss legal per SDCL 1-25-2(3). All members present voting aye. Motion carried. The chair declared executive session closed with no action taken.

**ADJOURNMENT:**

Moved by Kippley, seconded by Wiese to adjourn the Brown County Commission at 10:58 a.m. All members present voting aye. Motion carried.

Cathy McNickle, Brown County Auditor

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