



# City of Flandreau City Council Meeting

## Agenda

5:00 p.m., Thursday  
October 3<sup>rd</sup>, 2019  
City Council Chambers  
1005 W. Elm Avenue  
Flandreau, SD

Meeting called by: Mayor Bonrud

Type of meeting: Regular

### Agenda topics

#### Pledge of Allegiance

Alderman Unger

2

Adopt Agenda

#### Administrative Reports

5

Mayor's Report

Mayor Bonrud

5

City Administrator's Report

Jeff Pederson

2

Approve Administrative Reports

#### Old Business

None

#### New Business

2

Resolution 2019-05, Resolution Authorizing the Issuance, Sale, and Delivery of \$480,000 Sewer Project Revenue Bond

2

Resolution 2019-06, Approving Legal Services Agreement

2

Resolution 2019-07, Water Loan Resolution

2

Resolution 2019-08, Sewer Loan Resolution

2

Application for Temporary On-Sale Liquor  
License – Mad Mary’s

Public Comments

Council Comments

**Special notes:**

Other business properly referred to the City Council.

Jeff Pederson  
City Administrator

**Distribution:**

Mayor Bonrud  
Alderman Bjerke  
Alderman Pesall  
Alderman Sutton  
Alderman Tufty  
Alderman Unger  
Alderman Whitman

Cc:

Newspaper: Moody County Enterprise  
Radio: Carol Kiecksee  
City Attorney: Corey Bruning

## Agenda Action Form Flandreau City Council

Meeting Date: 10/3/2019

**Title:** Resolution 2019-05, Resolution Authorizing the Issuance, Sale, and Delivery of \$480,000 Sewer Project Revenue Bond

Motion       Resolution       Ordinance       Other

**Background Information:** Approval is requested for Resolution 2019-05 which authorizes the City of Flandreau to issue a \$480,000 Sewer Project Revenue Bond for the purpose of defraying costs associated with sewer line improvements. After issue, the bond will be sold to the United States Department of Agriculture. In total, three bonds will be issued for funding the Water/Sewer project that began in 2015. Approval authorizing the issuance of the first two bonds took place in 2017. This Resolution authorizes the issuance of the third bond that is a result of additional work that was authorized with replacing sanitary sewer along 3<sup>rd</sup> Ave. between Veterans and 13<sup>th</sup> St., along 13<sup>th</sup> St. between 1<sup>st</sup> and 3<sup>rd</sup> Ave., and along Pipestone Ave. between Veterans and 13<sup>th</sup> St. In February 2018, a USDA Sewer Loan Resolution was presented and approved by Council authorizing the additional loan funds of \$480,000.

**Justification:** Required to proceed with bond issue in the amount of \$480,000

**Financial Consideration:** Issued bond will be used for the loan with the United States Department of Agriculture; loan proceeds will be used to pay off interim project financing at CoBank.

**City Administrator's Recommendation:** Approval

**Attachments:** Resolution 2019-05, Resolution Authorizing the Issuance, Sale and Delivery of not to Exceed \$480,000 Sewer Project Revenue Bond of the City of Flandreau.

## RESOLUTION NO. 2019-05

**A RESOLUTION AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF NOT TO EXCEED \$480,000 SEWER PROJECT REVENUE BOND OF THE CITY OF FLANDREAU; MAKING CERTAIN COVENANTS AND AGREEMENTS TO PROVIDE FOR THE PAYMENT AND SECURITY THEREOF; PROVIDING FOR A SPECIAL CHARGE OR SURCHARGE FOR THE PURPOSE OF PAYING PRINCIPAL OF AND INTEREST ON SAID BOND AS MAY BECOME DUE; AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.**

BE IT RESOLVED by the City Common Council of the City of Flandreau, South Dakota (the "City"), as follows:

### **SECTION 1. Bond Purpose and Authorization.**

1.01 The City currently operates a municipal sewer utility under SDCL 9-40 (the "Utility"), consisting of a system or part of a system for the collection, treatment, and disposal of sewage and other domestic, commercial, and industrial wastes. The City determines it necessary and expedient to issue Sewer Project Revenue Bond (the "Bond") for the purpose of defraying the cost of the improvements and hereby declares the necessity therefore.

1.02 The City is authorized to borrow money and issue its revenue bonds under SDCL Chapter 9-40 and 6-8B (the "Act"), in order to defray the cost of acquiring and constructing improvements to the Utility, consisting of the improvements generally described on Exhibit A hereto (the "Improvements"). The City is authorized to acquire the Improvements, to issue its Bond, in order to defray the cost thereof, and to make all pledges, covenants and agreements authorized by law for the protection of the owners of the Bond, including, without limitation, those covenants set forth in Sections 9-40-15 through 9-40-17 of the Act. The Bond is payable solely from the revenue or income derived from the operation of the improvements and shall not constitute an indebtedness of the City within the meaning of South Dakota constitution Article 13 § 4 or any statutory provisions or limitations.

### **SECTION 2. Terms of the Bond**

2.01 The Bond shall be issued in an aggregate principal amount not exceeding \$480,000 and shall be sold to the United States of America. The Bond will bear interest at a rate or rates per annum resulting in an interest rate not greater than 2.625% per annum and will mature over a period not to exceed forty (40) years. The Bond shall be issued in one series. The Mayor and Finance Officer are hereby authorized and directed to agree with the United States of America upon the exact purchase price, principal amount, maturities, interest rate or rates, payment dates and redemption provisions for the Bond, within the parameters set forth in this Section. The Bond will be issued in equal standing with the \$3,620,000 Sewer Project Revenue Bond, Series 2015 (the "2015 Bond").

### **SECTION 3. Execution, Authentication, Delivery and Form of the Bond.**

3.01 The Bond shall be prepared under the direction of the Finance Officer and shall be executed on behalf of the City by the signatures of the Mayor and the Finance Officer, and countersigned by an attorney actually residing in the State of South Dakota and duly licensed to practice therein, and shall be sealed with the official corporate seal of the City; provided that all signatures may be printed, engraved or lithographed facsimiles of the originals. In case any officer whose signature or a facsimile of whose signature shall appear on the Bond shall cease to be such officer before the delivery of any Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery. The City hereby appoints the Finance Officer of the City as bond registrar, transfer agent and paying agent (the "Registrar") for the Bond.

### **SECTION 4. Creation of Accounts, Appropriation, Pledge and Segregation of Revenues.**

4.01 Accounts. The Bond is issued with equal standing and on parity with the 2015 Bond and shall use the same accounts created under the 2015 Bond authorizing resolution.

4.02 Project Revenue Segregation and Pledge. Net income derived from the Improvements shall be the excess of revenues or income remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements, and operation including the interest on any general obligation bonds authorized to construct or acquire or improve such original Utility and including the necessary debt service funds required to be provided for the retirement of said bond issues, and including the interest and debt service funds required annually to be paid or set aside on any refunding bonds issued to refund such general bonds issued for the original construction or acquisition or improvement of said Utility, so extended, added to, or improved (hereafter "Project Revenues"). All Project Revenues shall be segregated and subdivided into separate accounts as designated and described in the 2015 Bond authorizing resolution. As described in Section 5.05 hereof, the City shall impose a separate surcharge for the availability, benefit and use of the improvements and shall aggregate the revenues derived from such surcharge for the Improvements, together with the expenses of the operation and maintenance of the Improvements and shall account for them as provided in SDCL Chapter 9-40 and Section XI of the South Dakota Department of Legislative Audit Municipal Accounting Manual.

4.03 Accounting. The City shall follow the municipal accounting requirements of the South Dakota Legislative Audit. The above-named accounts may be designated in accordance with South Dakota municipal accounting standards.

4.04 Deposit and Investment of Funds. The City Finance Officer shall cause all moneys to be deposited as provided in South Dakota Law and allowed by applicable federal regulations.

4.05 Optional Redemption. The Bond is subject to optional redemption on any date at par plus accrued interest to date of redemption to refinance the unpaid balance, in whole or in part, of its Bond upon the request of the United States Department of Agriculture (the "Government") if at any time it shall appear to the Government that the City is able to refinance its Bond by obtaining

a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 B.S.C. 1983(c)).

4.6 Defeasance and Additional Bonds. As permitted by SDCL 9-40-8 and SDCL 9-40-9, additional bonds payable from revenues and income of the system may be issued, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements; provided the consent of the Government is obtained. The City shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Bond. The City may not defease the Bonds, or borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the Utility (exclusive of normal maintenance) without the prior written consent of the Government.

4.7 Prepayments: Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of City. Refunds, extra payments and loan proceeds obtained from outside sources for the purpose of paying down the Bond, shall, after payment of interest, be applied to the final unpaid principal installment, then in inverse order. Any prepayments shall not affect the obligation of the City to pay the remaining installments as scheduled. Scheduled payments shall be applied first to interest and then to principal. In the event the City of Flandreau shall elect to pay and redeem this Bond, in whole or in part, it shall give written notice thereof, describing this Bond by date and principal amount to the Government, by registered or certified mail addressed to the United States Department of Agriculture, St. Louis, Missouri 63101, and mailed at least forty days prior to the date fixed for redemption.

4.8. The Bond is subject to all of the provisions and limitations of Loan Resolution RUS Bulletin 1780-27 (the "Loan Resolution").

## **SECTION 5. Covenants, Remedies and Rates.**

5.01 General. The City covenants and agrees that until the Bond is fully discharged as provided in this Resolution, it will continue to hold, maintain and operate the Utility as a public utility and convenience, free from all liens thereon or on the income therefrom other than the liens herein granted or provided for, will observe prudent utility practices, and will maintain, expend and account for the Fund and the several accounts therein as provided in Section 4. The City will cause the Improvement to be constructed in accordance with plans and specifications hereto prepared and will not enter into contracts in excess of the amount provided.

5.02 Competing Service. The City will not establish or authorize the establishment of any other system for the public supply of service or services in competition with any or all of the services supplied by the facilities of the Utility.

5.03 Billings. The charges for sewer utility services will be billed at least monthly, and if the bill is not paid within sixty days of the date of billing, or if the customer fails to comply with all rules and regulations established for the Utility within sixty days after notice of violation thereof (which notice shall be given promptly upon discovery of any such violation), the service to the

premises involved shall be discontinued and shall not be resumed until payment of all past-due bills for sewer utility service and compliance with all such rules and regulations. The City may reduce the number of days before the service will be disconnected from sixty to any lesser number of days by ordinance or resolution. The City shall take all appropriate legal action to collect the unpaid charges. The City shall follow the procedures, if any, set by South Dakota Codified Laws for disconnection of service during the winter months.

5.04 Remedies. The holder of the Bond shall have such remedies as are set forth in SDCL 9-40.

5.05 Rates and Charges. There shall be charged a monthly surcharge for the services provided by the improvement financed by the Bond. The surcharge shall be segregated from other revenues of the utility and shall be used for the payment of principal of and interest on the Bond. Provided that such surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements. The rate herein specified will be collected as a surcharge for the Improvement. This surcharge shall remain in effect until such time as the Bond is paid in full or discharged. The initial surcharge shall be set by resolution. All users, current and future, shall be charged the surcharge for it has been found that all users benefit from the improvement. The surcharge is found to be equitable for the services provided by the Improvement. The amount of the surcharge shall be reviewed not less than annually and shall be modified in order to provide such funds as are set forth herein. All modifications may be made by Resolution. No resolutions setting the surcharge shall be subject to referendum for they are necessary for the support of government.

5.06 Statutory Lien. There shall pursuant to SDCL 9-40-25 be a statutory mortgage lien upon the Improvements in favor of and for the equal benefit of the lawful holders of the Bond issued pursuant to SDCL 9-40, except no such lien shall attach to or become a charge upon or against any property or Utility or any part thereof previously owned by the City. Until the Bond is fully paid with interest, the City shall not sell or otherwise dispose of the Utility and shall not establish, authorize or grant a franchise for the operation of any other Utility in competition with the City. The statutory lien shall continue until the Bond is paid in full.

5.07. Additional Bonds. As permitted by SDCL 9-40-8 and SDCL 9-40-9, additional bonds payable from revenues and income of the system may be issued, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements. The City shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Bond.

The above and foregoing Resolution was read by \_\_\_\_\_ and \_\_\_\_\_ and  
was moved for adoption by \_\_\_\_\_ seconded by \_\_\_\_\_  
and upon roll call vote,

voted aye,

voted nay,

whereupon the Mayor declared the Resolution to be duly passed and adopted.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Finance Officer

Adopted:

Published:

Effective Date:

**EXHIBIT A**  
description of project

Cost overruns associated with the replacing sanitary sewer along 3<sup>rd</sup> Avenue between Veterans and 13<sup>th</sup> St. and along 13<sup>th</sup> St. between 1<sup>st</sup> Ave. and 3<sup>rd</sup> Ave. The work includes sewer services, street reconstruction, and appurtenances.

Work along Pipestone Ave. between Veterans and 13<sup>th</sup> St. includes installation of sanitary sewer, services, and appurtenances.

## Agenda Action Form Flandreau City Council

Meeting Date: 10/3/2019

**Title:** Resolution 2019-06 Approving Legal Services Agreement

Motion       Resolution       Ordinance       Other

**Background Information:** Resolution 2019-06 retains Todd Meierhenry, attorney at law, of Meierhenry Sargent LLP, as bond counsel for the proposed Sewer Project Revenue Bond and authorizes the Mayor and Finance Officer to negotiate and execute the form of the Legal Services Agreement. As bond counsel attorney, Todd Meierhenry will perform all legal services associated with the issuance of a Sewer Project Revenue Bond in the amount of \$480,000.00 as well as the loan to be obtained from the United States Department of Agriculture (USDA).

**Justification:** Legal Services Agreement is needed to retain Todd Meierhenry, attorney at law, to provide necessary services regarding bond issuance and financing.

**Financial Consideration:** Professional services fee of one percent will be included in the bond amount.

**City Administrator's Recommendation:** Approval

**Attachments:** Resolution 2019-06; Resolution Approving Legal Services Agreement

**RESOLUTION NO. 2019-06**

**RESOLUTION APPROVING LEGAL SERVICES AGREEMENT**

BE IT RESOLVED by the City of Flandreau that Meierhenry Sargent LLP be retained as bond counsel for the proposed Sewer Project 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 \_\_\_\_\_ seconded by \_\_\_\_\_.

Aye:

Nay:

Abstained:

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Finance Officer

(SEAL)

## **FORM OF LEGAL SERVICES AGREEMENT**

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

### **UNITED STATES DEPARTMENT OF AGRICULTURE Farmers Home Administration LEGAL SERVICES AGREEMENT**

This agreement made this \_\_\_\_ day of \_\_\_\_\_ 2019 between **THE CITY OF FLANDREAU, 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 Sewer Project Revenue Bond under the provisions of SDCL 9-40-15 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 \ 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 Resolution authorizing and securing the Bond and other authorizing documents;
- consult with the parties to the transaction prior to the issuance of the Bond; 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 Bond;
- the Bond is a valid and binding special obligation of the Issuer;
- the Bond has been duly authorized, executed and delivered by the Issuer and is a valid and binding special obligation 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.

Todd Meierhenry  
**MEIERHENRY SARGENT LLP**

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**CITY OF FLANDREAU, SOUTH DAKOTA**

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Mayor

ATTEST

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Finance Officer  
[SEAL]

## Agenda Action Form Flandreau City Council

Meeting Date: 10/3/2019

**Title:** Resolution 2019-07, Water Loan Resolution

Motion       Resolution       Ordinance       Other

**Background Information:** Resolution 2019-07 authorizes and provides for the incurrence of indebtedness with the United States Department of Agriculture (USDA). In June of 2015, City Council approved the issuance of a Water Project Revenue Bond (not to exceed \$3,082,000) for water system improvements. Upon issue, the bond will be purchased by and delivered to USDA in order to obtain permanent financing to pay off interim financing obtained from CoBank for the construction phase of the Water/Sewer project. The bond will be issued in the actual amount of \$2,552,000, which will be purchased by USDA at 2.375% with repayment over a period of 40 years in the amount of \$8,243.00 per month.

**Justification:** Pay off interim financing and obtain permanent financing.

**Financial Consideration:** Loan proceeds will be used to pay off interim project financing at CoBank. Loan repayment will be from surcharge income.

**City Administrator's Recommendation:** Approval

**Attachments:** Resolution 2019-07, Water Loan Resolution

**RESOLUTION 2019-07**  
**LOAN RESOLUTION**  
(Public Bodies)

A RESOLUTION OF THE City Council

OF THE Flandreau, City Of

AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS

Water System

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the Flandreau, City Of

*(Public Body)*

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of two million five hundred fifty-two thousand & 00/100

pursuant to the provisions of SDCL ; and

WHEREAS, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal ly permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. 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. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0121. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*



**CERTIFICATION TO BE EXECUTED AT LOAN CLOSING**

I, the undersigned, as \_\_\_\_\_ of the Flandreau, City Of  
 hereby certify that the City Council \_\_\_\_\_ of such Association is composed of  
 \_\_\_\_\_ members, of whom , \_\_\_\_\_ constituting a quorum, were present at a meeting thereof duly called and  
 held on the \_\_\_\_\_ day of \_\_\_\_\_ ; and that the foregoing resolution was adopted at such meeting  
 by the vote shown above, I further certify that as of \_\_\_\_\_ ,  
 the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been  
 rescinded or amended in any way.

Dated, this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_

Title \_\_\_\_\_

## Agenda Action Form Flandreau City Council

Meeting Date: 10/3/2019

**Title:** Resolution 2019-08, Sewer Loan Resolution

Motion       Resolution       Ordinance       Other

**Background Information:** Resolution 2019-08 authorizes and provides for the incurrence of indebtedness with the United States Department of Agriculture (USDA). In June of 2015, City Council approved the issuance of a Sewer Project Revenue Bond (not to exceed \$3,620,000) for sewer system improvements. Upon issue, the bond will be purchased by and delivered to USDA in order to obtain permanent financing to pay off interim financing obtained from CoBank for the construction phase of the Water/Sewer project. The bond will be issued in the actual amount of \$3,620,000, which will be purchased by USDA at 2.375% with repayment over a period of 40 years in the amount of \$11,693.00 per month.

**Justification:** Pay off interim financing and obtain permanent financing.

**Financial Consideration:** Loan proceeds will be used to pay off interim project financing at CoBank. Loan repayment will be from surcharge income.

**City Administrator's Recommendation:** Approval

**Attachments:** Resolution 2019-08, Sewer Loan Resolution

**RESOLUTION 2019-08**  
**LOAN RESOLUTION**  
(Public Bodies)

A RESOLUTION OF THE City Council

OF THE Flandreau, City Of

AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS sanitary sewer system

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the Flandreau, City Of

*(Public Body)*

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

Three million six hundred twenty thousand & 00/100

pursuant to the provisions of SDCL; and

WHEREAS, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

**NOW THEREFORE**, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal ly permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. 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. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.

*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0572-0121. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.*

- 11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
- 12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.
- 13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
- 14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the Government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities and replacement of short lived assets.
- 15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
- 16. To comply with the measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
- 17. To accept a grant in an amount not to exceed \$ NA

under the terms offered by the Government; that the NA

and NA of the Association are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant; and to operate the facility under the terms offered in said grant agreement(s).

The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the Government or assignee. The provisions of sections 6 through 17 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee.

The vote was:                                      Yeas \_\_\_\_\_                                      Nays \_\_\_\_\_                                      Absent \_\_\_\_\_

IN WITNESS WHEREOF, the \_\_\_\_\_ of the

Flandreau, City Of has duly adopted this resolution and caused it

to be executed by the officers below in duplicate on this \_\_\_\_\_, \_\_\_\_\_ day of \_\_\_\_\_

(SEAL) \_\_\_\_\_  
By \_\_\_\_\_

Attest: \_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
Title \_\_\_\_\_

**CERTIFICATION TO BE EXECUTED AT LOAN CLOSING**

I, the undersigned, as \_\_\_\_\_ of the Flandreau, City Of

hereby certify that the \_\_\_\_\_ of such Association is composed of

\_\_\_\_\_ members, of whom , \_\_\_\_\_ constituting a quorum, were present at a meeting thereof duly called and

held on the \_\_\_\_\_ day of \_\_\_\_\_ ; and that the foregoing resolution was adopted at such meeting

by the vote shown above, I further certify that as of \_\_\_\_\_ ,  
the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been  
rescinded or amended in any way.

Dated, this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Title \_\_\_\_\_

## Agenda Action Form Flandreau City Council

Meeting Date: 10/3/2019

**Title:** Application for Temporary On-Sale Liquor License

Motion       Resolution       Ordinance       Other

**Background Information:** An application for a temporary on-sale liquor license has been submitted by Mad Mary's, for the Cardinal Baseball Hall of Fame Banquet to be held at the William J. Janklow Community Center on October 6<sup>th</sup>, 2019.

**Justification:** Required per SDCL 35-4-124

**Financial Consideration:** \$25.00 Permit Fee will be credited to the General Fund

**City Administrator's Recommendation:** Approval

**Attachments:** Application for Temporary On-Sale Liquor License

APPLICATION FOR TEMPORARY ON-SALE SPECIAL ALCOHOLIC BEVERAGE LICENSE AT THE WILLIAM J. JANKLOW COMMUNITY CENTER ACCORDING TO SDCL 35-4-124

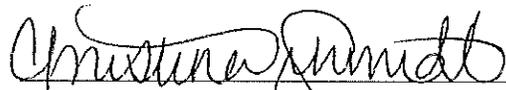
NAME OF APPLICANT: Mad Man's Steakhouse  
ADDRESS: 300 N. Veterans St Flandreau, SD 57028  
TELEPHONE NUMBER: 605-997-9901 / 605-695-3881  
EVENT: Rick Weber - Hall of Fame Card

I, the undersigned, hereby make application to the CITY OF FLANDREAU, SOUTH DAKOTA for a Temporary On-Sale Special Alcoholic Beverage License to be operated at the William J. Janklow Community Center for the following period of time not to exceed twenty-four (24) hours:

From 3:00 o'clock p.m. on the 6th day of October, 2019  
To 11:00 o'clock p.m. on the 6th day of October, 2019

In making this application, I understand that all State Laws governing on-sale licenses apply including the hours of authorized sale/consumption and the prohibitions regarding the presence and/or sale to minors.

Dated this 30 day of September, 2019

  
Applicant's Signature

TEMPORARY PERMIT

Having considered the foregoing Application and approving the same, the governing body of the City of Flandreau, South Dakota issues to said applicant a temporary on-sale license upon the property described above during the hours set forth in the application subject to and as authorized by SDCL 35-4-124.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY OF FLANDREAU, SD

By: \_\_\_\_\_  
Mayor or Council President

APPROVED BY COUNCIL on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_