

Introduced by: City Manager Capela
Date: May 24, 2016
Action: Approved
Vote: 7-0

CITY OF BETHEL, ALASKA

Resolution #16-19

A RESOLUTION BY THE BETHEL CITY COUNCIL AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS (LOAN) FOR THE PURPOSES OF PROVIDING A PORTION OF THE COST OF ACQUIRING, CONSTRUCTION, ENLARGING, IMPROVING, AND/OR EXTENDING ITS WASTE WATER SEWER LAGOON FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the City of Bethel to raise a portion of the cost of such undertaking by issuance of its promissory note in the principal amount (loan) of nine hundred thirteen thousand dollars (\$913,000);

WHEREAS, the City of Bethel (City) intends to obtain assistance from the United State Department of Agriculture (USDA), 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 promissory notes lawfully issued, in the event that no other acceptable purchaser for such promissory note is found by the City;

WHEREAS, requirements for this loan include:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the promissory note containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to USDA.
2. To refinance the unpaid balance, in whole or in part, of its promissory note upon the request of USDA if at any time it shall appear to USDA that the City is able to refinance its promissory note 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. This would require the City to track and make available it's compliance with Title 6 of the Civil Rights Act of 1964.
4. To indemnify USDA for any payments made or losses suffered by USDA on behalf of the City. Such indemnification shall be payable from the same

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source of funds pledged to pay the promissory note or any other legally permissible source.

5. That upon default in the payments of any principal and accrued interest on the promissory note or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, USDA 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 City (payable from the source of funds pledged to pay the promissory note 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 USDA to constitute default under any other instrument held by USDA and executed or assumed by the City, and default under any such instrument may be construed by USDA 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 USDA.

7. Not to defease the promissory note, 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 USDA if such undertaking would involve the source of funds pledged to pay the promissory note.

8. To place the proceeds of the promissory note on deposit in an account and in a manner approved by the USDA. 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.

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11. To acquire and maintain such insurance and fidelity bond coverage as may be required by USDA.
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 USDA, to provide USDA a copy of each such audit without its request, and to forward to USDA such additional information and reports as it may from time to time require.
13. To provide USDA at all reasonable times access to all books and records relating to the facility and access to the property of the system so that USDA 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 USDA requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the promissory note if sufficient funds are not otherwise available and prior approval of USDA is obtained. Also, with the prior written approval of USDA, 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 City or public body.
16. To comply with the measures identified in USDA'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 \$1,669,358 under the terms offered by USDA, that the City Manager, and City Council 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);

WHEREAS, the grant/loan project funding will be used for construction of a jetty at the existing sewage lagoon and the purchase of three wastewater haul trucks;

WHEREAS, the project estimated expenditures are:

Administration	\$10,000
Construction	\$2,443,962
Contingency	\$244,396
Engineering Fees	\$270,000

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Equipment (three sewer haul trucks)	\$750,000
Interest-Interim	\$10,000
Legal Fees	\$10,000
Total	\$3,738,358

WHEREAS, the project funding sources are (in the order of required use):

City of Bethel Contribution	\$206,000
Indian Health Service (1 sewer truck)	\$250,000
State of Alaska Legislative Appropriation	\$700,000
USDA Loan	\$913,000
USDA Grant	\$1,669,358
=====	
Total	\$3,738,358

WHEREAS, the loan will be scheduled for repayment over a period of 40 years, equal to \$2,895 amortized monthly installments, the loan will be secured by a Revenue instrument (promissory note) with first lien position in the amount of \$913,000;

WHEREAS, all projects associated with the grant/loan program are required to be completed and all funds disbursed within five years of obligation unless a written waiver is approved for an extension;

WHEREAS, reserves must be properly budgeted to maintain the financial viability and sustainability of the operation to fund unanticipated emergency maintenance and repairs, and assist with debt service should the need arise, the debt service reserve must establish a fund equal to at least one annual loan installment that accumulates at the rate of 10% of one annual payment year for ten years or until the balance is equal to one annual loan payment, prior written concurrence from USDA must be obtained before funds may be withdrawn from this account during the life of the loan;

WHEREAS, in addition to the debt service reserve fund, the City must establish a short-lived assets reserve fund of \$365,650 annually for the life of the loan to pay for repairs, and/or replacement of majority system assets-current assets can be used to establish and maintain reserves to include but not limited to operation and maintenance, customer deposits, deferred interest during the construction period, and an asset management program;

WHEREAS, environmental requirements include but are not limited to- ~~construction~~ ~~activities must be limited to waking hours to reduce noise impacts (10 hours);~~ contractor to prepare a Storm Water Pollution Prevention Plan; fugitive dust

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from construction activities must be reduced during construction by use of water or other dust control measures; emissions from vehicles and equipment must be maintained below applicable state and local emission control plans; movement of construction material and machinery must be scheduled for non-peak or non-critical times; in the event historical artifacts are discovered, all work must be stopped immediately and appropriate agencies contacted; Best Management Practices must be utilized during construction to minimize or avoid potential impacts to water quality or resources; all waste material generated during construction will be disposed of in the landfill or the waste will be backhauled to an approved facility; proper sedimentation and erosion control construction techniques will be used;

WHEREAS, the City is required to execute a legal services agreement with the City Attorney, if applicable, for any legal work needed in connection with this project which shall include a hourly rate for the work, with a "not to exceed" amount for the services, this agreement must be submitted to USDA prior to advertising for bids;

WHEREAS, property rights evidence must be submitted to USDA prior to the advertising of the bids;

WHEREAS, a sound business plan must be adopted and followed to include policies, procedures and/or ordinances outlining the conditions of service to include mandatory connection, effective collection for accounts not paid in full with specified number of days after the date of billing, this should include appropriate late fees, timeframes for disconnection of service and reconnection fees, these policies must be reviewed and approved by USDA prior to advertising for bids;

WHEREAS, the City must maintain the annual 3% increase for the sewer rates at least through the 2018 rate increase;

WHEREAS, the City will have to establish a Vulnerability Assessment/Emergency Response Plan and a certification of this VA/ERP must be provided before advertising for bids;

WHEREAS, the attorney must certify that the executed contract documents, including performance and payment, if required are adequate and that the person executing these documents have been properly authorized;

WHEREAS, unless exempted, the City must have a full-time inspection service that is required to attend the pre-construction conference, the resume of the

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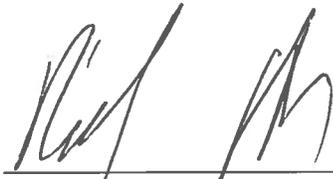
resident inspector must be submitted to USDA for review and concurrence prior to the pre-construction conference;

WHEREAS, USDA will perform an inspection of the facility and the records management system every three years for the life of the loan;

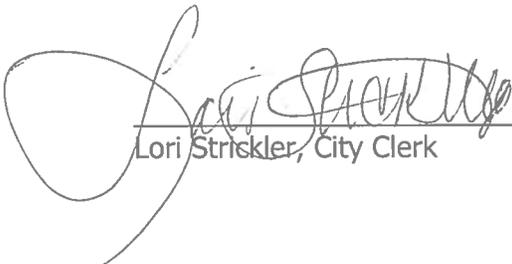
WHEREAS, audit requirements to include quarterly reports to USDA, annual audit reports (end of each fiscal year), and annual budget and projected cash flow (thirty days prior to beginning of each fiscal year) are to be submitted;

NOW, THEREFORE, BE IT RESOLVED THAT the City of Bethel, City Council finds 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 City as long as the promissory note are held or insured by USDA or assignee. The provisions of section 6 through 17 hereof may be provided for in more specific detail in the promissory resolution; to the extent that the provisions contained in such resolution should be found to be inconsistent with the provisions hereof, these provisions shall be constructed as controlling between the City and USDA or assignee.

PASSED AND APPROVED THIS 24 DAY OF MAY 2016, BY A 7 VOTE IN FAVOR AND A 0 VOTE IN OPPOSITION.


Richard Robb, Mayor

ATTEST:


Lori Striskler, City Clerk