

CITY COUNCIL PROCEEDINGS
PUBLISHED SUBJECT TO THE GOVERNING BODY'S REVIEW AND REVISION

A regular meeting of the Beach City Council was called to order by President Jeanne Larson on November 16, 2020 at 7:00 p.m. Present when the meeting was called to order was City Council Nick Hegel, Tim Marman, Bev Wolff, Andy Zachmann, PWS Randy Dietz, City Auditor Kimberly Gaugler, and City Engineer Jasper Klein via telephone.

The Pledge of Allegiance was recited.

Roll call was taken. Lynn Swanson-Puckett was absent.

Minutes

Minutes of the meeting on November 2nd were presented. Zachmann moved to approve the minutes, second by Wolff. Motion carried unanimously.

Public Works Report

PWS Dietz reviewed his written report. Zachmann moved to approve the request for Blighted Residential Building Demolition Program by Deirdre White (420 2nd Avenue SE), second by Hegel. Motion carried unanimously.

Auditor Report

Gaugler reviewed her written report. Gaugler reviewed the financial statement for the month of October. Marman moved to approve, second by Wolff. Motion carried unanimously. Information on Governor Burgum's Executive Order 2020-43 was provided.

Committee Reports

Garbage

Larson proposed a study of garbage rates be conducted to ensure all customers are being properly charged for services being provided.

Engineers Report

Engineer Klein gave an update on the 2021 Street and Utility Project. Bid opening will be November 30th at 2 pm for the Water Main and Lead Residential Service Line portion of the project. A bid opening date has not been determined yet for the 6th Street Water Main Improvement portion of the project. The Agreement between Owner and Engineer for Professional Services prepared by Engineers Joint Contract Documents Committee (EJCDC) was reviewed. Zachmann moved to approve the Agreement, second by Wolff. Motion carried unanimously. Marman moved to approve a voucher from AE2S in the amount of \$21,059.69, second by Zachmann. Motion carried unanimously. Expenses to date incurred for the 2021 Street and Utility Project totaling \$160,516 will be submitted to the State Revolving Fund for Payment Request.

Sheriff's Report

The Sheriff's Report for the month of October consisting of 1 citation and 24 calls was reviewed.

New Business

Information was provided on the process to fill the vacancy of the Mayor. Wolff moved to appoint Jeanne Larson to the fill the vacancy of the Mayor, second by Marman. Motion carried unanimously.

Marman provided information on Ordinance 385 Section 1.0207 - Salaries. Marman moved to amend Ordinance 385 Section 1.0207 to reflect City Council and/or Mayor will be paid per regular meeting attended in person, by telephone, or video conference, second by Wolff. Motion carried unanimously. Attorney Bouray will draft the proposed change of Ordinance.

RESOLUTION 2020-22

Member Marman introduced the following resolution and moved its adoption:

CITY OF BEACH, STATE OF NORTH DAKOTA

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF \$1,575,000 WATER TREATMENT ASSESSMENT WARRANT, SERIES 2020

RECITATIONS

The City of Beach, North Dakota (the "Municipality"), hereby recites that by resolution of its governing body the Municipality has:

1. Found and determined that it is necessary for the Municipality to construct a water treatment works, or make improvements thereto (the "Project").
2. Directed its engineer to prepare a report as to the general nature, purpose and feasibility of the Project and an estimate of the probable cost of the Project.
3. After receiving and approving the engineer's report, directed the engineer to prepare detailed plans and specifications for construction of the Project.
4. Approved the engineer's detailed plans and specifications for construction of the Project and caused a copy of such plans and specifications to be filed in the office of the City Auditor.
5. By publication, advertised for bids for construction of the Project.
6. Opened and made public the bids, entered them in the minutes of the meeting of the

governing body at which they were considered and caused them to be kept by the City Auditor.

7. After requiring the engineer to make a careful and detailed statement of the estimated cost of the Project, awarded the contract to the lowest responsible bidder and approved the contractor's performance bond.

8. Applied to the State Department of Environmental Quality (DEQ), Division of Municipal Facilities (the "Department") and the North Dakota Public Finance Authority (the "Authority") for financial assistance to finance all or a portion of the cost of the Project, which application has been approved.

9. Performed all other acts required by the Constitution and laws of North Dakota prerequisite to the issuance and sale of assessment warrants for the purpose of providing money to pay for the cost of the Project in the manner required of the Municipality by law with full power and authority conferred on it as a political subdivision and municipality of North Dakota.

RESOLUTION

Be it resolved by the governing body of the Municipality:

Section 1. All acts performed, resolutions, motions or ordinances adopted or passed, and all publications incidental to the construction and financing of the Project, whether or not reflected in the official minutes and records of the Municipality, are hereby ratified and confirmed, and all resolutions and other acts or proceedings of the Municipality which are in any way inconsistent with this Resolution are hereby amended to the extent necessary to give full force and effect to this Resolution.

Section 2. It is hereby found and determined to be necessary for the Municipality to issue \$1,575,000 in principal amount of its City of Beach Water Treatment Assessment Warrant, Series 2020 (the "Municipal Securities"), pursuant to N.D.C.C. ch. 40-22 through 40-24.

Section 3. Offer and Acceptance. The governing body of the Municipality, in response to its application for financial assistance from the Department and the Authority, has received an offer from the Authority, subject to the approval of the Industrial Commission of North Dakota, to purchase the Municipal Securities at a price equal to the principal amount plus accrued interest, if any, to the date of purchase, which offer is more fully set out in a loan agreement to be entered into between the Municipality and the Authority (the "Loan Agreement"). It is hereby found and determined that the offer of

the Authority to purchase the Municipal Securities is reasonable and advantageous to the Municipality and is hereby accepted, and the Loan Agreement, in substantially the form presented to the Municipality at this meeting, is hereby accepted and authorized to be executed on behalf of the Municipality by its President of the City Council and City Auditor (the "Authorized Officers"), with such modifications as may be approved by the Authorized Officers. The Authorized Officers are authorized and directed to execute the Loan Agreement and to deliver it to the Authority, which execution and delivery shall be conclusive evidence of the approval of any modifications with respect to the Loan Agreement.

Section 4. Form. The Municipal Securities issued under this Resolution shall be designated City of Beach Water Treatment Assessment Warrant, Series 2020, and shall be issued to the Authority in the form of a single registered Municipal Security in substantially the form as attached hereto as Exhibit A.

Section 5. Terms. The Municipality authorized the issuance of the Municipal Securities in the aggregate principal amount not to exceed \$1,575,000, dated _____. The Municipal Securities shall be issued in the form of a single registered Municipal Security as set forth in Section 4. The Municipal Securities issued shall be payable in installments of principal, with interest at the rate of One and One-Half Percent (1.50%) per year (plus an administrative fee as set out in the Loan Agreement), on the dates and in the amounts set forth below. Provided, that interest will be based on funds actually advanced, and the schedule below and attached to the Municipal Security form are already reduced by the \$1,144,000 anticipated loan forgiveness and will be revised to reflect the actual principal amount loaned to the Municipality at the completion of the Project.

Year	Amount	Interest Rate	Year	Amount	Interest Rate
2022	\$11,000	1.50%	2037	\$14,000	1.50%
2023	11,000	1.50	2038	15,000	1.50
2024	11,000	1.50	2039	15,000	1.50
2025	11,000	1.50	2040	15,000	1.50
2026	12,000	1.50	2041	15,000	1.50
2027	12,000	1.50	2042	16,000	1.50
2028	12,000	1.50	2043	16,000	1.50
2029	12,000	1.50	2044	16,000	1.50
2030	12,000	1.50	2045	17,000	1.50
2031	13,000	1.50	2046	17,000	1.50
2032	13,000	1.50	2047	17,000	1.50
2033	13,000	1.50	2048	18,000	1.50
2034	13,000	1.50	2049	18,000	1.50
2035	14,000	1.50	2050	18,000	1.50
2036	14,000	1.50	2051	20,000	1.50

Section 6. Interest. Interest shall be payable semiannually on each March 1 and September 1, commencing on the first March 1 or September 1 following the first loan advance. The principal of and interest on the Municipal Securities shall be payable to

the registered holder thereof at the address appearing on the registration books of the registrar in any coin or currency of the United States of America, which on the respective dates of payment is legal tender for the payment of public or private debts or by check or draft delivered to the registered holder thereof at the address appearing on the registration books of the registrar, or by wire transfer.

Section 7. Registration. The Municipal Securities shall be registered as to both principal and interest and shall be initially registered in the name of and payable to the Authority. While so registered, principal of and interest on the Municipal Securities shall be payable at the office of the Bank of North Dakota, in Bismarck, North Dakota (the "Registrar"), or such other place as may be designated by the Authority in writing, delivered to the Registrar. The Registrar shall establish and maintain a register for the purpose of recording the names and addresses of the registered holders or assigns, and the date of such registration.

Section 8. Assignment. The Municipal Securities are transferable upon the books of and at the principal office of the Registrar, by the registered holder thereof in person or by their attorney duly authorized in writing upon surrender thereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or their attorney. Upon request of the registered holder or transferee, and upon surrender of the Municipal Securities, the Municipality shall execute and deliver one or more other Municipal Securities of an aggregate principal amount equal to the principal amount of the Municipal Securities then remaining unpaid and maturing at the same time or times as the then unpaid principal installments thereof, with each Municipal Security dated so that neither gain nor loss in interest shall result from such transfer. Each Municipal Security shall be dated as of the last interest payment date preceding the date of transfer to which interest on the Municipal Security has been paid or made available for payment, unless the date of transfer is an interest payment date to which interest has been paid or made available for payment, in which case the Municipal Security shall be dated as of the date of transfer. The surrendered Municipal Security shall be promptly canceled by the Registrar. The Registrar shall not be required to perform any of the duties set out in this section as of the record date as established by N.D.C.C. § 21-03.1-02(4). **No service charge shall be made for such transfer or exchange**, but the Registrar may require payment of a sum sufficient to cover any tax, fee or governmental charge or other expense incurred by the Municipality or Registrar with respect to such transfer or exchange.

Section 9. Execution and Delivery. The Municipal Securities shall forthwith be prepared under the direction of an Authorized Officer of the Municipality and when so prepared shall be executed on behalf of the municipality by the manual or facsimile signatures of the Authorized Officers of the Municipality and shall be authenticated by the manual signature of the Registrar.

When the Municipal Securities have been so executed and authenticated, they shall be delivered by an Authorized Officer of the Municipality to the Authority.

Section 10. Redemption. The Municipal Securities are subject to redemption on any interest payment date with the written consent of the Authority.

Section 11. Draws of Municipal Security Proceeds. The proceeds of the Municipal Securities are irrevocably appropriated to pay expenses necessarily incurred in the construction and completion of the Project and to pay costs associated with the issuance of the Municipal Securities. Draws on the Municipal Securities, in the form of Requisitions for Payment, shall be submitted by the Municipality to the Department from time to time in accordance with procedures established by the Department. Requisitions for Payment approved by the Department shall be forwarded to the Authority for approval and funding.

Section 12. Improvement District. It is hereby found, determined and declared that the Municipality has heretofore duly created the following improvement district:

Improvement District

Water Improvement District No. 2021-1

Section 13. Improvement District Fund. There is hereby a created special fund of the Municipality for the improvement district (the "Improvement District Fund") hereinbefore designated, which fund shall be held and administered by the City Auditor apart from all other funds of the Municipality and shall be continued and maintained as herein directed until all warrants issued thereon shall have been fully paid with interest. In such fund there shall be maintained two separate accounts to be designated as the "Construction Account" and "Principal and Interest Account," respectively (the "Accounts").

Section 14. Construction Account. A Construction Account is established in the Improvement District Fund. There shall be deposited to the credit of such account the proceeds of the Municipal Securities, except the accrued interest, if any.

As proceeds are needed for Project costs, including interest coming due during construction, the Municipality shall submit requests for disbursement in accordance with Section 2.02 of the Loan Agreement. Moneys in the Construction Account shall be used for payment of the cost of the Project and costs of issuance of the Municipal Securities, including reimbursement to the Municipality for advances made to pay such costs or to refund amounts borrowed for the Project, and for no other purposes.

Moneys in the Construction Account shall be deposited with a qualified depository as required by N.D.C.C. ch. 21-04-03, and any deposits in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation or the National Credit Union administration shall be collateralized in accordance with N.D.C.C. ch. 21-04-09.

If upon completion of the improvements of the Project, approval by the Engineer of the Municipality, and payment of all claims and expenses in respect to the Project, there shall remain any unexpended balance in the Construction Account, such balance shall be transferred to the Principal and Interest Account and handled and accounted for in the same manner as other moneys in that Account.

Section 15. Principal and Interest Account. There shall be credited to the Principal and Interest Account the accrued interest on the warrant drawn on said fund from the date of the warrant to the date of delivery thereof to the purchaser, the entire amount of special assessments, and any taxes, to be levied with respect to that improvement as herein agreed, certain utility revenues, and any balance remaining in the Construction Account after completion of said improvement (the "Available Revenues"). The Principal and Interest Account shall be used solely to discharge the Municipal Securities, to pay when due the interest on and the principal of the Municipal Securities, and to redeem the Municipal Securities prior to maturity. The Municipality shall make the following deposits into the Principal and Interest Account:

(a) On the first day of each month, commencing six months prior to the first payment of interest on and/or principal of the Municipal Securities, Available Revenues in an amount equal to one-sixth ($1/6$) of the amount necessary to pay interest and the Administrative Fee (as defined in the Loan Agreement) which will become due on the next interest payment date after crediting the amount of accrued interest and any earnings on the Principal and Interest Account. Prepayment of monthly deposits will fulfill this requirement. Notwithstanding the foregoing, the Municipality shall deposit into the Principal and Interest Account from the Available Revenues an amount sufficient to permit all interest due on the Municipal Securities to be paid on the date due.

(b) On the first day of each month, commencing 12 months prior to the first payment of interest on and/or principal of the Municipal Securities, Available Revenues in an amount equal to one-twelfth ($1/12$) of the amount necessary to pay any principal which will become due on the next principal payment date of the Municipal Securities. Prepayment of monthly deposits will fulfill this requirement. Notwithstanding the foregoing, the Municipality shall deposit into the Principal and Interest Account from the Available Revenues an amount sufficient to permit all principal due on the Municipal Securities to be paid on the date due.

Deposits required to be made pursuant to Sections 15(a) and 15(b) above are cumulative, and if the Available Revenues are not sufficient to credit the amount required in any month, the deficiency shall be met from funds on deposit in the Principal

and Interest Account. The moneys and investments in the Principal and Interest Account are irrevocably pledged to and shall be used to the extent required for the payment of principal of and interest on the Municipal Securities when and as the same shall become due and payable for that purpose only.

Notwithstanding the foregoing, in the event the first payment of interest on the Municipal Securities occurs less than six months from the date of closing and delivery of the Municipal Securities to the Authority (the "Closing Date") or the first payment of principal installments on the Municipal Securities occurs less than 12 months from the Closing Date, the deposits provided for in paragraphs (a) and (b) of this section shall be adjusted accordingly, so that the amount necessary to make the first payments of interest on and principal of the Municipal Securities is on deposit in the Principal and Interest Account at least one month prior to the date such payment or payments is required to be made.

Section 16. Reserve Account. A separate Reserve Account will not be established within the Improvement District Fund.

Section 17. Levy of Assessments. With respect to the district, the Municipality covenants and agrees with all holders of warrants on the fund of the district that it will do and perform as soon as may be possible, in accordance with law, all acts and things necessary for the final and valid levy of special assessments against properties within the district benefitted by the improvements, in an aggregate amount equal to the total cost of the improvement to the Municipality, except any portion, not exceeding one-fifth of the cost of the improvement and not exceeding any applicable constitutional or statutory debt limit, as the Municipality may determine to pay by the levy of ad valorem taxes upon all taxable property within its corporate limits. In the event that the assessment should at any time be held invalid with respect to any lot or tract of land, due to any error, defect or irregularity in any action or proceeding taken or to be taken by the Municipality or by the governing body or by any officers or employees, either in the making of the assessment or in the performance of any condition precedent thereto, the Municipality and this governing body covenant and agree that they will forthwith do all such further acts and take all such further proceedings as may be required by law to make such assessment a valid and binding lien upon such lot or tract; provided, however, that if all special assessments and taxes collected are insufficient to pay principal or interest then due on the Municipal Securities, the Municipality covenants to take action pursuant to Section 18. The installments of special assessments from time to time remaining unpaid shall bear interest at the rate of 3.00% per annum and the special assessments shall be levied in equal annual installments as set out below:

<u>District Designation</u>	<u>Principal Amount</u>	<u>Amounts and Years of Payment</u>
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Water Improvement District
\$52,500 levied in
No. 2021-1

\$1,575,000

each of the years
2021 through 2050
(Collected 2022-
2051)

Section 18. With respect to the Improvement District Fund, the Municipality hereby recognizes its obligation with respect to the warrant drawn against said Improvement District Fund, as set forth in Section 40-26-08, North Dakota Century Code, as amended, that whenever all special assessments and taxes, if any, theretofore collected for said improvement are insufficient to pay principal of or interest then due on said improvement warrant, this governing body shall thereupon levy a tax upon all taxable property in the corporate limits of the Municipality for the payment of such deficiency; provided, that if said improvement warrant has been exchanged for Refunding Improvement Bonds pursuant to the provisions of Chapter 40-27, North Dakota Century Code, such deficiency tax may be made payable in the years and amounts required to pay the principal of and interest on the Refunding Improvement Bonds as the same become due. Nothing herein contained shall be deemed to limit the power of the Municipality and this governing body under the provisions of said Section 40-26-08, as amended, to levy a general tax in anticipation of a deficiency considered likely to occur in said Improvement District Fund within one year, and it is hereby declared to be the policy of the Municipality that the governing body will annually review the current requirements and resources of said Improvement District Funds, at the time of the preparation of and hearing on the budget, in accordance with the provisions of Chapter 40-40, North Dakota Century Code, to the end that provisions may be made in each annual budget for any deficiency in the Principal and Interest Account of said Improvement District Fund which is deemed likely to occur within the then next succeeding year. Any taxes levied in accordance with the provisions of this paragraph in payment of a deficiency, or in anticipation of a deficiency, shall be paid upon collection into the Principal and Interest Account.

Section 19. Qualified Tax-Exempt Obligations. The Municipality reasonably anticipates the amount of qualified tax-exempt obligations which will be issued by the Municipality and all subordinate entities thereof during such calendar year shall not exceed \$10,000,000. The municipality does hereby designate the Municipal Securities as a qualified tax-exempt obligation pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986.

Section 20. Loan Forgiveness. During the pendency of the Loan, the Municipality may be offered a certain amount of loan forgiveness by the Department and the Authority to reduce the principal amount loaned to the Municipality. The Municipality acknowledges that any such loan

forgiveness would be made available by the Department and the Authority in connection with receiving and administering federal capitalization grants under the State Revolving Fund Program. The Municipality agrees to accept any such loan forgiveness offered to it in connection with this Loan without any further action.

Section 21. Use of American Iron and Steel. The Municipality will comply with all federal requirements applicable to the Loan Agreement (including those imposed by the 2014 Appropriations Act, Public Law No. 113-76, and related SRF regulations and policy guidelines) which the Municipality understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States ("American Iron and Steel Requirement") unless (i) the Municipality has requested and obtained a waiver from the Department pertaining to the Project or (ii) the Department or Authority has otherwise advised the Municipality in writing that the American Iron and Steel Requirement is not applicable to the Project.

Section 22. Davis Bacon and Related Acts. The Municipality shall, to the extent applicable to the Loan or any related grant, comply with the Davis Bacon and Related Acts requirements (40 U.S.C. 3141, et seq).

Section 23. Record and Reporting Requirements. The Municipality will comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a federal agency, the Department or the Authority such as performance indicators of program deliverables, information on costs and project progress. The Municipality understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Municipal Securities and/or other remedial actions.

Adopted November 16, 2020.

CITY OF BEACH

BY:_____

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Jeanne Larson, Mayor

ATTEST:

Kimberly Gaugler, City Auditor

The motion for the adoption of the foregoing resolution was duly seconded by Member Zachmann. On roll call vote the following members voted aye: Hegel, Marman, Wolff, Zachmann and Larson. The following members voted nay: none. The following members were absent and not voting: Swanson-Puckett. The majority having voted aye, the motion carried and the resolution was duly adopted.

Correspondence was read from Southwest Water Authority regarding a rate increase effective January 1, 2021. The contract water rate will increase from \$5.50/1000 gallons to \$5.60/1000 gallons.

No other business was brought forward. Marman moved to adjourn, second by Wolff. Meeting adjourned at 7:55 p.m.

ATTEST:

Jeanne Larson, Mayor

Kimberly Gaugler, City Auditor