

## RESOLUTION NO. 2024-2

**RESOLUTION GIVING APPROVAL TO CERTAIN CLEAN WATER FACILITIES IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF A REVENUE BOND TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE FACILITIES; APPROVING THE FORM OF THE LOAN AGREEMENT AND THE REVENUE BOND AND PLEDGING REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND AND PROVIDING FOR A SEGREGATED SPECIAL CHARGE OR SURCHARGE FOR THE PAYMENT OF THE BONDS.**

**WHEREAS**, one of the purposes of SDCL Chapters 34A-5 and 9-40 (the “Act”) as found and determined by the Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of system for the collection, treatment and disposal of sewage and other domestic, commercial and industrial wastes; or any system for the control of floods and drainage; or any combination thereof, together with extensions, additions, and necessary appurtenances; and,

**WHEREAS**, a Sanitary District is authorized to issue revenue bonds without pledging its credit to fund improvements, extensions and additions to its wastewater system by SDCL 34A-5 and 9-40 and is authorized to pledge the net income or revenues from the improvements in accordance with the Act; and,

**WHEREAS**, the Spring Creek Cow Creek Sanitation District (the “Sanitary District”) finds it necessary to construct and operate a sewer system for the collection, treatment and disposal of sewage and other domestic, commercial and industrial wastes; and for the control of floods and drainage and has determined that the construction of a sewer facilities is necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its sewer system; and,

**WHEREAS**, the Sanitary District has determined to issue its revenue bonds to finance the construction of its sewer system for the purpose of collecting, treating and disposing of sewage and other domestic, commercial and industrial wastes (the “System”) and has applied to the South Dakota Conservancy District (the “District”) for a Clean Water State Revolving Fund Loan to finance the improvements;

**WHEREAS**, the Sanitary District will adopt special rates or surcharges for the improvements to be pledged, segregated and used for the payment of the Revenue Bond.

**NOW THEREFORE BE IT RESOLVED** by the Sanitary District as follows:

**SECTION 1. Definitions.** The terms when used in this Resolution shall have the following meanings set forth in this section unless the context clearly requires otherwise. All terms used in this Resolution which are not defined herein shall have the meanings assigned to them in the Loan Agreement unless the context clearly otherwise requires.

**“Act”** means South Dakota Codified Laws Chapters 34A-5 and 9-40.

**“Loan”** means the Loan made by the South Dakota Conservancy District to the Sanitary District pursuant to the terms of the Loan Agreement and as evidenced by the Revenue Bond.

**“Project”** means the Spring Creek Cow Creek Sanitation District Sanitary Sewer System Improvements Project.

**“Revenue Bond”** means the revenue bond or bonds issued the date of the Loan Agreement by the Sanitary District to the South Dakota Conservancy District to evidence the Sanitary District’s obligation to repay the principal of and pay interest and Administrative Expense Surcharge on the Loan.

**“System”** means the Sanitary District’s system of collecting, treating and disposing of sewage and other domestic, commercial and industrial wastes.

**SECTION 2. Declaration of Necessity and Findings.**

**2.1. Declaration of Necessity.** The Sanitary District hereby determines and declares it is necessary to construct and finance construction of and improvements to its System described as the Project.

**2.2. Findings.** The Sanitary District does hereby find as follows:

**2.2.1.** The Sanitary District hereby expressly finds that if the Project is not undertaken, the System will pose a health hazard to the Sanitary District and its inhabitants, and will make the Sanitary District unable to comply with state and federal law.

**2.2.2.** Because of the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with State and federal laws, including SDCL Chapter 34A-2, and the federal Clean Water Act, and the nature of the improvements financed, the Sanitary District hereby finds and determines that the Project will substantially benefit the entire System and all of its users within the meaning of the Act.

**2.2.3.** The Sanitary District hereby determines and finds that for the purposes of the Act, that only the net income from the Project financed by the Revenue Bond, be pledged for its payment.

### **SECTION 3. Authorization of Loan, Pledge of Revenue and Security.**

**3.1. Authorization of Loan.** The Sanitary District hereby determines and declares it necessary to finance up to \$3,627,880 of the costs of the Project through the issuance of bonds payable from revenues of the Project and other funds secured by the Sanitary District. The Sanitary District hereby determines that because the Revenue Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, no election is required to issue the Revenue Bond.

**3.2. Approval of Loan Agreement.** The execution and delivery of the Revenue Obligation Loan Agreement (the "Loan Agreement"), the form of which is on file with the District Clerk (the "District Clerk") and open to public inspection, between the Sanitary District as Borrower and the District, are hereby in all respects authorized, approved and confirmed, and the President and District Clerk are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content attached hereto, with such changes as the Attorney for the Sanitary District deems appropriate and approves, for and on behalf of the Sanitary District. The President and District Clerk are hereby further authorized and directed to implement and perform the covenants and obligations of the Sanitary District set forth in or required by the Loan Agreement. The Loan Agreement herein referred to and made a part of this Resolution is on file in the office of the District Clerk and is available for inspection by any interested party.

**3.3. Approval of Revenue Bond.** The issuance of a revenue bond in a principal amount not to exceed \$3,627,880 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (the "Revenue Bond") shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the President, District Clerk, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the District, for and on behalf of the Sanitary District, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The President and District Clerk are hereby authorized to approve the final terms of the Revenue Bond and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapters 34A-5, 9-40 and 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided the Act.

**3.4. Pledge of Revenues.** The Revenue Bond together with the interest thereon, shall not constitute a charge against the Sanitary District's general credit or taxing power, but shall be a limited obligation of the Sanitary District payable solely out of the Project Debt Service Account, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Revenue Bond and shall be used for no other purpose than to pay the principal of, interest and Administrative Surcharge on the Revenue Bond, except as may be otherwise expressly

authorized in the Loan Agreement (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The Sanitary District covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges which will be sufficient to provide for the payments upon the Revenue Bond issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the Project, and depreciation, and the Rate Resolution shall be revised from time to time so as to produce these amounts. The Sanitary District hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Revenue Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene the covenant of the Sanitary District set forth in this Section 3 or any other covenant or agreement in the Loan Agreement.

#### **SECTION 4. Special Charge or Surcharge for Revenue Bond.**

**4.1.** The Sanitary District does hereby create the Revenue Bond Special-Surcharge District (the "District") which shall include all users which benefit from the Project. There shall be charged a special charge or surcharge pursuant to SDCL 9-40-15 for the services provided by Project financed by the Revenue Bond. The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the Revenue Bond. The special charge or 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 and shall be 110% of the debt service requirements on the Revenue Bond.

**4.2. Rates and collection.** The rate herein specific will be collected as a special charge or surcharge for the Project. This special charge or surcharge shall remain in effect until such time as the Revenue Bond is defeased or paid in full.

**4.3. Initial Surcharge.** The initial special charge or surcharge shall be set by resolution and collected at the same time as other charges of the utility. All users within the District which benefit from the Project, current and future, shall be charged the special charge or surcharge. The special charge or surcharge is found to be equitable for the services provided by the Project. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due.

**4.4. Segregation.** The District Clerk shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue, special charges and surcharges.

**4.5. Periodic review.** The amount of the surcharge shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the Loan Agreement's rate covenant and to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due. The surcharge may be set by resolution in accordance with this Section. The rate resolution shall be necessary for the support of government and shall be effective upon passage.

**SECTION 5. Additional Bonds.** As permitted by the Act, Additional Bonds payable from revenues and income of the System or Project may be issued, as permitted in the Loan Agreement, 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 Sanitary District shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond pursuant to the Loan Agreement.

**SECTION 6. Project Fund Accounts.** For the purpose of application and proper allocation of net income of the Project and to secure the payment of principal, Administrative Surcharge and interest on the Revenue Bond, the following mandatory asset segregations shall be included in the sewer system account of the Sanitary District and shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Revenue Bond:

**6.1. Project Revenue Account.** There shall be deposited periodically into the Project Revenue Account the net revenues as defined in the Act derived from the operation of the Project collected pursuant to the ordinances and resolutions of the Spring Creek Cow Creek Sanitation District, South Dakota (collectively the "Rate Ordinance"). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

**6.2. Project Debt Service Account.** Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25<sup>th</sup> day of each month into the account designated Project Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal of, interest and Administrative Surcharge on the Revenue Bonds and any reserve determined by the Sanitary District's governing body to be necessary. The amount set aside monthly shall be not less than one-third of the total principal, interest, and Administrative Surcharge payable on the following January 15, April 15, July 15, or October 15 and if there shall be any deficiency in the amount previously set aside, then the amount of such deficiency shall be added to the current requirement.

**6.3. Depreciation Account.** There shall be established a General Depreciation Account. Out of the revenues of the Project Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the Board of Trustees to be a proper and adequate amount for repair and depreciation of the Project.

**6.4. Project Surplus Account.** There shall be established the Project Surplus Account. Revenues remaining in the Project Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Board of Trustees shall authorize the District Clerk to rectify such default so far as possible by the transfer of money from the Project Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above.

When not required to restore a current deficiency in the Project Debt Service Account, moneys in the Project Surplus Account from time to time may be used for any of the following purposes and not otherwise:

- (a) To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;
- (b) To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then;
- (c) To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or
- (d) To be used for any other authorized municipal purpose designated by the Board of Trustees;
- (e) No moneys shall at any time be transferred from the Project Surplus Account or any other account of the Fund to any other fund of the Sanitary District, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

**SECTION 7. Approval of Paying Agent/Registrar.** The Revenue Bond shall be payable at the office of U.S. Bank National Association, St. Paul, Minnesota, hereby designated as paying agent and registrar.

**SECTION 8. Approval of Bond Counsel.** Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

**SECTION 9. Tax Matters.** The Interest on the Revenue Bond shall be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (“the Code”) and applicable Treasury Regulations (the “Regulations”).



**SECTION 10. Covenants.** The Sanitary District hereby covenants and agrees with the Sanitary District and other owners of the Revenue Bond as follows:

**10.1.** The Sanitary District will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this Resolution.

**10.2.** The Sanitary District agrees and covenants that it will promptly construct the improvements included in the Project.

**10.3.** The Sanitary District covenants and agrees that pursuant to the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal and interest on the Revenue Bond, and the Sanitary District agrees not to sell or otherwise dispose of the System, the Project, or any substantial part thereof, except as provided in the Loan Agreement and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the distribution of water for municipal, industrial, and domestic purposes within the Sanitary District.

**10.4.** The Sanitary District covenants and agrees with the Sanitary District and other owners of the Revenue Bond that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements and accounts as provided for in this Resolution and the Loan Agreement. The Revenue Bond shall refer expressly to this Resolution and the Act and shall state that it is subject to all provisions and limitations thereof pursuant to SDCL 40-9-19.

**SECTION 11. Depositories.** The District Clerk shall cause all moneys pertaining to the Funds and Accounts to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of SDCL Ch. 4-6A, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the Sanitary District, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Funds and Accounts as authorized in this Resolution; except that moneys from time to time on hand in the Funds and Accounts may at any time, in the discretion of the Sanitary District's governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Fund may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the Fund or Account from whose moneys the deposit was made or the

investment was purchased, and handled and accounted for in the same manner as other moneys therein.

**SECTION 12. Consent to Appointment.** In the event of mismanagement of the Project, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the System are dissipated, wasted or diverted from their proper application as set forth in the Loan Agreement, Revenue Bond, or herein, the Sanitary District hereby consents to the appointment of a receiver pursuant to the Act, and agrees that the receiver will have the powers set forth therein, to operate and administer the Project, and charge and collect rates as described therein.

**SECTION 13. Severability.** If any section, paragraph, clause or provision of this Resolution, the Loan Agreement, the Revenue Bond, or any other Loan Document shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Resolution or said Loan Agreement, Revenue Bond, or any other Loan Document.

**SECTION 14. Repeal of Resolution.** At such time as the Revenue Bond is defeased or paid in full, this Resolution and the special charge or surcharge shall automatically be repealed without any further action of the Sanitary District.

**SECTION 15. Authorization of Sanitary District Officials.** The President, District Clerk, Sanitary District Attorney and Sanitary District officials shall be and they are hereby authorized to execute and deliver for and on behalf of the Sanitary District any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the actions authorized herein.

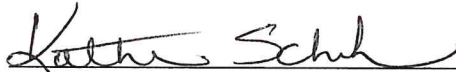


**SECTION 16. Effective Date.** This Resolution shall take effect on passage.

Adopted at Spring Creek Cow Creek Sanitation District, South Dakota, this 8<sup>th</sup> day of May 2024.

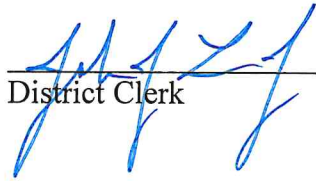
**APPROVED:**

**SPRING CREEK COW CREEK SANITATION  
DISTRICT, SOUTH DAKOTA**

  
\_\_\_\_\_  
President

(Seal)

ATTEST:

  
\_\_\_\_\_  
District Clerk

