

**POWDER HOUSE PASS COMMUNITY IMPROVEMENT DISTRICT
RESOLUTION 2022-09**

A RESOLUTION AUTHORIZING THE ISSUANCE BY POWDER HOUSE PASS COMMUNITY IMPROVEMENT DISTRICT, SOUTH DAKOTA OF ITS SPECIAL ASSESSMENT BOND IN AN AMOUNT NOT EXCEEDING \$7,163,500, TO PAY THE COSTS OF DEVELOPING, DESIGNING, ENGINEERING, AND CONSTRUCTING THE FURTHER BUILD-OUT OF THE DISTRICT'S WASTEWATER COLLECTION AND TREATMENT SYSTEMS, INCLUDING AN ADDITIONAL EXPANSION OF THE DISTRICT'S RESOURCE RECOVERY FACILITY TO ACCOMMODATE MAXIMUM CAPACITY BUILDOUT; APPROVING THE FORM OF LOAN AGREEMENT AND REVENUE BOND; AUTHORIZING THE SALE OF THE BOND; PLEDGING SPECIAL ASSESSMENT REVENUES TO THE PAYMENT OF THE BOND; AND PROVIDING FOR THE MANNER OF EXECUTION AND ISSUANCE OF THE BOND.

WHEREAS, Powder House Pass Community Improvement District, South Dakota (the "District") is authorized pursuant to SDCL Chapters 7-25A and 9-40 to establish, construct, equip, operate and maintain systems and facilities for sanitary sewer and sewage and solid waste disposal systems, and pursuant to SDCL 7-25A-26, SDCL Chapter 9-43, and SDCL Chapter 6-8B (together, the "Acts") is authorized to issue bonds to defray the cost of such projects; and

WHEREAS, the Board of Supervisors of the District (the "District Board") has determined that it is necessary and in the best interests of the District to pay the cost of developing, designing, engineering and constructing the further build-out of the District's wastewater collection and treatment systems (the "System"), including an additional expansion of the District's resource recovery facility to accommodate maximum capacity buildout, such improvements being more fully described as follows:

Powder House Pass CID Water Resource Recovery Facility Expansion and Lift Station Project as outlined in the facilities plan dated December 15, 2021 (the "Project"),

and to finance a portion of the costs thereof through the issuance of its Special Assessment Bond, Series 2022 in the amount not to exceed \$7,163,500 (the "Bond") to the South Dakota Clean Water State Revolving Fund Loan Program administered by the South Dakota Conservancy District ("SDCD") pursuant to SDCL 46A-1-49; and

WHEREAS, pursuant to the Acts, the District Board has adopted a Resolution of Necessity to establish a special assessment to be levied and apportioned in accordance with SDCL Chapters 7-25A and 9-43 (the "Special Assessment") in order to repay the principal of and interest on the Bond; and

WHEREAS, the Board has determined that the issuance of the Bond would be in the best interests of the District,

NOW, THEREFORE, BE IT RESOLVED by the Board of Powder House Pass Community Improvement District, South Dakota, as follows:

ARTICLE I: THE BOND

Section 1.01 Findings. It is hereby found, determined and declared that:

(a) The District is a political subdivision of the State of South Dakota and a body corporate and politic.

(b) The District finds and determines that, without making the improvements included in the Project, the System would pose a health hazard to the residents of the District, and the lands adjacent thereto.

(c) As authorized by this Resolution and the Act, the District has determined that it is necessary and desirable to issue the Bond, and to use the proceeds thereof to (i) to pay a portion of the costs of the Project and (ii) to pay the costs of issuance of the Bond.

(d) The Bond will be issued, sold and delivered by the District to the SDCD pursuant to the terms of the Revenue Obligation Loan Agreement between the SDCD and the District (the "Loan Agreement").

Section 1.02 Authorization and Execution of Bond; Terms. The District hereby authorizes the issuance of one fully registered Bond in a principal amount not to exceed the lesser of \$7,163,500 or the aggregate amount of the Special Assessment. The Bond will be designated "Special Assessment Bond, Series 2022," will be numbered R-1 and will be dated as of the date of its issuance. The Bond will be payable in annual installments over 30 years commencing as set forth in the Loan Agreement, provided that, in accordance with SDCL 9-43-114, the maturity of the Bond may not be later than one year after the maturity of the last Special Assessment installment.

The Bond will bear interest at the rate of 1.875% per annum pursuant to the Loan Agreement. In addition, as required by the Loan Agreement, the District will pay the holder of the Bond an administrative expense surcharge on the outstanding principal amount of the Bond at a rate of .250% per annum.

The Bond must be signed by the manual signatures of the Chairman and District Secretary, and sealed with the corporate seal of the District, or a facsimile thereof. The approval hereby given to the Bond includes an approval of such additional details therein as may be necessary and appropriate and approved by the District's Attorney prior to the execution thereof. The execution of the Bond by the Chairman and District Manager will be conclusive evidence of the approval of the Bond in accordance with the terms hereof.

Section 1.03 Authorization of Financing Documents. The documents required to accomplish the issuance of the Bond include the following:

- (a) the Loan Agreement;
- (b) the Bond;
- (c) all documents necessary to evidence the completion of all proceedings required to establish, apportion and levy the Special Assessment; and
- (d) such other documents, agreements or instruments as may be necessary to make covenants and recite facts required to demonstrate the validity and enforceability of the Bond under the laws of the State of South Dakota and to effectuate the terms and intent of this Resolution.

The execution and delivery of such documents is hereby authorized, approved and confirmed, and the Chairman and District Secretary are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content presented to the District on this date (the terms of which are incorporated herein by this reference), with such changes as the District's Attorney deems appropriate and approves, for and on behalf of the District. The Chairman and District Secretary are hereby further authorized and directed to implement and perform the covenants and obligations of the District as set forth in or required by the Loan Agreement.

Section 1.04 Form of Bond. The Bond will be in substantially the form set forth on Appendix B to the Loan Agreement.

Section 1.05 Sale of Bond. The sale of the Bond to the SDCD at par plus interest accrued to the date of delivery of the Bond, is ratified and confirmed; and the officers of the District are authorized and directed to do any and all acts necessary to conclude delivery of the Bond to said purchaser, upon receipt of the purchase price, as soon after the effective date of this Resolution as is convenient.

Section 1.06 Application of Bond Proceeds. Proceeds of the Bond will be deposited in the manner provided in the Loan Agreement.

Section 1.07 Inspection of Documents. All documents referred to herein will be available for public inspection in the office of the District during regular business hours.

ARTICLE II: SECURITY FOR THE BOND

Section 2.01 Pledge of Special Assessments. Pursuant to SDCL Chapter 9-43, including specifically, SDCL 9-43-114, the District hereby irrevocably pledges to the SDCD all revenues received from the Special Assessment (the "Pledged Revenues") in order to secure the District's obligation to pay all amounts payable under the Loan Agreement and the Bond. The District will set aside and segregate in a separate account on a monthly basis such Pledged Revenues for payment of the principal and interest on the Bond.

Section 2.02 Deposit of Pledged Revenues. All moneys in the account provided for above will be deposited with such financial institution as designated from time to time by the District.

ARTICLE III: OTHER COVENANTS

Section 3.01 Compliance With Laws. The District hereby covenants and agrees with the holder or holders, from time to time of the Bond, that it will punctually perform all duties with reference to the Bond required by the constitution and laws of the State of South Dakota and by this Resolution.

Section 3.02 Other Covenants. The District agrees and covenants that it will purchase the improvements included in the Project. The District will not sell, lease, mortgage or in any other manner dispose of the Project, or any substantial part thereof, until the Bond has been paid in full. The District covenants and agrees with the owners of the Bond that it will prepare, keep and file records, statements and accounts as provided for in this Resolution and the Loan Agreement.

Section 3.03 Additional Bonds. Additional bonds payable from the Pledged Revenues may be issued on a parity with the Bond, but only as permitted in the Loan Agreement and no provision of this Resolution will have the effect of restricting the issuance of, or impairing the first lien of, such additional parity bonds. The District will have the right to issue additional bonds secured by a lien subordinate to the lien for the Bond but only as permitted by the Loan Agreement.

ARTICLE IV: MISCELLANEOUS

Section 4.01 Limited Obligations. The Bond, together with the interest thereon, will not constitute a charge against the District's general credit or taxing power, but will be a limited obligation of the District payable solely out of the Pledged Revenues, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Bond and will be used for no other purpose than to pay the principal of and interest on the such Bond, except as may be otherwise expressly authorized in the Loan Agreement. The Bond will not constitute indebtedness within the meaning of any constitutional or statutory debt limitation.

Section 4.02 Severability. If any section, paragraph, clause or provision of this Resolution or the Loan Agreement is held invalid, the invalidity of such section, paragraph, clause or provision will not affect any of the other provisions of this Resolution or the Loan Agreement. The Chairman, District Secretary, Attorney for the District and other District officials are hereby authorized to execute and deliver, for and on behalf of the District, the Bond 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 matters herein authorized.

Section 4.03 Retention of Bond Counsel. The District hereby retains the firm of Davenport, Evans, Hurwitz & Smith, L.L.P., Sioux Falls, South Dakota, to act as bond counsel with respect to the Bond.

Section 4.04 Effective Date. This Resolution, after its final passage, will be recorded in a book kept for that purpose, will be authenticated by the signature of the Chairman and District Secretary, will be published in the District's officially designated newspaper, and will be effective on the 20th day following such publication. After becoming effective, this Resolution is irrevocable until the Bond issued hereunder has been paid in full, except that prior to issuance of the Bond, this Resolution may be amended at any time by adoption of an administrative resolution or ordinance.

Those voting aye:

Those voting nay:

Motion carried.

Adopted at Powder House Pass Community Improvement District, Lead, South Dakota, this 30th day of September, 2022.

APPROVED:

ATTEST:

Greg Kaschmitter, CID President

Julie Stone, Secretary

Approved: September 30, 2022
Published Date:
Effective Date:

Seal

CERTIFICATE

The undersigned hereby certifies that the foregoing Resolution is a true and exact copy of the Resolution adopted by the Community Improvement District of Powder House Pass Community Improvement District at a meeting duly called and held on September 30, 2022.

Published: _____, 2022

Effective: _____, 2022

Dated this 30th day of September, 2022.

District Secretary

{SEAL}