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RESOLUTION NO. 395

CERTIFICATION OF MINUTES RELATING TO

\$795,000 Special Improvement Sanitary Sewer,  
Water System and Street System District No. 24 Bonds

Issuer: City of Polson, Montana

Governing Body: City Council

Kind, date, time and place of meeting: A special meeting, held on May 2, 1979,  
at 4:00 o'clock p.m. at Polson City Hall.

Members Present: James W. Duford, David R. Pugh, Neil Wm. Devlin, Gordon G. Fisher

Members Absent: Willard A. Maughan, George Buus

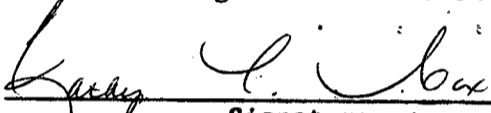
Documents Attached: Minutes of said meeting (pages): One (1)

RESOLUTION AWARDING SALE OF \$795,000 SPECIAL IMPROVEMENT SANITARY SEWER, WATER SYSTEM AND STREET SYSTEM DISTRICT NO. 24 BONDS, AND PRESCRIBING THEIR FORM AND TERMS AND COVENANTS OF THE CITY FOR THE SECURITY OF THE HOLDERS THEREOF

I, the undersigned, being the duly and qualified and acting recording officer of the public corporation issuing the bonds referred to in the title of this certificate, certify that the documents attached hereto, as described above, have been carefully compared with the original records of said corporation in my legal custody, from which they have been transcribed; that said documents are a correct and complete transcript of the minutes of a meeting of the governing body of said corporation, and correct and complete copies of all resolutions and other actions taken and of all documents approved by the governing body at said meeting, so far as they relate to said bonds; and that said meeting was duly held by the governing body at the time and place and was attended throughout the meeting by the members indicated above, pursuant to call and notice of such meeting given as required by law.

WITNESS my hand officially as such recording officer this 2nd day of May, 1979.

(SEAL)

  
\_\_\_\_\_  
Signature

Kathy L. Cox, City Clerk  
\_\_\_\_\_  
Name and Title

Member Neil Wm. Devlin introduced the following resolution and moved its adoption:

RESOLUTION NO. 395

RESOLUTION AWARDING SALE OF \$795,000 SPECIAL IMPROVEMENT SANITARY SEWER, WATER SYSTEM AND STREET SYSTEM DISTRICT NO. 24 BONDS, AND PRESCRIBING THEIR FORM AND TERMS AND COVENANTS OF THE CITY FOR THE SECURITY OF THE HOLDERS THEREOF

BE IT RESOLVED by the City Council of the City of Polson, Montana, as follows:

Section 1. Recitals. It is hereby found, determined and declared as follows:

1.01. By Resolution No. 392, adopted September 18, 1978, this Council declared its intention to create Special Improvement Sanitary Sewer, Water System and Street System District No. 24 for the purpose of making special improvements within and for the special benefit of said district, which resolution designated the number of the district, described the boundaries thereof, and stated the general character of the improvements to be made therein, in accordance with the provisions of Montana Code Annotated, Title 7, Chapter 12. By said resolution this Council also declared its intention to cause the cost and expense of making such improvement to be assessed against the properties included within the boundaries of the district.

1.02. The Council by Resolution No. 394, adopted September 18, 1978, created Special Improvement Sanitary Sewer, Water System and Street System District No. 24 (hereinafter referred to as "Special Improvement District No. 24"), and did order the proposed improvements in accordance with the resolution of intention designated in paragraph 1.01 hereof.

1.03. Plans, specifications, maps, profiles and surveys for construction of the improvements in Special Improvement District No. 24 were prepared by the engineers acting for the City, and were thereupon examined and approved by this Council. An advertisement for bids for construction of said improvements was published in the official newspaper of the City on October 19 and October 26, 1978, calling for

bids to be received on November 6, 1978, on which date the bids theretofore received were opened and examined. After referring the bids to the engineers for the City it was determined that the regular proposals for furnishing work and materials according to Schedules I and II required for construction of said improvements in accordance with approved plans and specifications were as follows: Schedule I - Pack & Company Inc., Kalispell, Montana, based upon quantities of work and materials estimated in the plans and specifications in the aggregate sum of \$349,302.15 and Schedule II - Long Construction Company, Missoula, Montana, in the aggregate sum of \$288,111.00. Contracts for construction of said improvements were therefore awarded to said bidders, subject to the right of owners of property liable to be assessed to elect to take the work and enter into a written contract therefor in the manner provided by Montana Code Annotated, Sec. 7-12-4147, which election the property owners failed to make, whereupon the City and said bidders entered into a written contract for construction of said improvements upon the bidders having executed and filed satisfactory bonds with respect thereto.

1.04. It is presently estimated that the cost and expense connected with and incidental to the formation of said improvement district, including costs of preparation of plans, specifications, maps, profiles, engineering superintendence and inspection, preparation of assessment rolls, expenses of making the assessments, the cost of work and materials under the construction contract, and all other costs and expenses, will be \$795,000, which amount will be levied and assessed upon all property within the improvement district on the basis described in the resolution of intention. The Council has jurisdiction and is required by law to levy and assess such balance, to collect such special assessments and credit the same to the special improvement district fund created for said district, which fund is to be maintained on the official books and records of the City separate from all other City Funds, to be used solely for payment of interest when due on the bonds herein authorized and for redemption of such bonds in order of their registration whenever and as often as the balance in said fund after payment of interest due is sufficient for the purpose.

1.05. For the purpose of paying the total cost and expense of making the improvements, which is to be assessed against the property within the district, this Council called for the sale of bonds in the principal amount of \$795,000. After a public sale noticed and conducted in accordance with applicable statutory provisions, the bonds were sold to D. A. Davidson & Co., of Great Falls, Montana.

1.06. All acts, conditions and things required by the Constitution and laws of the State of Montana, including Montana Code Annotated, Title 7, Chapter 12, in order to make the bonds herein authorized valid and binding special obligations in accordance with their terms and in accordance with the terms of this resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required.

Section 2. Special Improvement District No. 24 Bonds. For the purpose of paying the costs and expenses incurred in construction of the improvements authorized to be constructed in Special Improvement District No. 24, and in anticipation of collection of special assessments to be levied therefor, and in accordance with the public offering and contract of sale described in paragraph 1.05 hereof, the City of Polson shall forthwith issue and deliver to the purchaser its Special Improvement District No. 24 bonds in the total principal amount of \$795,000, payable solely from the Special Improvement District No. 24 Fund. The bonds shall be dated and registered as of January 15, 1979 and shall be 795 in number and numbered serially from 1 through 795, each in the denomination of \$1000. The bonds shall mature on January 15, 1999, subject to redemption and prepayment prior thereto in accordance with Section 3 hereof. The bonds shall be payable to bearer, and shall bear interest from their date of registration until called for redemption or paid in full at the basic and additional rates and for the periods of time set forth on Exhibit B attached hereto. Interest shall be payable on the 15th day of January of each year, commencing January 15, 1980, represented by coupons appurtenant to each bond.

Section 3. Payment of Principal and Interest. The principal of and interest on the bonds shall be payable at the office of the City Treasurer. The interest shall be paid by the City Treasurer from the Special Improvement District No. 24 Fund on presentation of the coupons belonging thereto when due, and any balance remaining in the fund shall be applied to the payment of the principal and the redemption of the bonds in the order of their registration as evidenced by their serial numbers. Whenever there is any balance in the fund after paying the interest due on all bonds drawn against it, the City Treasurer shall call in for payment outstanding bonds in an amount which, together with the interest thereon to the date of redemption, will equal the amount of the fund on that date. The date of redemption shall be fixed by the City Treasurer, who shall give notice

by publication once in a newspaper published in the City and by written notice to any holder or holders of such bonds if their addresses be known, of the numbers of the bonds and the date on which payment will be made, which date shall be not less than ten days after the date of publication or of service of notice. On the date so fixed interest shall cease.

Section 4. Form of Bonds. The bonds and the interest coupons appurtenant thereto shall be drawn in substantially the form set forth in Montana Code Annotated, Section 7-12-4202, as more fully set forth in Exhibit A attached hereto and by this reference made a part hereto.

Section 5. Execution, Registration and Delivery of Bonds. The bonds shall be prepared under the direction of the City Clerk and shall then be signed by the facsimile signatures of the Mayor and Clerk, and the interest coupons appurtenant thereto shall be executed and authenticated by the printed, lithographed or engraved facsimile signatures of the Mayor and Clerk. The bonds and coupons of each issue shall then be registered in order of their serial numbers by the City Treasurer, as of January 15, 1979, and shall be delivered by the City Treasurer to the purchaser upon payment of the par value thereof plus accrued interest from the registration date to the date of such delivery and payment. The purchasers shall not be obligated to see to the application of the purchase price, but the proceeds of the bonds shall be credited by the City Treasurer forthwith to the Special Improvement District No. 24 Fund, and used solely for the payment of the cost and expenses necessarily incurred in the completion of the improvements heretofore ordered, except that the accrued interest received shall be applied in payment of interest on the bonds when due.

Section 6. Special Improvement District No. 24 Fund.

6.01. There is hereby created and established a fund designated as "Special Improvement District No. 24 Fund," which shall be maintained by the City Treasurer of the City on the books and records of the City separate and apart from all other funds of the City. Within said Fund there shall be maintained separate accounts, designated as the "Bond Account" and "Interest Account," respectively. Upon the collection of the installment of principal and interest due on November 30 of each year on the special assessments to be levied with respect to the improvements in said District, the City Treasurer shall credit to the Interest Account in the District Fund so much of said special assessments as is collected as interest payment. Any installment of any special assessment paid prior to its due date with interest accrued thereon to the nearest bond call date shall be credited with respect to principal and interest payments the same as other assessments are credited to the District Fund. All moneys in the Interest Account and the Bond Account shall be used first to pay the interest due, and any remaining moneys shall be used to pay bonds. Redemption of bonds therefrom shall be in order of their registration numbers, and interest shall be paid as accrued thereon to the date of redemption, in accordance with the provisions of Montana Code Annotated, Sections 7-12-4203 and 7-12-4206.

6.02. The Council shall annually or more often if necessary issue an order authorizing a loan or advance from the Special Improvement District Revolving Fund to said District Fund in an amount sufficient to make good any deficiency then existing in the Interest Account in said District Fund, and shall issue an order authorizing a loan or advance from the Revolving Fund to the District Fund in an amount sufficient to make good any deficiency then existing in the Bond Account of said District Fund to the extent that moneys are available in the Revolving Fund. Pursuant to Ordinance No. 283, the City has undertaken and agreed to provide funds for the Revolving Fund by levying such tax or making such loan from the General Fund as authorized by Montana Code Annotated, Section 7-12-4222. In the event that the balance on hand in the Revolving Fund fifteen days prior to any date when interest is due on special improvement district bonds of the City is not sufficient to make good all deficiencies then existing in the improvement district fund for which the City has promised to make loans from the Revolving Fund, the balance on hand in the Revolving Fund shall be allocated to the funds of the improvement district in which such deficiencies then exist in proportion to the amounts of the deficiencies on the respective dates of receipt of such money, until all interest accrued on such special improvement district bonds of the City has been paid. On any date when all accrued interest on improvement district bonds of the City payable from funds for which the City has promised to make loans from the Revolving Fund has been paid, any balance remaining in the Revolving Fund shall be loaned or advanced to the improvement district fund for payment and redemption of bonds to the extent the improvement district fund is deficient for such purpose, in an amount proportionate to the amount of such deficiency. A deficiency shall be deemed to exist in the Bond Account of the Special Improvement District No. 24 Fund on any date on which interest is due on bonds payable therefrom unless the City has then or theretofore redeemed bonds in a principal amount equal to the sum of all installments

of special assessments paid prior to their due dates plus a fraction of the remaining principal amount of the special assessments originally levied and appropriated to said Improvement District Fund equal to the number of installments of such assessments then and thereafter due divided by the total number of installments in which such special assessments are permitted to be paid.

Section 7. Covenants. The City of Polson covenants and agrees with the holder from time to time of each of the bonds issued pursuant to this resolution that until all such bonds and interest thereon are fully paid:

7.01. The City will hold the Special Improvement District No. 24 Fund and the Special Improvement District Revolving Fund described above as trust funds, separate and apart from all of its other funds, and the City, its officers and agents, will comply with all covenants and agreements contained in this resolution. The provisions hereinabove made with respect to the Improvement District Fund and Revolving Fund are in accordance with the undertaking and agreement of the City made in connection with the public offering of the bonds herein authorized.

7.02. The City will do all acts and things necessary to enforce the provisions of the construction contracts and bonds referred to in paragraph 1.03 and to assure the completion of the improvements in Special Improvement District No. 24 in accordance with the plans and specifications and within the time therein provided, and will pay all costs thereof promptly as incurred and allowed, out of the Special Improvement District Fund and within the amount of the bond proceeds appropriated thereto.

7.03. The City will do all acts and things necessary for the final and valid levy of special assessments upon all property within the boundaries of Special Improvement District No. 24 in accordance with the Constitution and laws of the State of Montana and the Constitution of the United States, in an aggregate principal amount not less than \$795,000. Such special assessments shall be levied in accordance with the basis therefor prescribed in the resolution of intention described above, payable in annual installments over a period of twenty years, each annual installment being due in an amount equal to one-twentieth of the principal amount of each assessment, with interest on the whole amount remaining unpaid at the rate or rates borne by the bonds, interest being payable with principal installments. The assessments to be levied will be payable on the 30th day of November in each of the years 1979 through 1998, inclusive, if not thereafter paid, and shall become delinquent on that date unless paid in full. The first partial payment of each assessment shall include interest on the entire assessment from the date of registration of the bonds herein authorized to January 15, 1980, and each subsequent partial payment shall include interest from one year on that payment and then remaining balance of the special assessment. The assessments shall constitute a lien upon and against the property against which they are made and levied, which lien may only be extinguished for payment of the assessment with all penalties, cost and interest as provided in Montana Code Annotated, Section 7-12-4191. No tax deed issued with respect to any lot or parcel of land shall operate as payment of any installment of the assessment thereon which is payable after the execution of such deed, and any tax deed issued shall convey title subject only to the lien of said future installments, as provided in Montana Code Annotated, Section 15-18-309.

7.04. If at any time and for whatever reason any special assessment or tax herein agreed to be levied is held invalid, the City and this Council, its officers and employees, will take all steps necessary to correct the same and to re-assess and levy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance or resolution relating thereto, and will re-assess and re-levy the same with the same force and effect as an original levy thereof, as authorized in Montana Code Annotated, Section 7-12-4186. Any special assessment, or re-assessment or re-levy shall, so far as is practicable, be levied and collected as it would have been if the first levy had been enforced including the levy and collection of any interest accrued on the first levy.

7.05. There is now no litigation threatened or pending questioning the validity or regularity of the creation of Special Improvement District No. 24, the contracts for construction of improvements therein or the undertaking and agreement of the City to levy special assessments therefor and to make good any deficiency in the collection thereof through the levy of taxes for and the making of advances from the Special Improvement District Revolving Fund, or the right and power of the City to issue the bonds herein authorized, or in any manner questioning the existence of any condition precedent to the exercise of the City's powers in these matters. If any such litigation should be initiated or threatened, the City will forthwith notify in writing the original purchasers of bonds herein authorized and will furnish the purchasers with a copy of all documents, including pleadings, in connection with such litigation.

7.06. The City will make no use of the proceeds of bonds issued hereunder which, if such uses had been reasonably expected on the date of issue thereof, would have caused them to be arbitrage bonds under the provisions of Section 103(c) of the Internal Revenue Code of 1954, as amended, and the regulations thereunder.