

AGENDA REPORT

TO: Mayor & City Commission
FROM: Ken Hibl, City Manager
DATE: January 27, 2010
RE: Notice of Intent Resolution – Sewage Disposal System Revenue Bonds

For the Agenda of February 1, 2010

Background. The City Commission previously considered and approved a request to the United States Department of Agriculture (USDA) for a loan to allow us to eliminate our current non-compliance status related to ammonia discharge at our waste water treatment plant; accomplish needed system improvements and upgrades at the plant; and refinance existing sewer fund debt. The USDA has approved the loan request, and we now required to issue the necessary notices and take the required administrative steps to issue revenue bonds (the funding instrument the USDA uses for issuance of loan proceeds) to utilize the approved loan funds.

The City's long-time (approx. 25 years) bonding attorney has provided a letter (*copy att'd*) regarding this matter and the required resolution (*copy att'd*) that must be adopted by the City Commission noticing its intent to issue the revenue bonds.

A significant aspect of Mr. Keim's letter addresses the matter of utilizing bond revenues for refunding a portion of our existing sewer fund debt, explaining that we cannot refinance this debt for a period beyond the expected useful life of the treatment plant. We've had subsequent discussions with both USDA and Mr. Keim related to this specific topic and agreed that the term of the refunding portion of the bonds will only be for 20 years, thus eliminating the concern raised in Mr. Keim's letter.

The City Commission is now asked to adopt the required resolution, thereby directing our City Clerk to publish public notice of the City's intent to issue the revenue bonds.

Issues & Questions Specified. Should the City Commission adopt the required Notice of Intent Resolution?

Alternatives.

1. Adopt the resolution.
2. Do not adopt the resolution.
3. Set aside decision regarding this matter to a later date.

Financial Impact. The maximum amount of the revenue bonds issued will be \$3,081,000; a definitive amount will be determined when all bids are received for the ammonia remediation project and other system upgrades.

Recommendation. I recommend that the City Commission adopt the Notice of Intent Resolution (2010-007).

Attachments.

1. Resolution 2010-007.
2. Letter of Mr. Keim.

RESOLUTION 2010-007
NOTICE OF INTENT RESOLUTION
SEWAGE DISPOSAL SYSTEM REVENUE BONDS

CITY OF CLARE
COUNTIES OF CLARE AND ISABELLA, STATE OF MICHIGAN

Minutes of a regular meeting of the City Council of the City of Clare, Counties of Clare and Isabella, State of Michigan, held on the 1st day of February, 2010, at 6:00 p.m., prevailing Eastern Time.

PRESENT: Members _____

ABSENT: Members _____

The following preamble and resolution were offered by Member _____ and supported by Member _____:

WHEREAS, the City of Clare, Counties of Clare and Isabella, State of Michigan (the "City") intends to issue and sell bonds, pursuant to Act 94, Public Acts of Michigan, 1933, as amended, in one or two series in an aggregate amount not to exceed Three Million Eighty-One Thousand Dollars (\$3,081,000) for the purpose of paying all or part of the cost of acquiring, constructing, furnishing and equipping improvements to the City's sewage disposal system including replacement of existing wastewater treatment facility with new facilities, lift station upgrades, installation of ammonia control equipment and facilities, electrical upgrades and demolition of existing wastewater treatment facility, and to refund the City's outstanding Sewage Disposal System Revenue Bond, Series 1990 (together, the "Project"); and

WHEREAS, a notice of intent to issue bonds must be published before the issuance of the aforesaid bonds in order to comply with the requirements of Section 33 of Act 94, Public Acts of Michigan, 1933, as amended; and

WHEREAS, the City intends at this time to state its intentions to be reimbursed from proceeds of the bonds for any expenditures undertaken by the City for the Project prior to issuance of the bonds.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City Clerk is hereby authorized and directed to publish a notice of intent to issue bonds in the *Clare Sentinel*, a newspaper of general circulation in the City.
2. Said notice of intent shall be published as a one-quarter (1/4) page display advertisement in substantially the following form:

NOTICE TO TAXPAYERS AND ELECTORS OF
THE CITY OF CLARE, COUNTIES OF CLARE AND ISABELLA,
STATE OF MICHIGAN AND THE USERS OF THE CITY'S
SEWAGE DISPOSAL SYSTEM OF INTENT TO ISSUE BONDS AND
THE RIGHT OF REFERENDUM RELATING THERETO

PLEASE TAKE NOTICE that the City of Clare, Counties of Clare and Isabella, State of Michigan (the "City"), intends to issue and sell revenue bonds pursuant to Act 94, Public Acts of Michigan, 1933, as amended, in one or two series in an aggregate amount not to exceed Three Million Eighty-One Thousand Dollars (\$3,081,000), for the purpose of paying all or part of the cost of acquiring, constructing, furnishing and equipping improvements to the City's sewage disposal system including replacement of existing wastewater treatment facility with new facilities, lift station upgrades, installation of ammonia control equipment and facilities, electrical upgrades and demolition of existing wastewater treatment facility, and to refund the City's outstanding Sewage Disposal System Revenue Bond, Series 1990.

SOURCE OF PAYMENT OF REVENUE BONDS

THE PRINCIPAL OF AND INTEREST ON SAID REVENUE BONDS SHALL BE PAYABLE solely from the revenues received by the City from the operations of said sewage disposal system. Said revenues will consist of rates and charges that may from time to time be revised to provide sufficient revenues to provide for the expenses of operating and maintaining the system, to pay the principal of and interest on said bonds and to pay other obligations of the system.

BOND DETAILS

SAID BONDS will be payable in annual installments not to exceed forty (40) in number, and will bear interest at the rate or rates to be determined at private sale to the U.S. Government but in no event to exceed two and one-half percent (2.5%) per annum on the balance of the bonds from time to time remaining unpaid.

RIGHT OF REFERENDUM

THE REVENUE BONDS WILL BE ISSUED WITHOUT A VOTE OF THE ELECTORS UNLESS A PETITION REQUESTING SUCH A VOTE SIGNED BY NOT LESS THAN 10% OF THE REGISTERED ELECTORS RESIDING WITHIN THE BOUNDARIES OF THE CITY IS FILED WITH THE CITY CLERK WITHIN FORTY-FIVE (45) DAYS AFTER PUBLICATION OF THIS NOTICE. IF SUCH PETITION IS FILED, THE BONDS MAY NOT BE ISSUED WITHOUT AN APPROVING VOTE OF A MAJORITY OF THE QUALIFIED ELECTORS RESIDING WITHIN THE BOUNDARIES OF THE CITY VOTING THEREON.

THIS NOTICE is given pursuant to the requirements of Section 33, Act 94, Public Acts of Michigan, 1933, as amended.

Diane Schmidt
City Clerk
City of Clare

3. The City Council does hereby determine that the foregoing form of notice of intent to issue bonds and the manner of publication directed is the method best calculated to give notice to the sewage disposal system's users and the electors residing in the boundaries of the City of this City's intent to issue the bonds, the purpose of the bonds, the security for the bonds and the right of referendum relating thereto, and the newspaper named for publication is hereby determined to reach the largest number of persons to whom the notice is directed.

4. The City makes the following declarations for the purpose of complying with the reimbursement rules of Treas. Reg. § 1.150-2 pursuant to the Internal Revenue Code of 1986, as amended:

- (a) As of the date hereof, the City reasonably expects to reimburse itself for the expenditures described in (b) below with proceeds of debt to be incurred by the City.
- (b) The expenditures described in this paragraph (b) are for the costs of acquiring and constructing the Project which were paid subsequent to sixty (60) days prior to the date hereof or which will be paid prior to the issuance of the bonds from funds of the City.
- (c) The maximum principal amount of debt expected to be issued for the Project, including issuance costs, is \$3,081,000.
- (d) A reimbursement allocation of the expenditures described in (b) above with the proceeds of the borrowing described herein will occur not later than 18 months after the later of (i) the date on which the expenditure is paid, or (ii) the date the Project is placed in service or abandoned, but in no event more than three (3) years after the original expenditure is paid. A reimbursement allocation is an allocation in writing that evidences the City's use of the proceeds of the debt to be issued for the Project to reimburse the City for a capital expenditure made pursuant to this resolution.
- (e) The expenditures described in (b) above are "capital expenditures" as defined in Treas. Reg. § 1.150-1(b), which are any costs of a type which are properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of placed in service under Treas. Reg. § 1.150-2(c)) under general Federal income tax principles (as determined at the time the expenditure is paid).
- (f) No proceeds of the borrowing paid to the City in reimbursement pursuant to this Resolution will be used in a manner described in Treas. Reg. § 1.150-2(h) with respect to abusive uses of such proceeds, including, but not limited to, using funds corresponding to the proceeds of the borrowing in a manner that results in the creation of replacement proceeds (within Treas. Reg. § 1.148-1) within one year of the reimbursement allocation described in (d) above.

5. Each of the officers of the City is hereby authorized and directed to execute and deliver such applications, documents, instruments and certificates with the Michigan Department of Treasury in support of an application of the City for "qualified status" or, in the alternative, for prior approval with respect to the City's bonds, and to file for such waivers as may be necessary or advisable with respect to the City's bonds.

6. The City hereby ratifies and confirms the retention of Miller, Canfield, Paddock and Stone, P.L.C. ("Miller Canfield"), as bond counsel in connection with the bonds.

7. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

AYES: Members _____

NAYS: Members _____

RESOLUTION DECLARED ADOPTED.

Clerk

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Clare, Counties of Clare and Isabella, State of Michigan, at a regular meeting held on February 1, 2010, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Clerk

Founded in 1852
by Sidney Davy Miller

MILLER CANFIELD

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January 21, 2010

Mr. Ken A. Hibel
City Manager
City of Clare
202 W. Fifth Street
Clare, MI 48617-1490

Re: City of Clare Sewage Disposal System Revenue Bond for Wastewater Plant
Improvements Project

Dear Ken:

When we met in December we discussed the idea of publishing the so-called 45-day referendum notice in January or February even though the City would not have a final determination of the process that would be incorporated in the new wastewater treatment facilities. I have delayed until now the sending of the enclosed resolution because of ongoing discussions with Rural Development regarding the refunding component of the bond issue. Let me explain briefly the issues and how they can be resolved.

The City's Sewage Disposal System Revenue Bond, Series 1990, was issued to pay part of cost of the wastewater treatment facility that was constructed at that time. The bond issue has a term of 40 years; 20 years remain. The new bond issue will also have a term of 40 years because of useful life of the new project is at least 40 years. The discussion involves the ability of the City to extend (reamortize) the 1990 bond debt for another 20 years in order to match the term of the debt on the new project. If the payments on the 1990 debt are reamortized over an additional 20 years (40 more years), the City will be paying off the old plant over 60 years.

Under Michigan law bonds may not extend beyond the useful life of the project being financed. This means the useful life of the old plant must be 60 years (40 years beyond 2010). In order to satisfy Michigan law there must be some basis for this conclusion, e.g., an opinion of your engineers supported by reference to some independent source of estimates or similar.

If this is not realistic, then the *refunding* portion of the new bond issue will have to be less than 40 years, e.g., the remaining 20 years (or maybe 25 years). In other words we cannot automatically assume that the old bond debt can be reamortized for an additional 40 years.

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There is also a Michigan statute that generally requires any refunding to produce some "savings." The City's bonds may evade this requirement because of a "loophole" in the applicable statutes under which the bonds are issued, but the question is still relevant: Does the City wish to proceed with an amortization schedule that results not in savings but dissavings? Even if there are savings, the total amount of interest paid on the original amount of the borrowing will be more if paid over 40 more years than if paid (at the new lower rate) over the remaining 20 years.

While a decision about the reamortization, if legally permitted at all, does not have to be made presently, it does need to be thought about now. The notice of intent does not change unless the City rejects the idea of refinancing the 1990 debt altogether and I cannot imagine such a rejection. In other words the City may proceed with adoption of the notice of intent resolution and publication of the notice of intent concurrently with consideration of the issues mentioned above.

Accordingly, I am enclosing the form of notice of intent resolution in the principal amount not to exceed \$3,081,000, issuable in one or two series, and maturing in not more than 40 years from issuance. At our December meeting you were quite specific about limiting the bond issue to the amount of the Rural Development commitment and therefore I did not provide any extra "cushion." The notice indicates that the interest rate will not exceed 2.5% although the interest rate could be lower if Rural Development is offering a lower rate at the time of closing.

Under Michigan's Revenue Bond Act, before the bonds can be issued, the City must publish a notice stating its intention to issue the bonds. I have provided in the resolution for publication in the *Clare Sentinel*. If you are using a different newspaper, then change the first numbered paragraph in the resolution. *The notice (and not the entire resolution) must be published as a display advertisement of approximately 1/4 page in size.* (A fine print legal notice will not satisfy Michigan Court decisions regarding the adequacy of notice.)

The notice describes the project. I took the description from Rural Development documents but you should discuss the description with your engineers and make sure that you are satisfied with it. If you want to change the description, please send me the revisions and I will make them.

If a valid petition for a referendum election signed by not less than ten percent (10%) of the registered voters in the City is filed with the City Clerk within 45 days from the date of publication of the notice, then the bonds may not be issued without voter approval. The form of the notice is set forth on page 2 of the enclosed resolution. Only the notice form and not the entire resolution should be published.

The enclosed resolution also addresses another purpose: Under the Federal tax laws and regulations, the City may not reimburse itself from bond proceeds for any costs it may expend on the projects prior to the date of issuance of the bonds unless the City has previously stated its

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

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intention to reimburse itself. The enclosed resolution contains in Section 4 the appropriate "reimbursement" language as set forth in the Federal tax regulations. While the language in Section 4 is difficult to following, the basic idea is clear enough. The City is declaring its intention to pay itself back from bond proceeds for any moneys it advances. In addition, the City agrees to maintain records sufficient to allow for the tracing of the use of bond proceeds for valid project costs. Finally, in subsection (g) of Section 4, there is an exception to the general rule regarding "reimbursement". Subsection (g) recognizes that the City may reimburse itself for costs incurred prior to the time this resolution is adopted as long as those costs qualify as preliminary expenditures, *e.g.*, engineering costs.

Please be reminded that I will need to receive five (5) certified copies of the resolution after adoption as well as five (5) publisher's affidavits of publication (with "tearsheets" attached) after the notice has been published.

If you have any questions, please do not hesitate to call.

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

By: _____
Donald W. Keim

cc: Steven Kingsbury
Joe Elliott
Jaynie Hourauf
Steve Frank
Steve Mann

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