

RESOLUTION NO. 2019-11

RESOLUTION GIVING APPROVAL TO THE ISSUANCE BY CITY OF HARRISBURG, SOUTH DAKOTA OF ITS WASTEWATER SURCHARGE REVENUE BOND, SERIES 2019, IN AN AMOUNT NOT EXCEEDING \$24,487,000 TO FINANCE, DIRECTLY AND INDIRECTLY, CONSTRUCTION OF IMPROVEMENTS TO THE CITY'S WASTEWATER SYSTEM; APPROVING THE FORM OF LOAN AGREEMENT AND REVENUE BOND; AUTHORIZING THE SALE OF SAID REVENUE BOND; PLEDGING WASTEWATER SURCHARGE REVENUES FOR SERVICING DEBT ISSUED HEREUNDER; AND THE MANNER OF EXECUTION AND ISSUANCE OF SAID BOND.

WHEREAS, City of Harrisburg, South Dakota (the "City") is authorized pursuant to SDCL Chapters 9-40 and 9-48 to construct, operate and improve wastewater systems, and pursuant to SDCL 9-40-6 and Chapter 6-8B (the "Acts") is authorized to issue bonds to defray the cost of such extensions, additions, and improvements; and

WHEREAS, the City Council of the City has determined that it is necessary and in the best interests of the City to make certain improvements to the City's wastewater system (the "Wastewater System"), such improvements being more fully described as:

Wastewater Treatment Facility Construction Project as outlined in the Facilities Plan dated June 2018 (the "Project"),

and to finance \$24,487,000 of the costs thereof through 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, the City has determined that it is necessary and appropriate to issue its Wastewater Surcharge Revenue Bond, Series 2019 in the amount of \$24,487,000, as more fully described herein (the "Bond") to the SDCL pursuant to the South Dakota Clean Water State Revolving Fund Loan Program to finance a portion of the costs of the Project; and

WHEREAS, pursuant to the Acts, including specifically SDCL 9-40-15, and Resolution No. 2019-09 (adopted May 6, 2019), the City has adopted a surcharge (the "Surcharge") in order to repay the principal of and interest on the Bond; and

WHEREAS, the City Council has determined that the issuance of the Bond would be in the best interests of the City,

NOW, THEREFORE, BE IT RESOLVED by the City Council of City of Harrisburg, South Dakota, as follows:

ARTICLE I: THE BOND

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

- (a) The City is a political subdivision of the State of South Dakota and a body corporate and politic.
- (b) The City finds and determines that (1) without making the improvements included in the Project, the Wastewater System would pose a health hazard to the residents of the City,

and the lands adjacent thereto, and (2) the Project will benefit all users of the City's Wastewater System.

- (c) As authorized by this Resolution and the Act, the City has determined that it is necessary and desirable to issue the Bond in a principal amount not to exceed \$24,487,000. The proceeds of the Bond are to be used (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 City pursuant to the terms of the Revenue Obligation Loan Agreement between the City and SDCD (the "Loan Agreement").

Section 1.02 Authorization and Execution of Bond; Terms. The City will issue one fully registered Bond in the principal amount not to exceed the sum of \$24,487,000 (as defined in the Loan Agreement, the "Committed Amount"). The Bond will be designated "Wastewater Surcharge Revenue Bond, Series 2019," will be numbered R-1 and will be dated as of the date of its issuance. The Bond will be payable in one hundred twenty (120) quarterly installments over a thirty-year period which will commence and be due in the manner provided in the Loan Agreement.

The Bond will bear interest at the rate of 1.75% per annum pursuant to the Loan Agreement. In addition, as required by the Loan Agreement, the City will pay the holder of the Bond an administrative expense surcharge on the outstanding principal amount of the Bond at a rate of .75% per annum. The Bond is issued under the authority of Chapters 9-40 and 6-8B of the South Dakota Codified Laws, as amended.

The Bond will be signed by the manual signatures of the Mayor and Finance Officer, and sealed with the corporate seal of the City, 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 City's legal counsel prior to the execution thereof. The execution of the Bond by the Mayor and Finance Officer 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 Revenue Obligation Loan Agreement between the SDCD and the City, and pursuant thereto to pledge the Surcharge revenues to secure the payment of the City's obligations thereunder;
- (b) the Bond; and
- (c) such other documents, agreements or instruments as may be necessary to make covenants and recite facts required to demonstrate the validity and enforceability of Bond under the laws of the State of South Dakota and to assure the exclusion of the interest thereon from the gross income of the owners of the Bond under the Code 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 Mayor and Finance Officer are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content presented to the City Council on this date (the terms of which are incorporated herein by this reference), with such changes as the City Attorney deems appropriate and approves, for and on behalf of the City. The Mayor and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the City 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 for the purchase price of \$24,487,000 plus interest accrued to the date of delivery of the Bond, is ratified and confirmed; and the officers of the City 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 Finance Officer during regular business hours.

ARTICLE II: SECURITY FOR THE BOND

Section 2.01 Pledge of Wastewater Surcharge Revenues. Pursuant to SDCL 9-40-15, the City hereby irrevocably pledges to the SDCD all revenues received from the Surcharge (the "Pledged Revenues") in order to secure the City's obligation to pay all amounts payable under the Loan Agreement and the Bond. The City 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 City.

ARTICLE III: OTHER COVENANTS

Section 3.01 Compliance With Laws. The City 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 City agrees and covenants that it will purchase the improvements included in the Project. The City 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 City 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 City 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 City's general credit or taxing power, but will be a limited obligation of the City 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 Mayor, Finance Officer, the City Attorney and City officials will be and they are hereby authorized to execute and deliver for and on behalf of the City 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 City 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 Mayor and Finance Officer, will be published in the City's officially designated newspaper, and will be effective on the 20th day following such publication. After becoming effective, this Resolution will be 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.

Dated this 19th day of June, 2019.

Julie Burke-Van Luvanee, Mayor

ATTEST:

Mary McClung
Finance Officer

[CITY SEAL]

CERTIFICATE

The undersigned hereby certifies that the foregoing Resolution is a true and exact copy of the Resolution adopted by the City Council of City of Harrisburg, South Dakota at a meeting duly called and held on June 19, 2019.

Adopted: June 19, 2019

Published: June 27, 2019

Effective: July 18, 2019

Dated this 19th day of June, 2019.

Mary McClung
Finance Officer

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