

RESOLUTION NO. 2013-28

RESOLUTION OF THE CITY OF HARRISBURG, SOUTH DAKOTA TO APPROVE A SURCHARGE APPLICABLE TO USERS OF THE CITY'S SANITARY SEWER SYSTEM IN ORDER TO REPAY A SURCHARGE REVENUE BOND IN THE ORIGINAL PRINCIPAL AMOUNT OF \$1,435,340.

WHEREAS, pursuant to Resolution No. 2011-10, on January 11, 2012, the City of Harrisburg, South Dakota (the "City") issued a Sales Tax Revenue Bond (the "Bond") in the amount of \$1,435,340 to the South Dakota Conservancy District (Loan # C461065-04) under a Loan Agreement of the same date (the "Loan Agreement") to pay the cost of making certain modifications and improvements to the City's Sanitary Sewer System (the "System"), including construction of the Columbia Basin sanitary sewer interceptor, such Bond being secured by a pledge of the revenues received by the City from its 2% sales and use tax; and

WHEREAS, at the City's request, the South Dakota Conservancy District has approved substituting, in place of the original collateral, a pledge of a wastewater surcharge adopted pursuant to SDCL 9-40-15 (the "Surcharge") as security for the repayment of the principal of and interest on the Bond; and

WHEREAS, the South Dakota Conservancy District has also approved extending the term of the Bond, with an accompanying increase in the rate of interest; and

WHEREAS, the City Council has determined it necessary and advisable to adopt the Surcharge and pledge the receipts therefrom for the security of the Bond.

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

1. Surcharge and Rate. The City does hereby establish the special charge or surcharge not to exceed the amount set forth on *Exhibit A* (the "Surcharge") payable by all customers of the System. The Surcharge will be charged monthly beginning on January 1, 2014. The Surcharge will be included and separately identified on City's wastewater rate schedule approved by resolution of the Council.

2. Surcharge Found to be Equitable. It has been found that all users of the System benefit from the Improvements paid for in part from the proceeds of the Bond, and that the Surcharge is found to be equitable for the services provided by such improvements. Therefore, the Surcharge will be applicable to all users of the System, current and future.

3. Segregation of Surcharge Receipts. As provided in the Resolution authorizing the issuance of the Bond, as amended, the revenues collected from the Surcharge will be segregated from all other funds of the City, and will be pledged to secure the Bond. The Bond will be payable solely from such segregated revenues, and not from the general revenues of the System. Until adequate provision has been made for the debt service on the Bond, moneys in the segregated account may not be used for any purpose other than for the repayment of the Bond. The City in its discretion may from time to time advance moneys from the general revenues of the System to make payments on the Bond, but any moneys so advanced will be repaid from Surcharge collections within one year of the date of such advance.

4. Period Surcharge in Effect; Automatic Repeal. The Surcharge shall remain in effect until such time as the Bond is discharged or defeased. The initial Surcharge shall be collected at the same time

as other charges of the Sanitary Sewer System. Upon payment of all principal and interest on the Bond or any refunding bonds, or until the same have been defeased, the Surcharge will automatically be repealed without any further action of the City Council.

5. Annual review. The City Council will review the Surcharge rate annually, and adjust it upwards or downwards to a level which, assuming a 10% delinquency rate, will produce income at the times and in amounts sufficient to pay when due the principal of and interest on the Bond and all other amounts owing under the Loan Agreement.

6. Billing and Accounting. The Surcharge will be included in the monthly bill. Nothing contained herein requires the Surcharge to be indicated on the billing, but the Surcharge segregation must be specifically reflected in the books of the City.

7. Severability. If any one or more of the provisions of this resolution is held invalid, illegal, or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision hereof.

8. Surcharge Bonds Not to Create Constitutional Indebtedness. The Surcharge provided for herein is for the purpose of paying the Bond, which will not constitute indebtedness within the meaning of the South Dakota Constitution, Article XIII, Section 4.

Dated at Harrisburg, South Dakota, this 21st day of October, 2013.

APPROVED:

JULIE BURKE BOWEN
Mayor

ATTEST:

Mary McClung
Finance Officer

EXHIBIT A

SURCHARGE SCHEDULE
(Pursuant to Resolution No. 13-__)

The Surcharge rate to be charged to all customers served, subject to adjustment as described in the Surcharge Resolution, will be:

\$1.28 per one thousand gallons of water used per month