

RESOLUTION NO. 2022 - 02

RESOLUTION OF THE CITY OF HARRISBURG, SOUTH DAKOTA, GIVING APPROVAL TO THE ISSUANCE AND SALE OF A WASTEWATER SURCHARGE REVENUE AND REFUNDING BOND, SERIES 2022, TO REFUND WASTEWATER SURCHARGE REVENUE BONDS, SERIES 2018, AND TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE WASTEWATER SYSTEM; APPROVING THE FORM OF THE WASTEWATER SURCHARGE REVENUE REFUNDING BONDS, DESIGNATION OF WASTEWATER REFUNDING AND REVENUE BOND AND PLEDGING PROJECT SURCHARGE REVENUES TO SECURE THE PAYMENT OF THE BONDS; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE BONDS AND PROVIDING FOR A SEGREGATED SPECIAL CHARGE OR SURCHARGE FOR THE PAYMENT OF THE BONDS.

WHEREAS, one of the purposes of SDCL Chapter 9-40 (the “Act”) as found and determined by the South Dakota Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of any system for the collection, treatment, and disposal of sewage and other domestic, commercial, and industrial wastes;

WHEREAS, a municipality is authorized by Section 6 of the Act to issue revenue bonds to defray the cost of extensions, additions and improvements to any system previously owned without pledging its credit and is authorized to pledge the net income or revenues from the improvements in accordance with Section 15 of the Act; and,

WHEREAS, the City of Harrisburg (the “City”) currently operates a sanitary sewer system, has acquired land, and constructed a wastewater treatment facility (the “System”), and has determined that all are necessary for the conduct of its governmental programs; and,

WHEREAS, the City has determined that it is necessary and in the best interests of the City to (i) refund the Wastewater Surcharge Revenue Bonds, Series 2018 (the “Series 2018 Bond”) through the issuance of a Sales Tax Refunding Bond, Series 2011, and (ii) prepay the purchase of sewer improvements pursuant to a Joint Exercise of Powers Agreement dated March 3, 2020 (the “2020 JPA”);

WHEREAS, the City shall adopt special rates or surcharges for the improvements to be pledged, segregated and used for the payment of the Bonds.

NOW THEREFORE BE IT RESOLVED by the City as follows:

SECTION 1. Definitions. The terms when used in this Resolution (“Resolution”) shall have the following meanings set forth in this section unless the context clearly requires otherwise. “Act” means South Dakota Codified Laws Chapter 9-40.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations of the United States Department of Treasury promulgated thereunder as in effect on the date of issuance of the Bonds.

“Colliers” means Colliers Securities LLC, Pierre, South Dakota.

“Issuance Costs” means costs but only to the extent incurred in connection with, and allocable to, the borrowing: underwriters’ spread; counsel fees; financial advisory fees; fees paid to an organization to evaluate the credit quality of an issue; trustee fees; paying agent fees; bond registrar, certification, and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than for qualified guarantees and similar costs.

“Mayor” means the Mayor elected pursuant to the provisions of the SDCL 9-13 or his or her designee acting on his or her behalf pursuant to the Charter.

“Outstanding,” “Bonds Outstanding,” or “Outstanding Bonds” means, as of a particular date all Bonds issued and delivered under this Resolution except: (1) any Bond paid or redeemed or otherwise canceled by the City at or before such date; (2) any Bond for the payment of which cash, equal to the principal amount thereof with interest to date of maturity, shall have theretofore been deposited prior to maturity by the City for the benefit of the owner thereof; (3) any Bond for the redemption of which cash, equal to the redemption price thereof with interest to the redemption date, shall have theretofore been deposited with the registration agent and for which notice of redemption shall have been mailed in accordance with this Resolution; (4) any bond in lieu of or in substitution for which another bond shall have been delivered pursuant to this Resolution, unless proof satisfactory to the City is presented that any bond, for which a bond in lieu of or in substitution therefor shall have been delivered, is held by a bona fide underwriter, as that term is defined in Article 8 of the Uniform Commercial Code of South Dakota, as amended, in which case both the bond in lieu of or in substitution for which a new bond has been delivered and such new bond so delivered therefor shall be deemed Outstanding; and, (5) any bond deemed paid this Resolution, except that any such Bond shall be considered Outstanding until the maturity or redemption date thereof only for the purposes of being exchanged, transferred, or registered.

“Person” means an individual, partnership, corporation, trust, or unincorporated organization, or a governmental entity or agency or political subdivision thereof.

“President” means the President of the City Council who may act for the Mayor in the absence of the Mayor.

“Project” means the acquisition of land for the construction of improvements to the City’s wastewater system financed by the Series 2018 Bond and the 2020 JPA.

“Record Date” means the close of business on the first/fifteenth day (whether or not a business day) of the calendar month next preceding such interest payment date.

“**Revenue Bond**” or “**Bond**” means the Wastewater Surcharge Revenue and Refunding Bond, Series 2022 issued by the City.

“**System**” means the City’s wastewater system.

SECTION 2. Declaration of Necessity and Findings.

2.1. Declaration of Necessity. The City hereby determines and declares it is necessary to construct and finance improvements to its System described as the Project.

2.2. Findings. The City does hereby find as follows:

2.2.1. The proceeds of the Revenue Bond are to be used to refund the Series 2018 Bond and prepayment of the 2020 JPA and will result in interest savings to the City.

2.2.2. The City hereby expressly finds that if the Project is not undertaken, the System will pose a hazard to the City and its inhabitants, and will make the City unable to comply with state and federal law.

2.2.3. Because of the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with state and federal laws, and the nature of the improvements financed, the City hereby finds and determines that the Project will substantially benefit the entire System and all of its users within the meaning of Sections 15 and 17 of the Act.

2.2.4. The City hereby determines and finds that for the purposes of the Act, including, in particular, Sections 15 and 17 of the Act, only the net income from the Project financed by the Revenue Bond be pledged for its payment.

SECTION 3. Authorization of Bond, Pledge of Revenue and Security.

3.1. Authorization of Bond. The City hereby determines and declares it necessary to issue Revenue Bond in a principal amount of not to exceed \$3,300,000, plus costs of issuance and any reserve fund requirement. The Bond is issued for the purpose of financing the Project and Issuance Costs, including proper reimbursements, and will be payable from a segregated special charge or surcharge established for the services of the facilities financed by the Revenue Bond. The City hereby determines that because the Revenue Bond are payable from solely the segregated portion of the revenue or income, no election is required to issue the Revenue Bond.

3.2. Approval of Revenue Bond. The issuance of Revenue Bond in the principal amount not to exceed \$3,100,000, plus costs of issuance and any reserve fund requirement, shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the Mayor, Finance Officer, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the ultimate purchaser, for and on behalf of the City, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth herein. The Mayor and Finance Officer are hereby authorized to approve the final terms of the

Revenue Bond and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapter 9-40 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided in Section 19 of the Act. If required by the purchaser thereof, the City officials are also authorized to execute and deliver any necessary closing documents such as any wire transfer agreement.

3.3. Pledge of Revenues. The Revenue Bond together with the interest thereon, shall not constitute a charge against the City's general credit or taxing power, but shall be a limited obligation of the City payable solely out of the Project Debt Service Account, which payments, revenues and receipts are hereby pledged and assigned for the equal and ratable payments of the Revenue Bond and shall be used for no other purpose than to pay the principal of and interest on the Revenue Bond, except as may be otherwise expressly authorized (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The City covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges which will be sufficient to provide for the payments upon the Revenue Bond issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the Project, and depreciation, and the rate resolution or ordinance shall be revised from time to time so as to produce these amounts. The City hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Revenue Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene any covenant of the City set forth in this Resolution.

SECTION 4. Special Charge or Surcharge for Revenue Bond.

4.1. Surcharge. The City will establish the special charge or surcharge payable by every customer of its wastewater system who receives or benefits from the services of the Project. Such charge or surcharge shall be set at a level, which in combination with any Reserve Account requirements, assuming a 1.10 coverage ratio, will produce income at the times and in amounts sufficient to pay when due the principal of and interest on the Revenue Bond and all other payments as may be required under this Resolution and Revenue Bond.

4.2. Payment of Bond with Surcharge. The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the principal and interest, when due on the Revenue Bond. The special charge or surcharge shall create net income used first for paying debt service fund annual requirements and shall be maintained at not less than 100% of the debt service requirements on the Revenue Bond. Any amounts held in the Reserve Account shall be used in calculation of the debt service requirements.

4.3. Rates and collection. The rate herein specific will be collected as a special charge or surcharge for the Project. This special charge or surcharge shall remain in effect until such time as the Revenue Bond is defeased or paid in full.

4.4. Initial Surcharge. The special charge or surcharge is set by this resolution and collected at the same time as other charges of the utility. All users within the area which benefit from the Project, current and future, shall be charged the special charge or surcharge. The special charge or surcharge is found to be equitable for the services provided by the Project. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal of and interest on the Revenue Bond when due. The initial surcharge, until changed by resolution, be as follows:

\$6.18 base fee surcharge upon all classifications of customers.

The charges shall be segregated from other revenues and are pledge to the payment of the Bond. The surcharge became effective January 1, 2022 and will remain in effect subject to this Section 4.

4.5. Segregation. The Finance Officer shall setup bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue, special charges and surcharges.

4.6. Periodic review. The amount of the surcharge shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the rate covenant and to pay principal of, interest on the Revenue Bond when due. The charges shall be reviewed yearly by city personal and administratively adjusted, upwards or downwards, pursuant to SDCL § 9-40-15 to such amounts as may be necessary to pay principal, interest, maintain any coverage requirements and other charges as may become due and owing under the Revenue Bond.

4.7. Adjustment without Further Resolution. The surcharge may be administratively adjusted up to a \$10.00 base fee upon all classes of customers without further resolution in order to maintain coverage requirements.

SECTION 5. Additional Bonds. As permitted by Section 8 and 9 of the Act, additional bonds payable from revenues and income of the System or Project may be issued, as permitted in the section, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements. The City may issue additional bonds (the “Parity Bonds”) payable from the Pledged Revenues and having a lien upon such revenues on a parity with the Bonds and the Outstanding Parity Bonds providing that:

5.1. the City is current in the payment of principal and interest on the Outstanding Bonds and is current in the collections required for the Principal and Interest Account and the Reserve Account.

5.2. the Pledged Revenues collected by the City in the last preceding fiscal year are sufficient to cover 1.25 times the maximum annual principal and interest requirements on the Outstanding Bonds and the proposed Parity Bonds. The City shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond.

SECTION 6. Project Fund Accounts. For the purpose of application and proper allocation of the income of the Project and to secure the payment of principal and interest on the Revenue Bond, the following mandatory asset segregations shall be included in the wastewater system account of the City and shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Revenue Bond:

6.1. Project Revenue Account. There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the ordinances and resolutions of the City of Harrisburg, South Dakota (collectively the “Rate Ordinance”). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

6.2. Project Debt Service Account. Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25th day of each month into the account designated Project Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal and interest payment on the Revenue Bond and any reserve determined by the City’s governing body to be necessary.

6.3. Reserve Account. Should a reserve be required for the sale of the Bond, there may be a reserve account established in the amount equal to the lesser of (i) 10% of the original principal amount, (ii) the maximum annual debt service on, (iii) 125% of the average annual debt service on, all Outstanding Bond having a parity lien on the Pledged Revenues if required, or (iv) any other amount as agreed to by the City and the holder of the Revenue Bond.

6.4. Depreciation Account. There shall be established a General Depreciation Account. Out of the revenues of the Project Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the Commission to be a proper and adequate amount for repair and depreciation of the Project.

6.5. Project Surplus Account. There shall be established the Project Surplus Account. Revenues remaining in the Project Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Council shall authorize the City Finance Officer to rectify such default so far as possible by the transfer of money from the Project Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above.

When not required to restore a current deficiency in the Project Debt Service Account, moneys in the Project Surplus Account from time to time may be used for any of the following purposes:

1. To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;
2. To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then:
3. To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or
4. To be used for any other authorized municipal purpose designated by the Council.

SECTION 7. Approval of Bond Counsel. Cutler Law Firm, LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

SECTION 8. Approval of Colliers. The Mayor and Finance Officer are authorized to retain Colliers & Company LLC as underwriter/placement agent for the Bond.

SECTION 9. Rating Agency. The Mayor and Finance Officer are authorized to retain a rating agency, if required, upon such terms as they approve.

SECTION 10. Tax Matters. The Interest on the Revenue Bond shall be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (“the Code”) and applicable Treasury Regulations (the “Regulations”).

SECTION 11. Covenants. The City hereby covenants and agrees with the owners of the Revenue Bond as follows:

11.1. The City will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this resolution.

11.2. The City agrees and covenants that it will promptly acquire and construct the improvements included in and related to the Project and spend all available proceeds of the Revenue Bond including interest earnings thereon within three years from the date of issuance. The City reasonably anticipates to enter into a binding agreement to spend not less than 5% of the proceeds of the Bonds within six months of the date of issuance.

11.3. The City covenants and agrees that pursuant to Sections 25 through 27 of the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal and interest on the Revenue Bond, and the City agrees not to sell or otherwise dispose of the System, the Project, or any substantial part thereof, and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition

therewith, or permit any person, firm or corporation to compete with it in the disposal of wastewater for municipal, industrial, and domestic purposes within the City.

11.4. The City covenants and agrees with the owners of the Revenue Bond that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements and accounts as provided for in this Resolution. The Revenue Bond shall refer expressly to this Resolution and the Act and shall state that it is subject to all provisions and limitations thereof pursuant to Series 19 of the Act.

11.5. The City covenants and agrees that it will at all times comply with the Code and Regulation so that the interest on the Bonds not be includable in gross income for federal income tax purposes.

SECTION 12. Depositories. The Finance Officer shall cause all moneys pertaining to the Funds and Accounts to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of SDCL Ch. 4-6A, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the City, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Funds and Accounts as authorized in this Resolution; except that moneys from time to time on hand in the Funds and Accounts may at any time, in the discretion of the City's governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Fund may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the Fund or Account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys therein.

SECTION 13. Consent to Appointment. In the event of mismanagement of the Project, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the Project are dissipated, wasted or diverted from their proper application as set forth herein, the City hereby consents to the appointment of a receiver pursuant to Section 33 of the Act, and agrees that the receiver will have the powers set forth therein, and in Section 34 and 35 of the Act to operate and administer the Project, and charge and collect rates as described therein.

SECTION 14. Severability. If any section, paragraph, clause or provision of this Resolution, the Revenue Bond, or any agreement pertaining hereto shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Resolution or Revenue Bond, or any other documents pertaining hereto.

SECTION 15. Authorization of City Officials. The Mayor, Finance Officer, and the City Administrator shall be and they are hereby authorized to execute and deliver for and on behalf of

the City 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 actions authorized herein.

SECTION 16. Sale of Bond.

16.1. Sale. The Bond shall be sold to a purchaser or purchasers or placed by Colliers at a true interest cost for the Bond not to exceed 3.00% per annum or have a final maturity date later than December 15, 2038. Interest on the Bond shall be calculated on the basis of a 360 day year of 12 months of 30 days. The Mayor and the Finance Officer, or either of them, in consultation with Colliers, is authorized to make such changes in the structuring of the terms and sale of the Bond as they shall deem necessary. In this regard, they, or either of them, in consultation with Colliers, are authorized to cause to be sold an aggregate principal amount of the Bond less than that authorized herein, to sell any or all of the Bond as term Bond with annual mandatory redemption requirements which will produce substantially the same annual principal reductions as authorized herein, to change the dated date of the Bond, and to adjust principal and interest payment dates and redemption dates of the Bond. The Mayor and the Finance Officer, or either of them, are hereby authorized to execute and the Finance Officer is authorized to attest any documents necessary by the ultimate purchaser of the Bonds to effectuate the sale of the Bond in accordance with the provisions of this Resolution, and is not inconsistent with the terms hereof. The Mayor and Finance Officer are authorized to cause the Bond to be authenticated and delivered by the Registration Agent to the purchaser and to execute, publish, and deliver all certificates and documents and closing certificates and documents, as they shall deem necessary in connection with the sale and delivery of the Bond. Interest on the Bond shall be payable to the purchaser thereof via wire transfer, ACH payment or other electronic means. The

16.2. The Bond is issuable only as a fully registered Bond, without coupons, in the denomination of Five Thousand Dollars (\$5,000) or any integral multiple thereof.

16.3. The Bond shall be executed in such manner as may be prescribed by applicable law in the name and on behalf of the City with the manual or facsimile signature of the Mayor, attested by the manual or facsimile signature of the Finance Officer, and approved as to form and countersigned by a Resident Attorney by his manual or facsimile signature.

16.4. In the event any officer whose manual or facsimile signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such manual or such facsimile signature shall nevertheless be valid and sufficient for all purposes as if he or she had remained in office until such delivery. Any Bond may bear the facsimile signature of, or may be manually signed by, such individuals who, at the actual time of the execution of such Bond, were the proper officers of the City to sign such Bond, although on the date of the adoption by the City of this Resolution, such individuals may not have been such officers.

16.5. The Bond is transferable as set forth in the ultimate Bond delivered to the ultimate purchaser and the Finance Officer (the “Registration Agent”) is hereby appointed as registration agent. The Bonds need not be presented to the Registration Agent for payment and may be transferred by executing in writing the form of assignment on the reverse side thereof completed in full and signed with the name of the registered owner as it appears upon the face of the Bond(s) accompanied by appropriate documentation necessary to prove the legal capacity of any legal representative of the registered owner. Upon receipt of the Bond(s) in such form and with such documentation, if any, the Registration Agent shall issue a new Bond to the assignee(s) in \$5,000 denominations, or integral multiples thereof, as requested by the registered owner requesting transfer. The Registration Agent shall not be required to transfer or exchange any Bond during the period commencing on a Regular or Special Record Date and ending on the corresponding interest payment date of such Bond, nor to transfer or exchange any Bond after the publication of notice calling such Bond for redemption has been made, nor to transfer or exchange any Bond during the period following the receipt of instructions from the City to call such Bond for redemption; provided, the Registration Agent, at its option, may make transfers after any of said dates. No charge shall be made to any registered owner for the privilege of transferring any Bond, provided that any transfer tax relating to such transaction shall be paid by the registered owner requesting transfer. The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and neither the City nor the Registration Agent shall be affected by any notice to the contrary whether or not any payments due on the Bonds shall be overdue. Bonds, upon surrender to the Registration Agent, may, at the option of the registered owner, be exchanged for an equal aggregate principal amount of Bonds of the same maturity in any authorized denomination or denominations.

16.6. In the event any Bond is mutilated, lost, stolen, or destroyed, the City may execute, and upon the request of the City, the Registration Agent shall authenticate and deliver, a new Bond of like maturity, interest rate, and principal amount, and bearing the same number (but with appropriate designation indicating that such new Bond is a replacement Bond) as the mutilated, destroyed, lost, or stolen Bond, in exchange for the mutilated Bond or in substitution for the Bond so destroyed, lost, or stolen. In every case of exchange or substitution, the bondholder shall furnish to the City and the Registration Agent: (1) such security or indemnity as may be required by them to save each of them harmless from all risks, however remote; and, (2) evidence to their satisfaction of the mutilation, destruction, loss, or theft of the subject Bond and the ownership thereof. Upon the issuance of any Bond upon such exchange or substitution, the City and the Registration Agent may require the Owner thereof to pay a sum sufficient to defray any tax or other governmental charge that may be imposed in relation thereto and any other expenses, including printing costs and counsel fees, of the City and the Registration Agent. In the event any Bond which has matured or is about to mature shall become mutilated or be destroyed, lost, or stolen, the City may, instead of issuing a Bond in exchange or substitution therefor, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Bond) if the Owner thereof shall pay all costs and expenses, including attorney’s fees, incurred by the City and the Registration Agent in connection herewith, as well as a sum sufficient to defray any tax or other

governmental charge that may be imposed in relation thereto and shall furnish to the City and the Registration Agent such security or indemnity as they may require to save them harmless and evidence to the satisfaction of the City and the Registration Agent the mutilation, destruction, loss, or theft of such Bond and of the ownership thereof.

16.7. Every Bond issued pursuant to the provisions of this section shall constitute an additional contractual obligation of the City (whether or not the destroyed, lost, or stolen Bond shall be found at any time to be enforceable) and shall be entitled to all the benefits of this Resolution equally and proportionately with any and all other Bonds duly issued under this Resolution.

16.8. All Bond shall be held and owned upon the express condition that the provisions of this Section are exclusive, with respect to the replacement or payment of mutilated, destroyed, lost, or stolen Bond, and, to the maximum extent legally permissible, shall preclude all other rights or remedies, notwithstanding any law or statute now existing or hereafter enacted to the contrary.

16.9. The Registration Agent is hereby authorized to authenticate and deliver the Bonds to Colliers or as it may designate upon receipt by the City of the proceeds of the sale thereof, to authenticate and deliver Bonds in exchange for Bonds of the same principal amount delivered for transfer upon receipt of the Bond(s) to be transferred in proper form with proper documentation as hereinabove described. The Bonds shall not be valid for any purpose unless authenticated by the Registration Agent by the manual signature of an officer thereof on the certificate set forth herein on the Bond form.

SECTION 17. Preliminary Official Statement and Official Statement.

If required for placement of the Bonds by Colliers, the Mayor and Finance Officer, and the underwriter are hereby authorized and directed to provide for the preparation and distribution of a Preliminary Official Statement describing the Bonds (the "Preliminary Official Statement"). After the Bonds have been sold, the Mayor and Finance Officer shall make such completions, omissions, insertions and changes in the Preliminary Official Statement not inconsistent with this Resolution as are necessary or desirable to complete it as a final Official Statement for purposes of Rule 15c2-12(e)(3) of the Securities and Exchange Commission.

To comply with paragraph (b) (3) of Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule") and with Rule G-32 City agrees to deliver to the underwriter, the Official Statement (which shall be a final official statement, as such term is defined in the Rule, as of its date) in an electronic format as prescribed by the MSRB.

The City hereby covenants and agrees that it will provide financial information and material event notices as required by Rule 15c2-12 of the Securities Exchange Commission for the Revenue Bond. The Mayor is authorized to execute at the closing of the sale of the Revenue Bond, an agreement for the benefit of and enforceable by the owners of the Revenue Bond specifying the details of the financial information and material event notices to be provided and its obligations relating thereto. Failure of the City to comply with the undertaking herein described and to be detailed in said closing agreement, shall not be a default hereunder, but any such failure shall

entitle the owner or owners of any of the Revenue Bond to take such actions and to initiate such proceedings as shall be necessary and appropriate to cause the City to comply with its undertaking as set forth herein and in said agreement, including the remedies of mandamus and specific performance.

SECTION 18. Record Retention and Post Issuance Compliance. The City has adopted a Post-Issuance Compliance Policy for Tax Exempt and Tax-Advantaged Obligations and Continuing Disclosure policy as its written post issuance compliance procedures with regard to the current financing. The Finance Officer is directed to retain records with regard to this financing for the entire term of the financing plus three years and to keep record of all payments for six years after the payment has been made.

SECTION 19. Effective Date. This Resolution shall take effect on the 20th day following its publication, unless suspended by a referendum. Adopted at City of Harrisburg, South Dakota, this 1st day of March 2022.

APPROVED:

Derick Wenck
Mayor

(SEAL)

Attest: Deb Harris
City Finance Officer

Passed: March 1, 2022
Published: March 3, 2022
Effective: March 23, 2022