

RESOLUTION NO. 2020-05

RESOLUTION TO ENTER INTO JOINT POWERS AGREEMENT FOR
CONSTRUCTION AND ACQUISITION OF SEWER SYSTEM AND
RESOLUTION OF NECESSITY TO BORROW BY ISSUANCE OF
PROMISSORY NOTE
PURSUANT TO SDCL 9-25-12

WHEREAS, the City of Harrisburg, South Dakota (the “City”) has the power pursuant to SDCL Chapter 9-48 and 9-40 to finance, construct, and maintain sewer systems;

WHEREAS, the City has determined that it is in its best interest and necessary to jointly construct a sewer system with Harrisburg School District 41-2 (the “District”) in order to serve the District’s future school and expand the area that may be served by City utilities;

WHEREAS, the City is authorized pursuant to SDCL 9-25-12 to borrow money from any source willing to lend the money by issuing a promissory note subject to the limitations set forth in SDCL 9-25-13 to SDCL 9-25-16 inclusive (the “Acts”); and

WHEREAS, the City has determined that it is necessary and in the best interests of the City to borrow money pursuant to SDCL 9-25-12 for the purpose of financing the acquisition of the sewer improvements.

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

ARTICLE I: THE NOTE AND JOINT POWERS AGREEMENT

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) As authorized by this Resolution and SDCL Chapter 9-48 and 9-40, the City has determined that it is necessary and desirable to jointly finance, construct, and maintain sewer system improvements with the District in order to serve a new school and expand the area that may be served by City utilities;

(c) As authorized by this Resolution and SDCL Chapter 1-24-2, the City has determined that it is necessary and desirable to enter into a Joint Powers Agreement with the District for purposes of documenting the arrangement between the City and the District to jointly finance, construct, and maintain sewer system improvements (the “Joint Powers Agreement”);

(d) As authorized by this Resolution and the Acts, the City has determined that it is necessary and desirable to enter into a Promissory Note in a principal amount not to exceed \$1,500,000.00 to finance the acquisition of the sewer improvements (the “Note”);

(e) The Note may be issued by the City without an election pursuant to the Acts; and

(f) The Note be issued, sold and delivered by the City pursuant to the terms of this Resolution.

Section 1.02 Authorization and Execution of Note; Terms. As authorized by the Acts, the City may enter into the Note in the principal amount not to exceed the sum of \$1,500,000.00. The Note shall be dated as of the date of its issuance. The Note shall be payable in annual, semiannual, or quarterly installments, as determined by the City, over the term of the Note, not to exceed five (5) years.

The Note shall 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 Note includes an approval of such additional details therein as may be necessary and appropriate and approved by the City Attorney prior to the execution thereof. The execution of the Note by the Mayor and Finance Officer shall be conclusive evidence of the approval of the Note in accordance with the terms hereof.

Section 1.03 Authorization of Financing Documents. The documents required to accomplish the issuance of the Note include the following:

(a) the Note; and

(b) such other documents, agreements or instruments as may be necessary to make covenants and recite facts required to demonstrate the validity and enforceability of Note 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 Note 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 shall be and they are hereby authorized and directed to execute and deliver the Note 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 this Resolution.

Section 1.04 Issuance of Note. The issuance of the Note to for the purchase price of an amount not to exceed \$1,500,000.00 plus interest accrued to the date of delivery of the Note, 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 Note to said purchaser, upon receipt of the purchase price, as soon after the effective date of this Resolution as is convenient.

Section 1.05 Application of Note Proceeds. Proceeds of the Note shall be deposited in the City's general fund or other fund so designated by the City.

Section 1.06 Inspection of Documents. All documents referred to herein shall be available for public inspection in the office of the City Finance Officer during regular business hours.

Section 1.07 Joint Powers Agreement. The City shall enter into a Joint Powers Agreement with the District for purposes of documenting the arrangement between the City and the District to jointly finance, construct, and maintain sewer system improvements. The following shall be material terms of the Joint Powers Agreement:

- (a) The District shall transfer funds to the City to be held in trust for purposes of land acquisition, bidding and construction of the sewer improvements, with such improvements being depicted on the attached Exhibit A;
- (b) The City shall acquire the necessary land and right of ways, bid, construct, and maintain the sewer improvements;
- (c) The sewer improvements shall be owned by the District until such time as the City purchase the improvements from the District;
- (d) The City shall grant a license to the District for the sewer improvements to occupy City acquired land and right of ways until such time as the City purchases the improvements from the District;
- (e) The City shall have up to five (5) years to purchase the sewer improvements from the District. The District, at its sole option, shall have the ability to accelerate the purchase date by giving the City 180 days' notice of such acceleration; and
- (f) The purchase price for the sewer improvements shall be the City's share of the construction cost with interest to the date of purchase calculated at a rate to be agreed to by the parties.

The approval hereby given to the Joint Powers Agreement includes an approval of such additional details therein as may be necessary and appropriate and approved by the City Attorney prior to the execution thereof. The execution of the Joint Powers Agreement by the Mayor and Finance Officer shall be conclusive evidence of the approval of the Joint Powers Agreement in accordance with the terms hereof.

ARTICLE II: SECURITY FOR THE NOTE

Section 2.01 Pledge of Tax Levies. Pursuant to the Acts, the City hereby irrevocably pledges its uncollected taxes levied by the municipality (the "Pledged Revenues") in order to secure the City's obligation to pay all amounts payable under the Note. Pursuant to SDCL 9-25-16, no cash receipts may be expended for any purpose except the retirement of principal and interest of the Note if it has not been paid in full within its term.

Section 2.02 Inter-fund Transfer. So long as the Pledged Revenues are sufficient to make all required payments on the Note, and any other notes secured by the Pledged Revenues, the City may spend or deposit the excess revenues to the general fund or any other City fund as determined by the City and permitted by law.

ARTICLE III: OTHER COVENANTS

Section 3.01 Compliance With Laws. The City hereby covenants and agrees with the holder of the Note, that it will punctually perform all duties with reference to the Note required by the constitution and laws of the State of South Dakota and by this Resolution.

Section 3.02 Other Covenants. The City covenants and agrees with the owners of the Note that it will prepare, keep and file records, statements and accounts as provided for in this Resolution.

Section 3.03 Additional Note. Additional notes payable from the Pledged Revenues may be issued on parity with Note, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity notes or bonds. The City shall have the right to issue additional notes secured by a lien subordinate to the lien for the Note.

ARTICLE IV: TAX MATTERS

Section 4.01 Tax Matters. The City covenants and agrees with the registered owners from time to time of the Note that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the notes to become subject to taxation under the Internal Revenue Code of 1986, as amended (the "Code"), and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the interest on the Note will not become subject to taxation under the Code and the Regulations. The City will cause to be filed with the Secretary of Treasury an information reporting statement in the form and at the time prescribed by the Code.

The City reasonably anticipates that the amount of tax-exempt obligations which will be issued by the City and all entities subordinate to, or treated as one issuer with, the City during calendar year 2020 will not exceed \$10,000,000. The Note is hereby designated as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code. The City will not designate, or cause any subordinate entity or request any other governmental entity to designate on its behalf more than \$10,000,000 of its obligations as "qualified tax-exempt obligations" in calendar year 2020. The City does not reasonably expect that it or any subordinate entity will issue, and will not request any other governmental entity to issue on its behalf, in calendar year 2020, more than \$10,000,000 of obligations which it or any such entity could designate as "qualified tax-exempt obligations."

If the City agrees to comply with all provisions of the Code, which if not complied with by the City, would cause the interest on the Note not to be tax-exempt in the hands of a holder who is a natural person, including, if determined to be necessary upon advice of bond counsel, the payment of any rebate amount necessary to preserve such tax exemption pursuant to Section 148

of the Code. The City further agrees: (1) through its officers, to make such further specific covenants, representations as shall be truthful, and assurance as may be necessary or advisable; (2) to consult with bond counsel and to comply with such advice as may be given; (3) to file such forms, statements, and supporting documents as may be required and to do so in a timely manner; and (4) if deemed necessary or advisable by its officers, to employ and pay fiscal agents, financial advisors, attorneys, and other persons to assist the City in such compliance.

ARTICLE V: MISCELLANEOUS

Section 5.01 Limited Obligations. The Note, 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 Pledged Revenues, which payments, revenues and receipts are hereby pledged and assigned for the equal and ratable payments of the Note and shall be used for no other purpose than to pay the principal of and interest on the Note, except as may be otherwise expressly authorized by this Resolution.

Section 5.02 Severability. If any section, paragraph, clause or provision of this Resolution shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Resolution. The Mayor, Finance Officer, City Attorney and City officials shall be and they are hereby authorized to execute and deliver for and on behalf of the City the Note 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 5.03 Retention of Bond Counsel. The City hereby retains Nathan S. Schoen of the firm of Cutler Law Firm, LLP, Sioux Falls, South Dakota, to act as bond counsel with respect to the Note.

Section 5.04 Effective Date. This Resolution, after its final passage, shall be recorded in a book kept for that purpose, shall be authenticated by the signature of the Mayor and Finance Officer, shall be published in the City's officially designated newspaper, and shall be effective on the 20th day following such publication. After becoming effective, this Resolution shall be irrevocable until the Note issued hereunder shall be paid in full, except that prior to issuance of the Note, this Resolution may be amended at any time by adoption of an administrative resolution or ordinance.

Section 5.05 Certification of Proceedings. The officers of the City are authorized and directed to prepare and furnish to the purchasers of the Note certified copies of all proceedings and records of the City relating to the authorization and issuance of the Note and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and marketability of the Note as such facts appear from the officer's books and records or are otherwise known to them. All such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the City as to the correctness of the facts recited therein and the action stated therein to have been taken.

Section 5.06 Legislative Nature of Resolution. This Resolution shall constitute authority to issue the Note and enter into the Joint Powers Agreement without any further action. The City may hereafter pass a resolution indicating the final terms of which shall be administrative in nature and effective upon passage.

Dated this 4th day of February, 2020.

[CITY SEAL]

RYAN OLSON
City Council President

ATTEST:

MARY MCCLUNG
Finance Officer

CERTIFICATE

The undersigned hereby certifies that the foregoing Resolution is a true and exact copy of the Resolution adopted by the City Council of the City of Harrisburg, South Dakota at a meeting duly called and held on February 4, 2020.

Published: February 13, 2020

Effective: March 3, 2020

Dated this 4th day of February, 2020.

Mary McClung
Finance Officer

{SEAL}

EXHIBIT A

[attach description of school sewer line]