

**CITY OF PHILIP COUNCIL PROCEEDINGS  
REGULAR MEETING  
SEPTEMBER 5, 2023**

A regular meeting of the Philip City Council was held on Tuesday, September 5, 2023, at 7:00 p.m. in the Community Room of the Haakon Co. Courthouse. Present were Mayor Brit Miller, Council Members Terri Pelle, Greg Arthur, Marion Matt, Marty Gartner, and Scott Pinney. Also present were City Administrator Brittany Smith, Finance Officer Monna Van Lint, Chief of Police Ben Buls, Police Officer AJ Bartlett, City Attorney Stephanie Trask, Jacob Sonne with SPN & Assoc., Rob Book with Pioneer Review, Caleb Book, Karen Pinney; and later, Jason Harry.

Absent: Joni Parsons

The meeting was opened with the Pledge of Allegiance.

Motion was made by Pelle, seconded by Gartner to approve the agenda as presented. Motion carried.

Motion was made by Matt, seconded by Arthur to approve the minutes of the last meetings on Aug. 7<sup>th</sup>, 16<sup>th</sup> and 24<sup>th</sup> as published. Motion carried.

Motion was made by Pinney, seconded by Arthur to approve the payment of the bills from the appropriated funds as listed below. Motion carried.

**Gross Salaries – Aug. 31, 2023:** Admin - \$4853.33; Finance - \$4064.66; Public Works - \$12763.31; Police - \$8146.66; Rubble Site - \$256.00; Swimming Pool - \$11015.03; Econ Develop - \$1500.00

Colonial Life	Employee Supplemental Ins 8/23	88.65
Credit Collections Bureau	Garnishment 8/23	200.86
EFTPS	SS/Med/WH 8/23	9010.79
NE Child Support	Garnishment 8/23	469.18
SDRS	Employee Retirement 8/23	3966.21
SDSRP	Sup Retirement 8/23	100.00

**Airport Runway Rehab Design:**

Helms & Assoc	Eng Design thru 8/2/23	8979.42
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**This Month's Bills:**

4E Foods	Resale 8/23	10.47
AT&T Mobility	Cell Phone 8/23	222.76
Brant's Electric	LS Repairs 8/23	96.90
Century Business Products	Copier Maint 7-8/23	60.09
D&T Auto Parts	Supplies 8/23	369.21
Delta Dental	Dental Ins 9/23	771.00
Fugate, Carson	LG Cert Reimb 2023	210.00
Golden West Telecom	Telephone/Internet 7-8/23	517.08
Haakon Co Treasurer	Office Rent 9/23	500.00
Hanson Oil	Fuel/LP 7-8/23	921.49
Health Pool of SD	Health Ins 9/23	11639.59
Heltzel, Brady	½ WSI Cert Reimb 2023	82.50
Kennedy Implement	Equip Repairs 8/23	686.25
Kieffer Sanitation	377 Residential Collections 8/23	5274.23

	Tote Rental 8/23	40.00
Kroetch, Evan	½ WSI Cert Reimb 2023	82.50
Lurz, Copper	LG Recert Reimb 2023	150.00
Lurz, Dymond	½ WSI Cert Reimb 2023	82.50
Lyle Signs Inc	Sign 8/23	114.39
MG Oil Co	Fuel 7/23	336.27
Miracle Recreation	Park Supplies 8/23	326.18
Optilegra	Vision Ins 9/23	110.65
Pheasantland Industries	Signs 8/23	357.01
Philip Building Center	Supplies 8/23	16.77
Philip Hardware	Supplies 8/23	548.34
Philip Motor Inc	PD Repairs 8/23	33.95
Rush, Mary “Gayle”	LG/WSI Pd Volunteer 2023	575.00
Schofield, Ali	½ WSI Cert Reimb 2023	82.50
SD Dept of Revenue	Sales Tax Payable 8/23	550.01
	Water/Pool Testing 8/23	75.00
SD Drug & Alcohol Consortium	Testing 8/23	95.00
SDML	Conf Reg 9/23	250.00
Smith, Brittany	Mileage Reimb 7/23	112.66
Spry, Alyn	½ WSI Cert Reimb 2023	82.50
Terkildsen, Drew	LG Cert Reimb 2023	210.00
The Philip Pit Stop	Fuel 7-8/23	1688.21
UU Inc. DBA Valley Sweeping	ST Striping 8/23	1372.84
US Bank	Supplies 7-8/23	190.76
Verizon Wireless	W AMR Internet 8-9/23	80.06
Vetter, Doreen	LG Recert Reimb 2023	150.00
WR/LJ Rural Water Systems	4,980,000 gals 8/23	6723.00
	Contract Min. 8/23	2500.00
	AIR Water 8/23	102.40
	South Shop Water 8/23	20.00
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Total Bills		47399.49

**Old Business:**

None.

**New Business:**

**Kroetch Addition Project:**

The motion was made by Arthur, seconded by Gartner to authorize advertising for bids to complete the project and establish the bid opening date as Oct. 31, 2023. Motion carried.

**Airport Runway Design Project:**

Motion was made by Pinney, seconded by Matt, to approve the 2024 Airport Capital Improvement Plan as presented. Motion carried.

Motion was made by Matt, seconded by Pelle to approve the financial agreement with the SD Dept. of Transportation for the Pavement Maintenance Project (AIP #3-46-4600-29-2023) and authorize the mayor’s signature thereon. In addition, the City will be requesting the use of the airport fuel tax revenue funds to cover the majority of the city’s local share. Motion carried.

Motion was made by Arthur, seconded by Pinney to approve the 2024 FAA Grant Initiation Request for federal assistance for the airport runway rehabilitation construction project and authorize the mayor's signature thereon. Motion carried.

Motion was made by Arthur, seconded by Matt to approve the 2024 FAA BIL Grant Initiation Request for federal assistance to purchase snow removal equipment and authorize the mayor's signature thereon. Motion carried.

175 S. Center Ave. Property:

Motion was made by Pinney, seconded by Pelle to authorize the title search and insurance on the property contingent upon a signed purchase agreement. Motion carried.

Atty Trask was asked to finalize the purchase agreement with the conditions requested by West River Foundation for Economic and Community Development.

Artesian Well Project:

It was mentioned that the contractor has been working on the well and water is currently running out, but no update has not been received since Aug. 25, 2023. (For the record, the contractor has incurred penalties of \$97,500 through today for noncompletion--leaving a remaining contract balance of \$6,514.92 upon completion.)

Atty Trask was requested to compile correspondence to the contractor advising of the Sept. 27, 2023, deadline in which the project shall be completed and/or the contractor must have all equipment removed. In addition, there was no update on obtaining quotes from other contractors to finish the well repairs.

Meter Project:

Council was advised that more progress has been made, and there are currently 318 meters active on the AMR. The training with Core & Main for the Sensus Analytics portal has also been completed.

Council reviewed the following L/P Propane bids received during August 2023.

	<u>Aug. 2<sup>nd</sup></u>	
Hanson Oil	\$1.59/gal	*Awarded on rotational basis due to tied bids.
CHS River Plains	\$1.59/gal	

NE Sewer & Stewart Ave. Improvement Projects:

At 7:10 pm, as previously advertised, a public hearing was held on the Proposed Resolution of Necessity for the Stewart Ave. Project.

Mayor Miller opened the floor for any comments for or against the resolution as proposed.

Jacob Sonne, Project Engineer with SPN & Assoc., provided an update on the recent property owner meetings and project design.

With no further comments, motion was made by Matt, seconded by Pelle to approve the following Resolution #2023-12 as presented. (For the record, some of the estimates changed from the Proposed Resolution of Necessity due to quantity changes.) Motion carried with all members voting aye.

**RESOLUTION #2023-12  
CITY OF PHILIP  
RESOLUTION OF NECESSITY**

**WHEREAS**, the City of Philip, South Dakota, has proposed a resolution of necessity; and,

**WHEREAS**, the City of Philip, South Dakota, has published and mailed said notices as required by South Dakota Codified Laws; and,

**WHEREAS**, the City is ready to proceed with the project and again declares the necessity to make the improvements.

**NOW THEREFORE, BE IT RESOLVED**, by the City Council of the City of Philip, South Dakota, at a regular meeting thereof, held in the Community Room, located on first floor of the Haakon County Courthouse in the City of Philip at 7:10 p.m. on the 5<sup>th</sup> day of September 2023, that the convenience and necessity has arisen to improve substantially the following in the City of Philip, Haakon County, South Dakota, by the addition of curb, gutter, driveway, sidewalk, landscape rock and sidewalk drain improvements where needed in the Southwest Philip Improvement Project. Such properties affected being hereinafter named on the attached list marked “Exhibit A” with the projected location being as follows:

City of Philip encompassing Stewart Avenue (north from Oak Street to Elm Street); Elm Street (east from N. Wood Avenue to N. Stewart Avenue); and, E. Pine Street (from N. Wood Ave. intersection, east passed Stewart Avenue intersection).

**BE IT FURTHER RESOLVED** that the material to be used in the project shall be according to the plans and specifications as prepared by the City’s engineering firm, Schmucker, Paul, Nohr and Associates, in and for the City of Philip, South Dakota, and are on file in the office of the City Finance Officer and open for the public’s review during regular office hours.

**BE IT FURTHER RESOLVED** that the cost of the curb and gutter, sidewalk, approach pavement, and retaining wall improvements shall be assessed against all assessable lots and tracts of land fronting or abutting thereon, according to the provisions of SDCL 9-43-76 as to each of such lots and tracts above stated. The total cost of the improvements shall include the total contract price and shall be assessed according to SDCL 9-43-78. This includes, on a lineal foot basis, **Concrete Curb and Gutter** installation at an ESTIMATED construction cost of \$34.00 per lineal foot; on a square yard basis, **6” Concrete Approach Pavement** installation at an ESTIMATED construction cost of \$100.00 per square yard; on square foot basis, **4” Concrete Sidewalk** installation at an ESTIMATED construction cost of \$8.50 per square foot; on a square foot basis, **Retaining Wall** installation at an ESTIMATED construction cost of \$70.00 per square foot.

**BE IT FURTHER RESOLVED** that the City of Philip will cover the expenses for those improvements in the street and alley intersections, removals, gravel base course, and engineering.

**BE IT FURTHER RESOLVED** that the City of Philip has established a policy to cover 60% of the eligible assessment costs in order to be consistent with past projects wherein the City was the recipient of grant funds that covered 60% of the eligible costs. The City has determined that the following improvements as shown in the Final Plans dated August 4, 2023, are eligible assessment costs subject to the 60% discount: curb and gutter; approach pavements; 4” concrete sidewalk; and, retaining wall. The costs associated with any additional improvements requested by the property owner will be assessed at 100% of the eligible costs per City policy.

**BE IT FURTHER RESOLVED** that the assessments will be divided into ten (10) equal annual installments, which shall be payable under Plan One, collection by the County Treasurer, as set forth in SDCL 9-43-102, and that all deferred installments shall bear interest at such rate as shall be determined by the City Council.

**BE IT FURTHER RESOLVED**, that the Resolution of Necessity is hereby adopted.

Dated this 5<sup>th</sup> day of September, 2023.

THE GOVERNING BODY OF THE CITY  
OF PHILIP, SOUTH DAKOTA

/s/ Brit Miller, Mayor

ATTEST:

/s/ Monna Van Lint, City Finance Officer

**“Exhibit A”**

Name	Legal Description	100% Total Estimated Assessed Cost	Total Estimated Assessed Cost (60% Discount on Eligible Items)
Michael & Doreen Vetter JT	All Lot 1 & N2 Lot 2, Block 4, Original Town, City of Philip	\$8,542.50	\$3,417.00
Michael & Doreen Vetter JT	S2 Lot 2 & N10' Lot 3, Block 4, Original Town, City of Philip	\$1,368.50	\$547.40
Colton K / Erin L Fitzgerald JT Ten	S40' Lot 3, Block 4, Original Town, City of Philip	\$1,360.00	\$544.00
Colton K / Erin L Fitzgerald JT Ten	Lot 4 & N15' Lot 5, Block 4, Original Town, City of Philip	\$2,346.00	\$938.40
Mitzi Boyd	E70' of S35' Lot 5 & E70' of N27.5' Lot 6, Block 4, Original Town, City of Philip	\$4,925.00	\$1,970.00
Mitzi Boyd	S22' EX W70' Lot 6 & ALL EX W70' Lot 7, Block 4, Original Town, City of Philip	\$6,748.50	\$2,699.40
Floren and Deborah Falzone	W70' Lot 7 & W70' of S22.5' Lot 6, Block 4, Original Town, City of Philip	\$2,592.50	\$1,037.00
First Lutheran Church	ALL EX W50' Lot 8, All EX W50' Lot 9 & W50' Lot 8 & 9, Block 4, Original Town, City of Philip	\$15,878.00	\$6,351.20
First Lutheran Church	W23' Lot 7, E30' Lot 7 & ALL Lot 8, Block 16, Original Town, City of Philip	\$4,904.00	\$1,961.60

Jeffery Jelinek	Lot 14, Block 4, Original Town, City of Philip	\$6,170.50	\$2,468.20
Masonic Lodge #153	W100' Lot 1, Block 5, Original Town, City of Philip	\$4,190.50	\$1,676.20
Riverview Townhomes LLC	ALL EX W100' Lot 1, Block 5, Original Town, City of Philip	\$10,870.40	\$4,348.16
Michael & Tina Noteboom	Lots 2 & 3, Block 5, Original Town, Philip, SD	\$2,697.78	\$1,079.11
Jade Berry	Lot 4, Block 5, Original Town, City of Philip	\$0.00	\$0.00
Brock Slovek	S8' of W110' Lot 5 & W110' Lot 6, Block 16, Original Town, City of Philip	\$6,240.00	\$2,496.00
David and Mary Burnett JT	Lots 4 & 5 EX TR & E30' Lot 6, Block 16, Original Town, City of Philip	\$2,420.00	\$968.00
Dustin & Carrie Lurz JT	Lot 9, Block 16, Original Town, City of Philip	\$49,476.00	\$19,790.40
T & A Rental Properties LLC	Lots 1 & 2, Block 17, Original Town, City of Philip	\$11,560.00	\$4,624.00
T & A Rental Properties LLC	Lot 3, Block 17, Original Town, City of Philip	\$2,827.50	\$1,131.00
Ryan Seager (C); Tena Slovek (D)	BEG NW Corn Lot 1, Block 18, N to SW Corn Lot 3, Block 17 T H. S to NE Corn Lot 1, Block 18, W to point of BEG, Original Town, City of Philip	\$1,827.50	\$731.00
Ryan Seager (C); Tena Slovek (D)	Lots 1 & 2, That Portion of Lot 2 Lying Across E Pine St, Block 18, Original Town, City of Philip	\$5,900.00	\$2,360.00
City of Philip	Lot 3, Block 18, Original Town, City of Philip	\$1,705.78	\$682.31
Mark and Denise Coyle JT	N61.4' of W90' Lot 5, Block 18, Original Town, City of Philip	\$986.00	\$394.40

Fred and Michelle Koester JT	Lot 6, Hoags Addition, City of Philip	\$0.00	\$0.00
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Total                    \$155,536.96        \$62,214.78

Motion was made by Arthur, seconded by Gartner to approve the following Resolution #2023-13 as presented. Motion carried with all members voting aye.

**RESOLUTION NO. 2023-13  
CITY OF PHILIP**

**RESOLUTION GIVING APPROVAL TO THE ACQUISITION, CONSTRUCTION AND FINANCING OF THE SANITARY SEWER IMPROVEMENTS PROJECT, GIVING APPROVAL TO THE ISSUANCE OF A BORROWER BOND TO FINANCE A PORTION OF THE COSTS OF SUCH PROJECT AND AUTHORIZING THE SALE OF SAID BOND.**

**NOW, THEREFORE, BE IT RESOLVED AND ORDAINED** by the City Council of the City of Philip as follows:

1. Recitals. The City of Philip (the "City ") desires to make a capital improvement to and finance its Sanitary Sewer Improvements, as described in Exhibit A hereto (the "Project"), details on the project are on file with the Finance Officer and open to public inspection.
2. Authority. The City is authorized to issue a Borrower Bond to finance the capital improvements pursuant to Section 10-52-2.10 of the South Dakota Codified Laws. Pursuant to Chapter 10-52 of the South Dakota Codified Laws (the "Act") the City proposes to issue a municipal non ad valorem borrower bond (as herein authorized, the Bond, or the "Borrower Bond") to finance the Project. The City is authorized by the Act to levy a "non-ad valorem tax" (as defined by the Act) on the sale, use, storage, and consumption of items taxed under Chapters 10-45 and 10-46 of the South Dakota Laws, subject to certain, as amended, exceptions.
3. Sales Tax Ordinance. The two percent (2%) municipal retail occupation sales and service tax imposed under DCL Chapter 10-45 and the two percent (2%) municipal use, storage or consumption tax imposed by SDCL Chapter 10-46 imposed by Ordinance No. 6-106 of the Code of Ordinances of the City of Philip, South Dakota (collectively the "Sales Tax Ordinance").
4. Cost of the Project. The cost of the Project is approximately \$800,342. The City proposes to finance approximately \$800,342 of the Project through the issuance of the 2023 Borrower Bond (the "Bond"). The Bond shall be payable out of collections of the Sales Tax as is necessary to pay principal, premium and interest on the Bond (the "Pledged Tax").
5. Findings. The City Council hereby finds and determines as follows:
  - 5.1. The Project constitutes capital improvements which qualify for the financing under and pursuant to SDCL Chapter 10-52, and the Sales Tax Ordinance; and
  - 5.2. The Borrower Bond authorized hereby is being issued to pay costs of the Project which have not been incurred or paid as of the date hereof and/or which the City has heretofore declared its intention to finance with bond proceeds and for which the City has no other available means or source of financing.

- 5.3. It is in the best interests of the City to authorize the borrowing of funds to pay a portion of the costs of the Project by authorizing and issuing its Borrower Bond, consistent with the terms approved hereby for an aggregate sum not in excess of the amount of \$800,342.
6. Sale of Bond. It is hereby determined to be necessary and in the best interests of the City and its inhabitants that this City Council authorize, issue, and sell the Bond in order to finance a portion of the cost of the Project. The Mayor and Finance Officer are authorized to take such action as is necessary to close the loan with the South Dakota Conservancy District (the "District") upon such terms and conditions as the District may require. The Mayor and Finance Officer are authorized to execute the Borrower Bond and Loan Agreement approved by the District.
7. Approval of the Loan, the Form of Borrower Bond and Loan Agreement. The City does hereby approve the Loan from the District, the form of the Borrower Bond and Loan Agreement. The Form of the Borrower Bond and Loan Agreement which are subject to modification are on file with the Finance Officer and open to public inspection. The Mayor and Finance Officer are authorized to execute a Borrower Bond and Loan Agreement in a form approved by the District.
8. Terms of Bond.
- 8.1. Date, Amount, Maturities and Interest Rates. The City Council hereby authorizes the issuance of the Bond. The Bond shall be dated in 2023. The principal amount of the Bond shall not exceed any statutory or constitutional debt limitation. The Bond shall have maturities and interest rates as negotiated by the Mayor and Finance Officer.
- 8.2. Registration. The City hereby appoints U.S. Bank National Association as registrar and transfer agent (the "Registrar") for the Bond. The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:
- 8.2.1.1 Register. The Registrar shall keep at its office a register (the "Register") in which the Registrar shall provide for the registration of ownership of the Bond and the registration of transfers and exchanges of the Bond entitled to be registered, transferred or exchanged.
- 8.2.1.2. Transfer of Bond. When the Bond is surrendered for transfer it shall be duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer in form satisfactory to the Registrar; duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner thereof. If the Bond is properly surrendered as provided above, the Registrar shall authenticate and deliver, in the name of the designated transferee, a new Bond of a like aggregate principal amount and maturity. The Registrar may, however, close the books for registration of any transfer after the fifteenth day of the month preceding each interest payment date and until such interest payment date.
- 8.2.1.3. Exchange of Bond. Whenever the Bond is surrendered by the registered owner for exchange the Registrar shall authenticate and deliver the new Bond of a like aggregate principal amount and maturity, as required by the registered owner or the owner's attorney in writing.
- 8.2.1.4. Cancellation. The Bond surrendered upon any transfer or exchange shall be promptly canceled by the Registrar and thereafter disposed of as directed by the City.
- 8.2.1.5. Improper or Unauthorized Transfer. When the Bond is presented the Registrar may refuse to transfer the same until satisfied that the endorsement on such Bond or separate instrument of transfer is valid and



genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for the refusal, in good faith, to make transfer which, in their judgment, are deemed improper or unauthorized.

- 8.2.1.6 Persons Deemed Owners. The City , Paying Agent and Registrar may treat the person whose name any Bond is at any time registered in the Register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.
  - 8.2.1.7. Taxes, Fees and Charges. For every transfer or exchange of Bond, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.
  - 8.2.1.8. Mutilated, Lost, Stolen or Destroyed Bond. In case the Bond shall become mutilated or be destroyed, stolen or lost, the Registrar shall deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond or in lieu of and in substitution for any such Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory that such Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance and amount satisfactory to the Registrar, in which the City and the Registrar shall be named as obligees. The Bond so surrendered to the Registrar shall be canceled by him and evidence of such cancellation shall be given to the City. If the mutilated, destroyed, stolen or lost certificate has already matured or has been called for redemption in accordance with its terms it shall not be necessary to issue a new Bond prior to payment.
- 8.3. Preparation and Delivery. The Bond shall be prepared under the direction of the Finance Officer and shall be executed on behalf of the City by the facsimile or manual signatures of the Mayor and the Finance Officer and countersigned by the facsimile or manual signature of an attorney actually residing in the State of South Dakota and duly licensed to practice therein.
- 8.4. Security Provisions; Funds and Accounts and Other Covenants and Determinations.
- 8.4.1. Clean Water Borrower Bond Fund 2023. The Finance Officer is hereby authorized and directed to establish and shall maintain the Clean Water Borrower Bond Fund 2023 as a separate and special fund in the financial records of the City until the Bond issued and made payable therefrom, and interest due thereon, have been duly paid or discharged. All collections of the Pledged Tax, as hereinafter defined, shall be credited, as received, to the Clean Water Borrower Bond Fund 2023. Within the Clean Water Borrower Bond Fund 2023 are various separate accounts to be maintained by the City.
  - 8.4.2. Pledged Tax. Pursuant to the Act and the Sales Tax Ordinance, the City has levied the Sales Tax on the sale, use, storage and consumption of items taxes under

Section 10-45 and 10-46 of South Dakota Codified Laws, subject to certain exceptions. The proceeds of the Pledged Tax are irrevocably pledged and appropriated and amounts sufficient to pay the principal of and interest on the Outstanding Bond as the same become due shall be deposited to the Clean Water Borrower Bond Fund 2023. For purposes of this Resolution, "Outstanding Bond" shall mean the Bond and any parity lien Bond hereafter issued pursuant to this Resolution. The Pledged Tax and the Clean Water Borrower Bond Fund 2023 shall be used and applied only in the manner and order hereinafter set forth.

- 8.4.3. Construction Account. There is hereby created and established as an account of the Clean Water Borrower Bond Fund 2023, a "Construction Account". There shall be credited to the Construction Account the proceeds from the sale of the Bond remaining after payment of the expenses of issuing the Bond. All moneys credited to the Construction Account shall be applied solely to the payment of the costs of the Project. For the purposes of this Resolution, "costs of the Project" shall include costs of acquiring, construction, and installing the Project including cost of labor, services, materials and supplies, financial, architectural, engineering, legal, accounting and other professional expenses relating to the Project, the costs of acquisition or properties, rights, easements, or other interest in properties, insurance premiums, and the costs of publishing, posting or mailing notices in connection with the Project. All sums derived from the investment of moneys in the Construction Account shall remain in and become part of such account. Upon completion of the Project and when all costs of the Project have been paid, any balance remaining in the Construction Account shall be credited to the Principal and Interest Account hereinafter established.
- 8.4.4. Principal and Interest Account. There is hereby created and established as an account of the Clean Water Borrower Bond Fund 2023, a "Principal and Interest Account." Immediately upon delivery of the Bond, there shall be credited to the Principal and Interest Account the amount of any accrued interest received from the Purchaser. Commencing on the first day of the month following the month in which the Bond is delivered to the Purchaser, there shall be withdrawn from the Clean Water Borrower Bond Fund 2023, at least monthly and credited to the Principal and Interest Account an amount which will equal at least one-third (1/3) of the principal, interest and administrative surcharge becoming due on the next succeeding interest payment date with respect to the Outstanding Bond issued. In all events there shall be credited to the Principal and Interest Account amounts sufficient to pay the principal of and interest on the Outstanding Bond as the same become due.
- 8.4.5. Subordinate Lien Bond. After making the above-required payments, any remaining Pledged Tax shall be used for the payment of the principal of and interest on any additional sales tax revenue bonds having a lien which is on a parity to or subordinate to the lien of the Outstanding Bond, and for a reserve fund as additional security for the payment of such subordinate lien Bond.
- 8.4.6. Inter-fund Transfer. So long as the revenues from the Pledged Tax are sufficient to make all required deposits to the Principal and Interest Account, the City may deposit the excess revenues from the Pledged Tax to the general fund or any other City fund as determined by the City and as permitted by law.
- 8.4.7. Deposit and Investment of Funds. The Finance Officer shall cause all moneys pertaining to the Fund to be deposited as received with one or more banks which

are duly qualified public depositories under the provisions of Chapter 4-6A, South Dakota Codified Laws, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the City, so long as the Bond 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 moneys shall at any time be withdrawn from such deposit accounts except for the purposes of the Fund as authorized in this Resolution; except that moneys from time to time on hand in the Fund may at any time, in the discretion of this Council, be invested in securities permitted by the provisions of Section 4-5-6, South Dakota Codified Laws, maturing and bearing interest at the times and in the amounts estimated to be required to provide cash when needed for the purposes of the respective accounts. Income received from the deposit or investment of moneys shall be credited to the 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 in that account.

- 8.5. Additional Debt. The Borrower shall not incur any Debt which has a lien on or right to payment from the Pledged Tax which is superior to that of this Loan Agreement and the Borrower Bond. The Borrower may incur Debt which is on a parity with this Loan Agreement and the Borrower Bond under the following conditions:
  - 8.5.1. Debt secured by Pledged Tax may be incurred to pay or prepay or defease other Debt secured by Pledged Tax if the maximum annual Debt Service of the new Debt is no greater than that of the Debt being paid, prepaid or defeased.
  - 8.5.2. Debt secured by Pledged Tax may be incurred for any purpose so long as prior to the issuance of such Debt the Borrower has delivered to the Trustee and the District a certificate prepared by a Consultant showing that the Pledged Tax collected for any 12 consecutive months out of the 15 consecutive months immediately preceding the issuance of the proposed Debt was at least equal to 125% of maximum annual Debt Service for all Debt secured by Pledged Tax which will be outstanding immediately after the issuance of the proposed Debt.
  - 8.5.3. The Borrower may not, without the written consent of the District, incur any (i) variable rate Debt secured by Pledged Tax or (ii) Debt secured by Pledged Tax the payments of principal of and interest on which in any fiscal year are 150% or more of the payments of principal and interest for any other fiscal year.
  - 8.5.4. Nothing herein shall prevent the City from issuing Bonds payable from the Pledged Tax and the Clean Water Borrower Bond Fund 2023 or having a lien thereon which is junior and subordinate to the lien of the Bonds authorized herein.
- 8.6. Covenants of the City. The City hereby irrevocably covenants and agrees with each and every holder of the Bonds that so long as any of the Bonds remain outstanding:
  - 8.6.1. It will not amend or repeal the Sales Tax Ordinance relating to the Sales Tax by decreasing the Sales Tax rate or the allocation of revenues thereof to the Clean Water Borrower Bond Fund 2023, or in any way that would adversely affect the amount of Sales Tax revenues which would otherwise be collected and deposited to the Clean Water Borrower Bond Fund 2023. However, nothing shall prevent the City from amending the Sales Tax Ordinance in order to make certain changes in the administration, collection or enforcement of the Sales Tax, provided that such changes would not materially adversely affect the owners of the Bonds.

- 8.6.2. It will administer, enforce, and collect, or cause to be administered, enforced or collected, the Sales Tax authorized by the Sales Tax Ordinance and shall take such necessary action to collect delinquent payments in accordance with law.
- 8.6.3. It will keep or cause to be kept such books and records showing the proceeds of the Sales Tax, in which complete entries shall be made in accordance with standard principles of accounting, and any owner of any Bond shall have the right at all reasonable times to inspect the records and accounts relating to the collection and receipts of such Sales Tax.
- 8.6.4. In the event the Sales Tax of the City is replaced and superseded by the state collected-locally shared sales tax or taxes, or is replaced and superseded in some other manner from other source or sources, the revenues derived by the City from the replacement source or sources, as received by the City shall be appropriated in the same manner as if the City had levied and imposed a sales tax. From and after the date of a replacement, the Outstanding Bonds shall have a first and prior lien, but not necessarily an exclusive lien, upon such replacement revenues to the extent therein specified.
- 8.7. Defeasance. When the Bond issued has been discharged as provided in this section, all pledges, covenants, and other rights granted by this resolution to the registered owners of the Bond shall cease. The City may discharge its obligations with respect to any Bond which is due on any date by providing to the Paying Agent on or before that date a sum sufficient for the payment thereof in full; or, if the any Bond should not be paid when due, it may nevertheless be discharged by providing to the Paying Agent a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit. The City may also discharge its liability with reference to all Bonds which are called for redemption on any date in accordance with their terms by depositing funds with the Paying Agent on or before that date in accordance with their terms by depositing funds with the Paying Agent on or before that date, in an amount equal to the principal, interest, and premium, if any, which are then due thereon, provided that notice of such redemption has been duly given. The City may also at any time discharge this issue of Bonds in its entirety, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or United States government obligations which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required to provide funds (without an reinvestment) sufficient to pay all principal, interest and premiums, if any, to become due on all Bonds on and before maturity, or, if a Bond has been duly called for redemption, on or before the designated redemption date.
- 8.8. Tax Matters; Certification of Proceedings and Miscellaneous.
- 8.8.1. Tax Matters. The City covenants and agrees with the registered owners from time to time of the Bonds 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 Bond 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 Bond 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.

- 8.8.2. The Mayor and Finance Officer, being the officers of the City charged with the responsibility for issuing the Bond pursuant to this resolution, are authorized and directed to execute and deliver to the purchaser thereof a certificate in accordance with the provisions of Section 148 of the Code and Sections 1.103-13, 1.103-14 and 1.103-15 of the Regulations, stating the facts estimates and circumstances in existence on the date of issue and delivery of the Bond which make it reasonable to expect that the proceeds of the Bond will not be used in a manner that would cause the Bond to be arbitrage bonds within the meaning of the Code and Regulations.
- 8.8.3. The City recognizes its obligation to comply with the provisions of Section 148(f) of the Code relating to the rebate of certain amounts to the United States, and covenants that it will take or refrain from any actions, the result of which would be to cause the interest on the Bond to become subject to federal income taxation as a result of the failure to comply with Section 148(f) of the Code and applicable Treasury Regulations. The City will take all actions necessary to comply with the rebate requirement, including making or causing to be made the computations of rebate or penalty amounts. The City will make any payments of rebate or penalty amounts, and will pay the costs of computing any such rebate or penalty amounts.
- 8.8.4. It is hereby determined that the Bond is not and will not be "private activity bonds" as defined in Section 141(a) of the Code, and in support of such conclusion the City Council covenants, represents, and certifies as follows:
- 8.8.4.1. none of the proceeds of the Bond will be used, directly or indirectly, or will be used to replace funds which were used, in any trade or business carried on by any person other than a state or local governmental unit;
- 8.8.4.2. no direct or indirect payments of the principal of or interest on the Bond will be derived from payments (whether or not to the City), in respect of property, or borrowed money, used or to be used for a private business use by any person other than a state or local governmental unit;
- 8.8.4.3. none of the proceeds of the Bond are to be used directly or indirectly, to make or finance loans to persons other than a state or local governmental unit; and
- 8.8.4.4. no user of any facilities or improvements financed with the proceeds of the Bond will use the same on any basis other than the same basis as the general public; and no person other than the City will be a user of said, facilities as a result of (i) ownership; (ii) actual or beneficial use pursuant to a lease or a management or incentive payment contract; or (iii) any other arrangement.
- 8.8.5. 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 Bond 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 assurances 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.

9. Certification of Proceedings. The officers of the City are authorized and directed to prepare and furnish to the purchaser of the Bond certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bond and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and marketability of the Bond 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.

/s/ Brit Miller, Mayor

ATTEST:

/s/ Monna Van Lint, Finance Officer

Adopted: Sept. 5, 2023

Published: Sept. 14, 2023

#### **EXHIBIT A DESCRIPTION OF THE PROJECT**

City of Philip Stewart Avenue Area Storm Sewer Improvement Project. As described in the facility plan dated November 8, 2021, a supplement to Facility Plan #13485.

Motion was made by Gartner, seconded by Arthur to approve the following Resolution #2023-14 as presented. Motion carried with all members voting aye.

#### **RESOLUTION #2023-14**

##### **CITY OF PHILIP**

**RESOLUTION GIVING APPROVAL TO CERTAIN SEWER FACILITIES IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF A REVENUE BOND TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE FACILITIES; APPROVING THE FORM OF THE LOAN AGREEMENT AND THE REVENUE BOND AND PLEDGING PROJECT REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND 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 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; or any system for the control of floods and drainage; or any combination thereof, together with extensions, additions, and necessary appurtenances; and,

**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 utility previously owned without pledging its credit and is authorized to pledge the net income or revenues from the Project in accordance with Section 15 of the Act; and,

**WHEREAS**, the City of Philip (the “City”) currently operates a sewer system for the collection, treatment and disposal of sewage and other domestic, commercial and industrial wastes; and for the control of floods and drainage and has determined that improvements to the sewer facilities are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its sewer system; and,

**WHEREAS**, the City has determined to issue its revenue bonds to finance the improvements to its sewer system for the purpose of collecting, treating and disposing of sewage and other domestic, commercial and industrial wastes (the “System”) and has applied to the South Dakota Conservancy District (the “District”) for a Clean Water State Revolving Fund Loan to finance the improvements;

**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 shall have the following meanings set forth in this section unless the context clearly requires otherwise. All terms used in this Resolution which are not defined herein shall have the meanings assigned to them in the Loan Agreement unless the context clearly otherwise requires.

“**Act**” means South Dakota Codified Laws Chapter 9-40.

“**Loan**” means the Loan made by the South Dakota Conservancy District to the City pursuant to the terms of the Loan Agreement and as evidenced by the Revenue Bond.

“**Project**” means the City of Philip Northeast Wastewater and Stewart Avenue Area Wastewater Improvements.

“**Revenue Bond**” means the revenue bond or bonds issued the date of the Loan Agreement by the City to the South Dakota Conservancy District to evidence the City’s obligation to repay the principal of and pay interest and Administrative Expense Surcharge on the Loan.

“**System**” means the City’s system of collecting, treating and disposing of sewage and other domestic, commercial and industrial wastes.

**SECTION 3. Declaration of Necessity and Findings.**

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

**3.2. Findings.** The City does hereby find as follows:

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

**3.2.2.** 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, including SDCL Chapter 34A-2, and the federal Clean Water Act, 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.

**3.2.3.** 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 4. Authorization of Loan, Pledge of Revenue and Security.**

**4.1. Authorization of Loan.** The City hereby determines and declares it necessary to finance up to \$1,040,830 of the costs of the Project through the issuance of bonds payable from the revenue of the Project and other funds secured by the City. The City hereby determines that because the Revenue Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to Section 15 of the Act no election is required to issue the Revenue Bond.

**4.2. Approval of Loan Agreement.** The execution and delivery of the Revenue Obligation Loan Agreement (the "Loan Agreement"), the form of which is on file with the Finance Officer (the "Finance Officer") and open to public inspection, between the City as Borrower and the District, is hereby in all respects 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 attached hereto, with such changes as the Attorney for the City 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 set forth in or required by the Loan Agreement. The Loan Agreement herein referred to and made a part of this Resolution is on file in the office of the Finance Officer and is available for inspection by any interested party.

**4.3. Approval of Revenue Bond.** The issuance of a revenue bond in a principal amount not to exceed \$1,040,830 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (the "Revenue Bond") 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 District, for and on behalf of the City, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. 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.

**4.4. 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 and in the Loan Agreement 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, interest and Administrative Surcharge on the Revenue Bond, except as may be otherwise expressly authorized in the Loan Agreement (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 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 the covenant of the City set forth in this Section 3 or any other covenant or agreement in the Loan Agreement.

## **SECTION 5. Special Charge or Surcharge for Revenue Bond.**

**5.1.** The City does hereby create the Revenue Bond Special-Surcharge District (the “Surcharge District”) which shall include all users which benefit from the Project. There shall be charged a special charge or surcharge pursuant to Section 15 of the Act for the services provided by Project financed by the Revenue Bond. The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the Revenue Bond. The special charge or surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements and shall be 110% of the debt service requirements on the Revenue Bond.

**5.2. 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.

**5.3. Initial Surcharge.** The initial special charge or surcharge shall be set by resolution and collected at the same time as other charges of the utility. All users within the Surcharge District 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, interest and Administrative Surcharge on the Revenue Bond when due.

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

**5.5. 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 Loan Agreement’s rate covenant and to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due. The surcharge may be set by resolution in accordance with this Section. The rate resolution shall be necessary for the support of government and shall be effective upon passage.

**SECTION 6. Additional Bonds.** As permitted by Sections 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 Loan Agreement, 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 shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond pursuant to the Loan Agreement.

**SECTION 7. Project Fund Accounts.** For the purpose of application and proper allocation of the income of the Project and to secure the payment of principal, Administrative Surcharge and interest on the Revenue

Bond, the following mandatory asset segregations shall be included in the sewer 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:

**7.1. 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 resolutions and ordinances of the City of Philip, South Dakota (collectively the “Rate Resolution”). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

**7.2. Project Debt Service Account.** Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25<sup>th</sup> 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 of, interest and Administrative Surcharge on the Revenue Bonds and any reserve determined by the City’s governing body to be necessary. The amount set aside monthly shall be not less than one-third of the total principal, interest, and Administrative Surcharge payable on the following February 15, May 15, August 15 or November 15 and if there shall be any deficiency in the amount previously set aside, then the amount of such deficiency shall be added to the current requirement.

**7.3. 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 Common Council to be a proper and adequate amount for repair and depreciation of the Project.

**7.4. 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 Common Council shall authorize the 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 and not otherwise:

- (a) To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;
- (b) 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:
- (c) 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
- (d) To be used for any other authorized municipal purpose designated by the Common Council.

(e) No moneys shall at any time be transferred from the Project Surplus Account or any other account of the Fund to any other fund of the City, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

**SECTION 8. Approval of Paying Agent/Registrar.** The Revenue Bond shall be payable at the office of U.S. Bank National Association, St. Paul, Minnesota, hereby designated as paying agent and registrar.

**SECTION 9. Approval of Bond Counsel.** Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

**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 District and other 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 construct the improvements included in the Project.

**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, except as provided in the Loan Agreement 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 distribution of water for municipal, industrial, and domestic purposes within the City.

**11.4.** The City covenants and agrees with the District and other 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 and the Loan Agreement. 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 Section 19 of the Act.

**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 in the Loan Agreement, Revenue Bond, or 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 Sections 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 Loan Agreement, the Revenue Bond, or any other Loan Document 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 said Loan Agreement, Revenue Bond, or any other Loan Document.

**SECTION 15. Repeal of Resolution.** At such time as the Revenue Bond is defeased or paid in full, this Resolution and the special charge or surcharge shall automatically be repealed without any further action of the City.

**SECTION 16. Authorization of City Officials.** 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 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 17. Effective Date.** This Resolution shall take effect on the 20<sup>th</sup> day following its publication, unless suspended by a referendum.

Adopted at Philip, South Dakota, this 5<sup>th</sup> day of September 2023.

APPROVED:

/s/ Brit Miller, Mayor

(SEAL)

Attest: /s/ Monna Van Lint, Finance Officer

First reading: Sept. 5, 2023  
Published: Sept. 14, 2023  
Effective: Oct. 4, 2023

Motion was then made by Arthur, seconded by Matt to approve the first reading of Ordinance #2023-17, Establishing Subsection 207.1.d in Chapter #5, Wastewater Surcharge. Motion carried with all members voting aye.

Motion was made by Arthur, seconded by Pinney to authorize advertising for bids to complete both the NE Sewer and Stewart Ave. projects and establishing the bid opening date as Oct. 31, 2023. Motion carried.

Motion was then made by Pinney, seconded by Pelle to authorize the Street Committee to establish the bid guidelines for the NE Sewer, Stewart Ave., and Kroetch Addition Projects. Motion carried.

Departmental Reports:

Administration

Council was advised that Dakota State University (DSU) completed another Project Boundary Fence assessment on the city networks last month. CA Smith will be working with IT to address any recommended remediations.

The 2022 audited financial report was not available.

The following airport liability insurance quotes were reviewed:

First National Agency – Old Republic Insurance Company - \$3,906 (\$3,600 in 2022)  
SD Public Assurance Alliance (SDPAA) - \$1,002.43

Motion was made by Matt, seconded by Gartner to accept the airport liability insurance quote from SDPAA in the amount of \$1002.43. This is an annual premium that will be prorated for coverage from Oct. 23 to Dec. 31, 2023, then added to the city’s annual insurance policy on Jan. 1, 2024. Motion carried.

Motion was made by Pinney, seconded by Gartner to approve the amendment to the Purchasing Manual as presented. This includes authorizing ACH and credit card payments to vendors when additional fees are not imposed. Motion carried.

Motion was made by Matt, seconded by Arthur to approve repealing Resolution #2004-11, Credit Card Policy. Motion carried.

Motion was made by Gartner, seconded by Pinney to approve the following Resolution #2023-15 as presented. Motion carried with all members voting aye.

**RESOLUTION #2023-15  
2024 CAPITAL OUTLAY ACCUMULATIONS**

**WHEREAS**, the City Council of the City of Philip, South Dakota, has determined that improvements, equipment, land and buildings are necessary to preserve, upgrade and maintain the general fund operations of the City; and,

**WHEREAS**, the City Council of the City of Philip has determined that there are not sufficient funds within the general fund to proceed with said general fund improvements, equipment, land and buildings; and,

**WHEREAS**, the City Council of the City of Philip, the authority of SDCL 9-21-14.1, authorizes the accumulation of funds for capital outlay purposes to make general fund improvements, equipment, land and buildings; and,

**WHEREAS**, the City Council of the City of Philip acknowledges that, according to SDCL 9-21-14.2, the accumulations must be expended within sixty months from the date of resolution establishing said accumulations and any accumulated funds deemed no longer necessary shall revert to the general fund; and,

**WHEREAS**, as required by SDCL 9-21-14.1 and 9-21-14.2, City Council of the City of Philip establishes that the maximum amount of the total general fund capital outlay accumulations shall not exceed \$750,000.00; and,

**WHEREAS**, according to the standard accounting principles as established by the South Dakota Department of Legislative Audit by the direction of South Dakota Codified Law, said capital outlay accumulations shall be a part of the general fund as an assigned cash account;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Philip, South Dakota, that capital outlay accumulations in the general fund be assigned in fiscal year 2024 as follows: municipal buildings and improvements thereto \$20,000.00; street department equipment \$25,000.00; police department equipment \$10,000.00; airport equipment and improvements \$10,000.00; swimming pool equipment and improvements \$5,000.00; and, rubble site land and improvements \$1,000.00. Total assigned cash for 2024 is estimated at \$76,000.00.

Total general fund assigned cash account balance, including the 2024 accumulations and appropriations is therefore estimated at \$675,248.98. They are estimated as follows: municipal buildings and improvements thereto \$228,650.00; street department equipment and improvements \$182,544.00; police department equipment and improvements \$47,419.00; airport equipment and improvements \$70,000.00; swimming pool equipment and improvements \$37,793.06; and, rubble site land and improvements \$111,842.92 (also includes the rubble site surcharge established on 11/03/2003).

Approved this 5<sup>th</sup> day of September 2023.

/s/ Brit Miller, Mayor

ATTEST:

/s/ Monna Van Lint, Finance Officer

Motion was made by Pinney, seconded by Pelle to approve the second reading of Ordinance #2023-16, 2024 Municipal Appropriations--adopting the 2024 budget. Motion carried with all members voting aye.

Motion was made by Gartner, seconded by Arthur to approve the first reading of Ordinance #2023-18, Supplemental Appropriations, Street Equipment. Motion carried with all members voting aye.

Motion was made by Arthur, seconded by Matt to approve the first reading of Ordinance #2023-19, Supplemental Appropriations, Infrastructure Improvement Projects. Motion carried with all members voting aye.

Motion was made by Pinney, seconded by Gartner to approve the first reading of Ordinance #2023-20, Supplemental Appropriations, Airport Hangar Building Repairs. Motion carried with all members voting aye.

Economic Development:

Motion was made by Gartner, seconded by Pinney to approve extending the Joint Agreement with Philip Charities and Philip Chamber of Commerce through Dec. 31, 2024, to assist in funding the Community Development Director position. Motion carried.

Parks/Recreation:

Motion was made by Matt, seconded by Arthur to authorize the Scottie Booster Club to make upgrades to the tennis court lighting system including motion sensors and administer their Philip Area Community Foundation grant. In addition, the city agrees to cover the monthly electric charges for the lighting. Motion carried.

Police

The monthly report was reviewed.

Street

The quarterly report was reviewed.

Motion was made by Pelle, seconded by Arthur to formally approve the hiring of Parker Snyder, Public Works Maintenance, at \$19.00 per hour, retroactive to his hire date of Aug. 21, 2023. Motion carried.

Swimming Pool

The 2023 season report was reviewed.

Water

The monthly report was reviewed and noted a water loss for the month of August 2023 at 8.24%.

Council reviewed correspondence regarding the EPA's Lead and Copper Rule Revisions--Lead Service Line Inventory. It was noted that the initial requirements have been met with the completed materials inventory due by Oct. 16, 2024. More information is available on the city's website or by contacting the city office.

Training/Travel:

The following will be attending the SDML Annual Conference in Rapid City: CA Smith, Oct. 3<sup>rd</sup>-6<sup>th</sup>; and FO Van Lint, Oct. 4<sup>th</sup>-6<sup>th</sup>, 2023.

At 7:52 p.m., motion was made by Arthur, seconded by Matt to enter into executive session per SDCL 1-25-2(1), personnel and (3), contractual matters. Motion carried.

At 8:05 p.m., motion was made by Gartner, seconded by Arthur to come out of executive session with the following action:

Motion was made by Arthur, seconded by Gartner to accept Brian Pearson's resignation, effective September 29, 2023. Pearson was thanked for his many years of dedicated service to the City of Philip and community. Motion carried.

Motion was then made by Gartner, seconded by Pinney to authorize advertising for a part-time administrative assistant and a full-time public works maintenance. Motion carried.

Motion was then made by Arthur, seconded by Matt to authorize the Budget Committee to hire a part-time administrative assistant and the Street Committee to hire a full-time public works maintenance personnel. Motion carried.

Public Comments:

None.

**In Other Business:**

The next Regular Council Meeting will be held on Monday, Oct. 2<sup>nd</sup> at 7:00 p.m. in the Community Room.

With no further business to come before the Council, Mayor Miller declared the meeting adjourned at 8:09 p.m.

/s/ Brit Miller, Mayor

ATTEST:

/s/ Brittany Smith, City Administrator

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