

REGULAR MEETING DE SMET COMMON COUNCIL
November 8, 2023

The De Smet Common Council met in regular session on November 8, 2023, at 5:00 p.m., with the following present: Council members Dustin McCune, Bret Jensen, Pam Spader, George Cavanaugh Shon Asleson, Lowell Hansen, Mayor Gary Wolkow, Finance Officer Tracey Larson, and City Attorney Todd Wilkinson. Absent: none.

Mayor Wolkow called the meeting to order at 5:00 PM.

PLEDGE OF ALLEGIANCE: The meeting was started with the council and those from the public reciting the Pledge of Allegiance.

ANNOUNCEMENTS: None.

MINUTES: Motion was made by Cavanaugh, seconded by Hansen, to approve the minutes of the October 11, 2023, Regular Meeting minutes, all voting aye, motion carried.

CLAIMS: Motion by Cavanaugh, seconded by Jensen, to approve payment of the claims as presented, all voting aye, motion carried. The claims are as follows: PAYROLL \$32,200.33; OASI Benefit 2,463.32; Aflac, ins. premium 187.98; Dearborn National, life insurance 105.60; Delta Dental of South Dakota 342.00; VSP 162.60; The Health Pool of SD, health insurance premium 6,200.76; SDRS, retirement benefit 3,853.78; Mediacom, utilities 106.20; Visa, supplies, utilities, conference & fuel 816.54; Postmaster, Prunty variance 48.12; American Bank & Trust, deposit slips 60.00; Aaron Flegel, meter deposit \$150.00; Albrecht Road Maintenance, equipment 34,900.00; Anderson Lumber, supplies, repairs & maintenance 881.72; Avid Hawk LLC, supplies 35.00; Butler Machinery Co., repairs & maintenance, 1,543.16; Center Point Large Print, supplies 30.71; Chesterman Company, supplies 146.20; City of De Smet, utilities 614.81; City of De Smet, supplies 17.15; Connecting Point, software, supplies, repairs & maintenance 1,419.52; Cook's Wastepaper & Recycling, utilities 275.06; Cook's Wastepaper & Recycling, repairs & maintenance 6,960.02; Core & Main LP, supplies 324.41; Cowboy Country Store, fuel 406.78; Daniel & Ashley Rommereim, meter deposit refund 75.00; De Smet Development Corp., contributions 1,000.00; De Smet Trustworthy, supplies, 145.28; Demco, supplies 272.28; Department of Health, water labs 43.00; Farmer Brothers, supplies 508.96; Good Housekeeping, supplies 24.97; Hawkins, chemicals 2,450.69; Innovative Office Solutions, LLC, supplies 1,311.97; Karen Hansen, mileage 195.19; Kingsbury Electric Cooperative, repairs & maintenance 220.00; Kingsbury County Auditor, law enforcement contract 6,283.33; Kingsbury Electric Cooperative, utilities 210.25; Kingsbury Journal, publishing 498.96; Kingsbury Journal, library publishing 42.00; Kramer Mechanical, repairs 92.16; Kristy Hubbard, supplies 68.63; Lyle Signs, supplies 303.77; Mach Landscaping, repairs & maintenance 375.00; Maguire, repairs & maintenance 1,800.00; Matt Nutter, event center deposit refund 275.00; Maynard's, supplies 180.64; Micro Marketing LLC, supplies 308.71; Mikala Wendel, meter deposit refund 100.00; Napa, supplies 9.99; Northwestern, utilities 165.81; Office Peeps, library supplies 55.60; Office Peeps, Inc., supplies 272.66; Prevention, supplies 48.00; Ramkota Hotel & Conference Center, conference 107.00; Rich's Gas & Service, diesel &

fuel 635.84; Ryan Petersen, supplies 75.02; SD Historical Society, event center deposit refund 50.00; Share Corp, chemicals 3,223.47; Shelby Lemler, event center deposit refund 50.00; Smith Lumber, meter deposit refund 75.00; Tracey Larson, supplies 53.10; Valley Fibercom, utilities 504.03; Efraimson Electric, final AWOS project 66,823.20; Helms & Associates, airport engineering project \$23,623.65; IMEG, Chase St. water project 10,000.00; IMEG, sewer project 5,000.00; IMEG, Main Street water project 3,000.00, Dept. of Criminal Investigation, supplies 43.25; Mediacom, utilities 106.20; Ottertail Power Company, utilities 4,386.99; SD Dept of Revenue, sales tax 290.34; SD Dept of Revenue, sanitation sales tax 475.01; Kingsbury County Treasurer Office, vehicle title 26.70.

ZONING: Motion was made by Jensen, seconded by Cavanaugh, that the Council to be convened as the Board of Adjustment, all voting aye, motion carried. The Board of Adjustment was called to order by Mayor Wolkow.

This being the date and time public noticed for the hearing on Variance Application #104 submitted by Jon Prunty, represented by De Smet Development Coordinator Jamie Lancaster, met with the board to discuss the variance application. Prunty has requested a variance to allow them to construct a free-standing business sign that will be 21 feet from the front (East) property line located on the property in an area zoned "C-1" Central Commercial District on the following legally described property: Lots 1 & 2, Block 2, Original Plat, and addressed as 101 Joliet Ave. SE, De Smet, South Dakota.

Notice of the hearing was properly given by certified mail and by publication of the publication of the Notice of Hearing in conformity with Section 3.04.05 of the City Zoning Ordinance. Nobody from the public appeared for discussion of the variance application.

The location of the proposed construction was reviewed by the zoning board. Upon conclusion of the hearing and the Board having considered the application and evidence presented, enters its findings as follows:

1. That property legally described as Lots 1 & 2, Block 2, Original Plat, De Smet, Kingsbury County, South Dakota, is located within the city limits of the City of De Smet and the Board of Adjustment has jurisdiction over the application.
2. That the property is currently zoned "C-1 Central Commercial District".
3. That adjacent properties are zoned "R-2 General Residential" and "C-1" Central Commercial District".
4. That the lot is located at the intersection of two street right-of-ways (Joliet Ave. SE & 1st Street SE).
5. That the Area Regulations of the "C-1 Central Commercial District" zoning do not require a front yard set-back.
6. That the Area Regulations of the "C-1 Central Commercial District" zoning requires that all buildings located on lots adjacent to a residential district shall observe a yard requirement equivalent to the minimum yard requirement of the residential district on the side or sides adjacent.

7. "Additional yard Requirement" in Chapter 4.07 Yards, states that a corner lot must have a front yard along both streets.
8. That the proposed building addition would be constructed 21 feet from the east (front yard) property line.
9. That none of the adjoining property owners objected to the proposed variance.
10. That granting the proposed variance would not increase any safety exposure to the adjacent property owners.
11. That the Board of Adjustment take into consideration each application on its own accord.
12. That ordinances have been approved and adopted to protect the De Smet residents and properties within the city limits.
13. That the current structure locations do not result from the applicant's action.
14. That the reasons set forth in the application justify approving a variance.

Based upon these findings, a motion was made by Jensen, seconded by Asleson, to recommend approval of the variance application #104 as submitted by Jon Prunty, for a free-standing business sign, all voting aye, motion carried.

Motion was made by Jensen, seconded by Cavanaugh to reconvene as the city council, all voting aye, motion carried.

VARIANCE & BUILDING PERMITS: Motion was made by Jensen, seconded by Cavanaugh, to approve the variance application #104 as submitted by Jon Prunty for a free-standing business sign, all voting aye, motion carried. Motion was made by Jensen, seconded by Cavanaugh, to approve the building permit application submitted Jon Prunty - free-standing business sign, all voting aye, motion carried.

2024 LIQUOR & WINE LICENSE RENEWALS: This being the date and time advertised motion was made by Hansen seconded by Cavanaugh, to reissue liquor licenses to the Main Stop (off-sale), Half Pint, LLC (on-sale), Klinkels III (on-sale), Wheaties (on-sale), Double Bogey's (on-sale), Oxbow Restaurant (on-sale wine & cider), Dollar General (on/off-sale wine & cider), and Maynard's (off-sale liquor and on/off-sale wine & cider) for the year 20243, all voting aye, motion carried.

EQUIPMENT: Motion was made by Cavanaugh, seconded by McCune, to approve purchasing a 2007 Sterling Lt7500 Dump Truck with 193,000 miles, as is, for \$34,900.00 from Albrecht Road Maintenance, LLC, all voting aye, motion carried.

PUBLIC COMMENTS: Mark Siefkes met with the council to inquire about removing the jake brake ordinance, and speed limits coming into city limits.

AIRPORT AWOS PROJECT: Mike Schmit, Engineer for Helms & Associates, met with the council to give an update on the airport AWOS project. Schmit reported that the AWOS project construction has been completed and the close-out paperwork needs to be completed. The project final inspection was held on October 18, 2023. Schmit presented Change Order #1 reducing the project construction expenses by -\$12,090.95. The reduction was for quantity deductions and expenses saved for not closing the runway while the project was in progress.

CHANGE ORDER #1: Motion was made by Hansen, seconded by Cavanaugh, to approve Airport AWOS project Change Order #1, reducing the project construction by -\$12,090.95, all voting aye, motion carried.

WATER/WASTEWATER/MAIN STREET PROJECT UPDATES: IMEG Engineer, Shane Waterman met with the council to give a review of the current water, wastewater, and Main Street projects. The plans for the Chase Street water and sewer project and plans for the 2nd Street water project have been submitted to SD DANR. After the DANR review is received, comments will be addressed. Another meeting will be held with the property owners along 2nd Street from Prairie Ave. to Hwy 25, to discuss and answer questions for replacement of the water main, curb and gutter, and sidewalks planned to take place in 2024 later in the meeting. Bidding for the water and sewer project will be done after January 1, 2024.

SRF LOAN RESOLUTIONS: Motion was made by Hansen, seconded by Cavanaugh, to approve Resolution 2023-5, giving the approval for the issuance and sale of a revenue bond in the amount of \$2,272,500.00, approving to the loan agreement with a water revenue surcharge for payment of the water loan, all voting aye, motion carried.

RESOLUTION NO. 2023-5

RESOLUTION GIVING APPROVAL TO CERTAIN DRINKING WATER 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 of waterworks for the purpose of providing water and water supply for domestic, municipal, 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 DeSmet (the "City") currently operates a water distribution system to supply municipal, industrial and domestic water to its inhabitants and has determined that improvements to the drinking water facilities are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its drinking water system; and,

WHEREAS, the City has determined to issue its revenue bonds to finance the improvements to its system of waterworks for the purpose of providing water and water supply for domestic, municipal, and industrial purposes (the "System") and has applied to the South Dakota Conservancy District (the "District") for a Drinking 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 DeSmet Water Distribution System Improvements Project.

“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 waterworks used for the purpose of providing water and water supply for domestic, municipal, and industrial purposes.

SECTION 2. Declaration of Necessity and Findings.

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

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

2.2.1. 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.

2.2.2. 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-3A, and the federal Safe Drinking 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.

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

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

3.1. Authorization of Loan. The City hereby determines and declares it necessary to finance up to \$2,272,500 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.

3.2. 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

City 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.

3.3. Approval of Revenue Bond. The issuance of a revenue bond in a principal amount not to exceed \$2,272,500 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.

3.4. 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, 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 4. Special Charge or Surcharge for Revenue Bond. 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.

4.1. 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.

4.2. 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, interest and Administrative Surcharge on the Revenue Bond when due.

4.3. 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.

4.4. 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 5. 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 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, Administrative Surcharge and interest on the Revenue Bond, the following mandatory asset segregations shall be included in the water system account of the City and shall be used solely for the following respective purposes until payment in full of the principal, interest and Administrative Surcharge 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 resolutions and ordinances of the City of DeSmet, South Dakota (collectively the "Rate Resolution"). 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 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.

6.3. 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.

6.4. 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 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 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 7. 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 8. Approval of Bond Counsel. Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

SECTION 9. 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 10. Covenants. The City hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

10.1. 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.

10.2. The City agrees and covenants that it will promptly construct the improvements included in the Project.

10.3. 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, interest and Administrative Surcharge 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.

10.4. 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 11. 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 12. 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 13. 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 14. Repeal of Resolution. At such time as the Project 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 15. 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 16. Effective Date. This Resolution shall take effect on the 20th day following its publication, unless suspended by a referendum.

Adopted at DeSmet, South Dakota, this 8th day of November 2023.

APPROVED:

Mayor – Gary Wolkow

(SEAL)

Attest: _____
City Finance Officer – Tracey Larson

Adopted: November 8, 2023
Published: November 22, 2023
Effective: December 12, 2023

Motion was made by Jensen, seconded by Asleson, to approve Resolution 2023-6, giving the approval for the issuance and sale of a revenue bond in the amount of \$1,196,650.00, approving to the loan agreement with a wastewater revenue surcharge for payment of the water loan, all voting aye, motion carried.

RESOLUTION NO. 2023-6

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 DeSmet (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 17. 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 DeSmet Wastewater Collection System Improvements Project.

“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 18. Declaration of Necessity and Findings.

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

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

18.2.1. 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.

18.2.2. 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.

18.2.3. 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 19. Authorization of Loan, Pledge of Revenue and Security.

19.1. Authorization of Loan. The City hereby determines and declares it necessary to finance up to \$1,196,650 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.

19.2. 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.

19.3. Approval of Revenue Bond. The issuance of a revenue bond in a principal amount not to exceed \$1,196,650 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.

19.4. 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 20. Special Charge or Surcharge for Revenue Bond.

20.1. 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.

20.2. 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.

20.3. 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.

20.4. 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.

20.5. 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 21. 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 22. 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:

22.1. 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 DeSmet, South Dakota (collectively the "Rate Resolution"). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

22.2. 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 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.

22.3. 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.

22.4. 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 23. 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 24. Approval of Bond Counsel. Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

SECTION 25. 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 26. Covenants. The City hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

26.1. 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.

26.2. The City agrees and covenants that it will promptly construct the improvements included in the Project.

26.3. 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.

26.4. 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 27. 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 28. 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 29. 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 30. 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 31. 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 32. Effective Date. This Resolution shall take effect on the 20th day following its publication, unless suspended by a referendum.

Adopted at DeSmet, South Dakota, this 8th day of November 2023.

APPROVED:

Mayor – Gary Wolkow

(SEAL)

Attest: _____
Finance Officer – Tracey Larson

Adopted: November 8, 2023
Published: November 22, 2023
Effective: December 12, 2023

WATER & WASTEWATER: Water & Wastewater Supt., Jason Springer, informed the council that he will need to rent a backup generator for the south sewer lift over the winter season; water flow testing has been completed at the Dale Thompson residence. It is consistent with the two other vacant lots for future development. Springer has ordered a new starter for well #7.

SURPLUS PROPERTY: Motion was made by Cavanaugh, seconded by Hansen, to declare the Airport Super AWOS equipment as surplus property to be returned to the SD State Department- of Transportation Air & Rail, all voting aye, motion carried.

HIRING PERSONNEL: Motin was made by Cavanaugh, seconded by Jensen, to approve hiring Lucas Gombojav, as the RUS Superintendent/Dept. Assistant at the rate of \$18.98 per hour, all voting aye, motion carried.

AMENDMENT TO EVENT CENTER RENTAL RATES: A recommendation from the Event Center Advisory Board was presented to the council. Motion was made by Cavanaugh, seconded by Asleson, to approve the rental rate amendments as follows: Exhibit Hall - Full Day \$1,000.00, weekend rentals with more than 1 day add \$500.00, Half Day \$550.00; Conference Center West Full Day \$145.00, Half Day \$110.00; Meyer Meeting Room Full Day \$90.00, Half Day \$60.00; Theater Full Day \$200.00/\$100.00 w/exhibit hall rental, Half Day \$125.00/\$50.00 with exhibit hall rental for the Event Center as recommended by the Advisory Board, all voting aye, motion carried.

PROJECT PAYMENTS: Motion was made by Cavanaugh, seconded by Hansen, to approve pay requests: IMEG, water project Inv. 21005454.02-7 \$3,0000.00; IMEG, Sewer project Inv. 22006268.01-10 \$5,00000; IMEG,

Chase waster project 22006268.00-10 \$10,000.00; Helms & Associates, pay request #5, airport AWOS project engineering \$23,623.65; Efraimson Electric, Inc., pay request #4 (final) airport AWOS project \$66,823.20, all voting aye, motion carried. Airport projects are funded 95% by federal and state grant funds.

DE SMET DEVELOPMENT COORIDNATOR: Jamie Lancaster, De Smet Development Coordinator met with the council to give an update of activities and projects. The De Smet Development annual meeting has been scheduled for December 12, 2023, at 7:00 AM, at the Oxbow; work on applying for the childcare grant is continuing; the Mayor, City Staff, and Development Coordinator met with ISG for a kick-off meeting to work on the 5 year CIP; and Lancaster has met with a builder and is working on details for a housing project.

FINANCIAL REPORTS: Motion was made by Hansen, seconded Spader, to approve the October 2023 Cash Balances Report as presented by the Finance Officer, all voted aye, motion carried.

OVERTIME: Motion by Jensen, seconded by McCune, to approve the overtime hours for the month of October as presented, all voted aye, motion carried.

OTHER: Other non-action items of discussion were as follows: 1) the October law enforcement report; and 2) nuisance properties.

A 30-minute recess was taken before starting the discussion with the 2nd Street property owners for the water project.

Mayor Wolkow declared the council back in session.

2ND STREET WATER PROJECT: Shane Waterman, Engineer for IMEG, gave a brief review of the 2nd Street Water project that is planned to start in 2024. Discussion was held about the replacement of the curb & gutter and sidewalks. City Attorney, Todd Wilkinson explained the special assessment process for the curb & gutter and sidewalk replacement. The design work has already been completed. The road will be re-graded to have a standard 6-8 inch curb. Water service line replacements in the project will stop at the property line. If there is an unusual or lead service line, the property owner will be contacted. Questions from the public were discussed. The next meeting for the official assessment hearing will be held on December 13, 2023, during the December Regular Council Meeting.

ADJOURN: There being no further business the meeting was adjourned on motion by McCune, seconded by Jensen, all voting aye, motion carried.

Gary Wolkow, Mayor

ATTEST:

Tracey Larson, Finance Officer

Published once at the approximate cost of \$ _____