

**BROOKINGS CITY COUNCIL**  
**July 23, 2024** (unapproved)

The Brookings City Council held a meeting on Tuesday, July 23, 2024 at 6:00 PM, at the Brookings City & County Government Center, Chambers, with the following City Council members present: Mayor Oepke Niemeyer, Council Members Wayne Avery, Brianna Doran, Andrew Rasmussen, Bonny Specker, Holly Tilton Byrne, and Nick Wendell. Absent: City Attorney Steve Britzman. City Manager Paul Briseno, and City Clerk Bonnie Foster were also present.

**Agenda.** A motion was made by Mayor Niemeyer, seconded by Council Member Tilton Byrne, to amend the agenda and remove Item #5B, Public Arts Commission appointments, and Item #8D, First Reading and Introduction of Ordinance 24-020, from tonight's agenda. The motion carried by the following vote: Yes: 7 - Avery, Doran, Niemeyer, Rasmussen, Specker, Tilton Byrne, and Wendell.

A motion was made by Council Member Tilton Byrne, seconded by Council Member Doran, that the agenda be approved, as amended. The motion carried by the following vote: Yes: 7 - Avery, Doran, Niemeyer, Rasmussen, Specker, Tilton Byrne, and Wendell.

**Open Forum.** Heidi Gullickson, United Way Executive Director, invited the City Council and public to the Brookings Early Learners Community Planning event on August 21<sup>st</sup>, from 8:00 - 11:00 am at Mickelson Middle School.

**Consent Agenda.** A motion was made by Council Member Tilton Byrne, seconded by Council Member Doran, to approve the Consent Agenda. The motion carried by the following vote: Yes: 7 - Avery, Doran, Niemeyer, Rasmussen, Specker, Tilton Byrne, and Wendell.

**A. Action to approve the July 9, 2024 City Council Minutes.**

**C. Action on City Council Ex-Officio Appointments to SDSU Student Association:** Council Member Andrew Rasmussen and Council Member Brianna Doran, for 1-year terms (terms expire June 1, 2025).

**D. Action to abate property taxes in the amount of \$1,973.88 for Parcel #40114-00500-005-00. Address: 104 Helen Circle, Brookings. Legal description: Lot 5, Block 5, Christie Heights Addition.**

**E. Action on Resolution 24-070, a Resolution declaring surplus property for the City of Brookings.**

RESOLUTION 24-070 - DECLARING SURPLUS PROPERTY

WHEREAS, the City of Brookings is the owner of the following described equipment formerly used at the City of Brookings: Police Dept.: 3 metal file cabinets.

WHEREAS, in the best financial interest, it is the desire of the City of Brookings to dispose of as surplus property; and

WHEREAS, the City Manager is hereby authorized to sell or dispose of said surplus property.

NOW, THEREFORE, BE IT RESOLVED by the governing body of the City of Brookings, SD, that this property be declared surplus property according to SDCL Chapter 6-13.

**Proclamation: Americans with Disabilities Act 34<sup>th</sup> Anniversary.** Mayor Niemeyer presented a Proclamation to Matt Weiss, Brookings Disabilities Awareness Committee member, recognizing the 34<sup>th</sup> Anniversary of the Americans with Disabilities Act.

#### MAYORAL PROCLAMATION

WHEREAS, the Americans with Disabilities Act (ADA) was passed on July 26, 1990, as the first comprehensive declaration of equality for people with disabilities and protects rights in all aspects of employment, in accessing public services, and guaranteeing access to private establishments; and

WHEREAS, the goals of the community aligns with providing people with disabilities with the opportunities and support to achieve full integration and inclusion in society, in an individualized manner; and

WHEREAS, disability is a natural part of the human experience that does not diminish the right to enjoy the opportunity to live independently, enjoy self-determination, make choices, contribute to society, and experience full integration and inclusion with necessary services and supports.

NOW, THEREFORE, BE IT RESOLVED, that I, Oepke G. Niemeyer, Mayor of the City of Brookings, do hereby proclaim July 26, 2024 as Americans with Disabilities Act 34<sup>th</sup> Anniversary Day, and call upon the people of Brookings to:

1. Recognize and celebrate the progress that has been made by reaffirming the principals of equality and inclusion and recommitting our efforts to reach full ADA compliance for people with disabilities in the City of Brookings.
2. Continue advocating for full inclusion and equity of individuals with disabilities in all aspects of society.

**Report: 2023 Annual Comprehensive Financial Report and Audit Summary.** Brian Stavenger, CPA partner with Eide Bailly, presented the City's 2023 Annual Comprehensive Financial Report.

**Resolution 24-022.** A motion was made by Council Member Tilton Byrne, seconded by Council Member Specker, that Resolution 24-022, a Resolution Authorizing an Energy Savings Performance Contract with Ameresco, be approved. The motion carried by the following vote: Yes: 7 - Avery, Doran, Niemeyer, Rasmussen, Specker, Tilton Byrne, and Wendell.

RESOLUTION 24-022 - A RESOLUTION APPROVING AN ENERGY SAVINGS PERFORMANCE CONTRACT WITH AMERESCO

WHEREAS, the City of Brookings, in conjunction with Ameresco, a national energy solution company, have completed an investment grade energy audit of City of Brookings buildings and facilities; and

WHEREAS, Ameresco provides energy savings performance services pursuant to contracts with facility owners, wherein the contractor identifies, designs and installs energy conservation measures which are structured so the costs of these energy cost conservation measures are recovered from energy cost savings those energy conservation measures create; and

WHEREAS, the City of Brookings has developed a project which, through the implementation of energy savings conservation measures, together with facility improvement measures, will provide energy savings, capital equipment upgrades and will improve the maintenance of existing facilities and reduced energy use and costs; and

WHEREAS, this Resolution authorizes the City Manager to sign the documentation required to enter into an energy savings performance contract with Ameresco. The Contract with Ameresco is entered into through the Interlocal Purchasing System (TIPS), and the estimated cost of the contract for comprehensive energy conservation measures is \$3,356, 000, with the recovery of this cost guaranteed by Ameresco through long-term energy and conservation savings.

NOW, THEREFORE, BE IT RESOLVED that an energy savings performance contract with Ameresco through The Interlocal Purchasing System (TIPS) Contract #220104 in the amount of \$3,356,000 is hereby approved, and the City Manager and City Clerk are authorized to sign the documents required to execute this Energy Savings Performance Contract.

**FIRST READING – Ordinance 24-022.** Introduction and First Reading was held on Ordinance 24-022, an Ordinance to Rezone Outlot J in the South East Quarter of Section 11, Township 109, Range 50 West from a Joint Jurisdiction Residence R-3A District to a Joint Jurisdiction Business B-3 Heavy District. Public Hearing and Action: August 13, 2024.

**FIRST READING – Ordinance 24-023.** Introduction and First Reading was held on Ordinance 24-023, an Ordinance to Rezone the East 151 feet of Block 1 in Northern Plains Addition from a Business B-2A Office District to a Residence R-2 Two-Family District. Public Comment: Jason Flaskey, Ron Stee, and Kyle Rausch. Public Hearing and Action: August 13, 2024.

**FIRST READING – Ordinance 24-024.** Introduction and First Reading was held on Ordinance 24-024, an Ordinance to permit by Conditional Use Permit townhouses on

Blocks 3A and 4 in Northern Plains Addition, City of Brookings, Brookings County, South Dakota. Public Comment: Jason Flaskey. Public Hearing and Action: August 13, 2024.

**Ordinance 24-010.** A motion was made by Council Member Tilton Byrne, seconded by Council Member Doran, that Ordinance 24-010, an Ordinance granting a Franchise to Interstate Telecommunications Cooperative, Inc., to construct, operate, and maintain a Cable Television System in the City of Brookings, South Dakota, setting forth conditions accompanying the grant of the Franchise; providing for regulation and use of the system; and prescribing penalties for the violation of its provisions, be approved. Public Comment: Ryan Taylor, Attorney with Cutler Law Firm, and Tracy Bandemer, Interstate Telecommunications Cooperative, Inc. General Manager. The motion carried by the following vote: Yes: 7 - Avery, Doran, Niemeyer, Rasmussen, Specker, Tilton Byrne, and Wendell.

**Ordinance 24-021.** A motion was made by Council Member Tilton Byrne, seconded by Council Member Wendell, that Ordinance 24-021, an Ordinance Authorizing Budget Amendment No. 7 to the 2024 Budget. The motion carried by the following vote: Yes: 7 - Avery, Doran, Niemeyer, Rasmussen, Specker, Tilton Byrne, and Wendell.

**Special Event Alcoholic Beverage Application.** A public hearing was held on a Temporary / Special Event Alcoholic Beverage Application from Main Street Pub, to operate within the City of Brookings, South Dakota for a "Tini Bit Left of Summer" event to be held on July 26<sup>th</sup> at The Socialight, 420 Main Avenue. A motion was made by Council Member Tilton Byrne, seconded by Council Member Doran, that the Special Event Alcoholic Beverage Application be approved. The motion carried by the following vote: Yes: 7 - Avery, Doran, Niemeyer, Rasmussen, Specker, Tilton Byrne, and Wendell.

**Resolution 24-067.** A motion was made by Council Member Tilton Byrne, seconded by Council Member Specker, that Resolution 24-067, a Resolution Relating to the Improvement of Drinking Water Facilities: Authorizing and Directing the Issuance and Sale of Revenue Bond to Pay the Cost of Said Improvements; Defining the Terms and Manner of Payment of the Bond and the Security Thereof and Approving the Form of Loan Agreement, be approved. Public Comment: Eric Witt, BMU Water / Wastewater and Engineering Manager. The motion carried by the following vote: Yes: 7 - Avery, Doran, Niemeyer, Rasmussen, Specker, Tilton Byrne, and Wendell.

RESOLUTION 24-067 - RESOLUTION RELATING TO THE IMPROVEMENT OF DRINKING WATER FACILITIES; AUTHORIZING AND DIRECTING THE ISSUANCE AND SALE OF A REVENUE BOND TO PAY THE COST OF SAID IMPROVEMENTS; DEFINING THE TERMS AND MANNER OF PAYMENT OF THE BOND AND THE SECURITY THEREOF AND APPROVING THE FORM OF LOAN AGREEMENT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BROOKINGS, SOUTH DAKOTA, AS FOLLOWS:

## SECTION 1. AUTHORIZATION AND FINDINGS.

- 1.01. The City of Brookings, South Dakota (the “Issuer”), operating through Brookings Municipal Utility (“BMU”) currently operates a water distribution system to supply municipal, industrial and domestic water to its inhabitants (the “Utility”), for municipal, industrial and domestic purposes.
- 1.02. The Issuer is authorized to borrow money and issue its revenue bonds under South Dakota Codified Laws, Chapters 9-40 (the “Act”) and 6-8B, in order to finance all or a portion of the cost of improvements to the Utility, consisting of the construction of a new 6 MGD lime softening water treatment facility along 34th Avenue (the “Treatment Facility”) which will have the East Well Field and the North Well Field deliver raw water to the Treatment Facility. A total of 28,500 feet of new 16-inch raw water line will be constructed along with 19,890 feet of new 16-inch finished water line and six new municipal wells with 17,400 feet of new 20-inch transmission main (all such financed projects, the “Improvements”). The Issuer is authorized to issue its obligations in order to defray the cost thereof, and to make all pledges, covenants and agreements authorized by law for the protection of the holders of the obligations, including, without limitation, those covenants set forth in SDCL, Sections 9-40-16 and 9-40-17. The obligations are payable from the Net Revenues of the Improvements, as defined in 2.04 hereof. Pursuant to a resolution adopted September 13, 2022 (the “Prior Bond Resolution”), the Issuer issued a single revenue bond in the principal amount of \$50,963,200 (the “Prior Bond”) to finance the Improvements, but market conditions have significantly increased the cost of the Improvements. Therefore, the Issuer finds it necessary to issue an additional revenue bond (the “Bond”; together with the Prior Bond, the “Parity Bonds”) in the principal amount of not more than \$40,700,000.
- 1.03. Pursuant to the terms of the Prior Bond Resolution and Loan Agreement with respect to the Prior Bond governing issuance of additional bonds, BMU will raise rates to ensure that, beginning within 12 months and continuing for each fiscal year that any Parity Debt remains outstanding, the amount of Project Income will be at least 110% of the amount of Project Debt. Additionally, BMU will provide to the South Dakota Conservancy District (the “District”) a Consultant’s written forecast showing that for such 12 months both (1) Project Income will equal at least 100% of Project Debt Service and (2) assuming that the expansion was complete and placed in service on the date of the forecast and all other conditions expected to be in effect on the expected date of completion were in effect on the date of the forecast, Project Income would equal at least 110% of Project Debt Service on the Parity Bonds. BMU has, by resolution, covenanted and agreed to adopt and maintain special rates or surcharges for the improvements, in order to produce revenues to be pledged, segregated and used for the operation and maintenance of the Improvements and payment of the Parity Bonds. Capitalized terms used in this Section 1.03 but not defined herein shall have the meanings given such terms in the Prior Bond Resolution and Loan Agreement with respect to the Prior Bond.
- 1.04. The execution and delivery of the Revenue Obligation Loan Agreement for the Bond between the District and the Issuer (the “Loan Agreement”), the form of

which has been submitted to this Council, and the pledging of the loan payments thereunder for the security of the State Revolving Fund revenue bonds of the Issuer and the interest and administrative fee thereon shall be, and they are, in all respects, hereby authorized, approved and confirmed, and the Mayor and City Clerk are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content submitted to this Council, with such changes that are not substantive as the Attorney for the Issuer deems appropriate and approves, for and on behalf of the Issuer. The Mayor and City Clerk are hereby further authorized and directed to implement and perform the covenants and obligations of the Issuer as set forth in or required by the Loan Agreement.

- 1.05. The issuance of the Bond is hereby authorized, approved and confirmed, and the Mayor, City Clerk and other appropriate officials of the Issuer shall be authorized to execute and deliver the Bond to the District, for and on behalf of the Issuer, upon receipt of the purchase price and to deposit the proceeds thereof in the manner provided for in the Loan Agreement. The Mayor and City Clerk are hereby authorized to approve the final terms of the Bond, and their execution and delivery of the Bond shall evidence such approval. The terms of the Bond, as so executed and delivered, shall be deemed to be incorporated herein by reference.
- 1.06. The Issuer hereby determines that because the Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to SDCL 9-40-15, no election is required to issue the Bond.

## SECTION 2. FUNDS AND ACCOUNTS.

For the purpose of application and proper allocation of the income of the Improvements and to secure the payment of principal of and interest on the Parity Bonds, the following funds and accounts shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Parity Bonds:

- 2.01. Pledge of Net Revenues of the Improvements. The Net Revenues of the Improvements shall be pledged and appropriated to the payment of the Parity Bonds as set forth in the resolution adopted by BMU.
- 2.02. Water Utility Fund; Bond Proceeds and Revenues Pledged and Appropriated. A fund designated as the Water Utility Fund (the "Fund") has been established and shall be maintained as a separate and special bookkeeping account on the official books of the Issuer until the Parity Bonds and any additional bonds payable from the Net Revenues of the Improvements, as provided in Sections 3.02 through 3.04 hereof and interest, Administrative Expense Surcharge and redemption premiums due thereon have been fully paid, or the Issuer's obligations with reference to the Parity Bonds have been discharged as provided in this resolution. All proceeds of the Parity Bonds and all other funds hereafter received or appropriated for purposes of the Improvements are appropriated to the Fund. All gross revenues derived from the operation of the Improvements are irrevocably pledged and appropriated and shall be credited to the Fund as received. As described in Section 3.04 hereof, BMU shall impose a separate surcharge for the availability, benefit and use of the Improvements as part of the Utility and shall aggregate the gross revenues derived from such surcharge and the Improvements, together with the expenses of operation and maintenance of the Improvements and shall account for them as provided in this Resolution;

except as expressly stated in this Resolution, the pledges, appropriations, covenants and agreements of the City and the Accounts established within the Fund by the Resolution apply only to the Improvements, its operations, revenues and expenses. The City finds that acquisition and construction of the Improvements will benefit all present and future users of the Utility, therefore the surcharge described in Section 3.04 shall be imposed on all current and future users of the Utility. Such gross revenues shall include all gross income and receipts from rates and charges imposed for the availability, benefit and use of the Improvements as now constituted and of all replacements and improvements thereof and additions thereto, and from penalties and interest thereon, and from any sales of property acquired for the Improvements and all income received from the investment of such gross revenues; but not any taxes levied or amounts borrowed or received as grants for construction of any part of the Improvements. The Fund shall be subdivided into separate accounts as designated and described in Sections 2.03 to 2.07, to segregate income and expenses received, paid and accrued for the respective purposes described in those sections. The gross revenues received in the Fund shall be apportioned monthly or as soon as possible after the first day of each month, which apportionment is hereinafter referred to as the "monthly apportionment."

- 2.03. Construction Account. The Construction Account shall be used only to pay as incurred and allowed costs which under financial and reporting standards as promulgated by the Governmental Accounting Standards Board, the Financial Accounting Standards Board, or an Other Comprehensive Basis of Accounting, as applicable (referred to herein as Financial and Reporting Standards), are capital costs of the Improvements, and of such future reconstructions, improvements, betterments or extensions of the Improvements as may be authorized in accordance with law; including but not limited to payments due for work and materials performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands and easements, interest accruing on the Parity Bonds during the first year following the date of delivery, if and to the extent that the Revenue Bond Account is not sufficient for payment of such interest, reimbursement of any advances made from other Issuer funds, and all other expenses incurred in connection with the construction and financing of any such undertaking. To the Construction Account shall be credited as received all proceeds of the Parity Bonds, except amounts appropriated to the Revenue Bond Account under Section 2.05, all other funds appropriated by the Issuer for the Improvements, and all income received from the investment of the Construction Account.
- 2.04. Operating Account. On each monthly apportionment there shall first be set aside and credited to the Operating Account, as a first charge on the gross revenues, such amount as may be required over and above the balance then held in the Operating Account to pay the reasonable and necessary operating expenses of the Improvements which are then due and payable, or are to be paid prior to the next monthly apportionment. The term "operating expenses" shall mean the current expenses, paid or accrued, of operation, maintenance and current repair of the Improvements, calculated in accordance with generally accepted

accounting principles, and shall include, without limitation, administrative expenses of the Issuer relating solely to the Improvements, premiums for insurance on the properties thereof, labor and the cost of materials and supplies used for current operation and for maintenance, and charges for the accumulation of appropriate reserves for current expenses which are not recurrent monthly but may reasonably be expected to be incurred in accordance with generally accepted accounting principles. Such operating expenses shall not include any allowance for depreciation or renewals or replacements of capital assets of the Improvements and shall not include any portion of the salaries or wages paid to any officer or employee of the Issuer, except such portion as shall represent reasonable compensation for the performance of duties necessary to the operation of the Improvements, nor any amount properly payable from any other account of the Fund. The Net Revenues of the Improvements, as referred to in this Resolution, are hereby defined to include the entire amount of such gross revenues remaining after each such monthly apportionment, after crediting to the Operating Account the amount required hereby, including sums required to maintain an operating reserve equal to one month's estimated operating expenses.

- 2.05. Revenue Bond Account. Upon each monthly apportionment there shall be set aside and credited to the Revenue Bond Account, out of the Net Revenues of the Improvements, an amount equal to one-third of the total sum of the principal and interest and administrative surcharge to become due on each Parity Bond on the next succeeding Loan Repayment Date (as defined in each Parity Bond). Moneys from time to time held in the Revenue Bond Account shall be disbursed only to meet payments of principal and interest on each Parity Bond as such payments become due; provided, that on any date when an outstanding Parity Bond is due or prepayable by its terms, if the amount then on hand in the Revenue Bond Account is sufficient, with other moneys available for the purpose, to pay the Parity Bond and the interest accrued thereon in full, together with interest due on the next succeeding Loan Repayment Date on any outstanding Parity Bonds to remain outstanding, it may be used for that purpose. If any payment of principal or interest or administrative surcharge becomes due when moneys in the Revenue Bond Account are temporarily insufficient, such payment shall be advanced out of any Net Revenues theretofore segregated and then on hand in the Replacement and Depreciation Account or the Surplus Account. In the event that sufficient moneys are not available from the aforementioned sources the Issuer, to the extent it may, at the time legally do so, may, but shall not be required to, temporarily advance moneys to the Revenue Bond Account from other revenues of the Improvements or from other funds of the Issuer on hand and legally available for the purpose, but any such advance shall be repaid from Net Revenues of the Improvements within 24 months.
- 2.06. Replacement and Depreciation Account. There shall next be set aside and credited, upon each monthly apportionment, to the Replacement and Depreciation Account such portion of the Net Revenues, in excess of the current requirements of the Revenue Bond Account (which portion of the Net Revenues is referred to herein as Surplus Net Revenues), as BMU shall determine to be

required for the accumulation of a reasonable reserve for renewal of worn out, obsolete or damaged properties and equipment of the Improvements. Moneys in this account shall be used only for the purposes above stated or, if so directed by BMU, to redeem Bonds which are prepayable according to their terms, to pay principal or interest or administrative surcharge when due thereon as required in Section 2.05 hereof, or to pay the cost of improvements to the Improvements; provided, that in the event that the Issuer shall hereafter issue bonds for the purpose of financing the construction and installation of additional improvements or additions to the Improvements, but which additional bonds cannot, upon the terms and conditions provided in Section 3, be made payable from the Revenue Bond Account, Surplus Net Revenues from time to time received may be segregated and paid into one or more separate and additional accounts for the payment of such bonds and interest thereon, in advance of payments required to be made into the Replacement and Depreciation Account.

- 2.07. Surplus Account. Any amount of the Surplus Net Revenues from time to time remaining after the above required applications thereof shall be credited to the Surplus Account, and the moneys from time to time in that account, when not required to restore a current deficiency in the Revenue Bond Account as provided in Section 2.05 hereof, may be used for any of the following purposes and not otherwise:
- (a) to redeem and prepay principal of each Parity Bond when and as such principal becomes prepayable according to its terms;
  - (b) if the balances in the Revenue Bond Account and the Replacement and Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made therefrom prior to the end of the current fiscal year, then;
    - (i) to pay for repairs or for the construction and installation of improvements or additions to the Improvements;
    - (ii) to be held as a reserve for redemption and prepayment of principal of each Parity Bond which is not then but will later be prepayable according to its terms;
    - (iii) with the written consent of the District, transferred to one or more specified funds of the Issuer.

No moneys shall at any time be transferred from the Surplus Account or any other account of the Fund to any other fund of the Issuer, nor shall such moneys at any time be invested in warrants, special improvement bonds or other obligations payable from other funds, except as provided in this section.

- 2.08. Deposit and Investment of Funds. The Chief Financial 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 so long as any of the Parity Bonds and the interest thereon shall remain unpaid. The deposit and investment of all moneys pertaining to the Fund must, on the books and records of the Issuer, be maintained separate and apart from all other funds of the Issuer. 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 the City Council, be invested in securities permitted by the provisions of South Dakota Codified Laws, Section 4-5-6; provided, that the Replacement and Depreciation Account 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 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. The investment of the moneys on deposit in the Revenue Bond Account is further restricted by the provisions of Section 6.01 hereof. Deposits and securities described in this Section shall constitute "Qualified Investments."

- 2.09. Additional Revenues or Collateral. The Issuer reserves the right at any time to pledge additional moneys, revenues or collateral as security for the Parity Bonds and any additional bonds. Such pledge shall not be effective unless and until the Issuer receives, and provides to the bond registrar an opinion of, nationally recognized bond counsel stating that such pledge will not adversely affect the validity or tax exemption of the Parity Bonds and any additional bonds then outstanding.
- 2.10. Appropriation of Other Moneys. The Issuer reserves the right in any year while the Parity Bonds are outstanding to appropriate from moneys on hand and legally available for such purpose in its cash reserve accounts such amounts as this Council may specify and direct that such amounts be used to pay principal and interest and administrative expense surcharge on the Parity Bonds. Any such appropriation shall reduce the obligation of the Issuer to impose rates and charges under Section 3.04 hereof.
- 2.11. Statutory Mortgage. The Issuer covenants and agrees that pursuant to SDCL 9-40-28 and SDCL 9-40-29, the lawful holders of each Parity Bond shall have a statutory mortgage lien upon the Improvements and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal, interest, and Administrative Expense Surcharge on the Parity Bond held, and the Issuer agrees not sell or otherwise dispose of the Utility, the Improvements, 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 collection and treatment of wastewater for municipal, industrial, and domestic purposes within the Issuer.

### SECTION 3. PRIORITIES AND ADDITIONAL BONDS.

- 3.01. Priority of Bond Payments. If at any time the Net Revenues of the Improvements are insufficient to pay principal and interest and administrative expense surcharge then due on the Parity Bonds, any and all moneys then on hand shall be first used to pay the interest and administrative expense surcharge accrued on the Parity Bonds, and the balance shall be applied toward payment of the maturing principal of the Parity Bonds in order of their maturities, the earliest maturing principal to be paid first, and pro rata in payment of principal maturing on the same date.

- 3.02. Additional Bonds. The Issuer reserves the right to issue additional bonds, payable from the Revenue Bond Account of the Fund, on a parity as to both principal and interest and administrative expense surcharge with the Parity Bonds in the manner and upon satisfaction of the conditions and subject to the limitations set forth in the Loan Agreement, and if any Parity Bonds are then outstanding, subject to the limitations contained in the resolutions under which such Parity Bonds were issued.
- 3.03. Compliance with Loan Agreement. The Issuer will comply, so long as the Parity Bonds are outstanding, and unpaid, with all of the provisions of the Loan Agreement, to the same extent as though such provisions were set forth in this resolution.
- 3.04. Rates and Charges. BMU has covenanted that it will maintain, revise, charge and collect rates and other charges for all service furnished and made available by the Improvements, according to schedules such that the gross revenues derived therefrom will be sufficient, when combined with other available funds, to pay when due all expenses of the operation and maintenance of the Improvements, and all principal of and interest and administrative expense surcharge on the Bond, to provide for the establishment and maintenance of adequate reserves, to provide an allowance adequate for recurring renewals and replacements of the Improvements, to satisfy the rate covenant provided in Section 6.4 of the Loan Agreement and to fulfill the terms of all other agreements with holders of the Issuer's bonds. The rates and charges with respect to the Improvements shall be in the form of a separately stated surcharge on the municipal utilities rate schedule; in calculating the surcharge BMU shall allocate to the Improvements its share of the expenses of operation and maintenance and allowances for renewal and replacement as well as the requirements to pay principal of and interest and administrative expense surcharge on the Parity Bonds and to repay the Utility or any other funds of the City for moneys advanced in accordance with Section 2.05 hereof.

#### SECTION 4. AMENDMENTS.

- 4.01. Amendments Without Bondholder Consent. The Issuer reserves the right to amend this resolution from time to time and at any time, for the purpose of curing any ambiguity or of curing, correcting or supplementing any defective provision contained herein, or of making such provisions with regard to matters or questions arising hereunder as this City Council may deem necessary or desirable and not inconsistent with this resolution, and which shall not adversely affect the interests of the holders of the Parity Bonds, or for the purpose of adding to the covenants and agreements herein contained, or to the gross revenues herein pledged, other covenants and agreements thereafter to be observed and additional gross revenues thereafter appropriated to the Fund, for the purpose of surrendering any right or power herein reserved to or conferred upon the Issuer, or for the purpose of authorizing the issuance of additional bonds in the manner and subject to the terms and conditions prescribed in Section 3. Any such amendment may be adopted by resolution, without the consent of the holders of the Parity Bonds.

- 4.02. Amendments With Bondholder Consent. With the consent of the holders of the Parity Bonds as provided in Section 4.03, the Issuer may from time to time and at any time amend this resolution by adding any provisions hereto or changing in any manner or eliminating any of the provisions hereof, or of any amending resolution, except that no amendment shall be adopted at any time without the consent of the holders of each Parity Bond which is then outstanding and so affected, if it would extend the maturities of any Parity Bond, would reduce the rate or extend the time of payment of interest thereon, would reduce the amount or extend the time of payment of the principal or redemption premium thereof, would give to any Parity Bond any privileges over any other Parity Bond, would reduce the sources of gross revenues appropriated to the Fund, would authorize the creation of a pledge of gross revenues prior to or on a parity with the Parity Bonds (except as is authorized by Section 3), or would reduce the percentage in principal amount of Parity Bonds required to authorize or consent to any such amendment.
- 4.03. Notice and Consent. Any amendment adopted pursuant to Section 4.02 shall be made by resolution, mailed to each holder of a Parity Bond affected thereby, and shall become effective only upon the filing of written consents with the Chief Financial Officer, signed by the holders of not less than two-thirds in principal amount of the Parity Bonds which are then outstanding or, in the case of an amendment not equally affecting all outstanding Bonds, by the holders of not less than two-thirds in principal amount of the Parity Bond adversely affected by such amendment. Any written consent to an amendment may be embodied in and evidenced by one or any number of concurrent written instruments of substantially similar tenor signed by bondholders in person or by agent duly appointed in writing, and shall become effective when delivered to the Chief Financial Officer. Any consent by the holder of any Parity Bond shall bind the holder and every future holder of the same Parity Bond with respect to any amendment adopted by the Issuer pursuant to such consent, provided that any bondholder may revoke his consent with reference to any Parity Bond by written notice received by the Chief Financial Officer before the amendment has become effective. In the event that unrevoked consents of the holders of the required amount of Parity Bonds have not been received by the Chief Financial Officer within one year after the mailing of any amendment, the amendment and all consents theretofore received shall be of no further force and effect.
- 4.04. Proof. Proof of the execution of any consent, or of a writing appointing any agent to execute the same, or of the ownership by any person of a Parity Bond, shall be sufficient for any purpose of this resolution and shall be conclusive in favor of the Issuer if made in the manner provided in this section. The fact and date of the execution by any person of any such consent or appointment may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgements that the person signing such writing acknowledged to him the execution thereof. The amount of Parity Bonds held by any person by or for whom a consent is given, and the distinguishing numbers of such Parity Bonds, and the date of holding the same, shall be proved by the bond register. The fact and date of execution of

any such consent may also be proved in any other manner which this Council may deem sufficient; but this City Council may nevertheless, in its discretion, require further proof in cases where it deems further proof desirable.

SECTION 5. PAYMENT OF BOND.

- 5.01. General. When the liability of the Issuer on the Parity Bonds has been discharged as provided in this section, all pledges, covenants and other rights granted by this resolution to the holders of the Parity Bonds shall cease.
- 5.02. Payment. The Issuer may discharge its liability with reference to any Parity Bond which is due on any date by depositing with the holder or holders thereof, or the paying agent or agents, if any, for such Parity Bond on or before that date a sum sufficient for the payment thereof in full; or if any Parity Bond shall not be paid when due, the Issuer may nevertheless discharge its liability with reference thereto by depositing with the holder or holders thereof, or the paying agent or agents, if any, a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit.
- 5.03. Prepayable Bonds. The Issuer may also discharge its liability with reference to any prepayable Parity Bonds which are called for redemption on any date in accordance with their terms, by depositing with the holder or holders thereof, or the paying agent or agents, if any, on or before that date an amount equal to the principal, interest and redemption premium, if any, which are then due thereon, provided that notice of such redemption has been duly given as provided in the resolution authorizing the Parity Bond.

SECTION 6. TAX MATTERS AND EFFECTIVE DATE.

- 6.01. Tax Matters.
  - (a) Covenant. The Issuer covenants and agrees with the holders from time to time of the Parity 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 Parity Bonds, to the extent issued as tax-exempt obligations, to become subject to taxation under the Internal Revenue Code of 1986, as amended (the "Code"), and applicable Treasury Regulations (the "Regulations").
  - (b) Use of Improvements. The Issuer covenants and agrees that it will not, nor will it permit any of its officers, employees or agents, to enter into any lease, use or other agreement with any person other than a state or political subdivision or agency or instrumentality of a state, relating to the use of the Improvements or the security for the Parity Bonds which might cause the Parity Bonds, to the extent issued as tax-exempt bonds, to be considered "private activity bonds" within the meaning of Section 141 of the Code.
  - (c) Investment of Moneys on Deposit in Revenue Bond Account. The Chief Financial Officer shall ascertain monthly the amount on deposit in the Revenue Bond Account. If the amount on deposit therein ever exceeds by more than \$100,000 the aggregate amount of principal and interest due and payable from the Revenue Bond Account within 13 months thereafter, such excess shall either (1) not be invested except at a yield equal to or less than the yield borne by the Parity Bonds, or (2) be used to prepay and redeem principal installments of the Parity Bonds.

- (d) **Certification.** The Mayor and City Clerk, being the officers of the Issuer charged with the responsibility for issuing the obligations pursuant to this resolution, are authorized and directed to execute and deliver to the purchaser a certification in order to satisfy the provisions of Section 1.148-2(b) of the Regulations. Such certification shall state that on the basis of the facts, estimates and circumstances in existence on the date of issue and delivery of the Bond as therein set forth, it is not expected that the proceeds of the Bond will be used in such a manner that would cause the Bond to be an arbitrage bond, and the certification shall further state that to the best of the knowledge and belief of the officers there are no other facts, estimates or circumstances that would materially change such expectation.
- 6.02. **Tax-Exempt Status of the Bond and Rebate.** The Issuer shall comply with requirements necessary under the Code to establish and maintain the exclusion from gross income under Section 103 of the Code of the interest on the Bond, including without limitation (1) requirements relating to temporary periods for investments, (2) limitations on amounts invested at a yield greater than the yield on the Bond, and (3) the rebate of excess investment earnings to the United States.
- 6.03. **Repeal.** All provisions of all other ordinances, resolutions and other actions and proceedings of the Issuer and of this City Council which are in any way inconsistent with the terms and provisions of this resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this resolution.

**Progress Report.** Samantha Beckman, Assistant to the City Manager, provided a progress report highlighting the City's activities and projects.

**Executive Session.** A motion was made by Council Member Tilton Byrne, seconded by Council Member Rasmussen, to enter into Executive Session at 7:18 p.m., as per SDCL 1-25-2.4, for the purpose of preparing for contract negotiations or negotiating with employees or employee representatives. The motion carried by a unanimous vote. A motion was made by Council Member Rasmussen, seconded by Council Member Doran, to exit Executive Session at 7:54 p.m. The motion carried by a unanimous vote.

*(Council Member Specker left at 7:50 p.m.)*

**Adjourn.** A motion was made by Council Member Wendell, seconded by Council Member Doran, that this meeting be adjourned at 7:54 p.m. The motion carried by a unanimous vote.

CITY OF BROOKINGS, SD

---

Oepke G. Niemeyer, Mayor

ATTEST:

---

Bonnie Foster, City Clerk