

Brookings City Council
December 14, 2021 (unapproved)

The Brookings City Council held a meeting on Tuesday, December 14, 2021 at 5:30 PM, at the Brookings City & County Government Center, Chambers, with the following City Council members present: Mayor Oepke Niemeyer, Council Members Leah Brink, Holly Tilton Byrne, Patty Bacon, Joey Collins, Nick Wendell, and Wayne Avery. City Attorney Steve Britzman, City Manager Paul Briseno, and City Clerk Bonnie Foster were also present.

5:30 PM EXECUTIVE SESSION.

A motion was made by Council Member Tilton Byrne, seconded by Council Member Bacon, to enter into Executive Session at 5:32 p.m. pursuant to SDCL 1-25-2.1, for purposes of discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term "employee" does not include any independent contractor. Present: City Council and Susan Rotert, Human Resources Director. The motion carried by a unanimous vote. A motion was made by Council Member Tilton Byrne, seconded by Council Member Brink, to exit Executive Session at 6:04 p.m. The motion carried by a unanimous vote.

6:00 PM REGULAR MEETING

Consent Agenda. A motion was made by Mayor Tilton Byrne, seconded by Council Member Brink, to approve the agenda. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

4.A. Action to approve the agenda.

4.B. Action to approve the November 23, 2021 City Council Minutes.

4.C. Action on Resolution 21-109, a Resolution declaring surplus property for the City of Brookings.

Resolution 21-109 - Declaring Surplus Property

Whereas, the City of Brookings is the owner of the following described equipment formerly used at the City of Brookings:

Solid Waste / Landfill: (4) 8 cubic yard dumpsters; (3) 6 cubic yard dumpsters; (14) 4 cubic yard dumpsters; (5) 3 cubic yard dumpsters; (5) 2 cubic yard dumpsters; (11) 1.5 cubic yard dumpsters

Fire Dept.: One (1) pair of truck tire chains. Unknown tire size but measure 18 inches wide by 9 feet long; One (1) Briggs & Stratton 9 hp gas motor with Davey water pump; One (1) Skil Roto-Hammer with complete bit set (does not run)

Larson Ice Arena: 2002 Olympia Millennium Ice Resurfacer, Serial #RM021128103
Brookings Public Library: One (1) 2017 Brother MFC-L8850CDW Printer (bad fuser); Two (2) 19" HP monitors; Three (3) Dell 19" monitors; One (1) Metal magazine rack
Brookings Police Department: 24 – 17" HP L1710 screens

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.

4.D. Action to cancel the December 21, 2021 City Council Study Session.

4.E. Action on the 2022 City Council Meeting Calendar.

4.F. Action on Resolution 21-107, a Resolution Approving Agreements with the Brookings Regional Humane Society for the Care and Disposition of Impounded Animals.

Resolution 21-107 - A Resolution Approving Agreements with the Brookings Regional Humane Society for the Care and Disposition of Impounded Animals

Whereas, the City of Brookings has previously entered into an Agreement with the Brookings Regional Humane Society for the care and disposition of Impounded Animals; and

Whereas, the City of Brookings and Brookings Regional Humane Society have agreed to minor changes to the current Agreement for the Care and Disposition of Impounded Animals, which amendment would be effective for the remainder of 2021; and

Whereas, the City of Brookings and Brookings Regional Humane Society have also agreed to the terms of an Agreement for the Care and Disposition of Impounded Animals, which Agreement would be effective for the calendar year 2022; and

Whereas, this Resolution is intended to authorize the City to enter into both the Amended Agreement as described herein for the remainder of 2021 and the above-described Agreement with the Brookings Regional Humane Society for the year 2022.

Now, Therefore, It Is Hereby Resolved by the City Council of the City of Brookings, South Dakota that the Amended Agreement for 2021 and the Agreement for Care and Disposition of Impounded Animals for the year 2022 with the Brookings Regional Humane Society are hereby approved and the City Manager and City Clerk are authorized to execute these Agreements.

Update: 2021-2026 Strategic Plan. City Manager Paul Briseno provided a State of the City Message with an update on the 2021-2026 Strategic Plan and successes of the 2021 Calendar Year.

2021-2026 Strategic Plan

A. Fiscal Responsibility

Brookings will implement innovative and responsible policies and business practices to effectively manage its fiscal and human resources for the short and long term. Brookings will maintain a stable financial environment that is

transparent and that maintains an outstanding quality of life for our citizens. Business practices will be efficient, business friendly and ensure exceptional customer service to all stakeholders and citizens.

GOAL 1: Outside Agency Funding Analysis (Capital/Economic/Social Services)

- Social service agency analysis/recommendation/impact report provided by United Way
- Economic Development agencies review started

GOAL 2: Evaluation of Existing Staffing, Service Delivery, and Service Level

- Three additional dispatchers funded in the 2022 budget
- Lead Dispatchers added to assist with overtime and span of leadership
- All open positions evaluated for need and position refinement
- Identified initial department needs and exploration of software, duties, and process ongoing

GOAL 3: Maintenance of City Facilities and Infrastructure (Unfunded Liability)

- \$1.2 million was budgeted in 2022 from City Council Financial Policy
- All future facility maintenance now within the 10-year Capital Improvement Plan
- Upgraded the Library's HVAC system and exterior doors
- Replaced the Art Council's elevator

GOAL 4: Review of Financial Reserve Policy

GOAL 5: Long-Term Strategic Financial Plan

- 10-year operational plan started with consultant
- Financial reserve policy/analysis in collaboration with 10-year operating plan

GOAL 6: Internal Financial Process Review and Auditing

- Consultant contracted and primary areas for improvement identified
- Ongoing continuous improvement lead and completed by internal staff

OTHER:

- -\$4.3 million in American Rescue Plan (1/2) funding received/administered with survey
- COVID incentive shot program partnership with SDSU/SWIFTEL
- 2020 Audit contained 0 material weakness
- Received the award for outstanding CAFR/ACFR
- 2021 Budget in Brief presented to all employees and community leadership groups
- New 2022 Budget in Brief developed
- Obtained a \$2,500 Literacy Grant to add Wonderbooks and launchpads
- Dark Fiber – Increase efficiencies/communication and opportunities while saving \$85,000 over 5 years
- Dell's VxRail Hyperconverged Infrastructure – combine multiple datacenters into one creating costs savings
- Fortinet Fortigate 100F Nextgen firewall installation eliminated 14 outdated firewalls with increased protection

B. Safe, Inclusive, and Connected Community

Brookings and our partners will provide programs, gathering places, and events where the community can come together to participate in opportunities of

learning, recreation, and enjoyment. Connectivity within the community will be cultivated through citizen and cultural engagement, outstanding customer service, public safety and clear, accessible communication. Our community's history, its diversity, inclusivity, and environment will be protected for future generations.

GOAL 1: Police Facility Improvements

- Owners representative hired
- Engineer and construction manager at risk with reconstruction/new construction est. spring 2022
- 2021 approximately \$7million identified in CCFPP with \$500,000 committed in November

GOAL 2: Emergency Management Planning

- First Ever City/County table top emergency preparedness drill in November

GOAL 3: Fire Training Facility Improvements

GOAL 4: Food Pantry Improvements

- \$1.7 million Community Development Block Grant Secured for United Way, Food Pantry, Back Pack Program, and senior programming with construction in 2022

GOAL 5: Park Master Plan Implementation

- Master plan completed
- Park Board will prioritize and strategize outcomes

GOAL 6: Bicycle Master Plan Awareness and Implementation

- Future implementation and funding of 1-1.5 mile of trails along 20th Street identified for 2022
- \$87,000 State Grant awarded for Prairie Hills hike and bike path extension
- GIS bike master plan layer completed
- Bike Committee transferred as a Parks Board Subcommittee
- Bike Master Plan now included in ongoing Development Review Discussions

GOAL 7: Transportation Connectivity Index Development and Implementation

GOAL 8: Housing Study Update and Implementation

- RDG contracted for the housing study with BEDC, County and City with completion early 2022
- Traditional zoning changes to R1D to include setback and lot size reductions
- Affordable housing infrastructure commencement at 15th and 7th Ave, developer agreement 2022
- Final Plat policy changed to allow administrative approval which expedites development
- Traditional Development proposed that increases workforce housing and peacemaking
- Development cost calculator completed

GOAL 9: Downtown Master Plan Development and Implementation

GOAL 10: Volunteer Board Advancement – Presentations (Annual Report and Goal Setting)

- Staff liaisons notified of 2022 Council Planning session discussion
- Elimination of inactive boards
- Combination of boards for greater efficiencies, resources, and outcomes

- Created new structured orientation process for all new members

OTHER:

- BMU water shutoff policy change to eliminate trip/ADA hazards in sidewalks
- New dog park grant awarded for Sexauer, 2022 development
- \$3.7m Bob Sheldon renovation completed
- Bob Sheldon art project designed, 2022 completion
- Inaugural Community Games
- BISA Hockey Performance Center project development
- Park & Rec Summer Guide printed in Spanish
- Library Board's 2022-2024 Strategic Plan finalized
- Native American History Month Speaker Series grant funded
- Safety assessment on the Library completed by the police department with 2022 improvements
- \$3,000 ALA "Libraries Transforming Communities" grant
- Sponsored and planned successful Juneteenth event
- Bystander training to the public
- Continuation of listening sessions

C. Service and Innovation Excellence

Brookings will provide a working environment that is committed to ongoing innovation and outstanding service through listening and engagement.

Employees will be provided the tools, resources, and support while promoting continuous improvement and growth.

GOAL 1: Performance Management Implementation and Enhancement

- Brookings Insights Performance Management implemented spring 2021 and updated every six
- Months with the quarterly CFO report directly linked to the public facing website

GOAL 2: Development Review Team Process Improvement

GOAL 3: City Governance and Operations Policy Review

- Governance policy complete
- Ends and other Council policy review underway
- Commission on Accreditation for Law Enforcement Agencies (CALEA) – Started a three-year process for accreditation which includes the review of all police department policies

GOAL 4: Community Survey Development, Distribution, and Review

GOAL 5: Community-Oriented Policing Engagement, Awareness and Implementation

- National Night Out record breaking attendance (700+)
- Launch of Desk Officer Reporting system- Citizen reporting 24/7 of non-violent crimes
- Coffee with a Cop Started

GOAL 6: Intergovernmental Relations and Policy Shaping

GOAL 7: Marijuana Implementation Planning and Policy

- Zoning, application, fee and process approved by deadline

OTHER:

- Creation of a Public Works Department that improve efficiencies

- New City Planner – First AICP Certified Planner
- New City Engineer – Background in best management practices with environmental experience
- New Fire Chief and Deputy Fire Chief
- GIS division 95% base layer complete – Collaboration with the County, BMU, & School
- GIS – development of apps for code enforcement, sidewalk inventory, fire hydrants, water flow, bike master plan
- GIS story map of Brookings future development hindrances
- New employee evaluations and software system
- New employee monthly news letter
- Total compensation/benefit statements sent to all employees annually
- Part Time pay analysis brought employees into market
- Finalized department head 360 evaluations
- Organizational wide diversity and bias training
- Launched Engage Brookings App
- SDSU Project Engagement – Smart Projects, Sustainable initiatives, redevelopment opportunities, research park project
- Fleet Maintenance Software – Replacement and maintenance program
- American Public Works Association – Streets personnel attended AWA snow best practices to improve winter weather response and environmental friendly use of salt
- Evaluation and update of City/School District joint use agreement
- Restructure of Park Maintenance Staff to increase efficiencies with limited staffing
- Building permit software (iWorQ) integration with BMU for enhanced communication, efficiencies, etc. on building permit reviews
- Assisted 21 applicants to date with the 11.1 Historic Review process
- Joint Jurisdiction Zoning Ordinance Update – City & County Planning
- Commissions started the ordinance review process after a break during pandemic
- Successful negotiation of multi-year union agreements with police and city general
- Non-lethal force tools added with pepper ball launchers
- Text to 911

D. Sustainability

Brookings will meet our environmental, community, economic desires and needs without compromising future generations' quality of life. We will strategically plan, implement and maintain current and future infrastructure and facilities, using technology when possible, to support the community's quality of life, economic viability, and protect the environment.

GOAL 1: Stormwater and Groundwater Master Plan, Best Practices, Maintenance, Development Code, Education, and Partnerships

- Stormwater master plan consultant contracted and completion expected 2022

- Six Mile Stormwater Study FEMA grant awarded for \$100,000
- Stormwater pilot project on Jefferson addresses sump pump discharge
- SDSU Collaborations – Stormwater BMP (rain gardens, rain barrels, education)
- Impervious pavement project at Bob Shelden complete
- 20th & Medary stormwater improvement funding identified through TIF
- CITCO educational retention garden

GOAL 2: Sustainable Development Practices Training, Implementation, and Policy

- All Department Heads attended sustainability training
- \$10k new tree rebate program
- CITCO electric vehicle charging station collaboration with BMU
- Fast charging station collaboration effort with BMU
- New Electric fleet vehicle and direction to start moving to renewable fuel fleet
- First Ever Household Hazardous Waste Event
- Emerald Ash Borer Management Plan

GOAL 3: Park Land Dedication Policy

GOAL 4: Comprehensive Plan Implementation

- Infrastructure Acceptance Policy – Developed to protect City/Residents infrastructure
- Commercial Overlay Districts – Protecting the culture and aesthetics of Brookings on primary corridors
- Buffer Yard Regulations – Increased green space and landscaping (BMP stormwater) incorporated to protect environment and neighborhoods

OTHER:

- Landfill Master Plan state grant Identify recycling, household hazardous waste, risk/liability reductions, efficiencies, sustainability of landfill facility
- Historic Preservation Plan Update completed
- Library HVAC – value engineering to reduce costs while gaining efficiencies
- City of Brookings new domain implementation increased interoffice communication
- Print services contract renegotiated to consolidate departments into one contract
- Migration of TimeClock and Springbrook financial/Personnel services to the Cloud

E. Economic Growth

Effective community investment and equitable opportunities for prosperity fostered through streamlined processes, technology, safety, proper planning and an aesthetically attractive community appearance. This is supported by sustainable development through fostering partnerships. The quality of life for our citizens is key to our economic success.

GOAL 1: Swiftel Center Return on Investment and Financial Planning

- Spectra request for proposal outlined a cost savings/mitigation

GOAL 2: Swiftel Center Facility Expansion and Hotel

- Site listed with Brookings Economic Development Corporation to receive proposals

GOAL 3: Swiftel Center Agriculture Market Growth

GOAL 4: Marketplace Development

GOAL 5: City-Owned Land and Purchasing Policy

GOAL 6: Future Development and Growth Cost-Benefit Analysis

- Cost – Benefit calculator created for residential development analysis through the University of Iowa

GOAL 7: Armory Redevelopment and Hotel

- A new agreement was approved with transfer of the property expected July 2022

GOAL 8: I-29 and 20th Street Interchange Construction

- Approval for entry received
- Design completed and bid
- Bids received November 17

OTHER:

- Future land use GIS presentation to the key stakeholder of 10-15 years of developable land
- Inventory of community photos for marketing shared with city partners
- 15th and 7th Street Infrastructure – prep for the workforce housing project
- Attainment of McClemons Property for storm water and street infrastructure
- DRT met 33 times, reviewed 12 rezones, 5 preliminary plats, 29 development projects, 7 conditional use permits, 32 agenda items on policy/presentations, and 85 total agenda items
- Creation of TIF #11 to spur economic growth in southwest portion of community

Update: Housing Study. City Manager Paul Briseno provided an update on the regional housing study survey for the City of Brookings, Brookings County, and the Brookings Economic Development Corporation. The Housing Study's objectives are to understand the current opportunities and issues in the regional housing market and deliver recommendations to move the region towards more affordable and attainable housing for all.

Resolution 21-106. A motion was made by Council Member Tilton Byrne, seconded by Council Member Brink, that Resolution 21-106, a Resolution Authorizing Change Order No. 1 (Final) for 2021-08STI, Overlay Project; Bowes Construction, Inc., be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Resolution 21-106 - Resolution Authorizing Change Order No. 1, Final, for Project 2021-08STI Street Maintenance and Overlay Project; Bowes Construction, Inc.

Be It Resolved by the City Council that the following change order be allowed for 2021-08STI, Street Maintenance and Overlay Project: Construction Change Order Number 1 (Final): Adjust plan quantities to as-constructed quantities for a decrease of \$25,209.43 and include additional work for an increase of \$90,390.72. Combining these will result in the project cost increasing by \$65,181.29. To accommodate the additional work, the substantial completion date shall be extended by 10 working days to close out the project.

Resolution 21-116. A motion was made by Council Member Avery, seconded by Council Member Collins, that Resolution 21-116, a Resolution Authorizing Change Order No. 1 (Final) for Project 2021-04STI Swiftel Pavement Reconstruction Project; Timmons Construction, Inc., be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Resolution 21-116 - Resolution Authorizing Change Order No. 1, Final, for Project 2021-04STI Swiftel Pavement Reconstruction Project; Timmons Construction, Inc.

Be It Resolved by the City Council that the following change order be allowed for 2021-04STI, Swiftel Pavement Reconstruction Project: Construction Change Order Number 1 (Final): Adjust plan quantities to as-constructed quantities for an increase of \$21,362.00 to close out the project. This will result in a final contract amount of \$130,894.50.

Resolution 21-112. A motion was made by Council Member Wendell, seconded by Council Member Brink, that Resolution 21-112, a Resolution Approving Amended and Restated Joint Cooperative Agreement for the Management of the Brookings City & County Government Center, be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Resolution 21-112 - A Resolution Approving Amended and Restated Joint Cooperative Agreement for the Management of the Brookings City & County Government Center

Be It Resolved by the City Council of the City of Brookings, South Dakota as follows: Whereas, the City of Brookings and the County of Brookings are parties to a Joint Cooperative Agreement, dated April 6, 2010, and

Whereas, the City of Brookings and the County of Brookings now desire to amend the above-mentioned Joint Cooperative Agreement pursuant to an Amended and Restated Joint Cooperative Agreement for the Management of the Brookings City & County Government Center, a true copy of which is attached hereto, marked Exhibit "A",

Now, Therefore, It Is Hereby Resolved by the City Council of the City of Brookings, South Dakota, as follows:

- A. That the Amended and Restated Joint Cooperative Agreement for the Management of the Brookings City & County Government Center is approved; and
- B. That the Mayor and City Clerk are authorized to execute the Amended and Restated Joint Cooperative Agreement for the Management of the Brookings City & County Government Center on behalf of the City of Brookings.

Exhibit "A"
Amended and Restated Joint Cooperative Agreement for the
Management of the Brookings City & County Government Center

This Amended and Restated Joint Cooperative Agreement for the management of the Brookings City & County Government Center is executed effective as of December 14, 2021, by and between the County of Brookings, South Dakota (the "County") and the City of Brookings, South Dakota (the "City").

Whereas, the parties did enter into a Joint Agreement for the Brookings City & County Government Center effective as of the 13th day of April, 2010, and the parties now desire to amend and restate their Joint Agreement for the management of the Brookings City & County Government Center.

Now, Therefore, the parties to the above-referenced Agreement hereby amend and restate their Agreement in the manner set forth below.

Section One

Statutory Authority/Joint Powers Agreement

This agreement is an agreement for joint or cooperative action pursuant to SDCL Chapter 24, and does not constitute a separate administrative or legal entity pursuant to SDCL § 1-24-19.

Section Two

Purpose of this Agreement and Use of the Government Center Building

This agreement is intended to set forth the terms and conditions under which the County and City will manage and maintain their government building for the joint and common use of the County and City to provide space for the County's administrative offices and the City's administrative offices. Further, it is the intent of both Parties that this Agreement may be further amended and supplemented as needed.

Section Three

Building Name

The name of the building is the BROOKINGS CITY & COUNTY GOVERNMENT CENTER.

Section Four

Government Center Advisory Committee

The parties have established a Government Center Advisory Committee, consisting of four (4) members, with two (2) members designated by the County and two (2) members designated by the City. The Government Center Advisory Committee meets periodically as necessary for the purpose of discussing the operation of the building and grounds.

The representatives of the County shall consist of two County Commissioners, who shall be appointed by the County Commission.

The representatives of the City shall be employees of the City, appointed by the City Manager.

The Government Center Advisory Committee shall have general authority concerning the continued operation of the building, including the following:

1. Elect Chairperson and Vice Chairperson;
2. Approve the annual budget and budget amendments;
3. Review building security, safety issues and insurance coverage;
4. Review necessary building and utility repairs, maintenance and building improvements;
5. Review and update information technology ("IT") within the building;
6. Discuss landscaping, exterior maintenance and snow removal;
7. Consider capital improvements and equipment purchases as necessary;
8. Coordinate use of election facilities;
9. Update this Agreement as necessary; and
10. Special meetings may be called, as needed, by the Chairperson.

The following matters are subject to approval by both the County Commission and the City Council:

- All contracts where competitive bidding is required;
- All bonds and financing; and
- The annual budget of the building maintenance, repairs and improvements.

In the event members of the Government Center Advisory Committee are at an impasse by virtue of a tie vote on an issue they deem irreconcilable, the Committee agrees to submit the issue to a mutually acceptable dispute resolution and mediation process.

Section Five

Allocation of Building Maintenance Costs

A) Each party is paying an allocated share of the ongoing building-related costs based upon their respective square footage of separate office area as it relates to the combined square footage of both separate office areas, with the County's share at Fifty-two percent (52%) and the City's share at Forty-eight percent (48%).

B) Each party shall timely pay its respective share of any building and capital improvement costs as they become due.

Section Six

Furniture, Fixtures and Equipment

The City and County will each continue to pay for their own furniture, fixtures and equipment necessary for their operations in the building. Each Party shall pay for furniture, fixtures and equipment necessary for the joint areas and the general operation of the building based upon the allocation of the County's share at Fifty-two percent (52%) and the City's share at Forty-eight percent (48%). The Government Center Advisory Committee may recommend to the City and County that furniture, fixtures and equipment deemed no longer necessary for the joint areas and general operation of the building be declared surplus. The City and County may then declare such property surplus, and can determine the method of disposal by the City and County.

Section Seven

Insurance

Liability insurance shall continue to be procured jointly by the County and the City to protect these governmental entities from any and all claims for bodily injury, including death and property damage arising out of the use or operation of the facility. In addition, fire and extended coverage insurance in an amount not less than the estimated replacement cost of the building shall be obtained by the County and the City, which will insure the owners of the building in case of fire, catastrophe, or other damage to the building, fixtures, and/or equipment contained in the facility. Each Party shall pay for the cost of such insurance based upon the allocation of County share of Fifty-two percent (52%) and the City share of Forty-eight percent (48%). Each Party shall pay for any insurance on its separately owned furniture, fixtures and equipment.

Section Eight

Portion and Method of Allocating Expenses of Operation and Maintenance

Each party shall pay for all costs of maintenance, repairs, utilities and capital replacement for its separate areas. The costs of maintenance, repairs, utilities and capital replacement of the building exterior, roof, heating and air conditioning systems, grounds, parking lot, audio and video equipment in joint-use spaces and common areas shall be allocated between the Parties based upon the allocation of the County's share at Fifty-two percent (52%) and the City's share at Forty-eight percent (48%). Based upon action taken in February, 2019, the City Manager and Commission Department Director have administrative authority to make individual purchases of up to \$5,000.

Section Nine

Management of Common Areas

Management and scheduling of the joint-use areas of the building shall follow the "Meeting Room & Common Space Usage Policy" (Exhibit "A", attached) as established by the Government Center Advisory Committee. The County Commission and the City Council shall always have priority as to the use of the Commission/Council Chambers. Any fees generated by the use of the common areas of the building shall be applied to the costs of maintenance and upkeep of such common areas.

Section Ten

Personnel

The City shall control the personnel and operations of its offices and the County shall control the personnel and operations of its offices, except as specifically agreed to within the terms of this Agreement or any other agreement between the Parties. The County shall provide custodial/maintenance services for the building as needed throughout the normal workday hours and on an emergency basis. Wages for the county employee(s) shall be reimbursed to the County by the City quarterly and shall be based on the county employees' hourly wage, benefits and number of hours they are at the facility based upon the allocation of the County's share at Fifty-two percent (52%) and the City's share of Forty-eight percent (48%).

Section Eleven

Disposition of Revenue Derived from Building

In the event that there exists any revenues derived from the operations of the building, the County and City shall retain such revenues as are attributable to the space under its control.

Section Twelve Termination

This agreement shall continue until otherwise terminated by the parties by mutual agreement.

Section Thirteen Partial Invalidity

If any one or more of the provisions of this Agreement shall be held to be unenforceable in any respect, by final decree of any court of lawful jurisdiction, such unenforceability shall not affect any other provision hereof, or of any exhibit or attachment thereto.

Section Fourteen Agreement Open to Public Inspection/Publication of Proceedings

This agreement shall be filed and copies hereof kept as an open record with the County Finance Officer and City Clerk and shall be open to public inspection. The publication and other procedures for Notice of Meetings, Meetings, including Agendas and Minutes of Meetings wherein the business of the Government Center Advisory Committee is conducted shall conform to the respective procedures of the County of Brookings and City of Brookings.

Section Fifteen Amendments

This agreement may be amended and supplemented from time to time by the action of the governing bodies of the County and City. This agreement is intended to amend previous agreements, and to the extent such agreements are inconsistent with this agreement, they are hereby repealed. Therefore, all other agreements in conflict herewith are hereby repealed.

Exhibit "A" Joint Powers Board, City and County of Brookings Meeting Room & Common Space Usage Policy

1. Brookings County shall develop its own individual policy governing the use of Rooms 103, 221, 215, and 332. The City of Brookings shall develop its own individual policy governing the use of Rooms 147, 241, and 242.
2. Room 300 (Community Room), Room 310 (Chambers), Room 312 (Executive Session Room), Rooms 340/341 (Conference/Break Room), and the first and second floor common spaces (hallways) shall be available to any committee, advisory board, commission, task force, or council whose establishment has been duly affiliated with, created, or authorized by the governing board of either the City or County of Brookings.

4. Scheduling must occur through the appropriate City or County procedure. It is understood most of these scheduling demands will be standing meetings of each entity.
 5. Meeting rooms referenced in #2 shall be available to any entity that is non-profit and whose purpose and mission is governmental, civic, charitable, fraternal, or educational in nature. Meetings held by the governing board of the City and County as well as those groups listed in #2 shall have priority.
 6. It is preferred that usage occur within regular business hours. Events held in these spaces shall not disrupt regular business. An effort will be made to hold events in the first and second floor common spaces after hours when possible. Any group, other than those listed in #2, using a space during non-work hours shall be communicated between the City and County in advance of the event.
 7. Users not listed in #2 must schedule the spaces by contacting either the Commission Department Director's office or the City Manager's office.
 8. Users must return the condition of the space to the way they found it. Users will be responsible for their own set-up arrangements of the room. Users are responsible for clean-up and will be billed for any special cleaning necessary or any damage that occurred. As long as garbage is bagged, bags may be left for building staff to dispose.
 9. Tables, chairs, flags, a lectern, and a podium are available.
 10. Electronic equipment such as recording, teleconferencing, audio/visual is available and will be billed at an hourly rate for technical assistance for the use of such equipment.
 11. Alcohol and tobacco are not permitted in the building. Food and other beverages are permitted. (See #6)
 12. Users are responsible for the supervision of children when using the rooms.
- ADOPTED: Joint Powers Board, August 15, 2019

Legal Services Agreement – City Attorney. A motion was made by Council Member Bacon, seconded by Council Member Brink, that a Legal Services Agreement between the City of Brookings and Steven J. Britzman, Attorney at Law for a one-year contract (01/01/2022 - 12/31/2022), be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Legal Services Agreement

THE CITY OF BROOKINGS AND STEVEN J. BRITZMAN, ATTORNEY AT LAW agree that the City of Brookings has appointed Steven J. Britzman to serve as City Attorney for a one (1) year period, commencing January 1, 2022 and ending December 31, 2022, unless extended by mutual agreement of the parties, in writing. The City of Brookings and Steven J. Britzman desire to set forth the terms of their Agreement concerning the provision of legal services by Steven J. Britzman as City Attorney as follows:

1. Performance of Legal Services

Steven J. Britzman will perform all legal services as provided in the "Scope of Services for City Attorney for City of Brookings" (the "Scope of Services"). A copy of the Scope of

Services for City Attorney is attached hereto. Steven J. Britzman will perform all legal services which include representing the City in Magistrate Court in the enforcement of City Ordinances.

2. Insurance Coverage

Steven J. Britzman will maintain Attorneys Professional Liability coverage in the amount of One (1) million dollars (\$1,000,000) per claim and One (1) million dollars (\$1,000,000) aggregate during the term of this agreement. Steven J. Britzman will be responsible to pay any deductible amount under the foregoing coverage.

3. Conflicts of Interest

The parties to this Agreement understand that actual or perceived conflicts of interest are defined in great detail in the South Dakota Rules of Professional Responsibility which govern attorneys and which are a part of the statutes of South Dakota.

Accordingly, Steven J. Britzman will follow the South Dakota Rules of Professional Responsibility, immediately disclose to the City Council and City Manager any conflict or the appearance of a potential conflict, and resolve the issue to the satisfaction of the City of Brookings and the client.

4. Compensation for Legal Services

Steven J. Britzman agrees to provide all of the legal services provided in the Scope of Services, for a monthly sum from January 1, 2022 through December 31, 2022 up to eight thousand five hundred eighty-nine and 16/100 (\$8,589.16) Dollars, payable on the last day of the month.

The hourly rate for other legal services, including those set forth in Item 15 of the Scope of Services is \$175.00 during the term of this Agreement.

The legal services provided by Steven J. Britzman will be performed as an independent contractor and Steven J. Britzman shall therefore pay all payroll and business expenses incurred in providing legal services to the City.

5. Expense Reimbursements, Meetings and Conferences

In addition to the compensation for legal services during each year of this Agreement, the City will provide Three Thousand Dollars (\$3,000.00) per year for membership in the International Municipal Attorneys Association (IMLA) (currently \$625.00 per year) and for Conference registration, travel and lodging for the Annual Meeting of the International Municipal Lawyers Association which includes approximately nineteen hours of continuing legal education.

The City Attorney will also be reimbursed for out-of-pocket expenses when required to travel outside the City of Brookings to other meetings or to perform legal services, provided such travel is approved by the City Manager in advance of travel.

6. Legal Services not within the Scope of Services

Steven J. Britzman shall first obtain approval of the City to perform any legal services excluded from the Scope of Services, however Steven J. Britzman and the City agree that it is appropriate for the City Attorney to be responsive to residents of the city, the media, other municipal attorneys, the municipal league and other public officials where communication or an appropriate measure of assistance is in the best interest of the City. Any work requested by other entities or parties which requires over one hour of service will only be provided after consulting with the City Manager for approval.

7. Appointment and Compensation of Assistant City Attorney

It is further understood and agreed that Eric Rasmussen be appointed as Assistant City Attorney, based upon the recommendation of the City Manager and City Attorney. The term of office of the Assistant City Attorney shall coincide with the City Attorney's term of office and the scope of services shall be as set forth in this Legal Services Agreement. The compensation for the Assistant City Attorney shall be paid in the following manner:

- a) If the City Attorney performs Fifty (50) or fewer hours of service per month, the City Attorney will pay all of the compensation for the Assistant City Attorney.
- b) If the City Attorney performs more than Fifty (50) hours of service per month, then the City will reimburse the City Attorney for all of the fees paid by the City Attorney to the Assistant City Attorney for the month. The Assistant City Attorney's rate of compensation for this Contract is \$175.00 per hour.

**SCOPE OF SERVICES FOR CITY ATTORNEY FOR CITY OF BROOKINGS
THE CITY ATTORNEY SHALL PERFORM THE FOLLOWING SERVICES:**

- 1) The City Attorney will attend all City Council meetings as the legal advisor for the Brookings City Council, unless the absence is due to vacation or illness or the subject matter does not require the assistance of counsel. If the City Attorney is unable to attend, then the Assistant City Attorney shall attend.
- 2) Provide all necessary legal consultation services, including oral and written opinions and research as requested by the Brookings City Council and the City Manager.
- 3) Provide legal assistance to the City's Boards and Commissions, except the Utility Board and Hospital Board, as requested by the City Manager and City Council.
- 4) Provide legal representation to the City in litigation initiated against the City and by the City in circumstances where the City is not represented by legal counsel assigned by its insurance company. Legal representation in litigation must be authorized in each instance by the City Council and compensation will be in addition to the monthly compensation as provided in Section 15 of this Scope of Services.
- 5) Assist in the preparation and review of all contract agreements, resolutions, ordinances and other legal documents considered, adopted or endorsed by the City.
- 6) To maintain a working knowledge of Municipal Law on both the State and Federal level.
- 7) Provide legal representation for the City before administrative bodies upon special request by the City Council.

- 8) As requested, review all claims made against the City.
- 9) Confer with colleagues who specialize in areas of law to establish and verify a basis for legal proceedings; serve as a liaison between outside legal counsel and City Officials on specialized legal issues.
- 10) Prepare a monthly written report to the City Manager of legal services performed which includes a description of the service and the time required to perform the service.
- 11) Assist the City Clerk and the private sector firm in Ordinance Codification.
- 12) The City Attorney will be an advisor to the labor negotiating staff and will review labor contracts as required or requested.
- 13) Maintain professional awareness of current literature and changes in law and attend continuing legal education to ensure the most efficient, cost-effective, and accurate operation of the City Attorney's Office.
- 14) Review proposed state legislation affecting the City and prepare or supervise the preparation of state legislation relating to municipal and city government matters as directed by the City Manager or City Council. Consult with City Council, the City Manager and department heads in regard to such legislation and testify before legislative boards as requested.
- 15) The City Attorney's basic fee does not include the following services:
 - a. Litigation
 - b. Recodification of substantially all of the City Ordinances.All services with the exception of litigation and recodification of the City Ordinances will be compensated pursuant to the City Attorney's basic fee. Fees for services in a. and b. above will be as negotiated and agreed upon by the parties.
- 16) The Assistant City Attorney shall perform all services set forth in this Scope of Services as directed by the City Attorney.

FIRST READING – Ordinance 21-042. An introduction and first reading was held on Ordinance 21-042, an Ordinance Authorizing Budget Amendment No. 6 to the 2021 Budget. Second Reading: January 11, 2022.

Ordinance 21-040. A public hearing was held on Ordinance 21-040, an Ordinance to Change the Zoning within the City of Brookings, rezoning Block 20 in Prairie Hills Addition from B-2/R-3 to Residence R-3 Apartment District. A motion was made by Council Member Brink, seconded by Council Member Wendell, that Ordinance 21-040 be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Ordinance 21-041. A public hearing was held on Ordinance 21-041, an Ordinance to Change the Zoning within the City of Brookings, rezoning Lot 2, Block 19 in Prairie Hills Addition from Business B-2 District to Residence R-3 Apartment District. A motion was made by Council Member Collins, seconded by Council Member Bacon, that Ordinance 21-041 be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Resolution 21-108. A public hearing was held on Resolution 21-108, a Resolution of Intent to Lease Real Property to LNJ Farms in the Wiese and Freeland Additions. A motion was made by Council Member Brink, seconded by Council Member Collins, that Resolution 21-108 be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Resolution 21-108 - Resolution of Intent to Lease Real Property to LNJ Farms, Lyle Bothe, owner, in the Wiese and Freeland Additions

Be It Resolved by the governing body of the City of Brookings, South Dakota, that the City of Brookings intends to enter into a lease with LNJ Farms, Lyle Bothe, owner, for a period of one year, commencing on January 1, 2022 and ending December 31, 2022, and the Bidder may have the option to renew this Lease for one additional year for 2023.

This lease pertains to the following described property: The designated crop land of thirty (30) acres more or less in Block 9 of the Wiese Addition and the designated crop land of ten (10) acres more or less in Block 10 of Freeland Addition in the City of Brookings, Brookings County, South Dakota. The Lease will be an amount of One Hundred Eighty Dollars (\$180.00) per acre for crop land annually, payable first half on April 1 and the remaining half on November 1. The City of Brookings may terminate this Lease at any time in the event a parcel of the above described property is to be sold by the City of Brookings. If a portion of the leased land is sold, the number of acres to be paid for will be adjusted at the unit price per acre.

Be It Further Noted, that a Public Hearing on this Resolution was held on December 14, 2021 at 6:00 o'clock P.M. in the Chambers of the City & County Government Center and that all persons were given an opportunity to be heard on the intent to lease real property.

Resolution 21-110. A public hearing was held on Resolution 21-110, a Resolution of Intent to Lease Real Property to MC Hay, Mike Erickson and Corey Granum, owners, for Hay Lease at Brookings Regional Airport. A motion was made by Council Member Bacon, seconded by Council Member Brink, that Resolution 21-110 be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Resolution 21-110 - Resolution of Intent to Lease Real Property to MC Hay, Mike Erickson and Corey Granum, owners, for Hay Lease at Brookings Regional Airport

Be It Resolved by the governing body of the City of Brookings, South Dakota, that the City of Brookings intends to enter into a Lease with MC Hay for a period of one (1) year, commencing on January 1, 2022 and ending December 31, 2022, with the option to renew for one (1) additional year (2023) and pertaining to the following described property: The designated hayland on the Brookings Regional Airport, three hundred and fourteen (314) acres more or less in Sections 26, 27, and 35, T110N, R50W, in the

City of Brookings, Brookings County, South Dakota. The Lease will be an amount of \$91.33 per acre, \$28,677.62 annually, for the hayland, with the first half payable on July 1 and the remaining half on November 1 of each year.

Be It Further Noted, that a Public Hearing on this Resolution was held on December 14, 2021 at 6:00 o'clock P.M. in the Chambers at the City & County Government Center and that all persons were given an opportunity to be heard on the intent to lease real property.

Temporary Alcohol Application. A public hearing was held on a Temporary Alcohol Application from St. Thomas More Catholic School, to operate within the City of Brookings, South Dakota, on February 5, 2022, for a Winter Gala and Grand Auction to be held at 1700 8th Street South. A motion was made by Council Member Wendell, seconded by Council Member Tilton Byrne, that the Temporary Alcohol Application be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Video Lottery Request – Corner Pantry #19. A public hearing was held on a request for Video Lottery for MG Oil, dba Corner Pantry #19, 921 20th Street South. Legal description: Lot 7B, Block 13, McCleman's Addition. Pending permit issuance and final inspection per the Community Development Department. A motion was made by Council Member Collins, seconded by Council Member Brink, that the Video Lottery request be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

On-Off Sale Malt License Application – Corner Pantry #24. A public hearing was held on a request for an On-Off Sale Malt License for MG Oil Company, dba Corner Pantry #24, Marlyn Erickson and Troy Erickson, owners, 600 6th Street., Suite B, legal description: Lots 5-7, Block 11, Second Addition, Suite B. Pending permit issuance and final inspection per the Community Development Department. A motion was made by Council Member Brink, seconded by Council Member Wendell, that the On-Off Sale Malt License be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Video Lottery Request – Corner Pantry #24. A public hearing was held on a request for Video Lottery for MG Oil Company, dba Corner Pantry #24, Suite B, Marlyn Erickson and Troy Erickson, owners, 600 6th Street, legal description: Lots 5-7, Block 11, Second Addition, Suite B. Pending permit issuance and final inspection per the Community Development Department. A motion was made by Council Member Brink, seconded by Council Member Collins, that the Video Lottery request be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Resolution 21-117. A motion was made by Council Member Brink, seconded by Council Member Wendell, that Resolution 21-117, a Resolution Authorizing the Licensing of Deja Vu SD as a Medical Cannabis Dispensary in the City of Brookings, be

approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Resolution 21-117 - A Resolution Authorizing the Licensing of Deja Vu SD as a Medical Cannabis Dispensary in the City of Brookings

Whereas, Deja VU SD submitted an Application and Application Fee for a Medical Cannabis Dispensary License to the City of Brookings; and

Whereas, the City of Brookings has reviewed the Deja VU SD Medical Cannabis Dispensary License Application and has determined that the Application satisfies the requirements of Ordinance 21-028, an Ordinance Establishing Procedures for the Licensing of Medical Cannabis Establishments in the City;

Now, Therefore, Be It Resolved as follows:

- 1) That a City of Brookings Medical Cannabis Dispensary License be issued to Deja VU SD, subject to an inspection by the City of Brookings prior to Deja VU SD commencing operations; and
- 2) That an inspection of Deja VU SD's facilities and review of their operational plans be completed by the City Manager or his authorized representative(s) following completion of their facility and prior to operation, with operation contingent upon satisfactory inspection results; and
- 3) That a City of Brookings Medical Cannabis Program Licensing Certification and South Dakota Medical Cannabis Program Local Government Compliance Certification be issued by the City Clerk; and
- 4) That the South Dakota Department of Health be furnished all documents pertaining to the Deja VU SD Application and City of Brookings Medical Cannabis Dispensary License.

Resolution 21-111. A motion was made by Council Member Collins, seconded by Council Member Tilton Byrne, that Resolution 21-111, a Resolution amending the Consolidated Fee Schedule, be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Resolution 21-111 - Resolution Amending the Consolidated Fee Schedule

Whereas, the adopted Municipal Code and City Policies make references to fees charged; and

Whereas, it is prudent that the fees be reviewed for cost effectiveness.

Now, Therefore, Be It Resolved, that the City of Brookings hereby adopts the following Amendment to the Consolidated Fee Schedule:

	<u>Resolution No.</u>	<u>City Code</u>	<u>Fee</u>	<u>Previous Fee</u>	<u>Percent Change</u>
Contract Police Officer Security Per Reserve Officer, Per Hour	21-062		\$60.00	\$50.00	20%

Resolution 21-115. A motion was made by Council Member Wendell, seconded by Council Member Tilton Byrne, that Resolution 21-115, a Resolution Transferring City Manager Contingency Funds to 2021's Budget, be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Resolution 21-115 - A Resolution Transferring City Manager
Contingency Funds to City Departments

Whereas, the City of Brookings hereby transfers City Manager's contingency funds to fund unplanned operational obligations of the municipality. This resolution is for the purpose of completing a transfer of contingency funds to the following accounts:

421 Police Department

101-421-5-422-03 Consulting/Engineering	\$ 50,000.00
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Total Transfers	<u>\$ 50,000.00</u>
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The Financing Source for this transfer is from the following account:

101-405-5-856-99 Contingency Fund	\$ 50,000.00
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Total Source of Funding	<u>\$ 50,000.00</u>
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Whereas, this resolution is deemed necessary for the immediate preservation of the public peace, health, safety and support of the City, and shall become effective upon publication.

Resolution 21-113. A motion was made by Council Member Tilton Byrne, seconded by Council Member Wendell, that Resolution 21-113, a Resolution Establishing Procedures for City of Brookings Construction Manager-At-Risk Projects, be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Resolution 21-113 - A Resolution Establishing Procedures for City of Brookings
Construction Manager-At-Risk Projects

Be It Resolved by the City Council of the City of Brookings, South Dakota as follows:

Section 1. Purpose

In order to comply with State law requirements for construction manager-at-risk ("CMAR") projects, the City of Brookings adopts these procedures and will select CMAR firms to provide construction management services for authorized projects in accordance with the following procedures:

Section 2. Findings and Determinations

The City of Brookings makes the following determinations:

- a. It is in the City's interest to utilize the services of a construction manager for the renovation or replacement of the Brookings Police Department Building; and

- b. That the construction management services would not unreasonably duplicate and would be in addition to the normal scope of separate architect or engineer contracts concerning the renovation or replacement of the Brookings Police Department Building; and
- c. The construction manager shall be a CMAR and be solicited through a qualification-based request for proposals method of procurement as provided in SDCL § 5-18B-44. The CMAR, for any actual construction contracted by the CMAR to be performed on the project shall provide payment and performance bonds and competitive bids for the work as required by any statute governing bidding and bonding for public improvement projects.

Section 3. Definitions

For purposes of these procedures, the following definitions apply:

- a. "City" means the City of Brookings.
- b. "CMAR" means construction manager-at-risk
- c. "Department" is defined as any department of the City of Brookings, including the Swiftel Center.
- d. "Firm" is defined as any individual, firm, partnership, corporation, association, joint venture, or other legal entity permitted by law to practice construction contracting in the State of South Dakota.
- e. "Project" is defined as that project described in the public announcement.

Section 4. Minimum Qualification Requirements for Firms Providing CMAR Services

Firms providing CMAR services shall be registered with the Department of Revenue prior to contract award. Where required by State law, the CMAR shall be able to provide construction management services by licensed or registered individuals.

Section 5. Public Announcement Procedures

Except in emergency situations, the Department will publish an announcement in accordance with SDCL §5-18B-1. The announcement will set forth a general description of the project requiring construction management services and will define the time frame and procedures for interested qualified firms to apply for consideration. The public announcement will further state whether construction management firms will be pre-qualified for the project.

Section 6. Request for Proposals

(1) The City will prepare a Request for Proposal ("RFP"). The RFP developer may be either a private firm retained by the City or may be a staff member of the City. The RFP developer is prohibited from being part of the bidding entity. The RFP may include the following:

- Background and Description of the project
- Preliminary Project Schedule
- Outline of CMAR Best Value selection process and timeline
- Detailed description of the scope of services for each phase of the project
- RFP evaluation criteria and requirements of RFP response

(2) The purpose of the RFP is to furnish sufficient information for firms to prepare qualitative proposals and price proposals. The firm submitting the successful proposal shall develop a detailed proposal based on the criteria in the RFP. All Requests for Proposals shall also comply with the City's Purchasing Policy Guide.

Section 7. Evaluation Criteria for Shortlisting Construction Management Firms

The City's selection committee will review proposals from all candidate firms and shortlist no more than three firms who will be invited to be interviewed. Shortlisting will be based the following qualifications:

- a. Company background
- b. Applicable and relevant experience and education of proposed key team members
- c. Team / personnel experience working together and on similar projects
- d. Project approach including working in South Dakota on CMAR projects for public sector clients
- e. Demonstrated knowledge of the local and regional subcontractor market

To be considered for the shortlist selection, the firm must demonstrate the ability to provide a performance and payment bond as described in the RFP.

Section 8: Criteria for Selecting Construction Manager Firm

The City's selection committee will rely on the information contained and presented in the proposals, interviews, and reference checks in making the decision to select the best value and the most qualified firm to provide services for this project. Selection criteria will be based on:

- a. Experience, qualifications, and availability of proposed team leaders
- b. Broader team structure
- c. History of project team working together
- d. Technical work process
- e. Proposal, interview and response
- f. Price Proposal

Section 9. Construction Manager-at-Risk Proposal Requirements

(1) The RFP shall outline proposal submittal requirements including but limited to the following:

- a. Letter signed by an individual authorized to commit the proposed team to the scope of work proposed consortiums, joint ventures, or teams submitting proposals must establish contractual responsibility solely with one company or one legal entity. Each submittal should indicate the entity responsible for execution on behalf of the proposal team.
- b. Identification of proposed team members with proposed roles and responsibilities.
- c. Project approach and management capabilities.
- d. Relevant project experience

- e. Statement from a surety company authorized to do business in South Dakota indicating the firm(s) bonding capacity and ability to obtain a performance and payment bond in the amount specified in the RFP.
- f. Certification statement that proposal response will remain in effect for 30 days, and all representations stated in the Response to RFP are true and accurate, and acknowledge that all costs associated with preparation of the Response to RFP will be the responsibility of the proposing CMAR.

(2) Each firm submitting a proposal shall submit a Qualitative Proposal and a Price Proposal. Proposals shall be segmented into two packages;

Qualitative Proposal. A qualitative proposal shall include management plan, schedule, and other data requested in response to the RFP. Qualitative proposals shall be submitted in a sealed package, which identifies the project and the construction management firm on the outside of the package. Each firm shall place the words "QUALITATIVE PROPOSAL" on the outside of the package.

Price Proposal. Price proposals shall include CMAR fee per phase of the project, a detailed description of management staff general conditions, a detailed description of certain reimbursable general conditions and other cost related questions that pertain the performance of the requested scope of services. Each firm shall submit its price proposal in a separate sealed package. Each firm shall place the words "PRICE PROPOSAL" on the outside of the package.

Section 10. Negotiating Owner / Construction Manager at Risk Agreement and Preservation of Confidential Information

The procedures for negotiations between the City of Brookings and those submitting proposals prior to the acceptance of a proposal are as follows:

Upon completion of the interviews, the firms will be ranked. The City will start negotiations of the contract with the highest-ranking firm. If an agreement for services cannot be reached with the highest ranked firm, the City will move to the second ranked firm. The same process will be repeated with the other ranked firms if no such agreement can be reached. The City reserves the right to not select a firm as part of this process if an agreement cannot be reached with the interviewed firms.

The procedures shall also contain safeguards to preserve confidential information and proprietary information supplied by those submitting proposals consistent with §5-18B-34, which are as follows:

Until a proposal is accepted, information in the proposal remain the property of the person making the proposal. The City will make reasonable efforts to maintain the secrecy and confidentiality of any proposal and all information contained in any proposal and the City will not disclose any proposal or the information contained in a proposal to the CMAR's competitors. The City will not disclose, except as may be permitted pursuant to Chapter 1-27, confidential and

proprietary information contained in any proposal to the public until such time as the City takes final action to accept a proposal.

Section 11. Emergency Procedures

The procedures for awarding construction management firm contracts in the event of public emergencies as defined in § 5-18A-9 are as follows:

The City may make an emergency procurement without advertising the procurement if there exists a threat to public health, welfare, or safety or for other urgent and compelling reasons. An emergency procurement will be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor will be included in the contract file.

Executive Session. A motion was made by Council Member Tilton Byrne, seconded by Council Member Collins, to enter into Executive Session at 6:54 p.m., pursuant to SDCL 1-25-2.1, for purposes of discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term “employee” does not include any independent contractor. Present: City Council, City Manager, and Susan Rotert, Human Resources Director. The motion carried by a unanimous vote. A motion was made by Council Member Tilton Byrne, seconded by Council Member Collins, to exit Executive Session at 7:18 p.m. The motion carried by a unanimous vote.

Resolution 21-114. A motion was made by Council Member Collins, seconded by Council Member Wendell, that Resolution 21-114, a Resolution Amending the City Manager’s Contract for 2022, be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, Collins, and Avery.

Resolution 21-114 - Resolution Amending the City Manager’s Contract for 2022

Whereas, the purpose of this Resolution is to adjust the City Manager’s Contract for 2022; and

Whereas, the position of City Manager is a position appointed by the City Council; and

Whereas, the City Council has determined it is appropriate to increase the City Manager’s salary 2%, resulting in a total annual salary of \$161,367.55; and

Whereas, the City Council has determined it is appropriate to also amend Section 12 (Pension) of the City Manager’s Contract as follows:

In addition, the City shall also contribute 2% of the City Manager’s compensation to a deferred compensation plan selected by the City Manager; and

Whereas, the City Council has determined it is also appropriate to amend Section 19 of the City Manager’s Contract by adding the following:

E. Limitation on Without Just Cause Termination Following Seating of New Council Member(s). Notwithstanding any other provision of this Agreement, the Employer may not take any action to terminate this Agreement without cause during the period of sixty (60) days following the seating of a new city council member elected in a city election or appointed by the City Council to fill a vacancy. The purpose of this provision is to allow any newly elected or appointed member(s) of the City Council or a reorganized City Council to have sufficient time to observe the actions and ability of the Employee in the performance of the powers and duties of their office. After the expiration of the aforementioned sixty (60) day period, there shall be no limitation on the Employer's ability to terminate without cause. Nothing herein shall limit the Employer's ability to terminate this Agreement for cause.

Now, Therefore, It Is Hereby Resolved by the City Council of the City of Brookings, South Dakota, as follows:

- 1) That the City Manager's salary shall increase by 2% for 2022, resulting in a total annual salary of \$161,367.55; and
- 2) That Section 12 of the City Manager's Contract shall be amended to include the following provisions:
In addition, the City shall also contribute 2% of the City Manager's compensation to a deferred compensation plan selected by the City Manager; and
- 3) That the City Manager's Contract shall also be amended to include Section 19 (E), as set forth above.

Adjourn. A motion was made by Council Member Tilton Byrne, seconded by Council Member Brink, that the meeting be adjourned at 7:24 p.m. The motion carried by a unanimous vote.

CITY OF BROOKINGS

ATTEST:

Oepke G. Niemeyer, Mayor

Bonnie Foster, City Clerk