

**Brookings City Council
December 11, 2018**

The Brookings City Council held a meeting on Tuesday, December 11, 2018 at 4:00 p.m., at City Hall with the following City Council members present: Mayor Keith Corbett, Council Members Ope Niemeyer, Dan Hansen, Patty Bacon, and Holly Tilton Byrne. Council Members absent: Nick Wendell, Mary Kidwiler. City Manager Paul Briseno, City Attorney Steve Britzman, City Clerk Shari Thornes, and Deputy City Clerk Angie Ritter were also present.

4:00 PM Executive Session

A motion was made by Council Member Hansen, seconded by Council Member Tilton Byrne, to enter into Executive Session, pursuant to SDCL 1-25-2, for purposes of discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee, at 4:01 p.m. with the City Council, City Manager, and City Attorney present. The motion carried by a unanimous vote. A motion was made by Council Member Bacon, seconded by Council Member Hansen, to exit Executive Session at 4:45 p.m. The motion carried by a unanimous vote.

6:00 PM REGULAR MEETING

1. Call to Order / Pledge of Allegiance.

2. Record of Council Attendance.

3. Consent Agenda: A motion was made by Council Member Hansen, seconded by Council Member Tilton Byrne, to amend the Consent Agenda to include Resolution 18-103, a Resolution authorizing the City Manager to sign documents for a Hazard Mitigation Grant Application. The motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett: Absent: 2 - Kidwiler, and Wendell
A motion was made by Council Member Hansen, seconded by Council Member Tilton Byrne, to approve the Consent Agenda as amended. The motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett: Absent: 2 - Kidwiler, and Wendell

3.A. Action to approve the agenda, as amended.

3.B. Action to approve minutes.

3.C. Action on appointments to City Boards, Committees and Commissions.

Swiftel Center Advisory Committee: appoint Tim Peters (term expires 01/01/2022);
Traffic Safety Committee: appoint Charlie Schnabel (term expires 12/31/2021) and Don Norton (term expires 12/31/2019).

3.D. Action on Resolution 18-097, a Resolution setting forth a Schedule of Proposed Fines for Parking Violations of the Ordinances of the City of Brookings, South Dakota

Resolution 18-097 - a Resolution setting forth a Schedule of Proposed Fines for Parking Violations of the Ordinances of the City of Brookings, South Dakota.

Be It Resolved by the governing body of the City of Brookings, South Dakota, that the following Schedule of Proposed Fines shall be effective as prescribed by law for all violations of the Ordinance set forth below.

Schedule of Proposed Fines with Court Costs					
Section	Offense	Fine	Prior	Costs	Total
<u>Parking Offenses</u>					
82-522	Size of Vehicles	60.00	0.00	60.00	120.00
82-523	Prohibited Activities	60.00	0.00	60.00	120.00
82-524	Removal of Vehicles	60.00	0.00	60.00	120.00
82-525	Permit Parking	60.00	0.00	60.00	120.00
<u>Parking Offenses (if paid within 72 hours)/ Without Court Appearance</u>					
82-522	Size of Vehicles	60.00	0.00	0.00	60.00
82-523	Prohibited Activities	60.00	0.00	0.00	60.00
82-524	Removal of Vehicles	60.00	0.00	0.00	60.00
82-525	Permit Parking	60.00	0.00	0.00	60.00

3.E. Action on Resolution 18-100. a Resolution to approve the purchase of a 2019 Elgin Pelican Street Sweeper for the Street Department off of Sourcewell (formerly NJPA) contract #122017-FSC through Sanitation Products.

Resolution 18-100 - Resolution Approving the Purchase of a
2019 Elgin Pelican Street Sweeper

Whereas, the City Street Department requests action to purchase a 2019 Elgin Pelican Street Sweeper for the Street Department off of Sourcewell (formerly NJPA) contract #122017-FSC through Sanitation Products; and

Whereas, the new sweeper will replace a 2012 Elgin Pelican sweeper. Replacement of street sweepers occurs on a 6-year basis in order to reduce maintenance costs and breakdowns; and

Whereas, the 2019 CIP has a budget amount of \$190,000. The total price from Sanitation Products is \$200,816.00. The overage of the CIP amount will be compensated with the surplus sale of the 2012 Elgin Pelican sweeper.

Now Therefore, Be It Resolved that contract from Sanitation Products from Sioux Falls, South Dakota in the amount of \$200,816.00 be accepted.

3.F. Action on Resolution 18-103, a Resolution authorizing the City Manager to Sign Documents for a Hazard Mitigation Grant Application.

Resolution 18-103 - Resolution authorizing the
City Manager to Sign Documents for a Hazard Mitigation Grant Application

Whereas, the Brookings City Council desires to apply for a Hazard Mitigation Grant project to the Federal Emergency Management Agency and the State of South Dakota; and

Whereas, the City of Brookings is committed to providing a local match towards the project costs; and

Whereas, the City of Brookings appoints Banner Associates as the Applicant Agent for the purpose of signing documents and assuring the completion of all application documents.

Now, Therefore Be It Resolved that the City Manager of the City of Brookings is authorized to sign documents on behalf of the City of Brookings associated with a Hazard Mitigation Grant application and funding award documents.

City General Employee Contract. A motion was made by Council Member Bacon, seconded by Council Member Tilton Byrne, that the City General Employee Contract be approved. The motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett; Absent: 2 - Kidwiler, and Wendell.

Police Department Union Contract. A motion was made by Council Member Hansen, seconded by Council Member Niemeyer, that the Police Department Union Contract be approved. The motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett; Absent: 2 - Kidwiler, and Wendell.

Resolution 18-093, A motion was made by Council Member Tilton Byrne, seconded by Council Member Hansen, that Resolution 18-093, a Resolution Awarding Bids for City Hay Lease in Section 21-T110N-R50W (West of Brookings Airport), be approved. The motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett; Absent: 2 - Kidwiler, and Wendell.

Resolution 18-093 - Resolution Awarding Bids on
City Hay Lease in Section 21-T110N-R50W

Whereas, the City of Brookings opened bids for approximately 85 acres of City Hay Land for the City-owned parcel located in Section 21-T110-R50W on Tuesday, November 27, 2018 at 1:30 PM at the Brookings City & County Government Center; and

Whereas, the City of Brookings has received the following bids for City Hay Lease: MC Hay, Brookings, SD - \$110.00 per acre; Tim Bauer, Elkton, SD - \$110.00 per acre; David Rochel, Aurora, SD - \$107.50 per acre; Lyle Johnson, Brookings, SD - \$82.00 per acre; and Brian Fett, Dell Rapids, SD - \$70.00 per acre; and

Whereas, that MC Hay was selected by lottery as allowed by SDCL 5-18A-5(10).

Now, Therefore, Be It Resolved that the high bid of \$110.00 per acre from MC Hay, Brookings, SD be accepted.

Resolution 18-094. A motion was made by Council Member Bacon, and seconded by Council Member Hansen, that Resolution 18-094, a Resolution awarding Bids on City Crop Lease in Wiese and Freeland Additions be approved. Motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett: Absent: 2 - Kidwiler, and Wendell.

Resolution 18-094 - Resolution Awarding Bids on
City Crop Lease in Wiese and Freeland Additions

Whereas, the City of Brookings opened bids for approximately 52 acres of City Crop Lease for City-owned parcels located in Wiese Addition and Freeland Addition, Sections 18 and 19, T110N, R49W, on Tuesday, November 27, 2018 at 1:30 PM at the Brookings City & County Government Center; and

Whereas, the City of Brookings has received the following bids for City Crop Lease: David Rochel – \$206.50/acre, Brian Fett - \$150.00/acre, and Tim Bauer - \$120.00/acre.

Now, Therefore, Be It Resolved that the high bid of David Rochel, Aurora, SD, for \$206.50 per acre be accepted.

Resolution 18-095. A motion was made by Council Member Hansen, seconded by Council Member Niemeyer, that Resolution 18-095, a Resolution awarding Bids for City Hay Lease in Section 11-T109N-R50W (Main Avenue South & 32nd Street South), be approved. The motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett: Absent: 2 - Kidwiler, and Wendell.

Resolution 18-095 - Resolution Awarding Bids to Lease City Hay Land in
Section 11-T109N-R50W (Main Avenue South & 32nd Street South)

Whereas, the City of Brookings opened bids for a two-year lease of approximately 18 acres of City hay land in Section 11-T109N-R50W, southeast of 32nd Street South and Main Avenue South, on Tuesday, November 27, 2018 at 1:30 PM at the Brookings City & County Government Center; and

Whereas, the City of Brookings has received the following bids for City Hay Lease: Tim Bauer, Elkton, SD \$50.00/acre; Brian Fett, Dell Rapids, SD \$47.00/acre; MC Hay, Brookings, SD \$40.00/acre.

Now, Therefore, Be It Resolved that the high bid of Tim Bauer, Brookings, SD for \$50.00 per acre be accepted.

Resolution 18-096. A motion was made by Council Member Hansen, seconded by Council Member Tilton Byrne, that Resolution 18-096, a Resolution awarding Bids for

Airport Hay Lease be approved. The motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett; Absent: 2 - Kidwiler, and Wendell.

Resolution No. 18-096 - Resolution Awarding Bids on Airport Hay Lease

Whereas, the City of Brookings opened bids to lease approximately 314 acres of Airport Hay Land at the Brookings Regional Airport located in Sections 26, 27 and 28, T110, R50W, on Tuesday, November 27, 2018 at 1:30 PM at the Brookings City & County Government Center; and

Whereas, the City of Brookings has received the following bids for Airport Hay Lease: Lyle Johnson, Brookings, SD - \$78.00 per acre; MC Hay, Brookings, SD - \$70.00 per Acre; Tim Bauer, Elkton, SD - \$65.00 per acre; and Brian Fett, Dell Rapids, SD - \$56.00 per acre.

Now, Therefore, Be It Resolved that the high bid of Lyle Johnson, Brookings, SD for \$78.00 per acre be accepted.

Legal Services Agreement. A motion was made by Council Member Niemeyer, seconded by Council Member Hansen, to approve a Legal Services Agreement (01/01/2019 - 12/31/2019) between the City of Brookings and Steven J. Britzman. Motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett; Absent: 2 - Kidwiler, and Wendell.

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, 2019 and ending December 31, 2019, 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 shall 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 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 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, 2019 through December 31, 2019 of Seven Thousand Nine Hundred Eighteen and 70/100 (\$7,918.70) 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 this Agreement, the City will provide Four Thousand Dollars (\$4,000.00) 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.

Dated this ____ day of December, 2018.

STEVEN J. BRITZMAN, ATTORNEY AT LAW
Steven J. Britzman

Dated this ____ day of December, 2018.

CITY OF BROOKINGS, SOUTH DAKOTA
Paul Briseno, City Manager

ATTEST:
Shari Thornes, City Clerk

Scope of Services for City Attorney for the 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.
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.
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.

Resolution 18-099. A motion was made by Council Member Niemeyer, seconded by Council Member Bacon, that Resolution 18-099, a resolution authorizing the City of Brookings to Amend the Brookings Marketplace Development Agreement be approved. Public Comment: Jacob Mills. The motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett; Absent: 2 - Kidwiler, and Wendell.

Resolution 18-099 - Resolution Authorizing the City of Brookings to Amend the
Brookings Marketplace Development Agreement

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

Whereas, the City of Brookings approved a Development Agreement between the City of Brookings and Brookings Marketplace, LLC on December 13, 2016; and

Whereas, the parties now desire to modify Sections 4 and 7 of said Development Agreement to extend the time of performance by the Developer to allow the City and Developer to hold further discussions concerning the Brookings Marketplace project.

Now, Therefore, Be It Resolved as follows:

1. That an Amendment to the Development Agreement by and between the City of Brookings and Brookings Marketplace, LLC is hereby approved; and
2. The Mayor, City Manager and City Clerk are hereby authorized to execute on behalf of the City the documents required to complete the Amendment described herein, consistent with the terms of this Resolution.

Resolution 18-101. A motion was made by Council Member Tilton Byrne, seconded by Council Member Niemeyer, that Resolution 18-101, a Resolution authorizing the City of Brookings to execute Lease Extension Amendment Agreements with Cellular Inc. Network Corporation D/B/A Verizon Wireless, be approved. The motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett; Absent: 2 - Kidwiler, and Wendell.

Resolution 18-101 - Resolution authorizing the
City of Brookings to execute Lease Extension Amendment Agreements with

Cellular Inc. Network Corporation d/b/a Verizon Wireless

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

Whereas, the City of Brookings leases three cell towers to Cellular Inc. Network Corporation d/b/a Verizon Wireless, formerly known as Sanborn Cellular, Inc., d/b/a Verizon Wireless; and

Whereas, the three cell towers are located on 22nd Avenue (next to Edgebrook Golf Course), and near Bob Sheldon Field (the East Tower on 8th Street South), and at a third location on North Medary (next to the BMU wells and the community gardens); and

Whereas, the City has received requests for 25-year least extensions for the three cell towers, resulting in new proposed expiration dates of 2055 and 2056; and

Whereas, the City of Brookings finds the proposed terms for the cell tower lease extensions to be acceptable.

Now, Therefore, Be It Resolved as follows the Mayor, City Manager, City Clerk and City Attorney are hereby authorized to execute on behalf of the City the documents required to complete the cell tower lease extensions transactions described herein, consistent with the terms of this Resolution in a manner satisfactory to the City Manager.

Temporary Liquor Application. A public hearing was held on a Temporary Liquor Application from St. Thomas More Catholic School, to operate within the City of Brookings, South Dakota, on February 2, 2019, for a Gala and Grand to be held at 1700 8th Street South. A motion was made by Council Member Hansen, seconded by Council Member Niemeyer, to approve the Temporary Liquor Application. The motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett; Absent: 2 - Kidwiler, and Wendell.

Ordinance 18-017. A second reading was held on Ordinance 18-017, an Ordinance pertaining to the use of commercial pedal cars in the City of Brookings, South Dakota. A motion was made by Council Member Niemeyer, seconded by Council Member Tilton Byrne, that Ordinance 18-017 be approved. The motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett; Absent: 2 - Kidwiler, and Wendell.

Resolution 18-102. A public hearing was held on Resolution 18-102, a Resolution authorizing the City Manager to enter into an Operating Agreement for an On-Sale Restaurant Liquor License for or the Lodge, DenWil Hospitality Group, Inc., owner, 2515 6th Street, Brookings, South Dakota, legal description: Block 12, Telkamp Addition. A motion was made by Council Member Hansen, seconded by Council Member

Niemeyer, that Resolution 18-102 be approved. The motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett; Absent: 2 - Kidwiler, and Wendell.

Resolution 18-102 - Den-Wil Hospitality Group, LLC, dba The Lodge
Restaurant Liquor Operating Agreement

Be It Resolved by the City of Brookings, South Dakota, that the City Council hereby approves a Lease Agreement for the Operating Liquor Management Agreement for Liquor between the City of Brookings and Dennis Bielfeldt, Den-Wil Hospitality Group, LLC, owner, dba The Lodge, for the purpose of a liquor manager to operate the on-sale establishment or business for and on behalf of the City of Brookings at 2515 Sixth Street, Legal: Block 12, Telkamp Addition, Brookings, South Dakota

Be It Further Resolved that the City Manager be authorized to execute the Agreement on behalf of the City, which shall be for a period of five (5) years and renewal for another five (5) years.

2019 City Manager Compensation Package. A motion was made by Council Member Bacon, seconded by Council Member Hansen, that the 2019 City Manager Compensation Package be approved. The motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett; Absent: 2 - Kidwiler, and Wendell.

City Council member introduction of topics for future discussion. A motion was made by Council Member Niemeyer, seconded by Council Member Tilton Byrne, to direct staff to look at the idea of possible electric car charging stations in the City of Brookings. Motion carried by the following vote: Yes: 5 - Niemeyer, Hansen, Bacon, Tilton Byrne, and Corbett; Absent: 2 - Kidwiler, and Wendell.

Adjourn. A motion was made by Council Member Hansen, seconded by Council Member Niemeyer, to adjourn the meeting at 6:37 p.m. The motion carried by a unanimous vote.

CITY OF BROOKINGS

Keith W. Corbett, Mayor

ATTEST:

Shari Thornes, City Clerk