

Brookings City Council
July 11, 2023 (unapproved)

The Brookings City Council held a meeting on Tuesday, July 11, 2023 at 6:00 PM, at the Brookings City & County Government Center, Chambers, with the following City Council members present: Mayor Oepke Niemeyer, Deputy Mayor Nick Wendell, Council Members Holly Tilton Byrne, Wayne Avery, Bonny Specker, Brianna Doran, and Andrew Rasmussen. City Manager Paul Briseno, City Attorney Steve Britzman, and City Clerk Bonnie Foster were also present.

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

Open Forum. Jeanette Gibbons, Brookings, SD: shared information on the movie "Sound of Freedom" extending its play date through July 19th at the Brookings Theatre. She expressed concerns regarding the number of missing youth in the State of South Dakota.

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

A. Action to approve the June 27, 2023 City Council Minutes.

B. Action on Resolution 23-060, a Resolution awarding a Request For Proposal on a Used Tandem Axle Day Cab Semi-Tractor.

Resolution 23-060 - Resolution Awarding Request For Proposal for
a Used Tandem Axle Day Cab Tractor

Whereas, the City of Brookings opened Request for Proposals for a Used Tandem Axle Day Cab Semi-Tractor on Tuesday, June 27, 2023 at 1:30 pm at the Street Division; and

Whereas, the City of Brookings received one proposal in the amount of \$93,000 from Double K Sales & Detailing; and

Whereas, the City of Brookings has appropriations of \$275,000 in the 2023 adopted budget for the purchase of a tandem axle semi-tractor.

Now, Therefore, Be It Resolved that the low proposal of \$93,000.00 from Double K Sales & Detailing be accepted.

Ex-Officio Reports. Ex-Officio Reports were presented for the following: Brookings Municipal Utility Board report by Council Members Avery and Rasmussen. Brookings Health Systems Board of Trustees report by Council Member Doran and Specker.

Report: Prohibiting use of inflatables on City property. City Manager Paul Briseno shared with the City Council and public the reasons behind the new City Policy prohibiting use of inflatables on City property.

Ordinance 23-020. A motion was made by Council Member Tilton Byrne, seconded by Council Member Wendell, that Ordinance 23-020, an Ordinance Establishing the Number of Video Lottery Machine Placements in the City of Brookings, SD, be approved. A motion was made by Council Member Avery, seconded by Council Member Rasmussen, to amend Ordinance 23-020 and increase the number of authorizations to 30, from the stated 27. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Avery, Tilton Byrne, Specker, Doran, and Rasmussen. A friendly amendment was made by Council Member Tilton Byrne, and accepted by Council Members Avery and Rasmussen, to increase the population limit to 26,377. On the main motion, as amended, the motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Avery, Tilton Byrne, Specker, Doran, and Rasmussen. Due to substantial changes to Ordinance 23-020, a third reading and action will be held at the July 25th City Council Meeting.

Ordinance 23-022. A public hearing was held on Ordinance 23-022, an Ordinance to Change the Zoning within the City of Brookings (Lot 2 in Block 9 of Freeland Addition). A motion was made by Council Member Doran, seconded by Council Member Wendell, that Ordinance 23-022 be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Avery, Tilton Byrne, Specker, Doran, and Rasmussen.

Ordinance 23-023. A public hearing was held on Ordinance 23-023, an Ordinance to Change the Zoning within the City of Brookings (Outlots 2, 3 and 4 in Government Lot 4 in the NW $\frac{1}{4}$ of Section 6, Township 109, Range 49). A motion was made by Council Member Doran, seconded by Council Member Wendell, that Ordinance 23-023 be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Avery, Tilton Byrne, Specker, Doran, and Rasmussen.

Ordinance 23-024. A public hearing was held on Ordinance 23-024, an Ordinance to Change the Zoning within the City of Brookings (Lots 1 -11 in Block 28 in Timberline Addition). A motion was made by Council Member Wendell, seconded by Council Member Doran, that Ordinance 23-024 be approved. Public Comment: Justin Bucher. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Avery, Tilton Byrne, Specker, Doran, and Rasmussen.

Preliminary Plat. A motion was made by Council Member Wendell, seconded by Council Member Doran, that a Preliminary Plat for Lots 1 to 11, Block 28, Timberline Addition be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Avery, Tilton Byrne, Specker, Doran, and Rasmussen.

Preliminary Plat. A motion was made by Council Member Doran, seconded by Council Member Wendell, that the Preliminary Plat for Mills Fourth Addition, Block 1, Lots 1 and

2 be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Avery, Tilton Byrne, Specker, Doran, and Rasmussen.

Resolution 23-059. A motion was made by Council Member Avery, seconded by Council Member Tilton Byrne, that Resolution 23-059, a Resolution relating to the Improvement of Drinking Water Facilities; Authorizing and Directing the Issuance and Sale of a Taxable 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; Pledging Certain Revenues to Secure the Payment of the Revenue Bond and Creating Special Funds and Accounts for the Administration of Funds for Operation of the System and Retirement of the Revenue Bond, be approved. Public Comment: Laura Julius, BMU Finance & Accounting Manager, Eric Witte, BMU Water / Wastewater & Engineering Manager. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Avery, Tilton Byrne, Specker, Doran, and Rasmussen.

Resolution 23-059 - Resolution Relating to the Improvement of Drinking Water Facilities; Authorizing and Directing the Issuance and Sale of a Taxable 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; Pledging Certain Revenues to Secure the Payment of the Revenue Bond and Creating Special Funds and Accounts for the Administration of Funds for Operation of the System and Retirement of the Revenue Bond

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 "System"), for municipal, industrial and domestic purposes.

1.02. The Issuer desires and hereby determines it is necessary, in order to comply with increased State and Federal emphasis on reducing lead exposure in drinking water, to construct certain improvements to the System, which will consist of removing and replacing the System's remaining lead service lines (the "Improvements"). Because of the availability of the Improvements to all residents, the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with State and federal laws, and the nature of the Improvements, the Issuer hereby determines that the Improvements will substantially benefit the entire System and all of its users within the meaning of SDCL 9-40-15 and SDCL 9-40-17. Therefore, the Issuer hereby determines that for the purposes of South Dakota Codified Laws, Chapters 9-40 (the "Act"), including, in particular, SDCL 9-40-17, the net income or revenues of the entire System, as extended, added to, or improved by the Improvements shall be deemed to be the net income or revenues available to be pledged to the payment of the bond issued under this resolution (the "Resolution").

1.03. BMU has concurred in the pledge of System Revenues to payment of the bond issued under this Resolution.

1.04. The Issuer is authorized to borrow money and issue its revenue bonds under the Act and SDCL 6-8B, in order to finance all or a portion of the cost of 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 9-40-15 and SDCL 9-40-17. The obligations are payable from the Net Revenues of the System, as defined in Section 2.03 hereof.

1.05. The execution and delivery of the Revenue Obligation Loan Agreement between South Dakota Conservancy District (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 bond 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. The Loan Agreement herein referred to and made a part of this Resolution is on file in the office of the City Clerk and is available for inspection by any interested party.

1.06. The issuance of a taxable revenue bond of the Issuer, of not more than \$1,000,000 principal amount, with principal forgiveness up to a maximum of \$490,000 (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. The provisions of the Act are hereby expressly incorporated herein.

1.07. 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. It is hereby found and determined that the principal amount of the Bond, when added to all other indebtedness of the Issuer subject to the utility debt limit pursuant to Article XIII, Section 4 of the South Dakota Constitution, will not exceed 10% of the assessed value of the taxable property in the Issuer.

SECTION 2. FUNDS AND ACCOUNTS.

2.01. Water Fund; Bond Proceeds and Revenues Pledged and Appropriated. A fund designated as the Water 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 Bond and any additional bonds payable from the Net Revenues of the System (the "Additional Bonds," together with the Bond, the "Bonds," and any one of the Bonds, a "Bond"), as set forth in Section 3.02, and interest, Administrative Expense Surcharge and redemption premiums due thereon have been fully paid, or the Issuer's obligation with reference to the Bonds has been discharged as provided in this Resolution. All proceeds of the Bonds and all other funds hereafter received or appropriated for purposes of the System are appropriated to the Fund. All gross revenues derived from the operation of the System are irrevocably pledged and appropriated and shall be credited to the Fund as received. As described in Section 3.04 hereof, BMU shall impose rates and charges for the availability, benefit and use of the System and shall aggregate the gross revenues derived from such rates and charges and the System, together with the expenses of operation and maintenance of the System and shall account for them as provided in this Resolution. Such gross revenues shall include all gross income and receipts from rates, fees, charges and rentals imposed for the availability, benefit and use of the System 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 System 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 2.02 to 2.06, 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, commencing the first calendar month following the delivery of the Bond, which apportionment is hereinafter referred to as the "monthly apportionment."

2.02. 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 System 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 Bond during the first year following the date of its delivery, if and to the extent that the Debt Service 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 Bonds, all other funds appropriated by the

Issuer for the System, and all income received from the investment of the Construction Account.

2.03. 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 of the System, 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 System 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 System, calculated in accordance with generally accepted accounting principles, and shall include, without limitation, administrative expenses of the Issuer relating solely to the System, 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 an appropriate reserve (the "Operating Reserve") 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 System 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 System, nor any amount properly payable from any other account of the Fund. Moneys in the Operating Account shall be used solely for the payment of current operation expenses of the System. The Net Revenues of the System, as referred to in this Resolution, are hereby defined to include the entire amount of such gross revenues remaining after each such monthly apportionment, crediting to the Operating Account the amount required hereby, including sums required to maintain the Operating Reserve.

2.04. Debt Service Account. Upon each monthly apportionment, there shall be transferred to the Debt Service Account, out of the Net Revenues of the System, an amount equal to not less than one-twelfth of the total sum of the principal and interest and administrative surcharge to become due within the then next succeeding twelve months on all Bonds and any obligations issued on a parity therewith and outstanding.

If on the 25th day of the month preceding any Interest Payment Date there are not sufficient amounts on deposit in the Debt Service Account to pay the total amount of interest coming due on such Interest Payment Date, the Issuer shall transfer any moneys then on deposit to the credit of the Surplus Account, in an amount equal to such deficiency, to the Debt Service Account.

If on the 25th date of the month preceding any Principal Payment Date there are not sufficient amounts on deposit in the Debt Service Account to pay the total amount of principal coming due on such Principal Payment Date, the Issuer shall transfer any moneys then on deposit in the Surplus Account, in an amount equal to such deficiency, to the Debt Service Account

2.05. 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 Debt Service 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 System. 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, or to pay the cost of improvements to the System; 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 System, but which additional bonds cannot, upon the terms and conditions provided in Section 3.02, be payable from the Debt Service 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.

2.06. Surplus Account. The Surplus Account is hereby established as a separate account within the Fund. 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 Debt Service Account as provided in Section 2.04 hereof, may be used for any of the following purposes and not otherwise:

- a) To redeem and prepay Bonds when and as such Bonds become prepayable according to their terms;
- b) To purchase Bonds on the open market, whether or not the Bonds so purchased or other such Bonds may then be prepayable according to their terms; and, if the balances in the Debt Service 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;
- c) To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Debt Service 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 then current fiscal year, then;
 - i. To be held as a reserve for redemption and prepayment of the Bonds which are not then but will later be prepayable according to their terms; or
 - ii. 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 loaned to other municipal funds or invested in warrants, special assessment bonds or other obligations payable from other funds, except as provided in this section.

2.07. 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 SDCL 4-6A, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the Issuer, so long as any of the 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 this City Council, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, that the Replacement and Depreciation Account and the Surplus Account may be invested in such securities maturing not later than ten years from the date of the investment and that moneys in the Surplus Account may, in the direction of this City Council, be invested in any securities which are direct, general obligations of the Issuer. 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.

2.08. Additional Revenues or Collateral. The Issuer reserves the right at any time to pledge additional moneys, revenues or collateral as security for the 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 any Parity Bond issued on a tax-exempt basis and then outstanding.

2.09. Appropriation of Other Moneys. The Issuer reserves the right in any year while the Bond is 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 Bond. Any such appropriation shall reduce the obligation of the Issuer to impose rates and charges under Section 3.04 hereof.

2.10. Statutory Mortgage. The Issuer covenants and agrees that pursuant to SDCL 9-40-28 and SDCL 9-40-29, the lawful holders of the Bonds shall have a statutory mortgage lien upon the System 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 Bonds, and the Issuer agrees not sell or otherwise dispose of the System, 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

treatment and distribution of water 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 System are insufficient to pay principal and interest and administrative expense surcharge then due on the Bonds, any and all moneys then on hand shall be first used to pay the interest and administrative expense surcharge accrued on the Bonds, and the balance shall be applied toward payment of the maturing principal of the 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 Debt Service Account of the Fund, on a parity as to both principal and interest and administrative expense surcharge with the Bond, in the manner and upon satisfaction of the conditions and subject to the limitations set forth in the Loan Agreement, and if any previously issued bonds payable therefrom ("Prior Bonds") are then outstanding, subject to the limitations contained in the resolutions under which such Prior Bonds were issued.

3.03. Compliance with Loan Agreement. The Issuer will comply, so long as any 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 System, 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 System, and all principal of and interest and administrative expense surcharge on the Bonds, to provide for the establishment and maintenance of adequate reserves, to provide an allowance adequate for recurring renewals and replacements of the System, 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. BMU shall determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene the covenant of BMU described in this Section 3.04 or any other covenant or agreement of the Issuer or of BMU set forth herein or in the Loan Agreement.

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 interest of the holder of the Bond, 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 any Bonds then outstanding.

4.02. Amendments With Bondholder Consent. With the consent of the holders of the Bond then outstanding, 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 the Bond is outstanding, without the consent of the holders of the Bond, if it would extend the maturity of the 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 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 Bond (except as is permitted by Section 3), or would reduce the percentage in principal amount of the Bond 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 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 Bond 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 Bonds 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 Bond shall bind the holder and every future holder of the same Bond with respect to any amendment adopted by the Issuer pursuant to such consent, provided that any bondholder may revoke such bondholder's consent with reference to any 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 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 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 Bonds held by any person by or for whom a consent is given, and the distinguishing numbers of such Bond, 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 Bond has been discharged as provided in this section, all pledges, covenants and other rights granted by this Resolution to the holder of the Bond shall cease.

5.02. Payment. The Issuer may discharge its liability with reference to any 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 Bond on or before that date a sum sufficient for the payment thereof in full; or if any 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 Bond. The Issuer may also discharge its liability with reference to any prepayable Bond which is called for redemption on any date in accordance with its 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 Bond.

SECTION 6. REPEAL.

6.01. 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.

Executive Session. A motion was made by Council Member Tilton Byrne, seconded by Council Member Doran, to enter into Executive Session at 6:47 p.m., pursuant to SDCL 1-25-2.4, for preparing for contract negotiations or negotiating with employees or employee representatives. Present: City Council, City Manager, Deputy City Manager, City Attorney, City Clerk, Casey Bell, Human Resources Director. The motion carried by a unanimous vote. A motion was made by Council Member Tilton Byrne, seconded by Council Member Wendell, to exit Executive Session, at 7:03 p.m. The motion carried by a unanimous vote.

Adjourn. A motion was made by Council Member Specker, seconded by Council Member Tilton Byrne, that this meeting be adjourned at 7:04 p.m. The motion carried by a unanimous vote.

CITY OF BROOKINGS, SD

Oepke G. Niemeyer, Mayor

ATTEST:

Bonnie Foster, City Clerk