

Brookings City Council
September 13, 2022 (unapproved)

The Brookings City Council held a meeting on Tuesday, September 13, 2022 at 5:15 PM, at the Brookings City & County Government Center, Chambers, with the following City Council members present: Mayor Oepke Niemeyer, Council Members Nick Wendell, Joey Collins, Holly Tilton Byrne, Wayne Avery, Brianna Doran, and Bonny Specker. City Manager Paul Briseno, City Attorney Steve Britzman, and City Clerk Bonnie Foster were also present.

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

Budget Workshop #1. Jacob Meshke, Assistant City Manager, and Erick Rangel, Chief Financial Officer, presented the proposed 2023 Budget to the City Council and public. Budget Workshop #1 focused on a budget overview, operating budget, long-term financial plan, and outside agency funding requests.

Open Forum. Jeanette Gibbons expressed COVID concerns for the Brookings Community which is still operating under Resolution 21-072, passed August 2021, and concerns regarding the upcoming SDSU COVID vaccination drive.

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, Collins, Tilton Byrne, Avery, Doran, and Specker.

A. Action to approve the 8/23/2022 City Council Minutes.

B. Action on Resolution 22-070, a Resolution authorizing the City Manager to sign an On-Sale Liquor Operating Agreement renewal for Skinners Pub, Inc., Greg and Shari Thornes, owners, 300 Main Avenue, Brookings, South Dakota. Legal description: Lots 1-2, Block 2, Original Plat Addition.

Resolution 22-070 - On-Sale Liquor Operating Agreement – 10-year renewal
Skinner's Pub, Inc.

Be It Resolved by the City of Brookings, South Dakota, that the City Council hereby approves a Lease Agreement renewal for the On-Sale Operating Alcohol Management Agreement for Liquor between the City of Brookings and Skinner's Pub, Inc., Greg and Shari Thornes, owners, 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 300 Main Avenue. Legal description: Lots 1-2, Block 2, Original Plat Addition.

Now, Therefore, 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 10 years, with a mid-term renewal in five years.

C. Action on Resolution 22-071, a Resolution declaring surplus property for the City of Brookings.

Resolution 22-071 - Declaring Surplus Property

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

Brookings Police Department: 2019 Dodge Charger (#03), Serial #: 2C3CDXKT9KH699584; 2020 Ford Explorer (#05), Serial #1FM5K8AW5LGC48723; 2020 Ford Explorer (#06), Serial #1FM5K8AW7LGC48724.

Engineering Dept.: old wood drafting table

Brookings Public Library: HP Color Laserjet Pro (doesn't work properly), Brother HL L6400dw (doesn't work properly), Clarify Vision Magnifier, 18" tall wooden seat on wheels, small filing cabinet, 2 sets of metal desk drawers (desks do not have tops).

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.

D. Action to cancel the September 20, 2022 City Council Study Session.

Introduction: Public Works Director. Jacob Meshke, Assistant City Manager, introduced new Public Works Director John Thompson.

Recognition: National Police Woman Day. Monday, September 12, 2022 was US National Police Woman Day. The Brookings Police Department would like to thank all the women serving the Department. Mayor Niemeyer presented a Proclamation to Chief Drake in recognition of National Police Woman Day.

The City of Brookings Police Department recognized Police Officer Jorrie Hart with a plaque for her continued service to the City of Brookings, and the Brookings Community. She has been with the Brookings Police Department for 7 years.

MAYORAL PROCLAMATION

Whereas, the Brookings Police Department values the benefits of a diverse workforce and is committed to becoming more representative of the community; and

Whereas, the recent Brookings Center for Public Safety Management study called for greater investment in attaining a diverse workforce especially focusing on attaining female officers; and

Whereas, only 12% of officers and 3% of police leaders are women; and

Whereas, research shows women officers use less force, less excessive force, are perceived as more honest and compassionate, make fewer discretionary arrests, and see better outcomes for crime victims, especially in sexual assault cases; and

Whereas, the Brookings Police Department is committed to the 30 x 30 Initiative goals to increase women in police recruitment classes to 30% by 2030 and ensure policies and cultures intentionally support the success of qualified women officers throughout their careers.

Now, Therefore, Be It Resolved that I, Oepke G. Niemeyer, Mayor of the City of Brookings, do hereby proclaim Tuesday, September 13, 2022 as Police Woman Day.

Report: SDSU Student Association. SDSU Student Association Government Affairs Chair, Erika Van Nieuwenhuyse, provided an update on SDSU happenings to the City Council and members of the public.

Resolution 22-075. A motion was made by Council Member Wendell, seconded by Council Member Collins, that Resolution 22-075, a Resolution Authorizing Change Order No. 1(Final) for 2022-06STI, Chip Seal Project; TopKote, Inc., be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Collins, Tilton Byrne, Avery, Doran, and Specker.

Resolution 22-075 - Resolution Authorizing Change Order No. 1 (Final)
for 2022-06STI Chip Seal Project; Topkote, Inc.

Be It Resolved by the City Council that the following Change Order be allowed for 2022-06STI Chip Seal Project: Construction Change Order Number 1 (Final): Adjust plan quantities to as-constructed quantities for a total increase of \$6,859.70 to close out the project.

Resolution 22-076. A motion was made by Council Member Doran, seconded by Council Member Collins, that Resolution 22-076, a Resolution Rejecting Bids on 2022-03SSI Harvey Dunn Street Storm Sewer Improvements, be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Collins, Tilton Byrne, Avery, Doran, and Specker.

Resolution 22-076 - Resolution Rejecting Bids on Project 2022-03SSI Harvey Dunn
Street Storm Sewer Improvements

Whereas, the City of Brookings opened bids for Project 2022-03SSI Harvey Dunn Street Storm Sewer Improvements on Tuesday, August 16, 2022 at 1:30 pm at the Brookings City & County Government Center; and

Whereas, the City of Brookings received the following bid for the 2022-03SSI Harvey Dunn Street Storm Sewer Improvements: Bowes Construction - \$438,756.55; and

Whereas, the low bid was approximately 48% higher than the Engineer's Estimate.

Now, Therefore, Be It Resolved that the low bid of \$438,756.55 from Bowes Construction be rejected.

FIRST READING – Ordinance 22-031. Introduction and first reading was held on Ordinance 22-031, an Ordinance certifying the 2023 City of Brookings Property Tax Levy to the Brookings County Finance Officer. Second Reading and Action: September 27, 2022.

FIRST READING – Ordinance 22-032. Introduction and First Reading on Ordinance 22-032, an Ordinance authorizing Budget Amendment No. 8 to the 2022 Budget. Second Reading and Action: September 27, 2022.

Resolution 22-073. A public hearing was held on Resolution 22-073, a Resolution Authorizing an Application for Financial Assistance, Authorizing the Execution and Submittal of the Application, and Designating an Authorized Representative to Certify and Sign Payment Requests. A motion was made by Council Member Avery, seconded by Council Member Doran, that Resolution 22-073 be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Collins, Tilton Byrne, Avery, Doran, and Specker.

Resolution 22-073 - Resolution Authorizing an Application for Financial Assistance, Authorizing the Execution and Submittal of the Application, and Designating an Authorized Representative to Certify and Sign Payment Requests

Whereas, the City of Brookings/BMU (the "City") has determined it is necessary to proceed with improvements to its Water System, including but not limited to constructing a Water Treatment Facility, installing water mains, and constructing 6 new wells (the "Project"); and

Whereas, the City has determined that financial assistance will be necessary to undertake the Project and an application for financial assistance to the South Dakota Board of Water and Natural Resources (the "Board") will be prepared; and

Whereas, it is necessary to designate an authorized representative to execute and submit the Application on behalf of the City and to certify and sign payment requests in the event financial assistance is awarded for the Project,

Now, Therefore, Be It Resolved by the City as follows:

1. The City hereby approves the submission of an Application for financial assistance in an amount not to exceed \$40,700,000 to the South Dakota Board of Water and Natural Resources for the Project.

2. The Mayor is hereby authorized to execute the Application and submit it to the South Dakota Board of Water and Natural Resources, and to execute and deliver such other documents and perform all acts necessary to effectuate the Application for financial assistance.
3. The General Manager/Executive Vice President is hereby designated as the authorized representative of the City to do all things on its behalf to certify and sign payment requests in the event financial assistance is awarded for the Project.

Resolution 22-074. A public hearing was held on Resolution 22-074, a Resolution Relating to the Improvement of Drinking Water Facilities; Authorizing and Directing the Issuance and Sale of a Revenue Bond to Pay the Cost of Said Improvements; Defining the Terms and Manner of Payment of the Bond and the Security Thereof and Approving the Form of Loan Agreement. A motion was made by Council Member Doran, seconded by Council Member Avery, that Resolution 22-074 be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Collins, Tilton Byrne, Avery, Doran, and Specker.

Resolution 22-074 - Resolution Relating to the Improvement of Drinking Water Facilities; Authorizing and Directing the Issuance and Sale of a Revenue Bond to Pay the Cost of Said Improvements; Defining the Terms and Manner of Payment of the Bond and the Security Thereof and Approving the Form of Loan Agreement

Be It Resolved by the City Council of the City of Brookings, South Dakota, As Follows:

Section 1. Authorization and Findings

1.01. The City of Brookings, South Dakota (the "Issuer"), operating through Brookings Municipal Utility ("BMU") currently operates water distribution system to supply municipal, industrial and domestic water to its inhabitants (the "Utility"), for municipal, industrial and domestic purposes.

1.02. The Issuer is authorized to borrow money and issue its revenue bonds under South Dakota Codified Laws, Chapters 9-40 (the "Act") and 6-8B, in order to finance all or a portion of the cost of improvements to the Utility, consisting of the construction of a new 6 MGD lime softening water treatment facility along 34th Avenue (the "Treatment Facility") which will have the East Well Field and the North Well Field deliver raw water to the Treatment Facility. A total of 28,500 feet of new 16-inch raw water line will be constructed along with 19,890 feet of new 16-inch finished water line and six new municipal wells with 17,400 feet of new 20-inch transmission main (all such financed projects, the "Improvements"). The Issuer is authorized to issue its obligations in order to defray the cost thereof, and to make all pledges, covenants and agreements authorized by law for the protection of the holders of the obligations, including, without limitation, those covenants set forth in SDCL, Sections 9-40-16 and 9-40-17. The obligations are payable from the Net Revenues of the Improvements, as defined in 2.03 hereof.

1.03. BMU has, by resolution, covenanted and agreed to adopt and maintain special rates or surcharges for the Improvements, in order to produce revenues to be

pledged, segregated and used for the operation and maintenance of the Improvements and payment of the revenue bonds.

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

1.05. The issuance of a revenue bond of the Issuer of not more than \$50,963,200 principal amount (the "Bond") is hereby authorized, approved and confirmed, and the Mayor, City Clerk and other appropriate officials of the Issuer shall be authorized to execute and deliver the Bond to the District, for and on behalf of the Issuer, upon receipt of the purchase price and to deposit the proceeds thereof in the manner provided for in the Loan Agreement. The Mayor and City Clerk are hereby authorized to approve the final terms of the Bond, and their execution and delivery of the Bond shall evidence such approval. The terms of the Bond, as so executed and delivered, shall be deemed to be incorporated herein by reference.

1.06. The Issuer hereby determines that because the Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to SDCL 9-40-15, no election is required to issue the Bond.

Section 2. Funds and Accounts. For the purpose of application and proper allocation of the income of the Improvements and to secure the payment of principal of and interest on the Bond, the following funds and accounts shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Bond:

2.01. Pledge of Net Revenues of the Improvements. The Net Revenues of the Improvements shall be pledged and appropriated to the payment of the Bond as set forth in the resolution adopted by BMU.

2.02. Water Utility Fund; Bond Proceeds and Revenues Pledged and Appropriated. A fund designated as the Water Utility Fund (the "Fund") has been established and shall be maintained as a separate and special bookkeeping account on the official books of the Issuer until the Bond and any additional bonds (together referred to as the "Bonds") payable from the Net Revenues of the Improvements, as provided in Sections 3.02 through 3.04 hereof and interest, Administrative Expense Surcharge and redemption premiums due thereon have been fully paid, or the Issuer's obligation with reference to the Bond has been discharged as provided in this resolution. All proceeds of the Bond and all other funds hereafter received or appropriated for purposes of the Improvements are appropriated to the Fund. All gross revenues derived from the operation of the Improvements are irrevocably pledged and appropriated and shall be credited to the Fund as received. As described in Section

3.04 hereof, BMU shall impose a separate surcharge for the availability, benefit and use of the Improvements as part of the Utility and shall aggregate the gross revenues derived from such surcharge and the Improvements, together with the expenses of operation and maintenance of the Improvements and shall account for them as provided in this Resolution; except as expressly stated in this Resolution, the pledges, appropriations, covenants and agreements of the City and the Accounts established within the Fund by the Resolution apply only to the Improvements, its operations, revenues and expenses. The City finds that acquisition and construction of the Improvements will benefit all present and future users of the Utility, therefore the surcharge described in Section 3.04 shall be imposed on all current and future users of the Utility. Such gross revenues shall include all gross income and receipts from rates and charges imposed for the availability, benefit and use of the Improvements as now constituted and of all replacements and improvements thereof and additions thereto, and from penalties and interest thereon, and from any sales of property acquired for the Improvements and all income received from the investment of such gross revenues; but not any taxes levied or amounts borrowed or received as grants for construction of any part of the Improvements. The Fund shall be subdivided into separate accounts as designated and described in Sections 2.03 to 2.07, to segregate income and expenses received, paid and accrued for the respective purposes described in those sections. The gross revenues received in the Fund shall be apportioned monthly or as soon as possible after the first day of each month, 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 Improvements as may be authorized in accordance with law; including but not limited to payments due for work and materials performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands and easements, interest accruing on the Bond during the first year following the date of its delivery, if and to the extent that the Revenue Bond Account is not sufficient for payment of such interest, reimbursement of any advances made from other Issuer funds, and all other expenses incurred in connection with the construction and financing of any such undertaking. To the Construction Account shall be credited as received all proceeds of the Bond, except amounts appropriated to the Revenue Bond Account under Section 2.04, all other funds appropriated by the Issuer for the Improvements, 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, such amount as may be required over and above the balance then held in the Operating Account to pay the reasonable and necessary operating expenses of the Improvements which are then due and payable, or are to be paid prior to the next monthly

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

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

2.05. 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 Revenue Bond Account (which portion of the Net Revenues is referred to herein as Surplus Net Revenues), as BMU shall determine to be required for the accumulation of a reasonable reserve for renewal of worn out, obsolete or damaged properties and equipment of the Improvements. Moneys in this account shall be used only for the

purposes above stated or, if so directed by BMU, to redeem Bonds which are prepayable according to their terms, to pay principal or interest or administrative surcharge when due thereon as required in Section 2.04 hereof, or to pay the cost of improvements to the Improvements; provided, that in the event that the Issuer shall hereafter issue bonds for the purpose of financing the construction and installation of additional improvements or additions to the Improvements, but which additional bonds cannot, upon the terms and conditions provided in Section 3, be made payable from the Revenue Bond Account, Surplus Net Revenues from time to time received may be segregated and paid into one or more separate and additional accounts for the payment of such bonds and interest thereon, in advance of payments required to be made into the Replacement and Depreciation Account.

2.06. Surplus Account. Any amount of the Surplus Net Revenues from time to time remaining after the above required applications thereof shall be credited to the Surplus Account, and the moneys from time to time in that account, when not required to restore a current deficiency in the Revenue Bond Account as provided in Section 2.04 hereof, may be used for any of the following purposes and not otherwise:

- a) to redeem and prepay principal of the Bond when and as such principal becomes prepayable according to its terms;
- b) if the balances in the Revenue Bond Account and the Replacement and Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made therefrom prior to the end of the current fiscal year, then;
 - i. to pay for repairs or for the construction and installation of improvements or additions to the Improvements;
 - ii. to be held as a reserve for redemption and prepayment of principal of the Bond which is not then but will later be prepayable according to its terms;
 - iii. with the written consent of the District, transferred to one or more specified funds of the Issuer.

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

2.07. 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 Chapter 4-6A, South Dakota Codified Laws, in a deposit account or accounts, which shall be maintained 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 the City Council, be invested in securities permitted by the provisions of South Dakota Codified Laws, Section 4-5-6; provided, that the Replacement and Depreciation Account may be invested in such securities maturing not later than ten

years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys in that account. The investment of the moneys on deposit in the Revenue Bond Account is further restricted by the provisions of Section 6.01 hereof. Deposits and securities described in this Section shall constitute "Qualified Investments."

2.08. Additional Revenues or Collateral. The Issuer reserves the right at any time to pledge additional moneys, revenues or collateral as security for the Bond and any additional bonds. Such pledge shall not be effective unless and until the Issuer receives, and provides to the bond registrar an opinion of, nationally recognized bond counsel stating that such pledge will not adversely affect the validity or tax exemption of the Bond and any additional bonds 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 Bond shall have a statutory mortgage lien upon the Improvements and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal, interest, and Administrative Expense Surcharge on the Bond, and the Issuer agrees not sell or otherwise dispose of the Utility, the Improvements, or any substantial part thereof, except as provided in the Loan Agreement and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the collection and treatment of wastewater for municipal, industrial, and domestic purposes within the Issuer.

Section 3. Priorities and Additional Bonds.

3.01. Priority of Bond Payments. If at any time the Net Revenues of the Improvements are insufficient to pay principal and interest and administrative expense surcharge then due on the Bond, any and all moneys then on hand shall be first used to pay the interest and administrative expense surcharge accrued on the Bond, and the balance shall be applied toward payment of the maturing principal of the Bond 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 Revenue Bond Account of the Fund, on a parity as to both principal and interest and administrative expense surcharge with the Bonds in the manner and upon satisfaction of the conditions and subject to the limitations set forth in the Loan Agreement, and if any 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 the Bond is outstanding, and unpaid, with all of the provisions of the Loan Agreement, to the same extent as though such provisions were set forth in this resolution.

3.04. Rates and Charges. BMU has covenanted that it will maintain, revise, charge and collect rates and other charges for all service furnished and made available by the Improvements, according to schedules such that the gross revenues derived therefrom will be sufficient, when combined with other available funds, to pay when due all expenses of the operation and maintenance of the Improvements, and all principal of and interest and administrative expense surcharge on the Bond, to provide for the establishment and maintenance of adequate reserves, to provide an allowance adequate for recurring renewals and replacements of the Improvements, to satisfy the rate covenant provided in Section 6.4 of the Loan Agreement and to fulfill the terms of all other agreements with holders of the Issuer's bonds. The rates and charges with respect to the Improvements shall be in the form of a separately stated surcharge on the municipal utilities rate schedule; in calculating the surcharge BMU shall allocate to the Improvements its share of the expenses of operation and maintenance and allowances for renewal and replacement as well as the requirements to pay principal of and interest and administrative expense surcharge on the Bond and to repay the Utility or any other funds of the City for moneys advanced in accordance with Section 2.04 hereof.

Section 4. Amendments.

4.01. Amendments Without Bondholder Consent. The Issuer reserves the right to amend this resolution from time to time and at any time, for the purpose of curing any ambiguity or of curing, correcting or supplementing any defective provision contained herein, or of making such provisions with regard to matters or questions arising hereunder as this City Council may deem necessary or desirable and not inconsistent with this resolution, and which shall not adversely affect the 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 holder of the Bond

4.02. Amendments with Bondholder Consent. With the consent of the holder of the Bond as provided in Section 4.03, the Issuer may from time to time and at any time amend this resolution by adding any provisions hereto or changing in any manner or eliminating any of the provisions hereof, or of any amending resolution, except that no amendment shall be adopted at any time without the consent of the holder of the Bond which are then outstanding, if it would extend the maturities of any Bond, would reduce the rate or extend the time of payment of interest thereon, would reduce the amount or extend the time of payment of the principal or redemption premium thereof, would give to any Bond any privileges over any other Bond, would reduce the sources of gross revenues appropriated to the Fund, would authorize the creation of a pledge of gross revenues prior to or on a parity with the Bond (except as is authorized by Section 3), or

would reduce the percentage in principal amount of 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 Bonds which are then outstanding or, in the case of an amendment not equally affecting all outstanding Bonds, by the holders of not less than two-thirds in principal amount of the Bond adversely affected by such amendment. Any written consent to an amendment may be embodied in and evidenced by one or any number of concurrent written instruments of substantially similar tenor signed by bondholders in person or by agent duly appointed in writing, and shall become effective when delivered to the Chief Financial Officer. Any consent by the holder of any 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 his 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. Tax Matters and Effective Date.

6.01. Tax Matters.

(a) Covenant. The Issuer covenants and agrees with the holders from time to time of the Bond that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Bond to become subject to taxation under the Internal Revenue Code of 1986, as amended (the "Code"), and applicable Treasury Regulations (the "Regulations").

(b) Use of Improvements. The Issuer covenants and agrees that it will not, nor will it permit any of its officers, employees or agents, to enter into any lease, use or other agreement with any person other than a state or political subdivision or agency or instrumentality of a state, relating to the use of the Improvements or the security for the Bond which might cause the Bond to be considered a "private activity bond" within the meaning of Section 141 of the Code.

(c) Investment of Moneys on Deposit in Revenue Bond Account. The Chief Financial Officer shall ascertain monthly the amount on deposit in the Revenue Bond Account. If the amount on deposit therein ever exceeds by more than \$100,000 the aggregate amount of principal and interest due and payable from the Revenue Bond Account within 13 months thereafter, such excess shall either (1) not be invested except at a yield equal to or less than the yield borne by the Bond, or (2) be used to prepay and redeem principal installments of the Bond.

(d) Certification. The Mayor and City Clerk, being the officers of the Issuer charged with the responsibility for issuing the obligations pursuant to this resolution, are authorized and directed to execute and deliver to the purchaser a certification in order to satisfy the provisions of Section 1.148-2(b) of the Regulations. Such certification shall state that on the basis of the facts, estimates and circumstances in existence on the date of issue and delivery of the Bond as therein set forth, it is not expected that the proceeds of the Bond will be used in such a manner that would cause the Bond to be an arbitrage bond, and the certification shall further state that to the best of the knowledge and belief of the officers there are no other facts, estimates or circumstances that would materially change such expectation.

6.02. Tax-Exempt Status of the Bond and Rebate. The Issuer shall comply with requirements necessary under the Code to establish and maintain the exclusion from gross income under Section 103 of the Code of the interest on the Bond, including without limitation (1) requirements relating to temporary periods for investments, (2) limitations on amounts invested at a yield greater than the yield on the Bond, and (3) the rebate of excess investment earnings to the United States.

6.03. Repeal. All provisions of all other ordinances, resolutions and other actions and proceedings of the Issuer and of this City Council which are in any way

inconsistent with the terms and provisions of this resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this resolution.

Ordinance 22-030. A public hearing was held on Ordinance 22-030, an Ordinance pertaining to the Unlawful Use of Dynamic Braking Devices. A motion was made by Council Member Wendell, seconded by Council Member Doran, that Ordinance 22-030 be approved. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Collins, Tilton Byrne, Avery, Doran, and Specker.

House Moving Request. A public hearing was held on a house moving request for a single-story residential home from 1218 6th Street to the property described as Lot 3A, Block 9, Moriarty-Edgebrook Addition. A motion was made by Council Member Doran, seconded by Council Member Avery, that the house moving request be approved. Public Comment: Jenna Schulte. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Collins, Tilton Byrne, Avery, Doran, and Specker.

Resolution 22-072. A motion was made by Council Member Doran, seconded by Council Member Wendell, that Resolution 22-072, a Resolution Waiving Building Permit Fees for 15th Street South / 7th Avenue South Workforce Housing Project, be approved. The motion carried by the following vote: Yes: 6 - Niemeyer, Wendell, Tilton Byrne, Avery, Doran, and Specker; No: 1 – Collins.

Resolution 22-072 - A Resolution Waiving the Building Permit Fees
for 15th Street South / 7th Avenue South Workforce Housing

Whereas, the City of Brookings created the Brookings Affordable Housing Task Force;
and

Whereas, the Brookings Affordable Housing Task Force presented their findings and their recommendations were accepted by the City Council; and

Whereas, the report defined a need for affordable owner and renter occupied workforce housing; and

Whereas, the recommendations of the report include multiple opportunities for achievement of the goals; and

Whereas, the City of Brookings and South Dakota Housing Development Authority have provided financial commitments to the project; and

Whereas, CD Properties, LLC proposes construction of 20 owner-occupied, deed restricted units; and

Whereas, CD Properties, LLC has requested the building permit fees for the 15th Street South / 7th Avenue South Workforce Housing Project be waived.

Now, Therefore, Be It Resolved that the Building Permit Fees be waived for the 15th Street South / 7th Avenue South Workforce Housing Project.

Council Member Introduction of Topics for Future Discussion.

A motion was made by Council Member Specker, seconded by Council Member Tilton Byrne, to request an October 11th Budget Work Session for additional discussion on outside agency funding. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Collins, Tilton Byrne, Avery, Doran, and Specker.

A motion was made by Council Member Wendell, seconded by Council Member Tilton Byrne, to ask staff review Code Section 22-233 and if it is possible change the public hearing process to an administrative process for moving permit applications which involve a dwelling originally constructed on-site and previously occupied and is to be moved within city limits. The motion carried by the following vote: Yes: 7 - Niemeyer, Wendell, Collins, Tilton Byrne, Avery, Doran, and Specker.

A motion was made by Council Member Specker, seconded by Mayor Niemeyer, to ask staff to look at a solution for not recording or rebroadcasting the Open Forum portion of the City Council Agenda. The motion carried by the following vote: Yes: 6 - Niemeyer, Wendell, Tilton Byrne, Avery, Doran, and Specker; No: 1 – Collins.

Executive Session. A motion was made by Council Member Collins, seconded by Council Member Wendell, to enter into Executive Session at 7:12 p.m., pursuant to SDCL 1-25-2.3, for consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters, and SDCL 1-25-2.5, for discussing marketing or pricing strategies by a board or commission of a business owned by the state or any of its political subdivisions, when public discussion may be harmful to the competitive position of the business. Present: City Council, City Attorney, Assistant City Manager, City Clerk, Erick Rangel, Chief Financial Officer, and Michael Logan, Swiftel Center General Manager. 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 7:38 p.m. The motion carried by a unanimous vote.

Adjourn. A motion was made by Council Member Tilton Byrne, seconded by Council Member Wendell, that this meeting be adjourned at 7:38 p.m. The motion carried by a unanimous vote.

CITY OF BROOKINGS, SD

Oepke G. Niemeyer, Mayor

ATTEST:

Bonnie Foster, City Clerk