

Brookings City Council
October 13, 2020 (unapproved)

The Brookings City Council held a meeting on Tuesday, October 13, 2020 at 6:00 PM, at the City & County Government Building Chambers with the following City Council members present: Mayor Keith Corbett and Council Members Holly Tilton Byrne, Leah Brink, Patty Bacon, Joey Collins, Nick Wendell, and Oepke Niemeyer. City Attorney Steve Britzman, City Manager Paul Briseno, and City Clerk Bonnie Foster was also present.

6:00 PM REGULAR MEETING

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

3.A. Action to approve the agenda.

3.B. Action to approve the September 22, 2020 City Council Minutes.

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

Human Rights Commission, College Student Representative: appoint Shedrick Flournoy (term expires 5/1/2021); Public Arts Commission, SDSU School of Design Representative: appoint Brian Rex (term expires 1/1/2023); Sustainability Council: appoint Louis Hesler (term expires 1/1/2023).

New/Promoted City of Brookings Employees. Brookings Police Department: Jonny Weinrich was promoted from Patrol Officer to Patrol Sergeant. Information Technology Department: Don Goff has been hired as the new Information Technology Department Manager.

Proclamation. A Proclamation on National Disability Employment Awareness Month was presented to Mark Sternhagen, representative of the Brookings Committee for People who have Disabilities.

MAYORAL PROCLAMATION
CITY OF BROOKINGS, SOUTH DAKOTA

WHEREAS, National Disability Employment Month is commemorating its 75th Anniversary of educating about disability employment issues and celebrate the many and varied contributions of America's workers with disabilities,

WHEREAS, NDEAM is led by the U.S. Department of Labor's Office of Disability Employment Policy, but its true spirit lies in the many observances held at the grassroots level across the nation every year. Employers of all sizes and in all industries are encouraged to participate in NDEAM.

WHEREAS, Workplaces welcoming of the talents of all people, including people with disabilities, are a critical part of our efforts to build an inclusive community and strong

economy.

NOW, THEREFORE, I, Keith W. Corbett, Mayor of the City of Brookings, do hereby proclaim October 2020 as

NATIONAL DISABILITY EMPLOYMENT AWARENESS MONTH

And I call upon employers, schools and other community organizations in Brookings to observe this month with appropriate programs and activities, and to advance its important message that people with disabilities are equal to the task throughout the year.

IN WITNESS WHEREOF, I have placed the Seal of the City of Brookings, State of South Dakota, this 13th day of October, 2020.

Keith W. Corbett, Mayor

City of Brookings / Brookings County Settlement Agreement. City Attorney Steve Britzman provided an overview of the Settlement Agreement with Brookings County on the Brookings County Detention Facility Project. The City of Brookings received a ruling from the Circuit Court this year on the Brookings County Detention Facility. In July, the City sought to proceed with litigation efforts through the South Dakota Supreme Court. In August, City Council passed resolution 20-066 withdrawing the Supreme Court appeal. The resolution authorized the City Manager to execute a settlement agreement and release to terminate the litigation.

Open Forum. Bradley Walker expressed concerns and urged the City Council to allow businesses to return to 100% occupancy with the requirement of masks and social distancing.

SDSU Student's Association Report. Hattie Seten, SDSU Students Association President, provided an update on SDSU happenings to the City Council and public.

Resolution 20-079. A motion was made by Council Member Wendell, seconded by Council Member Brink, that Resolution 20-079, a Resolution Awarding Bids on 2020-2021 Contractor Snow Removal Equipment Contracts, be approved. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, and Collins.

Resolution 20-079 - Resolution Awarding Snow Removal Equipment Contracts

Whereas, the City of Brookings opened bids for Snow Removal Equipment on Thursday, October 2, 2020 at 1:30 pm at Brookings City & County Government Center; and

Whereas, the City of Brookings has received the following bids for Snow Removal Equipment:

Four (4) Motor Graders with Wings: Two bids were received. 1) Bowes Construction, Inc., CAT, \$185.00/hour; and 2) Bowes Construction, Inc., CAT w/ Wing, \$200.00/hour.

One (1) 3- to 6-Yard Loader: Six bids were received. 1) Winter Contracting LLC, 644K, 4.50 cubic yards, \$184.00/hour; 2) Winter Contracting, LLC, 624K, 3.50 cubic yards, \$145.00/hour; 3) Bowes Construction, CAT, 5.00 cubic yards, \$220.00/hour; 4) Bowes Construction, CAT, 4.00 cubic yards, \$190.00/hour; 5) Bowes Construction, CAT, 3.00 cubic yards, \$170.00/hour; and 6) Timmons Construction, Inc., Hyundai 757, 3.30 cubic yards, \$155.00/hour.

Four (4) Loaders with Reversible Blades: One bid received. 1) Bowes Construction, CAT, \$210.00/hour.

Ten (10) End-Dump Trucks: Thirteen bids were received. 1) DeBoer Construction, #102, 28.00 cubic yards, \$135.00/hour; 2) Winter Contracting, Inc., #14, 23.00 cubic yards, \$122.00/hour; 3) DeBoer Construction, #101, 23.00 cubic yards, \$125.00/hour; 4) Bowes Construction, Inc., #26, 22.70 cubic yards, \$130.00/hour; 5) Bowes Construction, Inc., #27, 22.70 cubic yards, \$130.00/hour; 6) Bowes Construction, Inc., #29, 22.70 cubic yards, \$130.00/hour; 7) Bowes Construction, Inc., #30, 22.70 cubic yards, \$130.00/hour; 8) Prussman Contracting, Inc., #19, 22.80 cubic yards, \$135.00/hour; 9) Prussman Contracting, Inc., #20, 22.80 cubic yards, \$135.00/hour; 10) Prussman Contracting, Inc., #22, 22.20 cubic yards, \$135.00/hour; 11) Timmons Construction, Inc., #4, 22.20 cubic yards, \$135.00/hour; 12) Prussman Contracting, Inc., #21, 20.60 cubic yards, \$135.00/hour; and 13) Prussman Contracting, Inc., #23, 19.50 cubic yards, \$135.00/hour.

Four (4) Side-Dump Trucks: Four bids were received. 1) Winter Contracting, LLC, #10, 34.00 cubic yards, \$138.00/hour; 2) Winter Contracting, LLC, #12, 32.00 cubic yards, \$138.00/hour; 3) DeBoer Construction, Inc., #103, 34.00 cubic yards, \$150.00/hour; and 4) DeBoer Construction, Inc., #104, 34.00 cubic yards, \$150.00/hour.

Now Therefore, Be It Resolved the following bids be accepted:

Four (4) Motor Graders with Wings: Two bids were received. 1) Bowes Construction, Inc., CAT, \$185.00/hour; and 2) Bowes Construction, Inc., CAT w/ Wing, \$200.00/hour.

One (1) 3- to 6-Yard Loader: Six bids were received. 1) Winter Contracting LLC, 644K, 4.50 cubic yards, \$184.00/hour; 2) Winter Contracting, LLC, 624K, 3.50 cubic yards, \$145.00/hour; 3) Bowes Construction, CAT, 5.00 cubic yards, \$220.00/hour; 4) Bowes Construction, CAT, 4.00 cubic yards, \$190.00/hour; 5) Bowes Construction, CAT, 3.00 cubic yards, \$170.00/hour; and 6) Timmons Construction, Inc., Hyundai 757, 3.30 cubic yards, \$155.00/hour.

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Resolution 20-080. A motion was made by Council Member Bacon, seconded by Council Member Brink, that Resolution 20-080, a Resolution Awarding Bids on 2020-2021 Snow and Ice Removal Road Salt, be approved. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, and Collins.

Resolution 20-080 - Resolution Awarding Snow and Ice Removal Road Salt

Whereas, the City of Brookings opened bids for Snow and Ice Removal Road Salt on Thursday, October 2, 2020 at 1:30 pm at Brookings City & County Government Center; and

Whereas, the City of Brookings has received the following bids:

Johnson Feed, Canton, SD, \$74.00/ton
Blackstrap, Inc., Neligh, NE, \$74.30/ton
Mills and Miller, Brandon, SD, \$78.00/ton
Central Salt, Lyons, KS, \$86.01/ton

Now Therefore, Be It Resolved the bid for Snow and Ice Removal Road Salt be awarded to Johnson Feed, Canton, SD in the amount of \$74.00/ton.

City General Employee Contract. A motion was made by Council Member Wendell, seconded by Council Member Brink, that the City General Employee Contract be approved. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, and Collins.

Police Department Union Contract. A motion was made by Council Member Wendell, seconded by Council Member Bacon, that the Police Department Union Contract be

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

Resolution 20-081. A motion was made by Council Member Bacon, seconded by Council Member Wendell, that Action on Resolution 20-081, a Resolution authorizing the Execution of a Real Estate Sale Acquisition Agreement. be approved. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, and Collins.

Resolution 20-081 - Resolution Authorizing the Execution of a
Real Estate Sale Acquisition Agreement

Be It Resolved by the City Council of the City of Brookings, South Dakota as follows:
Whereas, the City of Brookings desires to purchase the following described property:
Approximately 3.48 Acres in the Southeast ¼ of the McClemans Addition to the City of Brookings, County of Brookings, State of South Dakota.

Whereas, the property has been offered to the City and the City of Brookings has prepared a proposed Real Estate Acquisition Agreement, the terms of which are satisfactory to the City of Brookings.

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

- A. That the City acquire title to the above-described real property pursuant to a Real Estate Sale Acquisition Agreement with Prairie Meadow, Inc., Mike McClemans and Kathy McClemans; and
- B. That the Mayor, City Clerk, City Attorney and City Manager are authorized to execute the documents required to complete this transaction in accordance with this Resolution.

FIRST READING – Ordinance 20-022. An introduction and first reading was held on Ordinance 20-022, an Ordinance Establishing a Public Works Department. Second Reading: October 27, 2020.

A motion was made by Council Member Brink, seconded by Council Member Wendell, to hold additional discussion on Ordinance 20-022, an Ordinance Establishing a Public Works Department, at an upcoming Study Session. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, and Collins.

Ordinance 20-021. A public hearing was held on Ordinance 20-021, an Ordinance Amending Chapter 51, Subdivision Regulations, pertaining to Information Required for a Preliminary Plat and Final Plat. A motion was made by Council Member Wendell, seconded by Council Member Brink, that Ordinance 20-021 be approved. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, and Collins.

Resolution 20-082. A public hearing was held on Resolution 20-082, a Resolution giving approval to certain Storm Drainage Improvements; giving approval to the Issuance and Sale off a Revenue Bond to Finance, Directly or Indirectly, the Improvements to the Facilities; approving the Form of the Loan Agreement and the Revenue Bond and Pledging Revenues and Collateral to Secure the Payment of the Revenue Bond; and creating Special Funds and Accounts for the Administration of Funds for Operating of the System and Retirement of the Revenue Bond. (State Avenue Watershed Improvement Project). A motion was made by Council Member Brink, seconded by Council Member Wendell, that Resolution 20-082 be approved. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, and Collins.

Resolution 20-082 - Resolution Giving Approval To Certain Storm Drainage Improvements; Giving Approval To The Issuance And Sale Of A Revenue Bond To Finance, Directly Or Indirectly, The Improvements To The Facilities; Approving The Form Of The Loan Agreement And The Revenue Bond And Pledging Revenues And Collateral To Secure The Payment Of The Revenue Bond; And Creating Special Funds And Accounts For The Administration Of Funds For Operating Of The System And Retirement Of The Revenue Bond. (State Avenue Watershed Improvement Project)

Whereas, one of the purposes of SDCL Chapter 9-40 (the "Act") as found and determined by the Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of any system for the collection, treatment and disposal of sewage and other domestic, commercial and industrial wastes; or any system for the control of floods and drainage; or any combination thereof, together with extensions, additions, and necessary appurtenances; and,

Whereas, a municipality is authorized by Section 6 of the Act to issue revenue bonds to defray the cost of extensions, additions and improvements to any utility previously owned and is authorized to pledge the net income or revenues from the net income or revenues from the system in accordance with Section 15 of the Act; and,

Whereas, the City of Brookings (the "City") currently operates a storm drainage system for the control of floods and other storm water drainage and has determined that improvements to the storm drainage system are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its storm drainage, and has determined that improvements to the storm drainage system are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its storm drainage system; and,

Whereas, the City has determined to issue its revenue bonds to finance the improvements to its storm drainage system for the purpose of storm water management (the "System") and has applied to the South Dakota Conservancy District (the "District") for a Clean Water State Revolving Fund Loan to finance the improvements;

Whereas, the City shall adopt rates and charges to be pledged, segregated and used for the payment of the Revenue Bond.

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

SECTION 1. Definitions. The terms when used in this Resolution shall have the following meanings set forth in this section unless the context clearly requires otherwise.

All terms used in this Resolution which are not defined herein shall have the meanings assigned to them in the Loan Agreement unless the context clearly otherwise requires.

“Act” means South Dakota Codified Laws Chapter 9-40.

“Loan” means the Loan made by the South Dakota Conservancy District to the City pursuant to the terms of the Loan Agreement and as evidenced by the Revenue Bond.

“Project” means the City of Brookings State Avenue Watershed Improvement Project.

“Revenue Bond” means the revenue bond or bonds issued the date of the Loan Agreement by the City to the South Dakota Conservancy District to evidence the City’s obligation to repay the principal of and pay interest and Administrative Expense Surcharge on the Loan.

“System” means the City’s system of collection and management of storm water drainage.

SECTION 2. Declaration of Necessity and Findings.

2.1. Declaration of Necessity. The City hereby declares and determines it is necessary to construct and finance improvements to its System described as the Project.

2.2. Findings. The City does hereby find as follows:

2.2.1. The City hereby expressly finds that if the Project is not undertaken, the System will pose a health hazard to the City and its inhabitants, and will make the City unable to comply with state and federal law.

2.2.2. Because of 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, including SDCL Chapter 34A-2, and the federal Clean Water Act, and the nature of the improvements financed, the City hereby finds and determines that the Project will substantially benefit the entire System and all of its users within the meaning of Sections 15 and 17 of the Act.

2.2.3. The City hereby determines and finds that for the purposes of the Act, including,

in particular, Sections 15 and 17 of the Act, that only the net income from the system as improved financed by the Revenue Bond, be pledged for its payment.

SECTION 3. Authorization of Loan, Pledge of Revenue and Security.

3.1. Authorization of Loan. The City hereby determines and declares it necessary to finance up to \$850,000 of the costs of the Project through the issuance of bonds payable from the net revenues of the system and other funds secured by the City. The City hereby determines that because the Revenue Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to Section 15 of the Act no election is required to issue the Revenue Bond.

3.2. Approval of Loan Agreement. The execution and delivery of the Revenue Obligation Loan Agreement (the "Loan Agreement"), the form of which is on file with the City Finance Officer (the "Finance Officer") and open to public inspection, between the City as Borrower and the District, are hereby in all respects authorized, approved and confirmed, and the Mayor and Finance Officer are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content attached hereto, with such changes as the attorney for the City deems appropriate and approves, for and on behalf of the City. The Mayor and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the City 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 Finance Officer and is available for inspection by any interested party.

3.3. Approval of Revenue Bond. The issuance of a revenue bond in a principal amount not to exceed \$850,000 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (the "Revenue Bond") shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the Mayor, Finance Officer, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the District, for and on behalf of the City, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The Mayor and Finance Officer are hereby authorized to approve the final terms of the Revenue Bond and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapter 9-40 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided in Section 19 of the Act.

3.4. Pledge of Revenues. The Revenue Bond together with the interest thereon, shall not constitute a charge against the City's general credit or taxing power, but shall be a limited obligation of the City payable solely out of the Project Debt Service Account, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Revenue Bond and shall be used for no other purpose than to pay the principal of, interest and Administrative Surcharge on the Revenue Bond, except as may be otherwise expressly authorized in the Loan Agreement (including the purpose of securing Additional Bonds issued as

permitted by the terms thereof). The City hereby irrevocably pledges to the South Dakota conservancy District all income and revenues of the System, including, without limitation, fees, charges to users of the System, penalties and hook-up fees, sign-up fees, proceeds of business interruption insurance, proceeds from the sale of property constituting part of the System and investment income on all such revenues, but only to the extent that the revenues exceed the amounts necessary to operate and maintain the System, provided there shall be excluded from this pledge the proceeds of any federal or state grant or loan, and the investment income therefrom, to the extent such exclusion is a condition of such grant or loan. The City covenants and agrees to charge rates for all services from the System or establish charges or rates which will be sufficient to provide for the payments upon the Revenue Bond issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the System, and depreciation, and the Rate Ordinance shall be revised from time to time so as to produce these amounts. The City hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Revenue Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene the covenant of the City set forth in this Section 3 or any other covenant or agreement in the Loan Agreement.

SECTION 4. Rates, Certification, Segregation and Review.

4.1. Rates and collection There shall be charged rates for each fiscal year which shall ensure that its Net Revenues Available for Debt Service will equal at least 110% of its System Debt Service for such fiscal year.

4.2. Certification. In each fiscal year, or as soon as practicable, and in any event by the date of the delivery of the unaudited financial statements required in the Loan Agreement, the City shall (a) calculate its Net Revenues Available for Debt Service and System Debt Service for the fiscal year, and (b) certify such figures to the South Dakota Conservancy District. The certification described in clause (b) of the preceding sentence shall be substantially in the form of the certificate attached as Appendix E to the Loan Agreement. If the City fails to meet the Rate Covenant set forth in Section 6.4 of the Loan Agreement, the City shall supply the District with quarterly reports on the actions it is taking to correct its coverage deficiency until it delivers an annual coverage certificate showing compliance with the first sentence of this Section.

4.3. Segregation. The Finance Officer shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue.

4.4. Periodic review. The storm sewer drainage fees shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the Loan Agreement's rate covenant and to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due. The rates may be set by ordinance or resolution in accordance with this Section. The rate

ordinance or resolution shall be necessary for the support of government and shall be effective upon passage.

SECTION 5. Additional Bonds. As permitted by Sections 8 and 9 of the Act, Additional Bonds payable from revenues and income of the System may be issued, as permitted in the Loan Agreement, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements. The City shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond pursuant to the Loan Agreement.

SECTION 6. System Fund Accounts. For the purpose of application and proper allocation of net income of the System and to secure the payment of principal, Administrative Surcharge and interest on the Revenue Bond, the following mandatory asset segregations shall be included in the sewer system account of the City and shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Revenue Bond:

6.1. System Revenue Account. There shall be deposited periodically into the System Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the System collected pursuant to the Ordinances and resolutions of the City of Brookings, South Dakota (collectively the "Rate Ordinance"). Moneys from the System Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

6.2. System Debt Service Account. Out of the revenues in the System Revenue Account, there shall be set aside no later than the 25th day of each month into the account designated System Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal of, interest and Administrative Surcharge on the Revenue Bonds and any reserve determined by the City's governing body to be necessary. The amount set aside monthly shall be not less than one-third of the total principal, interest, and Administrative Surcharge payable on the following January 15, April 15, July 15 or October 15 and if there shall be any deficiency in the amount previously set aside, then the amount of such deficiency shall be added to the current requirement.

6.3. Depreciation Account. There shall be established a General Depreciation Account. Out of the revenues of the System Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the Common Council to be a proper and adequate amount for repair and depreciation of the System.

6.4. System Surplus Account. There shall be established the System Surplus Account. Revenues remaining in the System Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the System Surplus Account. If at any time there shall exist any default in making any periodic transfer to the System Debt

Service Account, the Common Council shall authorize the City Finance Officer to rectify such default so far as possible by the transfer of money from the System Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above. When not required to restore a current deficiency in the System Debt Service Account, moneys in the System Surplus Account from time to time may be used for any of the following purposes and not otherwise:

- a) To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;
- b) To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then:
- c) To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or
- d) To be used for any other authorized municipal purpose designated by the Common Council.
- e) No moneys shall at any time be transferred from the Project Surplus Account or any other account of the Fund to any other fund of the City, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

SECTION 7. Approval of Paying Agent/Registrar. The Revenue Bond shall be payable at the office of U.S. Bank National Association, St. Paul, Minnesota, hereby designated as paying agent and registrar.

SECTION 8. Approval of Bond Counsel. Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

SECTION 9. Tax Matters. The Interest on the Revenue Bond shall be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended ("the Code") and applicable Treasury Regulations (the "Regulations").

SECTION 10. Covenants. The City hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

10.1. The City will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this Resolution.

10.2. The City agrees and covenants that it will promptly construct the improvements included in the Project.

10.3. The City covenants and agrees that pursuant to Sections 25 through 27 of the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal, interest and Administrative Surcharge on the Revenue Bond, and the City agrees not to sell or otherwise dispose of the System, the Project, 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 distribution of water for municipal, industrial, and domestic purposes within the City.

10.4. The City covenants and agrees with the District and other owners of the Revenue Bond that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements and accounts as provided for in this Resolution and the Loan Agreement. The Revenue Bond shall refer expressly to this Resolution and the Act and shall state that it is subject to all provisions and limitations thereof pursuant to Section 19 of the Act.

SECTION 11. Depositories. The Finance Officer shall cause all moneys pertaining to the Funds and Accounts to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of SDCL Ch. 4-6A, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the City, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Funds and Accounts as authorized in this Resolution; except that moneys from time to time on hand in the Funds and Accounts may at any time, in the discretion of the City's governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Fund 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 Fund or 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 therein.

SECTION 12. Consent to Appointment. In the event of mismanagement of the Project, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the Project are dissipated, wasted or diverted from their proper application as set forth in the Loan Agreement, Revenue Bond, or herein, the City hereby consents to the appointment of a receiver pursuant to Section 33 of the Act, and agrees that the

receiver will have the powers set forth therein, and in Sections 34 and 35 of the Act to operate and administer the Project, and charge and collect rates as described therein.

SECTION 13. Severability. If any section, paragraph, clause or provision of this Resolution, the Loan Agreement, the Revenue Bond, or any other Loan Document shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Resolution or said Loan Agreement, Revenue Bond, or any other Loan Document.

SECTION 14. Repeal of Resolution. At such time as the Project Revenue Bond is defeased or paid in full, this Resolution and the special charge or surcharge shall automatically be repealed without any further action of the City.

SECTION 15. Authorization of City Officials. The Mayor, Finance Officer, City Attorney and City officials shall be and they are hereby authorized to execute and deliver for and on behalf of the City any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the actions authorized herein.

SECTION 16. Effective Date. This Resolution shall take effect on the 20th day following its publication, unless suspended by a referendum.

Resolution 20-083. A public hearing was held on Resolution 20-083, a Resolution authorizing the City Manager to enter into an Operating Agreement for an On-Sale Liquor Operating Agreement for Gonz Productions, Inc., dba Main Street Pub, Garner Hansen, owner, 408 Main St.: legal description: Block 7, Lot 5, Original Plat Addition. A motion was made by Council Member Brink, seconded by Council Member Tilton Byrne, that Resolution 20-083 be approved. Public Comment: Garner Hansen, Kirk Simet, Tim Hogan, and Jesse Lee. The motion carried by the following vote: Yes: 7 - Corbett, Niemeyer, Brink, Bacon, Wendell, Tilton Byrne, and Collins.

Resolution 20-083 - Gonz Productions, Inc., dba Main Street Pub
On-Sale Liquor Operating Agreement

Now, Therefore, 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 Gonz Productions, Inc., dba Main Street Pub, Garner Hansen, owner, 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 408 Main Avenue: legal description: Block 7, Lot 5, 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 five (5) years and renewal for another five (5) years.

COVID-19 Update. City Manager Paul Briseno provided an update on COVID-19 to the City Council and public.

Adjourn. A motion was made by Council Member Bacon, seconded by Council Member Collins, that this meeting be adjourned at 7:33 p.m. The motion carried by a unanimous vote.

CITY OF BROOKINGS

ATTEST:

Keith W. Corbett, Mayor

Bonnie Foster, City Clerk