

Brookings City Council
December 8, 2020 (unapproved)

The Brookings City Council held a meeting on Tuesday, December 8, 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 Nick Wendell, Holly Tilton Byrne, Leah Brink, Patty Bacon, and Oepke Niemeyer. Absent: Council Member Joey Collins. City Attorney Steve Britzman, City Manager Paul Briseno, and City Clerk Bonnie Foster were also present.

6:00 PM REGULAR MEETING

Consent Agenda. A motion was made by Council Member Wendell, seconded by Council Member Brink, to approve the Consent Agenda. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Brink, Bacon, Wendell, and Tilton Byrne; Absent: 1 – Collins.

3.A. Action to approve the agenda.

3.B. Action to approve the November 24, 2020 City Council Minutes.

3.C. Action on annual Wine Alcohol License Renewals for 2021. Wine (On-Off Sale): Wooden Legs Brewing Co., Inc. 309-311 5th Street; and Yessica's Restaurant, 1300 Main Avenue South.

Open Forum.

Bradley Walker expressed concerns regarding the City of Brookings social media campaign regarding COVID-19.

Presentation: Proclamation. Mayor Corbett read the Proclamation, designating December 16, 2020 as Al Heuton Day. The Mayor will present the Proclamation to Al Heuton at a later date.

Mayoral Proclamation
City of Brookings, South Dakota

Whereas, Al Heuton retires this month after 15 years of visionary and devoted service as the Executive Director for Brookings Economic Development Corporation; and

Whereas, Al's strategic recruitment and expansion of businesses has resulted in the creation of over 1,000 new jobs and capital investments exceeding \$100 million; and

Whereas, Al is directly responsible for bringing in over \$24 million in grant dollars for the Brookings region; and

Whereas, Brookings has seen tremendous growth during Al's tenure including a population increase of 26% and an ongoing economic impact from his work of more than \$100 million annually; and

Whereas, Brookings has garnered significant national recognition for economic success during Al's tenure including being named #16 Best Performing Micropolitan in the

Country by Policom in 2020, a National Micropolitan Success Story by the Walton Family Foundation in 2018 and one of only eleven communities chosen for a Case Study for Positive Economic Transformation for the State of Indiana in 2014.

Now, Therefore, I Keith W. Corbett, Mayor of the City of Brookings, South Dakota, do hereby proclaim Wednesday, December 16, 2020, as Al Heuton Day.

In Witness Whereof, I have hereunto set forth my hand and caused to be affixed the Great Seal of the City of Brookings, this 8th day of December, 2020.

Project Update: 20th Street South BUILD Grant / Interchange. City Engineer Jackie Lanning provided a 60% Construction update on the BUILD Grant / Interchange Project. The 90% review is tentatively scheduled for February, 2021.

Resolution 20-101. A motion was made by Council Member Niemeyer, seconded by Council Member Brink, that Resolution 20-101, a Resolution Authorizing Change Order No. 1 (Final) for 2020-08STI Street Maintenance & Overlay Project; Bowes Construction, Inc., be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Brink, Bacon, Wendell, and Tilton Byrne; Absent: 1 – Collins.

Resolution 20-101 - Resolution Authorizing Change Order No. 1, Final, for 2020-08STI Street Maintenance and Overlay Project; Bowes Construction, Inc.

Be It Resolved by the City Council that the following change order be allowed for 2020-08STI, Street Maintenance and Overlay Project: Construction Change Order Number 1 (Final): Adjust plan quantities to as-constructed quantities for a total increase of \$34,630.57 to close out the project.

Resolution 20-102. A motion was made by Council Member Wendell, seconded by Council Member Tilton Byrne, that Resolution 20-102, a Resolution Approving an Art Installation Agreement between the City of Brookings and Reed Madden for the purpose of Public Art at Bob Shelden Field, be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Brink, Bacon, Wendell, and Tilton Byrne; Absent: 1 – Collins.

Resolution 20-102 - A Resolution Approving an Art Installation Agreement between the City of Brookings and Reed Madden for the purpose of Public Art at Bob Shelden Field

Whereas, the City of Brookings is the owner of Bob Shelden Athletic Field Complex located at 621 Medary Avenue South; and

Whereas, one of the goals of the City of Brookings' Strategic Plan is to create a connected community through opportunities for public engagement and added vibrancy to public spaces through the use of art; and

Whereas, the City of Brookings selected Reed Madden Designs, a professional art team, through a competitive process as the preferred artist for the Bob Shelden project; and

Whereas, the City of Brookings has negotiated a Public Art Installation Agreement with Reed Madden Designs for the construction and installation of public art at the Bob Shelden Athletic Field Complex.

Now, Therefore, Be It Resolved by the City Council of the City of Brookings, South Dakota that the proposed Public Art Installation Agreement between the City of Brookings and Reed Madden Designs be approved, together with the terms and conditions included therein, for the public art project at Bob Shelden Athletic Complex.

Resolution 20-103. A motion was made by Council Member Brink, seconded by Council Member Niemeyer, that Resolution 20-103, a Resolution Authorizing the City to Lease Real Property to Brookings Backpack Program, be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Brink, Bacon, Wendell, and Tilton Byrne; Absent: 1 – Collins.

Resolution 20-103 - Resolution of Intent to Lease Real Property
to Brookings Backpack Program

Be It Resolved by the governing body of the City of Brookings, South Dakota that the City of Brookings intends to enter into a lease agreement with Brookings Backpack Program on a month-to-month basis for a period not to exceed two years; and

Whereas the lease pertains to the following described property: Research & Technology Center – 807 32nd Avenue.

Whereas, the Lease will be an amount of \$0.00 per square foot based on the agreed upon square footage of 2,066 square feet for a period not to exceed two (2) years.

Be It Further Noted, that a Public Hearing on this Resolution was held on December 8, 2020 at 6:00 o'clock P.M. at the Brookings City & County Government Center and that all persons were given an opportunity to be heard on the intent to lease real property.

Resolution 20-104. A motion was made by Council Member Wendell, seconded by Council Member Brink, that Resolution 20-104, a Resolution of Intent to Lease Real Property to RTI, LLC. be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Brink, Bacon, Wendell, and Tilton Byrne; Absent: 1 – Collins.

Resolution 20-104 - Resolution of Intent to Lease Real Property
to Rural Technologies, Inc.

Be It Resolved by the governing body of the City of Brookings, South Dakota that the City of Brookings intends to enter into a lease agreement with RTI, LLC., on a

month-to-month basis terminating on or before December 31, 2022; and

Whereas, the lease pertains to the following described property: Research & Technology Center – 801 32nd Avenue, Suite 100.

Whereas, the Lease will be an amount of \$10.00 per square foot for 10,957 square feet of office/lab space and \$4.00 per square foot for 2,134 square feet of garage/cold storage space.

Be It Further Noted, that a Public Hearing on this Resolution was held on December 8, 2020 at 6:00 o'clock P.M. at the Brookings City & County Government Center and that all persons were given an opportunity to be heard on the intent to lease real property.

FIRST READING – Ordinance 20-029. An introduction and first reading was held on Ordinance 20-029, an Emergency Ordinance Amending Emergency Ordinance 20-028 to Extend and to Comprehensively Adopt Provisions to Address a Public Health Crisis and to Revise Certain Measures which are Necessary for the Immediate Preservation of the Public Health, Safety and Welfare of the City and are Necessary to Slow the Community Spread of Coronavirus (COVID-19) in the City of Brookings, South Dakota. Public Comment: Bill Alsaker, Bradley Walker, Russ Widhalm, and Jody Owen. Second Reading: December 15, 2020.

Temporary Alcohol Application. A public hearing was held on a Temporary Alcohol Application from St. Thomas More Catholic School, to operate within the City of Brookings, South Dakota, on February 6, 2021, for a Winter Gala and Grand Auction to be held at 1700 8th Street South. A motion was made by Council Member Brink, seconded by Council Member Tilton Byrne, that the Temporary Alcohol Application be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Brink, Bacon, Wendell, and Tilton Byrne; Absent: 1 – Collins.

Resolution 20-105. A public hearing was held on Resolution 20-105, a Resolution of Intent to Lease Real Property to Lyle Bothe in Section 21-T110N-R50W (West of Brookings Airport). A motion was made by Council Member Niemeyer, seconded by Council Member Wendell, that Resolution 20-105 be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Brink, Bacon, Wendell, and Tilton Byrne; Absent: 1 – Collins.

Resolution 20-105 - Resolution of Intent to Lease Real Property to Lyle Bothe
in Section 21-T110N-R50W (West of Brookings Airport)

Be It Resolved by the governing body of the City of Brookings, South Dakota, that the City of Brookings intends to enter into a Lease with Lyle Bothe for a period of two (2) years, commencing January 1, 2021 and ending December 31, 2022; and

Whereas, the Bidder may have the option to renew this Lease for two additional one-year terms for 2023 and 2024; and

Whereas, this lease pertains to the following described property: the designated hay land, eighty-five (85) acres more or less, in Section 21, T110N-R50W in the City of Brookings, Brookings County, South Dakota.

Whereas, the Lease will be an amount of One Hundred Eleven Dollars and Zero Cents (\$111.00) per acre for hay land, payable the first half payment will be due July 1st with the second half due November 1st of each year.

Be It Further Noted, that a Public Hearing on this Resolution was held on December 8, 2020, at 6:00 o'clock P.M. in the Chambers of the City & County Government Center and that all persons were given an opportunity to be heard on the intent to lease real property.

Resolution 20-106. A public hearing was held on Resolution 20-106, a Resolution of Intent to Lease Real Property to Lyle Bothe in Section 11-T109N-R50W (Main Avenue S. & 32nd Street S.). A motion was made by Council Member Brink, seconded by Council Member Wendell, that Resolution 20-106 be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Brink, Bacon, Wendell, and Tilton Byrne; Absent: 1 – Collins.

Resolution 20-106 - Resolution of Intent to Lease Real Property to Lyle Bothe
in Section 11-T109N-R50W (Main Avenue S. & 32nd Street S.)

Be It Resolved by the governing body of the City of Brookings, South Dakota, that the City of Brookings intends to enter into a Lease with Lyle Bothe for a period of two (2) years, commencing January 1, 2021 and ending December 31, 2022; and

Whereas, the Bidder may have the option to renew this Lease for two additional one-year terms for 2023 and 2024; and

Whereas, this lease pertains to the following described property: the designated hay land, eighteen (18) acres more or less, in Section 11-T109N-R50W in the City of Brookings, Brookings County, South Dakota.

Whereas, the Lease will be an amount of Fifty-two Dollars and Fifty Cents (\$52.50) per acre for hay land, payable the first half on July 1st of each year and the second half payable on November 1st of ear year.

Be It Further Noted, that a Public Hearing on this Resolution was held on December 8, 2020 at 6:00 o'clock P.M. in the Chambers of the City & County Government Center and that all persons were given an opportunity to be heard on the intent to lease real property.

Resolution 20-107. A public hearing was held on Resolution 20-107, a Resolution of Intent to Lease Real Property to Lyle Bothe in the Wiese and Freeland Additions. A

motion was made by Council Member Niemeyer, seconded by Council Member Brink, that Resolution 20-107 be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Brink, Bacon, Wendell, and Tilton Byrne; Absent: 1 – Collins.

Resolution 20-107 - Resolution of Intent to Lease Real Property to Lyle Bothe
in the Wiese and Freeland Additions

Be It Resolved by the governing body of the City of Brookings, South Dakota, that the City of Brookings intends to enter into a lease with Lyle Bothe for a period of one year, commencing on January 1, 2021 and ending December 31, 2021; and

Whereas, the Bidder may have the option to renew this Lease for one additional year for 2022; and

Whereas, this lease pertains to the following described property: the designated crop land of thirty (30) acres more or less in the Wiese Addition and the designated crop land of ten (10) acres more or less in the Freeland Addition in the City of Brookings, Brookings County, South Dakota.

Whereas, the Lease will be an amount of One Hundred Seventy Dollars (\$170.00) per acre for crop land annually, payable first half on April 1 and the remaining half on November 1; and

Whereas, the City of Brookings may terminate this Lease at any time in the event a parcel of the above described property is to be sold by the City of Brookings. If a portion of the leased land is sold, the number of acres to be paid for will be adjusted at the unit price per acre.

Be It Further Noted, that a Public Hearing on this Resolution was held on December 8, 2020 at 6:00 o'clock P.M. in the Chambers of the City & County Government Center and that all persons were given an opportunity to be heard on the intent to lease real property.

Legal Services Agreement. A motion was made by Council Member Tilton Byrne, seconded by Council Member Brink, that a Legal Services Agreement between the City of Brookings and Steven J. Britzman, Attorney at Law for a one-year contract (01/01/2021 - 12/31/2021), be approved. The motion carried by the following vote: Yes: 6 - Corbett, Niemeyer, Brink, Bacon, Wendell, and Tilton Byrne; Absent: 1 – Collins.

Legal Services Agreement

THE CITY OF BROOKINGS AND STEVEN J. BRITZMAN, ATTORNEY AT LAW agree that the City of Brookings has appointed Steven J. Britzman to serve as City Attorney for a one (1) year period, commencing January 1, 2021 and ending December 31, 2021, unless extended by mutual agreement of the parties, in writing. The City of Brookings

and Steven J. Britzman desire to set forth the terms of their Agreement concerning the provision of legal services by Steven J. Britzman as City Attorney as follows:

1. Performance of Legal Services

Steven J. Britzman will perform all legal services as provided in the "Scope of Services for City Attorney for City of Brookings" (the "Scope of Services"). A copy of the Scope of Services for City Attorney is attached hereto. Steven J. Britzman will perform all legal services which shall include representing the City in Magistrate Court in the enforcement of City Ordinances.

2. Insurance Coverage

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

3. Conflicts of Interest

The parties to this Agreement understand that actual or perceived conflicts of interest are defined in great detail in the Rules of Professional Responsibility which govern attorneys and which are a part of the statutes of South Dakota. Accordingly, Steven J. Britzman will follow the Rules of Professional Responsibility, immediately disclose to the City Council and City Manager any conflict or the appearance of a potential conflict, and resolve the issue to the satisfaction of the City of Brookings and the client.

4. Compensation for Legal Services

Steven J. Britzman agrees to provide all of the legal services provided in the Scope of Services, for a monthly sum from January 1, 2021 through December 31, 2021 of eight thousand two hundred fifty-eight and 81/100 (\$8,258.81) Dollars, payable on the last day of the month.

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

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

5. Expense Reimbursements, Meetings and Conferences

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

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

6. Legal Services not within the Scope of Services

Steven J. Britzman shall first obtain approval of the City to perform any legal services excluded from the Scope of Services, however Steven J. Britzman and the City agree that it is appropriate for the City Attorney to be responsive to residents of the city, the media, other municipal attorneys, the municipal league and other public officials where communication or an appropriate measure of assistance is in the best interest of the City.

7. Procedure for Appointment of Assistant City Attorney

In the event it is determined by the parties that an Assistant City Attorney be appointed, the selection of the Assistant City Attorney shall be by appointment by the City Council upon recommendation of the City Manager and City Attorney. The term of office of an Assistant City Attorney shall coincide with the City Attorney's term of office and the terms of the appointment and scope of services shall be set forth in an Amendment to this Legal Services Agreement. The compensation for an Assistant City Attorney shall be paid solely by the City Attorney.

SCOPE OF SERVICES FOR CITY ATTORNEY FOR CITY OF BROOKINGS

The City Attorney shall perform the following services:

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

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

All services with the exception of litigation and recodification of the City Ordinances will be compensated pursuant to the City Attorney's basic fee. Fees for services in a. and b. above will be as negotiated and agreed upon by the parties.

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

Executive Session. A motion was made by Council Member Niemeyer, seconded by Council Member Wendell, to enter into Executive Session at 6:52 p.m., for consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters with the City Council, City Manager, City Attorney, City Clerk, Steve Meyer, Brookings Municipal Utilities Executive Vice-President and General Manager, and Eric Witt, Brookings Municipal Utilities Water/Waste-Water/Engineering Manager present. And for discussing the qualifications,

competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term, employee, does not include any independent contractor; with only the City Council present. The motion carried by a unanimous vote. A motion was made by Council Member Brink, seconded by Council Member Niemeyer, to exit Executive Session at 7:52 p.m. The motion carried by a unanimous vote.

Adjourn. A motion was made by Council Member Brink, seconded by Council Member Tilton Byrne, that this meeting be adjourned at 7:53 p.m. The motion carried by a unanimous vote.

CITY OF BROOKINGS

ATTEST:

Keith W. Corbett, Mayor

Bonnie Foster, City Clerk