

**CHAMBER OF THE BOARD OF CITY COMMISSIONERS
YANKTON, SOUTH DAKOTA
MAY 9TH, 2022**

Board of City Commissioners of the City of Yankton was called to order by Mayor Moser.

Roll Call: Present: Commissioners Benson, Brunick, Johnson, Maibaum, Miner, Schramm, Webber and Villanueva. City Attorney Den Herder and City Manager Leon were also present.

Quorum present.

Mayor Moser introduced Colton Griffin, a scout working on an Eagle Scout Project, and invited him to lead the Commission in the Pledge of Allegiance.

Action 22-103

Moved by Commissioner Villanueva, seconded by Commissioner Webber, to approve Minutes of regular meeting of April 25, 2022 and Work Session meeting of April 25, 2022.

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Action 22-104

Moved by Commissioner Johnson, seconded by Commissioner Miner, that the Schedule of Bills be approved and warrants be issued.

1 Office Solution - Professional Services - \$50.20; 1-800-Hansons - Permit Overpayment - \$44.50; Adobe Creative Cloud - Computer Program - \$85.18; Adobe Stock - Computer Program - \$31.94; AFSCME Council 65 - AFSCME Deductions - \$1,353.00; Aggressive IND INT DYN - Dock Repairs - \$3,390.92; Allegiant Air - Travel - \$648.00; Al's Oasis - Travel - \$51.20; Al's Technologies - Training Rounds - \$968.68; Amazon - Office Supply - \$9.86; Amazon - Vacuum Cleaner - \$159.99; Amazon - Pool Basketballs - \$70.54; Amazon - Sunscreen - \$39.11; Amazon - DVD - \$7.49; Amazon - Janitorial Supplies - \$88.97; Amazon - DVD - \$13.99; Amazon - DVD - \$17.96; Amazon - Janitorial Supplies - \$69.87; Amazon - Program Supplies - \$372.33; Amazon - Adult Craft Night Supply - \$15.18; Amazon - Office Supplies - \$37.19; Amazon - Book - \$15.95; Amazon - Concession Supplies - \$374.75; Amazon - Lateral Filing Cabinet - \$185.99; Amazon - Postage Machine Supply - \$14.95; Amazon - Office Supplies - \$34.62; Amazon - Office Supplies - \$7.92; Amazon - Summer Program Supplies - \$14.98; Amazon - Summer Program Supplies - \$225.43; Amazon - Computer Monitor - \$214.96; Amazon - Summer Program Supplies - \$300.81; Amazon - Baseball Ground Anchors - \$60.90; Amazon - Summer Program Supplies - \$23.57; Amazon - Summer Program Supplies - \$138.86; Amazon - Foam Bags - \$53.99; Amazon - Chlorine Test Kits - \$162.66; Amazon - Summer Program Supplies - \$84.56; Amazon - SRT Connection - \$97.37; Amazon - Adult Craft Night Supply - \$9.28; Amazon - DVD's - \$53.91; Amazon - Book - \$36.57; American Family Life Corp - Cancer & ICU Premiums - \$5,876.94; American Red Cross - Lifeguard Registrations - \$1,158.32; A-Ox Welding Supply - Propane - \$144.70; A-Ox Welding Supply - Propane - \$164.30; Associated Supply - Crates For Pool - \$1,067.36; ATT Bill Payment - Mobile Data - \$1,178.77; Auch/Dawn - Shelter Refund - \$75.00; Aurora Training Advent - HR Live Trainings - \$599.00; Automatic Building Controls - Inspection - \$2,680.00; Avera Health - CRP Instructor Training - \$45.00; Avera Health Plans - Low Deductible Premiums - \$86,140.55; Avera Sacred Heart - Professional Services - \$408.00; Axvoice - Dialer Service - \$21.44; Banner Associates - Professional Services - \$43,406.76; Battery Space -

Battery Replacement - \$148.46; BB&T Governmental Finance - HFAC Bond - \$485,499.40; Blackstrap - Road Salt - \$6,659.70; Blue Rock Bar And Grill - Travel - \$38.86; Bomgaars - Floor Dry - \$4,728.69; Brent Mielke - Summer Program - \$350.00; Buhl's Cleaners - Cleaning Towels - \$395.60; Burger King - Travel Expense - \$17.80; C & B Yankton - Mower Supplies - \$38.41; Campbell/Stu - Large Print Book - \$15.16; Casey's - Travel Expense - \$86.03; Casey's - Employee Appreciation - \$66.71; Cedar Knox Public Power Dist. - Electricity - \$1,143.67; Cenex - Fuel - \$48.83; Cenex - Fuel - \$100.53; Center Point - Large Print Books - \$137.22; CenturyLink - Phone - \$1,297.19; Charlies Pizza - Employee Appreciation - \$117.00; CHS - Propane - \$247.50; Chucks Sanitary Service - Sewer Cleaning - \$125.00; City Of Vermillion - Jt Powers Cash Transfer - \$70,074.00; City Of Yankton-City Clean-Up - City Wide Clean Up - \$19,125.66; City Of Yankton-Parks - Landfill Charges - \$98.82; City Of Yankton-Solid Waste - Compacted Garbage - \$15,207.91; City Of Yankton-Water - Garbage - \$13.70; City Utilities - WTR-WW Charges - \$4,723.96; Clark's Rentals Custom - Tree Spade Rental - \$506.00; Clubhouse Hotel - Fees - \$21.96; Coffee Cup - Fuel - \$216.75; Construction & Aggregate - Straps - \$487.61; Cornhusker Intl Truck - Fuel Water - \$128.11; CPI Environmental - Lab Testing - \$175.96; Credit Collection Service - Ut Collection - \$293.63; Crescent Electric - Lights - \$725.46; Dakotamart Gas - Fuel - \$75.00; Danko Emergency Equipment - Spanner Wrench - \$34.06; Defensive Edge Training - AR Armorer Course - \$450.00; Delta - Professional Services - \$528.60; Demco - Bags - \$782.43; Den Herder Law Office, P.C. - Legal Services - \$1,380.66; Dept Of Ag - Membership Dues - \$35.88; Dept Of Environment - 2017-Rec-403 SW - \$63,173.59; Dept Of Social Services - State Of SD Child Supp - \$2,234.84; Desert Snow - Drug Interdiction Course - \$649.00; Diamond Vogel - Road Paint - \$1,737.50; Ditty's - Fuel - \$100.92; Dollar Tree - Summer Reading Program - \$83.75; Dollar Tree - Summer Reading Program - \$173.74; DRI Printplace - Office Supplies - \$84.45; Echo Electric Supply - Amphitheater Lights - \$461.73; Electair - Service Call - \$232.14; Electronic Frog Advertising - Billboards Ads - \$9,920.00; ESRI - Credits - \$200.00; Evolution Power Tools - Chop Saw - \$399.00; Exxon Mobil - Fuel - \$86.01; Faerber/Karen - Election Worker - \$112.73; Fastenal - Bolts/Washers/Nuts - \$437.37; FedEx - Mail Evidence - \$26.61; Ferguson Enterprises - 3" Meter - \$8,545.78; Finance, Dept Of - Election Workers - \$2,820.00; Findaway - Wonderbooks - \$512.88; Firehouse Subs - Travel - \$25.12; First Dakota Nat'l Bank Corp - Fire Station Debt Serv - \$14,127.50; First Dakota Nat'l Bank HSA - HSA Contributions - \$9,131.22; First National Bank FSA - Cafeteria Plan - \$1,410.00; Fisher/Bruce - Over Payment Utilities - \$89.26; Frey/Brandon - Per Diem - \$90.00; Frontier Mills - Grass Seed - \$272.28; Frontier Mills - Lawn Seed - \$90.76; Garys Repair Wrecker - Police Tow - \$150.00; General Traffic Controls - Traffic Signals - \$18,466.00; Geotek Eng & Testing Serv - Westside Park Testing - \$4,397.00; Gerstner Oil - Oil - \$306.82; Gerstner Oil - Fuel - \$41,641.79; Girton Adams - Sludge Heater Solenoid - \$1,311.16; Graymont WI- Chemicals - \$5,084.10; Great Shots Food - Travel Expense - \$21.80; Gregg/Judy - Election Worker - \$25.00; Grimms Pump - Motor - \$151.92; Guardian Alliance - Background Investigation - \$470.00; Hach Company - Lab Probe - \$3,535.78; Halvorson/Terry - Permit Reimbursement - \$355.50; Hanson Briggs - Business Cards - \$144.87; Hanson Briggs - Receipt Book - \$629.96; Hanson/Tanner - Travel Expense - \$47.00; Hardees - Travel Expense - \$8.05; Harding Glass - Replace Window Screen - \$22.90; Harn Ro Systems - Filters - \$11,480.86; Hawkins - Chemicals - \$26,335.28; HDR Engineering - WWTP EDA Improvements - \$85,842.99; Heiman Fire Equipment - Protective Equipment - \$27,271.00; Heritage Homes - 1/2 Sp Appropriation - \$1,250.00; Home Depot - Cordless Drills - \$1,047.00; Horn/Garrett - Sidewalk Reimbursement - \$416.75; Hotel Reservations - Travel/Training - \$390.58; Hu Hot Fargo - Travel Expense - \$42.59; Hy-Vee - Postage - \$75.70; ICMA Retirement Trust - 457 - ICMA Contributions - \$4,837.83; Indelco Plastics - Hypochlorite Pump - \$1,272.68; Industrial - Maintenance Kit - \$1,021.49; Intl Code Council - Membership Dues - \$245.70; Isa - Membership Dues - \$170.00; J & H Care & Cleaning Company - Janitorial Supplies - \$4,100.00; J2

Metrofax - Fax Service - \$9.95; Jacks Uniforms - Uniform Shirts - \$279.78; Jackson/Brooke - Travel Expense - \$160.00; JCL Solutions - Cleaning Supplies - \$909.28; Jimmy Johns - Staff Appreciation - \$178.94; JJ Benji's - Employee Uniforms - \$2,404.00; JLC Piano Studio - Singers Choir Program - \$250.00; Johnson Controls - Lab Repairs - \$173.60; Kaiser Refrigeration - Weedeater Repairs - \$81.95; Kc Entertainment Services - Summer Program - \$375.00; Klein's Tree Service - Stump Removal - \$16,650.00; KLJ Engineering - Bidding & Design Service - \$25,737.09; Knife River - 23rd And Green St - \$1,938.00; Knowink - Election Pollbooks - \$3,600.00; Koletzky Implement - Filters - \$200.50; Kopetsky's Ace Hardware - Summer Reading Program - \$499.77; Lamb Motor Company - Vehicle Purchase - \$42,506.00; Lewis & Clark Bhs - 1/2 Sp Appropriation - \$10,000.00; Lewis & Clark Theatre Co - 1/2 Sp Appropriation - \$1,250.00; Lewis And Clark Ford - Replace Torque Converter - \$2,060.78; Lifespan Fitness - Under Desk Treadmill - \$1,599.00; Locators & Supplies - Locate Paint - \$885.96; Los Designs - Dog Park Signs - \$500.00; Main Access - Sunwalk Decking - Dock - \$671.00; Marathon Petro - Fuel - \$54.81; Mark's Machinery - Bobcat Repairs - \$29.72; MacArthur Sheet Metal - Suction Pipe - \$172.29; McLeod's Printing - Election Supplies - \$429.53; McLeod's Printing - Printing Of Citations - \$50.87; McMaster-Carr - Lagoon Electrical - \$125.88; Menard's - Pallet Jack - \$1,858.19; Meridian Eye Care - Pre-Employment Physical - \$50.00; MidAmerican Books - Books - \$843.81; MidAmerican Energy - Fuel - \$22,350.09; MidAmerican Energy - Fuel - \$10,954.11; Midwest Laboratories - Monthly Wastewater Tests - \$129.84; Midwest Tape - Av - \$523.87; Midwest Tire And Muffler - Tires - \$2,618.26; Millennium Recycling - Single Stream Recycling - \$4,922.75; Morrow/Joseph C. - Design Work - \$5,880.00; Motor Vehicle Dept, SD - Title & License - \$21.20; Mutt Mitt - Mutt Mitts - \$3,523.30; Napa Auto Parts - Kubota Repairs - \$338.01; Nartec - Cocaine Field Test Kits - \$24.40; National HR Assoc. - Membership - \$110.00; Neptune - Conference - \$585.00; Northland Trust Services - Fire Station Agent Fee - \$495.00; Northtown Automotive - Fuel Pump - \$864.91; Northwestern Energy - Electricity - \$90,427.60; Observer - Ads - \$48.00; Olson's Pest Technician - Pest Control - \$278.00; Olson's Pest Technicians - Pest Control - \$560.00; One Office Solution - Office Supplies - \$186.40; O'Reilly Auto Parts - Mechanic Wire - \$808.42; Osborne/Jericho - Travel Expense - \$225.00; OTC Brands - Programming - \$184.67; Overdrive Dist - Ebooks - \$138.00; Pack And Ship - Total Station Shipping - \$78.20; Paypal EBay - Peg Equipment - \$95.47; Peace Officers Assn/Sd - Dues - \$150.00; Pedersen/Brandi - Refund - \$42.60; Photography By Jerry - Retirement Photo - \$113.50; Pitney Bowes - Postage - \$200.00; Pizza Hut - Employee Appreciation - \$37.60; Pizza Ranch - Training - \$131.63; Pooler Sr/John - Election Worker - \$75.00; Powers Port A Pot - Sertoma Field - \$150.00; Press Dakota - Commission Minutes - \$759.28; Prime Video - Streamed Video - \$10.64; Principal Life Insurance - Dental Insurance - \$6,714.82; Push Pedal Pull - Workout Equipment Repair - \$1,502.98; Quadiant - Postage Machine Ink - \$139.73; Quadiant Leasing USA - Postage - \$678.00; Racom Corporation - Radio Access - \$35.80; Radisson - Hotel - \$1,229.90; Ramkota - Hotel - \$793.84; Ramkota - Hotel - \$22.21; Rayallen.Com - K9 Corona Harness - \$244.89; RDO Equipment Company - Parts - \$791.07; Reservations.Com - Hotel Reservation - \$19.99; Retirement, SD - SD Retirement - \$124,272.14; Riverside Hydraulics - Repair Cylinder - \$1,221.83; Road King Trailers - Treated Wood - \$424.60; Ron's Auto Glass - Windshield Repair - \$40.00; Ron's Auto Glass Repair - Parts - \$240.00; Rothermel/Jonah - Boot Reimbursement - \$130.00; Royal Sport Shop - Trophy Plaques - \$44.00; Sanitation Products - Parts - \$3,763.00; SD Code Enforcement - Conference - \$51.95; SD Public Assurance Alliance - Property Insurance - \$29.99; SD Water & Wastewater - Permit Fees - \$103.00; SDSRP - SD Retirement Plan - \$21,223.50; Shell Oil - Fuel - \$38.46; Shoplet.Com - Evidence Boxes - \$208.10; Shur-Co - Tarp Replacement - \$1,365.47; Sickies Garage - Travel Expense - \$42.15; Sign Solutions - Signs - \$505.98; Smartsign - Signs - \$578.08; South Dakota 811 - Locate Fee - \$184.80; South Dakota State Historical - Microfilm - \$10.00; Spencer Quarries - Type 2a Chips - \$2,053.94; Standard Insurance Company - Vision

Insurance - \$680.81; State Supply - Air Vent - \$124.16; Sturdevant's - Filters - \$1,293.76; Subway - Investigation Expense - \$12.77; Supplyhouse.Com - Water Double Check Valve - \$579.51; Target - Summer Reading Program - \$21.30; Tenneboe/Zachary D - Summer Program - \$225.00; Tessman Company - Chemicals - \$6,319.00; Texas Roadhouse - Travel Expense - \$47.75; The Lodge At Deadwood - Hotel For Conference - \$89.01; The Ups Store - Wet Shipping - \$544.33; Third Millennium Asso - Utility Billing - \$654.93; Tinting Pros - Tint Mower Tractor - \$800.00; Titan Machinery - Kubota Accessories - \$2,522.87; Tractor Supply Co - Tailgate Lift - \$266.24; Tractor Supply Co - Dog Food - \$217.40; Travelocity - Professional Services - \$10.78; TRK Hosting - Internet Access - \$7.95; Truck Trailer Sales - Landing Gear Kit - \$1,630.90; Truck Trailer Sales - Dot Inspection - \$7,161.33; Turfwerks - Brush - \$157.40; U.S. Post Office-Util - Utility Billing Postage - \$2,141.47; UKG Workforce Ready - Payroll/HR/TLM Software - \$2,022.00; Uline Ship Supplies - Aline Board - \$176.35; United - Professional Services - \$677.60; United Laboratories - Slide Gate Lubricant - \$356.28; United States Postal Service - Postage Meter - \$611.60; United States Treasury - Federal Withholding Tax - \$237,990.74; United Way - United Way Contributions - \$183.00; United Way - 1/4 Sp Appropriation - \$9,831.25; Us Bank Equipment Finance - Copier Lease - \$473.86; USA Blue Book - Main Break Boots - \$694.03; USPS PO - Mail Evidence - \$150.93; Utility Equipment Company - Radio Detection Locator - \$10,046.00; Vast Broad Band - Internet Service - \$4,249.69; Verizon - Internet Access - \$1,124.13; Vessco - Parts - \$3,869.78; Viddler - Video Hosting - \$41.49; Vista Print - Summer Reading Program - \$308.05; Walgreens - Trash Bags - \$11.99; Walmart - Resist Tube - \$552.69; Walmart - Office Supplies - \$56.48; Walmart - Concessions - \$84.91; Watchguard Video - DVR - \$480.00; WEF Main - Membership - \$82.50; Wegner Auto - 2022 Dodge Pickup - \$65,032.00; Western Iowa Tech Comm College - Training - \$475.00; Wilson/Dylan - Per Diem - \$160.00; Winckler/Danicka - Lifeguard Class Refund - \$213.00; Winn-911 Software - Tech Support - \$660.00; Woehl/Toby - Refund Licensing Fee - \$3,000.00; Xerox Financial Services - Copier Lease - \$1,494.19; Xtreme Car Wash - Patrol Car Washes - \$286.80; Yankton Area Arts Assn - 1/2 Sp Appropriation - \$2,500.00; Yankton Area Prog. Growth - Sales Tax Reimb 1st Qtr - \$93,399.61; Yankton County - Pictometry Payment - \$9,521.57; Yankton Fire & Safety Co - Fire Ext Inspection - \$459.25; Yankton Media - Advertisement - \$266.73; Yankton Police Department - Petty Cash - \$81.00; Yankton Redi Mix - Road Materials - \$557.00; Yankton Rod Ctr - Recording Fees - \$95.00; Yankton School District 63-3 - 1st Qtr Shared Expenses - \$50,269.17; Yankton Thrive - 1/4 Sp Appropriation - \$109,930.75; Yankton Title - Creek Land Purchase - \$3,675.50; Yankton Winnelson - Faucet - \$311.76; Ykt Janitorial & Dt Sc - Floor Finish And Pads - \$689.50; Zoro Tools - Sandblasting Cabinet - \$3,857.96

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Salaries By Department: April 2022: Administration \$79,286.45; Finance \$54,442.08; Community Development \$42,444.82; Police/Dispatch \$269,911.98; Fire \$24,087.41; Engineering / Sr. Citizens \$59,555.27; Streets \$75,518.96; Traffic Control \$6,605.83; Library \$52,001.79; Parks / SAC \$111,892.15; Marne Creek \$7,997.07; Water \$61,939.37; Wastewater \$66,484.71; Cemetery \$6,891.99; Solid Waste \$32,545.27; Landfill / Recycle \$36,825.94; Central Garage \$12,480.53

New Hires: Recreation Dept - Lifeguard: Aubrey Herbolsheimer \$13 hr; Jackson Slowey \$13 hr. Aerobics Instr; Barb Law \$14 hr. Parks Dept – Grounds Maintenance: Rockie Wampol \$22 hr; John Gleich \$22 hr; Jay Walsh \$1,543.38 bi-weekly; Brandon Pavel \$1,543.38 bi-weekly. Communications

Dept – Dispatcher: Kelly Skrzypek \$1,620.30 bi-weekly. Police Dept – Police Officer: Kyler Pekarek \$26.36 hr; Crossing Guard: Madeline Hauser \$10 hr.

Wage Changes: Recreation Dept – WSI/WSI Instr: Dawn Bergeson \$12/\$20 to \$13/\$25 hr. Library – Library Asst: Tahlia Reynolds \$1,450.19 to \$1,468.46 bi-weekly. Police Dept – Police Officer: Dillon Bollinger \$2,007.30 to \$2,060.69 bi-weekly; Jon Todd \$2,007.30 to \$2,060.69 bi-weekly; Marcus Urban \$2,007.30 to \$2,060.69 bi-weekly.

Position Changes: Jordan Groves, Sanitation Truck Driver to Grounds Maintenance in Parks, \$1,601.30 to \$1,602.46 bi-weekly.

Mayor Moser read the proclamation, declaring May 15th – 21st, 2022 as National Police Week 2022 and presented it to Chief Jason Foote.

City Manager Leon thanked all officers and submitted a written report giving an update on community projects and items of interest.

There were no public appearances at that time.

Action 22-105

Moved by Commissioner Webber, seconded by Commissioner Benson, to approve the following consent agenda items:

1. **Establishing public hearing for transfer of ownership**
Establish May 23, 2022, as the date for the public hearing on the request for a transfer of ownership of a Retail (on-off-sale) Wine & Cider for January 1, 2022 to December 31, 2022, from TST, Inc. d/b/a Phinney's Pub & Casino (John Tuttle, President), to Phinney's, LLC., d/b/a Phinney's Pub & Casino (Deb Palmer, President), 2101 Broadway Tenancy Location 40 & 50, Yankton, S.D.
2. **Establishing public hearing for transfer of ownership**
Establish May 23, 2022, as the date for the public hearing on the request for a transfer of ownership of a Retail (on-off-sale) Malt Beverage & SD Farm Wine for July 1, 2022, to June 30, 2023, from TST, Inc. d/b/a Phinney's Pub & Casino (John Tuttle, President), to Phinney's, LLC., d/b/a Phinney's Pub & Casino (Deb Palmer, President), 2101 Broadway Tenancy Location 40 & 50, Yankton, S.D.
3. **Budget Meeting Date**
Setting date of June 13, 2022, with a second date of June 14, 2022 (to be used if necessary) at 5:30 pm in CMTEA Room #114 for Budget Meetings to discuss CIP
4. **Work Session**
Setting date of May 23, 2022, at 6:00 pm in Room #114 of the Career Manufacturing Technical Education Academy for the next work session of the Yankton City Commission

5. **Establish public hearing for sale of alcoholic beverages**

Establish May 23, 2022, as the date for the public hearing on the request for a Special Events Retail (on-sale) Liquor License for 1 day, June 4, 2022, from Stripes, Inc d/b/a Mojo's 3rd Street, 106 E 3rd St, Yankton, SD at The Meridian Venue, 101 E. 3rd Street, Yankton, SD.

Roll Call: All members present voting "Aye;" voting "Nay:" None.
Motion adopted.

Action 22-106

Moved by Commissioner Johnson, seconded by Commissioner Villanueva, to adjourn Sine Die at 7:21 p.m.

Roll Call: All members present voting "Aye;" voting "Nay:" None.
Motion adopted.

City Attorney DenHerder administered the Oath of office to re-elected City Commissioners Jerry L. Webber, Mason Schramm and Amy Miner.

In absence of a Mayor, City Manager Leon called the meeting to order.

Roll Call: Present: Commissioners Benson, Brunick, Johnson, Maibaum, Miner, Moser, Schramm, Webber and Villanueva. City Attorney Den Herder and City Manager Leon were also present.

Quorum present.

City Manager Leon requested nominations for Office of Mayor for the 2022-2023 term. Commissioner Benson nominated Commissioner Moser for the Office of Mayor, seconded by Commissioner Schramm.

Action 22-107

Moved by Commissioner Webber, seconded by Commissioner Villanueva, that nominations cease and a unanimous ballot be cast for Commissioner Moser for the position of Mayor.

Roll Call: Commissioners voting "Aye" were Benson, Brunick, Johnson, Maibaum, Miner, Schramm, Webber and Villanueva; Commissioners voting "Nay:" None. Abstain: Commissioner Moser.

Motion adopted.

City Manager Leon turned the meeting over to Mayor Moser at this time.

Action 22-108

This was the time and place for the public hearing of the Renewal of Malt Beverage Licenses for the 2022-2023 Licensing period. (Memorandum 22-73) No one was present to speak for or against the application.

Moved by Commissioner Benson, seconded by Commissioner Webber, to approve the licenses.

Roll Call: All members present voting "Aye;" voting "Nay:" None.
Motion adopted.

Action 22-109

Moved by Commissioner Maibaum, seconded by Commissioner Webber, to approve Resolution 22-17. (Memorandum 22-85)

RESOLUTION 22-17

WHEREAS, the City of Yankton owns an approximate eight (8) acre parcel northwest of the Intersection of Broadway Avenue and 31st Street., and

WHEREAS, Dr. Kyle Kenfield, Paradigm Technologies, Inc. has offered \$200,000 to purchase the site, and

WHEREAS, the Yankton Board of City Commissioners desires to sell the below described land for the long term goal of community and economic development.

NOW, THEREFORE BE IT RESOLVED by the Board of City Commissioners of the City of Yankton, South Dakota, that they hereby agree to transfer the below described property, subject to all provisions of the associated “Real Estate Purchase Agreement” to Yankton Thrive for the purpose of sale to Dr. Kyle Kenfield, Paradigm Technologies, Inc, and

BE IT FURTHER RESOLVED that the City Manager is authorized to execute all documents associated with the described transfer.

The South Six Hundred Twenty-Two Feet (S 622’) of the East Five Hundred Sixty Feet (E 560’) of Tract 1, Lot A, in the Southeast Quarter (SE 1/4) of Section Thirty-Six (36), Township Ninety-Four North (94N), Range Fifty-Six West (56W) of the 5th P.M., City and County of Yankton, South Dakota, measuring approximately eight (8) acres, more or less (“the Property”). To be plated and named.

Roll Call: All members present voting “Aye;” voting “Nay:” None.
Motion adopted.

Action 22-110

Moved by Commissioner Miner, seconded by Commissioner Benson, to approve the contract for professional services with Stockwell Engineers in the amount of \$34,800.00 for design and construction administration of the labyrinth and sundial/meditative garden feature.
(Memorandum 22-75)

Roll Call: All members present voting “Aye;” voting “Nay:” None.
Motion adopted.

Action 22-111

Moved by Commissioner Brunick, seconded by Commissioner Villanueva, to approve the funding agreements for Westside Park Meditative Garden, Sundial and Labyrinth. (Memorandum 22-76)

Roll Call: All members present voting “Aye;” voting “Nay:” None.
Motion adopted.

Action 22-112

Moved by Commissioner Villanueva, seconded by Commissioner Johnson, to approve funding of 1/3 of the total cost, not to exceed \$4,666.00 utilizing the BBB fund for Riverside Baseball Stadium Turf Replacement. (Memorandum 22-77)

Roll Call: All members present voting “Aye;” voting “Nay:” None.

Motion adopted.

Action 22-113

Colton Griffin was present and informed the Commission that he is working on this project as a part of his 'Eagle Scout' process. He requested that the Commission support this project.

Moved by Commissioner Miner, seconded by Commissioner Webber, to confirm the matching funds for the Skate Park Equipment to a maximum of \$10,000 from the BBB Fund. (Memorandum 22-78)

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Action 22-114

Moved by Commissioner Benson, seconded by Commissioner Brunick, to approve Resolution 22-16. (Memorandum 22-74)

RESOLUTION 22-16

WHEREAS, SDCL 6-13-1 requires a municipality owning personal property which is no longer necessary, useable or suitable for municipal purposes shall, by resolution, declare it surplus and may, by resolution, order for sale, destruction or other disposal of said personal property.

NOW, THEREFORE, BE IT RESOLVED that the following personal property be declared no longer necessary or suitable for municipal purposes and said property shall be disposed of in accordance with SDCL 6-13-1, et sequential:

PROPERTY TO BE SURPLUS

2005 Caterpillar 420 Backhoe CAT0420DLFD23133

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Action 22-115

Moved by Commissioner Johnson, seconded by Commissioner Benson, to approve the contract with Surveying and Mapping, LLC, of Maryville, MO in the total amount of \$176,380.00 and authorize the City Manager to sign all related documents. (Memorandum 22-79)

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Action 22-116

Moved by Commissioner Villanueva, seconded by Commissioner Benson, to approve a Sidewalk Cafe Permit to 100 West 3rd Street doing business as Walnut Tavern. (Memorandum 22-80)

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Action 22-117

Moved by Commissioner Villanueva, seconded by Commissioner Benson, to approve the Music at the Meridian Concert Series and grant the City Manager the ability to sign all documents/contracts for the event. (Memorandum 22-82)

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Action 22-118

Moved by Commissioner Villanueva, seconded by Commissioner Schramm, to approve the Kids in the Park event series and allow for the City Manager to be granted the ability to sign all documents/contracts needed for the event. (Memorandum 22-83)

Roll Call: All members present voting “Aye;” voting “Nay:” None.

Motion adopted.

Action 22-119

Moved by Commissioner Villanueva, seconded by Commissioner Webber, to approve the request for a public firework display hosted by Parks and Recreation on July 4, 2022. (Memorandum 22-81)

Roll Call: All members present voting “Aye;” voting “Nay:” None.

Motion adopted.

Action 22-120

Moved by Commissioner Johnson, seconded by Commissioner Villanueva, to approve Resolution 22-18. (Memorandum 22-84)

RESOLUTION 22-18

RESOLUTION GIVING APPROVAL TO CERTAIN SEWER FACILITIES 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 PROJECT REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND AND PROVIDING FOR A SEGREGATED SPECIAL CHARGE OR SURCHARGE FOR THE PAYMENT OF THE BONDS.

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 without pledging its credit and is authorized to pledge the net income or revenues from the Project in accordance with Section 15 of the Act; and,

WHEREAS, the City of Yankton (the “City”) currently operates a sewer system for the collection, treatment and disposal of sewage and other domestic, commercial and industrial wastes; and for the control of floods and drainage and has determined that improvements to the sewer facilities are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its sewer system; and,

WHEREAS, the City has determined to issue its revenue bonds to finance the improvements to its sewer system for the purpose of collecting, treating and disposing of sewage and other domestic, commercial and industrial wastes (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 special rates or surcharges for the improvements to be pledged, segregated and used for the payment of the Bonds.

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 Yankton Treatment Plant Improvements.

“**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 collecting, treating and disposing of sewage and other domestic, commercial and industrial wastes.

SECTION 2. Declaration of Necessity and Findings.

2.1.1. Declaration of Necessity. The City hereby determines and declares 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, only the net income from the Project 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 \$23,318,450 of the costs of the Project through the issuance of bonds payable from the revenue of the Project 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 Finance Officer (the "Finance Officer") and open to public inspection, between the City as Borrower and the District, is 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 \$23,318,450 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 covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges 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 Project, and depreciation, and the Rate Resolution 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. Special Charge or Surcharge for Revenue Bond.

4.1. The City does hereby create the Revenue Bond Special-Surcharge District (the “Surcharge District”) which shall include all users which benefit from the Project. There shall be charged a special charge or surcharge pursuant to Section 15 of the Act for the services provided by Project financed by the Revenue Bond. The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the Revenue Bond. The special charge or surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements and shall be 110% of the debt service requirements on the Revenue Bond.

4.2. Rates and collection. The rate herein specific will be collected as a special charge or surcharge for the Project. This special charge or surcharge shall remain in effect until such time as the Revenue Bond is defeased or paid in full.

4.3. Initial Surcharge. The initial special charge or surcharge shall be set by resolution and collected at the same time as other charges of the utility. All users within the Surcharge District which benefit from the Project, current and future, shall be charged the special charge or surcharge. The special charge or surcharge is found to be equitable for the services provided by the Project. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due.

4.4. Segregation. The Finance Officer shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue, special charges and surcharges.

4.5. Periodic review. The amount of the surcharge 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 surcharge may be set by resolution in accordance with this Section. The rate 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 or Project 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. Project Fund Accounts. For the purpose of application and proper allocation of the income of the Project 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. Project Revenue Account. There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the resolutions and ordinances of the City of Yankton, South Dakota (collectively the “Rate

Resolution”). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

6.2. Project Debt Service Account. Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25th day of each month into the account designated Project 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 February 15, May 15, August 15 or November 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 Project 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 Project.

6.4. Project Surplus Account. There shall be established the Project Surplus Account. Revenues remaining in the Project 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 Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Common Council shall authorize the Finance Officer to rectify such default so far as possible by the transfer of money from the Project 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 Project Debt Service Account, moneys in the Project 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 and interest 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 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.

Adopted at Yankton, South Dakota, this 9th day of May, 2022.

Roll Call: All members present voting “Aye;” voting “Nay:” None.
Motion adopted.

Action 22-121

Moved by Commissioner Brunick, seconded by Commissioner Johnson, to approve Resolution 22-19.
(Memorandum 22-86)

RESOLUTION 22-19

RESOLUTION GIVING APPROVAL TO CERTAIN SEWER FACILITIES 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 PROJECT REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND AND PROVIDING FOR A SEGREGATED SPECIAL CHARGE OR SURCHARGE FOR THE PAYMENT OF THE BONDS.

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 without pledging its credit and is authorized to pledge the net income or revenues from the Project in accordance with Section 15 of the Act; and,

WHEREAS, the City of Yankton (the “City”) currently operates a sewer system for the collection, treatment and disposal of sewage and other domestic, commercial and industrial wastes; and for the control of floods and drainage and has determined that improvements to the sewer facilities are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its sewer system; and,

WHEREAS, the City has determined to issue its revenue bonds to finance the improvements to its sewer system for the purpose of collecting, treating and disposing of sewage and other domestic, commercial and industrial wastes (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 special rates or surcharges for the improvements to be pledged, segregated and used for the payment of the Bonds.

NOW THEREFORE BE IT RESOLVED by the City as follows:

SECTION 17. 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 Yankton Wastewater Collection Improvements.

“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 collecting, treating and disposing of sewage and other domestic, commercial and industrial wastes.

SECTION 18. Declaration of Necessity and Findings.

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

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

18.2.1. 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.

18.2.2. 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.

18.2.3. The City hereby determines and finds that for the purposes of the Act, including, in particular, Sections 15 and 17 of the Act, only the net income from the Project financed by the Revenue Bond be pledged for its payment.

SECTION 19. Authorization of Loan, Pledge of Revenue and Security.

19.1. Authorization of Loan. The City hereby determines and declares it necessary to finance up to \$7,200,000 of the costs of the Project through the issuance of bonds payable from the revenue of the Project 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.

19.2. 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 Finance Officer (the “Finance Officer”) and open to public inspection, between the City as Borrower and the District, is 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.

19.3. Approval of Revenue Bond. The issuance of a revenue bond in a principal amount not to exceed \$7,200,000 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.

19.4. 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 covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges 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 Project, and depreciation, and the Rate Resolution 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 20. Special Charge or Surcharge for Revenue Bond.

20.1. The City does hereby create the Revenue Bond Special-Surcharge District (the “Surcharge District”) which shall include all users which benefit from the Project. There shall be charged a special charge or surcharge pursuant to Section 15 of the Act for the services provided by Project financed by the Revenue Bond. The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the Revenue Bond. The special charge or surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements and shall be 110% of the debt service requirements on the Revenue Bond.

20.2. Rates and collection. The rate herein specific will be collected as a special charge or surcharge for the Project. This special charge or surcharge shall remain in effect until such time as the Revenue Bond is defeased or paid in full.

20.3. Initial Surcharge. The initial special charge or surcharge shall be set by resolution and collected at the same time as other charges of the utility. All users within the Surcharge District which benefit from the Project, current and future, shall be charged the special charge or surcharge. The special charge

or surcharge is found to be equitable for the services provided by the Project. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due.

20.4. Segregation. The Finance Officer shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue, special charges and surcharges.

20.5. Periodic review. The amount of the surcharge 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 surcharge may be set by resolution in accordance with this Section. The rate resolution shall be necessary for the support of government and shall be effective upon passage.

SECTION 21. Additional Bonds. As permitted by Sections 8 and 9 of the Act, Additional Bonds payable from revenues and income of the System or Project 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 22. Project Fund Accounts. For the purpose of application and proper allocation of the income of the Project 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:

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

22.2. Project Debt Service Account. Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25th day of each month into the account designated Project 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 February 15, May 15, August 15 or November 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.

22.3. Depreciation Account. There shall be established a General Depreciation Account. Out of the revenues of the Project 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 Project.

22.4. Project Surplus Account. There shall be established the Project Surplus Account. Revenues remaining in the Project 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 Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Common Council shall authorize the Finance Officer to rectify such default so far as possible by the transfer of money from the Project 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 Project Debt Service Account, moneys in the Project 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 23. 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 24. Approval of Bond Counsel. Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

SECTION 25. 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 26. Covenants. The City hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

26.1. 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.

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

26.3. 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 and interest 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.

26.4. 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 27. 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 28. 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 29. 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 30. Repeal of Resolution. At such time as the 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 31. 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 32. Effective Date. This Resolution shall take effect on the 20th day following its publication, unless suspended by a referendum.

Adopted at Yankton, South Dakota, this 9th day of May, 2022.

Roll Call: All members present voting “Aye;” voting “Nay:” None.
Motion adopted.

Action 22-122

Moved by Commissioner Villanueva, seconded by Commissioner Miner, to approve Resolution 22-20. (Memorandum 22-87)

RESOLUTION 22-20

RESOLUTION GIVING APPROVAL TO CERTAIN DRINKING WATER FACILITIES 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 PROJECT REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND AND PROVIDING FOR A SEGREGATED SPECIAL CHARGE OR SURCHARGE FOR THE PAYMENT OF THE BONDS.

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 of waterworks for the purpose of providing water and water supply for domestic, municipal, 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 without pledging its credit and is authorized to pledge the net income or revenues from the Project in accordance with Section 15 of the Act; and,

WHEREAS, the City of Yankton (the “City”) currently operates a water distribution system to supply municipal, industrial and domestic water to its inhabitants and has determined that improvements to the drinking water facilities are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its drinking water system; and,

WHEREAS, the City has determined to issue its revenue bonds to finance the improvements to its system of waterworks for the purpose of providing water and water supply for domestic, municipal, and industrial purposes (the “System”) and has applied to the South Dakota Conservancy District (the “District”) for a Drinking Water State Revolving Fund Loan to finance the improvements;

WHEREAS, the City shall adopt special rates or surcharges for the improvements to be pledged, segregated and used for the payment of the Bonds.

NOW THEREFORE BE IT RESOLVED by the City as follows:

SECTION 33. 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 Yankton Water Distribution and Storage Improvements.

“**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 waterworks used for the purpose of providing water and water supply for domestic, municipal, and industrial purposes.

SECTION 34. Declaration of Necessity and Findings.

34.1. Declaration of Necessity. The City hereby declares and determines it is necessary to construct and finance improvements to its drinking water facilities within its System described as the Project.

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

34.2.1. 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.

34.2.2. 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-3A, and the federal Safe Drinking 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.

34.2.3. 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 Project financed by the Revenue Bond be pledged for its payment.

SECTION 35. Authorization of Loan, Pledge of Revenue and Security.

35.1. Authorization of Loan. The City hereby determines and declares it necessary to finance up to \$8,202,000 of the costs of the Project through the issuance of bonds payable from the revenue of the Project 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.

35.2. 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, is 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.

35.3. Approval of Revenue Bond. The issuance of a revenue bond in a principal amount not to exceed \$8,202,000 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.

35.4. 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, 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 covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges 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 Project, and depreciation, and the Rate Resolution 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 36. Special Charge or Surcharge for Revenue Bond. The City does hereby create the Revenue Bond Special-Surcharge District (the “Surcharge District”) which shall include all users which benefit from the Project. There shall be charged a special charge or surcharge pursuant to Section 15 of the Act for the services provided by Project financed by the Revenue Bond. The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the Revenue Bond. The special charge or surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements and shall be 110% of the debt service requirements on the Revenue Bond.

36.1. Rates and collection. The rate herein specific will be collected as a special charge or surcharge for the Project. This special charge or surcharge shall remain in effect until such time as the Revenue Bond is defeased or paid in full.

36.2. Initial Surcharge. The initial special charge or surcharge shall be set by resolution and collected at the same time as other charges of the utility. All users within the Surcharge District which benefit from the Project, current and future, shall be charged the special charge or surcharge. The special charge or surcharge is found to be equitable for the services provided by the Project. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal, interest and Administrative Surcharge on the Revenue Bond when due.

36.3. Segregation. The Finance Officer shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue, special charges and surcharges.

36.4. Periodic review. The amount of the surcharge 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 surcharge may be set by resolution in accordance with this Section. The rate resolution shall be necessary for the support of government and shall be effective upon passage.

SECTION 37. Additional Bonds. As permitted by Sections 8 and 9 of the Act, Additional Bonds payable from revenues and income of the System or Project 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 38. Project Fund Accounts. For the purpose of application and proper allocation of the income of the Project 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 water system account of the City and shall be used solely for the following respective purposes until payment in full of the principal, interest and Administrative Surcharge on the Revenue Bond:

38.1. Project Revenue Account. There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the resolutions and ordinances of the City of Yankton, South Dakota (collectively the “Rate Resolution”). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

38.2. Project Debt Service Account. Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25th day of each month into the account designated Project 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 February 15, May 15, August 15 or November 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.

38.3. Depreciation Account. There shall be established a General Depreciation Account. Out of the revenues of the Project 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 Project.

38.4. Project Surplus Account. There shall be established the Project Surplus Account. Revenues remaining in the Project 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 Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project 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 Project 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 Project Debt Service Account, moneys in the Project 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 39. 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 40. Approval of Bond Counsel. Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

SECTION 41. 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 42. Covenants. The City hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

42.1. 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.

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

42.3. 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.

42.4. 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 43. 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 44. 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 45. 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 46. 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 47. 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 48. Effective Date. This Resolution shall take effect on the 20th day following its publication, unless suspended by a referendum.

Adopted at Yankton, South Dakota, this 9th day of May, 2022.

Roll Call: All members present voting "Aye;" voting "Nay:" None.
Motion adopted.

Action 22-123

Moved by Commissioner Benson, seconded by Commissioner Johnson, to approve a Sidewalk Cafe Permit to 301 East 3rd Street doing business as The Boat House. (Memorandum 22-88)

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Action 22-124

Moved by Commissioner Villanueva, seconded by Commissioner Benson, to adjourn into Executive Session at 8:42 p.m. to discuss **contractual, litigation and personnel matters** under SDCL 1-25-2.

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Regular meeting of the Board of City Commissioners of the City of Yankton was reconvened by Mayor Moser.

Roll Call: Present: Commissioners Benson, Brunick, Johnson, Maibaum, Miner, Schramm, Webber and Villanueva. City Attorney Den Herder and City Manager Leon were also present.

Quorum present.

Action 22-125

Moved by Commissioner Miner, seconded by Commissioner Benson, to adjourn at 10:05 p.m.

Roll Call: All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

Stephanie Moser
Mayor

ATTEST:

Al Viereck
Finance Officer