

RESOLUTION NO. 64-09

Resolution Giving Approval To Tax Increment District Number 3 Project Phase Ii, Giving Approval To The Issuance Of Tax Incremental Revenue Refunding Bonds To Refund Outstanding Tax Increment District Number 3 Bonds, The Project And Authorizing The Sale Of Said Tax Incremental Revenue Refunding Bonds And The Terms Thereof.

NOW, THEREFORE, BE IT RESOLVED AND RESOLVED by the City of Brookings as follows:

SECTION 1. AUTHORITY, FINDINGS, AUTHORIZATION.

1.01 Authority. The City is authorized to issue its Tax Incremental Revenue Refunding Bonds, Series 2009 to (1) Refund Tax Increment Bonds, Series 2008 in accordance with 6-8B-30 through 6-8B-52 and (2) finance project costs pursuant to Section 11-9-33 of the South Dakota Codified Laws. Pursuant to Chapter 11-9 of the South Dakota Codified Laws (the "Act"), the City proposes to issue tax incremental revenue bonds (as herein authorized, the "Tax Incremental Revenue Refunding Bonds" or the "Bonds") to finance a portion of the Phase II project costs. The City is authorized by the Tax Incremental Act to pledge a special fund into which the City will deposit the tax increment (as defined by the Act).

1.02 Findings. The City Council hereby finds and determines as follows:

- (a) It is necessary to provide incentives for the development of certain real property located in the City for affordable housing;
- (b) The City intends to provide financing of public works and improvements located in the City of Brookings in connection with Tax Increment District Number 3 the plan on file with the City Finance Officer and open to public inspection (the "Project");
- (c) The Tax Incremental Revenue Refunding Bonds authorized hereby are being issued to pay costs of Project, which have not been incurred or paid as of the date hereof and/or which the City has heretofore declared its intention to finance with bond proceeds and for which the City has no other available means or source of financing. The cost of the Project will not exceed \$500,000, including capitalized interest;
- (d) It is in the best interests of the City to authorize the borrowing of funds to pay a portion of the costs of the Project by authorizing and issuing the Refunding Bonds, consistent with the terms approved hereby for an aggregate sum not in excess of the amount of \$1,035,000; and
- (e) That the Tax Incremental Revenue Refunding Bonds are payable only solely out of the special fund created herein and that it does not constitute a general indebtedness of the City or a charge against its general taxing power.

1.03 Authorization to issue the Bonds. It is hereby determined to be necessary and in the best interests of the City and its inhabitants that this City Council authorize, issue and sell the Bonds (the "Bonds") in order to finance a portion of the cost of the Project. The Mayor, City Manager and City Finance officer are authorized to negotiate the sale and terms of the Bonds subject to the limitations of the law and this Resolution. The Bonds may be issued by the City without an election pursuant to SDCL §11-9-34 and Chapter 6-8B.

SECTION 2. SALE, BOND PURCHASE AGREEMENT AND OFFICIAL STATEMENT.

2.01 Sale. The Bonds authorized by this Resolution shall be issued in an aggregate principal amount not exceeding \$1,035,000 and shall be privately placed due to the unique nature. The Bonds will bear interest at a rate or rates per annum and will mature over a period set forth in the bond purchase agreement or similar document. The City intends to sell the Bonds to South Dakota Housing Development Authority (the "Purchaser").

2.02 Bond Purchase Agreement. The execution of a bond purchase agreement or similar document setting forth the final terms of the Bonds is hereby approved and authorized. The execution of said document by the Mayor and City Finance officer shall be conclusive evidence of such agreement and shall be binding upon the City.

SECTION 3. TERMS OF BONDS.

3.01 Date, Amount, Maturities and Interest Rates. The Bonds shall be dated in calendar year 2009. The principal amount of the Bonds shall not exceed the lesser of \$1,035,000 or any statutory or constitutional debt limitation. The term of the Bonds shall not exceed 20 years. The weighted average interest rate on the Bonds shall not exceed 6.00%.

3.02 Form of Bonds. The Bonds shall be prepared in substantially the form on file with the City Finance officer and open to public inspection.

3.03 Execution. The Bonds shall be signed by the manual or facsimile signatures of the Mayor and City Finance Officer of the City and countersigned by the manual or facsimile signature of an attorney resident in the State of South Dakota and in case any officer whose signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery

3.04 Redemption. Terms of optional or mandatory redemption shall be set by negotiation with the purchaser of the Bonds.

- (i) Appointment of Initial Registrar. The City hereby appoints the Finance Officer, as Bond registrar, transfer agent and paying agent (the "Registrar") for the Bonds.

3.05 Authentication and Delivery. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until a certificate of authentication on such Bond has been duly executed by the Registrar by the manual signature of its authorized representative. Certificates of authentication on different Bonds need not be signed by the same representative. The executed certificate of authentication on each Bond shall

be conclusive evidence that it has been authenticated and delivered under this Resolution. When the Bonds have been so prepared, executed and authenticated, the City Finance Officer shall deliver the same to the Purchaser thereof upon payment of the purchase price in accordance with the provisions of the Bond Purchase Agreement and the Purchaser shall not be obligated to see to the application of the purchase price. Upon delivery of the Bonds to the Purchaser, the City Finance Officer shall file with the Secretary of State, on the form provided by the Secretary of State, the information required by SDCL, Section 6-8B-19.

SECTION 4. SECURITY PROVISIONS; FUNDS AND ACCOUNTS AND OTHER COVENANTS AND DETERMINATIONS.

4.01 Pledge Tax Increments. Pursuant to the Act, the City shall receive Tax Increments. All Tax Increments shall be placed in the Tax Incremental Revenue Bond Fund. The Tax Increment is irrevocably pledged and appropriated to the payment of the Bonds. For purposes of this Resolution, "Outstanding Bonds" shall mean these Bonds and any parity lien bonds herebefore or hereafter issued pursuant to this Resolution. The Tax Incremental Revenue Bond Fund shall be used and applied only in the manner and order hereinafter set forth. The holders of the Outstanding Bonds shall have a lien against the Tax Incremental Revenue Bond Fund for payment of the principal and interest and may either at law or in equity protect and enforce the lien.

4.02 Tax Incremental Revenue Bond Fund. The City Finance Officer is hereby authorized and directed to establish and shall maintain a special fund, the Tax Incremental Revenue Bond Fund, as a separate and special fund in the financial records of the City until all Bonds issued and made payable therefrom, and interest due thereon, have been duly paid or discharged. All collections of the Tax Increments shall be credited, as received, to the Tax Incremental Revenue Bond Fund. Within the Tax Incremental Revenue Bond Fund are various separate accounts to be maintained by the City.

- (a) Construction Account. There is hereby created and established as an account of the Tax Incremental Revenue Bond Fund, a "Construction Account". There shall be credited to the Construction Account the proceeds from the sale of the Bonds remaining after payment of the expenses of issuing the Bonds. All moneys credited to the Construction Account shall be applied solely to the payment of the costs of the Project or reimbursement therefore. For the purposes of this Resolution, "costs of the Project" shall include costs of acquiring, construction, and installing the Project including cost of capitalized interest, labor, services, materials and supplies, financial, architectural, engineering, legal, accounting and other professional expenses relating to the Project, the costs of acquisition or properties, rights, easements, or other interest in properties, insurance premiums, and the costs of publishing, posting or mailing notices in connection with the Project. All sums derived from the investment of moneys in the Construction Account shall remain in and become part of such account. Upon completion of the Project and when all costs of the Project have been paid, any balance remaining in the Construction Account shall be credited to the Principal and Interest Account hereinafter established. All public project costs shall be bid in accordance with South Dakota law.

- (b) Principal and interest Account. There is hereby created and established as an account of the Tax Incremental Revenue Bond Fund, a "Principal and Interest Account." Immediately upon delivery of the Bonds, there shall be credited to the Principal and Interest Account the amount of any accrued interest received from the Purchaser. Periodically, as needed there shall be withdrawn from the Tax Incremental Revenue Bond Fund and credited to the Principal and Interest Account an amount which will equal at least the next principal and interest payment. In all events there shall be credited to the Principal and Interest Account amounts sufficient to pay the principal of and interest on the Outstanding Bonds as the same become due.
- (c) Subordinate Lien Bonds. After making the above required payments, any remaining Tax Increment shall be used for the payment of the principal of and interest on any additional Tax Incremental Revenue Refunding Bonds having a lien which is subordinate to the lien of the Outstanding Bonds, and for a reserve fund as additional security for the payment of such subordinate lien bonds.

4.03 Additional Debt.

- (a) No additional Bonds shall be issued, be made payable from the Tax Incremental Revenue Fund or Tax Increments which is prior to or superior to the lien of the Bonds authorized herein.
- (b) Nothing in this Resolution shall be construed in such manner as to prevent the issuance by the City of additional bonds payable from the Tax Increment and constituting a lien upon the Tax Increment and the Tax Incremental Revenue Fund equal to or on a parity with the lien of the Bonds authorized herein (such additional bonds being referred to herein as "Additional Bonds"), provided that it is feasible and the Bond Holder agrees in writing.
- (c) Nothing herein shall prevent the City from issuing Bonds payable from the Tax Increment or Tax Incremental Revenue Bond fund or having a lien thereon which is junior and subordinate to the lien of the Bonds authorized herein. The City may incur expenses in connection with the Tax Incremental District Number 3 which shall be reimbursed through the tax increment. Said obligations shall be junior and subordinate to the Bonds whether evidenced by an accounting notation or instrument of indebtedness.

4.04 Pledge of State of South Dakota. Pursuant to SDCL 11-9-39.1, the State of South Dakota does pledge to and agree with the holders of any issued under 11-9 that the state will not alter the rights vested in the bond holders until such bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged.

4.05 Covenants of the City. The City hereby irrevocably covenants and agrees with each and every holder of the Bonds that so long as any of the Bonds remain outstanding:

- (a) It will not amend or repeal the Tax Increment or the allocation of revenues thereof to the Tax Incremental Revenue Bond Fund, or in any way that would adversely affect the amount of Tax Incremental Revenues which would otherwise be collected and deposited to the Tax Incremental Revenue Bond Fund.
- (b) It will administer, enforce, and collect, or cause to be administered, enforced or collected, the real property taxes and shall take such necessary action to collect delinquent payments in accordance with law.
- (c) It will keep or cause to be kept such books and records showing the proceeds of the Tax Incremental, in which complete entries shall be made in accordance with standard principles of accounting, and any owner of any Bond shall have the right at all reasonable times to inspect the records and accounts relating to the collection and receipts of such Tax Incremental.
- (d) In the event the real property taxes of the City is replaced and superseded by the state collected-locally shared tax or taxes, or is replaced and superseded in some other manner from other source or sources, the revenues derived by the City from the replacement source or sources, as received by the City shall be appropriated in the same manner as if the City had levied and imposed a real property tax. From and after the date of a replacement, the Outstanding Bonds shall have a first and prior lien, but not necessarily an exclusive lien, upon such replacement revenues to the extent therein specified.

4.06 Defeasance. When all the Bonds issued have been discharged as provided in this section, all pledges, covenants, and other rights granted by this Resolution to the registered owners of the Bonds shall cease. The City may discharge its obligations with respect to any Bonds which are due on any date by providing to the Paying Agent on or before that date a sum sufficient for the payment thereof in full; or, if any Bond should not be paid when due, it may nevertheless be discharged by providing to the Paying Agent a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit. The City may also discharge its liability with reference to all Bonds which are called for redemption on any date in accordance with their terms by depositing funds with the Paying Agent on or before that date in accordance with their terms by depositing funds with the Paying Agent on or before that date, in an amount equal to the principal, interest, and premium, if any, which are then due thereon, provided that notice of such redemption has been duly given. The City may also at any time discharge this issue of Bonds in its entirety, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or United States government obligations which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required to provide funds (without an reinvestment) sufficient to pay all principal, interest and premiums, if any, to become due on all Bonds on and before maturity, or, if a Bond has been duly called for redemption, on or before the designated redemption date.

4.07 Certification of Proceedings. The officers of the City are authorized and directed to prepare and furnish to the purchasers of the Bonds certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bonds and such other affidavits and

certificates as may reasonably be required to show the facts relating to the legality and marketability of the Bonds as such facts appear from the officer's books and records or are otherwise known to them. All such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the City as to the correctness of the facts recited therein and the action stated therein to have been taken.

SECTION 5. TAX MATTERS; CERTIFICATION OF PROCEEDINGS AND MISCELLANEOUS.

5.01 Tax Matters. The interest component on the Bonds shall be taxable.

SECTION 6. INTERPRETATION, AUTHORIZATION OF OFFICERS AND RESOLUTION CONSTITUTES CONTRACT.

6.01 Interpretation. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

6.02 Authorization of Officers. The Mayor, officers of the City and the City Finance Officer of Brookings are authorized and directed to prepare and furnish to the purchasers of said Bonds, and to the attorneys passing on the legality of said Bond issue, copies of all proceedings relating to Bonds and other certificates and affidavits showing the facts affecting the legality thereof as shown by the books and records of the City under their custody and control or as otherwise known to them and such copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the City as to the facts therein recited.

6.03 The officers of the City are hereby authorized and directed to take all other action necessary or appropriate to effectuate the provisions of this Resolution , including without limiting the generality of the foregoing, the printing of the Bonds, and the execution of such certificates as may reasonably be required by the Purchaser, including, without limitation, certification relating to the signing of the Bonds, the tenure and identity of the City's officials, the exemption of interest on the Bonds from federal income taxation, the receipt of the Bond purchase price and, if in accordance with the facts, the absence of litigation affecting the validity thereof.

6.04 Resolution Constitutes Contract. After the Bonds have been issued, this Resolution shall constitute a contract between the City and the holder or holders of the Bonds, and shall be and remain irrevocable and unalterable until the Bonds and the interest accruing thereon shall have been duly paid, satisfied and discharged.

6.05 Rules of Construction. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution. The title or caption of each paragraph are for convenience purposes only and do not define scope or intent of paragraph.

CITY OF BROOKINGS

Tim Reed, Mayor

ATTEST:

Shari Thornes, City Clerk

Adopted: June 23, 2009
Approved: June 23, 2009
Published: June 26, 2009

The motion for adoption of the foregoing Resolution was made by Council Member Whaley and duly seconded by Council Member McClemans and upon vote being taken thereof, the following voted YEA: Reed, Bartley, Whaley, Bezidichek, Kubal, Trieb and McClemans. And the following voted NAY: None

Whereupon said Resolution was declared duly passed and adopted.

CITY OF BROOKINGS

Tim Reed, Mayor

ATTEST:

Shari Thornes, City Clerk