

City of Tea
Regular Meeting
June 1, 2020

A regular meeting of the Tea City Council was held at Tea City Hall on June 1, 2020 at 7:00 pm.

Mayor Lawler called the meeting to order at 7:01 with the following members present: Jim Erck, Casey Voelker, Joe Weis, Sidney Munson, Chuck Ortmeier and Todd Boots. Also present: City Administrator Dan Zulkosky, Planning & Zoning Administrator Kevin Nissen and Finance Officer Dawn Murphy.

CONSENT AGENDA. MOTION 20-56. MOTION by Ortmeier, seconded by Weis to approve the following June 1, 2020 consent agenda items.

- a) Approval of the June 1, 2020 Agenda
- b) Approval of the May 18, 2020 Meeting Minutes
- c) Approval of June, 2020 Claims (will be listed at the end of the minutes).
- d) Approval of hiring maintenance season employee Trevor Welch at \$11.00 per hour.
- e) Plats:
 - a) Lot 1, Block 2 Bakker Landing Addition, City of Tea
 - b) Lot 4, Block 2, Bakker Landing Addition, City of Tea
 - c) Tract 1 & 2, Stuntebeck's Addition, City of Tea
 - d) Lots 1, 2, 11-18, Block 5 and Lots 1-9, Block 8, Pinnacle Estates Addition, City of Tea
 - e) Tracts 21, 22, 27,34, Landmark Industrial Park Addition, City of Tea

All members voted AYE.

There were no public comments.

CUP #20-01 PUBLIC HEARING. Mayor Lawler opened the public hearing for a Conditional Use Permit for a daycare at 415 S. Deerview. There were no public comments. **MOTION 20-57. MOTION** by Munson, seconded by Erck to approve Group Daycare Conditional Use Permit #20-01 for Jesse Cauwels, Daddy Care, at 415 S. Deerview Ave. All members voted AYE.

CUP #20-02 PUBLIC HEARING. Mayor Lawler opened the public hearing for a Conditional Use Permit for a Kelsea & Shawn Zillgitt to operate a pet sitting business in a residential district. City of Tea Ordinance #199 allows for a total of 6 pets in a home at one time and kennels are not permitted. There were no public comments. **MOTION 20-58. MOTION** by Ortmeier, seconded by Weis to approve Home Business Conditional Use Permit #20-02 for Kelsea & Shawn Zillgitt, d/b/a Claws n' Paws Pet Sitterz at 318 W 3rd St. All members voted AYE.

CUP #20-03 PUBLIC HEARING. Mayor Lawler opened the public hearing for a Conditional Use Permit for an off-premise sign in Bakker Landing. The proposed billboard design detail shows a sign of 672 sq. ft. and 40' tall. This would be along the interstate and the SD Department of Transportation has a maximum size of 672 sq. ft. There were some concerns regarding the size of the sign. There were no public comments. **MOTION 20-59. MOTION** by Boots, seconded by Weis to approve Off-Premise Sign Conditional Use Permit #20-03 for Sundowner Investments, LLC, to be installed on Lot 1, Block 2, Bakker Landing 1st Addition. Members Boots, Weis, Munson and Ortmeier voted AYE. Members Voelker and Erck voted NO. Motion carried.

VARIANCE #20-01 PUBLIC HEARING. Mayor Lawler opened the public hearing for a setback variance for Ryan Bak, 320 W. Ivy Rd. **MOTION 20-60. MOTION** by Voelker, seconded by Erck to approve the 3' setback variance for an accessory structure (shed) and a 2' setback variance for a concrete driveway/parking pad for Ryan Bak, 320 W. Ivy Rd. All members voted AYE.

SECOND READING OF ORDINANCE 273. (Mayor Lawler excused himself briefly during discussion) The council held the second reading of Ordinance 273. **MOTION 20-61. MOTION** by Weis, seconded by Munson to approve and adopt Ordinance 273, An Ordinance of the City of Tea, SD Amending Chapter 8, Traffic Code of the Tea Municipal

Ordinance by Adding Section 8.07 Golf Carts. Members Munson, Weis, Erck and Voelker voted AYE. Members Ortmeier and Boots voted NO. Motion carried. The Ordinance will be published separately.

RESOLUTION 20-06-06. MOTION 20-62. MOTION by Erck, seconded by Voelker to approve A Resolution of the City of Tea, SD Encouraging the People of Tea to be Diligent in Their Actions and Behavior to slow the spread of the Virus that causes COID-19 and to Protect Vulnerable Populations. All members voted AYE. The resolution will be published separately.

SECOND READING OF ORDINANCE 272. The second reading of Ordinance 272 was originally tabled on April 20th. **MOTION 20-63. MOTION** by Boots, seconded by Voelker to move Ordinance 272 off the table. All members voted AYE. **MOTION 20-64. MOTION** by Boots, seconded by Voelker to NOT approve Ordinance 272, An Ordinance of the City of Tea, SD Adopting Regulations Pertaining to the Novel Coronavirus (COVID-19). All members voted AYE.

SECOND READING OF ORDINANCE 275. The council held the second reading of Ordinance 275. The first reading was held on May 18th. **MOTION 20-65. MOTION** by Boots, seconded by Voelker to NOT approve Ordinance 275, An Ordinance of the City of Tea, SD Adopting Regulations Pertaining to the Novel Coronavirus (COVID-19). All members voted AYE.

SQUEALERS SMOKE SHACK would like to have a parking lot party on June 20th. This normally would have been Teapot Day. **MOTION 20-66. MOTION** by Boots, seconded by Munson to approve the outdoor parking lot party for Squealers Smoke Shack, 840 Gateway Lane on June 20, 2020 until 1:00 a.m. and to waive the license fee. Members Munson, Erck, Ortmeier, Boots and Voelker voted AYE. Member Weis voted NO. Motion carried.

SKY LOUNGE would like to have an outdoor dart tournament June 19 and outside concert on June 20. Again, this would have been Teapot Day. They presented their plan to reduce the risk of COVID-19 spread. They plan to have sanitizers, disinfectant wipes and to space outdoor seating six feet apart, just to name a few of the precautions. They would need to block a portion of 2nd St. just as they have done in the past. **MOTION 20-67. MOTION** by Voelker, seconded by Munson to allow Sky Lounge, 200 S. Main Ave., to have their outdoor activities on June 19 and 20, until 1:00 am and to waive the license fee. Members Munson, Erck, Ortmeier, Boots and Voelker voted AYE. Member Weis voted NO. Motion carried.

SKY LOUNGE would also like to host a class reunion on June 27. They would just need a portion of the 2nd St., they would follow the same COVID-19 plan and would not have a band, just speakers. **MOTION 20-68. MOTION** by Erck, seconded by Ortmeier to allow Sky Lounge to have an outdoor party and to block a portion of 2nd St. on June 27, 2020. All members voted AYE.

O'TOOLES would also like to have their normal Teapot Day Dance on June 19. This would be held on private property, so they are not required to have a COVID-19 plan. **MOTION 20-69. MOTION** by Voelker, seconded by Boots to approve the outdoor concert for O'Toole's Bar/Steak House on June 19, until 1:00 am. Members Munson, Erck, Ortmeier, Boots and Voelker voted AYE. Member Weis voted NO. Motion carried

SECOND READING OF ORDINANCE 274. The council held the second reading of Ordinance 274. The first reading was held on May 18. **MOTION 20-70. MOTION** by Voelker, seconded by Ortmeier to approve and adopt Ordinance 274, An Ordinance of the City of Tea, SD Rezoning Lot 1, Block 2, Boulder Addition from GB-General Business Commercial to R2-Residential District and Amending the Official Zoning Map of the City of Tea. All members Voted AYE. The Ordinance will be published separately.

RESOLUTION 20-06-07. This resolution is needed for certain property along Heritage Blvd. (CR 106). HDR Engineering, representing the City, has been in the process of acquiring right-of-way and permanent and temporary easements for the reconstruction project. The agents have not been able to reach an agreement with the property owners and therefore we have no choice but to begin the condemnation process. **RESOLUTION 20-06-07. MOTION 20-71.**

by Weis, seconded by Ortmeier to approve the Resolution Authorizing Condemnation. All members voted AYE. The resolution will be published separately.

RESOLUTON 20-06-08. This resolution is for funding of the Sanitary Sewer Regionalization Project. **RESOLUTION 20-06-08. MOTION 20-72. MOTION** by Boots, seconded by Weis to approve the following resolution. All members voted AYE. 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. All members voted AYE. The resolution will be published separately.

RESOLUTION 20-06-09. The City passed a resolution in December adding a sewer debt service fee for repayment of the revenue bond (Resolution 20-06-08). However, the state requires certain language to be included in the rate resolution. The rates are NOT increasing, this is just needed to comply with the above bond resolution. **RESOLUTION 20-06-09. MOTION 20-73. MOTION** by Voelker, seconded by Weis to approve Resolution 20-06-09, A Resolution Amending the City's Rate Structure, Providing for a Surcharge for improvement to Sewer System, for the Payment of a Revenue Borrow Bond and Yearly Review of Rate. All members voted AYE. The resolution will be published separately.

MOTION 20-74. MOTION by Ortmeier, seconded by Weis to adjourn at 8:48 pm. All members voted AYE.

John M. Lawler, Mayor

ATTEST:

Dawn R. Murphy, Finance Officer

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**CITY OF TEA
 WARRANTS PAID JUNE 1, 2020**

	FINANCE 4142	
Innovative Office Solutions	1/3 supplies	157.62
AFLAC	Insurance	616.96
KCL Group Benefits	Insurance	428.22
Wellmark	Insurance	6,536.97

PLANNING & ZONING/ECONOMIC DEVELOPMENT 4650

Camel Press	Occupancy forms	149.40
Odland, Tim	Inspections	3,750.00

LIBRARY 4550

Barnes & Nobel	Books	113.68
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GOVERNMENT BUILDINGS 4192

Explorers Credit Union	Zoom, Adobe, misc	261.60
Xcel Energy	600 E. 1st St	708.01
Xcel Energy	200 W Maple	40.84
Xcel Energy	510 S. Main	84.08

PUBLIC SAFETY 4210

Sioux Falls Humane Society	April services	121.65
Vast	Phone	571.99
Xcel	S. siren	16.22

HIGHWAY/STREET 4312

Cenex	Gasoline	19.54
	468th Drainage Improvement Project Final	
Metro Construction	Pay App.	8,061.95
Southeastern Electric	Locates	82.50
Xcel Energy	7th St. lights	17.71

PARKS/RECREATION 4501

EnviroMaster Inc.	Hand sanitizer	198.00
Hauff Mid America Sports	Basketball nets	45.98
Menards	Glass block for restroom	239.91
Site One	Irrigation supplies	51.10
Xcel Energy	Ball fields	574.29

WATER 601

Cenex	Gasoline	19.54
Innovate Office Solutions	Misc	157.62
Ralphs Repair	Tires	312.00
Real Property Management	Water refund	141.30
Xcel Energy	Lincoln County Rural Water	13.43
Xcel Energy	2nd St. tower	14.51
Xcel Energy	Brian St. tower	68.49

SEWER 604

Bierschbach	Making paint	99.60
Cenex	Gasoline	19.53
Hydro Klean	Clean lift station #4	1,340.00
Innovatie Office Solutions	Misc	157.64
Xcel Energy	S. Lift Station	394.74
Xcel Energy	5th St. Lift Station	68.65
Xcel Energy	Lagoon Building	1,249.34

SPECIAL PARK FUND 201

Dykstra, Andrea	Baseball refund	100.00
Ernster, Matthew	Baseball refund	150.00
Fischer, Erica	Baseball refund	50.00
Gabbert, April	Baseball refund	150.00
Haliburton, Jeffrey	Baseball and softball refund	160.00
Kooima, Jamie	Soccer & baseball refund	175.00
Lauck, Andrew	Softball refund	60.00
Maag, Nyla	Baseball refund	100.00
Olson, Jamie	Baseball refund	100.00
Thim Rebecca	Softball refund	100.00
Thompson, Jehoshaphat	Baseball and softball refund	160.00
Vandepol, Kent	Baseball refund	100.00
Williamssen, Rick	Baseball refund	100.00
Youngstrom, Kandice	Baseball refund	50.00

3RD PENNY/POOL/PARK EXPENSES 211

Xcel	Services	120.70
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TOTAL 28,580.31

DEPARTMENT	GROSS			TOTAL
	PAY	SS/MED	RETIRMENT	
Administrator 4122	7,422.84	567.86	445.38	8,436.08
Finance 4142	5,573.08	426.32	334.38	6,333.78
Public Safety 4210	33,746.60	2,483.17	2,699.71	38,929.48
Highway/Streets 4311	11,377.24	848.92	541.28	12,767.44
Recreation 4501	3,595.32	262.67	215.72	4,073.71
Planning & Zoning 4650	5,109.38	386.06	306.56	5,802.00
Water Distribution 4334	5,943.05	450.51	355.09	6,748.65
Water Clerk 4335	1,514.25	115.85	90.86	1,720.96
Sewer Administration 4321	5,944.83	450.67	355.19	6,750.69
Sewer Sanitary Clerk 4322	1,514.25	115.82	90.85	1,720.92
TOTAL MAY PAYROLL	74,318.00	5,539.99	4,989.64	93,283.71

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**CITY OF TEA
RESOLUTION 20-06-07**

BE IT RESOLVED BY THE CITY OF TEA COMMON COUNCIL AS FOLLOWS:

WHEREAS, the City of Tea, South Dakota, has set up for reconstruction, relocation, alteration, and widening of Gateway Boulevard (CR 106), the Phase 2 Improvements, the same being a City street in the City of Tea, South Dakota.

AND, WHEREAS, the construction of said project as planned will require the acquiring of additional land for right-of-way and temporary easement, either by purchase or condemnation.

AND, WHEREAS, the City of Tea has been unable to acquire the following described right-of-way and temporary easement necessary for the construction of said project by purchase or agreement with the owners to-wit:

Description of the land to be acquired for right-of-way:

Lot H1 in Tract 4 of Jongeling's Addition in the NW $\frac{1}{4}$ of Section 25, Township 100 North, Range 51 West of the 5th P.M., Lincoln County, South Dakota. Said Lot H1 containing 2,456 sq. ft. or 0.056 acres, more or less.

Lot H1 in the South Half (S $\frac{1}{2}$) of Tract 1B, Southwest Industrial Park in the East Half of the Southeast Quarter (E $\frac{1}{2}$ S $\frac{1}{2}$ E $\frac{1}{4}$) of Section 24, Township 100 North, Range 51 West of the 5th P.M., Lincoln County, South Dakota, according to the recorded plat thereof. Said Lot H1 containing 6765 sq. ft. or 0.16 acres, more or less.

Lot H1 in Tract 36, except Lot A in Sky Haven Heights Addition in the NW $\frac{1}{4}$ of Section 30, Township 100 North, Range 50 West of the 5th P.M., Lincoln County, South Dakota. Said Lot H1 15,142 sq. ft. or 0.35 acres, more or less.

Lot H1 in the West 1,557 feet of the NE $\frac{1}{4}$ of Section 25, Township 100 North, Range 51 West of the 5th P.M., Lincoln County, South Dakota. Said Lot H1 containing 1,713 sq. ft. or 0.04 acres, more or less.

Also elimination of access to:

Ingress and egress to Lincoln County, Township, and/or City Roadway 106 at Station 63+05 Lt. from the real property lying immediately along, adjacent, described as Lot B, Town of Bucksnot (unincorporated town) in the Southwest Quarter (SW $\frac{1}{4}$) of Section 24, Township 100 North, Range 51 West of the 5th P.M., Lincoln County, South Dakota, according to the recorded plat thereof.

Also a temporary easement in:

Tract 1 of Income Addition in the NW $\frac{1}{4}$ of Section 25, Township 100 North, Range 51 West of the 5th P.M., Lincoln County, South Dakota.

Lot B, Town of Bucksport (unincorporated town) in the Southwest Quarter (SW1/4) of Section 24, Township 100 North, Range 51 West of the 5th P.M., Lincoln County, South Dakota, according to the recorded plat thereof.

The South Half of Tract 1B, Southwest Industrial Park in the E1/2 SE1/4 of Section 24, Township 100 North, Range 51 West of the 5th P.M., Lincoln County, South Dakota.

And also permanent/temporary easement in:

Lot 1 of Income Addition in the NW¼ of Section 25, Township 100 North, Range 51 West of the 5th P.M., Lincoln County, South Dakota.

Tract 4 of Jongeling's Addition in the NW¼ of Section 25, Township 100 North, Range 51 West of the 5th P.M., Lincoln County, South Dakota.

Tract 36, except Lot A in Sky Haven Heights Addition in the NW1/4 of Section 30, Township 100 North, Range 50 West of the 5th P.M., Lincoln County, South Dakota, according to the recorded plat thereof.

The West 1,557 feet of the NE 1/4 of Section 25, Township 100 North, Range 51 West of the 5th P.M., Lincoln County, South Dakota.

IT IS HEREBY DECLARED NECESSARY to obtain said right-of-way by condemnation, and the City of Tea does hereby authorize and request the City Attorney of Tea to institute proceedings for condemnation of said above described land for highway purposes, including, if necessary, filing a Declaration of Taking in accordance with the provisions of SDCL §9-27-1. SDCL Ch. 21-35 and amendments thereto.

IT IS HEREBY FURTHER DECLARED NECESSARY to obtain by condemnation, right-of-way, temporary construction easements and permanent easements. The City of Tea Common Council does hereby authorize and request the City Attorney of Tea to institute proceedings for condemnation of said above described land for highway purposes, and, if necessary, file a Declaration of Taking in accordance with the provisions or SDCL §9-27-1, SDCL Ch. 21-35, and amendments thereto.

Dated this 1st day of June, 2020

John M. Lawler, Mayor

ATTEST:

Dawn R. Murphy, Finance Officer

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CITY OF TEA

RESOLUTION NO. 20-06-08

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 Tea (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 Tea Sanitary Sewer Regionalization Project- Phase 1 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 \$4,431,000 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.

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 \$4,431,000 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (the “Revenue Bond”) shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the Mayor, Finance Officer, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the District, for and on behalf of the City, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The Mayor and Finance Officer are hereby authorized to approve the final terms of the Revenue Bond and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapter 9-40 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided in Section 19 of the Act.

3.4. Pledge of Revenues. The Revenue Bond together with the interest thereon, shall not constitute a charge against the City's general credit or taxing power, but shall be a limited obligation of the City payable solely out of the Project Debt Service Account, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Revenue Bond and shall be used for no other purpose than to pay the principal of, interest and Administrative Surcharge on the Revenue Bond, except as may be otherwise expressly authorized in the Loan Agreement (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The City 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 Tea, 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 Tea, South Dakota, this 1st day of June 2020.

John M. Lawler, Mayor

ATTEST:

Dawn R. Murphy, Finance Officer

First reading: June 1, 2020
Published: June 5, 2020
Effective: June 25, 2020

Published once at the approximate cost of _____.

CITY OF TEA
RESOLUTION NO 20-06-09

A RESOLUTION AMENDING THE CITY'S RATE STRUCTURE, PROVIDING FOR A SURCHARGE FOR IMPROVEMENTS TO SEWER SYSTEM, FOR PAYMENT OF A REVENUE BORROWER BOND AND YEARLY REVIEW OF RATE

WHEREAS, on December 19, 2019 the City Council of the City of Tea Adopted Resolution #19-12-33, A Resolution Establishing a Sanitary Sewer Surcharge, imposing a surcharge on all customers of the City's wastewater System in order to secure repayment of a South Dakota Conservancy District Borrow Bond in the amount of \$4,431,000 for the Tea Sanitary Sewer Regionalization Project Phase 1 Improvements(the "Surcharge Resolution"); and

WHEREAS, the Surcharge Resolution established a monthly surcharge of \$10.00 per all commercial and single-family homes an \$10.00 per living unit for multi-family homes, effective January 1, 2020;

NOW THEREFORE BE IT RESOLVED as follows:

1. Surcharge for Borrower Bond. The Surcharge shall be segregated from other revenues of the city and shall be used for the payment of the Borrower Bond CW-02 (the "Borrower Bond"). Provided that such 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.
2. Collection. . Such charge or surcharge shall be set at a level which, assuming a 10% delinquency rate, will produce income at the times and in amounts sufficient to pay when due the principal of and interest on the Borrower Bond and the administrative expense surcharge and all other payments as may be required under the loan agreement and Borrower Bond.

Borrower Bond. This surcharge shall remain in effect until such time as the revenue bond is paid in full. The initial surcharge shall be collected at the same time as other charges of the system. The surcharge is found to be equitable for the services provided by the improvements.
3. Segregation. The debt service surcharge shall be segregated from other income of the system in a separate book keeping account and is pledged to the South Dakota Conservancy District for the payment of the loan payments on the Borrower Bond.
4. Yearly review. The amount of the surcharge shall be reviewed from year to year and may be modified in order to provide such funds as are set forth herein. The charges shall be reviewed yearly by City personal and administratively adjusted, upwards or downwards, to such amounts as may be necessary to pay principal, interest, administrative surcharge and other charges as may become due and owing under the loan agreement or Borrower Bond.
5. Billing and Accounting. The surcharges shall be included in the monthly user bill. Nothing contained herein requires the surcharge be indicated on the billing, however, the surcharge segregation shall be indicated on the books of the City.
6. Automatic Repeal. The surcharge for the Borrower Bond shall be automatically repealed when the Borrower Bond is paid in full.
7. Partial Invalidity. If any one or more of the provisions of the shall be held invalid, illegal, or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.

Dated this 1st day of June 2020

John M. Lawler, Mayor

ATTEST:

Dawn R. Murphy, Finance Officer

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