WORK SESSION OF THE CITY COUNCIL
MITCHELL, SOUTH DAKOTA

October 16, 2023
5:30 P.M.

PRESENT: Mayor Bob Everson, Marty Barington, Mike Bathke, John Doescher, Tim Goldammer, Dan Sabers, Jeffrey Smith, Susan Tjarks

ABSENT:

PRESIDING: Council President Kevin McCardle

REVIEW:

The City Council met October 16, 2023 for a budget work session in the Council Chambers of City Hall. The City Council reviewed previously discussed budget items. The first reading of the proposed budget will be held on November 6, 2023.

Council President McCardle recessed the work session at 6:00 p.m. for the regular City Council meeting and reconvened at 8:30 p.m.

ADJOURN:

There being no further business to come before the meeting, Council President McCardle adjourned the work session at 8:57 p.m.

Michelle Bathke
Finance Officer

Published once at the approximate cost of _____.

REGULAR MEETING OF THE CITY COUNCIL
COUNCIL CHAMBERS, CITY HALL
MITCHELL, SOUTH DAKOTA

October 16, 2023
6:00 P.M.

PRESENT: Marty Barington, Mike Bathke, John Doescher, Tim Goldammer, Kevin McCardle, Dan Sabers, Jeffrey Smith, Susan Tjarks

ABSENT:

PRESIDING: Mayor Bob Everson

AGENDA:

Moved by Barington, seconded by McCardle, to approve the following items on the consent agenda:

a. City Council Minutes
   1. City Council October 2, 2023.
b. Committee Reports
   1. Planning Commission September 25, 2023,
   2. Planning Commission October 10, 2023 (unsigned),
   3. Historic Preservation Commission April 27, 2023, and
   4. Historic Preservation Commission October 4, 2023 (unsigned).
c. Department Reports
   1. Sales Tax Collections (September),
   2. Finance (September),
   3. Building Permits (September),
   4. Police (September),
   5. Fire/EMS (September),
   6. Code Enforcement (September),
   7. Palace Transit (September),
   8. Water (September), and
   9. Airport (September).
d. MADC Quarterly Report.
e. Raffle Permits
   1. Mitchell Area Council of the Arts with the drawing to be held November 11, 2023,
   2. St. John Paul II with the drawings to be held weekly January 19-February 16, 2024, and
   3. Big Friend Little Friend with the drawing to be held February 3, 2024.
f. Pay Estimates October 16, 2023
   Pay Estimate #1 in the amount of $8,666.66 for Airport Snow Removal #2019-53R2 contracted to Quality Cut Lawn & Snow,

Pay Estimate #27 in the amount of $3,719.63 for AIP '28 Airport ALP/Master Plan contracted contracted to Helms & Associates,
Pay Estimate #5 in the amount of $639,404.79 for Above Ground Storage Tank #2020-20 contracted to Rice Lake West,
Pay Estimate #4 in the amount of $2,583.00 for Above Ground Storage Tank #2020-20 contracted to GeoTek Engineering,
Pay Estimate #18 in the amount of $3,628.40 for Lake Mitchell-Phase II #2021-20 contracted to Barr Engineering,
Pay Estimate #11 in the amount of $50,822.50 for Recycling Building #2021-30 contracted to Helms & Associates,
Pay Estimate #16 in the amount of $732,790.00 for WWTP Improvements #2021-31 contracted to PKG Contracting,
Pay Estimate #10 in the amount of $1,484.00 for WWTP Improvements #2021-31 contracted to GeoTek Engineering,
Pay Estimate #23 in the amount of $110.00 for Recreation Center Fitness Room-Phase II #2021-50 contracted to Schemmer,
Pay Estimate #1 in the amount of $93,195.00 for Cadwell Parks Crows Nest & Shade Structure #2022-34 contracted to Rexwinkel Concrete, and
Pay Estimate #5 in the amount of $1,400.00 for Gun Range #2023-01 contracted to Civil Design.

g. Approve Bills, Payroll, Salary Adjustments and New Employee Hires and Authorize Payment of Recurring and other expenses in advance as approved by the Finance Officer.

PAYROLL SEPTEMBER 17, 2023 – SEPTEMBER 30, 2023: City Council $3,615.68, Mayor $1,562.81, City Administrator $5,942.50, Administrative Boards $2,211.81, Attorney $4,938.27, Finance $13,408.74, Human Resources $3,975.10, Municipal Building $3,369.61, Information Technology $3,053.20, Police $75,287.35, Traffic $4,572.40, Fire $37,940.65, Street $30,580.15, Public Works $23,928.51, Cemetery $6,674.07, Library $17,943.64, Recreation & Aquatics $8,382.60, Recreation Center $16,832.65, Sports Complexes $10,632.61, Parks $17,391.54, Supervision $6,081.70, E911 $21,175.30, MVP $536.27, Palace Transit $29,499.69, JVCC $1,716.88, Nutrition $4,335.16, Water Distribution $16,266.95, Sewer $12,490.49, Airport $2,868.48, Recycling Program $6,633.01, Waste Collection $6,694.05, Landfill $9,277.16, Corn Palace $20,563.15, Golf Course $6,295.66, Campground $2,276.40, Emergency Medical Services $33,662.32

NEW HIRES:

CADWELL CONCESSIONS: Matthew Johnson-$12.80

RECREATION CENTER: Hannah Meadwell-$10.80, Hallie Schmidt-$10.80

SPORTS COMPLEXES: Hunter Hufstutler-$12.80, Sean Pinkerton-$12.80

SALARY ADJUSTMENTS:

E-911: Mary Aronson-$29.101

FIRE: Justin Adams-$26.743

PALACE TRANSIT: George Streetman-20.815

RECREATION CENTER: Todd Cavanaugh-$30.537

WARRANTS: A-Ox Welding Supply, Service Charge-$293.21; AAA Collections, Collection Fees-$20.00; Accounts Management, Garnishment-$387.79; Advance Auto Parts, Supplies-$8.27; AFSCME Council 65, Union Dues-$604.80; AK Athletic Equipment, Equipment-$1,308.10; Alex Air Apparatus 2, Professional Service-$650.00; All American Towing, Tow-$240.00; Amazon Capital Services, Supplies-$672.88; Aqua-Pure, Supplies-$2,362.50; Aramark, Supplies-$484.74; AT&T Mobility, Utilities-$521.20; Atv Holdings, LLC Dba Mitchell Telecom, Utilities-$2,769.75; Avera Patient Financial Service, Physicals-$640.77; Avera Queen of Peace Hospital, Supplies-$385.75; B-Y Water District, Utilities-$112,484.98; Baker & Taylor, Books-$419.21; Barr Engineering, 2021-20 P.E. #PH2-18-$3,628.40; Beacon Athletics, Supplies-$1,493.00; Bender's Sewer Cleaning, Maintenance-$9,224.20; Best Western Ramkota Hotel, Travel-$783.93; Big Daddy D's, Contract Services-$2,210.00; Blackstone Publishing, Supplies-$9.00; Blackstrap, Supplies-$7,629.58; Brooks Oil, Supplies-$2,490.00; Builders First Source, Supplies-$969.00; C&B Operations, Supplies-$59.71; C&D Pedal Pulls, Entertainment-$4,000.00; Carquest Auto Parts, Supplies-$1,028.53; CDW Government, Supplies-$48.98; Central Electric, Utilities-$708.00; Century Link, Utilities-$58.94; Charlotte Mayer, Re-Tree Program-$200.00; Chesterman, Supplies-$854.70; CHS Farmers Alliance, Supplies-$267.22; Cindy's K9 Treats, Supplies-$465.00; City of Mitchell, Hotel Tax September-$574.50; Civil Design, 2023-1 P.E. #5-$1,400.00; CK Bicycles & Locks, Supplies-$12.00; Coborns, Contract Services-$577.50; Commercial Asphalt/Spencer Quarries, Supplies-$10,014.14; Connections, 2023 Training-$2,334.15; Core & Main, Supplies-$2,753.52; Core-Mark Midcontinent, Supplies-$1,455.43; Corn Palace, Supplies-$14.75; Corporate Translation Service, Translation Service-$192.05; County Fair, Contract Services-$1,171.50; Craig Pfann, Refund-$150.00; CTM Services, Supplies-$214.42; Dakota Counseling, 2023 Allocation-$3,250.00; Dakota Data Shred, Supplies-$323.36; Dakota Fluid Power, Supplies-$2,279.78; Dakota Heartland Development, 2023 4th Quarter Allocation-$6,250.00; Dakota Supply Group, Supplies-$213.22; Darrington Water Conditioning, Rental-$37.80; Davison Rural Water Systems, Utilities-$74.35; Demco, Supplies-$243.89; Department of Agriculture, Solid Waste Fee-$2,842.02; Department of Motor Vehicle, Supplies-$26.70; Department of Social Services, Child Support-$864.46; Dick's Body Shop, Maintenance-$185.00; Dimock Dairy, Supplies-$175.50; Doug Cunningham, Supplies-$35.00; Elfstrand's Ace Hardware, Supplies-$249.00; Emergency Education, Training-$3,080.00; Emme Sand & Gravel, Supplies-$1,600.70; Forum Communications, Advertising-$25.84; Galls, Supplies-$306.00; Gary Kristensen, Refund-$694.39; Geotek Engineering & Testing, 2020-20 P.E. #4-$4,067.00; Golden West Technologies, Monitoring-S225.00; Graham Tire, Maintenance-$265.71; Great Western Tire, Repair-$3,561.66; Guardian Alliance Technologies, Background Check-$50.00; Hawkins, Supplies-$50.00; Helms and Associates,

2021-30 P.E. #11-$54,542.13; Henry Schein, Supplies-$1,295.44; Holiday Inn Hotel & Convention Center, Travel-$1,045.08; Howes Oil, Supplies-$3,600.00; ICan, Advertising-$750.00; Ideag, Deposit Refund-$2,000.00; Ingram Library Services, Books-$679.82; Innovative Office Solution, Supplies-$57.02; Interstate Office Products, Supplies-$76.21; Janis Rezac, Refund-$50.56; JCL Solutions, Supplies-$300.00; JGE Inc DBA Bobcat of Aberdeen, Supplies-$335.90; Jill Dejong, Refund-$48.00; Joelle Dammann, Training-$230.52; John Badker, Training-$272.00; Johnson Bros of South Dakota, Supplies-$406.00; Jones Supplies, Supplies-$1,296.17; Josh's Tools, Supplies-$28.75; Kimball-Midwest, Supplies-$102.60; Krohmer Plumbing, Maintenance-$1,115.92; Lakeview Veterinary Clinic, Monthly Fee-$927.57; Larry's I-90 Service, Repair-$221.30; Liz Kitchens, Travel-$313.48; M&T Fire and Safety, Testing-$3,161.51; Make it Mine Designs, Supplies-$98.75; Maximum Promotions, Repair-$53.00; McLeod's Printing, Supplies-$4,144.68; Menard's, Supplies-$1,778.00; Mettler Implement, Repairs-$856.34; Michelle Bathke, Travel-$316.54; Mid States Audio, Service Call-$567.85; Midcontinent Communication, Advertising-$1,253.31; Mitchell Area Development, 2023 4th Quarter Allocation-$41,750.00; Mitchell Convention & Visitors Bureau, Oct 2023 Funding-$20,800.00; Mitchell Iron & Supply, Supplies-$64.57; Mitchell Main Street and Beyond, 2023 4th Quarter Allocation-$8,750.00; Mitchell Prehistoric Indian Village, 2023 4th Quarter Allocation-$3,250.00; Mitchell United Way, Deductions-$224.50; Morgan Taylor, Travel-$82.00; Muth Electric, Supplies-$1,915.47; Napa Central, Supplies-$320.47; Newman Signs, Supplies-$568.36; Northwestern Energy, Utilities-$66,381.33; One Source The Background, Background Check-$274.00; Overdrive, Ebook-$43.99; Overtime, Contract Services-$2,637.00; Pepsi Cola, Supplies-$701.12; Peterbilt of Sioux Falls, Supplies-$2,024.03; PKG Contracting, 2021-31 P.E. #16-$732,790.00; Porter Distributing, Supplies-$114.60; Premier Pest Control, Supplies-$275.00; Prime Insurance, Refund-$150.00; Proseal, Supplies-$3,240.00; Qualified Presort, Postage-$293.49; Quality Cut Lawn & Tree Service, 2019-53R2 P.E. #1-2023-$8,666.66; Rexwinkel Concrete, 2022-34 P.E. #1-$93,195.00; Rice Lake West, 2020-20 P.E. #5-$639,404.79; Robert B Everson Jr., Travel-$339.09; Runnings Supply, Supplies-$1,221.63; S & M Printing, Supplies-$148.50; Saga Communications of South Dakota, Advertising-$1,311.40; Sanford Health, Programming Services-$355.00; Sanitation Products, Supplies-$63.38; Schemme, 2021-50 P.E. #23-$110.00; Schmucker, Paul, Nohr & Associates, Document Research-$955.00; Schoenfelder Portables, Rental-$100.00; Scott Supply, Supplies-$742.41; South Dakota Department of Public Safety, Service Contract-$1,608.00; South Dakota Retirement System, Retirement Contributions-$57,326.98; South Dakota Supplemental Retirement, Supplemental Retirement-$2,874.50; South Dakota Supplemental Roth 457, Roth 457 Contributions-$1,271.00; Shannon Sandoval, Travel-$428.00; Shellback Tactical, Supplies-$2,469.90; South Dakota 811, Supplies-$191.10; Standard Insurance, Life Insurance-$431.43; Staples, Supplies-$551.39; Stephanie Ellwein, Travel-$407.19; Stop Stick, Supplies-$153.00; Stryker Sales, Supplies-$964.08; Sturdevants Auto Value Mitchell, Supplies-$368.00; Subway, Meals-$15.98; Teamsters Local No. 120, Union Dues-$1,593.00; The Dugout, Contract Services-$1,617.00; Thomson Reuters – West, Subscription-$800.80; Thune True Value & Appliance, Repair-$108.22; Tim's Cutting Edge, Supplies-$144.00; TMA Stores, Supplies-$730.00; Transwest Trucks of Sioux Falls, Repairs-$492.98; United Laboratories, Supplies-$1,886.42; UPS Store #4227, Postage-$67.57; US Bank, Sales Tax-$550.00; Verizon Wireless, Utilities-$756.35; Vern Eide Ford, Repair-$2,067.57; Walmart/Capital One, Supplies-$16.98; Wheelco Brake & Supply, Supplies-$1,281.49; Wholesale Electronics, Supplies-$24.82; South

Dakota Department of Revenue, Sales Tax Payment-$20,935.47.

Members present voting aye: Barington, Bathke, Doescher, Goldammer, McCardle, Sabers, Smith, Tjarks. Members present voting nay: none. Motion carried.

CITIZENS INPUT:

Mayor Everson recognized Zach North, Adult Services Librarian, for being awarded the New Librarian of the Year from the South Dakota Library Association.

Mitchell resident, Jordan Hanson, informed council and the public that there would be a lake debate at 7:00 p.m. on Monday, October 23rd.

Corn Palace Director, Doug Greenway, stated the flu clinic will be held at the Corn Palace on Tuesday, October 17th.

BOARD OF ADJUSTMENT:

Moved by Tjarks, seconded by Goldammer, for the City Council to recess and sit as the Board of Adjustment. Motion carried.

It was advised that this is the date and time set for hearing on the application of Zion Lutheran Church for a conditional use permit to operate a religious institute (church fellowship hall and office space) located at 601, 605, and 611 East 4th Avenue, legally described as Lots 5-7, Block 32, Cooley & Guernsey Addition, City of Mitchell, Davison County, South Dakota. The property is zoned R2 Single Family Residential District. The Planning Commission recommended approval of said application. Moved by Tjarks, seconded by Goldammer, to approve said application. Motion carried.

It was advised that this is the date and time set for hearing on the application of Zion Lutheran Church for a variance permit for the following:

1. Side-yard setback along Burr Street of 17.5' vs 20' to account for the point of the building overhang.
2. Front-yard setback along the alley of 16.5' vs 25' to account for pedestrian drop-off roof and overhang.
3. Off-street parking on-site of 0 vs 89 spaces. Standard parking and ADA parking is located on existing adjacent church property and additional parking is planned in the next phase of construction to the east of the subject property.

The property is located at 601, 605, and 611 East 4th Avenue, legally described as Lots 5-7, Block 32, Cooley & Guernsey Addition, City of Mitchell, Davison County, South Dakota. The property is zoned R2 Single Family Residential District. The Planning Commission recommended approval of said application. Moved by Goldammer, seconded by Bathke, to approve said application. Motion carried.

Moved by Goldammer, seconded by Barington, for the Board of Adjustment to adjourn and the City Council to reconvene in regular session. Motion carried.

BOA APPEAL:

An appeal was heard from Jeffrey Bathke on the Board of Adjustment approval of the Jason Greenway variance located at 5740 Island Court. Bathke cited several reasons why this variance should be sent back to the Board of Adjustment and denied; including the variance violates zoning requirements, the variance request does not meet the hardship requirement, and the actions taken by the applicant when building on bare land. Greenway stated the lot is irregular and does not meet the minimum requirements in this development. Moved by Tjarks, seconded by Goldammer to uphold the variance granted by the Board of Adjustment. Smith stated he believes the hardship requirement has been met. Goldammer would like to see this variance granted due to the positioning of the house. Tjarks does not believe the decision is based on precedence. Tjarks also stated she has looked at properties many times in the past with builders/owners to see and observe the layout and does not feel like this should be a violation of code.

Members present voting aye: Barington, Doescher, Goldammer, McCardle, Sabers, Smith, Tjarks. Bathke abstained. Members present voting nay: none. Motion carried.

AWARD BID:

Bids were opened and read on Cadwell Booster Station Project #2023-19 on the 11th day of October, 2023. Moved by Sabers, seconded by Goldammer, to award, as follows:

CADWELL BOOSTER STATION
PROJECT #2023-19

605 Companies Inc., 700 East 65th Street, Sioux Falls, SD 57104

Bid Schedule A	$359,412.00

Motion carried.

CONSIDER APPROVAL:

Moved by Smith, seconded by Tjarks, to approve additional funds for Steve Donovan as the grant administrator for the city's North American Wetlands Conservation Fund Grant in an additional amount of $20,000.00. Motion carried,

Moved by Smith, seconded by Tjarks, to approve Agreement #A2023-46, Amendment to Rodeo Lease. The provisions of this amendment relate to the rodeo foundation's ability to finance their improvements to the site. The provisions help establish who is the owner of those improvements and whether security interests attach to them, and what happens in the event improvements need

to be removed. In addition, the rodeo foundation also requested that the term of the lease be extended by 2 years to reflect the last two years where they have been unable to proceed with the improvements. They are also asking that the rent for the last 2 years be reduced from a total of $15,000 to a total of $500. Rent for the remainder of the term would remain at $7,500 per calendar year.

Members present voting aye: Barington, Doescher, Goldammer, Sabers, Smith, Tjarks. Members present voting nay: Bathke, McCardle. Motion carried.

Moved by Goldammer, seconded by McCardle, to approve Agreement #A2023-47, NAWCA Grant S&G Partnership Project. Motion carried,

Moved by Tjarks, seconded by Goldammer, to approve Agreement #A2023-48, NAWCA Grant Miskimins Ranch Project. Motion carried.

RESOLUTIONS:

Moved by McCardle, seconded by Goldammer, to approve Resolution #R2023-73, Lots 2-A, 2-B, and 2-C, a Subdivision of Previously Platted Lot 2, all in Block 8 of Westwood First Addition, as follows:

RESOLUTION #R2023-73

WHEREAS, it appears that the City Planning Commission of the City of Mitchell, South Dakota, did duly consider and did recommend the approval and adoption of the hereinafter described plat, at its meeting held on the 10th day of October, 2023; and

WHEREAS, it appears from an examination of the plat of LOTS 2-A, 2-B AND 2-C, A SUBDIVISION OF PREVIOUSLY PLATTED LOT 2, ALL IN BLOCK 8 OF WESTWOOD FIRST ADDITION IN THE NW 1/4 OF SECTION 16, T 103 N, R 60 W OF THE 5TH P.M., CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA, prepared by Paul J. Reiland, a duly licensed Land Surveyor in and for the State of South Dakota, that said is in accordance with the system of streets and alleys set forth in the master plan adopted by the City Planning Commission of the City of Mitchell, South Dakota, and that such plat has been prepared according to law;

THEREFORE, be it resolved by the City Council of Mitchell, South Dakota that the plat of LOTS 2-A, 2-B AND 2-C, A SUBDIVISION OF PREVIOUSLY PLATTED LOT 2, ALL IN BLOCK 8 OF WESTWOOD FIRST ADDITION IN THE NW 1/4 OF SECTION 16, T 103 N, R 60 W OF THE 5TH P.M., CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA, as prepared by Paul J. Reiland, be and the same is approved and the description set forth therein and the accompanying surveyor's certificate shall prevail.

Motion carried and resolution declared duly adopted.

Moved by Sabers, seconded by Barington, to approve Resolution #R2023-74, SHPO Findings in Relation to the Property at 514 N Main St, as follows:

RESOLUTION #R2023-74

A RESOLUTION REGARDING SDCL SECTION 1-19A-11.1 FINDINGS IN RELATION TO THE PROPERTY AT 514 N MAIN STREET

WHEREAS, Bradley Theme LLC is the owners of certain real property at 514 N Main Street legally described as:

Lots 14 & 15 & S 10' of Lot 16, Block 11, Rowley's 1st Addition, City of Mitchell, Davison County, South Dakota.

WHEREAS, the above described property is listed on the National Register of Historic Places.

WHEREAS, Puetz Design + Build sought a building permit for the property on August 24, 2023.

WHEREAS state law puts certain processes in place which must be followed prior to any governmental action that may damage, destroy, or encroach upon any historic property.

WHEREAS, in consideration of such laws, the City of Mitchell did provide preliminary notice on of the status of the property, reports of its condition, and eventually proposed project of Puetz Design + Build plan to the State Historic Preservation Office (SHPO) received on August 25, 2023. The proposed project is a single-story building on Mitchell's Main Street. It is being converted from its current use as an office building to a grill & pub style restaurant with outdoor seating areas at ground level as well as rooftop seating. The building is currently brick on the North, East and South facades. The West facade has previously been altered with a stone stucco material that is in very poor condition. The current building features many window openings which will be maintained and improved from a historic viewpoint. Windows that have previously been boarded up will be restored to their original openings which is an improvement from its current state of CMU infill, broken glass, and HVAC unit additions.

WHEREAS, on October 10, 2023 SHPO issued its final determination that the proposed project will remove historic material from the building and does not meet Secretary of Interior's Standards for Rehabilitation. Therefore, SHPO has made the following determination that the proposal will damage historic property which is included in the National and State Registers of Historic Places, However, it appears that the proposal included planning to minimize harm to the historic resource.

WHEREAS, SDCL 1-19A-11.1 requires in this case that the City make a written determination that "based upon the consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that all possible planning to minimize harm to the historic property has been considered."

WHEREAS, such a hearing by the City Council was scheduled, noticed, and held on October 16, 2023 during regular session and that at such hearing interested parties were afforded an opportunity to comment on the matter and the City Council did consider and discuss relevant facts relating to such demolition plan.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Mitchell, SD that the City Council does hereby make the following findings of fact and conclusions:

1. The above described property is listed on the National Register of Historic Places.

2. The City of Mitchell, did submit a notice and supplemental materials as required by state law and as requested by the State Historic Preservation Office.

3. The City Council, in its capacity as the governing body designated to make a final determination of project acceptability under SDCL 1-19A-11.1, must determine that, "based upon the consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that all possible planning to minimize harm to the historic property has been considered."

4. The City Council has taken into consideration all relevant factors including all testimony provided at the above described hearing, all documentation provided at or for use in such hearing, and specifically, the following materials:

   Bradley's Pub & Grille-514 N Main St-Plans
   Bradley's Pub & Grille-514 N Main St-GIS
   Bradley's Pub & Grille-514 N Main St-Historic Request Letter-8-29-23
   Bradley's Pub & Grille-514 N Main St-State Case Report 9-25-23
   Bradley's Pub & Grille-514 N Main St-11.1 Case_ReportForm-Signed
   Bradley's Pub & Grille-514 N Main St-Case Report 10-10-23
   Bradley's Pub & Grille-514 N Main St-Flow Chart

5. That in recognition of these findings and conclusions, the State Office of History shall be provided with notice of this determination by certified mail, to include a complete record of factors considered.

6. That after ten days from sending such notice, compliance with SDCL 1-19A-11.1 shall no longer serve as an impediment to carrying out the proposed demolition plan.

Motion carried and resolution declared duly adopted.

Moved by Goldammer, seconded by Smith, to approve Resolution #R2023-76, Annexation of Blocks 1 and 2 of Maui Farms Second Addition and a Portion of Sam Street, a Subdivision of Previously Platted Lot 4 in the East ½ of the West ½ of Section 31, T 104 N, R 60 W of the 5th P.M., Davison County, South Dakota, as follows:

RESOLUTION #R2023-76

ANNEXATION OF BLOCK ONE (1) AND TWO (2) OF MAUI FARMS SECOND ADDITION AND A PORTION OF SAM STREET, A SUBDIVISION OF PREVIOUSLY PLATTED LOT FOUR (4) IN THE EAST ONE HALF (E ½) OF THE WEST ONE HALF (W ½) OF SECTION THIRTY-ONE (31), TOWNSHIP ONE HUNDRED FOUR (104) NORTH, RANGE SIXTY (60), WEST OF THE 5HT P.M., DAVISON COUNTY, SOUTH DAKOTA.

WHEREAS, Maui Farms Inc has petitioned to annex the real property legally described as Block One (1) and Two (2) of Maui Farms Second Addition and a Portion of Sam Street, a Subdivision of Previously platted Lot Four (4) in the East One Half (E ½) of the West One Half (W ½) of Section Thirty-one (31), Township One Hundred Four (104) North, Range Sixty (60), West of the 5th P.M., Davison County, South Dakota.

WHEREAS: Maui Farms Inc is the sole owner and petitioners of the real property described in this resolution; and

WHEREAS: There are no registered voters residing in the territory sought to be annexed and

WHEREAS: the real property is contiguous to the corporate limits of the City of Mitchell, Davison County, South Dakota; and

WHEREAS: a exhibit depiction is hereto attached.

NOW THEREFORE, be it resolved that in accordance with SDCL Chapter 9-4, the City Council of the City of Mitchell, Davison County South Dakota hereby annexes the above real property.

Motion carried and resolution declared duly adopted.

Moved by Tjarks, seconded by Barington, to approve Resolution #R2023-77, Creating Tax Increment District 31 and Approving the Project Plan, as follows:

RESOLUTION R2023-77

A RESOLUTION PROVIDING FOR THE CREATION OF CITY OF MITCHELL TAX INCREMENTAL DISTRICT NUMBER THIRTY-ONE

WHEREAS, the City of Mitchell has the power, pursuant to SDCL 11-9-2, to create Tax Incremental District Number Thirty-One (TID 31) and to define the district's boundaries; and

WHEREAS notice of the hearing before the city planning commission was provided pursuant to SDCL 11-9-3; and

WHEREAS, the City of Mitchell Planning Commission held a hearing on October 10, 2023 at which any interested parties were afforded a reasonable opportunity to express their views on the proposed creation of a tax incremental district; and

WHEREAS the City of Mitchell Planning Commission after said hearing has recommended the proposed plan for Tax Incremental District Number Thirty-One and has recommended its creation, setting the boundaries as listed in the project plan, and recommending adoption of the project plan.

THEREFORE, IT IS HEREBY RESOLVED:

1. Pursuant to SDCL 11-9-5, there is hereby created, as of October 16, 2023, the City of Mitchell Tax Incremental District Number Thirty-One (TID 31). TID 31 is legally described as follows:

   LOT TWO A (2A), BLOCK ONE (1); LOT FOUR (4), BLOCK SEVEN (7); LOT TWENTY (20), BLOCK SEVEN (7); AND LOT TWENTY-ONE (21), BLOCK SEVEN (7), ALL IN WESTWOOD FIRST ADDITION, A SUBDIVISION OF THE SOUTHWEST QUARTER (SW ¼) OF SECTION SIXTEEN (16), TOWNSHIP ONE HUNDRED THREE (103) NORTH, RANGE SIXTY (60) WEST OF THE 5TH P.M., CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA; AND

   LOT ONE (1), BLOCK SEVEN (7) OF WESTWOOD FIRST ADDITION, LESS THE PORTION OF WEST 15TH AVENUE LYING WITHIN, A SUBDIVISION OF THE SOUTHWEST QUARTER (SW ¼) OF SECTION SIXTEEN (16), TOWNSHIP ONE HUNDRED THREE (103) NORTH, RANGE SIXTY (60) WEST OF THE 5TH P.M., CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA

   UNPLATTED LOTS BOUNDED BY THE SOUTH BOUNDARY OF WEST 15TH AVENUE RIGHT-OF-WAY ON THE NORTH, THE WEST SIDE OF LOT ONE (1) ON THE EAST, THE NORTH SIDE OF LOT TWO (2) AND LOT TWENTY-ONE (21) ON THE SOUTH, AND THE EAST BOUNDARY OF NORTH OHLMAN STREET RIGHT-OF-WAY ON THE WEST; AND

   WEST 15TH AVENUE RIGHT-OF-WAY FROM ITS WEST INTERSECTION WITH COMMERCE STREET, EXTENDING WEST TO THE CENTERLINE OF THE NORTH OHLMAN STREET RIGHT-OF-WAY; AND

   THE EAST HALF OF THE NORTH OHLMAN STREET RIGHT-OF-WAY BEGINNING AT THE SOUTH PROPERTY LINE OF LOT TWENTY (20) TO THE SOUTH INTERSECTION OF WEST 15TH AVENUE RIGHT-OF-WAY; AND

COMMERCE STREET RIGHT-OF-WAY BEGINNING AT THE SOUTHERN BOUNDARY OF LOT FOUR (4) AND EXTENDING NORTH TO A POINT THIRTY-FIVE FEET (35') NORTH OF THE NORTH RIGHT-OF-WAY BOUNDARY OF WEST 15TH AVENUE.

with a map showing said boundaries included in the Project Plan presented to Council on October 16, 2023.

2. A hearing by the City of Mitchell Planning Commission concerning the creation and boundaries of TID 31 was held on October 10, 2023.

3. The City Council, in consideration of the project plan, other documentary evidence, and testimony, hereby makes the following findings:
   a. Pursuant to SDCL 11-9-8, not less than fifty percent (50%) by area of the real property within the proposed tax increment district will stimulate and develop the general economic welfare and prosperity of the City of Mitchell and State of South Dakota through the promotion and advancement of industrial, commercial, manufacturing, agricultural, or natural resources;
   b. Further pursuant to SDCL 11-9-8, the improvement of the area is likely to enhance significantly the value of substantially all of the other real property in TID 31;
   c. Pursuant to SDCL 11-9-13, the project plan for TID 31 includes information satisfying each of the 5 requirements contained therein;
   d. Pursuant to SDCL 11-9-16, the project plan for TID 31 includes information satisfying each of the 6 requirements contained therein; and
   e. The plan is feasible and in conformity with the master plan of the City.
   f. The aggregate assessed value of the taxable property in the District, plus all other tax incremental districts does not exceed ten (10%) percent of the total assessed valuation of the City.
   g. TID 31 will be designated as an Annual Appropriations TIF to ensure that it does NOT count against constitutional debt.

4. Based on the findings in Section 3 above, the City hereby approves and adopts the project plan and the proposed boundaries as recommended by the City of Mitchell Planning Commission.

5. The City hereby directs the City of Mitchell Finance Officer to take such action as is deemed necessary to accomplish SDCL 11-9-20.

6. There is hereby created, pursuant to SDCL 11-9-31, the Tax Incremental District Number Thirty-One Fund (TID 31 Fund).

7. All tax increments collected pursuant to TID 31 shall be deposited into the TID 31 Fund.

8. All funds in the TID 31 Fund shall be used solely for the purposes expressly stated and reasonably inferred in SDCL 11-9.

9. The City finds that the aggregate assessed value of the taxable property in the district plus the tax incremental base of all other existing districts does not exceed ten percent of the total assessed value of taxable property in the municipality.

10. The project plan is on file with the City of Mitchell Finance Officer.

11. A Developer's Agreement consistent with the provisions of this Resolution and the Project Plan shall be approved by separate action of the City Council.

Bathke voting nay. Motion carried and resolution declared duly adopted.

Moved by McCardle, seconded by Barington, to approve Resolution #R2023-78, Authorizes Agreement #A2023-49 with the SD DOT and Designating the Mayor as the Authorized Representative to Execute and Sign All Documents for State Project NH-TA 0037(157)75, PCN 05UY, Highway 37 Improvement Project #2021-45, as follows:

RESOLUTION #R2023-78

A RESOLUTION AUTHORIZING AGREEMENT A2023-49 WITH THE SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION, AND DESIGNATING AN AUTHORIZED REPRESENTATIVE TO EXECUTE AND SIGN ALL DOCUMENTS

WHEREAS, the City of Mitchell (the "City") has determined it is in the City's best interest to proceed with a Utility Improvement and Shared Use Path project in conjunction with the South Dakota Department of Transportation (State); and

WHEREAS, the State wishes to construct urban grading, curb and gutter, ADA compliance, signals, storm sewer, lighting, PCC surfacing, replacement of bridge structure, and a shared use path for State Project NH-TA 0037(157)75, PCN 05UY; and

WHEREAS, the City wishes to construct water and sewer improvements in conjunction with State project; and

WHEREAS, the State will let the Projects; and

WHEREAS, the City will assume maintenance responsibilities for the Shared Use Path as described in the agreement; and

WHEREAS, the City will reimburse the State for applicable costs within 30 days of receipt of invoice from the State; and

WHEREAS, it is necessary to designate an authorized representative to execute and submit applications on behalf of the City and to certify and sign payment requests,

NOW THEREFORE BE IT RESOLVED by the City as follows:

1. The City hereby approves Agreement A2023-49 as attached to this resolution.

2. The Mayor of the City of Mitchell is hereby authorized to execute and deliver such documents and perform all acts necessary to effectuate the proposed work.

The Mayor of the City of Mitchell is hereby designated as the authorized representative of the City to do all things on its behalf to certify and sign documents for the project.

Motion carried and resolution declared duly adopted.

ORDINANCE:

Moved by Smith, seconded by Barington, to place Ordinance #O2023-07, an Ordinance Establishing Business Improvement District #4 on second reading. Motion carried. Moved by Tjarks, seconded by McCardle, to adopt Ordinance #O2023-07, an Ordinance Establishing Business Improvement District #4, as follows:

ORDINANCE #O2023-07

AN ORDINANCE ESTABLISHING BUSINESS IMPROVEMENT DISTRICT NUMBER 4.

WHEREAS, the City of Mitchell has previously implemented two prior Business Improvement Districts relating to hotels, motels, and lodging establishments; and

WHEREAS, the City of Mitchell desires to update and consolidate all provisions relating to hotel, motel, and lodging establishment Business Improvement Districts and provide a fresh starting point for the same; and

WHEREAS, the prior Business Improvement Districts will be terminated by separate action of the City Council prior to the new Business Improvement District Number 4 (BID 4) going into effect.

NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF MITCHELL, SOUTH DAKOTA AS FOLLOWS:

Section 1. Recitals pursuant to SDCL Chapter 9-55.

Pursuant to SDCL 9-55-12, the Governing Body of the City of Mitchell, SD, does hereby make the following statements of facts and findings:

1. The resolution (R2023-54) setting the boundaries of the proposed district and appointing board members was passed on the 7th day of August, 2023. The BID 4 board met on the 15th day of August, 2023 and voted to recommend the adoption of the proposed ordinance creating BID 4 to the city council. The city council received the recommendation of the BID 4 board and passed a resolution of intent (Resolution #R2023-61) relating to this ordinance on the 21st day of August, 2023.
2. The hearing in relation to this matter was held on the 2nd day of October, 2023 at 6:00 PM in the chambers of the Mitchell City Council, at City Hall, 612 N Main, Mitchell, SD, following the notice period provided by law. At said hearing, the Governing Body did receive evidence for and against the proposed modification of revenues to be raised and the use and application thereof. No objections to the proposed modifications were made at said hearing or, alternatively, any objections made were less than a majority of the hotels and motels in the BID and were insufficient in number as required by law to terminate the proceedings.
3. BID 4 is hereby established pursuant to SDCL Chapter 9-55, this ordinance, and the prior resolutions of council relating to BID 4.
4. The purposes of BID 4, and the public improvements and facilities relating thereto, shall be as further provided by Section 2 of this ordinance.
5. The boundaries of BID 4 are as further described in Section 2 of this ordinance.
6. As authorized by SDCL 9-55-2, the hotel, motel, and lodging establishments included in BID 4 are hereby subject to the general business occupation tax as further provided by Section 2 of this ordinance. Such tax is hereby deemed fair and equitable.
7. As discussed in further detail in Section 2 of this ordinance, the initial rate of the occupation tax to be imposed on the business users of the space in the district is $2.00 per room per night on occupied rooms rented to transient guests by hotels, motels, and lodging establishments within BID 4.
8. Penalties for failure to pay the occupation tax are provided in Section 2 of this ordinance.

Section 2. Codification of Substantive Provisions.

The City of Mitchell does hereby ADOPT the following provisions to be codified in the Mitchell City Code as "Chapter 2-7: Business Improvement District Number 4", with the sections of said chapter to read as follows:

2-7-1: Establishment of District:

Pursuant to the provisions of SDCL Chapter 9-55, Business Improvement District Number 4 (BID 4) of the City is hereby created. A resolution designating the boundaries of the business area and appointing members to the BID 4 board was approved by City Council on August 7, 2023. Upon receiving the recommendation of the BID 4 board, a resolution of intent to

create BID 4 was approved by the City Council on August 21, 2023. The public hearing on creation of BID 4 was held in the City Council Chambers, located at 612 N. Main, Mitchell SD 57301 on October 2, 2023.

2-7-2: Boundaries of Business Improvement District Number 4:

A. The boundaries of BID 4 are as follows: That property within the City boundaries which is zoned and used for hotel, motel, or lodging establishment excluding any hotel, motel, or lodging establishment with less than 28 rooms, unless the hotel or motel elects to be included within the district.

B. A list of all properties included in BID 4, which list shall identify the name of the hotel, motel, or lodging establishment, the number of sleeping rooms and each property's address, shall be kept on file in the Finance Office. The initial list shall contain all properties currently included in BID 4. If a property no longer meets the criteria for inclusion in BID 4, the owner or proprietor of the hotel, motel, or lodging establishment shall provide the Finance Officer with a sworn, written statement setting forth the relevant change in property or operation that disqualifies the hotel, motel, or lodging establishment. The Finance Officer shall remove the hotel, motel, or lodging establishment if the statement shows the hotel, motel, or lodging establishment no longer qualifies for inclusion in BID 4.

2-7-3: New Properties within Business Improvement District Number 4:

Pursuant to SDCL 9-55-4, the City Council may add, by resolution, hotel, motel, or lodging establishment properties with 28 or more rooms which were not in operation or did not meet the occupancy threshold at the time of BID 4's creation.

2-7-4: Purpose of the District:

BID 4 is created for the purpose of funding the enhancement, expansion, marketing and promotion of visitor facilities, events, attractions and activities benefiting the City and its hotels, motels, and lodging establishments located within BID 4 consistent with the purposes set forth in SDCL 9-55-3.

2-7-5: Occupational Tax Imposed:

An occupational tax in the amount of $2.00 per occupied night shall be imposed upon the above hotels, motels, or lodging establishments based

upon rooms rented to transient guests. This occupation tax shall be fair, equitable and uniform as to class. No occupational tax may be imposed on any transient guest who has been offered a room by a hotel, motel, or lodging establishment on a complimentary basis whereby no fee or rent is charged for such room. Additionally, no occupational tax may be imposed on any transient guest who stays 28 days or more consecutive nights.

2-7-6: Duty to Account for Complimentary and Leased Rooms:

Each hotel, motel, or lodging establishment shall account for complimentary or leased rooms which are also subject to audit by the City, with records showing the reason rooms were provided on a complimentary basis or for a period of 28 days or more.

2-7-7: Computation and Collection of Occupational Tax:

The City Finance Officer is authorized to determine and compute the tax in accordance with this ordinance. The occupational tax assessed pursuant to this ordinance shall be remitted by the 20th day of each month to the City, based on the previous calendar-month tax collections. Should the 20th day of the month fall on a Saturday, Sunday or a holiday observed by the City, the occupancy tax remittance shall be due on the first business day immediately following the 20th. The City Finance Officer or their designee shall be authorized to audit the books, ledgers, or franchise reports of any hotel, motel, or lodging establishment subject to the terms of this ordinance, including the right to inspect daily reports of such hotels and motels so as to ensure that any occupancy tax is properly remitted to the City. The City may seek injunctive relief against any hotel, motel, or lodging establishment which does not remit the proper amount of tax monies when due. Each hotel, motel, or lodging establishment subject to this ordinance shall keep accurate records of amounts collected from transient guests for review by the City Finance Officer or their designee.

2-7-8: Certified Report Required along with Occupation Tax Payment:

Any business governed by this ordinance shall certify with the remittance of tax imposed by this ordinance that the accounting of rooms rented is accurate and the tax payment made is accurate according to the business records. Any business governed by this chapter shall sign a sworn statement, to be submitted along with the remittance of any tax imposed by this chapter on or before the 20th day of each month, stating as follows:

"I declare, under penalty of perjury, that the above accounting of rooms rented is accurate and the tax payment made herein is accurate to the best of my knowledge according to my business records.

Signed _____ Dated_____ Title_____"

2-7-9: Failure to Pay Occupational Tax:

All remittances of occupancy tax collected pursuant to this article shall be due and received in the Office of the City Finance Officer no later than the 20th day following the month for which the occupancy tax remittances are due. All amounts that are not remitted as set forth above will be charged a late fee in the amount of ten percent of the total amount due.

Failure to remit such tax shall constitute a violation of this chapter which may be punishable by a fine of up to $500.00 and/or imprisonment of up to 30 days. Any unpaid balance under this article shall constitute lien upon the property owned by the business or user of space being taxed and shall become a lien against and shall run with property taxes and assessments.

The City shall have the ability to deny the issuance of permits or licenses or any renewals thereof to any business or premises that fails to conform to provisions of this article, including, but not limited to, building permits, malt beverage licenses, wine licenses and liquor licenses.

Nothing with this provision shall be construed as limiting any other rights which the City has or may pursue in seeking collection of monies not paid under the terms of this chapter. In the event this tax becomes subject to supervision by the State through the State's department of revenue, any rights which the City has herein shall be deemed cumulative to any powers which inure to the benefit of the State.

2-7-10: Payment of Fees:

In the event legal action is required to collect any delinquent assessments, if there is a tax that has not been paid in accordance with this ordinance, the hotel, motel or lodging establishment failing to pay will be responsible for and pay all attorney's fees and costs incurred by the City in collecting the unpaid tax.

2-7-11: Costs Incurred by the City in Administering the Occupational Tax:

All costs incurred by the City of the City Finance Officer pursuant to this article shall be paid from occupancy taxes collected under this article. Administrative costs are not to exceed two percent.

2-7-12: Business Improvement District Number 4 Board:

There is hereby continued, as has been previously established pursuant to SDCL Chapter 9-55, a Business Improvement District Number 4 Board.

A. Composition.

1. The BID 4 Board shall consist of 7 members. The Mayor and a council representative shall constitute 2 members of the BID 4 board and shall not be subject to term limits. In addition to the Mayor and council representative, the BID 4 board shall also consist of 5 additional members, appointed by the Mayor with the approval of the City Council. Persons who are eligible to fill the 5 additional member seats of the BID 4 Board must be property owners, residents, business operators, or users of space within the business area to be improved, and will consist of:

   a. Three hoteliers from within BID 4; and
   b. Two other eligible persons who are not hoteliers.

B. Terms. All members of the Board shall be appointed to serve a 3-year term. A member of the Board may serve consecutive terms if so appointed by the Mayor and Council. The terms for the 5 non-city members shall initially be staggered so that 1 member serves a full 3-year term, 2 members serve 2-year initial terms, and 2 members serve 1-year initial terms.

C. Vacancies. The Mayor, with the approval of the City Council, shall fill any vacancy of members for the remainder of the term vacated.

D. Officers. The BID 4 Board shall annually select from its members a chair, vice chair, and secretary.

E. Compensation. All members of the Board shall serve as such without compensation, except for actual expenses, which shall be subject to approval of the City Council.

F. Powers of the board. The primary duty of the BID 4 board is to recommend a budget for the use of BID proceeds to the City Council. The use of BID 4 proceeds is limited to the purposes provided under Section 4 above. The BID 4 board shall be authorized to take such actions necessary to carry out the appropriated expenditures included in the Council's approved budget for BID 4, upon any such further restrictions the Mayor and Council may provide during the budget approval process.

2-7-13: Severability:

Should any section, clause or provision of this ordinance be declared invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part declared to be invalid.

2-7-14: Reporting:

The BID #4 Board will provide annual reports of their activities to the City Council.

2-7-15: Dissolution of the District:

BID 4 may be dissolved pursuant to SDCL 9-55-22, however there shall be no requirement that the revenue collected from the tax be used only for the promotion of the district in order for a majority of landowners to petition for dissolution.

Section 3.

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 4.

The City Finance Officer shall cause notice of adoption of this ordinance to be published in the official newspaper and, unless the referendum is invoked, this ordinance shall become effective January 1, 2024.

Members present voting aye: Barington, Bathke, Doescher, Goldammer, McCardle, Sabers, Smith, Tjarks. Members present voting nay: none. Motion carried and ordinance declared duly adopted.

REVIEW:

City Administrator Stephanie Ellwein and Mitchell Main Street & Beyond reviewed the Railroad and Main Streetscape Design proposal. Moved by Goldammer, seconded by Tjarks, to support the project as presented. Motion carried.

PRESENTATION:

A representative of Brosz Engineering reviewed the 2023 Bridge Inspections. The 3 bridges inspected were the Canal Bridge, Sanborn Bridge, and Foster Street Bridge.

ADJOURN:

There being no further business to come before the meeting, Mayor Everson adjourned the meeting.

Michelle Bathke
Finance Officer

Published once at the approximate cost of _____.