

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

**December 2, 2024
6:00 P.M.**

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

ABSENT:

PRESIDING: Mayor Jordan Hanson

AGENDA:

Moved by Goldammer, seconded by Tjarks, to approve the following items on the consent agenda:

- a. City Council Minutes
 - 1. City Council November 18, 2024
 - 2. Work Session November 25, 2024
- b. Committee Reports
 - 1. Planning Commission November 12, 2024
 - 2. Planning Commission November 25, 2024 (unsigned)
 - 3. Library Board September 19, 2024
 - 4. Community Services Board November 14, 2024
- c. Automatic Supplement to the General Fund-Traffic in the amount of \$64,389.20 from insurance claims
- d. Raffle Permits
 - 1. Mitchell Figure Skating Club with the drawing to be held at the Spring Show-mid March
 - 2. Mitchell Community Scholarship Fund with the drawing to be held on February 24, 2025
 - 3. VFW Post 2750 with the drawing to be held on September 27, 2025
 - 4. Voiture 481/40&8 Veterans with the drawing to be held on March 22, 2025
 - 5. American Legion Post 18 with drawing to be held on April 16, 2025
- e. 2025 Renewal of Vehicle for Hire Company Applications
 - 1. Kongo, Inc
- f. 2023 Delinquent Utility Billing Account Write-Offs
- g. Acceptance of SD Department of Health Regional Service Designation Grant
- h. Change Order #2 for Landfill Recycling Building Project #2021-30 increasing the contract amount by \$67,742.99 to WS Construction Management, LLC adjust contract amount to \$2,256,510.23
- i. Change Order #2 for North Harmon Sanitary Sewer Outfall Project #2023-06 increasing the contract amount by \$89,953.00 to Halme, Inc adjust contract amount to \$3,329,837.25

- j. Set date of December 16, 2024 for Hearing and Action
 - 1. On the application of Radhe LLC dba Thunderbird Lodge, 1601 South Burr Street for a new Retail (on-off sale) Malt Beverage & SD Farm Wine License (Video lottery is not included)
- k. Set date for bid opening 1:30 PM, December 18, 2024 for East 5th-Burr to Foster Street Utilities Improvement Project #2024-02
- l. Approval of Gas and Fuel Quotations

<u>Howes Oil</u>	<u>Requested Gallons</u>	<u>Bid Gallons</u>	<u>Price per Product</u>	<u>Total Bid</u>
On Road Diesel-#2	1,600	1,600	\$2.515	\$4,024.00
On Road Diesel-#1	1,600	1,600	\$2.810	\$4,496.00
Off Road Diesel-#2	2,150	2,150	\$2.240	\$4,816.00
Off Road Diesel-#1	2,150	2,150	\$2.535	\$5,450.25
Total Bid:				\$18,786.25

- m. Pay Estimates December 2, 2024
 - Pay Estimate #48 in the amount of \$14,111.84 for Above Ground Storage Tank #2020-20 contracted to Infrastructure Design Group
 - Pay Estimate #49 in the amount of \$1,548.05 for Above Ground Storage Tank #2020-20 contracted to Infrastructure Design Group
 - Pay Estimate #11 in the amount of \$4,884.00 for Above Ground Storage Tank #2020-20 contracted to GeoTek Engineering
 - Pay Estimate #7 in the amount of \$35.49 for Norway/S Rowley Bike Path #2021-01 contracted to SD Department of Transportation
 - Pay Estimate #26 in the amount of \$300.00 for West Side Water Tower #2021-03 contracted to SPN & Associates
 - Pay Estimate #16 in the amount of \$759.00 for Livesay Lane Utility Improvements #2021-25 contracted to Infrastructure Design Group
 - Pay Estimate #5 in the amount of \$603,868.38 for Recycling Building #2021-30 contracted to WS Construction Management
 - Pay Estimate #24 in the amount of \$5,495.02 for Recycling Building #2021-30 contracted to Helms & Associates
 - Pay Estimate #4 in the amount of \$42,365.80 for North Hwy 37 Utility Improvements #2021-45 contracted to Michels Road & Stone
 - Pay Estimate #41 in the amount of \$4,773.17 for North Hwy 37 Utility Improvements #2021-45 contracted to SPN & Associates
 - Pay Estimate #42 in the amount of \$8,329.86 for North Hwy 37 Utility Improvements #2021-45 contracted to SPN & Associates
 - Pay Estimate #22 in the amount of \$107,154.04 for Waste Water Treatment Plant-Phase II #2022-01 contracted to HDR Engineering
 - Pay Estimate #1 in the amount of \$53,061.32 for Waste Water Treatment Plant-Phase II #2022-01 contracted to Custom Touch Homes

Pay Estimate #1 in the amount of \$19,876.77 for Waste Water Treatment Plant-Phase II #2022-01 contracted to First Rate Excavate
 Pay Estimate #2A in the amount of \$4,067.00 for Waste Water Treatment Plant-Phase II #2022-01 contracted to GeoTek Engineering
 Pay Estimate #17 in the amount of \$283.75 for 23rd & Ohlman Lift Station #2022-03 contracted to SPN & Associates
 Pay Estimate #16 in the amount of \$997.50 for Water & Wastewater Fee Analysis #2022-22 contracted to HDR Engineering
 Pay Estimate #3 in the amount of \$19,975.05 for Lake Mitchell Jetty & Marina #2023-03 contracted to Soukup Construction
 Pay Estimate #2 in the amount of \$491,383.04 for North Harmon Sanitary Sewer Outfall #2023-06 contracted to Halme Inc
 Pay Estimate #17 in the amount of \$34,631.71 for North Harmon Sanitary Sewer Outfall #2023-06 contracted to SPN & Associates
 Pay Estimate #16 in the amount of \$300.00 for Ohlman & South Harmon Lift Station #2023-16 contracted to SPN & Associates
 Pay Estimate #11 in the amount of \$850.58 for Cadwell Booster Station #2023-19 contracted to SPN & Associates
 Pay Estimate #2 in the amount of \$18,910.00 for Paving & Overlay #2024-15 contracted to Commercial Asphalt
 Pay Estimate #5 in the amount of \$1,353.00 for Water Distribution System Model #2024-37 contracted to AE2S

n. 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 NOVEMBER 10, 2024 – NOVEMBER 23, 2024: City Council \$3,626.48, Mayor \$1,567.54, City Administrator \$6,369.23, Administrative Boards \$2,325.00, Attorney \$5,332.08, Finance \$14,516.63, Human Resources \$4,392.72, Municipal Building \$3,451.76, Information Technology \$3,286.77, Police \$79,335.36, Traffic \$4,696.63, Fire \$40,017.09, Street \$34,030.31, Public Works \$25,827.28, Cemetery \$5,667.73, Animal Control \$1,711.52, Library \$18,615.29, Recreation & Aquatics \$7,482.57, Recreation Center \$19,147.45, Sports Complexes \$11,242.49, Parks \$14,058.03, Supervision \$4,205.31, Corn Palace \$16,711.61, E911 \$27,050.18, Palace Transit \$31,172.21, JVCC \$2,085.89, Nutrition \$4,540.79, Airport \$2,540.81, Water Distribution \$15,630.41, Sewer \$15,437.01, Recycling Program \$7,348.59, Waste Collection \$7,783.77, Landfill \$10,229.11, Golf Course \$4,807.65, Emergency Medical Services \$36,302.08

NEW HIRES:

CORN PALACE: Abigail Colgrove-\$12.70, Linda Humble-\$12.70, Steven Schoepf-\$13.20

SALARY ADJUSTMENTS:

CORN PALACE: Jayda Horton-\$11.70

PALACE TRANSIT: George Streetman-\$22.259

RECREATION & AQUATICS: Jamie Henkel-\$36.136

WARRANTS: A&B Business Solutions, Print Service-\$4,669.30; A-Ox Welding Supply, Supplies-\$393.56; AAA Collections, Collections Fees-\$347.30; Acrisure Midwest Partners, Professional Service-\$50.00; Advance Auto Parts, Supplies-\$150.34; Advanced Engineering and Environmental Service, 2024-37 P.E. #5-\$1,353.00; Alignment X-Perts, Supplies-\$622.99; Amazon Capital Services, Supplies-\$597.49; American Garage Door, Repairs-\$472.70; American Legal Publishing, Supplies-\$188.89; Aqua-Pure, Service Contract-\$3,375.00; Automatic Building Control, Inspection-1,755.00; Avera Occupational Medicine, Physicals-\$2,931.00; Avera Queen of Peace, Supplies-\$706.01; Bailey Metal Fabricators, Supplies-\$62.05; Baker & Taylor, Books-\$52.91; Big Daddy D's, Contract Services-\$4,360.80; Bound Tree Medical, Training-\$2,026.99; Brandon Manchester, Reimbursement-\$344.93; Butler Machinery, Supplies-\$301.06; C&B Operations, Supplies-\$110.05; Carquest Auto Parts, Supplies-\$50.24; Casey Tegethoff, Travel-\$280.00; Cengage Learning Inc/Gale, Audio Books-\$50.00; Central Electric, Utilities-\$1,165.82; Chesterman, Supplies-\$988.50; CHR Solutions, Postage-\$3,822.28; CHS Farmers Alliance, Supplies-\$1,864.93; City of Mitchell, Community Garden-\$310.44; City of Mitchell, Golf Course Deductions-\$645.64; City of Mitchell, Recreation Deductions-\$1,246.68; Claims Associates, Liability-\$1,932.05; Colonial Research, Supplies-\$269.90; Column Software, Advertising-\$489.79; Commercial Asphalt, 2024-15 P.E. #2-\$18,910.00; Core & Main, Supplies-\$18,977.78; Core-Mark Midcontinent, Supplies-\$6,336.72; Corn Palace, Supplies-\$29.50; Custom Touch Homes, 2022-1 P.E. #1-\$53,061.32; Dakota Pump, Supplies-\$205.80; Dakota Riptide, Sports Authority Promo-\$5,000.00; Dakota Supply Group, Supplies-\$199.88; Davison County Treasurer, Rentals-\$500.00; Department of Agriculture, 2024 RLA-303-Loan-\$27,939.28; Department of Social Services, Child Support-\$633.69; Duininck, Supplies-\$2,208.00; Ebsco, Periodicals-\$4,826.44; Emme Sand & Gravel, Supplies-\$1,697.03; Eric Hieb, Contract Services-\$11,629.11; ETix, Ticketing Fee-\$340.10; Fedex, Shipping Charges-\$18.07; First National Bank Omaha, Cash Back Redemption-\$9,625.67; First Rate Excavate, 2022-1 P.E. #1-\$19,876.77; Fleetpride, Supplies-\$481.38; Galls, Supplies-\$1,217.89; Geotek Engineering & Testing, 2020-20 P.E. #11-\$8,951.00; Grainger, Supplies-\$54.12; Great Western Tire, Supplies-\$4,650.15; Halme, 2023-6 P.E. #2-\$491,383.04; Hawkins, Supplies-\$6,267.91; HDR Engineering, 2022-1 P.E. #22-\$108,151.54; Helms and Associates, 2021-30 P.E. #24-\$5,495.02; Henry Schein, Supplies-\$735.96; Hunter Heating & Cooling, Supplies-\$1,922.24; Infrastructure Design Group, 2020-20 P.E. #49-\$16,418.89; Ingram Library Services, Books-\$1,813.76; Intellipro Security, Supplies-\$11,025.50; Interstate Office Products, Supplies-\$238.98; Iverson Powersports, Vehicle-\$15,000.00; James Valley Landscape Solutions, Supplies-\$150.00; JCL Solutions, Supplies-\$183.53; Jeff Hurt, Reimbursed-\$209.76; Jeremy Nielsen, Reimbursed-\$149.99; Jon Thurman, Travel-\$28.00; Jones Supplies, Supplies-\$628.31; Kone, Maintenance-\$945.66; Larry's I-90 Service, Maintenance-\$60.00; Lawson Products, Supplies-\$437.51; Leighton Family Farms, Supplies-\$700.00; Lewis Family Drug, Supplies-\$37.49; Library Board of Trustees, Library Grant-\$500.00; Locators and Supplies, Supplies-\$779.97; Make it Mine Designs, Supplies-\$217.75; Menard's, Supplies-\$292.22; MHS/MCTEA Robotics, Sports Authority Promo-\$1,500.00; Michels Road & Stone, 2021-45 P.E. #4-\$42,365.80; Midcontinent Communication, Utilities-\$101.89; Midway Service dba Vollan Oil,

Supplies-\$908.20; Midwest Fire & Safety, Inspection-\$598.00; Midwest Oil, Supplies-\$922.28; Mitchell Iron & Supply, Supplies-\$16.10; Mitchell Plumbing & Heating, Supplies-\$284.15; Mitchell Rodeo Foundation, Deposit Refund-\$4,000.00; Mitchell School District, Utilities-\$2,111.19; Muth Electric, Maintenance-\$244.13; N-Able Technologies, Software-\$174.87; Northwestern Energy, Utilities-\$24,210.86; O'Connor, Excise Tax-\$365.29; Pepsi Cola, Supplies-\$526.60; Planning & Development District, Improvements-\$28,500.00; Premier Pest Control, Supplies-\$150.00; Qualified Presort, Postage-\$2,361.27; Rexwinkel Concrete, Maintenance-\$27,198.00; Runnings Supply, Supplies-\$1,444.14; S&M Printing, Supplies-\$50.00; Saber Shred Solutions, Maintenance-\$7,726.80; Safety Benefits, Registration-\$150.00; Sanford Health Mitchell, Supplies-\$120.00; South Dakota Department of Transportation, 2021-1 P.E. #7-\$35.49; South Dakota Music Education, Sports Authority Promo-\$1,000.00; South Dakota Redbook Fund, Sports Authority Promo-\$4,210.00; South Dakota Retirement System, Retirement Contributions-\$61,123.70; South Dakota-Supplemental Retirement, Supplemental Retirement-\$3,317.50; South Dakota-Supplemental Roth 457, Roth 457 Contributions-\$2,092.50; Secretary of State, Notary Fee-\$30.00; Soukup Construction, 2023-3 P.E. #3-\$19,975.05; South Dakota 811, Messaging Fees-\$364.35; SPN and Associates, 2021-3 P.E. #26-\$49,469.07; Stephanie Ellwein, Reimbursement-\$252.31; Streicher's-Minneapolis, Supplies-\$35.97; Sturdevants Auto Value Mitchell, Supplies-\$2,040.93; Subway, Planning Commission Meals-\$44.95; Sun Gold Sports, Supplies-\$494.00; Tessiers Mechanical Contracting, Supplies-\$174.79; The Office Advantage, Supplies-\$241.98; Thune True Value & Appliance, Supplies-\$868.36; TMA Stores, Supplies-\$92.77; Traditions Prepared Meals, Supplies-\$3,744.57; Traffic Control, Repairs-\$3,624.50; UPS Store #4227, Shipping Charges-\$474.18; Verizon Wireless, Utilities-\$340.19; Vern Eide Ford, Supplies-\$558.33; Vestis, Maintenance-\$267.01; WS Construction Management, 2021-30 P.E. #5-\$603,868.38; US Bank, Bond Payment-\$259,946.04; US Bank, Bond Payment-\$257,102.60; South Dakota State Treasurer, Sales Tax Payment-\$22,010.42; CorTrust Bank, Hohn TID #21-\$11,770.33; First Dakota National, Indoor Aquatic and Vantage Point TID #9-\$169,539.48; Wells Fargo, Pepsi-TID #14-\$30,587.62.

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

MAYOR & CITY COUNCIL DISCUSSION ITEMS:

Mayor Jordan Hanson updated City Council on various items including Corn Palace seating, Ice Arena roof, Corn Palace expansion discussion, rental inspection committee, and Hitchcock Park lighting.

Council Member Mike Bathke asked for a reminder on the sidewalk snow removal policy. City Attorney Justin Johnson and Public Works Director Joe Schroeder stated snow and ice needs to be removed from sidewalks within 48 hours of a snow event.

HEARING:

It was advised that this is the date and time set for hearing on the application of StocktonLee LLC dba Jesse's Place, 511 North Main Street for a new Retail (on-off sale) Wine and Cider

License (Video lottery is not included). Notice of hearing has been given and affidavit of publication is on file. Moved by McCardle, seconded by Barington, to approve said application. Motion carried.

It was advised that this is the date and time set for hearing on the application of StocktonLee LLC dba Jesse's Place, 511 North Main Street for a new Retail (on-off sale) Malt Beverage & SD Farm Wine License (Video lottery is not included). Notice of hearing has been given and affidavit of publication is on file. Moved by Barington, seconded by McCardle, to approve said application. Motion carried.

CONSIDER APPROVAL:

Moved by Goldammer, seconded by Smith, to approve the application for Jesse's Place for renewal of 2025 wine license. Motion carried.

Moved by Goldammer, seconded by McCardle, to approve the application of Keke Leiferman dba The Back 40 for a Special Event Liquor License located at the Area Community Theatre, 700 North Main on December 12, 2024 for comedy night. Motion carried.

AWARD BID:

Bids were opened and read on West Harmon Bridge BIG Project #2023-23 on the 20th day of November, 2024. Moved by Tjarks, seconded by Bathke, to award contingent on SD Department of Transportation approval, as follows:

**WEST HARMON BRIDGE
PROJECT #2023-23**

SFC Civil Constructors, 4500 W 58th Street, Sioux Falls, SD 57108

Total Bid	\$208,978.80
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Motion carried.

CONSIDER APPROVAL:

Moved by Sabers, seconded by Tjarks, to approve the request to name the green space to the south of Railroad & Main "Railroad Plaza". Motion carried.

Moved by Goldammer, seconded by Sabers, to approve request of Mueller Lumber Company to build on unimproved right of way at 804 and 808 West Plum Avenue. Motion carried.

Moved by McCardle, seconded by Goldammer, to approve authorizing the Mayor to sign letter of commitment as participating jurisdiction in the Davison County Hazard Mitigation Plan Update. Motion carried.

Moved by Tjarks, seconded by Smith, to approve South Dakota Department of Transportation Federal Highway Administration Urban Boundary Map. Motion carried.

Moved by Tjarks, seconded by Goldammer, to approve Amendment #2 to Agreement #A2021-10, Landfill Recycling Building Project #2021-30 with Helms & Associates in an amount not to exceed \$20,000.00. Motion carried.

Moved by Goldammer, seconded by Barington, to approve Amendment #3 to Agreement #A2021-56, Engineering Agreement for Spruce Street Project with Brosz Engineering. Motion carried.

Moved by Goldammer, seconded by Sabers, to approve Agreement #A2024-41, Tax Increment District #40 Developer Agreement-Golden Prairie Apartments LLC. Motion carried.

Moved by McCardle, seconded by Barington, to approve the following Agreements for Annexation and Utility Costs:

#A2024-51-Mike & Brenda Carpentier
#A2024-52-Arlen & Patricia Schuh
#A2024-53-Paul & Deborah Muth Trust

Motion carried.

Moved by Sabers, seconded by Tjarks, to approve Agreement #A2024-54, Developers Agreement for South Lake Estates Phase I with Mitchell Area Housing Incorporated (MAHI). Motion carried.

Moved by McCardle, seconded by Smith, to approve Agreement #A2024-55, Clarification of Easements for 514 N Main. Motion carried.

Moved by Smith, seconded by Tjarks, to approve Agreement #A2024-56, Release of Easement for 1605 East 5th Avenue. Motion carried.

RESOLUTIONS:

Moved by Goldammer, seconded by Barington, to approve Resolution #R2024-78, Plat of Lot 4, Block 6 of the Woods First Addition, as follows:

RESOLUTION #R2024-78

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 25th day of November, 2024; and

WHEREAS, it appears from an examination of the PLAT OF LOT 4, BLOCK 6 OF THE WOODS FIRST ADDITION, A SUBDIVISION OF THE E 1/2 OF THE SW 1/4 OF SECTION 23, T 103 N, R 60 W OF THE 5TH P.M., CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA, as prepared by Jeremy A. Wolbrink, 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, PLAT OF LOT 4, BLOCK 6 OF THE WOODS FIRST ADDITION, A SUBDIVISION OF THE E 1/2 OF THE SW 1/4 OF SECTION 23, T 103 N, R 60 W OF THE 5TH P.M., CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA, as prepared by Jeremy A. Wolbrink, 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 Goldammers, to approve Resolution #R2024-79, Plat of Lot B1 in the North 312.7 Feet of Lot B of Thomsen's 1st Addition, as follows:

RESOLUTION #R2024-79

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 25th day of November, 2024; and

WHEREAS, it appears from an examination of the PLAT OF LOT B1 IN THE NORTH 312.7 FEET OF LOT B OF THOMSEN'S 1ST ADDITION, IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 103 NORTH, RANGE 60 WEST OF THE 5TH PRINCIPAL MERIDIAN, CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA, as prepared by Steven G. Zimmer, 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, PLAT OF LOT B1 IN THE NORTH 312.7 FEET OF LOT B OF THOMSEN'S 1ST ADDITION, IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 103 NORTH, RANGE 60 WEST OF THE 5TH PRINCIPAL MERIDIAN, CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA, as prepared by Steven G. Zimmer, 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.

ORDINANCE:

Moved by McCardle, seconded by Goldammer, to place Ordinance #O2024-12, An Ordinance Granting a Franchise to Northwestern Energy on second reading. Motion carried. Moved by Barington, seconded by Smith, to adopt Ordinance #O2024-12, An Ordinance Granting a Franchise to Northwestern Energy, as follows:

Ordinance #O2024-12

An Ordinance granting NorthWestern Energy Public Service Corporation, a South Dakota corporation, its successors and assigns, a non-exclusive Franchise, right and privilege for a period of 1 year to erect, maintain, and operate a gas distribution system and any and all necessary pipes, mains, services, and all other appliances thereunto appertaining in, upon, over, across and along the streets, alleys, bridges, and public places of the City of Mitchell, South Dakota, as the same now are or may hereafter be extended, for the transmission, distribution, and sale of gas, whether artificial, natural, or otherwise, for cooking, heating, industrial, and all other uses and purposes in the City of Mitchell, South Dakota, and prescribing the terms and conditions under which said Franchisee is to operate; repealing all ordinances or parts of ordinances in conflict herewith; and providing for the effective date of this Ordinance, and publication thereof.

BE IT ORDAINED by the Mayor and City Council of the City of Mitchell, South Dakota:

Section 1.01. Definitions. As used in this Ordinance, the following words or phrases shall have the following meanings:

- A. “Customer” shall mean any individual person, corporation, company, partnership, firm, unincorporated association, trust, municipality, public corporation, or any other legal or non-legal entity served by the Franchisee.
- B. “Distribution System” shall mean a system of pipes, pipelines, apparatus, machinery, structures, appliances, or fixtures, and appurtenances, which in any way relate to or are reasonably necessary for the transportation and distribution of natural gas by the Franchisee to Customers.
- C. “Franchise” shall mean the rights and privileges granted by City to Franchisee under this Ordinance.
- D. “Franchisee” shall mean NorthWestern Energy Public Service Corporation, a South Dakota corporation, doing business as NorthWestern Energy, its successors and assigns.
- E. “City” shall mean the City of Mitchell, South Dakota, and includes the area within the City limits, as the same now exists or as may be extended from time to time.
- F. “Install, operate and maintain” shall mean to acquire, erect, construct, install, extend, repair, remove, relocate, replace, or otherwise operate and maintain.
- G. “Public Way” shall mean any street, alley, avenue, boulevard, lane, park, parkway, sidewalk, driveway, utility easement, right of way, and any other public ways, places, areas, or grounds within the corporate limits of the City as now constituted or may be added hereafter.

- H. The terms “*Franchise Agreement*” and “*Ordinance*” as found herein shall be fully interchangeable in meaning.
- I. The terms “*gas*” and “*natural gas*” as found herein shall be fully interchangeable in meaning.
- J. The term “*South Dakota Natural Gas Tariff*” as found herein means Franchisee’s South Dakota Gas Rate Schedule filed with the South Dakota Public Utilities Commission.

Section 1.02. Franchise Granted. Franchisee is hereby granted a non-exclusive Franchise, right and privilege for a period of 1 year to install, operate, and maintain a Distribution System upon, over, across and along the Public Ways, as the same now are or may hereafter be extended, for the transmission, distribution, and sale of gas, whether artificial, natural, or otherwise, for cooking, heating, industrial, and all other uses and purposes.

Section 1.03. Franchisee’s Agreement to Serve. Franchisee agrees that, for and during the term and period of this Franchise Agreement, it will maintain in the City an adequate, standard, and sufficient Distribution System and equipment and maintain and operate the same in a manner to meet the necessities and requirements of the City, its industries, and inhabitants. Franchisee will be deemed to have accepted the terms and conditions of this Franchise by supplying service to any Customer within the City limits after the effective date of this Franchise Agreement. Notwithstanding the foregoing, Franchisee does not guarantee uninterrupted or undisturbed service of gas, and is not liable for causes beyond its reasonable control. However, Franchisee shall use all commercially reasonable efforts to prevent interruptions in service and, in accordance with prudent utility practices, restore service as soon as practicable in the event of an outage.

Section 1.04. Changes to Physical Plant; Extension of Service. Franchisee shall and hereby agrees to make such reasonable extensions of the Distribution System as may be reasonably required to furnish service to parties making application therefor located within the corporate limits of the City.

Franchisee shall not be required to make any such extensions of the Distribution System nor install service lines for the purpose of serving any new Customer or Customers where the estimated revenue to be derived from such service is not sufficient to provide an adequate return upon the investment (after recognizing any Customer contribution-in-aid of construction) required to serve such Customer or Customers. All extensions of the Distribution System shall be made in compliance with the South Dakota Natural Gas Tariff.

Section 1.05. Relocation of Utility Facilities. Franchisee shall relocate its facilities or equipment at its own expense whenever the City, in the proper exercise of its police power grades, regrades, changes the line, or otherwise improves any Public Way or constructs or reconstructs any sewer or water system therein and, with due regard to seasonable working conditions, orders the Franchisee to relocate permanently its facilities or equipment located in said Public Way. The City shall give Franchisee reasonable notice of plans requiring such relocation.

Section 1.06. Relocation When Right of Way Vacated. City may not order Franchisee to relocate any of its facilities or equipment when a Public Way is vacated unless the reasonable cost of such relocation and the loss and expense resulting from such relocation are first paid to Franchisee. If the facilities are not relocated, the City shall grant the Franchisee a permanent easement prior to the vacation of said public use.

Section 1.07. Restoration of Public Ways. In doing any work in connection with exercising the privileges herein granted, the Franchisee shall avoid, so far as may be practicable, interfering with the use of any Public Way. Where a portion of the Public Way is disturbed, the Franchisee shall at its own expense and in a manner reasonably satisfactory to the City Public Works Director, and in compliance with the City specifications, repair or replace such portion of the Public Way, including the subsurface elements and other items underneath such portion, in as good condition as it was in before such work was commenced.

Section 1.08. Installation of Equipment. Franchisee shall install, maintain, and operate the Distribution System to not interfere with or obstruct the use of any water pipes, drains, sewers or other structures already installed. Further, the Franchisee, agrees to install, operate and maintain all underground piping according to current industry standards and all applicable codes, rules, regulations, statutes, and orders of local, state and federal agencies having authority in such matters.

Section 1.09. Installation and Ownership of Service Lines. Franchisee shall, at its own expense, furnish and install service pipe of suitable capacity to the Customer's point of delivery herein, defined as the inlet side of the first connection with Customer's premises or the outlet side of the meter if located beside, within, or attached to the premises. This delivery location shall be defined as "*Customer's Point of Delivery.*" Service lines or gas main extensions may be subject to a Customer Contribution in Aid of Construction. Ownership of all service lines shall remain with Franchisee.

Section 1.10. Allocation of Gas Supplies. In the event of a shortage in the supply of natural gas for any reason beyond the control of Franchisee, it will allocate the available gas in a manner to conform to the general interest of the public, as required by applicable laws and regulations.

Section 1.11. Insurance Requirements. Franchisee shall be self-insured and/or maintain commercially reasonable insurance coverage of foreseen and unforeseen risks including, but not limited to, the following types: Workers' Compensation; Automotive Liability; Comprehensive General Liability, including contractual liability, explosion, collapse and underground, personal injury, products and completed operations, owner and contractors protective; and umbrella liability. Upon request, Franchisee shall deliver to City proof of insurance coverage.

Section 1.12. Hold Harmless Clause. Franchisee shall at all times protect, indemnify, and save harmless the City from and against all claims and demands and from any and all loss, expense, and liability arising out of the intentional misconduct, negligence, or fault of Franchisee in the installation, operation, or maintenance of the Distribution System, except such as arises as a

result of the intentional misconduct or the negligence of the City, its officers, employees, or agents.

Section 1.13. Municipal Authority. Franchisee agrees that all authority and rights in this Ordinance contained shall at all times be subject to all rights, power, and authority now or hereafter possessed by said City to regulate and control and direct or otherwise by ordinance or resolution legislate concerning the manner in which the Franchisee shall use the Public Way.

Section 1.14. Interpretation of Law. This Franchise Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of South Dakota.

Section 1.15. Captions. Captions and other headings contained in this Franchise Agreement are for reference and identification purposes only and in no way alter, modify, amend, limit, or restrict the contractual obligation of the parties hereto.

Section 1.16. Compliance with Laws. Franchisee agrees to conduct its business under the terms of this Franchise Agreement in such a manner that it does not violate any federal, state, or local laws or regulations applicable to the conduct of its operations under the terms of this Franchise Agreement.

Section 1.17. Validity of Franchise. If any section, subsection, sentence, clause, phrase, or portion of this Franchise Agreement shall for any reason be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 1.18 Acceptance. Franchisee shall deliver its unconditional acceptance of this Franchise Agreement to the City within 45 days after receipt of the notice of publication.
All ordinances or parts of ordinances in conflict herewith are hereby repealed.
This Ordinance shall be in full force and effect from and after its final passage, approval and publication as provided by law.

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

Moved by Tjarks, seconded by Goldammer, to place Ordinance #O2024-13, Supplemental Appropriation Ordinance for the City of Mitchell, Davison County, South Dakota for Fiscal Year 2024 on first reading. Motion carried.

UPDATE:

City Administrator Stephanie Ellwein reviewed the financing for the Lake Mitchell Dredge/Improvement Project and Public Works Director Joe Schroeder reviewed the time frame

for the project to be bid and the project started. Schroeder also updated City Council on potential improvements to the Jetty Project including rip rap steps, a fishing pier, and shoreline access improvements.

Discussion took place regarding the hours of operation of medical cannabis licensed businesses. The current hours of operation allowed are 8:00 AM until 8:00 PM. An ordinance will be brought back at a future meeting to consider extending the hours of operation until 10:00 PM.

EXECUTIVE SESSION:

Moved by Goldammer, seconded by Barington, to go into Executive Session as permitted by SDCL 1-25-2(1) Personnel. Motion carried.

Mayor Hanson declared the board out of executive session at 8:29 p.m. and the City Council to reconvene in regular session at 8:30 p.m.

ADJOURN:

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


Michelle Bathke
Finance Officer

Published once at the approximate cost of _____.