

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

**JULY 6, 2010  
7:30 P.M.**

**PRESENT:** Dan Allen, Doug Backlund, Marty Barington, Geri Beck, Travis Carpenter, Scott Houwman, Mel Olson, Jeffrey Smith

**ABSENT:** none

**PRESIDING:** Mayor Lou Sebert

**AGENDA:**

Moved by Houwman, seconded by Carpenter, to approve the agenda as amended. Motion carried.

**MINUTES:**

Moved by Carpenter, seconded by Allen, to approve the minutes of the regular City Council meeting held on June 21, 2010. Motion carried.

**DEPARTMENT HEAD AND CITY ATTORNEY APPOINTMENTS:**

Mayor Sebert recommended appointments of the department heads as follows:

Finance Officer	Marilyn Wilson
Public Works Director	Tim McGannon
Human Resources Director	Teri Bertness
Parks & Recreation Director	Dustin Rodiek
Golf & Cemetery Director	Kevin Thurman
Senior Services Director	Brenda Paradis
City Attorney	Randolph Stiles
Deputy City Attorney	Douglas Papendick

Moved by Allen, seconded by Olson, to approve the recommendation for department head appointments. Council member Beck requested that Mayor Sebert postpone the appointment of the City Attorney for one month. Discussion followed. Moved by Allen, seconded by Olson, to call the question. Motion carried with Backlund and Houwman voting nay. The motion to approve the department head appointments was carried with Backlund voting nay.

**OATHS OF OFFICE:**

Mayor Lou Sebert issued the Oath of Office to department heads Marilyn Wilson, Tim McGannon, Teri Bertness, Kevin Thurman and Brenda Paradis and City Attorney Randolph Stiles and Deputy City Attorney Douglas Papendick.

## **ELECTION OF PRESIDENT AND VICE-PRESIDENT OF COUNCIL:**

Mayor Sebert called for nominations for President of the Mitchell City Council. Moved by Carpenter, seconded by Beck, to nominate Jeffrey Smith for President of the Mitchell City Council. Motion carried. Moved by Olson, seconded by Barington, to cease nominations and cast a unanimous vote. Motion carried.

Mayor Sebert called for nominations for Vice-President of the Mitchell City Council. Moved by Beck, seconded by Houwman, to nominate Marty Barington for Vice-President of the Mitchell City Council. Motion carried. Moved by Olson, seconded by Backlund, to cease nominations and cast a unanimous vote. Motion carried.

## **DISCUSSION:**

Discussion was held regarding Focus 2020's recommendation of hiring a City Manager for the City of Mitchell and changing the form of government to a Home Rule Charter. Council members expressed opinions on the subject. Moved by Beck, seconded by Smith, to authorize Mayor Sebert to appoint a committee to define what should be placed on the November ballot and to formulate a home rule charter with a city manager. City Attorney Stiles noted that this must be done in 30 days for it to be placed on the ballot for the November election. Motion carried with Olson voting nay.

Greg McCurry, chairman of the Lake Advisory Committee, addressed the council regarding a possible solution for algae growth on the lake. Ripple Environmental, Inc. of Lincoln, NE has submitted a proposal to deliver 600 pounds of PAK 27 Algaecide for a trial application in Lake Mitchell. Total cost would be \$1,590.00. The algaecide will be placed in bay areas and inlets where the algae problem is worst. The algaecide will not leave a lasting chemical residue in the water. Moved by Carpenter, seconded by Houwman, to approve the trial of PAK 27 Algaecide. Motion carried.

## **BOARD OF ADJUSTMENT:**

Moved by Carpenter, seconded by Backlund, for the City Council to adjourn 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 Derek Howard for a variance to construct an addition to a garage, located at 521 West 14<sup>th</sup> Avenue, legally described as Lot 6, Block 18, Capital Addition. The Planning Commission recommended approval of said application. Moved by Carpenter, 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 Jim Puetz for a variance to construct an addition a garage, located at 1410 East Ash Avenue, legally described as Lot 8 and East ½ Lot 7, Block 7, Fairview Addition. The Planning Commission tabled said application. Moved by Barington, seconded by Olson, to table said application. Motion carried.

It was advised that this is the date and time set for hearing on the application of LAB, LLC for a conditional use permit to operate a gasoline service station with convenience retail store, located at 1218 East 1<sup>st</sup> Avenue, legally described as Lots 11 and 12, Block 13, Gleeson's Addition. The original

application also asked for a car wash, however, this is not permitted in an R-4 zone. The Planning Commission recommended approval of said application, with the notation that alcohol sales are not allowed in residential districts. City Attorney Stiles noted that the property would need to be re-zoned if alcohol sales would be requested in the future. Moved by Beck, seconded by Allen, to approve said application. Motion carried, with Olson voting nay and Backlund abstaining.

It was advised that this is the date and time set for hearing on the application of LAB, LLC for a variance to construct a gasoline service station with convenience retail store, located at 1218 East 1<sup>st</sup> Avenue, legally described as Lots 11 and 12, Block 13, Gleeson's Addition. The original application also asked for a car wash, however, this is not permitted in an R-4 zone. The Planning Commission recommended approval of said application. Moved by Carpenter, seconded by Smith, to approve said application. Motion carried with Backlund abstaining.

Moved by Beck, seconded by Barington, that the 19<sup>th</sup> day of July, 2010 at 7:30 p.m. in the Council Chambers of City Hall be the date and time set for hearing on the application of Brad Jamison for a variance to construct a garage, located at 1000 West Hurst Street, Block 9 except West 88' and except East 166' and except Lot 8 and except that portion of Hurst Street, Sunnyside Addition and to direct the Finance Officer to give notice according to statute. Motion carried.

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

**AWARD BIDS:**

Bids were opened and read on the Library Boiler Replacement Project #2010-24 on the 30<sup>th</sup> day of June, 2010 in the Mayor's Office of City Hall. Moved by Allen, seconded by Houwman, to award as follows to Redlinger Brothers, of Watertown, SD:

**LIBRARY BOILER REPLACEMENT  
PROJECT #2010-24**

Base Bid - \$106,000.00

Motion carried.

Bids were opened and read on the South East Interceptor Sewer (MTI) Project #2010-25 on the 1<sup>st</sup> day of July, 2010 in the Mayor's Office of City Hall. Moved by Carpenter, seconded by Beck, to award to Northdale of Albertville, MN with recommendations as follows:

**SOUTH EAST INTERCEPTOR SEWER (MTI)  
PROJECT #2010-25**

Bid Schedule A	\$306,855.91
Bid Schedule B	\$105,050.31
Bid Schedule C	\$67,956.53
Bid Schedule D	\$67,994.46

Bid Schedule E	\$25,135.84
Bid Schedule F	\$73,929.75
TOTAL BID SCHEDULE A – F	\$646,922.80

Tim McGannon, Public Works Director, recommended approving Bid Schedule A separately. Bid Schedules B – F will be approved subject to approval of the Developer’s Agreement, which should be in place by the end of the week. Motion carried.

**RESOLUTIONS:**

Moved by Smith, seconded by Houwman, to adopt Resolution #2838, Release of Utility Easement, as follows:

**RESOLUTION #2838  
RELEASE OF UTILITY EASEMENT**

WHEREAS, Robert Martin and Bonita Martin, husband and wife, are the owners of that real property described as: Lots Thirty-nine (39), and Forty (40), all in the Island First Addition to the City of Mitchell, Davison County, South Dakota; and

WHEREAS, a survey has been completed with reference to the buildings and property; and

WHEREAS, it has been determined that the City has a utility easement over the Easterly 5’ of Lot 39 and the Westerly 5’ of Lot 40, all in the Island First Addition to the City of Mitchell, Davison County, South Dakota, as is contained in the exhibit which is attached hereto and incorporated herein by reference; and

WHEREAS, it has been determined that the City no longer has a need for said easement; now therefore

BE IT RESOLVED by the City Council that the Mayor is authorized to execute a Quit Claim Deed from the City of Mitchell to Robert Martin and Bonita Martin, husband and wife, as joint tenants with right of survivorship and not as tenants in common. The purpose for the execution of said Quit Claim Deed is to extinguish the City’s easement as hereinabove described on and across this property.

Motion carried and resolution declared duly adopted.

Moved by Beck, seconded by Backlund, to adopt Resolution #2839, Tax Incremental District #14, as follows:

**RESOLUTION #2839  
TAX INCREMENT DISTRICT #14**

WHEREAS, the City Planning Commission has recommended a proposed plan for Tax Increment District #14 and has recommended its creation; and

WHEREAS, the City of Mitchell has the power, pursuant to SDCL 11-9-2(1), to create the Tax Increment District #14 and define its boundaries

THEREFORE, IT IS HEREBY RESOLVED:

1. The City hereby finds that twenty-five percent (25%) and more of the real property located within the boundaries of the proposed Tax Increment District #14 City of Mitchell, is a blighted area under SDCL 11-9-10, (5), (6), (9) and 11-9-11 Further, the City finds that the improvement of the area is likely to enhance significantly the value of substantially all of the other real property in the District.
2. There is hereby created, pursuant to SDCL 11-9 the Tax Increment District #14, City of Mitchell.
3. The Tax Increment District is hereby created on July 6, 2010.
4. Tax Increment District #14 shall have boundaries which shall include the following described real property:

**PROPERTY WITHIN THE TAX INCREMENT ZONE.** The real property to be located within the Tax Incremental District consists of two (2) individual parcels of real property, street rights-of-way and two (2) easement areas, as follows:

Parcels 1 and 2: Lots One (1) and Two (2), Block C, Westview Addition in the Southeast Quarter (SE1/4) of Section Twenty (20), Township One Hundred Three (103) North, Range Sixty (60), City of Mitchell, Davison County, South Dakota.

Easements:

Easement 1: A portion of Lot One (1), Block A of Westview Addition in the Southeast Quarter (SE1/4) of Section Twenty (20), Township One Hundred Three (103) North, Range Sixty (60), City of Mitchell, Davison County, South Dakota, as depicted on Attachment 1 to this Agreement.

Easement 2: The West Thirty-three Feet (W.33') of Lot One (1), Block B, Westview Addition, in the Southeast Quarter (SE1/4) of Section Twenty (20), Township One Hundred Three (103) North, Range Sixty (60), City of Mitchell, Davison County, South Dakota, as depicted on Attachment 1 to this Agreement.

Street Rights-of-Way, as follows:

- All portions of the City/County/State right-of-way, consisting of that portion of Harriet Street in the City of Mitchell, starting at said street's intersection with West Cedar Avenue, and continuing north to its end.

- All portions of the City/County/State right-of-way, consisting of that portion of West Cedar Avenue to its intersection with Jones Street in the City of Mitchell.
  - All portions of the City/County/State right-of-way, consisting of that portion of West Ash Avenue that acts as the northerly boundary for Lots 1 and 2, Block C of Westview Addition to the City of Mitchell and its intersection with Harriet Street.
5. A hearing by the City Planning Commission concerning the creation and boundaries of the Tax Increment District #14 was held on June 28, 2010.
  6. Pursuant to SDCL 11-9-7, the City Council hereby approves the project plan as approved by the City Planning Commission.
  7. The City finds that the plan is feasible and in conformity with the master plan of the municipality.
  8. The City hereby directs the Finance Officer to take such action as is deemed necessary to accomplish SDCL 11-9-20.
  9. There is hereby created, pursuant to SDCL 11-9-31, a Tax Increment District #14 Fund.
  10. All tax increments collected pursuant to Tax Increment District #14 shall be deposited into the Tax Increment District #14 Fund.
  11. All funds in the Tax Increment District #14 Fund shall be used solely for those proposed expenses in SDCL 11-9.
  12. 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.
  13. The project plan is on file with the Finance Officer.

Motion carried and resolution declared duly adopted.

Moved by Allen, seconded by Olson, to adopt Resolution #2840, Plat of Lot 3 and Lot 6, Tract 1, Wild Oak Golf Club Addition, as follows:

**RESOLUTION #2840  
RESOLUTION OF CITY COUNCIL**

**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 28<sup>th</sup> day of June, 2010; and

**WHEREAS**, it appears from an examination of the plat of LOT 3 AND LOT 6 IN TRACT 1, WILD OAK GOLF CLUB ADDITION, IN THE SE ¼ OF SECTION 23, T103N, R60W OF THE 5<sup>TH</sup> P.M., DAVISON COUNTY, SOUTH DAKOTA as prepared by Nathan L. Jibben, a duly licensed Land Surveyor in and for the State of South Dakota, that said plat 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 LOT 3 AND LOT 6 IN TRACT 1, WILD OAK GOLF CLUB ADDITION, IN THE SE ¼ OF SECTION 23, T103N, R60W OF THE 5<sup>TH</sup> P.M., DAVISON COUNTY, SOUTH DAKOTA as prepared by Nathan L. Jibben, be and the same is hereby approved and the description set forth therein and the accompanying surveyor's certificate shall prevail.

Motion carried with Backlund abstaining and resolution declared duly adopted.

Moved by Carpenter, seconded by Olson, to adopt Resolution #2841, Plat of Lot 13 in the Replat of Tract E, Wild Oak Golf Club Addition, as follows:

**RESOLUTION #2841  
RESOLUTION OF CITY COUNCIL**

**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 28<sup>th</sup> day of June, 2010; and

**WHEREAS**, it appears from an examination of the plat of LOT 13 IN THE REPLAT OF TRACT E, WILD OAK GOLF CLUB ADDITION, IN THE SE ¼ OF SECTION 23, T103N, R60W OF THE 5<sup>TH</sup> P.M., DAVISON COUNTY, SOUTH DAKOTA as prepared by Nathan L. Jibben, a duly licensed Land Surveyor in and for the State of South Dakota, that said plat 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 LOT 13 IN THE REPLAT OF TRACT E, WILD OAK GOLF CLUB ADDITION, IN THE SE ¼ OF SECTION 23, T103N, R60W OF THE 5<sup>TH</sup> P.M., DAVISON COUNTY, SOUTH DAKOTA as prepared by Nathan L. Jibben, be and the same is hereby approved and the description set forth therein and the accompanying surveyor's certificate shall prevail.

Motion carried with Backlund abstaining and resolution declared duly adopted.

Moved by Houwman, seconded by Smith, to adopt Resolution #2842, Resolution Amending ACT Agreement, as follows:

**RESOLUTION #2842  
RESOLUTION AMENDING ACT AGREEMENT**

WHEREAS, the City of Mitchell has previously executed documents with ACT concerning the transfer of property to ACT; and

WHEREAS, it appearing that certain of those documents have to be amended to conform with the initial agreement between the parties and to comply with the appropriate insurance laws;

NOW THEREFORE, BE IT RESOLVED that the Mayor be, and he is, authorized to execute any and all documents to amend the same to comply with the language hereinafter set forth, to-wit:

ACT will insure the real property with a commercial property policy on a special causes of loss form, or equivalent form. If the property suffers any casualty for which insurance proceeds are received, ACT agrees that the insurance proceeds will be used for the repair of the damages suffered, either by repair or replacement.

If ACT does not repair or replace the property within six (6) months of the receipt of the insurance proceeds, ACT will pay to the City the first Five Hundred Thousand Dollars (\$500,000.00) of the received insurance proceeds. The City will only receive the proceeds if ACT does not commence the repair within the time frame above specified. ACT may apply for an extension of the six-month limitation, which extension request will not be unreasonably denied.

The total that the City will ever receive from the unused insurance proceeds will be in the sum of \$500,000.00, either from one incident or multiple incidents.

Motion carried and resolution declared duly adopted.

Moved by Beck, seconded by Barington, to adopt Resolution #2843, Resolution Authorizing Issuance of TID #14 Bonds, as follows:

### **RESOLUTION NO #2843**

#### **RESOLUTION GIVING APPROVAL TO THE ISSUANCE AND SALE OF TAX INCREMENTAL REVENUE BONDS IN AN AMOUNT NOT TO EXCEED \$630,000 TO FINANCE LAND AND PUBLIC IMPROVEMENTS FOR TAX INCREMENT DISTRICT NUMBER FOURTEEN, AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS**

NOW, THEREFORE, BE IT RESOLVED by the City Common Council of the City of Mitchell as follows:

1. Declaration of Necessity. The City of Mitchell (the "City") finds and declares a necessity to issue tax increment revenue bonds in connection with Tax Increment District Number Fourteen (14) and use the proceeds therewith to pay for public improvements (the "Project") which Project has been approved and copies of the tax incremental plan is on file with the Finance Officer open to public inspection.
2. Authority. The City is authorized to issue its tax increment revenue bonds to finance project costs pursuant to Section 11-9-33 of the South Dakota Codified Laws. Pursuant to Chapter 11-9 of the South Dakota Codified Laws (the "Act") the City proposes to issue municipal tax incremental revenue bonds (as herein authorized, the Tax Incremental Revenue Bonds, or the

"Bonds") to finance a portion of the Project costs. The City is authorized by the Tax Incremental Act to pledge a special fund into which the City will deposit the tax increment (as defined by the Act).

3. Pledge of State of South Dakota. Pursuant to SDCL 11-9-39.1, the state of South Dakota does pledge to and agree with the holders of any obligations issued under 11-9 that the state will not alter the rights vested in the bond holders until such bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged.
4. Authorization to issue the Bonds. The City does hereby authorize the issuance of the tax increment revenue bonds in an amount not to exceed \$630,000 (the "Bonds") in one or more series upon such terms and in such amounts as are negotiated with the purchaser of the Bonds.
5. Negotiation and Sale of the Bonds. It is hereby determined to be necessary and in the best interests of the City and its inhabitants that this City Common Council authorize, issue and sell the Bonds. The finance officer shall send out a request for proposal to any financial entity interested in making a proposal. The Mayor and Finance Officer are authorized to negotiate the sale and terms of the Bonds subject to the limitations of the law and this resolution.
6. No Election Required. The Bonds may be issued by the City without an election pursuant to SDCL 11-9-34.
7. Form of Bonds. The Bonds shall be prepared in substantially the form as filed with the Finance Officer and open to public inspection.
  - 7.1. Terms of Bonds. The City Common Council hereby authorizes the issuance of the Bonds. The principal amount of the Bonds shall not exceed any statutory or constitutional debt limitation and be in such amounts as will be retired with the tax increment revenues. The Bonds shall have maturities and interest rates as negotiated by the Mayor and Finance Officer. The Bonds shall be prepared under the direction of the Finance Officer and shall be executed on behalf of the City by the facsimile or manual signatures of the Mayor and the Finance Officer and countersigned by the facsimile or manual signature of an attorney actually residing in the State of South Dakota and duly licensed to practice therein.
8. Registration. The City hereby appoints its Finance Officer as paying agent, registrar and transfer agent (the "Registrar") for the Bonds. The City reserves the right to appoint a financial institution as Registrar upon thirty (30) days' notice. The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:
  - 8.1.1. Register. The Registrar shall keep at its office a register (the "Register") in which the Registrar shall provide for the registration of ownership of the Bonds and the registration of transfers and exchanges of the Bonds entitled to be registered, transferred or exchanged.

- 8.1.2. Transfer of Bonds. When a Bond is surrendered for transfer it shall be duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer in form satisfactory to the Registrar; duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner thereof. If the Bond is properly surrendered as provided above, the Registrar shall authenticate and deliver, in the name of the designated transferee, a new Bond of a like aggregate principal amount and maturity. The Registrar may, however, close the books for registration of any transfer after the fifteenth day of the month preceding each interest payment date and until such interest payment date.
- 8.1.3. Exchange of Bonds. Whenever a Bond is surrendered by the registered owner for exchange the Registrar shall authenticate and deliver the new Bond of a like aggregate principal amount and maturity, as required by the registered owner or the owner's attorney in writing.
- 8.1.4. Cancellation. All Bonds surrendered upon any transfer or exchange shall be promptly canceled by the Registrar and thereafter disposed of as directed by the City.
- 8.1.5. Improper or Unauthorized Transfer. When any Bond is presented the Registrar may refuse to transfer the same until satisfied that the endorsement on such Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for the refusal, in good faith, to make transfer which, in their judgment, are deemed improper or unauthorized.
- 8.1.6. Persons Deemed Owners. The City, Paying Agent and Registrar may treat the person whose name on any Bond is at any time registered in the Register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.
- 8.1.7. Taxes, Fees and Charges. For every transfer or exchange of Bond, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.
- 8.1.8. Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Registrar shall deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond or in lieu of and in substitution for any such Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory that such Bond was

destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance and amount satisfactory to the Registrar, in which the City and the Registrar shall be named as obligees. All Bonds so surrendered to the Registrar shall be canceled by him and evidence of such cancellation shall be given to the City. If the mutilated, destroyed, stolen or lost certificate has already matured or has been called for redemption in accordance with its terms it shall not be necessary to issue a new Bond prior to payment.

9. Security Provisions; Funds and Accounts and Other Covenants and Determinations.

9.1. Pledge Tax Increments. Pursuant to the Act, the City shall receive Tax Increments as defined by the Act. All Tax Increments shall be placed in the Tax Incremental Revenue Bond Fund Number Fourteen (14) (the "Bond Fund"). The Bond Fund is irrevocably pledged and appropriated to, and shall be deposited to the Bond Fund. For purposes of this Resolution, "Outstanding Bonds" shall mean these Bonds and any parity lien bonds herebefore or hereafter issued pursuant to this Resolution. The Bond Fund shall be used and applied only in the manner and order hereinafter set forth. The holders of the Outstanding Bonds shall have a lien against the Bond Fund for payment of the principal and interest and may either at law or in equity protect and enforce the lien.

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

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

9.2.2. Principal and Interest Account. There is hereby created and established as an account of the Bond Fund, a "Principal and Interest Account." Immediately upon delivery of the Bonds, there shall be credited to the Principal and Interest Account the amount of any accrued interest received from the Purchaser.

Periodically, as needed there shall be withdrawn from the Bond Fund Number Fourteen (14) and credited to the Principal and Interest Account an amount which will equal at least the next principal and interest payment. In all events there shall be credited to the Principal and Interest Account amounts sufficient to pay the principal of and interest on the Outstanding Bonds as the same become due.

9.2.3. Subordinate Lien Bonds. After making the above required payments, any remaining Tax Increment shall be used for the payment of the principal of and interest on any additional Tax Incremental revenue bonds having a lien which is subordinate to the lien of the Outstanding Bonds, and for a reserve fund as additional security for the payment of such subordinate lien bonds.

9.2.4. Deposit and Investment of Funds. The Finance Officer shall cause all moneys pertaining to the Fund to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of Chapter 4-6A, South Dakota Codified Laws, 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 moneys shall at any time be withdrawn from such deposit accounts except for the purposes of the Fund as authorized in this Resolution; except that moneys from time to time on hand in the Fund may at any time, in the discretion of this Council, be invested in securities permitted by the provisions of Section 4-5-6, South Dakota Codified Laws, maturing and bearing interest at the times and in the amounts estimated to be required to provide cash when needed for the purposes of the respective accounts. Income received from the deposit or investment of moneys shall be credited to the 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 in that account.

9.3. Defeasance. When all the Bonds issued have been discharged as provided in this section, all pledges, covenants, and other rights granted by this resolution to the registered owners of the Bonds shall cease. The City may discharge its obligations with respect to any Bonds which are due on any date by providing to the Paying Agent on or before that date a sum sufficient for the payment thereof in full; or, if any Bond should not be paid when due, it may nevertheless be discharged by providing to the Paying Agent a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit. The City may also discharge its liability with reference to all Bonds which are called for redemption on any date in accordance with their terms by depositing funds with the Paying Agent on or before that date in accordance with their terms by depositing funds with the Paying Agent on or before that date, in an amount equal to the principal, interest, and premium, if any, which are then due thereon, provided that notice of such redemption has been duly given. The City may also at any time discharge this issue of Bonds in its entirety, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or United States government obligations which are authorized by law to be so deposited, bearing interest payable at such times and at such

rates and maturing on such dates as shall be required to provide funds (without an reinvestment) sufficient to pay all principal, interest and premiums, if any, to become due on all Bonds on and before maturity, or, if a Bond has been duly called for redemption, on or before the designated redemption date.

10. Certification of Proceedings. The officers of the City are authorized and directed to prepare and furnish to the purchasers of the Bonds certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bonds and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and marketability of the Bonds as such facts appear from the officer's books and records or are otherwise known to them. All such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the City as to the correctness of the facts recited therein and the action stated therein to have been taken. The City does hereby declare its official intent to reimburse the capital expenditures made with respect to the Project with proceeds of the Bonds.
11. Post Issuance Compliance Procedures. The City does hereby adopt the Meierhenry Sargent LLP manual as its written procedures concerning post issuance compliance with the Internal Revenue Code.

Motion carried and resolution declared duly adopted.

#### **ORDINANCES:**

Moved by Carpenter, seconded by Allen, to place Ordinance #2335, Supplemental Appropriations, on first reading. Motion carried.

#### **SET DATE:**

Moved by Olson, seconded by Backlund, that the 28<sup>th</sup> day of July, 2010 at 1:30 p.m. in the Mayor's Office of City Hall be the date and time set to receive and consider bids for Country Drive Street Improvements – City Project #2010-18. Motion carried.

Moved by Allen, seconded by Olson, that the 2<sup>nd</sup> day of November, 2010 be the date set for an election on the initiated ordinance to dedicate certain municipal property for public use and benefit. Motion carried.

#### **CONSIDER APPROVAL:**

Moved by Carpenter, seconded by Beck, to authorize the Public Safety Department to apply for a no-match SD state Highway Grant in the amount of \$8,060.00 for speed enforcement. Motion carried with Backlund, Barington and Houwman voting nay.

Moved by Houwman, seconded by Olson, to approve the SD DOT Work Order for Engineering Services on the 23<sup>rd</sup> Avenue Overlay Project. Motion carried.

Moved by Backlund, seconded by Carpenter, to approve easement agreements for the SE Sewer Interceptor (MTI Project) with the following: Midcontinent Communications, Robert and Sheila DeBoer – Trustees, and H & P, Inc. Motion carried.

Moved by Beck, seconded by Smith, to surplus the following patrol mountain bike: Boys 21-speed, Trek single track silver mountain bike, VIN TBI-0415C23C95321. Motion carried.

Moved by Allen, seconded by Carpenter, to approve a request of KMIT 18U Girls Fastpitch to conduct a raffle with the drawing to be held on July 18, 2010. Motion carried.

Moved by Allen, seconded by Backlund, to approve a request of Mitchell Main Street & Beyond to conduct a raffle with the drawing to be held on August 18, 2010. Motion carried.

Moved by Olson, seconded by Backlund, to approve a request of Davison County Republicans to conduct a raffle with the drawing to be held within 60 days of August 1, 2010. Motion carried.

Moved by Olson, seconded by Beck, to approve a request of Pheasants Forever/Pheasant Country Chapter to conduct a raffle with the drawing to be held at various times through October 2010. Motion carried.

### **PAY ESTIMATES:**

Moved by Smith, seconded by Carpenter, to approve the following pay estimates:

- pay estimate #1 in the amount of \$29,020.64 for Handicapped Fishing Dock Project #2009-17 contracted with Springfield Vocational Industries,
- pay estimate #4 in the amount of \$136,298.48 for South Side Water Tower Project #2009-30 contracted with CB & I,
- pay estimate #8 in the amount of \$18,193.18 for Pepsi Soccer Complex – Phase II Project #2009-33 contracted with Mueller Lumber Company,
- pay estimate #3 in the amount of \$6,579.10 for Ash, Wallace & Miscellaneous Sidewalk Project #2010-4A contracted with Colwell Concrete Inc.,
- pay estimate #5 in the amount of \$4,807.65 and pay estimate #6 in the amount of \$417.60 for North Mentzer, East 8<sup>th</sup>, and Boat Ramp Project #2010-4B contracted with Colwell Concrete Inc.,
- pay estimate #5 in the amount of \$6,373.30 for Hazardous Sidewalk Project #2010-4C contracted with Big “O” Concrete,
- pay estimate #1 in the amount of \$235.75 for Hazardous Sidewalk Project #2010-4C contracted with Colwell Concrete Inc.,
- pay estimate #2 in the amount of \$45,519.93 for Sanborn Curb & Gutter Project #2010-14A contracted with Double “D” Concrete,
- pay estimate #2 in the amount of \$24,991.16 for Hazardous Curb & Gutter Project #2010-14B contracted with Rexwinkle Concrete,

- pay estimate #4 in the amount of \$43,020.22 for Paving & Overlay Project #2010-15 contracted with Commercial Asphalt,
- pay estimate #2 in the amount of \$62,488.36 for Northwestern TIF Project #2010-27 contracted with H & W Contracting,
- pay estimate #4 in the amount of \$1,552.07 for Old Landfill Leachate Monitoring Project #2010-28 contracted with Leggette, Brashears & Graham,
- pay estimate #4 in the amount of \$841.50 for New Landfill Monitoring Project #2010-29 contracted with Leggette, Brashears & Graham, and
- pay estimate #10 in the amount of \$12,036.92 for AIP `23 Runway 12/30 Reconstruction contracted with Muth Electric Inc.

Members present voting aye: Allen, Backlund, Barington, Beck, Carpenter, Houwman, Olson, Smith. Members present voting nay: none. Motion carried.

**BILLS:**

Moved by Beck, seconded by Olson, to approve the following payroll expenditures, adjustments to payroll and accounts payable warrants:

**PAYROLL, JUNE 13, 2010 – JUNE 26, 2010:** City Council-\$2,440.24, Mayor-\$885.54, Attorney-\$1,986.55, Finance-\$7,458.82, Human Resources-\$3,891.61, Information Technology-\$1,386.32, Police-\$53,421.6, Traffic-\$3,781.23, Fire-\$34,003.73, Street-\$26,276.01, Public Works-\$14,800.01, Cemetery-\$4,743.08, Mosquito Control-\$954.50, Animal Control-\$1,275.12, Emergency Medical Services-\$12,529.02, Library-\$9,663.27, Playground & Athletics-\$14,669.44, Swimming Pool-\$15,790.45, Campground-\$1,873.60, Recreation Center-\$8,149.81, Ice Arena-\$1,459.44, Cadwell-\$6,377.19, Soccer Complex-\$1,412.00, Park-\$16,289.64, Supervision-\$4,920.49, Forestry-\$2,636.07, E911-\$16,578.76, RSVP-\$3,289.50, Palace Transit-\$14,575.03, Nutrition-\$1,685.10, Water-\$5,767.26, Water Distribution-\$7,997.50, Sewer-\$10,866.10, Airport-\$1,666.96, Waste Collection-\$8,186.21, Landfill-\$7,916.72, Corn Palace Maintenance-\$8,884.57, Corn Palace Decorating-\$13,380.63, Corn Palace Shows-\$2,742.95, Corn Palace Concessions-\$8,057.32, Golf Course-\$8,814.14.

**SALARY ADJUSTMENTS (per hour rate):**

FIRE: Zach Dalrymple-\$14.207, Ben DeVries-\$13.027, Luke Ruml-\$13.624

POLICE: Mike Koster-\$24.981

SWIMMING POOL: Melanie Jerke-\$9.25, Katrina Young-\$7.75

**NEW HIRES (per hour rate):**

CORN PALACE CONCESSIONS: Arrika Kitto-\$7.25, Jessica Crumrine-\$7.25

PARKS & BOULEVARDS: Britney Kaupp-\$8.00

PLAYGROUNDS & ATHLETICS: Anne Barnhardt-\$7.50, Brent Havlik-\$7.25, Collin Moen-\$7.25, Jacob Pecenka-\$7.50

SWIMMING POOL: Charlee Nelson-\$7.50

**WARRANTS:** A & B Business, Supplies-\$249.48, A & G Diesel, Parts-\$17.85, A-Ox Welding Supply Company, Supplies-\$50.00, Aflac/Flex One, Flex One Payments-\$1,678.89, AIA Corporation, Supplies-\$31.71, Al's Engraving, Name Badge-\$5.95, Analytical Technology, Parts-\$804.59, Anna Mae Maeschen, Contract Services-\$610.00, Argus Leader, Subscription Renewal-\$79.00, Auto Body Specialties, Supplies-\$127.90, B-Y Water, Water Usage-\$44,265.00, Bailey Metal Fabricators, Labor-\$70.02, Baker Bros Electric, Repairs-\$361.89, Bender's Sewer & Drain, Pumpout Holding Tank-\$1,683.00, Big O Concrete, Contract Services-\$6,373.30, Blackburn Manufacturing Company, Supplies-\$22.61, Bonnie E. Weber, Contract Services-\$150.00, Boyer Trucks, Parts-\$273.94, Brown Traffic Products, Parts-\$14,195.50, Bud Winter, Lawn Mowing-\$150.00, Business Products, Supplies-\$2,155.58, Butler Machinery, Parts-\$119.10, Cabela's, Supplies-\$45.92, Campbell Supply, Parts-\$1,118.94, Carquest Auto Parts, Parts-\$18.31, Carrot-Top Industries, Supplies-\$672.00, CB&I, Contract Services-\$136,298.48, Chad Colwell Concrete, Contract Services-\$12,040.10, Cherie Ramsdell, Contract Services-\$3,160.00, City of Emery, Senior Meals Payroll Reimbursement-\$1,827.00, City of Mitchell, Payroll Deduction-\$25.00, City of Mitchell, Alcohol Task Force-\$600.00, Coca Cola Bottling Company, Supplies-\$1,407.75, Commercial Asphalt, Contract Services-\$43,020.22, Commercial Asphalt Spencer Quarries, Supplies-\$12,549.12, Connie Lynde, Contract Services-\$150.00, Cook Implement, Parts-\$1,044.40, Corn Palace Concessions, Supplies-\$147.00, County Fair, Supplies-\$6.00, Cretex Concrete Products, Parts-\$706.80, Daily Republic, Legals-\$39.48, Dakota Fluid Power, Parts-\$284.50, Dakota Supply Group, Supplies-\$5.96, Dale Tayler, Refund-\$20.62, Dan Sabers, Contract Services-\$7,208.76, Danko Emergency Equipment, Protective Equipment-\$834.01, Dependable Sanitation, Contract Services-\$17,083.00, Department of Social Services, Child Support-\$1,128.47, Dick's Body Shop, Repairs-\$808.00, Dick's Towing, Towing-\$280.00, Diesel Machinery, Equipment-\$1,950.00, Dippin' Dots, Supplies-\$977.45, Domino's Pizza, Supplies-\$37.48, Don Everson, Travel-\$18.00, Double D Concrete, Contract Services-\$45,519.93, DTC, Supplies-\$102.00, Electronic Security Equipment, Security System-\$745.00, Ellefson Implement, Parts-\$49.43, Evident Crime Scene Products, Supplies-\$140.50, Farmers Alliance, Repairs-\$233.00, Farnams Genuine Parts, Parts-\$2.74, Farner-Bocken Company, Supplies-\$15,344.32, Fastenal Company, Supplies-\$359.86, Fedex, Transportation Charges-\$10.57, Ferguson Waterworks, Supplies-\$393.29, First Bankcard, Supplies-\$3,907.26, First Dakota National Bank, TID #7 Payments-\$45,188.34, Fischer Rounds & Association, Notary Bond-\$80.00, Florida Micro, Supplies-\$67.24, Friends of the Middle Border, Sponsorship-\$350.00, Frito-Lay, Supplies-\$110.10, Galls, Supplies-\$188.31, Gary L. Larson, Contract Services-\$2,000.00, Gaylen's Homegrown Popcorn, Yellow Popcorn-\$130.00, Geotek Engineering, Maintenance-\$1,628.50, GF Advertising Services, Supplies-\$171.60, Graham Tire Company, Repairs-\$158.94, Great Western Tire Company, Tires-\$1,983.78, Gwendolyn Ball, Refund-\$60.00, H & W Contracting, Contract Services-\$62,488.36, Harve's Sport Shop, Supplies-\$698.05, Hawkins, Supplies-\$5,619.77, HD Supply Waterworks, Parts-\$6,795.62, Institutions Services, Supplies-\$18.49, Integrity Transcription, Transcribing Service-\$370.00, Interstate Office Products, Supplies-\$22.77, James Valley Community Center, 2010 Allocation-\$5,975.00, James Valley Nursery, Parts-\$89.31, JC Mowing, Lawn Mowing-\$85.00, Jeff Spars, Tools-\$236.62, Jill Enfield, Refund-\$15.00, Jones Supplies, Supplies-\$2,367.16, K-Mart, Supplies-\$35.98, Karen

Heiser, Contract Services-\$410.00, Kathy Kaye Foods, Supplies-\$1,800.00, Katie Buschbach, Personal Training Fees-\$103.00, Knology, Supplies-\$59.42, Kris Murtha, Reimbursement-\$45.93, Language Line Services, Over-The-Phone Interpretation-\$55.34, Lawson Products, Supplies-\$382.16, Leggette Brashers & Graham, Contract Services-\$2,393.57, Leila Schamber, Contract Services-\$410.00, Lois E. Huber, Contract Services-\$814.00, Lutheran Social Services, Contract Services-\$60.00, M & M Greenhouse, Supplies-\$63.44, M & T Fire and Safety, Supplies-\$26.89, McFarland Supply, Supplies-\$60.40, McLeod's Printing, Supplies-\$609.20, Mebius Nursery & Landscaping, Repairs-\$220.00, Menard's, Supplies-\$1,055.45, Meyers Oil Company, Supplies-\$19,431.68, Midcontinent Communications, Utilities-\$390.41, Midwest Marketing, Advertising & Promotions-\$43,992.00, Midwest Tire & Muffler, Tires-\$807.87, Midwest Turf & Irrigation, Supplies-\$744.24, Mike Levsen, Travel-\$111.00, Joshua Tracy, Refund-\$3.28, Mitchell Ford, Parts-\$222.73, Mitchell Iron & Supply, Supplies-\$17.05, Mitchell Lawn Care, Lawn Mowing-\$250.00, Mitchell School District, Utilities-\$972.97, Mitchell Telecom, Supplies-\$1,142.35, Mitchell United Way, United Way Deductions-\$161.80, Money, Subscription-\$10.00, Mueller Lumber Company, Supplies-\$18,210.17, Muth Electric, Repairs & Maintenance-\$14,553.96, Neenah Foundry, Supplies-\$1,923.51, New Deal Tire, Repairs & Maintenance-\$7,254.00, Newman Traffic Signs, Supplies-\$968.80, Noble Distributing, Supplies-\$1,020.00, Northwestern Energy & Communications, Utilities-\$22,646.30, O L Bussmus Construction, Repairs-\$647.96, Palace Cleaners, Supplies-\$484.35, Papa Murphy's Pizza, Supplies-\$376.04, Parts World, Parts-\$185.00, Patton Company, Maintenance-\$275.40, Paulson Sheet Metal, Repairs-\$85.46, Pepsi Cola Company, Rental & Supplies-\$1,562.26, Petty Cash, Reimbursement-\$20.91, Pony Creek Steakhouse, Contract Services-\$4,544.45, Premier Pest Control, Contract Services-\$130.00, Pro-Build, Supplies-\$261.60, Public Safety Equipment, Equipment-\$2,636.00, Qualified Presort, Mailing Services-\$1,962.13, Qwest, Utilities-\$82.45, Recreonics, Supplies-\$556.27, Rexwinkel Concrete, Contract Supplies-\$24,991.16, Rodger Kulm Repair, Repairs-\$127.99, Ron's Bicycle Shop, Cut Keys-\$8.00, S & M Printing Company, Supplies-\$161.00, S & S Willers, Supplies-\$1,615.65, Sam's Club, Supplies-\$303.54, Scott Supply Company, Equipment-\$6,550.85, South Dakota Department of Environment & Natural Resources, Water Fees-\$5,650.00, South Dakota Department of Health, Lab Fees-\$193.00, South Dakota Federal Property Agency, Parts-\$115.00, South Dakota Retirement System, South Dakota Retirement System Payment-\$38,132.56, South Dakota-Supplemental Retirement, Supplemental Retirement Payment-\$2,111.33, Shah Software, Computer Support-\$4,535.00, Sharon Rehorst, Contract Services-\$175.00, Sheehan Mack Sales & Service, Parts-\$1,455.25, Sherwin-Williams, Supplies-\$59.77, Shi Corporation, Software-\$1,723.05, Shopko, Supplies-\$144.92, Sioux Equipment, Supplies-\$350.93, Sioux Falls Two-Way Radio, Repairs-\$1,695.00, Spencer Quarries, Supplies-\$516.10, Springfield Vocational, Contract Services-\$29,020.04, Stacy & John Henkel, Refund-\$3.50, Sturdevant's Auto Parts, Parts-\$4,387.16, Sun Gold Trophies, Supplies-\$4,671.19, Solid Waste Association of North America, Dues-\$200.00, Symbol Arts, Supplies-\$289.00, Tech Solutions, Labor-\$240.00, Thune True Value Hardware, Supplies-\$378.78, Titan Access Account, Supplies-\$4,612.84, Titze Electric & Remodeling, Repairs-\$67.35, Turning Point Productions, Poster Design-\$410.91, United Accounts, Payroll Deduction-\$214.78, United Energy, Fuel-\$3,814.36, United Rentals Northwest, Parts-\$274.57, United States Postal Service, Postage-\$440.00, Variety Foods, Supplies-\$1,126.69, Virginia Limberg, Personal Training Fees-\$592.00, Walmart Community, Supplies-\$666.75, West River Beverage, Supplies-\$680.00, Wheelco Brake & Supply, Parts-\$689.41, Wholesale Electronics, Supplies-\$41.24.

Members present voting aye: Allen, Barington, Backlund, Beck, Carpenter, Houwman, Olson, Smith.

Members present voting nay: none. Motion carried.

**EXECUTIVE SESSION:**

Moved by Olson, seconded by Allen, to go into executive session as permitted by SDCL 1-25-2 (3). Motion carried.

**OUT OF EXECUTIVE SESSION AND ADJOURN:**

There being no further business to come before the meeting, it was moved by Allen and seconded by Houwman to come out of executive session and adjourn the meeting. Motion carried.

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Marilyn Wilson  
Finance Officer

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