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

February 4, 2019
6:00 P.M.

PRESENT: Dan Allen, John Doescher, Kevin McCardle, Steve Rice, Dan Sabers, Jeffrey Smith, Susan Tjarks

ABSENT: Marty Barington

PRESIDING: Mayor Bob Everson

AGENDA:

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

a. City Council Minutes
   1. City Council January 22, 2019 and

b. Committee Meeting Minutes

c. Raffle Permits
   1. VFW Building with the drawing to be held on June 1, 2019,
   2. Dakota Wesleyan University with the drawing to be held on February 16, 2019,
   3. Mitchell Skating & Hockey Association with the drawing to be held on February 23, 2019, and
   4. Gertie Belle Rogers PTA with the drawing to be held on March 23, 2019.

e. Set date for 02-19-2019 for hearings
   1. On the application to transfer Retail (On Sale) Liquor License RL-5759 from MG Oil Company dba Thirsty’s, 1801 North Main Street, Suite 1, Mitchell, SD to MG Oil Company dba Thirsty’s, 1500 North Duff, Suite B, Mitchell, SD, and
   2. On the application to transfer Retail (On-Off Sale) Malt Beverage License RB-3133 from Meyers Oil Company Inc. dba D’Luxe Casino, 1510 South Burr Street, Suite C, Mitchell SD to Hohn Partnership LLC, 1510 South Burr Street, Suite C, Mitchell, SD.

f. Request to accept DOT 5310 Funds for repair & maintenance.

g. Authorize the purchase of a Waste Water Pickup Project #2019-19.

h. Authorize the purchase of a Patrol Car Project #2019-30.

i. Appoint Joe Schlimgen to the Golf & Cemetery Board for a period of 3 years.

j. Pay Estimates for February 4, 2019
   Pay Estimate #4 in the amount of $13,932.50 for Sanborn Bridge Repair Design #2018-22B contracted to Brosz Engineering,
   Pay Estimate #5 in the amount of $168.00 for Old Landfill Monitoring #2018-28 contracted to WSP, and
Pay Estimate #1 in the amount of $3,240.00 for James Valley Community Center Drive-up Window #2019-7 contracted to L.L. Jirsa, Architect.

k. 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 DECEMBER 30, 2018 – JANUARY 12, 2019: City Council $3,106.48, Mayor $1,292.65, City Administrator $5,008.15, Attorney $4,037.15, Finance $13,582.48, Human Resources $3,527.96, Municipal Building $3,793.73, Information Technology $2,465.29, Police $67,576.95, Traffic $4,415.00, Fire $49,851.45, Street $29,452.42, Public Works $20,383.44, Cemetery $3,719.76, Animal Control $1,466.24, Emergency Medical Services $9,820.54, Library $14,084.62, Recreation & Aquatics $5,898.24, Recreation Center $15,186.66, Sports Complexes $12,354.90, Parks $9,221.21, Supervision $5,204.05, E911 $24,067.64, RSVP $5,740.25, Palace Transit $19,083.04, JVCC $1,431.00, Nutrition $861.02, $10,627.52, Sewer $12,738.51, Airport $3,260.59, Waste Collection $11,406.04, Landfill $8,223.80, Corn Palace $20,930.75, Golf Course $5,712.93.

NEW HIRES:


AIRPORT: Thomas Case-$23.00.


SPORTS COMPLEX: Baley Miller-$9.35.


SALARY ADJUSTMENTS:

E911: Crystal Schlimgen-$22.920.


REC & ACQUATICS: Ella Flippin-$10.35.


STREET: Kevin Hughes-$22.630.

WASTE COLLECTION: Scott Dey-$22.358.


WARRANTS: A & B Business Solutions, Contract Services-$4,087.23; A-OX Welding Supply, Supplies-$67.21; AAA Collections, Garnishment-$288.55; Adam Fosness, Contract Services-$1,715.50; AFSCME Council 65, Union Dues-
$613.60; Alexander Open Systems, Maintenance-$3,645.00; Ameripride Services, Supplies-$186.00; Arctic Refrigeration, Repair-$815.81; Assetworks, Computer Software-$1,000.00; Avera Occupational Medicine, Contract Services-$296.10; B & L Communications, Professional Service-$405.00; Bailey Metal Fabricators, Repairs-$48.10; Baker Bros Electric, Maintenance-$178.57; Ben Vanden Hoek, Travel-$64.00; Big Daddy D's, Contract Services-$4,294.50; Broadcast Music, Professional Service-$322.20; Bound Tree Medical, Supplies-$429.98; Brosz Engineering, 2018-22B P.E. #4-$13,932.50; Bumblebee-Gibson, Supplies-$9,627.30; Butler Machinery, Supplies-$82.50; C & B Operations, Supplies-$182.63; Campbell Supply, Supplies-$670.12; Carquest Auto Parts, Supplies-$985.72; CDW Government, Supplies-$136.89; Century Link, Utilities-$1,353.12; CHR Solutions, Contract Services-$2,913.72; City of Mitchell, Shipping-$61.23; Coca Cola Bottling, Supplies-$2,906.80; Core-Mark Midcontinent, Supplies-$4,669.10; Corn Palace Concessions, Supplies-$12.00; County Fair, Supplies-$175.99; Dakota Riggers and Tool Supplies, Supplies-$1,217.40; Dakota Transit Association, Membership-$210.00; Dawn Niehoff, Reimbursement-$49.99; Defensive Edge Training & Consulting, Registration-$700.00; Dependable Sanitation, Contract Services-$23,800.00; Department of Social Services, Child Support-$1,275.22; Dr. Hilary Rockwell, Contract Services-$1,500.00; Emergency Education, Training-$200.00; Engineering Unlimited, Supplies-$109.82; Eric Hieb, Contract Services-$4,363.95; Etterman Enterprises, Supplies-$35.8; Farmers Alliance, Supplies-$1,265.19; Fastenal, Supplies-$93.51; First National Bank Omaha, Loan Payment-$12,468.78; Fischer, Rounds & Associates, Notary Bond-$80.00; Frontier Precision, Supplies-$1,452.00; GCR Tires & Service, Supplies-$2,357.75; Gempler's, Supplies-$491.95; Glenn Cacaro, Travel-$22.00; Golden West Technologies, Repair-$316.01; Goverlan, Supplies-$200.00; Graham Advertising, Advertising-$1,500.00; Great Western Tire, Supplies-$1,143.64; Hach, Supplies-$3,624.68; Hanson School, Corn Palace Games-$15,602.00; Hanson School District, Sports Authority Promotion-$2,000.00; Harve's Sport Shop, Supplies-$17.85; Health Communications, Manuals-$1,840.81; Henry Schein, Supplies-$2,053.99; Hillyard/Sioux Falls, Supplies-$120.16; Honda of Mitchell, Supplies-$947.70; Howes Oil, Supplies-$16,216.28; International Association of Chiefs of Police, Membership-$190.00; Innovative Office Solution, Supplies-$145.80; Integrity Transcription, Transcribing Service-$456.75; Interstate Office Products, Supplies-$189.05; Jessica Pickett, Travel-$160.30; Johnson South Dakota, Supplies-$322.98; Jones Supplies, Supplies-$1,394.77; Justin Adams, Travel-$224.00; Karl's, Supplies-$719.63; Kimball Midwest, Supplies-$1,997.78; Krohmer Plumbing, Repair-$120.47; Larry Jirsa, 2019-7 P.E. #1-$3,240.00; Leads Online, Service Contract-$2,148.00; Lifquest, 2019 Allocation-$9,000.00; Locators and Supplies, Supplies-$626.11; Luke Ruml, Travel-$460.60; Lyndon Overweg, Travel-$11.00; Make It Mine Designs, Advertising-$26.00; McLeod's Printing, Supplies-$544.05; Menard's, Supplies-$556.96; Meyers Oil, Supplies-$1,056.31; Microsoft, Supplies-$910.26; Mid-American Research Chemical, Supplies-$503.04; Midwest Turf & Irrigation, Supplies-$2,387.31; Mitchell Aquatic Club, Sports Authority Promotion-$2,000.00; Mitchell Area Convention Visitors Bureau, 2019 Funding-January-
$22,750.00; Mitchell Power Equipment, Supplies-$38.37; Mitchell Telecom, Utilities-$168.56; Mitchell United Way, United Way Deductions-$203.11; Morgan Theeler Trust Account, Real Estate Purchase-$40,000.00; Mueller Lumber, Supplies-$45.13; Muth Electric, Maintenance-$891.80; Napa Auto Parts, Supplies-$578.05; Northwestern Energy & Communications, Utilities-$21,426.46; On Sight 24/7, Supplies-$117.50; Pepsi Cola, Supplies-$1,698.10; Porter Distributing, Supplies-$556.20; Rob Parker, Travel-$64.00; Robert Everson, Travel-$129.78; Roger Hazuka, Contract Services-$150.00; S & M Printing, Supplies-$551.00; Schumacher Elevator Company, Maintenance-$201.39; Scott Supply, Supplies-$528.84; South Dakota Arborist Association, Registration-$435.00; South Dakota Department of Health, Lab-$812.00; South Dakota Retirement System, Retirement Contributions-$51,399.29; South Dakota Supplemental Retirement, Retirement Contributions-$5,808.17; South Dakota Supplemental Roth 457, Roth 457 Contributions-$425.00; South Dakota Municipal League Workers' Compensation, 2019 Renewal-$256,227.00; Shervin-Williams, Supplies-$90.82; SHI International, Supplies-$780.00; Shopko Stores Operating, Supplies-$20.70; Sign Pro, Supplies-$34.30; Sioux Equipment, Supplies-$911.17; Stan Houston Equipment, Supplies-$77.90; Standard Insurance Company, Standard Insurance Company-$411.55; Staples Advantage, Supplies-$874.45; Stitchtogether, Supplies-$72.00; Sturdevant's Auto Parts, Supplies-$759.13; Subway, Meals-$45.03; Sun Gold Sports, Supplies-$229.57; Teamsters Local No. 120, Union Dues-$906.00; Tessier's, Maintenance-$173.14; Thomas L Price, Professional Service-$350.00; Thune True Value Hardware, Supplies-$159.43; Tim's Towing & Recovery, Police Tow-$150.00; TMA Stores, Repair-$18.54; Tractor Supply Credit Plan, Supplies-$34.99; USA Blue Book, Supplies-$188.57; Verizon Wireless, Utilities-$26.06; Vern Eide Ford Lincoln, Supplies-$439.48; Walmart, Supplies-$244.22; Wheelco Brake & Supply, Repair-$79.49; Woelfel Jewelry Store, Supplies-$75.00; Workamper News, Advertising-$69.00; WSP USA, 2018-28 P.E. #5-$168.00; Zimco Supply, Supplies-$7,422.50; Wage Works, Flex Expense-$24.25; South Dakota State Treasurer, Sales Tax Payment-$16,869.83; Ellwein Brothers, Corn Palace-COGS-$226.40; US Bank, Loan Payment-$128,351.49.

Members present voting aye: Allen, Doescher, McCordle, Rice, Sabers, Smith, Tjarks. Members present voting nay: none. Motion carried.

**CITIZENS INPUT:**

Steve Sibson voiced his concerns regarding the Kelley land/house purchase near Lake Mitchell that the City Council approved at a January 23rd special meeting. One of Sibson’s main concerns is that this purchase by the City will remove the property from the tax rolls, which will affect property taxes for the other property owners in Davison County and the City of Mitchell.

Council Members McCordle and Smith stated that they had had interested parties contact them regarding the Kelley house and would like to know where to send them for information. Mayor Everson commented that interested parties may contact either himself or City Administrator

02-04-19
Ellwein. If and when the Kelley property closes, Everson or Ellwein will reach out to interested parties with information on the property.

Council Member Smith stated that owning the Kelley land near Lake Mitchell will be advantageous for the City when applying for grant funds or matching grant funds.

HEARINGS:

It was advised that this is the date and time set for hearing on the application to transfer Retail (On Sale) Liquor License RL-19079 from V.V. Inc. dba SUDZ located at 508 & 510 East Havens to Potter’s Plus Studio LLC, 100 North Main Street. Notice of hearing has been given and affidavit of publication is on file. Moved by Smith, seconded by McCordle, to approve said application. Motion carried.

It was advised that this is the date and time set for hearing on the application of V.V. Inc. dba SUDZ for a Retail (On-Off Sale) Wine License located at 508 & 510 East Havens (video lottery excluded). Notice of hearing has been given and affidavit of publication is on file. Moved by McCordle, seconded by Rice, to approve said application. Motion carried.

CONSIDER APPROVAL:

Moved by Tjarks, seconded by Allen, to authorize the use of remaining 2018 funds in 2019 in the amount of $11,566.00 to complete the Recreation Center locker room remodel project. Motion carried.

AWARD BID:

Bids were opened and read on the Sanborn Phase II and III Reconstruction, C462129-03 and C461129-05, Project #2019-22 and Sanborn Bridge Structure Rehabilitation BRF 3710(00)18-1, PCN 06V8, STR 18-149-095 Project #2018-22B on the 17th day of January, 2019 in the Council Chambers of City Hall. Moved by Allen, seconded by Rice, to award the projects contingent on review from DENR, as follows:

SANBORN PHASE II & III RECONSTRUCTION  
PROJECT #2019-22

H & W Contracting, LLC, 3416 Hovland Drive, Sioux Falls, SD 57107

| Bid Schedule A-Phase II    | $4,695,995.22 |
| Bid Schedule B-Phase III   | $3,264,121.45 |

Total Bid Schedule A and B  $7,960,116.67

SANBORN BRIDGE STRUCTURE REHABILITATION  
PROJECT #2018-22B

02-04-19
CONSIDER APPROVAL:

Moved by Tjarks, seconded by Rice, to approve Agreement #A2019-04, Partial Settlement Agreement with Puetz Corporation for the release of the Weld Costs Claim in relation to the Indoor Pool Project in the amount of $8,952.00. Motion carried.

RESOLUTIONS:

Moved by Tjarks, seconded by Allen, to approve Resolution #R2019-12, A Resolution Giving Approval to Certain Sewer Facilities Improvements; Giving Approval to the Issuance and Sale of Revenue Bonds, in One or More Series, to Finance, Directly or Indirectly, the Improvements to the Facilities; Approving the Form of the Loan Agreement and the Revenue Bonds and Pledging Project Revenues and Collateral to Secure the Payment of the Revenue Bond; and Creating Special Funds and Accounts for the Administration of Funds for Operation of the System and Retirement of the Revenue Bonds and Providing for a Segregated Special Charge or Surcharge for the Payment of the Bonds, as follows:

RESOLUTION R2019-12

RESOLUTION GIVING APPROVAL TO CERTAIN SEWER FACILITIES IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF REVENUE BONDS, IN ONE OR MORE SERIES, TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE FACILITIES; APPROVING THE FORM OF THE LOAN AGREEMENT AND THE REVENUE BONDS AND PLEDGING PROJECT REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BONDS AND PROVIDING FOR A SEGREGATED SPECIAL CHARGE OR SURCHARGE FOR THE PAYMENT OF THE BONDS.

WHEREAS, one of the purposes of SDCL Chapter 9-40 (the “Act”) as found and determined by the Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of any system for the collection, treatment and disposal of sewage and other domestic, commercial and industrial wastes; or any system for the control of floods and drainage; or any combination thereof, together with extensions, additions, and necessary appurtenances; and,

WHEREAS, a municipality is authorized by Section 6 of the Act to issue revenue bonds to defray the cost of extensions, additions and improvements to any utility, including non-point source projects, previously owned without pledging its credit and is authorized to pledge the net income or revenues from the Project in accordance with Section 15 of the Act; and,
WHEREAS, the City of Mitchell (the “City”) currently operates a sewer system for the collection, treatment and disposal of sewage and other domestic, commercial and industrial wastes; and for the control of floods and drainage and has determined that improvements to the sewer facilities and the non-point source projects are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its sewer system; and,

WHEREAS, the City has determined to issue its revenue bonds to finance the improvements to its sewer system for the purpose of collecting, treating and disposing of sewage and other domestic, commercial and industrial wastes (the “System”) and has applied to the South Dakota Conservancy District (the “District”) for a Clean Water State Revolving Fund Loan to finance the improvements;

WHEREAS, the City shall adopt special rates or surcharges for the improvements to be pledged, segregated and used for the payment of the Bonds.

NOW THEREFORE BE IT RESOLVED by the City as follows:

SECTION 1. Definitions. The terms when used in this Resolution shall have the following meanings set forth in this section unless the context clearly requires otherwise. All terms used in this Resolution which are not defined herein shall have the meanings assigned to them in the Loan Agreement unless the context clearly otherwise requires.

“Act” means South Dakota Codified Laws Chapter 9-40.

“Loan” means the Loan made by the South Dakota Conservancy District to the City pursuant to the terms of the Loan Agreement and as evidenced by the Revenue Bond.

“Project” means the City of Mitchell East Central Drainage Basin Storm Water and Sanitary Sewer Improvements.

“Revenue Bond” means the revenue bond or bonds issued the date of the Loan Agreement by the City to the South Dakota Conservancy District to evidence the City’s obligation to repay the principal of and pay interest and Administrative Expense Surcharge on the Loan.

“System” means the City’s system of collecting, treating and disposing of sewage and other domestic, commercial and industrial wastes.

SECTION 2. Declaration of Necessity and Findings.

2.1. Declaration of Necessity. The City hereby determines and declares it is necessary to construct and finance improvements to its System and undertake non-point source projects described as the Project.

2.2. Findings. The City does hereby find as follows:
2.2.1. The City hereby expressly finds that if the Project is not undertaken, the System will pose a health hazard to the City and its inhabitants and will make the City unable to comply with state and federal law.

2.2.2. Because of the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with State and federal laws, including SDCL Chapter 34A-2, and the federal Clean Water Act, and the nature of the improvements financed, the City hereby finds and determines that the Project will substantially benefit the entire System and all of its users within the meaning of Sections 15 and 17 of the Act.

The City hereby determines and finds that for the purposes of the Act, including, in particular, Sections 15 and 17 of the Act, only the net income from the Project financed by the Revenue Bond, be pledged for its payment.


3.1. **Authorization of Loan.** The City hereby determines and declares it necessary to finance up to $3,931,000 of the costs of the Project through the issuance of bonds, in two series designated Series 2019A and NPS Series 2019, payable from the revenue of the Project and other funds secured by the City. The City hereby determines that because the Revenue Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to Section 15 of the Act no election is required to issue the Revenue Bond.

3.2. **Approval of Loan Agreement.** The execution and delivery of the Revenue Obligation Loan Agreement (the “Loan Agreement”), the form of which is on file with the City Finance Officer (the “Finance Officer”) and open to public inspection, between the City as Borrower and the District, is hereby in all respects authorized, approved and confirmed, and the Mayor and Finance Officer are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content attached hereto, with such changes as the Attorney for the City deems appropriate and approves, for and on behalf of the City. The Mayor and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the City set forth in or required by the Loan Agreement. The Loan Agreement herein referred to and made a part of this Resolution is on file in the office of the Finance Officer and is available for inspection by any interested party.

3.3. **Approval of Revenue Bond.** The issuance of Revenue Bonds Series 2019A and NPS Series 2019, on a parity basis and in aggregate principal amount not to exceed $3,931,000 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (collectively the “Revenue Bond”) shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the Mayor, Finance Officer, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the District, for and on behalf of the City, upon receipt of the purchase
price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The Mayor and Finance Officer are hereby authorized to approve the final terms of the Revenue Bond and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapter 9-40 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided in Section 19 of the Act.

3.4. **Pledge of Revenues.** The Revenue Bond together with the interest thereon, shall not constitute a charge against the City's general credit or taxing power, but shall be a limited obligation of the City payable solely out of the Project Debt Service Account, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Revenue Bond and shall be used for no other purpose than to pay the principal of, interest and Administrative Surcharge on the Revenue Bond, except as may be otherwise expressly authorized in the Loan Agreement (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The City covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges which will be sufficient to provide for the payments upon the Revenue Bond issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the Project, and depreciation, and the Rate Resolution shall be revised from time to time so as to produce these amounts. The City hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Revenue Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene the covenant of the City set forth in this Section 3 or any other covenant or agreement in the Loan Agreement.

SECTION 4. **Special Charge or Surcharges for Revenue Bond.**

4.1. The City does hereby create the Revenue Bond Special-Surcharges District (the "Surcharge District") which shall include all users which benefit from the Project. There shall be charged a special charge or surcharge pursuant to Section 15 of the Act for the services provided by Project financed by the Revenue Bond. The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the Revenue Bond. The special charge or surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements and shall be 110% of the debt service requirements on the Revenue Bond.

4.2. **Rates and collection.** The rate herein specific will be collected as a special charge or surcharge for the Project. This special charge or surcharge shall remain in effect until such time as the Revenue Bond is defeased or paid in full.

4.3. **Initial Surcharge.** The initial special charge or surcharge shall be set by resolution and collected at the same time as other charges of the utility. All users within
the Surcharge District which benefit from the Project, current and future, shall be charged the special charge or surcharge. The special charge or surcharge is found to be equitable for the services provided by the Project. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due.

4.4. Segregation. The Finance Officer shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue, special charges and surcharges.

4.5. Periodic review. The amount of the surcharge shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the Loan Agreement’s rate covenant and to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due. The surcharge may be set by resolution in accordance with this Section. The rate resolution shall be necessary for the support of government and shall be effective upon passage.

SECTION 5. Additional Bonds. As permitted by Sections 8 and 9 of the Act, Additional Bonds payable from revenues and income of the System or Project may be issued, as permitted in the Loan Agreement, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements. The City shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond pursuant to the Loan Agreement.

SECTION 6. Project Fund Accounts. For the purpose of application and proper allocation of the income of the Project and to secure the payment of principal, Administrative Surcharge and interest on the Revenue Bond, the following mandatory asset segregations shall be included in the sewer system account of the City and shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Revenue Bond:

6.1. Project Revenue Account. There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the ordinances and resolutions of the City of Mitchell, South Dakota (collectively the “Rate Resolution”). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

6.2. Project Debt Service Account. Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25th day of each month into the account designated Project Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal, interest and Administrative Surcharge on the Revenue Bonds and any reserve determined by the City’s governing body to be necessary. The amount set aside monthly shall be not less than one-third of the total principal, interest, and Administrative Surcharge payable on the following February 15, May 15, August 15, or November 15 and if there shall be any deficiency in
the amount previously set aside, then the amount of such deficiency shall be added to the current requirement.

6.3. **Depreciation Account.** There shall be established a General Depreciation Account. Out of the revenues of the Project Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the Common Council to be a proper and adequate amount for repair and depreciation of the Project.

6.4. **Project Surplus Account.** There shall be established the Project Surplus Account. Revenues remaining in the Project Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Common Council shall authorize the City Finance Officer to rectify such default so far as possible by the transfer of money from the Project Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above.

When not required to restore a current deficiency in the Project Debt Service Account, moneys in the Project Surplus Account from time to time may be used for any of the following purposes and not otherwise:

(a) To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;

(b) To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then:

(c) To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms;

(d) To be used for any other authorized municipal purpose designated by the Common Council.

(e) No moneys shall at any time be transferred from the Project Surplus Account or any other account of the Fund to any other fund of the City, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

(f) **Approval of Paying Agent/Registrar.** The Revenue Bond shall be payable at the office of U.S. Bank National Association, St. Paul, Minnesota, hereby designated as paying agent and registrar.
SECTION 7. **Approval of Bond Counsel.** Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

SECTION 8. **Tax Matters.** The Interest on the Revenue Bond shall be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended ("the Code") and applicable Treasury Regulations (the "Regulations").

SECTION 9. **Covenants.** The City hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

9.1. The City will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this Resolution.

9.2. The City agrees and covenants that it will promptly construct the improvements included in the Project.

9.3. The City covenants and agrees that pursuant to Sections 25 through 27 of the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal, interest and Administrative Surcharge on the Revenue Bond, and the City agrees not to sell or otherwise dispose of the System, the Project, or any substantial part thereof, except as provided in the Loan Agreement and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the distribution of water for municipal, industrial, and domestic purposes within the City.

9.4. The City covenants and agrees with the District and other owners of the Revenue Bond that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements and accounts as provided for in this Resolution and the Loan Agreement. The Revenue Bond shall refer expressly to this Resolution and the Act and shall state that it is subject to all provisions and limitations thereof pursuant to Section 19 of the Act.

SECTION 10. **Depositories.** The Finance Officer shall cause all moneys pertaining to the Funds and Accounts to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of SDCL Ch. 4-6A, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the City, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the

02-04-19

34
Funds and Accounts as authorized in this Resolution; except that moneys from time to time on hand in the Funds and Accounts may at any time, in the discretion of the City’s governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Fund may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the Fund or Account from whose moneys the deposit was made or the investment was purchased and handled and accounted for in the same manner as other moneys therein.

SECTION 11. Consent to Appointment. In the event of mismanagement of the Project, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the Project are dissipated, wasted or diverted from their proper application as set forth in the Loan Agreement, Revenue Bond, or herein, the City hereby consents to the appointment of a receiver pursuant to Section 33 of the Act, and agrees that the receiver will have the powers set forth therein, and in Sections 34 and 35 of the Act to operate and administer the Project, and charge and collect rates as described therein.

SECTION 12. Severability. If any section, paragraph, clause or provision of this Resolution, the Loan Agreement, the Revenue Bond, or any other Loan Document shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Resolution or said Loan Agreement, Revenue Bond, or any other Loan Document.

SECTION 13. Repeal of Resolution. At such time as the Revenue Bond is defeased or paid in full, this Resolution and the special charge or surcharge shall automatically be repealed without any further action of the City.

SECTION 15. Authorization of City Officials. The Mayor, Finance Officer, City Attorney and City officials shall be and they are hereby authorized to execute and deliver for and on behalf of the City any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the actions authorized herein.

SECTION 16. Effective Date. This Resolution shall take effect on the 20th day following its publication, unless suspended by a referendum.

Motion carried and resolution declared duly adopted.

Moved by McCordle, seconded by Rice, to approve Resolution #R2019-13, A Resolution Giving Approval to Certain Drinking Water Facilities Improvements; Giving Approval to the Issuance and Sale of a Revenue Bond to Finance, Directly or Indirectly, the Improvements to the Facilities; Approving the Form of the Loan Agreement and the Revenue Bond and Pledging Revenues and Collateral to Secure the Payment of the Revenue Bond; and Creating Special Funds and Accounts for the Administration of Funds for Operation of the System and Retirement of the Revenue Bond, as follows:

RESOLUTION R2019-13

02-04-19
RESOLUTION GIVING APPROVAL TO CERTAIN DRINKING WATER FACILITIES IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF A REVENUE BOND TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE FACILITIES; APPROVING THE FORM OF THE LOAN AGREEMENT AND THE REVENUE BOND AND PLEDGING REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND.

WHEREAS, one of the purposes of SDCL Chapter 9-40 (the “Act”) as found and determined by the Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of system of waterworks for the purpose of providing water and water supply for municipal, industrial, and domestic purposes; and,

WHEREAS, a municipality is authorized to issue revenue bonds to defray the cost of extensions, additions and improvements to any utility previously owned and is authorized to pledge the net income or revenues from the system in accordance with Section 15 of the Act; and,

WHEREAS, the City of Mitchell (the “City”) currently operates a system of waterworks for the purpose of providing water and water supply for municipal, industrial, and domestic purposes and has determined that improvements to the waterworks are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its waterworks system; and,

WHEREAS, the City has determined to issue its revenue bonds to finance the improvements to its waterworks system (the “System”) and has applied to the South Dakota Conservancy District (the “District”) for a Drinking Water State Revolving Fund Loan to finance the improvements;

WHEREAS, the City shall adopt rates and charges to be pledged, segregated and used for the payment of the Revenue Bonds.

NOW THEREFORE BE IT RESOLVED by the City as follows:

SECTION 17. Definitions. The terms when used in this Resolution shall have the following meanings set forth in this section unless the context clearly requires otherwise. All terms used in this Resolution which are not defined herein shall have the meanings assigned to them in the Loan Agreement unless the context clearly otherwise requires.

“Act” means South Dakota Codified Laws Chapter 9-40.

“Loan” means the Loan made by the South Dakota Conservancy District to the City pursuant to the terms of the Loan Agreement and as evidenced by the Revenue Bond.

“Project” means City of Mitchell East Central Drainage Basin Water Improvements.
"Revenue Bond" means the revenue bond or bonds issued the date of the Loan Agreement by the City to the South Dakota Conservancy District to evidence the City's obligation to repay the principal of and pay interest and Administrative Expense Surcharge on the Loan.

"System" means the City's system of waterworks used for the purpose of providing water and water supply for domestic, municipal and industrial purposes.

SECTION 18. Declaration of Necessity and Findings.

2.1. Declaration of Necessity. The City hereby determines and declares it is necessary to construct and finance improvements to its System described as the Project.

2.2. Findings. The City does hereby find as follows:

2.2.1. The City hereby expressly finds that if the Project is not undertaken, the System will pose a health hazard to the City and its inhabitants, and will make the City unable to comply with state and federal law.

2.2.2. Because of the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with State and federal laws, including SDCL Chapter 34A-3A, and the federal Safe Drinking Water Act, and the nature of the improvements financed, the City hereby finds and determines that the Project will substantially benefit the entire System and all of its users within the meaning of Sections 15 and 17 of the Act.

2.2.3. The City hereby determines and finds that for the purposes of the Act, including, in particular, Sections 15 and 17 of the Act, that only the net income from the system as improved, financed by the Revenue Bond, be pledged for its payment.


19.1. Authorization of Loan. The City hereby determines and declares it necessary to finance up to $690,000 of the costs of the Project through the issuance of bonds payable from net revenues of the System and other funds secured by the City. The City hereby determines that because the Revenue Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to Section 15 of the Act no election is required to issue the Revenue Bond.

19.2. Approval of Loan Agreement. The execution and delivery of the Revenue Obligation Loan Agreement (the "Loan Agreement"), the form of which is on file with the City Finance Officer (the "Finance Officer") and open to public inspection, between the City as Borrower and the District, are hereby in all respects authorized, approved and confirmed, and the Mayor and Finance Officer are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content attached hereto, with such changes as the attorney for the City deems appropriate and approves, for and on behalf of the City. The Mayor and Finance Officer are hereby further

02-04-19

37
authorized and directed to implement and perform the covenants and obligations of the City set forth in or required by the Loan Agreement. The Loan Agreement herein referred to and made a part of this Resolution is on file in the office of the Finance Officer and is available for inspection by any interested party.

19.3. Approval of Revenue Bond. The issuance of a revenue bond in a principal amount not to exceed $690,000 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (the “Revenue Bond”) shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the Mayor, Finance Officer, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the District, for and on behalf of the City, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The Mayor and Finance Officer are hereby authorized to approve the final terms of the Revenue Bond and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapter 9-40 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided in Section 19 of the Act.

19.4. Pledge of Revenues. The Revenue Bond together with the interest thereon, shall not constitute a charge against the City’s general credit or taxing power, but shall be a limited obligation of the City payable solely out of the Project Debt Service Account, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Revenue Bond and shall be used for no other purpose than to pay the principal of, interest and Administrative Surcharge on the Revenue Bond, except as may be otherwise expressly authorized in the Loan Agreement (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The City hereby irrevocably pledges to the South Dakota Conservancy District all income and revenues of the System, including, without limitation, fees, charges to users of the System, penalties and hook-up fees, sign-up fees, proceeds of business interruption insurance, proceeds from the sale of property constituting part of the System and investment income on all such revenues, but only to the extent that the revenues exceed the amounts necessary to operate and maintain the System, provided there shall be excluded from this pledge the proceeds of any federal or state grant or loan, and the investment income therefrom, to the extent such exclusion is a condition of such grant or loan. The City covenants and agrees to charge rates for all services from the System or establish charges or rates which will be sufficient to provide for the payments upon the Revenue Bond issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the System, and depreciation, and the Rate Ordinance shall be revised from time to time so as to produce these amounts. The City hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Revenue Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene the covenant of the City set forth in this Section 3 or any other covenant or agreement in the Loan Agreement.
SECTION 20. Rates, Certification, Segregation and Review.

20.1. Rates and collection There shall be charged rates for each fiscal year which shall ensure that its Net Revenues Available for Debt Service will equal at least 110% of its System Debt Service for such fiscal year.

20.2. Certification. In each fiscal year, or as soon as practicable, and in any event by the date of the delivery of the unaudited financial statements required in the Loan Agreement, the City shall (a) calculate its Net Revenues Available for Debt Service and System Debt Service for the fiscal year, and (b) certify such figures to the South Dakota Conservancy District. The certification described in clause (b) of the preceding sentence shall be substantially in the form of the certificate attached as Appendix E to the Loan Agreement. If the City fails to meet the Rate Covenant set forth in Section 6.4 of the Loan Agreement, the City shall supply the District with quarterly reports on the actions it is taking to correct its coverage deficiency until it delivers an annual coverage certificate showing compliance with the first sentence of this Section.

20.3. Segregation. The Finance Officer shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue.

20.4. Periodic review. The water rates shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the Loan Agreement’s rate covenant and to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due. The rates may be set by ordinance or resolution in accordance with this Section. The rate ordinance or resolution shall be necessary for the support of government and shall be effective upon passage.

SECTION 21. Additional Bonds. As permitted by Sections 8 and 9 of the Act, Additional Bonds payable from revenues and income of the System may be issued, as permitted in the Loan Agreement, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements. The City shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond pursuant to the Loan Agreement.

SECTION 22. Project Fund Accounts. For the purpose of application and proper allocation of net income of the System and to secure the payment of principal, Administrative Surcharge and interest on the Revenue Bond, the following mandatory asset segregations shall be included in the water system account of the City and shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Revenue Bond:

22.1. Project Revenue Account. There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the ordinances and resolutions of the City of Mitchell, South Dakota (collectively the “Rate Ordinance”). Moneys from the

02-04-19
Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

22.2. Project Debt Service Account. Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25th day of each month into the account designated Project Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal of, interest and Administrative Surcharge on the Revenue Bonds and any reserve determined by the City’s governing body to be necessary. The amount set aside monthly shall be not less than one-third of the total principal, interest, and Administrative Surcharge payable on the following February 15, May 15, August 15 and November 15 and if there shall be any deficiency in the amount previously set aside, then the amount of such deficiency shall be added to the current requirement.

22.3. Depreciation Account. There shall be established a General Depreciation Account. Out of the revenues of the Project Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the Common Council to be a proper and adequate amount for repair and depreciation of the Project.

22.4. Project Surplus Account. There shall be established the Project Surplus Account. Revenues remaining in the Project Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Common Council shall authorize the City Finance Officer to rectify such default so far as possible by the transfer of money from the Project Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above.

When not required to restore a current deficiency in the Project Debt Service Account, moneys in the Project Surplus Account from time to time may be used for any of the following purposes and not otherwise:

(a) To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;

(b) To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then;

(c) To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or
(d) To be used for any other authorized municipal purpose designated by the Common Council;

(e) No moneys shall at any time be transferred from the Project Surplus Account or any other account of the Fund to any other fund of the City, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

SECTION 23. Approval of Paying Agent/Registrar. The Revenue Bond shall be payable at the office of U.S. Bank National Association, St. Paul, Minnesota, hereby designated as paying agent and registrar.

SECTION 24. Approval of Bond Counsel. Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

SECTION 25. Tax Matters. The Interest on the Revenue Bond shall be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended ("the Code") and applicable Treasury Regulations ("the Regulations").

SECTION 26. Covenants. The City hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

26.1. The City will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this Resolution.

26.2. The City agrees and covenants that it will promptly construct the improvements included in the Project.

26.3. The City covenants and agrees that pursuant to Sections 25 through 27 of the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal, interest and Administrative Surcharge on the Revenue Bond, and the City agrees not to sell or otherwise dispose of the System, the Project, or any substantial part thereof, except as provided in the Loan Agreement and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the distribution of water for municipal, industrial, and domestic purposes within the City.

26.4. The City covenants and agrees with the District and other owners of the Revenue Bond that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements
and accounts as provided for in this Resolution and the Loan Agreement. The Revenue Bond shall refer expressly to this Resolution and the Act and shall state that it is subject to all provisions and limitations thereof pursuant to Section 19 of the Act.

SECTION 27. Depositories. The Finance Officer shall cause all moneys pertaining to the Funds and Accounts to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of SDCL Ch. 4-6A, in a deposit account or accounts, which shall be maintained separate and apart from all other accounts of the City, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Funds and Accounts as authorized in this Resolution; except that moneys from time to time on hand in the Funds and Accounts may at any time, in the discretion of the City’s governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Fund may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the Fund or Account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys therein.

SECTION 28. Consent to Appointment. In the event of mismanagement of the Project, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the Project are dissipated, wasted or diverted from their proper application as set forth in the Loan Agreement, Revenue Bond, or herein, the City hereby consents to the appointment of a receiver pursuant to Section 33 of the Act, and agrees that the receiver will have the powers set forth therein, and in Section 34 and 35 of the Act to operate and administer the Project, and charge and collect rates as described therein.

SECTION 29. Severability. If any section, paragraph, clause or provision of this Resolution, the Loan Agreement, the Revenue Bond, or any other Loan Document shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Resolution or said Loan Agreement, Revenue Bond, or any other Loan Document.

SECTION 30. Authorization of City Officials. The Mayor, Finance Officer, City Attorney and City officials shall be and they are hereby authorized to execute and deliver for and on behalf of the City any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the actions authorized herein.

SECTION 31. Effective Date. This Resolution shall take effect on the 20th day following its publication, unless suspended by a referendum.

Motion carried and resolution declared duly adopted.
Moved by Allen, seconded by Rice, to approve Resolution #R2019-14, A Plat of Lot 1 of DN & KN Addition in the SE ¼ of the SE ¼ of the NE ¼ of the SE ¼ of Section 36, Township 104 North, Range 61 West of the 5th P.M., Davison County, South Dakota, as follows:

RESOLUTION R2019-14

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 28th day of January, 2019; and

WHEREAS, It appears from an examination of the plat of LOT 1 OF DN & KN ADDITION IN THE SE1/4 OF THE SE1/4 AND NE1/4 OF THE SE1/4 OF SECTION 36, T 104 N, R 61 W OF THE 5TH P.M., DAVISON COUNTY, SOUTH DAKOTA as prepared by Paul J. Reiland, 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 1 OF DN & KN ADDITION IN THE SE1/4 OF THE SE1/4 AND THE NE1/4 OF THE SE1/4 OF SECTION 36, T 104 N, R 61 W OF TH 5TH P.M., DAVISON COUNTY, SOUTH DAKOTA, prepared by Paul J. Reiland, be and the same is hereby approved and the description set forth therein and the accompanying surveyor's certificate shall prevail.

Motion carried and resolution declared duly adopted.

ORDINANCES:

Moved by Tjarks, seconded by McCardle, to place Ordinance #O2019-01, Trees and Shrubs Chapter Updates on second reading. Motion carried. Moved by Smith, seconded by Rice, to adopt Ordinance #O2019-01, as follows:

ORDINANCE NO. O2019-01

AN ORDINANCE AMENDING SECTIONS OF CHAPTER 8-2 OF THE MITCHELL CITY CODE REGARDING TREES AND SHRUBS.

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

Section 1.

That Section 8-2-1 of the Mitchell City Code be AMENDED to read as follows:

The park and recreation board shall determine which species of tree are permitted to be planted as a street tree and may also designate certain species as not permitted. The park and recreation board may also determine the variety of such
trees to be so planted and the spacing thereof. No person or entity shall plant a street tree until the proposed street tree’s location and species has been approved by the Park and Recreation Director in writing.

Section 2.

That subsection (B) of Section 8-2-3 of the Mitchell City Code be AMENDED to read as follows:

All large established trees shall be trimmed to a sufficient height to allow free passage of pedestrians and vehicular traffic and in such manner so as to allow:

A. eight feet (8’) clearance over all sidewalks;
B. twelve feet (12’) clearance over all local streets and alleys; and
C. fifteen feet (15’) clearance over all arterial and collector streets.

Section 3.

That Section 8-2-4 of the Mitchell City Code be AMENDED to read as follows:

A. The owner of any property upon which there is any tree constituting a hazard to persons or property shall remove the same at his own expense. In case such owner shall neglect or refuse to remove such a tree upon notice by the park and recreation board, the same may be removed by the board, and the cost thereof shall be collected from such owner.

B. In the case of a tree constituting a hazard to persons or property which is located between a property owner’s property and the centerline of the adjoining street, the City shall notify the property owner that the hazardous tree requires removal. Upon receiving notice, a property owner may choose to have the tree removed at the property owner’s sole expense. In the event such hazardous tree is not removed within the time designated in the notice, the park and recreation department may proceed with the removal of said hazardous tree. The property owner shall be responsible for the costs of such removal according to rates established by the park and recreation board.

C. For the purposes of this section, a tree constituting a hazard is one that is dead, dying, infected, damaged, or is otherwise in a condition which poses an unreasonable risk to the health and safety of persons or property.

Section 4.

The City Finance Officer shall cause notice of adoption of this ordinance to be published in the official newspaper and twenty (20) days after the completed publication, unless the referendum is invoked, this ordinance shall become effective.
Members present voting aye: Allen, Doescher, McCordle, Rice, Sabers, Smith, Tjarks. Members present voting nay: none. Motion carried and ordinance declared duly adopted.

Moved by Rice, seconded by Allen, to place Ordinance #O2019-02, An Ordinance that Changes the Zoning District Classification of the Real Property legally described as Lot 9, Block 7, Rowley's 1st Addition, City of Mitchell, Davison County, SD from NS Neighborhood Shopping District to R2 Single Family Residential District on second reading. Motion carried. Moved by Tjarks, seconded by McCordle, to adopt Ordinance #O2019-02, as follows:

ORDINANCE O2019-02

AN ORDINANCE OF THE CITY OF MITCHELL, THAT CHANGES THE ZONING DISTRICT CLASSIFICATION OF THE REAL PROPERTY LEGALLY DESCRIBED AS; Lot 9, Block 7, Rowley's 1st Addition, City of Mitchell, Davison County, South Dakota from NS Neighborhood Shopping District to R2 Single Family Residential District AND THE OFFICIAL ZONING MAP BE CHANGED TO THE REFLECT THE SAME.

BE IT ORDAINED BY THE CITY OF MITCHELL, DAVISON COUNTY, SOUTH DAKOTA:

Section 1: THE ZONING DISTRICT CLASSIFICATION OF THE REAL PROPERTY LEGALLY DESCRIBED AS; Lot 9, Block 7, Rowley's 1st Addition, City of Mitchell, Davison County, South Dakota be changed from NS Neighborhood Shopping District to R2 Single Family Residential District AND THE OFFICIAL ZONING MAP BE CHANGED TO THE REFLECT THE SAME.

Section 2. The City Finance Officer shall publish notice of this ordinance and the same shall be effective 20 days after the completed publication thereof, unless the referendum shall be invoked as provided by law.

Members present voting aye: Allen, Doescher, McCordle, Rice, Sabers, Smith, Tjarks. Members present voting nay: none. Motion carried and ordinance declared duly adopted.

EXECUTIVE SESSION:

Moved by McCordle, seconded by Rice, to go into Executive Session as permitted by SDCL 1-25-2 (3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters. Motion carried.

Mayor Everson declared the board out of executive session at 7:11 p.m. and the City Council to reconvene in regular session at 7:12 p.m.

ADJOURN:

There being no further business to come before the meeting, Mayor Everson adjourned the meeting.
Published once at the approximate cost of ____________

Michelle Bathke
Finance Officer