

PROCEEDINGS OF THE STURGIS CITY COUNCIL

The Common Council of the City of Sturgis met in regular session starting at 6:30 p.m. on Monday, April 1, 2013 at the Erskine Building. Present: Mayor Mark Carstensen, Alderpersons, Joe DesJarlais, David Hersrud, Marcia Johnston, Tim Potts, Dane Sundstrom, Kelly Vasknetz and Ronald Waterland. Also present City Manager Daniel Ainslie and City Attorney Greg Barnier. Absent: Jamie McVay.

Mayor Mark Carstensen led everyone in the Pledge of Allegiance.

Motion by Waterland, second by Hersrud and carried with all members present voting yes to approve the agenda.

Announcements:

Mayor Carstensen proclaimed May 19-25, 2013 as EMS Week; April 9, 2013 as National Service Recognition Day and April 12, 2013 as Purple Up! For Military Kids Day.

Mayor Carstensen announced that the City election will be held on April 9, 2013 at the Community Center from 7:00 am to 7:00 pm.

The Candidate forum will be held on April 2, 2013 at the Commissioners room from 6:00 pm to 8:00 pm.

Informational Reports:

Gene Stock, Parks Director gave an update on his department:

- Baseball and Soccer starts this week.
- Opening bids for the Strong Field Concessions/restroom construction on April 4, 2013.
- Spraying for the Epps beetle and pruning trees.
- Training on West Nile program.
- Will be placing the pocket parks downtown.

Geody Vandewater, Assistant Police Chief, gave an update on the Police Department:

- There have been 1931 calls for service in the last 3 months compared to 1945 calls last year.
- The Officers have been doing saturation patrols and DUI check points and compliance checks; the cost is taken care of through a grant from ABC. Last month 8 compliance checks were done on businesses selling alcohol and 5 failed.
- The Community Service program has been very successful with 16 people participating.
- Officers have been doing foot patrols at the Schools.
- The Animal Shelter has had 492 people come to the shelter. There were 67 dogs brought to the shelter, with 39 returned to their owner and 18 adopted out. There were 29 cats brought to the shelter with 10 returned to their owner and 15 adopted out.

City Manager Ainslie reported:

Sales tax year to date through February was 17.8% higher compared to last year in the General/Capital Improvements Fund. The Gross receipts sales tax (Triple B) was down 10.7% compared to last year.

Lazelle Street construction project is ahead of schedule.

Motion by Johnston, second by DesJarlais and carried with all members present voting yes to approve the consent calendar.

Motion by Potts, second by Johnston and carried with all members present voting yes to approve the following claims:

Wages – Ambulance \$13,230.46; Attorney \$2884.62; Auditorium \$321.52; Buildings \$688.07; Cemetery \$1972.96; City Manager \$4709.28; Community Center \$9460.90; Finance Office \$8552.70; Fire Department \$1777.30; Human Resource \$2121.81; Library \$8701.47; Liquor \$4145.45; Mayor and Council \$3333.27; Parks \$10,315.57; Planning & Permitting \$3077.12; Police \$32,581.92; Rally \$3274.66; Recreation \$2457.18; Sanitary Service \$9404.72; Streets \$9483.94; Wastewater \$7573.35; Water \$13,404.65; Federal Withholding \$15,383.91; FICA \$19,040.58.

Combined Cash Fund – Pioneer Bank, \$1,315,000.00, cd.

General - A&B Business, \$266.88, supp; A-1 Windshield Repair, \$35.00, repair; Amazon, \$31.69, supp; Amcon, \$286.97, repair; American Legal Services, \$50.68, prof fee; American Legion Post 33, \$75.00, raffle refund; Gary Anderson, \$335.00, grp insur; Baker & Taylor, \$86.21, supp; Dusty Barker, \$30.00, other; BH Badlands & Lakes, \$275.00, publ-rally; BH Power, \$2687.89, util; Jerry Burnham, \$2490.92, prof fee; Campbell Supply, \$45.98, supp; CBH Cooperative, \$109.24, supp; Crouch Recreational Design, \$234.00, supp; Curley & Assoc, \$176.00, supp; Dakota Business Center, \$217.99, supp; Diamond Vogel Paints, \$69.06, supp; Diesel Machinery, \$290.67, repair; Energy Lab, \$21.20, maint; Fedex, \$32.62, supp; Freeman Electric, \$488.40, repair; G&G Enterprises, \$140.00, merch for resale; Glover Investments, \$600.00, rental-rally; Hersrud, \$70.35, repair; Hills Materials, \$379.12, supp; Hillyard, \$601.64, supp; Interstate All Batteries, \$100.00, supp; J&P Industrial Cleaning, \$486.00, repair; KT Connections, \$300.00, supp; Knology, \$1971.20, util; Leaning Door Enterprises, \$352.50, repair; Mastercard, \$575.00, travel; Matthew Bender & Co, \$36.49, supp; Meade Co Auditor, \$2971.78, util; Menard's, \$137.74, repair; MidAmerica Books, \$133.65, supp; Neve's Uniforms, \$81.23, supp; Newkirk's Ace Hardware, \$259.92, supp; Chris Oliver, \$163.00, travel; Brad Olson, \$47.97, travel; Dane Pi, \$30.00, other; Pool & Spa Center, \$349.62, repair; Public Safety Equipment, \$93.00, other; Public Safety Source, \$448.50, repair; Purchase Power, \$100.00, supp; Rapid City Journal, \$135.00, publ-rally; Rapid Fire Protection, \$150.00, maint; Rasmussen Mechanical, \$96.57, repair; Robert Sharp & Assoc, \$55.25, publ-rally; Rockingtree Floral, \$25.95, supp; Rushmore Office, \$295.30, supp; Rushmore Safety Supplies, \$33.25, supp; S&C Cleaning, \$2356.00, maint; Sand Creek Printing, \$249.25, supp; Scottsdale Insurance, \$174.90, insur; SD Dept of Military, \$30.00, other; SD Federal Property, \$48.00, supp; SD Municipal League, \$200.00, travel; Sturgis Motorcycle Museum, \$235.40, travel-rally; Sturgis Photo & Frames, \$75.00, other; Tigerdirect.com, \$718.04, supp; Tip's Lawn Care, \$800.00, other; Tom's T's, \$404.80, supp; Twilight First Aid, \$144.50, supp; Two Wheeler Dealer, \$425.00, repair; Geody Vandewater, \$138.59, supp; Brenda Vasknetz, \$80.18, travel-rally; Zylstra Body & Frame, \$353.50, repair.

Special Sales Tax – Chamber of Commerce, \$8573.48, chamber; SEDC, \$7750.00, ind dev.

Liquor – Chamber of Commerce, \$50.00, publ; Epic Products, \$121.26, merch for resale; Knology, \$147.49, util; M&B Enterprises, \$164.40, snacks for resale; Sand Creek Printing, \$330.31, supp; SMRi, \$4854.67, royalty; The Homeslice Group, \$5652.00, publ.

Water – Gary Anderson, \$165.00, grp insur; BH Power, \$7528.31, util; First Nat'l Bank-Sioux Falls, \$15,325.46, prin,int; Knology, \$70.21, util; S&C Cleaning, \$310.00, maint.

Wastewater – BH Power, \$2550.77, util; First Nat'l Bank-Sioux Falls, \$4977.41, prin,int; Northwest Pipe Fittings, \$840.00, repair; S&C Cleaning, \$217.00, maint; Stan Houston Equipment, \$134.40, supp.

Sanitary Service – BH Power, \$343.96, util; Century Link, \$57.52, util; Great Western Tire, \$132.50, repair; S&C Cleaning, \$217.00, maint; City of Belle Fourche, correction of \$128,887.98 to \$12,887.98.

Ambulance – BH Power, \$582.04, util; Century Business, \$33.23, supp; DB Billing, \$800.00, prof fee; Diesel Machinery, \$290.68, repair; Emergency Medical Products, \$68.40, supp; Shawn

Fischer, \$20.00, prof fee; Greens Alignment, \$60.00, repair; Knology, \$86.22, util; Mastercard, \$975.00, travel; Noridian Administrative Services, \$605.40, ambul chrg.

Motion by Potts, second by DesJarlais and carried with all members present voting yes to approve the Special Events Alcoholic Beverage License for the Sidehack Saloon at the City Armory for Sturgis Chamber Annual Banquet on April 12, 2013.

Motion by Potts, second by Waterland and carried with all members present voting yes to accept the recommendation of Planning and Zoning to approve a Use on Review for Maynard Rude to operate a repair shop at 602 Blanche St, Sturgis, with the following conditions: The Use on Review status is subject to an annual review; no code violations or complaints are received from the neighbors; no vehicles waiting on repair will be parked on City Streets; all customer parking must be off street and on a paved surface; limit the number of vehicles waiting on repairs to no more than two at a time; all signs must be permitted; property must meet all code standards for the residential area and the use on review would cease when the property is sold or if the present occupant of the property no longer uses it for a repair shop. The non-use would be for a duration of one year.

Motion by DesJarlais, second by Johnston and carried with all members present voting yes to accept the recommendation of Planning and Zoning to approve a 9' 3" variance subject to the conditions included in the staff report for a rear setback for The Knuckle Brewing Company dba as The Knuckle Saloon at 931 1st St, Sturgis. The area is located on the south side of the existing building in the alley.

Motion by Waterland, second by Hersrud and carried with all members present voting yes to approve tabling the approval of the liquor store annex location during the 2013 Motorcycle Rally and applying for an off-sale liquor license for this location until the April 15, 2013 meeting.

Motion by Potts, second by Hersrud and carried with all members present voting yes to approve the following payroll changes: Rally Dept – Seasonal Rally Office Assistant – Julie Nelson - \$10.25; Kelsey Kaitfors - \$8.50. Parks Dept – Seasonal Cemetery – Jose “Jess” Arguello - \$8.50; Seasonal Parks - max 1039 hrs – Justin Krogstad - \$7.50, Jennifer Hall - \$8.00, Charles “Bud” Rank - \$8.25, Donald Keil - \$10.00; Seasonal Parks part time – Glenn Reimer - \$8.25, Edgar Scripter - \$8.50.

Waterland introduced the following written resolution and moved its adoption:

**RESOLUTION 2013-20
TO APPROVE OR DENY A PUBLIC LOTTERY**

WHEREAS, the City of Sturgis has by Ordinances enacted by the City Council limited the use of public lotteries within the city to public purposes intended to provide for the benefit and safety of the members of the community, balanced with the purpose to encourage commerce and the development of a healthy and robust business and community atmosphere, and

WHEREAS, the Sturgis Community Pre-school, Inc. has submitted an application to conduct a public raffle within the City of Sturgis beginning on April 22, 2013 and continuing until May 15, 2013 at which time the lottery prizes will be awarded by a drawing at 11:00 am at the Sturgis City Park-Family Fun Day, on May 15, 2013, and

WHEREAS, the Sturgis Community Pre-school, Inc. presented its application to conduct this lottery to the City Finance Office on March 22, 2013 and seeks to commence and seeks to begin to sell such raffle tickets on April 22, 2013, and

WHEREAS, the request of the Sturgis Community Pre-school, Inc. to have approval to conduct this lottery has met all the requirements of City Ordinance, all the requirements of state law and has met all the administrative requirements of the City Finance Office in submitting its application,

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Sturgis City Council that the application of the Sturgis Community Pre-school, Inc. to conduct a public lottery/raffle in the City of Sturgis is hereby

 X Approved, with lottery ticket sales to be conducted at the stated times forth above and as stated in the terms of the lottery application, for the reason that the expected public benefits intended to be accomplished by the Lottery ordinance are present.

 Denied, with no lottery sales to be permitted as requested, for the reason that the expected public benefits intended to be accomplished by the Lottery ordinance are not present.

RESOLVED, this 1st day of April, 2013.

Published: 04/10/2013

Effective: 04/30/2013

Johnston seconded the motion for the adoption of the foregoing resolution with all members present voting yes and the resolution is declared passed and adopted.

Potts introduced the following written resolution and moved its adoption:

**RESOLUTION 2013-21
TO APPROVE OR DENY A PUBLIC LOTTERY**

WHEREAS, the City of Sturgis has by Ordinances enacted by the City Council limited the use of public lotteries within the city to public purposes intended to provide for the benefit and safety of the members of the community, balanced with the purpose to encourage commerce and the development of a healthy and robust business and community atmosphere, and

WHEREAS, the West River Foundation/Sturgis Girls Softball Association has submitted an application to conduct a public raffle within the City of Sturgis beginning on April 25, 2013 and continuing until June 30, 2013 at which time the lottery prizes will be awarded by a drawing between 8:00 am and 8:00 pm at the Sturgis Softball Fields on June 30, 2013, and

WHEREAS, the West River Foundation/Sturgis Girls Softball Association presented its application to conduct this lottery to the City Finance Office on March 25, 2013 and seeks to commence and seeks to begin to sell such raffle tickets on April 25, 2013, and

WHEREAS, the request of the West River Foundation/Sturgis Girls Softball Association to have approval to conduct this lottery has met all the requirements of City Ordinance, all the requirements of state law and has met all the administrative requirements of the City Finance Office in submitting its application,

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Sturgis City Council that the application of the West River Foundation/Sturgis Girls Softball Association to conduct a public lottery/raffle in the City of Sturgis is hereby

 X Approved, with lottery ticket sales to be conducted at the stated times forth above and as stated in the terms of the lottery application, for the reason that the expected public benefits intended to be accomplished by the Lottery ordinance are present.

 Denied, with no lottery sales to be permitted as requested, for the reason that the expected public benefits intended to be accomplished by the Lottery ordinance are not present.

RESOLVED, this 1st day of April, 2013.

Published: 04/10/2013

Effective: 04/30/2013

Hersrud seconded the motion for the adoption of the foregoing resolution with all members present voting yes and the resolution is declared passed and adopted.

Motion by Hersrud, second by Waterland and carried with all members present voting yes to approve second reading of Ordinance 2013-01 – Title 10 Franchises.

**ORDINANCE 2013-01
AN ORDINANCE AMENDING TITLE 10 – FRANCHISES**

BE IT ORDAINED by the Common Council of the City of Sturgis, Meade County, South Dakota that Title 10 is hereby amended to read as follows:

**TITLE 10
UTILITY FRANCHISES**

Chapters:

- 10.01: General Provisions
- 10.02: Electric Utility Franchise
- 10.03: Gas Utility Franchise
- 10.04: Telephone Utility Franchise
- 10.05: Sturgis Community Cable Television Franchise

**Chapter 10.01
GENERAL PROVISIONS**

SECTIONS:

- 10.01.01: Scope and Purpose
- 10.01.02: Definitions
- 10.01.03: Past Practice
- 10.01.04: Penalty

10.01.01: SCOPE AND PURPOSE

The purpose of this Title is to establish franchises to be granted by the City to certain utility companies for the use of City streets and alleys, and regulation by the City for such public purpose. The regulations set forth herein are intended to encourage the development of a competitive utility services market place while protecting the health, safety, and welfare of the public and maintaining the aesthetic integrity of the City of Sturgis. The regulations set forth herein apply to the placement, construction, and modification of public utility facilities for electricity, natural gas, telephone and television cable communications services for the City, and are adopted for that public purpose.

10.01.02: DEFINITIONS

RESERVED

10.01.03: PAST PRACTICE

Prior to the adoption of this ordinance, the City of Sturgis has granted, at one time or another, a utility franchise to serve the public, to the listed companies, their successors or assigns:

1. Black Hills Power and Light Company: Electricity
2. Montana-Dakota Utilities Company: Gas
3. Northwestern Bell telephone Company: Telephone
4. South Dakota Cable, Inc.: Television
5. Sturgis Community Antenna: Radio
6. Black Hills FiberCom, Inc.: Television/Telephone

10.01.04: PENALTY

Any violation of the provisions of this Title is a Class 2 misdemeanor punishable by the maximum punishment set forth by the laws of the state of South Dakota pursuant to SDCL 22-6-2. Said punishment may also include payment of any costs and/or restitution authorized by this Title and/or state law. In addition, any franchisee under this Title that is found to be in violation of any provisions of this Title shall face the possibility of revocation or non-renewal of any license.

Chapter 10.02 ELECTRIC UTILITY FRANCHISE

SECTIONS:

- 10.02.01: Operating Authority and Obligations
- 10.02.02: Police Power
- 10.02.03: Liabilities
- 10.02.04: Assignment of Franchise
- 10.02.05: Acceptance of Franchise

10.02.01: OPERATING AUTHORITY AND OBLIGATIONS

As authorized by law, and so long as the authority to operate as approved and granted by the South Dakota Public Utilities Commission shall remain in effect, Black Hills Power and Light Company, a Corporation, (hereinafter referred to as the Company), its successors and assigns, shall continue to hold the franchise right to locate, maintain, and operate in the City of Sturgis, and in all additions to said City hereinafter annexed to the City, subject to any limitations as may be established by the Public Utilities Commission, and to sell electric energy to light, heat and power and any other uses to which electric energy may be applied and without obstructing public travel, to freely use and occupy

for the purpose of generating, transmitting, distributing, and selling electricity during the term hereof, the streets, alleys, and public places of said City and its additions.

10.02.02: POLICE POWER

The City reserves any right it may have, under its police power, or otherwise, to control or regulate the use of said streets, alleys and public grounds by Franchisee.

10.02.03: LIABILITIES

Franchisee shall indemnify and save and hold the City harmless from any loss or damage due to the construction, installation, and maintenance of its distribution system, and its use of the streets, alleys, and public grounds of the City.

10.02.04: ASSIGNMENT OF FRANCHISE

Franchisee shall have the right to assign this franchise to any party, or corporation as approved by the South Dakota Public Utilities Commission, but all obligations hereunder shall be binding upon its successors and assigns.

10.02.05: ACCEPTANCE OF FRANCHISE

Within thirty (30) days after the franchisee is notified of passage and final approval of this Ordinance, Franchisee shall file with the City Finance Office its written acceptance of this franchise.

**Chapter 10.03
GAS UTILITY FRANCHISE**

SECTIONS:

- 10.03.01: Operating Authority
- 10.03.02: Obligations
- 10.03.03: Police Power
- 10.03.04: Liabilities
- 10.03.05: Assignment of Franchise
- 10.03.06: Acceptance of Franchise

10.03.01: OPERATING AUTHORITY

An Ordinance granting to Montana-Dakota Utilities Company, a division of MDU Resources Group, Inc., a corporation, its successors and assigns, subject to the requirements of State and Federal law, the franchise and right to occupy and use the streets, alleys and public grounds of the municipality as now, or hereinafter constituted, for the purpose of constructing, maintaining and operating within, upon, in and under the streets, alleys and public grounds of the City of Sturgis, Meade County, South Dakota, a gas distribution system for transmitting and distributing natural or manufactured gas, or a mixture of both, for public and private use. Said municipal corporation is designated and referred to as "City" and Montana-Dakota Utilities Co. is designated and referred to as "Franchisee", and any reference to either includes their respective successors and assigns.

10.03.02: OBLIGATIONS

Franchisee shall maintain an efficient distribution system for furnishing natural or manufactured gas, or a mixture of both for public and private use at such reasonable rates as may be approved by the Public Utilities Commission of the state wherein said City is located and under such orders, rules or regulations as may be issued by any federal or state agency having jurisdiction thereof.

10.03.03: POLICE POWER

The City reserves any right it may have, under its police power or otherwise, to control or regulate the use of said streets, alleys and public grounds by Franchisee.

10.03.04: LIABILITIES

Franchisee shall indemnify and save and hold the City harmless from any loss or damage due to the construction, installation, and maintenance of its distribution system, and its use of the streets, alleys, and public grounds of the City.

10.03.05: ASSIGNMENT OF FRANCHISE

Franchisee shall have the right to assign this franchise to any party, or corporation, but all obligations hereunder shall be binding upon its successors and assigns.

10.03.06: ACCEPTANCE OF FRANCHISE

Within thirty (30) days after the Franchisee is notified of passage and final approval of this Ordinance, Franchisee shall file with the City Finance Officer of the City its written acceptance of this franchise.

**Chapter 10.04
TELEPHONE UTILITY FRANCHISE**

SECTIONS:

- 10.04.01: Operating Authority
- 10.04.02: Use of Public Right of Ways
- 10.04.03: Subject to Police Power
- 10.04.04: Liabilities
- 10.04.05: Assignment of Franchise
- 10.04.06: Acceptance of Franchise

10.04.01: OPERATING AUTHORITY

As authorized by law, and so long as the authority to operate as approved and granted by the South Dakota Public Utilities Commission shall remain in effect, Century Link, a Corporation, (hereinafter referred to as the Franchisee), its successors and assigns, shall continue to hold the right to use and occupy the streets, alleys, and other public places of the City of Sturgis, South Dakota, for the purpose of locating, maintaining, and operating in the City, and in all additions hereinafter annexed to the City, subject to all requirements and imitations existing or as may be established by the Public Utilities Commission, a general telephone and telegraph system without obstructing public travel, to freely use and occupy, for said authorized purposes, the streets, alleys, and public places of said City and its additions.

10.04.02: USE OF PUBLIC RIGHT OF WAYS

That Franchisee, its successors and assigns, are hereby granted the right to use and occupy the streets, alleys and other public places of the City of Sturgis, South Dakota subject to all requirements and limitations existing or as may be established by the Public Utilities Commission, as authorized herein to accomplish the public purposes of this ordinance.

10.04.03: SUBJECT TO POLICE POWER

That the rights herein granted are subject to the exercise of the police power as the same now is or may hereafter be conferred upon said City.

10.04.04: LIABILITIES

Franchisee shall indemnify and save and hold the City harmless from any loss or damage due to the construction, installation, and maintenance of its distribution system, and its use of the streets, alleys, and public grounds of the City.

10.04.05: ASSIGNMENT OF FRANCHISE

Franchisee shall have the right to assign this franchise to any party, or corporation, but all obligations hereunder shall be binding upon its successors and assigns.

10.04.06: ACCEPTANCE OF FRANCHISE

Within thirty (30) days after the Franchisee is notified of passage and final approval of this Ordinance, Franchisee shall file with the City Finance Officer of the City its written acceptance of this franchise.

**Chapter 10.05
STURGIS COMMUNITY CABLE TELEVISION FRANCHISE**

SECTIONS:

- 10.05.01: Grant of Non-exclusive Authority
- 10.05.02: Duration and Renewal of Ordinance
- 10.05.03: Payment to the City
- 10.05.04: Compliance with Applicable Laws and Ordinances
- 10.05.05: Territorial Area Involved
- 10.05.06: Liability and Indemnification
- 10.05.07: General System Specifications and Technical Standards
- 10.05.08: Operation and Maintenance of System
- 10.05.09: Service to Schools and City
- 10.05.10: Safety Requirements
- 10.05.11: Limitations on Rights Granted
- 10.05.12: Ownership and Removal of Facilities
- 10.05.13: Erection, Removal and Common Use of Poles
- 10.05.14: Rates
- 10.05.15: Miscellaneous
- 10.05.16: Modification of FCC Rules
- 10.05.17: Modification of Obligations
- 10.05.18: Unauthorized Cable Use
- 10.05.19: Severability

- 10.05.20: Publication
- 10.05.21: Ordinance Repealed
- 10.05.22: Acceptance

10.05.01: GRANT OF NON-EXCLUSIVE AUTHORITY

There is hereby granted by the City of Sturgis, hereinafter called "City " , to WoW Communications, L.L.C., and Midcontinent Communications, hereinafter called "Franchisees", and to it successors, assigns or designees with rights of assignment, the non-exclusive franchise right to erect, maintain and operate in, under, over, along, across and upon the present and future street, lanes, avenues, sidewalks, alleys, bridges, highways, easements dedicated for compatible or utility uses and other public places in the City of Sturgis, South Dakota, and subsequent additions thereto, towers, poles, lines, cables, wires, manholes and all other fixtures and equipment necessary for the maintenance and operation in the city of a cable television system, for the purpose of transmission and distribution of audio, visual, electronic and electric impulses in order to furnish television and radio programs and various other communications services to the public by what is commonly called a community cable television system. This agreement shall expire on January 13, 2023.

10.05.02: DURATION AND RENEWAL OF ORDINANCE

The rights granted to the Franchisees shall be, except as provided in this Section, terminated January 13, 2023, which Ordinance shall be subject to renewal pursuant to the provisions of the Cable Communications Policy Act of 1984 applicable to new ordinances that are in the nature of a franchise. Pending final completion of renewal proceedings, the Ordinance shall remain in effect even if the franchise term has expired. If this Ordinance is not renewed or if it is revoked for cause by the City, the transfer of the Franchisee's system shall be governed by Section 627 of the Cable Communications Policy Act of 1984.

10.05.03: PAYMENT TO THE CITY

During the term of the rights granted hereunder, and so long as the Franchisees operate said system, the Franchisees shall pay, annually, as compensation to the city a sum equal to five percent (5%) of all basic service revenues derived from within the City for the year, commencing July 1, 2013. "Gross Receipts" shall consist of those revenues derived from the monthly service charges paid by subscribers for basic cable service, equipment, Digital Cable Plus, HBO, Premium channels, Pay Per View and Video on Demand movies and all like services. Gross receipts shall not include revenues received as installation charges, and fees for reconnections, inspections, repairs or modifications of any installation, ad sales, home shopping revenues, past due charges, bad debt and all state and federal taxes relating thereto.

The payments that Franchisees make to the City shall be in lieu of any occupation tax, license tax, or similar levy by the city and shall be paid on a monthly basis based on the proceeding year's gross subscriber revenues. Upon completion of Franchisee's audit, Franchisees shall pay to the city within fifteen (15) days, the balance due, if any, for the operating year covered by the audit.

This amount payable by the Franchisees to the City shall be the sole amount payable for all of its rights under this ordinance including, but not limited to, the use of the streets and other facilities of the city in the operation of the cable system and for the municipal supervision thereof and shall be in lieu of any other occupational tax.

If the Franchisees are legally obligated to collect or pay any sales tax or other taxes, the Franchisees shall have the right to charge the subscribers an additional amount equal to such tax and thereby pass such tax on to the subscribers.

10.05.04: COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Franchisees shall, during the term hereof, except in those areas which have been preempted by the Cable Communications Policy Act of 1984 or other federal laws or which are regulated by the Federal Communications Commission, be subject to all lawful exercise of the regulating and police powers of the City.

10.05.05: TERRITORIAL AREA INVOLVED

This ordinance grants a franchise to use the present territorial limits of the City and to any area annexed thereto during the term of this ordinance. Franchisees shall not be required to service residents of the City that are beyond two hundred feet (200') from existing distribution lines except upon payment by such residents of the capital costs incurred by the Franchisees in bringing service to such residents. Franchisees may, but shall not be required to, serve area or individual homes adjoining, but outside the City limits, that may be served from its existing facilities. Franchisees may negotiate directly with all such customers the amount to be charged for the bringing of service to the customer and the rate to be charged for the service, which rate may be a special rate imposed to compensate the Franchisees for the additional costs of providing such service.

10.05.06: LIABILITY AND INDEMNIFICATION

Franchisees shall, at all times, keep in effect the following types of insurance coverage:

- A. Worker's Compensation upon its employees engaged in any manner in the installation of servicing of its plant and equipment within the City.
- B. Property Damage Liability insurance to the extent of fifty thousand dollars (\$50,000.00) as to each occurrence and one hundred thousand dollars (\$100,000.00) aggregate, and personal injury liability insurance to the extent of one hundred thousand dollars (\$100,000.00) as to each occurrence and three hundred thousand dollars (\$300,000.00) aggregate.

The Franchisees agree to indemnify, save and hold harmless, and defend the City, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Franchisee's construction, operation, or maintenance of its cable system, including, but not limited to, reasonable attorney's fees and costs.

These damages or penalties shall include, but shall not be limited to, damages arising out of copyright, infringements, and all other damages arising out of the installation, operation, or maintenance of the cable television system authorized herein, whether or not any act or omission complained or is authorized, allowed or prohibited by this ordinance.

10.05.07: GENERAL SYSTEM SPECIFICATIONS AND TECHNICAL STANDARDS

The facilities used by the Franchisees shall have a minimum capacity of 35 channels (300 MHZ). The facilities shall be capable of distributing color television signals, and when the signals the Franchisees distribute are received in color, they shall be distributed in color where technically

feasible. Franchisee's performance under this franchise shall be governed by the technical standards established by the FCC.

10.05.08: OPERATION AND MAINTENANCE OF SYSTEM

The Franchisees shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

10.05.09: SERVICE TO SCHOOLS AND CITY

The Franchisees shall, subject to the line extension provisions of Section V, provide basic cable service at no monthly cost to public and parochial elementary and secondary schools within the service area, at one terminal junction, for educational purposes upon request of the school system. The school system shall provide all entrance conduit as may be required.

Franchisees shall, subject to the line extension provisions of Section 10.0705, also provide to the City without charge, three (3) connections at City owned buildings, which may not include hospitals, nursing homes, apartments or airport buildings; to be selected by the City, one junction terminal to each of the said connections. The City shall provide all entrance and distribution conduit as may be required by Franchisees.

10.05.10: SAFETY REQUIREMENTS

The Franchisees shall, at all times, employ ordinary care and shall use and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries or nuisances to the public.

10.05.11: LIMITATIONS ON RIGHTS GRANTED

As authorized by SDCL 49-32-4, City shall continue to have the authority to regulate by ordinance the location of such facilities for the exercise of this Franchise. Subject to the terms set forth herein, Franchisees are granted the right during the term of this franchise to erect, construct, install and maintain its cable system and operate its cable communications business in, over, under, along and across the public ways, only in the manner as expressly provided herein. Franchisees shall be subject to all laws and regulations regarding private property in the course of constructing, installing, operating or maintaining the cable system in the municipality, and shall comply with all zoning and land use restrictions as may hereafter exist or may hereafter be amended.

- A. **USE OF PUBLIC WAY:** All transmission and distribution structures, lines and equipment erected by the Franchisees within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and said poles or towers shall be removed by Franchisees whenever the City Manager, superintendent or engineer reasonable finds that the same restrict or obstruct the operation or location of any future streets or public places in the City.
- B. **CONSTRUCTION:** Construction and maintenance of the transmission distribution system shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code

of the National Board of Fire Underwriters, and such applicable ordinances and regulations of the City, affecting electrical installation, which may be presently in effect, or changed by future ordinances.

- C. **RESTORATION OF PROPERTY:** Franchisees shall promptly restore at its sole cost and expense, in a manner approved by CITY, any portion of the public ways that is in any way disturbed by the construction, operation, maintenance or removal of the cable system to as good or better condition than that which existed prior to the disturbance, and shall at its sole cost and expense promptly restore and replace any other property, real or personal, disturbed, damaged or in any way injured by or on account of the company or by its acts or omissions, to as good or better condition as such property was in immediately prior to the disturbance, damage or injury, in manner approved by the City Manager or designee. Such a restoration shall start promptly but no more than fifteen (15) days from the company becoming aware of the problem in question, unless prevented by weather conditions, acts of God, power outages, strikes, or other events beyond Franchisee's control.

- D. **CHANGE IN PUBLIC WAY:** If at any time during the period of this ordinance City reasonably determines to alter or change the grade of any street, sidewalk, alley, or other public way, or determines that any portion of the cable system is an undue and unreasonable burden, Franchisees at its expense shall modify its system by relocating its poles, wires, cables, underground conduits, manholes and other fixtures or take such other actions as municipality may reasonably determine are in the public interest to remove or alleviate the burden, and shall do so within the reasonable time period established by City.

- E. **STRUCTURE REMOVAL:** The Franchisees shall, on the request of any person holding a building moving permit issued by the City or any person who wishes to remove trees or structures from their property, temporarily raise or lower its wires to permit the moving of buildings or tree removal. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Franchisees shall have the authority to require such payment in advance as a condition to its performance under this subsection. The Franchisees shall be given not less than five (5) business days' advance notice to arrange for such temporary wire changes.

- F. **TRIMMING:** The Franchisees shall have the authority to trim trees upon the overhanging streets, alleys sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Franchisees, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Franchisees provided that Franchisees have been first notified in writing to perform such trimming and have unreasonably refused to do so.

- G. **RELOCATION OF FACILITIES:** Franchisees shall at its own cost and expense, protect, support, disconnect or remove from the public ways any portion of the cable system when required to do so by the municipality due to street or other public excavation, construction, repair, grading, re-grading or traffic conditions; the installation of sewers, drains, water pipes or municipally owned facilities of any kind; or the vacation, construction or relocation of streets or any other type

of structure or improvement of a public agency or any other type of improvement necessary for the public health, safety or welfare.

- H. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system or property has been installed in any street or public place without complying with the requirements of this ordinance, or the rights granted hereunder have been terminated, cancelled or have expired, Franchisees shall, subject to the rights of the City to acquire or transfer the system as specified in section 10.0717, promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Franchisees shall promptly restore the street or other area from which such property has been removed to a condition reasonably satisfactory to the City.
- I. Any property of Franchisees to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of any property of Franchisees in place it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.

10.05.12: OWNERSHIP AND REMOVAL OF FACILITIES

All cable and passive equipment for cable television reception service installed by Franchisees at a subscriber's location shall remain the property of Franchisees and Franchisees shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the Franchisees shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon request.

10.05.13: ERECTION, REMOVAL AND COMMON USE OF POLES

- A. No poles or other wire-holding structures shall be erected by the Franchisees without prior approval of the City Manager or designee with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the Franchisees shall be a vested interest and such poles or structures shall be removed or modified by the Franchisees at its own expenses whenever the City manager or designee determines that the public convenience would be enhanced thereby.
- B. Where poles or other wire-holding structures already existing in use in serving the City are available for use by Franchisees, but it does not make arrangements for such use, the City manager or designee may require the Franchisees to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Franchisees are just and reasonable.
- C. Where the City or a public utility serving the City desires to make use of poles or other wire-holding structures of Franchisees but an agreement therefore with the Franchisees cannot be reached, the City manager or designee may require the Franchisees to permit such use for such consideration as is just and reasonable and upon such terms as the City manager or designee determines the use would enhance the public convenience and would not unduly interfere with the Franchisee's operation.

10.05.14: RATES

- A. Franchisees shall at all times maintain on file with the City Finance Office a schedule setting forth all rates and charges to be made to subscribers for basic CATV service, including installation charges.
- B. During the term hereof, the City may regulate rates only if authorized to do so by Federal Communications Commission regulations and then such regulation shall only be in accordance with the provisions of such regulations.

In the event that the City has authority to regulate rates, the following procedures shall be used:

- A. Before making any changes in the rates and charges to subscribers for basic CATV service, Franchisees shall file in writing with the City Finance Office a new proposed rate change at least thirty (30) days in advance of the proposed effective date for such rate change. If the City takes no action to set the proposed rate change for hearing, said proposed rate changes shall become effective upon the expiration of the 30-day notice period.
- B. If the City Council wishes to hold a hearing on the proposed rate increase, the hearing shall be held within forty-five (45) days of the filing of the proposed rate increase by Franchisees. Following the hearing, the City Council shall take final action on the proposed increase within thirty (30) days.
- C. Any rate subject to regulation under the above provisions may be increased without the approval of the City, at the discretion of Franchisees, by an amount not to exceed five percent (5%) per calendar year. In addition, Franchisees shall have the right to pass along to subscriber's state and local sales taxes, franchise fees, programming cost increases, copy right fee increases and other readily identifiable cost increases.
- D. The monthly rate set forth in subsection A above shall be payable in advance.
- E. The Franchisees shall not discriminate in rates between customers of the same category except to the extent permitted by the Cable Communications Policy Act of 1984 and Federal Communications Commission regulations.

10.05.15: MISCELLANEOUS

- A. Franchisee's legal, financial, technical, and other qualifications, and the adequacy and feasibility of its construction arrangements, if any, have been approved by the City Council after consideration in a full public proceeding affording due process to all interested person.
- B. Complaints regarding the quality of service, equipment malfunctions and similar matters shall first be directed to Franchisees. Should Franchisees fail to satisfy a complaint, it may then be directed to the City Finance Office for review by the City Manager and, if appropriate, for investigation. The complaining party and Franchisees shall be afforded a reasonable opportunity to present written statements of their position. The City Finance Office staff and City Manager or designee shall attempt to resolve the complaints and, if this cannot be achieved, a recommendation shall be submitted to the City Council, which shall recommend either (1) dismiss the complaint, or (2) specify corrective steps to be taken by Franchisees. Appeal

from the City Council's decision may be made to the appropriate judicial or administrative forum.

- C. In any action by the City or its representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

10.05.16: MODIFICATION OF FCC RULES

Any modification or amendment of the rules of the Federal Communications Commission shall, to the extent applicable, to be considered a part of this ordinance as of the effective date of such amendment, and shall be incorporated herein by specific amendments within one (1) year from the effective date of the amendment or at the time of the Federal Communications Commission's amendment or at the time of renewal of this ordinance, whichever occurs first.

10.05.17: MODIFICATION OF OBLIGATIONS

In addition to any other remedies provided by law or regulation, Franchisee's obligations under this ordinance may be modified, at its request, in accordance with Section 625 of Cable Communications Policy Act of 1984 as it now exists, or as hereafter amended.

10.5.18: UNAUTHORIZED CABLE USE

It shall be unlawful for any person or persons to obtain any cable television reception service from Franchisees, or any firm or private person by installing, rearranging, or tampering with any facilities or equipment of Franchisees, unless the same is done with the prior permission of the Franchisees. Any person or persons found guilty of violation of any of the provisions of this section may be fined not more than five hundred dollars (\$500.00) or by imprisonment not exceeding thirty (30) days, or by both such fine and imprisonment.

10.05.19: SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is, for any reason, held invalid of unconstitutional by any court of competent jurisdiction, or is superseded or preempted by Federal Communications Commission regulation, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

10.05.20: PUBLICATION

The Franchisees shall assume the cost of any required publication of this ordinance.

10.05.21: ORDINANCE REPEALED

All ordinances or part of ordinances in conflict herewith are hereby repealed.

Unless expressly otherwise agreed between the parties, every notice or response to be served upon the City or Franchisees shall be in writing, and shall be deemed to have been duly given to the required part five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a post office or branch thereof

regularly maintained by the U.S. Postal Service. The notices or responses to City shall be addressed as follows:

City of Sturgis
1040 2nd Street, Suite 103
Sturgis, SD 57785

The notices or responses to the Franchisees shall be addressed as follows:

WOW Communications
809 Deadwood Avenue
Rapid City SD 57702

MidContinent Communications
PO Box 5010
Sioux Falls, SD 57117-5010

10.05.22: ACCEPTANCE

Upon passage, this ordinance shall be presented to Franchisees for acceptance or rejection. Written acceptance or rejection shall be provided to City or Franchisees before the ordinance shall become law.

Dated this 1st day of April, 2013.

First reading: 01/07/2013
Second reading: 04/01/2013
Adopted: 04/01/2013
Published: 04/10/2013
Effective: 04/30/2013

Motion by DesJarlais, second by Johnston and carried with all members present voting yes to approve the MS4 (Storm Water Management Program) Annual Report.

The following bids were received for mechanical equipment for the Sturgis Community Center: Rasmussen Mechanical Services: Schedule A-\$32,118; Schedule B-\$26,706; Schedule C-\$2,138 x (3) three for a total of \$6,414.

Temperature Technology: Schedule A - \$0; Schedule B-\$0; Schedule C-\$2,478 x (3) three for a total of \$7,434.

Motion by DesJarlais, second by Vasknetz and carried with all members present voting yes to accept the low bid from Rasmussen Mechanical Services for schedule A, B and C for mechanical equipment for the Community Center and allow the City Manager to sign all paperwork.

Motion by DesJarlais, second by Johnston and carried with all members present voting yes to approve writing off the Ambulance uncollectable accounts receivable for 2008 (\$158,128.23) and to decrease 2009 accounts receivable \$27,609.66; increase 2010 accounts receivable \$42,632.29; increase 2011 accounts receivable \$9,057.91.

Motion by Potts, second by Hersrud and carried with all members present voting yes to approve Pioneer Bank as a qualified investment institution.

Waterland introduced the following written resolution and moved its adoption:

RESOLUTION 2013-22

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AGREEMENT TO UTILIZE COMMUNICATION SERVICES

WHEREAS, the City of Sturgis desires to enter into contract with Meade County for the purpose of providing joint dispatch services for the residents of the City of Sturgis and Meade County, and

WHEREAS, the City of Sturgis Police Department, Ambulance Service and Sturgis Volunteer Fire Department use the Meade County Dispatch Center of dispatch services, and

WHEREAS, Meade County has agreed that only half of the operations cost of the dispatch services should be paid for by municipalities based on their use of the dispatch services for police services, and

WHEREAS, the 9-11 calls for the City of Sturgis Police Department consisted of 40% of the combined municipal operations dispatch calls during 2010, 2011 and 2012, and

WHEREAS, the City of Sturgis and Meade County will benefit greatly by continuing to share resources and reduce costs through the use of the proposed Communication Services Agreement.

NOW THEREFORE, City Manager Daniel Ainslie is hereby authorized to execute said approved Agreement to Utilize Communication Services for the above stated purposes.

Dated this 1st day of April, 2013.

Approved: 04/01/2013

Published: 04/10/2013

Effective: 04/30/2013

Johnston seconded the motion for the adoption of the foregoing resolution with all members present voting yes and the resolution is declared passed and adopted.

Discussion was held with eighteen people speaking for and against leasing the fairgrounds to Dirt Promotions for a Super Cross Track. The concerns were noise, safety of horses and riders, and parking. Several people stated that they would like to have a Super Cross Track in the Sturgis area and thought it would be a successful venture.

Motion by Hersrud, second by Johnston and carried with all members present voting yes to set a public meeting on April 4, 2013 at 6:30 pm to demonstrate the noise level of 10 bikes running at the fairgrounds and to form a committee to look at the potential uses of the fairgrounds.

Any other business:

None

Motion by Waterland, second by Hersrud and carried with all members present voting yes to go into executive session for contracts and legal at 8:39 pm.

Motion by Waterland, second by Potts and carried with all members present voting yes to return to regular session at 9:07 pm.

Mayor Carstensen adjourned the meeting at 9:07 pm.

ATTEST: _____
Fay Bueno, Finance Officer

APPROVED _____
Mark Carstensen, Mayor

Published once at the total approximate cost of \$485.77.