

## UNAPPROVED MINUTES OF THE REGULAR MEETING OF THE ELK POINT CITY COUNCIL

The Elk Point City Council met in regular session on Monday, August 4, 2014 at 7:00pm in the council chamber of City Hall located at 106 W. Pleasant Street with Mayor Trobaugh presiding and these members present: Honomichl, McCreary, Verros, Leitru, Zevenbergen and Boom. No one was absent. Also present were: City Attorney Thompson, City Engineer McLaury, City Administrator Nelsen, Police Chief Fleek, Public Works Director Boom and Finance Officer Hammitt.

Motion made by Zevenbergen, seconded by McCreary to approve the agenda. All in favor.

Honomichl moved and McCreary seconded a motion to approve the minutes from the July 7, 2014 council meeting. Unanimous.

Motion and second, Verros/Honomichl to approve the following salaries and bills and to instruct the Finance Officer for payment of the same. All in favor. Salaries: General Fund: \$50,116.65; Enterprise Fund: \$24,419.10; Fringe Benefits: General Fund: \$10,678.62; Enterprise Fund: \$5,882.16; Bills: Adapco, Inc.-supplies: \$831.60; Altec Industries, Inc.-supplies: \$223.87; Analytical & Consulting-sewer testing: \$126.75; Aquafix-repairs: \$3,348.70; Avera Queen of Peace Health-professional services: \$69.90; Bierschbach Equipment-rentals: \$1,369.90; Bomgaars-supplies: \$225.97; Border States Electric Supply-supplies: \$548.74; Brock White Company-street repairs: \$1,299.99; California Contractors Supplies-supplies: \$191.24; Cardmember Services-auto expenses: \$1,557.84; Chesterman Co.-pool concessions: \$195.00; City of Sioux Falls-water testing: \$87.00; City of Vermillion-tipping fees: \$2,799.20; Class C Solutions Group-supplies: \$890.33; Craig K. Thompson, Atty.-professional fees: \$1,390.05; Crop Production Services, Inc.-104.45; Department of Revenue-water testing: \$1,115.00; Drain Masters-repairs: \$175.00; Ebsco Subscription Services-library subscriptions: \$579.28; Fanta-C Auto-repairs: \$56.00; Fejfar, Ashley-swimsuit reimbursement: \$39.48; Flynn, Kathy-training & swimsuit reimbursement: \$212.60; Frye, Kyle-utilities: \$140.00; Graham Tire Company-repairs: \$951.24; Hammitt, Erika-travel & conference: \$69.00; Hanson, Mark-utilities: \$20.00; Hawkins, Inc.-supplies: \$4,456.43; Janitor's Closet-supplies: \$193.65; Jeff's Lawn Care, Inc.-repairs: \$81.60; Johnson, Marjo-training & swimsuit reimbursement: \$462.60; Jones' Food Center-supplies: \$1,186.01; Kalin's Indoor Comfort-repairs: \$549.53; Koupal, Julie-reimbursement for supplies: \$35.32; Leader-Courier-publishing: \$235.87; Limoges, Jacob-utilities: \$140.00; McLaury Engineering, Inc.-professional services: \$5,650.00; Metering & Technology Solution-meter: \$196.24; MidAmerican Energy-utilities: \$61.44; Mid-American Research Chemical-repairs: \$592.42; Midwest Mini Melts-pool concessions: \$87.50; Midwest Radar & Equipment-repairs: \$160.00; Midwest Turf & Irrigation-repairs: \$80.23; Nygren's True Value-supplies: \$244.62; Office Systems, Co.-office expense: \$427.06; Pedersen Machine, Inc.-repairs: \$67.56; Perkins Office Solutions-office expense: \$91.69; Queen City Wholesale, Inc.-pool concessions: \$219.01; Resco-inventory for resale: \$2,758.00; Sanford Health Plan-insurance: \$10,747.52; Scoop's Contracting-street repairs: \$2,637.76; SD Association of Rural Water-dues: \$525.00; Senior Companions of SD-donation: \$1,000.00; Severson, Debra-swimsuit & training reimbursement: \$209.02; Sewer Matic-repairs: \$3,110.88; Sheehan Mack Sales & Equipment-repairs: \$771.92; Sioux Sales, Co.-training: \$189.00;

Siouxland Humane Society-animals: \$37.00; Sooland Bobcat-repairs: \$194.87; Southeast Farmer Elevator Coop.-auto expense: \$3,933.06; Standard Battery, Inc.-repairs: \$76.95; Sturdevant's Auto Parts-repairs: \$813.19; Trudeau, Corey-utilities: \$140.00; Tudog's Computing, LTD-professional fees: \$159.11; Union County Electric Coop.-utilities: \$1,601.85; Union County Highway Department-supplies: \$38.36; US Bank Equipment Finance-copier lease: \$162.47; USA Blue Book-supplies: \$275.84; Utility Department-repairs: \$351.77; VanDiest Supply Company-supplies: \$682.00; VanRoekel, Troy-utilities: \$20.00; Verizon Wireless-utilities: \$266.21; Welch, Jason-utilities: \$20.00; Wesco Distribution-supplies: \$133.39; WOW-utilities: \$39.04

Dennis Pitz was invited to the council meeting to follow up from the previous council meeting held on July 7, 2014 to discuss his property located at 110 W. Rose Street. A letter was sent following the July 7<sup>th</sup> council meeting with possible remedies stated. Mr. Dan Veatch presented a petition to the Mayor in support of Dennis Pitz. Residents attended the meeting in support of Mr. Pitz and were given the opportunity to approach the podium and discuss the issues. Council decided not to pursue the remedy efforts with the nuisance.

Motion and second, McCreary/Buum to hire Craig Limoges as the part-time landfill and recycling attendant at \$9.00/hour as recommended by Public Works Director Buum and City Administrator Nelsen. Unanimous.

Second reading was given to Ordinance No. 368.

#### ORDINANCE NO. 368

AN ORDINANCE GRANTING TO MIDAMERICAN ENERGY COMPANY, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND NON-EXCLUSIVE FRANCHISE TO ACQUIRE, CONSTRUCT, ERECT, MAINTAIN AND OPERATE IN THE CITY OF ELK POINT, SOUTH DAKOTA, A NATURAL GAS SYSTEM AND TO FURNISH AND SELL NATURAL GAS TO THE CITY AND ITS INHABITANTS FOR A PERIOD OF 20 YEARS.

BE IT ENACTED by the City Council of the City of Elk Point, South Dakota:

**Section 1.** There is hereby granted to MidAmerican Energy Company, an Iowa corporation, hereinafter called "Company," and to its successors and assigns the right and non-exclusive franchise to acquire, construct, erect, maintain and operate in the City of Elk Point, South Dakota, hereinafter called the "City," a gas distribution system, to furnish natural gas along, under the streets, avenues, alleys and upon public places to serve customers within and without the City and to furnish and sell natural gas to the City and its inhabitants. The term of this franchise shall be twenty (20) years beginning from and after the effective date of this ordinance. Either the Company or the City may, not less than ninety (90) days nor more than one hundred eighty (180) days prior to the tenth and fifteenth anniversary of the effective date of this ordinance, provide written notice to the other party of its desire to amend the franchise. The parties shall negotiate any amendment to the franchise in good faith for a period of up to ninety

(90) days following receipt of notice. If, at the conclusion of the negotiation period, an amendment acceptable to the parties is not reached, either party may terminate the franchise provided such termination notice is provided to the other party within ninety (90) days of the conclusion of the negotiation period.

**Section 2.** The rights and privileges hereby granted are subject to the restrictions and limitations of South Dakota law, or as subsequently amended or changed.

**Section 3.** Company shall have the right to excavate in any public street for the purpose of laying, relaying, repairing or extending gas pipes, mains, conduits, and other facilities provided that the same shall be so placed as not to unreasonably interfere with the construction of any water pipes, drain or sewer or the flow of water therefrom, which have been or may hereafter be located by authority of the City, with construction, repair, laying, relaying or extending of gas pipes, mains, conduits, and other facilities being in form and manner authorized by the city.

**Section 4.** The Company shall, excluding facilities located in private easements (whether titled in Company exclusively or in Company and other entities), in accordance with South Dakota law including Company's tariff on file with and made effective by the South Dakota Public Utilities Commission as may subsequently be amended ("Tariff,") at its cost and expense, locate and relocate its existing facilities or equipment in, on, over or under any public street or alley in the City in such a manner as the City may reasonably require for the purposes of facilitating the construction reconstruction, maintenance or repair of the street or alley or any other public property owned by the city. Relocation expenses for other hard surfaces, including pedestrian and non-motorized vehicle pathways, will be paid by the City. The City shall be responsible for surveying and staking the right-of-way for City projects that require the Company to relocate Company facilities. If requested the City shall provide, for the reasonable cost to reproduction, to the Company, copies of its relocation plan and profile and cross section drawings.

**Section 5.** In making excavations in any streets, avenues, alleys and public places for the installation of gas pipes, conduits or apparatus, Company shall not unreasonably obstruct the use of the streets and shall replace the surface, restoring it to the condition as existed immediately prior to excavation. Company agrees any replacement of road surface shall conform to current City code regarding its depth and composition. The Company shall not be required to restore or modify public right of way, sidewalks or other areas in or adjacent to the project to a condition superior to its immediate previously existing condition or to a condition exceeding its previously existing condition to the extent any alterations are required for the City to comply with city, state or federal rules, regulations or laws.

**Section 6.** Vacating a street, avenue, alley, public ground or public right-of-way shall not deprive the Company of its right to operate and maintain existing facilities on, below, above, or beneath the vacated property. Prior to the City abandoning or vacating any street, avenue, alley or public ground where the Company has facilities in the vicinity, the City shall provide Company with notice upon receipt of a vacate petition.

**Section 7.** The Company shall not be required to relocate, at its cost and expense, Company facilities in the public right of way that have been relocated at Company expense at the direction of the City at any time during the previous 10 years.

**Section 8.** The Company shall not be required at its expense to relocate Company facilities or equipment in order to facilitate a project of a commercial or private developer or other non-public entity.

**Section 9.** The Company shall maintain insurance, which may be through a program of self-insurance, which will, among other things, indemnify and save harmless the City from any and all claims, suits, losses, damages, costs or expenses, on account of injury or damage to any person or property, to the extent caused or occasioned by the Company's negligence in construction, reconstruction, excavation, operation or maintenance of the natural gas facilities authorized by this franchise; provided, however, that the Company shall not be obligated to defend, indemnify and save harmless the City for any costs or damages to the extent arising from the negligence of the City, its officers, employees or agents.

**Section 10.** Upon request, the Company shall provide the City, on a project specific basis, information indicating the horizontal location, relative to boundaries of the right of way, of all equipment which it owns or over which it has control that is located in city right of way, including documents, maps and other information in paper or electronic or other forms ("Information.")

**Section 11.** The Company shall extend its mains and pipes and operate, and maintain the system in accordance with the applicable regulations of the South Dakota Public Utilities Commission or its successors and state law and federal law.

**Section 12.** During the term of this franchise, the Company shall furnish natural gas in the quantity and quality consistent and in accordance with the applicable regulations of the South Dakota Utilities Commission the Company's tariff made effective by the South Dakota Utilities Commission or its successors and state law and federal law.

**Section 13.** All reasonable and proper police regulations shall be adopted and enforced by the City for the protection of the facilities of the Company.

**Section 14.** Either City or Company ("party") may terminate this franchise if the other party shall be materially in breach of its provisions. Upon the occurrence of a material breach, the non-breaching party shall provide the breaching party with notification by certified mail specifying the alleged breach. The breaching party shall have 60 days to cure the breach, unless it notifies the non-breaching party, and the parties agree upon a shorter or longer period for cure. If the breach is not cured within the cure period, the non-breaching party may terminate this franchise. A party shall not be considered to be in breach of this franchise if it has operated in compliance with state or federal law. A party shall not be considered to have breached this franchise if the alleged breach is the result of the actions of a third party or the other party.

**Section 15.** If any section, provision, or part of this ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

**Section 16.** This ordinance and the rights and privileges herein granted shall become effective and binding upon its approval and passage in accordance with South Dakota law and the written acceptance by the Company. The City shall provide Company with an original signed and sealed copy of this ordinance within 10-days of its final passage. The Company shall, within thirty (30) days after the City Council approval of this ordinance, file in the office of the clerk of the City, its acceptance in writing of all the terms and provisions of this ordinance. Following City Council approval, this ordinance shall be published in accordance with the Code of South Dakota. The effective date of this ordinance shall be twenty (20) days after publication of the ordinance. In the event that MidAmerican Energy Company does not file its written acceptance of this ordinance within 30 days after its approval by the City Council, this ordinance shall be void and of no effect.

**Section 17.** Upon the effective date of this ordinance, all prior natural gas franchises granted to the Company to furnish natural gas to the City and its inhabitants are hereby repealed and all other ordinances or parts of ordinances in conflict herewith are also hereby repealed.

PASSED AND APPROVED this 4<sup>th</sup> day of August 2014.

CITY OF ELK POINT, SOUTH DAKOTA

By: Isabel Trobaugh  
Mayor

ATTEST:

Erika Hammitt  
City Finance Officer

Motion made by Zevenbergen, seconded by Leitru to approve Ordinance No. 368. All in favor.

Rex Buettgenbach, WOW System Manager and Jim Gleason, Clarity President and CEO attending the meeting to discuss the pending cable franchise transfer from WOW to Clarity Telecom. Verros and Zevenbergen motioned to approve the following Resolution. Unanimous.

RESOLUTION CONSENTING TO TRANSFER OF FRANCHISE

WHEREAS, Knology, Inc. (“Franchise”) currently holds a cable television franchise (“Franchise”) granted by the City of Elk Point, South Dakota (“Municipality”) authorizing Franchisee to own and operate a cable television system in the Municipality;

WHEREAS, Franchisee and certain of its affiliates have entered into an Asset Purchase Agreement (“Agreement”) with Clarity Telecom, LLC (“Clarity”) dated June 12, 2014 under which Clarity will acquire the cable system assets (including the Franchise) of Franchisee (“Transaction”);

WHEREAS, Franchisee and Clarity, according the requirements of the Franchise and applicable law, have requested that Municipality consent to the Transaction as described in the FCC Form 394 filed with Municipality (“Transfer Application”);

WHEREAS, in order to allow time for formal negotiations of a franchise extension, the existing Franchise shall stay in full force and effect for 24 months following the date of this Resolution; and

WHEREAS, Municipality has reviewed the Transfer Application and will consent to the transfer of control as described in the Transfer Application.

NOW, THEREFORE, MUNICIPALITY RESOLVES:

1. Municipality consents to the transfer of the Franchise to Clarity.
2. Municipality confirms the Franchise is valid and in full force and effect.
3. The existing Franchise shall stay in full force and effect for 24 months following the date of this Resolution.
4. The Clerk of Municipality is authorized to enter into, execute, and deliver on behalf of Municipality a certificate, along with other documents as may be necessary evidencing this Resolution without further action by this governing body.

CITY OF ELK POINT, SOUTH DAKOTA

By: Isabel Trobaugh  
Mayor

Attest: Erika Hammitt  
Finance Officer

First Reading was given to Ordinance No. 370, an Ordinance Granting Unto WOW Internet, Cable and Phone. Its successors and Assigns, the Right, Franchise and Authority for the Period of Fifteen (15) Years to Acquire, Construct and Operate a Broadband Telecommunications Network and to Sell and Supply to Individuals, Firms and Corporations, Public or Private, at any and all Places, Within the Corporate Limits of the City of Elk Point, South Dakota, as Said

Limits Now are or Hereafter may be Established, Cable Television Services; Prescribing the Terms and Conditions Thereof; and Providing for the Imposition and Collection of a Franchise Fee.

Discussion was held on the 2015 Budget.

The regular meeting for September was rescheduled for September 8, 2014 at 7:00pm due to the Labor Day holiday.

Leitru moved and Buum seconded a motion to give Sergeant Limoges a \$.50 merit increase as recommended by Police Chief Fleek and City Administrator Nelsen after successfully completing his 6-month probation period. All in favor.

Motion made by Verros, seconded by Buum to adopt Resolution #2014-3 as presented.  
Unanimous.

#### RESOLUTION #2014-3

WHEREAS, the United States of America and the State of South Dakota have authorized the making of grants from the Land and Water Conservation Fund (LWCF) to public bodies to aid in financing the acquisition and/or construction of specific public outdoor recreation projects;

NOW, THEREFORE BE IT RESOLVED,

1. That Mayor Isabel Trobaugh is hereby authorized to execute and file an application on behalf of the City of Elk Point with the Nation Park Service, U.S. Department of the Interior, through the State of South Dakota, Department of Game, Fish and Parks, Division of Parks and Recreation, for an LWCF grant to aid in financing the Elk Point Park Equipment Project for the City of Elk Point, Union County, South Dakota and its Environs.
2. That Isabel Trobaugh, Mayor is hereby authorized and directed to furnish such information as the above mentioned federal and/or state agencies may reasonably request in connection with the application which is hereby authorized to be filed.
3. That the City of Elk Point, Union County shall provide a minimum of 50% of the total cost of the project; and will assume all responsibility in the operation and maintenance of the project upon completion of construction, for the reasonable life expectancy of the facility.

#### CERTIFICATE OF RECORDING OFFICER

The undersigned duly qualified and acting Finance Officer of the City of Elk Point, Union County does hereby certify: That the attached Resolution is a true and correct copy of the Resolution, authorized the filing of application with the National Park Service as regularly adopted at a legally convened meeting of the Elk Point City Council duly held on the 4<sup>th</sup> day of

August, 2014 and further that such Resolution has been fully recorded in the journal of proceedings and records in my office.

IN WITNESS WHEREOF, I have hereunto set my hands this 4<sup>th</sup> day of August, 2014.

Isabel Trobaugh  
Mayor

Erika Hammitt  
Finance Officer

(SEAL)

Motion and second, Honomichl/McCreary to advertise for a part-time librarian. All in favor.

Discussion was held on hiring an on-call police officer. Verros moved and Leitru seconded a motion to advertise for an on-call police officer. Unanimous.

Motion made by Honomichl, seconded Zevenbergen to write off the following uncollectable accounts. All in favor.

1. Bouck, Craig-mowing assessment: \$2,740.97
2. Feller, Jonathan-promissory note closure: \$560.75

Council reviewed the premium proposals for the City's Liability, Property and Auto Insurance policies. Motion made by McCreary, seconded by Zevenbergen to hire McKinney Olson Insurance, Continental Western Group as the insurance carrier. Unanimous.

Zevenbergen moved and Honomichl seconded a motion to go into executive session to discuss personnel per SDCL #1-25-2.1 at 9:09pm. All in favor.

Mayor Trobaugh declared the council out of executive session at 9:36pm.

Motion and second, Verros/Honomichl to adjourn. Unanimous.

Attest: Erika Hammitt  
Finance Officer

Isabel Trobaugh  
Mayor

Publish: August 14, 2014