

AGENDA
REGULAR WHITEWOOD COUNCIL MEETING
January 5, 2026, 5:30 PM
CITY HALL

1. CALL THE MEETING TO ORDER.
2. ROLL CALL
3. APPROVE MINUTES from Regular Meeting on December 15, 2025.
4. APPROVE THE CLAIMS.
5. LEGAL UPDATE.
6. THIRD AMENDMENT TO WATER AGREEMENT THREE PEAKS WATER ASSOC.
7. APPROVE BH PIONEER AS OFFICIAL NEWSPAPER FOR CITY OF WHITEWOOD.
8. POSTING EMPLOYEE MAUAL ON-LINE.
9. FINISHING LIBRARY DOOR PROJECT.
10. DEPARTMENT REPORTS.
 - Police Department Library Board Street Department
 - Water Department Finance Commission Liquor Commission
 - Sewer Department Parks Department Economic Development
 - ADA Commission Railroad Authority NH Waste Management
 - Emergency Management Historic Dist. Commiss.
11. PUBLIC COMMENTS
12. EXECUTIVE SESSION FOR PERSONNEL MATTERS PURSUANT TO SDCL 1-25-2 (1) AND LEGAL MATTERS PURSUANT TO SDCL 1-25-2 (3).
13. NEXT REGULAR COUNCIL MEETING - *Tuesday*, January 20, 2026, at 5:30pm
14. ADJOURN

REGULAR WHITEWOOD COUNCIL MEETING**December 15, 2025**

The Whitewood City Council met in regular session on Monday the 15th of December 2025 at City Hall. Mayor Mitch Harmon called the meeting to order at 5:30 pm, with Council members Roxie Cooper, Jeremy Noren, Sara Fitzgerald, Ken Noren, Jerry Davidson, and Shelbi Bulat present. City Attorney Fitzgerald, Police Chief Bach, Building Official Smit, Public Works Werlinger and Assistant Finance Officer Bestgen were also present.

Action 2025-198

Motion by J. Noren, seconded by Bulat, to approve the minutes from the regular meeting on December 1, 2025. All members present voting yes, motion carried.

Action 2025-199

Motion by Cooper, seconded by J. Noren, to approve the claims as presented. Roll call, all members present voting yes, motion carried.

CLAIMS- DECEMBER 15, 2025**GENERAL LEDGER**

DELTA DENTAL- Employee Dental Insurance	628.70
HEALTH POOL OF SD- Employee Health Insurance	8,966.44
UNITED HEALTH CARE- Employee Life Insurance	69.96
TOTAL	\$9,665.10

GENERAL FUND

A&B BUSINESS SOLUTIONS- Police	59.99
ALL NET CONNECTIONS- Monthly Backup 214.54, Shop Cameras 91.00, Server Mt 159.25	464.79
AMAZON CAPITAL- Police 418.99, Camera Antenna 189.98	608.97
BANYON DATA SYSTEMS- Payroll & Fund Acct Support	1,925.00
BH CHEMICAL- De-Ice Liquid	271.74
BH PIONEER- Legal Publications	227.51
BH ENERGY- HH 112.59, CH95.44, Police 212.10, Shop 214.32, Parks 95.11, Lights 1198.85	1,928.41
BUTTE ELECTRIC- Exit Lights	519.35
BJ'S COUNTRY STORE- Bldg Insp Fuel 73.76, Police Fuel 422.07	495.83
GODFREY BRAKE SERVICE- Skid Steer Chains	663.44
GREAT WESTERN TIRE- Police Chains	568.00
MONUMENT HEALTH- Police Physicals	100.00
MOTOROLA SOLUTIONS- Police	395.00
REPUBLIC NATIONAL- December Liquor	1,294.14
SONSET STATION- PW Fuel	115.96
SOUTHERN GLAZERS- December Liquor	912.52
STURGIS TIRE PROS-Police	264.99
WESTERN STATIONERS- City Hall	30.97
WW CHAMBER OF COMMERCE- Whitewood Bucks	3,000.00
FITZGERALD LAW FIRM- Legal Services	4,357.50
JESSICA BESTGEN- Reimburse Supplies	17.82
PERFORMANCE AUTOMATICS- F-350 Window Repair	817.60
TOTAL	\$19,039.53

LIBRARY

A&B BUSINESS SOLUTIONS	145.12
AMAZON CAPITAL- Supplies/Books	745.11
DEB TERHUNE- Reimburse Supplies	522.54
MIDNIGHT CONFECTIONS- Supplies	96.00
CARDIO PARTNERS- AED Machine	2,307.33
BH ENERGY	102.00
TOTAL	\$3,918.10

WATER/SEWER FUNDS

BUTTE ELECTRIC- Treatment Plant 1860.99, Booster Station 517.19	2,378.18
DANS DUMPSTERS	100.00
MIDCONTINENT TESTING LABS	46.00
NORTHWEST PIPE FITTINGS	315.76
ADVANCED ENGINEERING- Treatment Plant	12,613.50
SONSET STATION- PW Fuel	115.99
USA BLUE BOOK	304.66
WESTERN PEAKS LOGISTICS- Samples	15.86
BH ENERGY	1,544.52
TOTAL	\$17,434.47

AUTOMATIC PAYMENTS

USDA RURAL DEVELOPMENT- Storm Sewer	1,226.50
USDA RURAL DEVELOPMENT- Laurel Stret Project	3,254.00
USDA RURAL DEVELOPMENT- Street Assessment	31,495.00
EFTPS- Payroll Taxes 12/12/25	7,422.75
TOTAL	\$43,398.25

2026 BEGINNING OF THE YEAR CLAIMS**GENERAL FUND**

SD BUILDING OFFICIALS ASSOC.- Dues	50.00
SD GOVERNMENTAL FINANCE OFFICER ASSOC- Dues	100.00
SD GOVERNMENTAL HUMAN RESORCE ASSOC- Dues	50.00
SD MUNICIPAL LEAGUE- Dues	1,296.00
SD POLICE CHIEFS ASSOC.-Dues	200.00
SDML WORKERS COMP- Streets	1,448.07
SDML WORKERS COMP- Parks	1,448.07
SDML WORKERS COMP- Police	5,674.08
SDML WORKERS COMP- Finance	177.32
SDML WORKERS COMP-Building Inspector	177.31
TOTAL	\$10,620.85

WATER/SEWER FUNDS

SDML WORKERS COMP- Water & Sewer	2,896.15
TOTAL	\$2,896.15

Action 2025-200

Motion by J. Noren, seconded by Cooper, to confirm discussion of the third amendment to the water agreement with Three Peaks Water Association (Spearfish Mountain Ranch). No action taken

Action 2025-201

Motion by Cooper, seconded by J. Noren, to approve closing city offices on December 26, 2025, and January 2, 2026, with employees paid for those two days. Roll call, all members present voting yes, motion carried.

Action 2025-202

Motion by Cooper, seconded by Davidson, to give Building Official Smit a \$1.50 per hour raise going back to December 1, 2025. Roll call. Davidson yes, Bulat yes, Cooper yes, J. Noren no, Fitzgerald no, K. Noren no. Mayor not able to cast vote as it was an appropriation of money.

Action 2025-203

After discussion, Motion by Cooper, seconded by Davidson, to give Building Official Smit a \$1.50 per hour raise going back to December 1, 2025. Roll call. Davidson yes, Bulat yes, Cooper yes, J. Noren no, Fitzgerald no, K. Noren no. Motion fails.

Action 2025-204

Motion by J. Noren, seconded by Fitzgerald, to approve the combined voting agreement with Lawrence County for the June 2, 2026, election. All members present voting yes, motion carried.

Action 2025-205

Motion by J. Noren, seconded by K. Noren, to close Laurel and Meade Streets on December 20, 2025, from 4:30 – 6:30 PM, for the Parade of Lights. All members present voting yes, motion carried.

There being no further business, the meeting was adjourned at 6:01 PM.

MITCHELL U. HARMON
Mayor

Attest:

JESSICA BESTGEN
Assistant Finance Officer

CLAIMS- January 5, 2026

ESTIMATED WAGES –JANUARY 2026 (2 pay periods)

MAYOR	550.00
COUNCIL	2,250.00
CITY ATTORNEY	1,000.00
BUILDING INSPECTOR	300.00
CHIEF OF POLICE- Josh Bach	4,800.00
POLICE OFFICER- Anthony Spencer	4,320.00
POLICE OFFICER- Dykes	4,000.00
POLICE OFFICER- Hebda	4,000.00
BUILDING OFFICAL- Jim Smit	2,366.10
WASTE/WATER OPERATOR- DJ Werlinger	4,150.40
WASTE/WATER OPERATOR- Derek Daniels	4,064.00
WASTE/WATER OPERATOR- John Cooper	3,857.60
LIBRARIAN – Deb Terhue	2,147.20
LIBRARY ASST.- Donna Willson	648.00
LIBRARY ASST- Sandy Huffman	648.00
LIBRARY ASST.- Racine Morgan	238.88
FINANCE OFFICER – Cory Heckenlaible	4,540.80
FINANCE & PW- Jessica Bestgen	2,374.90
TOTAL	\$46,255.88

GENERAL LEDGER

SD DEPT REVENUE & REGULATION- Garbage Tax	388.35
CITY OF WHITEWOOD- Take Deposit for Bills- Shaffer	100.00
SD RETIREMENT- Employee Retirement	6,464.60
TOTAL	\$6,952.95

GENERAL FUND

WASTE CONNECTIONS- Garbage Collection	6,462.30
SUNDANCE STATE BANK- Riley TIFD	3,384.36
SPEARFISH ELECTRIC- Hale Hall Outlet	567.64
MONTANA DAKOTA- Shop 123.02, Police 135.32, Hale Hall 228.66, City Hall 97.64	584.64
BLUEPEAK- Police 386.70, City Hall 462.43	849.13
A&B BUSINESS SOLUTIONS- Police 171.37, City Hall 238.29	409.66
ALL NET CONNECTIONS- 1 yr Exchange Online	48.00
AMAZON CAPITAL- Police 296.29, Bldg Insp 39.86, Hale Hall 35.93	372.08
RUNNINGS SUPPLY- Shop	232.46
GREAT WESTERN TIRE- Loader	191.95
FORD CREDIT- Pickup	1,237.44
REPUBLIC NATIONAL- December Liquor	4,218.95
RICHTERS TIRE & EXHAUST- Police	139.87
SD DEPT OF TRANSPORTATION- City Share Bridge Removal Project	103,660.67
SOUTHERN GLAZERS- December Liquor	824.72
WESTERN STATIONERS- City Hall	102.40
AT&T MOBILITY	435.35
LIGHTING MAINTENANCE- Exit Lights	58.52
WELLS FARGO VISA- Police 862.15, City Hall 83.90, Vision 33.52	979.57
TOTAL	\$124,759.71

LIBRARY

MONTANA DAKOTA	26.04
BLUEPEAK	216.95
AMAZON CAPITAL	913.12

TOTAL	\$242.99
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WATER/SEWER FUNDS

MONTANA DAKOTA- Generators- Booster Pump 185.94, Well 4 74.74	260.68
DANR- Annual Environmental Fees	850.00
HAWKINS CHEMICAL	179.25
WESTERN PEAKS	15.86
WELLS FARGO VISA	76.90
NORTHWEST PIPE FITTINGS	148.51
ONE CALL	2.10
POSTMASTER	305.00
TOTAL	\$1,838.30

AUTOMATIC PAYMENTS

USDA RURAL DEVELOPMENT- Water Project Loan	4,028.00
USDA RURAL DEVELOPMENT- Trunk Sewer Project	1,057.00
EFTPS- Payroll Taxes 12/26/25	
TOTAL	\$5,085.00

Prepared by:
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MEMORANDUM OF WATER SERVICE AGREEMENT

THIS MEMORANDUM OF WATER SERVICE AGREEMENT (“Memorandum”) is made as of the ____ day of January, 2026, by and between **the City of Whitewood**, a municipal corporation organized under the laws of the State of South Dakota (“City”), and **Three Peaks Water Association, LLC**, a South Dakota limited liability company (“Association”), successor to Spearfish Mountain Ranch LLC.

1. **Purpose.** This Memorandum is executed solely for the purpose of giving public notice of the existence of the Spearfish Mountain Ranch, LLC Water Service Agreement, dated October 21, 2021, Amended and Restated Spearfish Mountain Ranch LLC Water Service Agreement dated January 19, 2023, as amended by First Amendment to and Assignment and Assumption of Water Service Agreement dated December 18, 2023; Second Amendment to Water Service Agreement dated February 27, 2024; and Third Amendment to Water Service Agreement dated January ___, 2026 (collectively, the “**Water Service Agreement**”).

2. **Property Affected.** The Water Service Agreement establishes a defined service area within which the City is obligated to provide water service, all as more fully set forth in Water Service Agreement. Certain owners of parcels located within the service area have elected to sign this Memorandum solely to consent to the recording of this Memorandum against their respective parcels, for the limited purpose of providing constructive notice of Water Service Agreement as it relates to those parcels. By signing this Memorandum, no owner assumes any obligations or grants any rights beyond those already existing under Water Service Agreement. The legal descriptions of the parcels for which recordation consent has been provided are attached hereto as **Exhibits A through C** and incorporated herein by reference.

3. **Key Provisions of Water Service Agreement.** The following are summaries of selected covenants of the City contained in the Water Service Agreement; they are illustrative only and are not intended to enumerate all covenants or obligations:

a. **Potable Water Supply.** The City is obligated to sell and deliver potable water to the Association that meets the same standards as water delivered within the City limits.

b. **Number of Connections.** The Water Association shall be entitled to a minimum of 133 water connections within the service area covered by the Water Service Agreement.

c. Perpetual Term. The term of the Water Service Agreement is perpetual.

d. Water Quantity Guarantee. The City covenants that it shall at all times maintain the quantity of water entering the pump house from the City's water storage necessary to ensure that the pump house is able to deliver 250 two-hundred fifty (250) gallons per minute of water to the Association's meter, and (500) five-hundred gallons per minute when the pump system so requires for maintenance of adequate pressure, except during periods when the City is unable to furnish such quantity due to a disruption or insufficiency in the City's own water system. This flow-rate covenant is measured at the pump house to the Association's meter. The City further covenants that it shall not agree to furnish water from this pump house to any other party if doing so would compromise the City's ability to maintain the 250-500 gallons-per minute delivery capacity.

4. No Obligations Imposed on Lot Owners. The Water Service Agreement is an agreement solely between the City and the Association, and this Memorandum is being recorded for the limited purpose of providing public notice of that agreement so that current and future owners of lots within the defined service area are aware of the source of their water service. Nothing contained in this Memorandum, nor in its recordation, shall be construed as imposing any obligations of the Association under the Water Service Agreement upon any owner of a lot within the service area. This Section 4 shall not be construed to relieve any owner from its separate obligation to the Water Association to pay for water service furnished to its individual property.

5. No Expansion of Obligations. This Memorandum is for informational purposes only and nothing contained herein shall be deemed to in any way modify or otherwise affect any of the terms and conditions of the Water Service Agreement, the terms of which are incorporated herein by reference. In the event of any inconsistency between the terms of the Water Service Agreement and this instrument, the terms of the Water Service Agreement shall prevail.

[The Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first above written.

CITY OF WHITEWOOD, a South
Dakota Municipal Corporation

By: Mitch Harmon
The City of Whitewood Its
Mayor

ATTEST

By:

City Finance Officer

STATE OF SOUTH DAKOTA)
: ss
COUNTY OF _____)

On this ____ day of _____, 2026, before me, the undersigned officer, personally appeared Mitch Harmon, Mayor of the City of Whitewood, a South Dakota municipal corporation, and Cory Heckenlaible, its Chief Finance Officer, who acknowledged themselves to be the duly authorized officers of said municipal corporation and that they, as such Mayor and Chief Finance Officer, being authorized to do so, executed the foregoing instrument on behalf of the City of Whitewood for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My Commission Expires: _____

THREE PEAKS WATER ASSOCIATION, LLC,
a South Dakota limited liability company

By: Gerard J. Keating
President, Board of Directors

STATE OF SOUTH DAKOTA)
COUNTY OF _____) : ss

On this ____ day of _____, 2026, before me, the undersigned officer, personally appeared Gerard Keating, known to me or satisfactorily proven to be the Manager of Three Peaks Water Association, LLC, a South Dakota limited liability company, and acknowledged that he executed the foregoing instrument for the purposes therein contained on behalf of the company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
(SEAL)
My Commission Expires:

Memorandum of WSA
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EXHIBIT A
LEGAL DESCRIPTION OF SPEARFISH MOUNTAIN RANCH

Township 6 North, Range 4 East of the Black Hills Meridian, Lawrence County, South Dakota:
Section 19: SE1/4NE1/4, N1/2SE1/4, N1/2S1/2SE1/4, LESS AND EXCEPT THE
S1/2S1/2S1/2N1/2S1/2SE1/4.

Section 20: SW1/4 and S1/2NW1/4.

Section 20: SE1/4, EXCEPTING therefrom platted lots and dedicated streets in Whitewood
Forest Addition and Whitewood Forest Addition #2, also EXCEPTING therefrom Tract Y
including Tract A of the SW1/4NW1/4 of Section 21 and the unplatted portions of the
SE1/4NE1/4 and N1/2SE1/4 of Section 20, all located in T6N, R4E, B.H.M., Lawrence County,
South Dakota, according to Plat Document No. 2020-5672.

Section 29:

N1/2N1/2N1/2NW1/4NW1/4,

NE1/4NW1/4 LESS AND EXCEPT THE W1/2W1/2W1/2SW1/4NE1/4NW1/4;
AND LESS AND EXCEPT THE W1/2W1/2SW1/4NW1/4NE1/4NW1/4;
AND LESS AND EXCEPT THE W1/2SW1/4NW1/4NE1/4NW1/4;

SE1/4NW1/4 LESS AND EXCEPT W1/2SW1/4SE1/4NW1/4; AND LESS AND EXCEPT THE
S1/2SW1/4NW1/4SE1/4NW1/4; AND LESS AND EXCEPT THE
W1/2NW1/4SW1/4NW1/4SE1/4NW1/4; AND LESS AND EXCEPT THE
W1/2W1/2NW1/4NW1/4SE1/4NW1/4;

NW1/4NE1/4; W1/2NE1/4NE1/4; W1/2SW1/4NE1/4; W1/2E1/2SW1/4NE1/4;
NE1/4NE1/4SW1/4NE1/4; N1/2SE1/4NE1/4SW1/4NE1/4; N1/2S1/2SE1/4NE1/4SW1/4NE1/4;
W1/2SW1/4SW1/4SE1/4NE1/4SW1/4NE1/4; W1/2W1/2W1/2E1/2SE1/4SW1/4NE1/4;
N1/2NE1/4NE1/4NE1/4; N1/2S1/2NE1/4NE1/4NE1/4; W1/2W1/2SE1/4NE1/4NE1/4;
SW1/4SW1/4NE1/4NE1/4NE1/4;

AND

Tract Y including Tract A of the SW1/4NW1/4 of Section 21 and the unplatted portions of the
SE1/4NE1/4 and N1/2SE1/4 of Section 20, all located in T6N, R4E, B.H.M., Lawrence County,
South Dakota, according to Plat Document No. 2020-5672.

EXHIBIT B
LEGAL DESCRIPTION OF THREE PEAKS RANCH

Section 19: S1/2S1/2S1/2NW1/4SW1/4SE1/4, S1/2S1/2SW1/4NE1/4SW1/4SE1/4, SW1/4SW1/4SE1/4, NW1/4SE1/4SW1/4SE1/4, NW1/4NE1/4SE1/4SW1/4SE1/4, S1/2NE1/4SE1/4SW1/4SE1/4, S1/2SE1/4SW1/4SE1/4, SW1/4SW1/4SE1/4, S1/2NE1/4NE1/4NE1/4SW1/4SE1/4SE1/4, S1/2N1/2NW1/4NW1/4SE1/4SE1/4SE1/4, SE1/4NE1/4NE1/4SW1/4SE1/4SE1/4, S1/2N1/2N1/2SE1/4SE1/4SE1/4, NE1/4SE1/4NE1/4SW1/4SE1/4SE1/4, S1/2N1/2SE1/4SE1/4SE1/4, S1/2S1/2N1/2SW1/4SE1/4SE1/4, S1/2S1/2SE1/4SE1/4;

Section 30: S1/2S1/2NE1/4NE1/4, SE1/4NE1/4;

Section 29: S1/2N1/2N1/2NW1/4NW1/4, W1/2SW1/4NW1/4NW1/4NE1/4NW1/4, S1/2N1/2NW1/4NW1/4, S1/2NW1/4NW1/4, SW1/4NW1/4SW1/4NE1/4NW1/4, SW1/4NW1/4, NW1/4NW1/4SE1/4NW1/4, S1/2NE1/4NW1/4SE1/4NW1/4, S1/2NE1/4NE1/4SE1/4NW1/4, S1/2N1/2N1/2SW1/4NE1/4, S1/2NW1/4SE1/4NW1/4, S1/2N1/2SW1/4NE1/4SE1/4NW1/4, S1/2SW1/4NE1/4SE1/4NW1/4, SE1/4NE1/4SE1/4NW1/4, S1/2NW1/4SW1/4NE1/4, SW1/4NE1/4SW1/4NE1/4, N1/2SE1/4NE1/4SW1/4NE1/4, N1/2S1/2SE1/4NE1/4SW1/4NE1/4, W1/2SE1/4SE1/4SE1/4NE1/4SW1/4NE1/4, S1/2SE1/4NW1/4, SW1/4SW1/4NE1/4, W1/2SE1/4SW1/4NE1/4, W1/2W1/2W1/2E1/2SE1/4SW1/4NE1/4, E1/2NW1/4NW1/4SW1/4, NE1/4NW1/4SW1/4, E1/2SW1/4NW1/4SW1/4, NE1/4SW1/4, E1/2NW1/4SE1/4SW1/4, NE1/4SE1/4SW1/4, E1/2SE1/4SE1/4SW1/4, NW1/4NW1/4SE1/4, W1/2NE1/4NW1/4SE1/4, W1/2NW1/4NW1/4NE1/4NE1/4NW1/4SE1/4, S1/2N1/2NE1/4NE1/4NW1/4SE1/4, S1/2NE1/4NE1/4NW1/4SE1/4, SE1/4NE1/4NW1/4SE1/4, S1/2N1/2N1/2NW1/4NE1/4SE1/4, S1/2N1/2NW1/4NE1/4SE1/4, S1/2N1/2NW1/4NE1/4NE1/4SE1/4, S1/2NW1/4NE1/4NE1/4SE1/4, S1/2N1/2NE1/4SE1/4, S1/2NW1/4SE1/4, S1/2NE1/4SE1/4, SW1/4SE1/4, SE1/4SE1/4;

All Located in Township 6 North, Range 4 East of the Black Hills Meridian, Lawrence County, South Dakota. Containing 516.48 Acres more or less.

EXHIBIT C
LEGAL DESCRIPTION OF WILDFLOWER ESTATES

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of Wild Flower Estates, formerly the S1/2SW1/4, EXCEPT the highway right of way in Book 280, Page 187, and EXCEPT Lot H1 of the S1/2SW1/4, AND that portion of the SE1/4 lying south of Lots H2 and H3 (a/k/a I-90 right of way) of the SE1/4, and EXCEPT the railroad right of way as conveyed in Book 79, Page 114, and EXCEPT the highway right of way conveyed to Lawrence County, Book 273, Page 59, and EXCEPT the highway right of way conveyed to State of South Dakota, in Warranty Deed Book 280, Page 240, ALL LOCATED in Section 17, Township 6 North, Range 4 East of the Black Hills Meridian, Lawrence County, South Dakota, as shown on the plat filed in Document No. 2023-5401.

THIRD AMENDMENT TO WATER SERVICE AGREEMENT

This Third Amendment to the Water Service Agreement ("Amendment") between Three Peaks Water Association, LLC, a South Dakota limited liability company (the "Water Association"), and the City of Whitewood, a municipal corporation organized under the laws of the State of South Dakota (the "City") is dated January ____, 2026.

Background:

- A. The Water Association (as successor to Spearfish Mountain Ranch LLC ("SMR")) and the City are parties to that certain Amended and Restated Spearfish Mountain Ranch LLC Water Service Agreement dated January 19, 2023 as amended by First Amendment to and Assignment of Water Service Agreement dated December 18, 2023 and then further amended by the Second Amendment to Water Service Agreement dated February 27th 2024 (collectively, the "Water Service Agreement") under which the City agreed to provide water to the property described in the Water Service Agreement under the terms and conditions stated in the Water Service Agreement. The Water Agreement resulted from SMR and the City working together to secure SMR's right to purchase water for the benefit of certain residential communities created by SMR and located adjacent to or in the vicinity of the City.
- B. Omitted from all of the aforementioned documents above is the fact that a booster pump was required in order to deliver water from the City's source to the Association's storage tanks for distribution, and therefore Spearfish Mountain Ranch, LLC, predecessor in interest to Three Peaks Water Association, LLC, constructed and installed,, a "Pump House," also known as a "Booster Station," (referred to in this document as "Pump House") between the City of Whitewood Reservoir and the Association's master meter, at its own cost and expense, for the benefit of the property described in the Water Service Agreement.
- C. The City of Whitewood has incurred electrical bills, repair bills and otherwise has sustained damage to the building by virtue of vandalism committed against the building. The City intends to purchase and install a security system to guard against

damage in the future. To date the City of Whitewood has incurred total costs of \$19,880.02. This represents \$15,232.26 in electrical expenses, \$675.63 in regular repairs, \$172.43 in supplies and the cost of a security camera system, in the amount of \$3,799.97.

- D. Unrelated from the expenses, the City of Whitewood was under the incorrect assumption that the Water Association owned the pump house or held the pump house in trust until a certain number of incidental construction items were completed. At the time in which these items were completed the City would accept ownership. These incidental items are commonly known as "punch list items." The Water Association never believed it owned or held the Pump House in trust for the City of Whitewood but rather believed the City always owned the pump house.
- E. The President of the Board of Directors of the Water Association was not aware of the damage to the Pump House. The Water Association believes the Pump House should not be an expense to the City of Whitewood.
- F. Therefore the Three Peaks Water Association and the City of Whitewood desire to modify the Water Service Agreement to address the matters described above and any other related or agreed-upon modifications as hereinafter set forth.

Agreement

In consideration of the mutual covenants and promises contained in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree and covenant as follows:

COSTS:-

1a. Electrical Costs: At each regular billing cycle, the City of Whitewood shall invoice the Water Association for reimbursement of the Pump House's separately metered electrical costs as billed by the electric utility provider, without markup. The City will pay the electrical costs and then send an invoice along with a copy of the electrical provider's bill to the Water Association. The Water Association shall then remit payment to the City of Whitewood by check or ACH for reimbursement of that cost within 30 days of receipt of the City's invoice.

1b. Regular Repair and Supply Costs: The City of Whitewood shall maintain, repair, and replace the Pump House and all components thereof as necessary to keep them in good working order and in accordance with good industry practice

for potable water system facilities, subject to reimbursement to the extent provided herein. Any regular repair or regular maintenance costs or supply costs of the pump house will be paid promptly by the City. Within 30 days of payment, the City of Whitewood will invoice the Water Association for reimbursement of the City's reasonable costs. Each invoice shall be accompanied by copies of paid invoices documenting the costs incurred. If the City reasonably anticipates that the cost of any single repair or replacement will exceed \$5,000.00 [FIVE THOUSAND DOLLARS AND ZERO CENTS, the City shall consult with the Association before proceeding with such repair or replacement. The Water Association will provide reimbursement to the City within 30 days of receipt of the City's invoice. "Regular repair or regular maintenance costs" means all costs for repairing, maintaining, or replacing components of the Pump House that were installed on or before January 1, 2025, and that require service or replacement in the ordinary course during the useful life of the Pump House. "Supply costs" means costs for items consumed within 12 months by virtue of the operation of the pump house.▪

1c. Extraordinary Costs: The addition of new equipment or fixtures which does not replace existing equipment, which was installed by January 1, 2025 will be paid for by the City of Whitewood without reimbursement from the Water Association.

1d. Insurance/Casualty: The City of Whitewood shall maintain property and liability insurance adequate to cover the Pump House, its equipment and operations, naming the Association as an additional insured, beginning immediately after this agreement is signed. In the event of a casualty to the Pump House, the City shall, at its sole cost and expense and without reimbursement from the Association, repair or replace the Pump House as necessary to continue providing water services in accordance with the Water Service Agreement, as hereby amended.

1e. Historical Expenses: Notwithstanding the definitions and provisions of this Amendment the Water Association has agreed to pay the City of Whitewood its past expenditures in the amount of \$19,880.02. This represents \$15,232.26 in electrical expenses, \$675.63 in regular repairs, \$172.43 in supplies and the cost of a security camera system totaling \$3,799.97. The Water Association agrees to pay this amount in full within 12 twelve months after the signing of this amendment.▪

1f. Quit Claim: The Water Association quit claims any and all right title in interest in the Pump House including the physical structure in which it is housed and all

related fixtures and equipment. Execution of a formal and recordable Quit Claim Deed shall follow the execution of this agreement. The Quit Claim deed is meant to formalize and terminate any claim of ownership or control Three Peaks Water Association, its successors or predecessors in interest would have as to the Pump House, and any of its fixtures. Although the Pump House is located on City-owned property, the Quit Claim Deeds are being executed as a precautionary measure to eliminate any residual misunderstanding that may have arisen from the fact that the Association funded its construction.

2. Binding Effect. This Amendment is binding on and will inure to the benefit of the parties hereto and their respective successors and assigns. This amendment leaves all provisions of the previous agreements which do not specifically conflict with this amendment intact.

2a. Recording: A memorandum of this the Water Services Agreement as amended by this Amendment in the form attached to this Amendment as Exhibit A, as well as the quit claim deed, shall both be recorded in the Lawrence County Register of Deeds Office by the City Attorney for the City of Whitewood immediately after both documents have been executed.

3. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the state of South Dakota."

4. Severability. In the event any section, or any sentence within any section, is declared by a court of competent jurisdiction to be void or unenforceable, such sentence or section shall be deemed severed from the remainder of this Amendment and the balance of this Amendment shall remain in full force and effect."

5. Term. The term of the water agreement is modified to be a perpetual agreement and not a 10 year agreement with rights to extend. The City however retains the right to reduce water services in the event of a City shortage under the terms provided for in the Water Service Agreement.

5a. Water Quantity Guarantee: The City covenants that it shall at all times maintain the quantity of water entering the pump house from the City's water storage necessary to ensure that the pump house is able to deliver 250 two-hundred fifty (250) gallons per minute of water to the Association's meter, and (500) five-hundred

gallons per minute when the pump system so requires for maintenance of adequate pressure, except during periods when the City is unable to furnish such quantity due to a disruption or insufficiency in the City's own water system. This flow-rate covenant is measured at the pump house to the Association's meter. The City further covenants that it shall not agree to furnish water from this pump house to any other party if doing so would compromise the City's ability to maintain the 250-500 gallons-per-minute delivery capacity.

5b. Separate Meter: Any water sold, delivered, purchased or transferred to any party from the pump house shall be separately metered and shall not result in any increased costs or reduction in quality of the water sold to the Water Association. If the City provides water from the Pump House to any other party, the City shall promptly notify the Association, and the parties shall agree on a fair and equitable revised allocation of costs previously borne solely by the Association, to reflect that the Association is no longer the exclusive beneficiary.

6. Counterparts; Electronic Signatures. This Amendment may be executed in one or more counterparts and all so executed shall constitute one agreement, binding on all the parties hereto, even though all parties are not signatories to the original or the same counterpart. Any counterpart of this Amendment that has attached to it separate signature pages, which altogether contain the signatures of all parties, shall for all purposes be deemed a fully executed instrument. A copy of this Amendment sent by executed by pdf or by electronic signature such as, by way of example only, DocuSign or Adobe Sign, shall be deemed an original for all purposes and the electronic signature of a party shall have the same effect as an original signature.

[The Signature Page Follows]

Signed:

Three Peaks Water Association, LLC, a
South Dakota limited liability company

By: Gerard J. Keating
President, Board of Directors

CITY OF WHITEWOOD, a South Dakota
Municipal Corporation

By: Mitch Harmon
The City of Whitewood
Its Mayor

ATTEST

By:

City Finance Officer

EXHIBIT A
MEMORANDUM OF WATER SERVICES AGREEMENT

REFERENCE ATTACHED DOCUMENT