

All City Council Meetings are recorded.

**CITY OF CUSTER CITY
COUNCIL AGENDA
April 3rd, 2017 – City Hall Council Chambers
5:30 P.M.**

1. Call to Order - Roll Call - Pledge of Allegiance
2. Approval of Agenda
3. Approval of Minutes – March 20th, 2017 Minutes & March 20th, 2017 Board of Equalization Minutes
4. Declaration of Conflict of Interest
5. Department Head Discussion
 - Public Works Director – General Discussion
 - Finance Officer – General Discussion
6. Public Presentations - Public Hearings
 - a. Executive Proclamation – National Service Recognition Day
 - b. Resolution #04-03-17A – Establishing Fair Market Value of Full-Service Restaurant On-Sale License
 - c.
 - d.
 - e.
7. Old Business
 - a. Custer Area Economic Development Corporation's Hospital Building Proposal
 - b.
8. New Business
 - a. Solid Waste Collection & Disposal Bid
 - b. Water System Improvements – Permission to Bid
 - c. DOT Transportation Alternatives Grant Agreement
 - d. Preliminary Plat & Development Agreement – Saxton Subdivision
 - e.
 - f. Employee Step Increase
 - g. Planning Administrator Position
9. Presentation of Claims –
10. Committee Reports –
11. Executive Session – Personnel, Proposed Litigation, & Contract Negotiations (SDCL 1-25-2)
12. Adjournment

REMINDERS

General Government Committee Meeting – April 10th, 2017 4:00 P.M.

Planning Commission Meeting – April 11th, 2017 7:00 P.M.

Regular City Council Meeting – April 17th, 2017 5:30 P.M.

Park & Recreation Committee Meeting – April 18th, 2017 5:30 P.M.

Public Works Committee Meeting – April 24th, 2017 5:00 P.M.

Regular City Council Meeting – May 1st, 2017 5:30 P.M.

ADA Compliance: The City of Custer City fully subscribes to the provisions of the Americans with Disabilities Act. If you desire to attend this public meeting and are in need of special accommodations, please notify the Finance Office 24 hours prior to the meeting so that appropriate services are available.

**CITY OF CUSTER CITY
BOARD OF EQUALIZATION
MARCH 20th, 2017**

Mayor Jared Carson called to order the Board of Equalization meeting at 4:30 p.m. Present were Councilpersons Maciejewski, Nielsen, Blom, Fischer, Schleining, School Board Representative Tanya Olson and Director of Equalization Terri Cornelison along with appraisers Julie Jenniges and Amanda Pierce from the Equalization Office.

DECLARATION OF CONFLICT OF INTEREST

Mayor Carson declared a conflict with the Druyvestein appeal and left the chambers. Council President Schleining took over the meeting.

APPEAL APPLICATIONS

- 1.) Thomas & Linda Druyvestein ~ DOE #010865. Councilperson Fischer moved to take no action on this appeal with a recommendation to appeal at the Custer County Board of Equalization meeting to be held on April 26, 2017. The motion was seconded by Councilperson Blom and carried unanimously. Mayor Carson rejoined the meeting.

STIPULATIONS APPROVAL

Councilperson Schleining moved to approve the stipulations listed below. Seconded by Councilperson Nielsen, the motion carried unanimously.

Rec#	Property Owner	Class	Value	Change To
8657	Michael Hiltunen	NA-DC	36,120	36,120
		NA-DC2	147,538	2,952
4638	Connie Kratzmeyer	NA-D	41,349	41,349
		NA-D1	79,788	26,133
		NA-DC2	36,321	36,321
		NA-DM1		21,382
8460	Ann Cazer	NA-D-S	23,580	23,580
		NA-D1	13,075	
		NA-D1-S		3,716
8504	David Busskohl	NA-DC	66,139	66,139
		NA-DC2	82,098	67,902
8503	David Busskohl	NA-D	25,396	25,396
		NA-D1	60,103	34,528
8316	Dennis & Elizabeth Hickok	NA-D-S	62,370	53,014
12025	Main Street Marketplace LLC	NA-DC	58,822	58,822
		NA-DC2	418,217	311,240
8030	Barry & Cherish Baker	NA-DC	18,242	18,242
		NA-DC2	263,534	228,556
8344	Kevin Kirsch	NA-D-S	20,633	20,633
		NA-D1-S	48,977	44,343
8632	Kitty Johnson	NA-D	16,702	8,842
8633	Kitty Johnson	NA-D	33,405	17,685
10863	Thomas & Linda Druyvestein	NA-D	36,068	27,351

ACKNOWLEDGEMENT OF REAL PROPERTY ASSESSMENT LIST

Councilperson Maciejewski moved to acknowledge the real property assessment list provided by the DOE with the above changes made. Seconded by Councilperson Fischer, the motion carried unanimously.

ADJOURNMENT

Councilperson Blom moved to adjourn the meeting at 4:43 PM. Seconded by Councilperson Nielsen, the motion carried unanimously.

ATTEST:

CITY OF CUSTER CITY

Lisa Trana
Deputy Finance Officer

Jared Carson
Mayor

**CITY OF CUSTER CITY
COUNCIL PROCEEDINGS- REGULAR SESSION
March 20th, 2017**

Mayor Jared Carson called to order the second meeting of the Common Council for the month of March, 2017 at 5:30 p.m. Present at roll call were Councilpersons Maciejewski, Nielsen, Fischer, Blom and Schleining. City Attorney Chris Beesley was present. The Pledge of Allegiance was stated.

AGENDA

Councilperson Fischer moved, with a second by Councilperson Blom, to approve the agenda. The motion unanimously carried.

MINUTES

Councilperson Nielsen moved, with a second by Councilperson Blom, to approve the minutes from the March 6th regular council meeting. The motion unanimously carried.

CONFLICTS OF INTEREST

Mayor Carson stated that he would have a conflict with the First Reading of Ordinance #789 – Vacation Home Rental License. No other conflicts of interest were stated.

DEPARTMENT HEAD DISCUSSION

Bob Morrison, Public Works Director, mentioned that the public works staff has been working on spring projects and are preparing for Cleanup Days which are May 5th and 6th.

Laurie Woodward, Finance Officer, mentioned that the auditors have completed their on-site work and plan to present in May.

SECOND READING – ORDINANCE #788 – PLANNING COMMISSION COMPOSITION

Councilperson Schleining moved to adopt Ordinance #788, Planning Commission Composition. Seconded by Councilperson Nielsen, the motion carried with Councilperson Maciejewski, Nielsen, Fischer, Blom and Schleining voting yes.

Mayor Carson left the meeting and Council President took over the meeting.

FIRST READING – ORDINANCE #789 – VACATION HOME RENTAL LICENSE

Councilperson Maciejewski moved to approve Ordinance #789, Vacation Home Rental License. Seconded by Councilperson Nielsen. Public comments were heard. After discussion, the motion failed with Councilperson Nielsen, Fischer, Blom and Maciejewski voting no.

Mayor Carson rejoined the meeting.

RESOLUTION #03-06-17A – ALLEY VACATION – BLOCK 48

Councilperson Nielsen moved to adopt Resolution #03-06-17A, alley vacation in Block 48. Seconded by Councilperson Fischer, the motion unanimously carried.

Resolution #03-06-2017A

WHEREAS, the verified Petition and application of all owners of real property abutting the hereinafter described area of North/South Alley between Lots 3 & 4, Block 48 in Custer City, Custer County, South Dakota, praying that the West 10 feet of the Alley, contiguous Lot 3 located in Block 48, be vacated in order to promote an orderly and uniform system of streets and alleys in the City of Custer, the same not being necessary for the use and location of public streets and alleys thereon, has been heretofore filed, and

WHEREAS, the City Council of the City of Custer, Custer County, South Dakota, has heretofore caused notice of the time and place of hearing said Petition to be published once a week for two (2) consecutive weeks, to-wit: on the 15th day of February, 2017 and on the 22nd day of February, 2017, in the Custer County Chronicle, a legal newspaper printed and published in the City of Custer, Custer County, South Dakota, setting forth the 6th day of March, 2017, at the hour of 5:30 o'clock, P.M. for hearing thereon.

NOW THEREFORE BE IT RESOLVED that that area of the West 10 feet of the North/South Alley contiguous to Lots 3 and 4 in Block 48, of the originally platted streets and alleys to the City of Custer, Custer County, South Dakota described as follows:

The west 10 feet (W 10') of the north/south alley located in Block 48 contiguous to Lot 3 and contiguous to the previously vacated portion of the east/west alley contiguous to Lots 1, 2, and 3, from the southeast corner of Lot 3 to the northeast corner of the previously vacated east/west alley, said area having a total dimension of 10 feet by 160 feet (10' x 160')

~~all located in City of Custer City in Custer County South Dakota, subject to existent and future easements and right-of-way for public and private utilities, be, and the same is, forever vacated.~~

IT IS FURTHER RESOLVED that this Resolution is made upon the express condition that the Petitioners are responsible for the propriety of the proceedings including the Petition, consent of adjoining property owners, and compliance of the said proceedings with the statutes of the State of South Dakota and the ordinances of the City of Custer City and the limitations thereof, and Petitioners by acceptance of this Resolution agree to assume the liability, if any, of the City of Custer occasioned by the reading of this Resolution and the use and occupancy of the subject property by the Petitioners.

Date at Custer, Custer County, South Dakota, this 20th day of March, 2017.

CITY OF CUSTER

S/Jared Carson, Mayor

ATTEST: Laurie Woodward, Finance Officer

RESOLUTION #03-20-17A – ACKNOWLEDGING THAT THE CITY HAS WATER & WASTEWATER EMERGENCY PLAN

Councilperson Schleining moved to adopt Resolution #03-20-17A, acknowledging that the City has Water & Wastewater Emergency Plans. Seconded by Councilperson Nielsen. Councilperson Schleining moved to amend her motion to state approved contingent upon the wording "and stored in a secure location" being added to the last paragraph. Seconded by Councilperson Blom, the motion unanimously carried.

RESOLUTION 03-20-17A

A RESOLUTION ACKNOWLEDGING THAT THE CITY OF CUSTER HAS AN EMERGENCY RESPONSE PLAN FOR WATER AND WASTEWATER

WHEREAS, preparing an emergency response plan is an essential part of managing a drinking water and wastewater system; and

WHEREAS, the City of Custer recognizes the importance of maintaining up-to-date plans of the treatment facility and distribution system; and

WHEREAS, the Emergency Response Plan has been developed based on the utility's vulnerability assessment and may also include other specific response incidents that require immediate action to remediate; and

WHEREAS, the City recognizes that an Emergency Response Plan is a highly sensitive document that must be maintained as confidential. Accordingly, it must be stored in a secure location.

AND NOW THEREFORE BE IT RESOLVED, by the City of Custer, that it be acknowledged that Public Works Department has completed a Vulnerability Assessment and Emergency Response Plan for both the water and wastewater systems, that the documents are confidential and stored in a secure location.

Dated this 20th day of March, 2017.

CITY OF CUSTER

S/Jared Carson, Mayor

ATTEST: Laurie Woodward, Finance Officer

WREATHS ACROSS AMERICA REQUEST – BROCK HOAGLAND

Councilperson Fischer moved to allow the VFW Post 3442 to place wreaths on the veteran's graves in the Custer Cemetery in December with the wreaths to be removed from the graves in January as part of Wreaths Across America. Seconded by Councilperson Blom, the motion unanimously carried.

EASEMENT FOR THE LIFE OF STRUCTURE – 13 LINCOLN STREET

Councilperson Fischer moved to approve the easement for the life of structure at 13 Lincoln Street and authorize the Mayor to sign the document contingent upon the attorney's review and property owner's signature. Seconded by Councilperson Blom, the motion unanimously carried.

2017 POOL MANAGEMENT CONTRACT – CUSTER YMCA

Councilperson Nielsen moved to approve the 2017 pool management contract with the Custer YMCA for \$16,000. Seconded by Councilperson Fischer, the motion carried with Councilperson Maciejewski, Nielsen, Fischer and Blom voting yes, while Councilperson Schleining voted no.

TELSA RALLY REQUEST – CHAMBER OF COMMERCE

Councilperson Fischer moved to approve the Chamber of Commerce request for the Tesla Road Trip Rally on May 19th, 2017 which included street closure request for South Sixth Street from Mt Rushmore Road to Washington Street, keeping alley open; Washington Street from Sixth Street to Eighth Street; request to use the

showmobile and have it placed on South Sixth Street; use of the picnic tables and placement of them on the street; and a brown bag permit from 5pm – 7pm. Seconded by Councilperson Blom, the motion unanimously carried.

GOLD DISCOVERY DAYS REQUEST – CHAMBER OF COMMERCE

Councilperson Schleining moved to approve the Chamber of Commerce request for Gold Discovery Days which includes street closures for North Sixth Street from Crook Street south to the alley (7/21-7/22); Washington Street from Sixth Street to Eighth Street (7/21-7/22); South Seventh Street from Washington Street to the Mt Rushmore Road (7/21-7/22); South Fourth Street from Mt Rushmore Road to the south alley on only the east side of the street (7/21-7/23); South Sixth Street from Mt. Rushmore Road to Washington Street, keeping alley open (7/21-7/22); use of Way Park (7/21-7/23); use of the showmobile ((7/21-7/22); and parade to be held July 22nd at 10:00 am with line up on Crook Street, then proceeding west on Mt Rushmore Road from Eighth Street to First Street. Seconded by Councilperson Maciejewski, the motion unanimously carried.

COMMUNITY GARDEN AGREEMENT

Councilperson Maciejewski moved to approve the Community Garden agreement to be signed by those that rent a garden space. Seconded by Councilperson Nielsen, the motion unanimously carried.

CLAIMS

Councilperson Schleining moved, with a second by Councilperson Maciejewski, to approve the following claims. The motion carried unanimously.

A&B Electric, Repair & Maintenance, \$244.80
A&B Welding, Supplies, \$98.00
Black Hills Energy, Utilities, \$7,978.04
Culligan, Repair & Maintenance, \$18.50
Custer County, Rental, \$30.00
Chamber of Commerce, Sales Tax Subsidy, \$4,690.62
Custer Senior Center, Subsidy, \$4,000.00
Fastenal, Supplies, \$191.41
First Interstate Bank, Supplies, \$113.30
French Creek Supply, Supplies, Repair & Maintenance, \$303.21
Grimm's Pump, Repair & Maintenance, \$123.80
Gunderson, Palmer, Nelson & Ashmore, LLP, Professional Fees, \$36.00
Hawkins, Supplies, \$20.00
Itron, Supplies, \$790.99
KLJ, Professional Fees, \$4,918.45
Lynn's Dakotamart, Supplies, \$15.98
Nelson's Oil & Gas, Supplies, \$898.92
Northwest Pipe Fittings, Repair & Maintenance, \$447.71
O'Connor Company, Repair & Maintenance, \$625.00
Paypal, Supplies, \$277.50
Petty Cash, Travel, \$93.07
Pitney Bowes, Supplies, \$500.00
Quality Auto Body, Repairs & Maintenance, \$156.00
Rancher's Feed & Supply, Utilities, \$1,155.75
Rapid Delivery, Professional Fees, \$51.75
S&B Motors, Supplies, \$93.78
Sander Sanitation, Garbage Collection Contract, \$13,405.82
SD Executive MGMT Finance Office, Utilities, \$19.86
State of SD, Sales Tax, \$1,147.12
Trana, Lisa, Travel, \$59.81
USDA Loan Payments, \$8,910.00
Walker, Gaile, Supplies, \$150.00
Wright Express, Supplies, \$881.58
YMCA, Membership, \$40.00
Sweere, Janice, Utility Deposit Refund, \$61.63
Total Claims, \$52,548.40

COMMITTEE REPORTS

Various committee reports were given.

EXECUTIVE SESSION

Councilperson Schleining moved to go into and out of executive session for contract negotiations per SDCL 1-25-2(1-4) at 6:58 pm, with the Attorney, Public Works Director and Finance Officer present. Seconded by Councilperson Fischer, the motion unanimously carried. Councilperson Maciejewski left the Council Meeting at 7:00 pm. Council came out of executive session at 7:45 pm, with no action taken.

ADJOURNMENT

With no further business, Councilperson Blom moved to adjourn the meeting at 7:45 p.m. Seconded by Councilperson Nielsen, the motion carried unanimously.

ATTEST:

CITY OF CUSTER CITY

Laurie Woodward
Finance Officer

Jared Carson
Mayor

Executive Proclamation

Custer, South Dakota

Office of the Mayor

WHEREAS, The Corporation for National and Community Service shares a priority with mayors nationwide to engage citizens, improve lives, and strengthen communities across the country to recognize the impact of service on the Mayor's Recognition Day for National Service on April 4, 2017; and

WHEREAS, for over 15 years the Black Hills Foster Grandparent Program connected people 55 and older to volunteer opportunities with children. Foster Grandparents assisted children in the areas of literacy, cultural practices, cognitive development and more. The individualized tutoring, mentoring and nurturing provided by Foster Grandparents helped thousands of struggling children achieve great academic, social and emotional gains; and

WHEREAS, The Black Hills Senior Companion Program provides healthy older adults part-time stipendiary opportunities to render supportive assistance to individuals requiring assistance completing various daily tasks necessary to maintaining independence, such as grocery shopping, meal preparation, light housekeeping, and providing transportation to doctor's appointments; and

WHEREAS, The Black Hills State University's Retired Senior Volunteer Program engages people age 55 and older, in a diverse range of service activities, such as tutoring and mentoring, elderly meal delivery, food bank and congregate meal assistance, entertainment, services to hospitals, nursing homes, blood banks, and veteran's organizations and a wide variety of volunteer activities throughout Sturgis' non-profit; and

WHEREAS, The AmeriCorps VISTA Program supports community efforts to overcome poverty by recruiting and managing community volunteers, raising funds, and helping to manage a variety of projects such as development of urban gardens, development of volunteer plans for local nonprofits, and the development of marketing strategies for local nonprofits, thereby providing better services to low-income individuals and communities; and

WHEREAS, Last year, in the Custer area, these programs provided volunteer opportunities for citizens totaling approximately 2100 hours of service to the community at large.

NOW, THEREFORE, I, Jared Carson, Mayor of the City of Custer, do hereby proclaim April 4, 2017, as

National Service Recognition Day

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the seal of the City of Custer this 3rd day of April 2017.

ATTEST:

CITY OF CUSTER CITY

Laurie Woodward
Finance Officer

Jared Carson
Mayor

(SEAL)

RESOLUTION 04-03-17A

A RESOLUTION ESTABLISHING THE FAIR MARKET VALUE OF FULL-SERVICE RESTAURANT ON-SALE LICENSES

WHEREAS, South Dakota Codified Law (SDCL) 35-4-111 which authorized the issuance of additional on-sale licenses to full-service restaurants subject to certain conditions;

WHEREAS, pursuant to the authority established by SDCL 35-4-111, the City of Custer adopted Ordinance No. 785 which implemented the provisions of the full-service restaurant on-sale license;

WHEREAS, SDCL 35-4-116 requires that any municipality adopting such ordinance shall charge at least one dollar for each person residing within the municipality as measured by the last preceding decennial federal census;

WHEREAS, SDCL 35-1-117 requires any municipality intending to authorize the issuance of such licenses to establish the fair market value of the full-service restaurant on-sale license by using the documented value of the arm's length transactions, less the value of any real or personal property included in the transaction, between January 1, 2003 and January 1, 2008; and

WHEREAS, the City of Custer has received documentation indicating the value attributed to the sale of the on-sale license by the parties involved in that transaction has exceeded the minimum price required by SDCL 35-4-116.

AND NOW THEREFORE BE IT RESOLVED, by the City of Custer, that the fee for a full-service on-sale restaurant license is hereby established, pursuant to SDCL 35-4-116 at \$25,000.00.

Dated this 3rd day of April, 2017.

CITY OF CUSTER

ATTEST:

Jared Carson, Mayor

Laurie Woodward, Finance Officer

(SEAL)

**CONTRACTOR'S BID
FOR THE CUSTER CITY
RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL
CONTRACT**

To: The City of Custer City Finance Officer

Bid of Sander Sanitation Service Inc, an individual, partnership, or corporation duly organized under the laws of the State of South Dakota.

The undersigned having carefully read and considered the terms and conditions of the Contract Documents for Residential Solid Waste Collection and Disposal Contract for the City of Custer City, and being familiar with local conditions affecting the cost of work, does hereby offer to furnish, at the rates hereinafter set forth, all labor, equipment, materials, tools, insurance, supervision, and all other items necessary to provide the service as specified.

Rate per residential unit per month:
\$16.72 (Sixteen Dollars & Seventy-two cents)

By: Timothy J. Sander President
Signature

P.O. Box 788
Address

CUSTER, S.D. 57730

OFFICE 673-3174 CELL 673,1849
Contact Number

CONTRACTOR'S ALTERNATE BID(S)
FOR THE CUSTER CITY
RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL
CONTRACT

1. CITY OPERATIONS ACCOUNTS – Contractor will pick-up all city operations waste for
the _____ monthly _____ rate _____ of
-

City operations locations are:

- a. City Hall – One 300-gallon container – once per week.
- b. Street Shop – Three (3) 300 gallon containers – once per week.
- c. Swimming Pool facility – One 300-gallon container – once per week May through August.
- d. Custer Trailhead & Transportation Museum – One 90-gallon container – once per week.

**Will not accept Wastewater Treatment Plant sewage grit and screenings

\$350.00 per month (Three Hundred Fifty Dollars)

CONTRACT
FOR THE CUSTER CITY
RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL

THIS CONTRACT is made and entered into this 29 day of March (day of bid) 2017, by and between the City of Custer City (hereinafter called the "City"), and Sander Sanitation Service Inc, (hereinafter called the "Contractor").

WITNESSETH, that the Contractor and the city for the consideration stated herein agree as follows:

1. Term – This contract shall take effect on May 1st, 2017, and remain in full force and effect for five (5) years to May 1, 2022. The initial term of this Contract may be extended for a period of five (5) years, under the same terms and conditions as this, the initial Contract, provided each party has received from the other a written expression of consent no less than ninety (90) days prior to the expiration of the initial term.
2. Fiscal Funding Out Clause – It is specifically understood and agreed that this Contract is binding upon the City if, and only if, each year's financial obligations are approved and authorized by the governing body then holding office. If at any time during the life of this contract, the governing body of the City shall fail or refuse to approve or authorize the funds due hereunder for the following City fiscal year, then this Contract shall terminate at the end of the fiscal year for which funds were approved and authorized. Such a termination shall be without penalty to the City.
3. Scope of Work – The Contractor is granted the sole and exclusive right within the geographic area described in the Contract Specifications and shall furnish all personnel, labor, equipment, trucks, and all other items necessary to provide refuse collection, removal, and disposal services as specified and to perform all of the work called for and described in the Contract Documents.
4. Component Parts of the Contract documents – The Contract Documents shall include the following documents, all of which are as fully a part of this Contract as if herein set out verbatim, or if not attached, as if hereto attached:
 - a. The Request for Bids
 - b. The Instructions to Bidders
 - c. The Contractor's Bid
 - d. The Contract Specifications
 - e. This Instrument
 - f. Any addenda or changes to the foregoing documents agreed to by the parties hereto.

All provisions of the contract Documents shall be strictly complied with and conformed to by the Contractor, and no amendment to this Contract shall be made except upon the written consent of the parties, which consents shall not be unreasonably withheld. No amendment shall

~~be construed to release either party from an obligation of the Contract Documents except as specifically provided for in such amendment.~~

This Contract is intended to conform in all respects to applicable statutes of the State of South Dakota, and if any part or provision of this Contract conflicts therewith, the said Statute shall govern.

IN WITNESS WHEREOF, we the Contracting parties, by our duly authorized agents, hereto affix our signatures and seals at Custer City, South Dakota, as of this ____ day of _____, 20__.

CITY OF CUSTER CITY

Jared Carson, Mayor

Attest: _____
Laurie Woodward, Finance Officer

(seal)

CONTRACTOR

Contractor or Contractor's Agent

Attest: _____
Notary Public

Commission Expires: _____

(seal)

**REQUEST FOR BIDS
FOR THE CUSTER CITY
RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL
CONTRACT**

Sealed bids will be received by the City of Custer City at the Custer City Finance Office located at City Hall, 622 Crook Street, Custer, SD, until 2:00 p.m. on March 29th, 2017 at which time all bids will be publicly opened and read.

Bids must be made on the Proposal Form and in accordance with the Instructions to Bidders. The Contract Documents, of which the Proposal Form is a part, are published by and available through the Finance Office. No more than two copies will be furnished to any one person.

Envelopes containing the bids must be sealed and must clearly show the name and address of the bidder, the date and time of bid opening, and the statement "Bid for Residential Solid Waste Collection and Disposal Contract". Bids may be withdrawn up to 24 hours prior to bid opening.

The City reserves the right to reject any or all bids, to waive irregularities and/or informalities in any bid, and to make an award in any manner, consistent with law, deemed in the best interest of the City.

Laurie Woodward
Custer City Finance Officer

**INSTRUCTIONS TO BIDDERS
FOR THE CUSTER CITY
RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL
CONTRACT**

1. Receipt and Opening of Bids.

The City of Custer City invites and will receive bids on the forms attached hereto at the Custer City Finance Office until 2:00 p.m. on March 29th, 2017 at which time all bids will be publicly opened and read immediately following said time on said date. Bids must be sealed, addressed to the Finance Officer, plainly marked with "Bid for Residential Solid Waste Collection and Disposal Contract", the name and address of the bidder, and the date and time of bid opening.

2. Scope of Work.

The work to be performed under this Contract shall consist of all items contained in the bid including the provision of all labor, equipment, materials, tools, insurance, supervision, and all other items necessary to provide the service as set forth in the specifications attached hereto.

3. Term of Contract.

The term of this Contract will be for a five (5) year period beginning May 1st, 2017, and ending May 1, 2022. The initial term of this Contract may be extended for a period of five (5) years, under the same terms and conditions as this, the initial Contract, provided each party has received from the other a written expression of consent no less than ninety (90) days prior to the expiration of the initial term.

4. Preparation and Submission of Bid.

All bids must be prepared and signed by the bidders on the form attached hereto and without removal from this bound pamphlet. If submitted by a corporation, the bid must be signed by an officer of the corporation or by other persons authorized by a resolution of the board of directors. Bids which are not signed by individuals or corporations making them shall have attached hereto a power of attorney evidencing authority to sign the bid in the name of the person for whom it is signed.

All bids must be legibly written in ink or typewritten. Proposed rate schedules and quantities must be written in both words and figures. In the event of a discrepancy or error, the unit price and quantities as written out in word shall govern.

Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his/her address, and plainly marked "Bid for Residential Solid Waste Collection and Disposal Contract". If forwarding by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the bid. The City reserves the right to reject any bid not prepared and submitted in accordance with the provision hereof, to waive any irregularities, and to reject any and all bids.

5. Contractor to Make Examinations.

Bidders shall inform themselves of all conditions under which the work is to be performed and all other relevant matters that may affect both the quantity of work and the quantity of labor, equipment, and material needed thereon. The bidder shall make his/her own determinations as to conditions and shall assume all risk and responsibility and shall complete the work in and under conditions he/she may encounter or create, without extra cost to the City. The bidder agrees that if he/she should execute the contract he/she shall make no claim against the City because of estimates or statements made by any officer or agent of the city which may prove to be

in any respect erroneous. The failure or omission of any bidder to receive or examine any form, instrument, addendum, or other document shall in no way relieve him/her of any obligations with respect to his/her bid or the Contract. The Finance Officer shall make such documents available to the registered bidders.

6. Bid Bond.

None Required.

7. Performance bond/Letter of Credit

None Required.

8. Basis of the Bid.

Bids with respect to refuse collection and disposal are solicited on the basis of monthly rates per residential unit. The number of residential units is averaged at 836 units monthly. This rate will be assessed as payment due the Contractor for each collection. The City will collect charges from all residential units receiving service and faithfully render compensation due the Contractor for all services in the manner prescribed in the Contract Specifications. The successful Contractor shall provide a 90 gallon (or greater) container for each residential unit as part of the base bid. The collection of a "bulky waste item" is a contract between the successful bidder and the residential patron.

9. Addenda and Explanation.

Explanations desired by a prospective bidder shall be requested of the City in writing, and if explanations are necessary, a reply shall be made in the form of an addendum, a copy of which will be forwarded to each bidder. Every request for such explanation and any other information regarding the Contract shall be addressed in writing to the Finance Officer. Any verbal statements regarding the same by any person, previous to the awards, shall not be binding.

CONTRACT SPECIFICATIONS
FOR THE CUSTER CITY
RESIDENTIAL SOLID WASTE COLLECTION AND DISPOSAL
CONTRACT

1. DEFINITIONS

- a. Bags – plastic sacks designed for refuse with sufficient wall strength to maintain physical integrity when lifted by top; securely tied at the top for collection.
- b. Bid Bond – The corporate surety bond or a certified check drawn on a national bank, in the amount specified in the Instruction to Bidders submitted with the bid as a guarantee that the bidder will, if called upon to do so, accept and enter in the Contract.
- c. Bulky Waste – A large appliance, piece of furniture, or waste material from a residential source other than construction debris or hazardous waste.
- d. Bundle – Yard and garden trimmings or newspapers and magazines securely tied together forming an easily handled package not exceeding 3 feet in length or 35 lbs in weight.
- e. City – Refers to the applicable municipal authority empowered under state law to solicit and award contract for the collection of residential refuse. City will also refer to the appropriate employee or office of the municipality authorized to act as its agent in handling the pertinent matter of this Contract.
- f. Construction Debris – Waste building materials resulting from construction, remodeling, repair, or demolition operations, i.e. concrete, rocks, dirt, or asphalt.
- g. Containers –
 1. Regulation Garbage Containers – A receptacle made of plastic or metal furnished by the contractor with a tight-fitting lid, and handles of adequate strength for lifting.
 2. Non-reusable Containers – See definition of Bags.
- h. Contract Documents – The Request for Bids, Instructions to Bidders, Contractor's Bid, Contract Specifications, the Contract, Performance Bond or Letter of Credit, and any addenda or changes to the foregoing documents agreed to by the City and the Contractor.
- i. Contractor – The individual, firm, partnership, joint venture, corporation, or association performing refuse collection and disposal under Contract with the City.
- j. Garbage – Kitchen refuse, cans, bottles, paper, ashes, and other waste materials ordinarily originating on household premises, and items which can be, and are, placed in regulation containers.
- k. Green/Yard Waste– Means clipped grass, shrubs, brush, accumulation of tree leaves, tree limbs, branches, pine needles, wood pile bark, wood chunks, garden refuse material and other ordinary household rubbish or vegetation not customarily placed in regulation garbage containers.
- l. Heavy Material – Accumulations such as earth or dirt, brick, concrete, wood waste from construction or demolition, treated wood, lumber ashes, plaster, sheetrock, sand or gravel, large trees, automobile frames or parts, appliances, used tires, furniture, asphalt shingles and other bulky material shall be disposed at the expense of the owner or person controlling the same.
- m. Hazardous Waste – Waste designated as hazardous by the United States Environmental Protection Agency or appropriate state agency.

-
- n. ~~Medical Waste – Shall only be deposited in an approved container or placed in a closed clear plastic container such as a water or soda bottle.~~
 - o. Letter of Credit – A written undertaking by a financial institution on behalf of the contractor to pay the city for non-performance in amounts and under conditions as may be specified in the agreement.
 - p. Performance bond – A corporate surety bond that guarantees compensation to the City in the event that it must assume the obligations and/or duties of the contractor in order to continue the service as defined by the Contract's Specifications.
 - q. Refuse – Discarded waste materials in a solid or semi-liquid state, consisting of garbage, rubbish, or a combination thereof.
 - r. Recyclable Materials – Includes, but not limited to: aluminum, glass, plastic, small appliances which do not include Freon, clothing, shoes, foil, and miscellaneous metals, and paper fibers, i.e. cardboard, newspaper, office paper.
 - s. Residential Patron – Individual metered residential units, apartment dwellings, or mobile home housing.
 - t. Rubbish – Asphalt shingles, wood waste from construction or demolition, useless waste or rejected matter, sheet rock and tree stumps.
 - u. Transfer Site – A secured, fenced area kept free from accumulation of debris in and out of site, to be used for the processing of refuse including but not limited to sanitary landfills, incinerators, and waste processing separation centers, licensed, permitted or approved by all governmental bodies and agencies having jurisdiction.

2.

SCOPE OF CONTRACT

- a. Effective Date – This Contract shall become effective on the day of execution. Contractor shall begin the service of residential solid waste collection and disposal as set out by this agreement on the May 1, 2017.
- b. Term – The term of this Contract shall be for a five (5) year period beginning May 1, 2017 and terminating May 1, 2022. The parties agree that by their mutual consent, each expressed in writing and received at least ninety (90) days before the termination of the current term ending on May 1, 2022, that this Contract may be extended for a period of five (5) years upon the same terms and conditions as set forth in this Contract.
- c. Exclusive Contract – Pursuant to the provisions of SDCL 9-32-11, as amended, the City grants the Contractor the exclusive right during the term of this Contract to collect and dispose of residential solid waste located within the City. The City covenants that during the term of this Contract it will not engage other individuals or itself become involved in the activity of collecting and disposing of residential solid waste or any other similar activity that would impair the exclusive right of this Contract. Commercial accounts are not considered a part of the exclusive contract.
- d. Compliance with Applicable Laws – The parties to this Contract agrees that the laws of the State of South Dakota shall govern the validity, construction, interpretation, and effect of this Contract. The contractor shall conduct the service of residential solid waste collection as provided for by this Contract in compliance with all applicable federal and state regulations and laws. This Contract and the work to be done as described herein is also subject to the provisions of all pertinent municipal ordinances which are hereby made a part hereof with the same force and effect as if specifically set out herein.

- e. Bankruptcy – “Insolvent” for the purposes of this clause shall mean a party’s inability to pay its debts as they mature. A party’s insolvency, or voluntary or involuntary bankruptcy, shall not constitute prospective unwillingness and/or inability to perform nor a repudiation of this agreement unless the party fails to give a timely and adequate assurance of its ability to perform. Until such assurances are received, the demanding party may suspend, if commercially reasonable, any performance due upon its part unless already paid for. If a party is unable to give adequate assurance, the other party may terminate the Contract with ninety (90) days written notice. Assumption of this Contract by a bankrupt debtor’s trustee shall initially give rise only to reasonable sense of insecurity and shall not operate as an automatic repudiation, prospective unwillingness to perform, or a breach of the contract where the contractor is in the process of voluntary or involuntary bankruptcy. The City shall be bound to the contract by an insolvent contractor’s trustee or receiver. In the event of the contractor’s bankruptcy, the city will have the same remedies as proved for Breach of Contract.
- f. Breach of Contract – If the Contractor fails to perform, or to perform in a satisfactory manner, or to perform in accordance with applicable ordinances, the City shall have the right to demand in writing adequate assurance from the Contractor that steps have been or are being taken to rectify the situation. The Contractor must within forty-five (45) days of receipt of such demand return to the Finance Officer a written statement that explains reasons for non-performance or delayed, partial or substandard performance during that period and any continuation thereof. The Contractor also has available to him/her the option to appear with an explanation before the City Council. Upon receipt of the contractor’s statement or the failure of the contractor to submit one, the City may, except under conditions of Force Majeure, terminate this Contract with a 2/3 vote of the Council.
- g. Force Majeure – Neither the Contractor nor the City shall be liable for the failure to perform their duties nor for any resultant damage, loss, etc., if such failure is caused by a catastrophe, riot, war governmental order or regulation, strike, fine, accident, act of God or other similar or different contingency beyond the reasonable control of the Contractor or City. If such circumstances persist for more that ten (10) days or if after their cessation the Contractor is unable to render full or substantial performance for a period of ten (10) days, he may terminate this Contract upon written notice given ninety (90) days in advance to the City.
- h. Arbitration and Award – Any controversy or claim arising out of or relating to this agreement, or breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.
- i. Assignment of Contract – No assignment of this Contract or any right accruing under this Contract shall be made in whole or in part by the Contractor without the express written consent of the City, which consent shall not be unreasonably withheld. The delegation of any Contract duties will require the written consent of the Surety as such a delegation will not relieve the contractor or his surety of any liability and/or obligation to perform. In the event of any delegation of a duty, the delegate shall assume full responsibility for performance of the duty without affecting the contractor’s liability.
- j. Change of Ownership – In the event that the Contractor’s business assets are sold, the city maintains the right to hold the original owner solely liable. If, however,

~~the City determines that the new ownership can adequately and faithfully render the services called for in this Contract for the remaining term of the contract, then the City may elect to execute a novation, allowing the new ownership to assume the rights and duties of this Contract and releasing the previous ownership of all obligation and liability. The new ownership would then be solely liable for any work and/or claims attendant to this agreement.~~

- k. Waivers – A waiver by either party of any breach of any provisions hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself. No payment or acceptance of compensation for any period subsequent to any breach shall be deemed a waiver of any right or acceptance of defective performance. Where the condition to be waived is a material part of the contract such that its waiver would affect the essential bargains of the parties, the waiver must be supported by consideration and take the form of a Contract modification as provided for elsewhere in this section.
- l. Illegal, Invalid or Unenforceable Provision – Should any term, provision or other part of this contract be declared illegal, invalid or unenforceable it shall be excised and modified to conform to the appropriate laws or regulations. Should any term, provision or other part of this Contract be held to be inoperative, invalid or unenforceable, then such provision or portion thereof shall be reformed in accordance with applicable laws or regulations. In both cases of illegal, invalid or unenforceable provisions, the remainder of the Contract shall not be affected but shall remain in full force and effect.
- m. Joint and Several Liability – If the contractor is comprised of more than one individual, corporation or other entity, each of the entities comprising the contractor shall be jointly and severally liable.
- n. Binding Effect – The provisions, covenants, and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.
- o. Amendment of the Contract – No modification or amendment of the terms hereof shall be effective unless written and signed by the authorized representatives of all parties entitled to receive a right or obligated to perform a duty under this contract. A signed original is to be fastened to the original Contract with signed copies retained by all the parties. The written modification is not to become effective for a period of twenty (20) business days during which time either party may revoke the writing upon delivery to the other party of written notice to that effect, dated and signed by a notary.
- p. Merge Clause – Previous Agreements Superseded – This agreement constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are to be without effect in the construction of any provision or term of this Contract if they alter, vary or contradict this agreement.

3. SERVICE, OPERATIONS, AND PERFORMANCE

- a. Service Provided – The Contractor shall provide 90 gallon or greater regulation garbage containers, for the collection of refuse from residential units on a regular (1) time per week schedule. It is the resident's responsibility to see that the containers, are placed curbside or as close as practicable to collection vehicle routes by 6:00 a.m. on the designated collection day. Curbside refers to that portion of the right-of-way to paved or traveled roadways, including alleys. Contractor may decline to collect any container not so placed; any container not defined in the

definitions; any containers that contain sharp objects or liquids; or any residential refuse not properly contained. Where the contractor has reason to leave solid waste uncollected at a residence, he/she or his/her agents shall inform the resident and the city Finance Officer within one working day by written notice, mailing, or telephone as to why the solid waste was not collected, i.e. non-residential solid waste, hazardous waste, unapproved containers or bundles, improper placement, etc.

- b. Area to be Served – The area to receive the service of residential refuse collection includes all individually metered (water) residential units, apartments, dwellings, or mobile home housing, including those outside city limits who are on city water service. (See attached map of Custer City Limits)
- c. Hours of Collection – Normal hours of collection are to be from 6:00 a.m. to 7:00 p.m., Monday through Friday, and 6:00 a.m. to 12:00 p.m. on Saturday. Exceptions may be made only when the Contractor has reasonably determined that an exception is necessary to complete collection of an existing route due to unusual circumstances or upon the mutual agreement of the City and the Contractor.
- d. Routes and Schedule of Collections – The Contractor shall provide the City with maps and schedules of residential collection routes and keep such information current at all times. In the event of changes in routes or schedules that will alter the day of pickup, the Contractor shall so notify each resident affected. Not less than twenty (20) days prior to commencing service, the Contractor agrees to furnish for the City's approval the initial schedules and maps of all routes to be used in serving the area as specified in this Contract. Any changes in routes and/or schedules will also be subject to the city's approval which will not be unreasonably withheld.
- e. Missed Collections – In the event that a regularly scheduled collection is missed and a complaint received by either the City or the Contractor, and where no fault can be found on the account holders part, a special collection of the refuse will be required of the contractor within one working day. The City shall notify the Contractor of any complaints it receives within one working day
- f. Holidays – The following holidays will be observed as non-collection days by the Contractor: New Year's Day, Thanksgiving Day, and Christmas Day. The following holidays are optional as to whether or not the Contractor chooses to observe them as non-collection days: Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Native American's Day, and Veteran's Day. The suspension of collection service on any holiday in no way relieves the contractor his/her obligation to provide collection service at least once per week. Extending the hours of service to meet this obligation is subject to the city's approval.
- g. Complaints – The Contractor shall receive and respond to all complaints regarding services provided under this Contract. Any complaints received by the City will be directed to the contractor's office. Should a complaint go unresolved for longer than ten (10) days, the City will have the right to demand an explanation or resolution to meet the City's satisfaction.
- h. Collection Equipment – In that the City is undergoing a pavement improvement project the City is concerned about the possible damage to the existing and future street surfacing caused by collection equipment. The Contractor will include an operating procedure in the bid documents detailing how they intend to address the issue of minimizing damage to the city streets caused by collection equipment. An

adequate number of vehicles shall be provided by the Contractor to collect refuse in accordance with the terms of this Contract. The vehicles shall be licensed in the State of South Dakota and shall operate in compliance with all applicable state, federal, and municipal regulations. All vehicles shall be manufactured and maintained to conform to the American National Standards Institute (ANSI) standard Z245.1. The City has the right to request inspection of trucks, seals, box, oil leaks, brakes, etc., with expense, if any, borne by the Contractor. All vehicles and other equipment shall be kept in proper repair and sanitary conditions. Each vehicle shall bear plainly visible, as a minimum, the name and telephone number of the Contractor. Each vehicle shall be uniquely numbered in lettering at least four (4) inches high. Each truck shall have at least one broom and shovel to clean up solid waste that may be spilled or otherwise scattered during the process of collection. All vehicles shall be sufficiently secure so as to prevent any littering of solid waste and/or leakage of fluid. No vehicle shall be willfully overloaded. The Contractor may make private collections with the same vehicles used for contract collections provided that such use in no way impairs the delivery of service required under this contract.

- i. Personnel – The Contractor shall require his employees to be courteous at all times, to work quietly and not to use loud or profane language. Shoes and shirts will be required at all times. The Contractor's employees shall follow the regular walks for pedestrians while on private property, shall not trespass or loiter on private property, shall not cross property which does not or should not concern them. Each employee assigned to drive a vehicle shall, at all times, carry a valid driver's license for the type of vehicle he/she is driving. The City shall have the right to make a complaint regarding any employee of the Contractor who violates any provision hereof or who is wanton, negligent, or discourteous in the performance of his/her duties.
- j. Citizenship with Disability – The Contractor shall make all reasonable efforts to work any citizen with disability in the disposal of their garbage and further agrees not to discriminate against any person or entities.
- k. Transfer Site – The City of Custer requires that a transfer station be made available for the use of Custer residents. The Contractor shall be totally responsible for all equipment owned while operated on any disposal site. The location of the transfer site to be used under the terms of this Contract shall be within five (5) miles of the corporate limits of Custer City. The choice of this site is made by the Contractor, who will assume all fees. Compensation for fee increases and unanticipated costs will be subject to this Contract's provision for petitioning for unanticipated costs. The Contractor may at any time be asked to provide evidence that the transfer site upon which his/her rates are based is the site actually used and that the said site is a legally permitted facility. The transfer site shall be open to residents at least six (6) hours per day, three (3) days per week, of which one (1) day must be Saturday. Items to be accepted at the transfer site shall include, but are not limited to: motor oil, cooking grease, green waste (every other week April through November), Christmas trees, residential medical waste, recyclable materials, white goods and furniture, construction debris, and rubbish. Contractor shall be permitted to charge a reasonable fee for such services, to be paid directly by the individual or resident utilizing the service. One consecutive Friday and Saturday in the spring and an optional weekend in the Fall if deemed necessary by the City, the City in cooperation with the Contractor

will schedule a Clean Up Weekend to provide for the residents of Custer an opportunity to discard certain acceptable items at no charge. Contractor will be compensated by the City according to a pre-agreed schedule. The contractor will be required to maintain the transfer station open for extended hours on those days. If the Contractor cannot economically provide a transfer site according to the above provisions, Contractor will provide in bid documents how they intend to provide a cost effective alternative for the residents of Custer to dispose of items which would be normally disposed of at a transfer station and provide for services required to conduct a Clean Up Weekend.

- l. Introduction of Recycling Programs – In the event that, within the duration of this Contract, a new local ordinance or state law requires the separate collection of recyclable materials from residential units, the Contractor shall comply. The Contractor will be entitled to an adjustment of the Contract payments to reflect any additional costs of the program. To secure greater compensation, the Contractor must be able to demonstrate that the added costs are direct operating costs solely assignable to the recycling program. Depreciation of only that equipment specifically bought and exclusively used to meet the needs of the recycling program will be allowed. Increased costs must be capable of verification by an independent auditor.
- m. Title to Solid Waste – With the exception of prohibited waste as defined under federal, state, or local regulations, title to refuse shall pass to the Contractor when refuse is placed in the provided container in a public area for pickup. The original generator of prohibited waste shall remain liable for the disposal of such waste. Pursuant to Custer Municipal Code 8.12.080, and South Dakota Codified Law 34A-11-1 et seq., the Contractor shall not knowingly allow liquid waste, hazardous materials, oil or infectious waste to be placed into containers for eventual transportation to a land fill unless specifically authorized by ordinance or statute. The City shall not be liable for any such waste placed in a container or landfill and Contractor shall indemnify City in accordance with paragraph five (5) herein if necessary.
- n. Landfill – Contractor shall use the Custer/Fall River Waste Facility in Edgemont as the primary Landfill. Exceptions to using the Edgemont Landfill will only be allowed if the Landfill is closed due to unforeseen circumstances. Contractor will document any such circumstances and make such documentation available upon City's request.
- o. Notification of Residents – The Contractor shall inform all residents as to complaint procedures, rates, regulations and day for scheduled refuse collection.
- p. Office – The Contractor shall establish and maintain a local office or other facility, not necessarily within City limits, through which he can be contacted, where service may be applied for, and complaints can be made. Such office or facility shall be equipped with adequate telephone communications, shall have at least one responsible person in charge and present during collection hours, and shall be open during normal business hours.
- q. Notice – A notice properly addressed and sent by mail to any party at the addresses proved below shall constitute sufficient notice whenever written notice is required for any purpose of this agreement. Notice will be considered sent when received at the appropriate address or other such address as provided in writing by either party.

Address for notices to City:
City of Custer City
622 Crook Street
Custer, SD 57730

Address for notices to Contractor

4. NONDISCRIMINATION

Neither the Contractor nor any sub-contractor nor any person(s) acting on his/her behalf shall discriminate against any person because of race, sex, age, creed, color, religion, or national origin.

5. INDEMNITY

The Contractor will indemnify and save harmless the City, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees resulting from a willful or negligent act or omission of the Contractor, its officers, agents, servants and employees in the performance of this Contract; provided, however, that the Contractor shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys fees arising out of the award of this Contract, or a willful or negligent act or omission of the City, its officers, agents, servants and employees. The City will indemnify and save harmless the Contractor, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, cost, expenses, and attorney's fees resulting from a willful or negligent act or omission of the City, its officers, agents, servants and employees in the performance of this Contract; provided, however, that the City shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees arising out of a willful or negligent act or omission of the Contractor, its officers, agents, servants and employees.

6. INSURANCE

The Contractor shall maintain in full force and effect throughout the term of this Contract and throughout any extension or renewal thereof the following types of insurance in at least the limits specified below:

Workmen's Compensation – Statutory

Employer's Liability \$300,000

General Liability - \$1,000,000 each occurrence / \$2,000,000 general aggregate

Commercial Automobile Liability - \$1,000,000 each person/each occurrence

Employer's Liability Coverage will be required of the Contractor and any sub-contractor where any class of employee engaged in work under this Contract is not protected under the Workmen's Compensation Statute.

All insurance will be by insurers authorized to do business in the State of South Dakota. Prior to the commencement of work, as well as annually for the term of the Contract, the Contractor shall furnish the City with certificates of insurance or other satisfactory evidence that such insurance has been produced and is in force. Said policies shall not thereafter be canceled, permitted to expire, or be changed without thirty (30) days advance written notice to the city.

To the extent permitted by law, all or any part of required insurance coverage(s) may be provided under a plan of self-insurance.

7. PERFORMANCE BOND

None required.

8. PERMITS, LICENSES, AND TAXES

The Contractor shall obtain and assume the cost of all licenses and permits (other than the license and permit granted by the Contract) and promptly pay all taxes required by the City.

9. BASIS AND METHOD OF PAYMENT

Rates for all collection and disposal services required under this Contract, the charges to residents will be determined by the City Council.

At its option the Contractor may attempt to market to residential unit's special bags or containers, but in no way shall any residential unit be required to use such bags or containers.

Total Compensation and adjustments for new or discontinued service – Before commencement of work under this Contract, it shall be the City's responsibility to provide the Contractor with an accurate address list of residential units to receive service.

Lump sum contract shall be based upon 836 residential patrons for the period of May 1, 2017 through December 31, 2017. Thereafter and for the duration of the Contract, the City shall annually report on the first business day of January of each year to the Contractor the average number of residential patrons which will determine that year's monthly compensation to the Contractor.

In exchange for the billing and collection service, a fee of three percent (3%) of the total monthly bid shall be deducted from the amount remitted to the Contractor.

The City shall remit payment after the next immediate Council meeting after receipt of the Contractor's billing.

The Contractor will provide service to any territory annexed by the City within the duration of this Contract including any extension thereof. The aforementioned formula for compensation, together with the provision for petitioning for unanticipated costs, will provide greater compensation due the Contractor for servicing annexed territory.

Escalation Clause – The contractor may petition the City at any time for additional rate adjustments to reflect the general increase in the cost of operation; on the basis of unusual changes in the cost of operation, such as new or revised laws, ordinances or regulation; changes in the location of disposal sites or changes in disposal fees; and for other reasons. The City shall have the right, as a condition for its approval, to demand inspections by itself or by an independent auditor of pertinent records that demonstrate the need for an adjustment to the rates.

Fuel Surcharge/Reduction Clause – If on the first business day of January, April, July or October the diesel fuel price is greater than three dollars (\$3.00) per gallon, Contractor shall be entitled to a fuel surcharge adjustment of the rate per residential unit per month bid price for that calendar quarter, in accordance with the schedule listed below. If on the first business day of January, April, July or October the diesel fuel price is less than two dollars and fifty-one cents (\$2.51) per gallon, the City shall be entitled to a fuel reduction adjustment of the rate per residential unit per month

~~bid price for that calendar quarter, in accordance with the schedule listed below. The diesel fuel price and any reduction/surcharge adjustment will be based on the AAA Daily diesel fuel gauge report for the Rapid City, South Dakota market.~~

Quarterly Fuel Charge Range	Fuel Surcharge/Reduction
\$1.76 to \$2.00	-6%
\$2.01 to \$2.25	-4%
\$2.26 to \$2.50	-2%
\$2.51 to \$2.75	None
\$2.76 to \$3.00	None
\$3.01 to \$3.25	2%
\$3.26 to \$3.50	4%
\$3.51 to \$3.75	6%
\$3.76 and Higher	8%

Billing and Payment – The City shall submit statements and collect charges from all residential units for services provided by the Contractor under the terms of this Contract.

Billing and payment shall be based on the price rates and schedules set forth in the contract documents. The Contractor shall be entitled to payment for services whether or not the City collects from residents for such service.

DIVISION 01 – GENERAL REQUIREMENTS
SECTION 01 01 00 – SUMMARY OF WORK

PART 1 - GENERAL

1.01 SCOPE OF WORK UNDER THIS CONTRACT

A. The project work consists generally of the construction of the following:

Base Bid – Main and Kelly Water Plant Process Modifications

- Main Plant: Process piping and appurtenance demolition; installation of new process piping and appurtenances; Remove and reinstallation of fluorosilicic acid tank, potassium permanganate tank, hypochlorite tank, and caustic day tank; Install new aerator, flow meter and chemical feed system; Remove existing and install new filter media and supports; And construction of a new approx. 19'x19' building addition.
- Kelly Plant: Process piping and appurtenance demolition; installation of new process piping, valves, backwash pump, aerator, and flow meter; Construction of new approx. 19'x15' building addition; and Remove existing and install new filter media and supports.

1.02 WORK BY OWNER.

A. Work by Owner.

1. City of Custer will operate valves and assist with water system operations. Contractor shall coordinate system operation with City staff.

1.03 CONTRACTOR'S USE OF PREMISES

A. The Contractor shall limit his use of the project site to those areas within the Owner's property as shown on the Plans.

1.04 OWNER'S ACCESS TO SITE

A. The Contractor shall cooperate with the Owner in all construction operations to minimize conflict. The contractor shall at all times allow for access by the Engineer and Owner's personnel and equipment.

1.05 PROTECTION OF PROPERTY

- A. The Contractor shall protect, shore, brace, support and maintain all underground pipes, conduits, drains and other underground construction uncovered or otherwise affected by construction operations.
- B. The Contractor shall restore to their original condition roadways, utilities, fences, landscaping and other surface features affected by construction operations.
- C. The Contractor will be responsible for damage to roads or pavements which may be caused by transporting equipment or materials to or from the project site, or at the project site, whether by his own forces or by supplier or subcontractors.

END OF SECTION 01 01 00

**STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
TRANSPORTATION ALTERNATIVES(TA)
AGREEMENT**

THIS AGREEMENT is made by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "STATE," and the city of Custer, South Dakota, referred to in this Agreement as the "CITY."

BACKGROUND:

1. The STATE has determined that TAP project number P TAPR(23) PCN 062Q in the city of Custer, South Dakota, referred to in this Agreement as the "Project," is eligible for funding under the Fixing America's Surface Transportation Act (FAST Act) for Transportation Alternatives;
2. The CITY has submitted an application to sponsor the Project, which the STATE has accepted. A copy of the application is made part of this Agreement by reference;
3. The Project's cost estimate is as follows: Four Hundred Ninety-seven Thousand Seven Hundred Fifty-five Dollars and Fifty Cents (\$497,755.50) in infrastructure, Sixty-seven Thousand Eight Hundred Seventy-five Dollars and Seventy-five Cents (\$67,875.75) for design engineering, Sixty-seven Thousand Eight Hundred Seventy-five Dollars and Seventy-five Cents (\$67,875.75) for construction engineering;
4. Prior to bid letting advertisement and upon receiving the final plans, if the STATE, in its sole discretion, estimates the amount of the infrastructure portion of the Project (the STATE'S estimated amount) will be more than the eligible amount of infrastructure funding set out above in Background paragraph 3, the STATE will not pursue Federal Highway construction authorization for the Project until either: a) the plans are revised to reduce infrastructure costs to a level at or below the eligible amount of infrastructure funding, or, b) the CITY agrees in writing to fund the difference between the STATE'S estimated amount and the eligible amount of infrastructure funding; and,
5. Once the Project has been let and the contract is awarded to the successful low bidder, if the cost of the infrastructure portion of the Project, as bid, exceeds the STATE'S estimated amount, as-bid costs that exceed the STATE'S estimated amount will be eligible for Federal Highway funding. The STATE will pay the as-bid costs and the CITY will pay the STATE for the CITY'S match of the as-bid costs.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

I. THE STATE'S DUTIES AND RESPONSIBILITIES:

- A. The STATE will provide technical assistance for the Project and review plans and specifications.
- B. The STATE will develop the Scope of Services for the design of the Project and will issue the work order for the consulting firm the CITY selects from the STATE consultant retainer list to design the Project.
- C. The STATE will issue a Notice to Proceed letter for the work order to the consulting firm selected by the CITY from the STATE consultant retainer list following full execution of this Agreement and receipt of federal authorization of the Project for the Scope of Services for the design portion of the Project.
- D. The STATE will use the STATE'S best efforts to obtain Federal Highway Administration authorization of the Project.
- E. The STATE will advertise, let to contract, award, and be the contracting party for the infrastructure items of the Project, as detailed in the attached **Exhibit A**.
- F. The STATE will obtain the CITY'S concurrence before authorizing any changes to the Project work under the STATE approved Project plans and specifications.
- G. The STATE will provide construction administration for the infrastructure portion of the Project and make all progress payments for the infrastructure portion of the Project directly to contractors,

suppliers, and vendors with TAP funds, up to a maximum of Four Hundred Thousand Dollars (\$400,000.00). The STATE will bill the CITY for the 36.86% match on TAP funds, any costs exceeding Six Hundred Thirty-three Thousand Five Hundred Seven Dollars (\$633,507.00), any non-participating costs, and any costs deemed ineligible.

II. THE CITY'S DUTIES AND RESPONSIBILITIES:

- A. The CITY will concur with the design of the Project to ensure the design meets the CITY'S needs.
- B. The CITY will arrange for all needed right-of-way and utility adjustments and certify that all right-of-way and utility adjustments or agreements are in place prior to the STATE'S advertisement and the letting of the Project.
- C. The CITY will obtain all the necessary Project related environmental clearances, approvals, and permits and any other federally required clearances, approvals, or permits, including but not limited to Federal Emergency Management Agency (FEMA) flood plan insurance maps and those from the State Historical Preservation Office, Tribal Consultation, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and the Departments of Game, Fish and Parks and Environment and Natural Resources. The CITY will submit documentation to the STATE verifying Project approval has been obtained from the required agencies prior to receiving STATE'S approval of the Project.
- D. The CITY will perform all management, operation, and maintenance of the Project, once these items are completed. The required maintenance will include but not be limited to:
 - i. Debris and litter removal;
 - ii. Maintenance and replacement of sidewalks, curb ramps, and detectable warnings, in accordance with the Americans with Disabilities Act;
 - iii. Maintenance, repair, and replacement of the Project;
 - iv. Snow and ice removal and any necessary hauling of snow that has been removed all in accordance with the CITY'S policy and practices.
 - v. Sweeping;
 - vi. Mowing where undesirable or noxious vegetation exists; and
 - vii. Any repair or maintenance of the STATE'S right-of-way related to or necessitated by the installation, repair, and maintenance of the Project.
- E. The CITY will make no operational adjustments without prior written approval from the STATE and Federal Highway Administration.
- F. If the CITY defaults under this Agreement, the CITY will reimburse the STATE and the Federal Highway Trust Fund the amount of all funds expended under the Project for the CITY'S infrastructure Project items.
- G. Upon receipt of billings from the STATE for the infrastructure portion of the Project, the CITY will promptly pay the STATE for the CITY'S 36.86% match on TAP funds, any costs exceeding Six Hundred Thirty-three Thousand Five Hundred Seven Dollars (\$633,507.00), any non-participating costs, and any costs deemed ineligible.
- H. The CITY will indemnify the STATE, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that arise as a result any negligent act of the CITY or the CITY'S officers, agents, or employee's failure to reasonably perform any of its obligations set forth in this Agreement. The CITY is not responsible for or to defend against claims or damages arising from errors or omissions of the STATE, its officers, agents, or employees.
- I. The CITY will comply with all federal, state, and local laws, together with all ordinances and regulations applicable to the work and will be solely responsible for obtaining current information on such requirements. The CITY will procure all licenses, permits, or other rights necessary for the fulfillment of their obligations under this Agreement. The CITY'S noncompliance with these requirements will be cause for the STATE to withhold participation and reimbursement.
- J. The CITY warrants that the CITY has not employed or retained any company or person, other than a bona fide employee working solely for the CITY, to solicit or secure this Agreement, and that the CITY has not paid or agreed to pay any company or person, other than a bona fide employee

working solely for the CITY, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the STATE will have the right to terminate this Agreement without liability, or, in the CITY'S discretion to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

- K. The CITY will be bound by **Exhibit B**, entitled, "Standard Title VI/Nondiscrimination Assurances Appendix A & E," attached to and made a part of this Agreement by reference.
- L. The CITY will provide services in compliance with the Americans with Disabilities Act of 1990, and any amendments.
- M. All project charges will be subject to audit in accordance with the STATE'S current procedures and U. S. Office of Management and Budget (OMB) Circular regulations, found at 2 CFR Part 200. The CFDA Number for these funds is 20.205. Allowable costs will be determined in accordance with 2 CFR Part 200.

The CITY will maintain accurate cost accounting systems for all costs incurred under this Agreement and clearly identified with activities performed under this Agreement.

Upon reasonable notice, the CITY will allow the STATE, through any authorized representative to have access to and the right to examine and copy all records, books, papers, or documents related to services rendered under this Agreement. The CITY will keep these records clearly identified and readily accessible for a period of three (3) years after the date final payment under this Agreement is made and all other pending matters are closed.

If the CITY expends Seven Hundred Fifty Thousand Dollars (\$750,000.00) or more in federal funds during any CITY fiscal year covered, in whole or in part, under this Agreement, then the CITY will be subject to the single agency audit requirements of the US Office of Management and Budget (OMB) Circular regulations, found at 2 CFR Part 200. If the CITY expends less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) during any CITY fiscal year, the STATE may perform a more limited program or performance audit related to the completion of Agreement objectives, the eligibility of services or costs and adherence to Agreement provisions.

- N. The CITY will report to the STATE any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject the CITY, the STATE, or the STATE'S officers, agents, or employees to liability. The CITY will report any such event to the STATE immediately upon discovery.

The CITY'S obligation under this section will only be to report the occurrence of any event to the STATE and to make any other report provided for by their duty or applicable law. The CITY'S obligation to report will not require disclosure of any information subject to privilege or confidentiality under law (such as attorney-client communications). Reporting to the STATE under this section will not excuse or satisfy any obligation of the CITY to report any event to law enforcement or other entities under the requirements of any applicable law.

- O. The CITY may not assign, sublet, or transfer this Agreement or any interest in this Agreement without the STATE'S written permission to do so.
- P. The CITY certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- Q. The CITY certifies, to the best of the CITY'S knowledge and belief, that no federal appropriated funds have been paid or will be paid, by or on behalf of the CITY, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or cooperative Agreement. If any funds other than federal appropriated funds have been paid or will be paid to any of the above mentioned parties, the

CITY will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The CITY will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontract, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

- R. The CITY will be solely responsible for any damages to the Project, including but not limited to damages as a result of traffic accident impact and vandalism.
- S. The CITY will assume all risk of loss or damage to the Project, inclusive of free or unused materials, supplies, and equipment, however caused, resulting directly or indirectly, by reasons of the construction, repair, replacement, maintenance, removal, or use of the Project, and releases the STATE from any and all liability on account of such loss or damage, whether or not the negligence of the STATE contributed to this loss or damage in whole or in part.
- T. The CITY will be responsible for any injury or property damage suffered by any user of the Project traveling through or within the STATE'S right-of-way.
- U. The CITY will limit the use of the Project to use by the general public, and for no other purpose.
- V. If the CITY anticipates performing construction activities, the CITY will be required to furnish the STATE the following certificates of insurance and assure that the insurance is in effect for the life of this Agreement:
 - i. Commercial General Liability Insurance:

The CITY will maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it will apply separately to this Agreement or be no less than \$2,000,000.00.
 - ii. Business Automobile Liability Insurance:

The CITY will maintain business automobile liability insurance or equivalent form with a limit of not less than \$500,000.00 for each accident. Such insurance will include coverage for owned, hired, and non-owned vehicles.
 - iii. Workers' Compensation Insurance:

The CITY will procure and maintain workers' compensation coverage as required by South Dakota law.

III. THE PARTIES FURTHER UNDERSTAND AND MUTUALLY AGREE AS FOLLOWS:

- A. Neither the STATE nor the Federal Highway Administration will be responsible for any expenses or costs incurred by the CITY under this Agreement prior to the date of the STATE'S written Notice to Proceed.
- B. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement may be terminated by the STATE. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.
- C. This Agreement depends upon the continued availability of federally appropriated funds and expenditure authority from Congress for the Transportation Alternative Program. If for any reason Congress fails to appropriate Transportation Alternative Program funds or grant expenditure authority, or Transportation Alternative Program funds become unavailable by operation of law or

federal funds reductions, this Agreement may be terminated by the STATE. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.

- D. If any court of competent jurisdiction holds any provision of this Agreement unenforceable or invalid, such holding will not invalidate or render unenforceable any other provision of this Agreement.
- E. All other prior discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and, except as specifically provided in this Agreement, this Agreement constitutes the entire Agreement with respect to the subject matter.
- F. The STATE may terminate this Agreement with or without cause. If the CITY breaches any term or condition of this Agreement, the STATE may terminate this Agreement at any time with or without notice. If the STATE terminates this Agreement for such a default, the STATE may adjust any payment due to the CITY at the time of termination to cover any additional costs to the STATE due to the CITY'S default. If after the STATE terminates for a default by the CITY it is determined the CITY was not at fault, then the CITY will be paid for eligible services rendered and expenses incurred up to the date of termination.
- G. If the STATE terminates this Agreement for fault on the part of the CITY, the STATE will be entitled to recover payments made to the CITY.
- H. This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- I. This Agreement may not be amended, except in writing, which writing will be expressly identified as a part of this Agreement, and be signed by an authorized representative of each of the parties.
- J. Any dispute between the parties concerning this Agreement will be referred to the Secretary of the South Dakota Department of Transportation or duly authorized representative for determination, whose decision in the matter will be final and conclusive on the parties to this Agreement.
- K. Any notice or other communication required under this Agreement will be in writing and sent to the STATE at 700 East Broadway, Pierre, SD 57501-2586. Notices will be given by and to Jerry Ortbahn, Office of Project Development on behalf of the STATE, and by and to Jared Carson, Mayor, on behalf of the CITY, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties will be deemed to have been delivered when mailed by first class mail, or, if personally delivered, when received by such party; provided, however, that notice of default or termination will be sent by registered or certified mail.
- L. The STATE may, at any time, revoke this Agreement and notify the CITY that the CITY must remove or permit the removal of the Project from the right-of-way by a date certain. Removal of the Project will consist of removing the sidewalk and back-filling the disturbed area to maintain or restore adequate stability. If revocation of this Agreement is due to a proposed change in the highway, the STATE will give the CITY at least ninety (90) days' written notice of the need to remove the Project. Upon notification from the STATE that the Project must be removed, the CITY will, at the CITY'S sole cost and expense, remove the Project from the right-of-way no later than the date designated by the STATE. The CITY will not be entitled to any compensation of any kind for removal of the Project from the right-of-way. If the CITY does not remove the Project by the designated deadline, the STATE may remove and dispose of the Project. The parties agree that removal of the Project from the right-of-way may entail removal of those portions of the Project which do not occupy the right-of-way. The CITY will hold the STATE, its employees, officers, agents, and contractors, harmless for any damage to the Project, including any portion of the Project which does not occupy the right-of-way, and for any damage to the CITY'S property.

IV. TERM

The effective date of this Agreement will be the date this Agreement is signed by the STATE'S Project Development Engineer. The CITY will complete the work contemplated by this Agreement within three (3) years of this Agreement's effective date.

V. SIGNATURE AUTHORITY. The CITY has designated its Mayor as the CITY'S authorized representative and has empowered the Mayor with the authority to sign this Agreement on behalf of the CITY. A copy of the CITY'S Commission minutes or resolution authorizing the execution of this Agreement by the CITY'S authorized representative is attached to this Agreement as **Exhibit C**.

The CITY and the STATE, by signing this Agreement, evidence authority to enter into this Agreement through formal action of their governing bodies.

City of Custer, South Dakota

State of South Dakota
Department of Transportation

By: _____

By: _____

Its: Mayor

Its: Project Development Engineer

Date: _____

Date: _____

Attest:

City Auditor/Clerk

(City Seal)

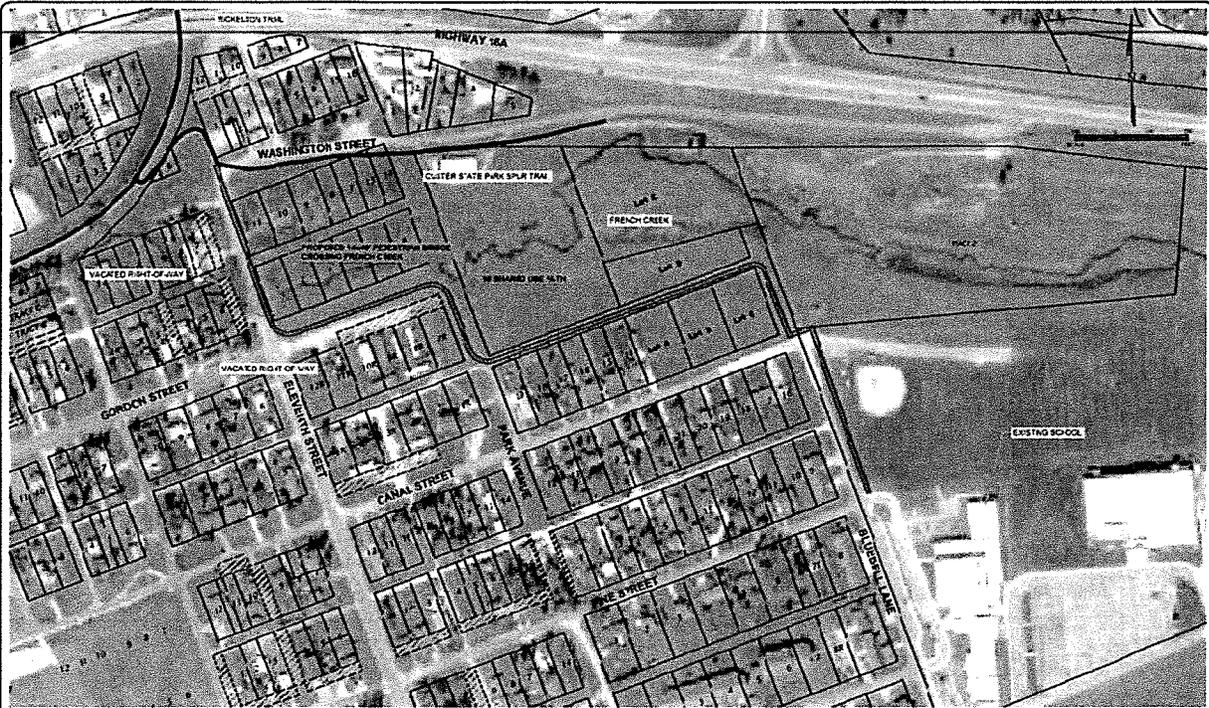


CONCEPTUAL OPINION OF CONSTRUCTION COSTS

CITY OF CUSTER, SOUTH DAKOTA

09/16/2016

BID ITEM	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL
1	Mobilization, Insurance, Bonding	1	LS	\$40,000.00	\$40,000.00
2	Clearing	1	LS	\$5,500.00	\$5,500.00
3	Unclassified Excavation	2,000	CY	\$6.00	\$12,000.00
4	Removal of Existing Concrete	300	SY	\$10.00	\$3,000.00
5	Remove and Reset Sign	3	EA	\$100.00	\$300.00
6	2" Thick Gravel Cushion	370	Ton	\$35.00	\$12,950.00
7	6" Thick, 10' Wide Reinforced Concrete Sidewalk	25,580	SF	\$9.00	\$230,220.00
8	6" Thick, Reinforced Concrete Driveway	67	SY	\$75.00	\$5,025.00
9	ADA Truncated Domes	120	SF	\$58.00	\$6,960.00
10	Storm Drain Pipe	100	LF	\$60.00	\$6,000.00
11	Storm Drain Flared End Section	2	EA	\$650.00	\$1,300.00
12	14' x 40' Pedestrian Bridge	1	EA	\$53,500.00	\$53,500.00
13	Bridge Abutments & Scour Protection	1	LS	\$50,000.00	\$50,000.00
14	Pavement Marking Paint (24" Wide)	150	LF	\$15.00	\$2,250.00
15	Seeding, Erosion Control & Fine Grading	1	LS	\$10,000.00	\$10,000.00
16	Traffic Control	1	LS	\$3,500.00	\$3,500.00
17	Construction Staking	1	LS	\$10,000.00	\$10,000.00
	CONSTRUCTION COSTS				\$452,505.00
	Contingency (10%)	1	LS	\$45,250.50	\$45,250.50
	Engineering & Surveying (15%)	1	LS	\$67,875.75	\$67,875.75
	Construction Administration (15%)	1	LS	\$67,875.75	\$67,875.75
	Total				\$633,507.00



STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATIONSTANDARD TITLE VI/NONDISCRIMINATION ASSURANCES
APPENDIX A & E

MARCH 1, 2016

During the performance of this contract, the CITY, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this contract, the CITY, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).



Planning Department
622 Crook Street
Custer, SD. 57730
Phone: 673-4824 Fax: 673-2411

Staff Report

Request: Preliminary Plat of Lots 1 and 2 of Bauer-2 Tract and Revised Tract B2 of Saxton Subdivision in Section 27, T3S, R4E
Applicant: Jack Bondurant
Location: 25158 Little Teton Rd.
Legal Desc.: Bauer-2 Tract and Revised Tract B2 of Saxton Subdivision in Section 27, T3S, R4E
Date: March 30, 2017
City Council Meeting: April 3, 2017
Prepared by Elmer Claycomb, P.E., Interim Planning Administrator

GENERAL

The plat is for land that is adjacent to the NW corner of the City. Under SDCL 11-3-6 the City is responsible for reviewing and approving plats adjoining the City. This is not an issue of the 3 mile extraterritorial area. A copy of SDCL 11-3-6 is included at the end of this staff report.

The plat splits 1.39 acres off the existing Bauer-2 Tract and adds them to existing Revised Tract B2. Bauer-2 Tract is in the county so there is no zoning. Revised Tract B2 is zoned Highway commercial.

The existing home on Bauer-2 Tract is served by a private well and wastewater system. Access is from Little Teton Road. Revised Tract B2 has a "40' wide private driveway access and utility easement" extending to Little Teton Road. The intended use of Lot 2 created by the plat is for guest cabins.

COMPREHENSIVE PLAN

The Comprehensive Plan shows the area as Countryside Residential which has a minimum lot size of 5 acres. A copy of the portion of the Comprehensive Plan Land Use Study for this area is attached.

ROUTING SHEET COMMENTS – THE FOLLOWING COMMENTS WERE RECEIVED BASED ON THE ORIGINAL PRELIMINARY PLAT ROUTING SHEETS. ROUTING SHEETS HAVE NOT YET BEEN SENT OUT FOR THE REVISED PLAT.

Black Hills Power - We have a powerline that runs up the driveway all the way to the end.

County Register of Deeds – Under Notes should say that French Creek Road is also a driveway for Lot 2?

County Planning - The County would require a public access easement or ROW. French Road will not meet City or County Requirements. Parcel is contiguous to City. City Code requires annexation. Lot 1 and Alpha were too high for existing water utility, so annexation might be waived.

SDDOT – No comment

County GIS - With two addresses already assigned to this access (25156/25158 Little Teton Rd) you may want to consider a named road if any future addressing is required.

ISSUES TO CONSIDER/RESOLVE

PLANNING COMMISSION ACTIONS

The Preliminary Plat was first considered by the Planning Commission on March 14, 2017. The Commission felt there were too many unanswered questions regarding the following issues:

The plat would create 2 lots that are both smaller than the size recommended by the Comprehensive Plan.

Three parcels would be served by the southern portion of French Road. The County regulations limit the number of parcels served by a private access easement to two. Also, without adding Lot 2 to the users of the easement it leaves the Lot without legal access.

City Council Resolution 06-17-02B requires that any area contiguous to the incorporated limits of the City which the owner desires to have platted shall first be annexed into the City before approval of the Final Plat.

The Planning Commission therefore tabled the Preliminary Plat to the March 28, 2017 meeting.

The revised Preliminary Plat and Proposed Development Agreement were addressed at the March 28th meeting. The Preliminary Plat had been revised following meetings with the Mayor and Public Works Director to deal with the concerns raised by the Planning Commission. The Development Agreement lists the steps needed to accomplish annexation and zoning of the portion of Bauer-2 Tract that will become a portion of Lot 2.

The following motion was made, seconded, and approved by a 2 to 1 vote:

recommend approval of the Preliminary Plat with the addition of a public utility easement from Little Teton Road to the south line of Revised Tract B2 along the alignment of the current private access easement (French Road).

SDCL 11-3-6. Municipal approval for adjoining addition or subdivision--Conformity to existing plats and regulations--Taxes and special assessments--Certification--Appeal of denial. The provisions of this chapter apply to every addition to, or subdivision within, any county, municipality, or unincorporated town. If the land or any part of the land included in any addition or subdivision is within, adjoining, or contiguous to the boundaries of any municipality, the plat, before being recorded, shall be submitted to the governing body or, if applicable, the planning director of the municipality. If it appears that the system of streets set forth therein conforms to the system of streets of the existing plats of the municipality, that all provisions of any subdivision regulations have been complied with, that all taxes and special assessments upon the tract or subdivision have been fully paid, and that such plat and the survey thereof have been executed according to law, the governing body shall, by resolution, approve the plat. The governing body may by resolution designate an administrative official of the municipality to approve plats in lieu of approval by the governing body. The auditor or finance officer shall endorse on the face of the plat a copy of the resolution or the designated administrative official's approval and certify to the same. No plat of any such addition or subdivision so situated may be recorded unless the plat bears on its face a copy of the resolution or approval and certificate of the auditor or finance officer. If the designated administrative official denies the plat request, the person requesting the plat may appeal to the governing body.

Source: SDC 1939, § 45.2806; SL 1959, ch 272, § 2; SL 1979, ch 93, § 7; SL 1997, ch 74, § 1; SL 2006, ch 64, § 1.



622 Crook Street
Custer, SD 57730

Phone: (605) 673-4824
mayor@cityofcuster.com

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is entered into this ____ day of _____, 20 ____, by and among Darwin Rabenberg (hereinafter referred to as "Developer"), and the City of Custer City, South Dakota, a South Dakota municipal corporation (hereinafter referred to as "City").

DECLARATIONS

WHEREAS, Developer has proposed the development of (legal description): A portion of Bauer-2 Tract of Saxton Subdivision located in Section 27, T3S, R4E, BHM, Custer County, SD, more particularly described as follows: Beginning at the southeast corner of Bauer-2 Tract of Saxton Subdivision, which is also the northeast corner of Revised Tract B2 of Saxton Subdivision; thence along the north line of Revised Tract B2 S89°40'01"W a distance of 374.37 feet to the northwest corner of Revised Tract B2; thence N25°21'39"E a distance of 86.64 feet; thence on a curve to the right with a cord bearing of N33°11'16"E and a radius of 80.00 feet, a distance of 21.86 feet; thence N41°00'53"E a distance of 133.60 feet; thence S87°04'25"E a distance of 237.70 feet more or less to a point on East line of Bauer-2 Tract; thence along the East line of Bauer-2 Tract S00°05'02"E a distance of 183.02 feet more or less to the point of beginning, containing 1.39 acres more or less, (hereinafter referred to as the "Property");

WHEREAS, The Property is adjacent to the City's current municipal limits making any development of the Property subject to review by the City; and

WHEREAS, the Developer and the City desire to see the process of development of the Property proceed in a smooth and coordinated manner;

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants, and agreements contained in this Agreement and other good and valuable considerations, the receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby as follows:

- A. The Developer agrees to submit a signed Petition for Voluntary Annexation of the Property to the City Planning & Zoning Administrator no later than five business days after closing on the purchase of the Property.
- B. The City agrees to assign the Highway Commercial Zoning District for the property as part of the Resolution Accepting the Voluntary Annexation of the Property as shown on the attached Exhibit A.



622 Crook Street
Custer, SD 57730

Phone: (605) 673-4824
mavor@cityofcuster.com

- C. Exhibit A also shows allowable access locations to adjoining streets.
- D. The Developer understands that any subdivision and/or development of the Property must be done in compliance with the City's Zoning and Subdivision Regulations and Design Standards unless otherwise first agreed to by the City.
- E. The City agrees to not require any stormwater or drainage basin analysis by the Developer for areas beyond the limits of the Property.
- F. The City needs to install a water main across the Property to possibly serve some of the future development of the Property. The Developer agrees that any future lots on the Property that will use this water main will be subject to cost recovery for the main, and that utility easements will be created by the Developer to benefit the City.

This Agreement, including the introductory and recital paragraphs contained herein, and any exhibits attached, contains the entire agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension, or discharge is sought. A waiver of any term or provision shall not be construed as waiver of any other term or provisions or as waiver of subsequent performance of the same provision of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

City of Custer City, South Dakota

Mayor

Attest _____

Developer

2031 COMPREHENSIVE PLAN

BAUER-2
TRACT

Not in City

Legend

- City Limit
- County/Parishes
- PUBLIC
- URBAN_COMMERCIAL
- SUBURBAN_COMMERCIAL
- INDUSTRIAL
- SUBURBAN_RESIDENTIAL
- COUNTRYSIDE_RESIDENTIAL
- FOREST_AGRICULTURE
- RURAL_RESIDENTIAL