

All City Council Meetings are recorded.

**CITY OF CUSTER CITY  
COUNCIL AGENDA - REVISED  
October 16<sup>th</sup>, 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 – October 2<sup>nd</sup>, 2017 Regular Meeting Minutes
4. Declaration of Conflict of Interest
5. Public Presentations - Public Hearings
  - a. Second Reading - Ordinance #795 - Rezoning Block 96 – Lynn's Dakotamart
  - b.
  - c.
  - d.
  - e.
6. Old Business
  - a. Harbach Park Master Plan Contract - KLJ
  - b. Wastewater Treatment Plant Improvements Request for Proposals
  - c. Preliminary Plat – Keupp Subdivision
7. New Business
  - a. Final Plat – Block 132
  - b. Planning Commission Appointment
  - c. Custer Cruisin Committee Appointment
  - d. Alcoholic Beverage License Operating Agreement
  - e.
8. Presentation of Claims –
9. Department Head Discussion & Committee Reports –
10. Executive Session – Personnel, Proposed Litigation, & Contract Negotiations (SDCL 1-25-2)
11. Adjournment

**REMINDERS**

**Park & Recreation Committee Meeting – October 17<sup>th</sup>, 2017 5:30 P.M.  
Public Works Committee Meeting – November 6<sup>th</sup>, 2017 4:00 P.M.  
Regular City Council Meeting – November 6<sup>th</sup>, 2017 5:30 P.M.  
General Government Committee Meeting – November 13<sup>th</sup>, 2017 4:30 P.M.  
Planning Commission Meeting – November 14<sup>th</sup>, 2017 5:00 P.M.  
Regular City Council Meeting – November 20<sup>th</sup>, 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  
COUNCIL PROCEEDINGS- REGULAR SESSION  
October 2<sup>nd</sup>, 2017**

Council President Larry Maciejewski called to order the first meeting of the Common Council for the month of October, 2017 at 5:30 p.m. Present at roll call were Councilpersons Maciejewski, Heinrich, Nielsen and Blom. City Attorney Chris Beesley was also present. The Pledge of Allegiance was stated.

**AGENDA**

Councilperson Heinrich moved to approve the agenda. Second by Councilperson Blom, the motion unanimously carried.

**MINUTES**

Councilperson Nielsen moved, with a second by Councilperson Blom, to approve the minutes from the September 18<sup>th</sup> regular and special council meetings. The motion carried with Councilperson Maciejewski, Heinrich, Nielsen and Blom voting yes, while Councilperson Fischer abstained.

**CONFLICTS OF INTEREST**

No conflicts of interest were stated.

**PUBLIC HEARING – FIRST READING – ORDINANCE #795 – REZONING BLOCK 96 – LYNN’S DAKOTAMART**

Councilperson Heinrich moved to approve Ordinance #795, Rezoning Block 96 – Lynn’s Dakotamart. Seconded by Councilperson Nielsen, the motion unanimously carried.

**DOG PARK – LANE ARTHUR**

Lane Arthur, Custer High School Senior, made a presentation to Council regarding a Dog Park being placed on City Property located at Eleventh Street & Washington Street. Councilperson Fischer moved to authorize up to one acre of City Property located at Eleventh Street & Washington Street to be used as a dog park. Seconded by Councilperson Heinrich, the motion unanimously carried.

**EXECUTIVE PROCLAMATION – WORLD HABITAT DAY**

Councilperson Fischer moved to approve the Executive Proclamation for World Habitat Day. Seconded by Councilperson Heinrich, the motion unanimously carried.

**EXECUTIVE PROCLAMATION**

WHEREAS, on a global scale, about 1 in 4 people live in conditions that harm their health, safety, prosperity and opportunities; and

WHEREAS, on a local level, 955 people were homeless in South Dakota in 2017.

WHEREAS, secure tenure not only facilitates opportunities for investment and wealth accumulation, but also provides a source of identity, status and political power and serves as a basis for the pursuit of other rights; and

WHEREAS, the United Nations General Assembly has declared the first Monday in October as World Habitat Day, a time to unite in a worldwide effort to eradicate poverty housing. By raising awareness and advocating for universal decent housing, we can change the systems that reinforce poverty housing and make affordable homes a reality for all; and

WHEREAS, in recognition of World Habitat Day 2017, Black Hills Area Habitat for Humanity will continue to build and preserve simple, decent, affordable housing for families in the Black Hills, and will continue to address the lack of decent housing around the world while reducing environmental impact by recycling building materials through Habitat ReStores.

THEREFORE, BE IT RESOLVED that I, Corbin Herman, Mayor of the City of Custer, South Dakota, do hereby proclaim October 2<sup>nd</sup>, 2017, and the first Monday of every October, to be

WORLD HABITAT DAY in the City of Custer, SD

In witness thereof, I have hereunto set my hand and caused the Seal of the City of Custer City to be affixed this second day of October in the year of our Lord Two Thousand and seventeen.

CITY OF CUSTER CITY

S/Corbin Herman, Mayor

ATTEST: Laurie Woodward, Finance Officer

**RESOLUTION #10-02-17A – CDBG FUNDING**

Councilperson Fischer moved to adopt Resolution #10-02-17A, Community Development Block Grant Funding. Seconded by Councilperson Heinrich, the motion unanimously carried.

RESOLUTION 10-02-17A  
CDBG Application Resolution

WHEREAS, the United States Department of Housing and Urban Development provides funding through annual allocations to the Community Development Block Grants to fund a variety of different projects in small cities and rural areas;

WHEREAS, the City of Custer, has identified the need to apply for a Community Development Block Grant (CDBG) for the Custer Community Center project; and,

WHEREAS, with the submission of the CDBG Application, the City of Custer assures and certifies that all CDBG Program requirements will be fulfilled;

NOW THEREFORE BE IT RESOLVED that the Mayor is hereby authorized to sign the CDBG application on behalf of the City of Custer City;

IT IS FURTHER RESOLVED the Finance Officer is hereby authorized and directed to furnish all needed information the above-mentioned agency may reasonably request in connection with the above authorized application, and to work with the Black Hills Council of Local Government on the submittal of such application.

Dated this 2<sup>nd</sup> day of October, 2017.

City of Custer City

S/Corbin Herman, Mayor

ATTEST: Laurie Woodward, Finance Officer

**CHAMBER DIRECTORY & RELOCATION GUIDE**

Charlie Najacht with the Custer Chronicle spoke to Council regarding the 2018 Custer Area Chamber Business & Membership Directory. Councilperson Fischer moved to approve the placement of a half page ad in the Directory for \$695. Seconded by Councilperson Heinrich. Councilperson Fischer and Heinrich amended the motion and second to include an additional \$25 for a "click it" feature. The motion carried with Councilperson Heinrich, Nielsen, Fischer, Blom and Maciejewski voting yes.

**MONSTER MASH DASH REQUEST – CUSTER YMCA**

Councilperson Heinrich moved to approve the Custer YMCA's request to place crossing guards along the Fourth Street and Second Street crossings for the Monster Mash Dash Run on October 21<sup>st</sup>, 2017. Seconded by Councilperson Blom, the motion unanimously carried.

**PRELIMINARY PLAT – KEUPP SUBDIVISION**

Councilperson Fischer moved to approve the preliminary plat for Keupp Subdivision. Seconded by Councilperson Blom, the motion unanimously carried.

**REBUILD OF TRAIL TO BIG ROCK OVERLOOK RFP'S**

Councilperson Heinrich moved to reject the only proposal received for the rebuild of trail to Big Rock Overlook, which was from Dakota Greens Rock & Landscape for \$35,668.97. Seconded by Councilperson Blom, the motion carried with Councilperson Nielsen, Fischer, Blom, Maciejewski and Heinrich voting yes.

**HARBACH PARK MASTER PLAN CONTRACT - KLJ**

Councilperson Nielsen moved to table the Harbach Park Master Plan contract until the next meeting to allow the Attorney time to review the questions that were presented regarding the contract. Seconded by Councilperson Nielsen, the motion unanimously carried.

**WASTEWATER TREATMENT PLANT IMPROVEMENTS REQUEST FOR PROPOSALS**

Councilperson Fischer moved to table the Wastewater Treatment Plant improvements request for proposals until the next Council Meeting. Seconded by Councilperson Blom, the motion unanimously carried.

**HEALTH INSURANCE**

Councilperson Nielsen moved to approve the 2018 Health Insurance Policy and renewal options as presented. Seconded by Councilperson Fischer, the motion carried with Councilperson Fischer, Blom, Maciejewski, Heinrich and Nielsen voting yes.

**EMPLOYEE RESIGNATION**

Councilperson Blom moved to accept David Warfel's resignation effective October 5<sup>th</sup>, 2017. Seconded by Councilperson Nielsen, the motion unanimously carried.

**CLAIMS**

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

AE2S, Professional Fees, \$7,439.40

AFLAC, Insurance, \$660.28

AFSCME Council 65, Dues, \$173.26

Battle Mountain Humane Society, Animal Control Contract, \$800.00

Beesley Law Office, Professional Fees, \$2,480.00

Black Hills Energy, Utilities, \$2,614.44  
Century Business Products, Supplies, \$178.89  
Custer Car Wash, Supplies, \$21.50  
Custer County Treasurer, Law Enforcement, \$80,000.00  
Custer Do It Best, Supplies, Repair & Maintenance, \$26.48  
Delta Dental, Insurance, \$232.60  
EFTPS, Taxes, \$12,460.11  
First Interstate Bank, Supplies, \$103.53  
Garland Goff Attorney at Law, Professional Fees, \$254.00  
G & R Controls INC, Repair & Maintenance, \$444.38  
Gunderson, Palmer, Nelson & Ashmore, Professional Fees, \$1,669.94  
Midco Diving, Repair & Maintenance, \$2,499.00  
Robert Morrison, Reimbursement, \$300.00  
Muth Electric, Repair & Maintenance, \$4,163.20  
Northwest Pipe Fitting, Supplies, \$400.04  
Petty Cash, Supplies, \$397.86  
Pitney Bowes, Supplies, \$500.00  
Power House, Supplies, \$47.04  
Pace, Supplies, \$302.56  
PayPal, Supplies, \$30.00  
RCS Construction, Capital Improvements, \$191,500.00  
State of SD, Sales Tax, \$982.22  
Supplemental Retirement, \$350.00  
SD Retirement System, \$5,560.58  
Walker, Gaile, Safety, \$175.00  
Wellmark, Insurance, \$9,045.20  
Health Insurance Deductible Reimbursement, \$2,000.00  
Mayor & Council, \$4,400.00  
Finance Department, \$4,739.14  
Public Buildings, \$2,637.14  
Planning Department, \$6,380.91  
Public Works Department, \$2,939.67  
Street Department, \$6,924.97  
Cruisin Department, \$91.05  
Parks Department, \$1,446.55  
Water Department, \$11,029.77  
Wastewater department, \$10,976.91  
Total Claims, \$379,377.62

**DEPARTMENT HEADS & COMMITTEE REPORTS**

Various committee reports were given in addition to department heads giving an update.

**EXECUTIVE SESSION**

Councilperson Fischer moved to go into and out of executive session for personnel and contract negotiations per SDCL 1-25-2(1-4) at 6:42 pm, with the Attorney, Planning Administrator and Finance Officer present. Seconded by Councilperson Heinrich, the motion unanimously carried. Council came out of executive session at 6:50 pm, with no action taken.

**NEW HIRES**

Councilperson Fischer moved to approve hiring Jeff Clark and Richard Kothe as Inter Department Operators at \$14.50 per hour contingent upon successful completion of background check, drug test and pre-employment physical & work screening. Seconded by Councilperson Blom, the motion unanimously carried.

**ADJOURNMENT**

With no further business, Councilperson President Maciejewski adjourn the meeting.

ATTEST:

CITY OF CUSTER CITY

Laurie Woodward  
Finance Officer

Larry Maciejewski  
Council President

ORDINANCE NO. 795

AN ORDINANCE ENTITLED "AN ORDINANCE AMENDING CUSTER CITY MUNICIPAL CODE, TITLE 17 ZONING BY REZONING CERTAIN PROPERTIES TO HIGHWAY COMMERCIAL ZONING DISTRICT."

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF CUSTER CITY, SOUTH DAKOTA THAT Title 17 Chapter 17.20 Central Business District of the Custer Municipal Code be amended by Rezoning the following property from Parks to Central Business Zoning District, and the same shall be subject to the provision of Chapter 17.20:

LOTS 1,2,3,4,5,6 OF BLOCK 96 INCLUDING THE SOUTH 15 FEET OF THE VACATED E/W ALLEY CONTIGOUS TO LOTS 1,2,3 PLUS THE EAST-WEST ALLEY BETWEEN THE EAST LINE OF THE PREVIOUSLY VACATED EAST-WEST ALLEY AND WEST LINE OF 9<sup>TH</sup> STREET, BLOCK 96; AND THE NORTH-SOUTH ALLEY BETWEEN THE SOUTH LINE OF THE PREVIOUSLY VACATED NORTH-SOUTH ALLEY AND NORTH LINE OF WASHINGTON STREET, BLOCK 96; NOT PREVIOUSLY ZONED CENTRAL BUISNESS BY ORDINANCE #644

Dated this 16<sup>th</sup> day of October 2017, at the City of Custer City, South Dakota.

CITY OF CUSTER CITY

ATTEST:

Corbin Herman, Mayor

Laurie Woodward  
Finance Officer

(SEAL)

First Reading: October 2<sup>nd</sup>, 2017  
Seconding Reading: October 16<sup>th</sup>, 2017  
Publication: October 25<sup>th</sup>, 2017

Vote:  
Fisher:                   Arseneault:  
Heinrich:               Blom:  
Nielsen:                 Maciejewski:





Planning Department  
622 Crook Street  
Custer, SD. 57730  
Phone: 673-4824 Fax: 673-2411  
e-mail: timh@cityofcuster.com

#### Staff Report

Request: Zoning Change, Block 96  
Applicant: Lynns Dakotamart  
Location: See Information Below and attached "Exhibit A"  
Date: August 21, 2017  
City Council Meeting: October 2, 2017  
Prepared by Tim Hartmann, Planning Administrator

#### **GENERAL**

The owner has made a request to rezone a large portion of Block 96. The proposed zoning change will include lots 1,2,3,4,5 and 6, along with the south 15 feet of the vacated e/w alley, contiguous to lots 1,2,3 plus the east-west alley between the east line of the previously vacated east-west alley and west line of 9th street. Also including the north-south alley between the south line of the previously vacated north-south alley and north line of Washington Street, Block 96.

The abutting property (north side of block 96) is currently zoned Central Business.

The owner wishes to rezone to provide for future development and services in the immediate area. The change in zone would allow for Tesla Inc. to construct and install additional electric car chargers for all Tesla Owners to utilize.

#### **PROPOSED ZONE CHANGE**

Staff is suggesting Central Business District due the location of the proposed zoning change. Central Business or Highway Commercial Zone would both lend themselves well to the planned developments. With no highway frontage and in an effort to keep continuity on the official zoning map Central Business seems most applicable.

#### **FLOOD PLAIN PROXIMITY**

A large portion of the land within this zoning change is currently affected by flood plain. Although the zoning change may lend itself to a wider range of possible building and development on the location, all flood plain building stipulations will govern flood plain development.

#### **PUBLIC HEARING**

A Public Hearing was held at the September 18, 2017 Planning Commission Meeting.  
A Public Hearing was held at the October 2, 2017 City Council Meeting.

## **ALLEY VACATIONS IN THE AREA**

Resolution 09-18-2017A - It is planned to vacate the full width of the East-West Alley between the East line of the previously vacated East-West Alley and West line of 9<sup>th</sup> Street and the full width of the North-South Alley between the South Line of the previously vacated North-South Alley and the North Line of Washington Street. Provided the alley vacations are approved prior to finalization of the zoning change, this zone change is planned to include those alleys. **Approved**

After a review of the area, previous vacations within block 96 include.

- Resolution – 11-19-73
  - East West Alley between the East line of 8<sup>th</sup> Street and West line of the North-South alley
  - East 25' of 8<sup>th</sup> street between Mount Rushmore Road and the South line of the East-West Alley, contiguous to Lot 12
    - Both Vacations Subject to an Easement and Right-of-Way for the location and maintenance of existent and future public and private utilities and appurtenant facilities.
- Resolution - 11-7-77
  - North-South Alley from the South Line of Mount Rushmore Road to the North line of the East-West alley, and contiguous to lots 9 & 10
    - Vacation Subject to easements and rights-of-way, covenants, restrictions and reservations.

## **STAFF RECOMMENDATIONS**

Resolution 09-18-2017A has been approved and filed with the CC Register of Deeds. This will now allow the City to move forward with this zoning change to provide for positive community development in area. Staff supports the zone change.

## **RECCOMENDATIONS BY PLANNING COMMISSION**

The Planning Commission reviewed this zoning change at the September 12<sup>th</sup>, 2017 meeting. After some discussion, commission member Dvorak moved, with a second by commission member Uhrich to recommend approval by the City Council of the zoning change. The motion was contingent upon official approval of Res 09-18-17A, which has now been approved and recorded. This motion unanimously carried.

## **PREVIOUS ACTION BY THE CITY COUNCIL**

The council reviewed and approved the first reading of Ordinance #795 at the October 2, 2017 regular council meeting.

Agreement No. 10417110-001 (Harbach  
Park Master Plan)

AGREEMENT FOR PROFESSIONAL SERVICES  
FOR ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING, OR  
LAND SURVEYING SERVICES ONLY

This Agreement for Consulting Services ("Agreement") is made and entered into in the County of Custer, State of South Dakota, this 3rd day of **October, 2017**, by and between the City of Custer City, a municipal corporation hereinafter ("City"), and **Kadrmass, Lee & Jackson, Inc.** hereinafter ("Consultant").

WHEREAS, City desires to hire Consultant to perform certain professional services specified herein as either architectural, landscape architectural, engineering, or land surveying services; and

WHEREAS, Consultant represents that Consultant and/or Consultant's personnel have the qualifications and experience to properly perform such services:

NOW, THEREFORE, City and Consultant hereby agree as follows:

1. Scope of Services

Consultant shall furnish City with professional consulting services as more particularly set forth in Exhibit B attached hereto and incorporated herein by this reference as though set forth in full herein. The City and Consultant agree that this Agreement shall serve as the Basic Services Agreement for multiple small projects that City wishes to complete employing Consultant. Each task order under this Agreement shall be sequentially numbered.

2. Method of Performing Services

Subject to the terms and conditions of this Agreement, Consultant may determine the method, details, and means of performing the services described herein.

3. Standard of Performance

Consultant agrees to undertake and complete these services to conclusion, using that standard of care, skill, and diligence normally provided by a professional person in performance of similar consulting services.

4. Nonexclusive Services

This Agreement shall not be interpreted to prevent or preclude Consultant from rendering any services for Consultant's own account or to any other person or entity as Consultant in its sole discretion shall determine. Consultant agrees that performing such services will not materially interfere with services to be performed for the City, nor shall this agreement prevent or preclude the City from procuring services covered under this agreement from other consulting firms if deemed in best interest of the City.

#### 5. Coordination of Services

All services are to be coordinated by or with the Public Works Director (PWD) or Designee, subject to the direction of the City of Custer Common Council.

#### 6. Place of Work

Consultant shall perform the services provided for in this Agreement at any place or location and at such times as the Consultant shall solely determine.

#### 7. Correction of Errors

Consultant agrees to correct, at its expense, all errors which may be disclosed during review of Consultant's services. Should Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be paid by Consultant.

#### 8. Time for Performance

All services performed under this Agreement shall be completed pursuant to the schedule provided in Exhibit B attached hereto and incorporated by this reference as though or if set forth in full herein. City agrees to amend the performance termination date whenever Consultant is delayed by action or inaction of City and Consultant promptly notifies Manager of such delays.

#### 9. Principal in Charge

Consultant hereby designates **Mike Bender, PLA** as its principal-in-charge and person responsible for necessary coordination with Manager.

#### 10. Permits, Licenses, Certificates

Consultant, at Consultant's sole expense, shall obtain and maintain during the term of this Agreement, all permits, licenses, and certificates required in connection with the performance of services under this Agreement, including a City business license.

#### 11. City's Responsibility

City shall cooperate with Consultant as may be reasonably necessary for Consultant to perform its services. City agrees to provide direction to Consultant as requested regarding particular project requirements.

#### 12. Term of Agreement

This Agreement shall begin on **October 3, 2017**, and expire on **March 31, 2018**. There may be multi-year options to renew this agreement.

#### 13. Termination

a. This Agreement may be terminated by City if City notifies Consultant, in writing, of City's desire to terminate the Agreement. Such termination shall be effective ten calendar days from the date of delivery or mailing of such notice. City agrees to pay Consultant in full for all amounts due Consultant as of the effective date of termination, including any expenditures incurred on City's behalf, whether for the employment of third parties or otherwise.

b. This Agreement may be terminated by Consultant if Consultant notifies City, in writing, of Consultant's desire to terminate the Agreement. Such termination shall be effective ten calendar days from the date of delivery or mailing of such notice and only if all assignments accepted by Consultant have been completed prior to the date of termination.

#### 14. Compensation

a. City agrees to pay Consultant in an amount not to exceed **\$19,000** for services provided under this Agreement at rates provided in Exhibit C attached hereto and incorporated by this reference as though or if set forth in full herein.

b. The acceptance by Consultant of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for work completed, finished or relating to Consultant's services.

c. Consultant agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant or its employees, subcontractors, agents and subconsultants for the accuracy and competency of the information provided and/or services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the services performed by Consultant, its employees, subcontractors, agents and subconsultants.

d. Consultant shall provide City with a completed Request for Taxpayer Identification Number and Certification, as issued by the Internal Revenue Service.

e. If any sales tax is due for services performed by Consultant or materials or products provided to City by Consultant, Consultant shall pay the sales tax. City shall not reimburse Consultant for sales taxes paid by Consultant.

#### 15. Method of Payment

a. City agrees to pay Consultant monthly upon satisfactory completion of the services and upon submission by Consultant of an invoice delineating the services performed, in a form satisfactory to City. The invoice shall identify services by project as specified by City.

b. Consultant agrees to maintain current monthly records, books, documents, papers, accounts and other evidence pertaining to the services performed and costs incurred. Such items shall be adequate to reflect the time involved and cost of performing the services. Consultant shall provide Manager with copies of payroll distribution, receipted bills and other documents requested for justification of the invoice.

#### 16. Responsibility for Expenses

Except as otherwise expressly provided in this Agreement, City shall not be responsible for expenses incurred by Consultant in performing services under this Agreement. All expenses incident to the performance of services under this Agreement shall be borne by the Consultant, including, but not limited to rent, vehicle, and travel, entertainment and promotion, general liability and health insurance, workers' compensation insurance, and all compensation and benefits of employees, subcontractors, agents and subconsultants engaged by Consultant. Consultant shall, at its own cost and expense, supply all personal property necessary or appropriate to perform the services provided for under this Agreement, including, but not limited to any personal property used by employees, subcontractors, agents and subconsultants of Consultant in the performance of such services.

#### 17. Non-Appropriation of Funds

Payments to be made to Consultant by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted and unencumbered appropriation of City. In the event City does not appropriate sufficient funds for payment of Consultant's services beyond the current fiscal year, this Agreement shall cover payment for Consultant's services only up to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year unless specifically extended by City.

## 18. Records

a. Consultant agrees that all final computations, exhibits, files, plans, correspondence, reports, drawings, designs, data and photographs which are expressed as deliverables by Consultant as part of the scope of services ("documents and materials") shall be the property of City and shall, upon completion of the services or termination of this Agreement, be delivered to City. In the event the City uses the documents and materials in a manner beyond performing services of planning for this project intended, including but not limited to making modifications or additions to the documents and materials, without written verification of the Consultant, the City releases the Consultant from all claims and causes of action arising from such uses. The City, to the extent permitted by law, further agrees to indemnify and hold harmless the Consultant from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the City's use of the document and materials.

b. At City's request, City shall be entitled to immediate possession of, and Consultant shall furnish to City within ten days, all of the documents and materials. Consultant may retain copies of these documents and materials.

c. Any substantive modification of the documents and materials by City staff or any use of the completed documents and materials for other City projects, or any use of uncompleted documents and materials, without the written consent of Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant. City agrees to hold Consultant harmless from all damages, claims, expenses and losses arising out of any reuse of the documents and materials for purposes other than those described in this Agreement, unless Consultant consents in writing to such reuse.

## 19. Maintenance and Inspection of Records

Consultant agrees that City or its auditors shall have access to and the right to audit and reproduce any of Consultant's relevant records to ensure that City is receiving all services to which City is entitled under this Agreement, or for other purposes relating to this Agreement. Consultant shall maintain and preserve all such records for a period of at least three years after the expiration of this Agreement, or until an audit has been completed and accepted by City. Consultant agrees to maintain all such records in City Finance Office, or to promptly reimburse City for all reasonable costs incurred in conducting the audit at a location other than in City, including but not limited to expenses for personnel, salaries, private auditor, travel, lodging, meals and overhead.

## 20. Confidentiality of Information

Any documents and materials given to or prepared or assembled by Consultant under this Agreement shall be confidential and shall not be made available to any third person or organization by Consultant without prior written approval of the City.

## 21. Indemnity

Consultant agrees to indemnify and hold harmless City, its City Council, and each member thereof, and every officer, employee, representative or agent of City, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, to the extent they are found to be caused by a negligent act(s), error(s), or omission(s) of Consultant related to this Agreement as performed by Consultant or its employees, subcontractors, agents and subconsultants or other persons acting on Consultant's behalf.

## 22. Insurance

a. Consultant shall obtain and maintain during the performance of any services under this Agreement the insurance coverages as specified in Exhibit INS-A, attached hereto and incorporated herein by this reference as tho set forth in full, issued by a company satisfactory to the City, unless the City waives, in writing, the requirement that Consultant obtain and maintain such insurance coverages.

b. Consultant shall, prior to performance of any services, file with the City evidence of insurance coverage as specified in Exhibit INS-A. Evidence of insurance coverage shall be forwarded to the City, addressed as specified in Exhibit INS-A.

c. Maintenance of proper insurance coverages by Consultant is a material element of this Agreement. Consultant's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

## 23. Independent Contractor

a. City and Consultant agree that in the performance of the services, Consultant shall be, and is, an independent contractor, and that Consultant or its employees, subcontractors, agents and subconsultants are not employees of City. Consultant has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant.

b. Consultant shall be solely responsible for, and shall save City harmless from, all matters relating to the payment of Consultant's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and State income tax withholding and all other regulations governing employer-employee relations.

c. Consultant acknowledges that Consultant and Consultant's employees, subcontractors, agents and subconsultants are not entitled to receive from City any of the benefits or rights afforded employees of City, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, or health, life, dental, long-term disability and workers' compensation insurance benefits.

## 24. Consultant Not Agent

Except as Manager may specify in writing, Consultant, and its employees, subcontractors, agents and subconsultants shall have no authority, expressed or implied, to act on behalf of City in any capacity, as agents or otherwise, or to bind City to any obligation, unless specifically authorized by express prior written consent of City.

## 25. Conflict of Interest

Consultant shall promptly inform City of any contract, agreement, arrangement, or interest that Consultant may enter into or have during the performance of this Agreement that may conflict with City's interests. This requirement includes contracts, agreements and arrangements with manufacturers, suppliers, contractors or other clients whose interests might be served by the services performed under this Agreement and Consultant's or Consultant's clients' interest in land that might be affected by the services. Consultant shall take such measures as are necessary in the performance of this Agreement to prevent actual, or the appearance of conflicts of interest.

## 26. Assignability of Agreement

Consultant agrees that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's personnel's unique competence, experience and specialized personal knowledge. Assignments of any or all rights, duties, or obligations of Consultant under this Agreement will be permitted only with the express prior

written consent of City, which consent may be withheld for any reason.

#### 27. Successors and Assigns

Consultant and City agree that this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Consultant and City.

#### 28. Fair Employment Practices

a. Consultant agrees that all persons employed by Consultant shall be treated equally by Consultant without regard to or because of race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law, and in compliance with all antidiscrimination laws of the United States of America, the State of South Dakota, and City.

b. Consultant agrees that, during the performance of this Agreement, Consultant and any other parties with whom Consultant and its employees, subcontractors, agents and subconsultants may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

c. Consultant agrees to state in all of its solicitations or advertisements for applicants for employment that all qualified applicants shall receive consideration for employment without regard to their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

d. Consultant shall provide City staff with access to and, upon request by City, provide copies to City of all of Consultant's records pertaining or relating to Consultant's employment practices, to the extent such records are not confidential or privileged under State or Federal law.

#### 29. Force Majeure

Consultant and City agree that neither City nor Consultant shall be responsible for delays or failures in performance resulting from acts beyond the control of either party. Such acts shall include, but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after this Agreement was executed, fire, communication line failures, earthquakes, or other disasters.

#### 30. Time of Essence

Consultant and City agree that time is of the essence in regard to performance of any of the terms and conditions of this Agreement.

#### 31. Covenants and Conditions

Consultant and City agree that each term and each provision of this Agreement to be performed by Consultant shall be construed to be both a covenant and a condition.

#### 32. Governing Law

City and Consultant agree that the construction and interpretation of this Agreement and the rights and duties of City and Consultant hereunder shall be governed by the laws of the State of South Dakota.

#### 33. Compliance with Laws

Consultant agrees to comply with all City, State, and federal laws, rules, and regulations, now or hereafter in force, pertaining to the services performed by Consultant pursuant to this Agreement.

#### 34. Severability

City and Consultant agree that the invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

#### 35. Waiver

City and Consultant agree that no waiver of a breach of any provision of this Agreement by either Consultant or City shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either City or Consultant to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver of such provision or breach.

#### 36. Counterparts

City and Consultant agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

#### 37. Arbitration

Consultant and City agree that in the event of any dispute with regard to the provisions of this Agreement, the services rendered or the amount of Consultant's compensation, the dispute may be submitted to arbitration upon the mutual agreement of the parties, under such procedures as the parties may agree upon, or, if the parties cannot agree, then under the Rules of the American Arbitration Association.

#### 38. Expenses of Enforcement

Consultant and City agree that the prevailing party's reasonable costs, attorneys' fees (including the reasonable value of the services rendered by the City Attorney's Office) and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement. For the purposes of this Agreement, a party "prevails" if it recovers 75% or more of what is sought in such proceeding, or if it successfully defends against 75% or more of what was claimed against it. If neither percentage is met, the Parties bear their own respective attorney's fees, expert fees and court costs.

#### 39. Authority to Execute

City acknowledges that the person executing this Agreement has been duly authorized by the City Council to do so on behalf of City. Consultant acknowledges that the person executing this Agreement has been duly authorized by Consultant to do so on behalf of Consultant.

40. Notices

a. Any notices to Consultant may be delivered personally or by mail addressed to **Kadrmass, Lee & Jackson, Inc. 330 Knollwood Drive, Rapid City, SD 57701 Attention: Mike Bender.**

b. Any notices to City may be delivered personally or by mail addressed to **City of Custer, Public Works Department, 622 Crook Street, Custer, South Dakota 57730, Attention: Bob Morrison.**

41. Amendment

City and Consultant agree that the terms and conditions of the Agreement may be reviewed or modified at any time. Any modifications to this Agreement, however, shall be effective only when agreed to in writing by both the City representative authorized to do so under the City's purchasing policies and Consultant.

42. Entire Agreement

City and Consultant agree that this Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements, and promises, either oral or written.

CITY OF CUSTER

CONSULTANT

\_\_\_\_\_  
Corbin Herman, Mayor

\_\_\_\_\_  
Rod Senn, Kadrmass, Lee & Jackson, Inc.

ATTEST:

\_\_\_\_\_  
Laurie Woodward, Finance Officer

**INSURANCE REQUIREMENTS FOR CONSULTANTS  
(WITH ERRORS AND OMISSIONS REQUIREMENT)**

1. Consultant shall obtain and maintain during the performance of any services under this Agreement the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of services hereunder by Consultant, its agents, representatives, employees or subconsultants.

a. Commercial General Liability Insurance, including Contractual Liability, in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for general liability with coverage equivalent to Insurance Services Office Commercial General Liability Coverage. If a general aggregate limit is used, that limit shall apply separately to the project or shall be twice the occurrence amount;

b. Business automobile liability insurance in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability.

c. Professional liability/errors and omissions insurance appropriate to Consultant's profession of a minimum coverage of \$1,000,000, with neither Consultant and its employees, subcontractors, agents and subconsultants having less than \$500,000 individually. The professional liability/errors and omissions insurance must be project specific with at least a one year extended reporting period, or longer upon request.

d. Workers' compensation insurance in compliance with the laws of the State of South Dakota, and employer's liability insurance in an amount not less than \$1,000,000 per claimant.

2. Consultant shall, prior to performance of any services, file with the City Finance Officer certificates of insurance with original endorsements effecting coverage required by this Exhibit INS-A. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on the attached forms or on other forms approved by the City Finance Officer. All certificates and endorsements are to be received and approved by the City Finance Officer before commencement of services. City reserves the right to require complete certified copies of all required insurance policies at any time. The certificates of insurance and endorsements shall be forwarded to the City, addressed as follows:

City of Custer  
Finance Officer  
622 Crook Street  
Custer, SD 57730

This is **EXHIBIT B**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated September 26, 2017.

## **Engineer's Services**

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Engineer shall provide Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

#### *A1.01 Schematic Master Plan Development*

A. Engineer shall:

1. Organize & conduct a Project Kick-off Meeting which will include the following activities:
  - a. Review project scope and end goal of the project
  - b. Identify Custer community user groups and stakeholders with interests in the project.
  - c. Gather background information for Harbach Park, Custer Skate Park/tennis court area, and volleyball court parcels.
  - d. Develop Goals & Objectives for the Harbach Park Master Plan.
2. Organize and conduct two (2) Public Engagement Meetings (PEM) during the development of the Harbach Park Master Plan including:
  - a. Develop meeting notices for informing the public about upcoming Public Engagement Meetings.
  - b. Develop materials to inform, engage and solicit input from citizens.
  - c. Act as meeting facilitator to gather information from citizens and staff.
  - d. Issue agenda for meeting and provide meeting notes.
  - e. Public Engagement Meeting #1 – During PEM #1, an interactive design workshop will be held to gather ideas, desires and needs for the Harbach Park study area. The workshop will identify current and potential uses for the park and begin to outline an overall arrangement for these activities.
  - f. Public Engagement Meeting #2 – PEM #2 will occur after the draft Master Plan is developed. The meeting will be an open-house format with a presentation of the proposed master plan. A variety of techniques will be used to gather comments on the proposed Harbach Park Master Plan. These include a verbal question/answer session, opportunity to provide written comments through a provided public input questionnaire, and opportunity to provide comment through online survey.
  - g. Document Public Engagement Meeting process, activities and results and provide as a Technical Memorandum.

- B. Conceptual Layouts - Develop two (2) conceptual layout plans for the Harbach Park area providing spatial arrangement of major activities, pedestrian connections, parking, existing features to remain and proposed park features.
  - 1. Provide electronic and printed versions of the conceptual layout plans.
  - 2. Provide preliminary Opinions of Probable Cost for each conceptual layout plan.
- C. Final Preferred Schematic Master Plan – Upon determining the preferred master plan through public engagement and comment, the KLJ Team will refine the preferred concept into a final Schematic Master Plan incorporating comments from the public, Parks and Recreation Board and Custer City staff.
  - 1. Document public involvement. This will be included as an Appendix the master plan document.
  - 2. Provide a graphic Final Schematic Master Plan that expresses the highest vision for Harbach Park.
  - 3. Provide a phased plan implementation based on the Public Engagement Meetings and the logical arrangement of projects within the study area.
  - 4. Provide an updated Opinions of Probable Cost for the preferred schematic master plan. The Opinion of Probable Cost will be broken down to match the proposed phasing of the site.
- D. Provide a complete color version (printed and electronic) of the final Schematic Master Plan.
  - 1. Provide a design narrative describing the major portions of the master plan.
- E. KLJ will attend Parks and Recreation Board Meeting and City Council Meeting at the conclusion of the Master Plan development to present the final Master Plan for adoption by both entities.

Estimated completion date of the Harbach Master Plan is February 28, 2018.

Services that are not included and can be added by supplemental agreement are: land surveying; preliminary and final design plans for individual parks, trails and recreation facilities; stream hydraulic/flood hazard analysis; traffic counts/analysis; environmental reviews; permitting; geotechnical reviews; bidding services; and construction period services.

This is **EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated October 3, 2017.

**Engineer's Standard Hourly Rates**

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A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Exhibit include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

B. *Schedule of Hourly Rates:*

Hourly rates for services performed on or after the Effective Date are:

**KLJ Rates**

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<b>Landscape Architect IV</b>	<b>\$150/hour</b>
<b>Landscape Architect III</b>	<b>\$133/hour</b>
<b>Landscape Architect II</b>	<b>\$114/hour</b>
<b>Engineer III</b>	<b>\$153/hour</b>
<b>Project Assistant</b>	<b>\$65/hour</b>

<b>KLJ Project Name:</b>	<b>Harbach Park Schematic Design</b>
<b>Detailed Description:</b>	Schematic Site Layout for Harbach Park Area
<b>KLJ Project Number:</b>	

# Project Budget



Task Code	Description	Landscape Architect III	Landscape Architect II	Landscape Architect IV	Engineer III	Project Assistant I	DIRECT LABOR Subtotal
1	Schematic Design	\$ 132.60	\$ 113.90	\$ 149.60	\$ 153.00	\$ 64.60	
1.1	Project Setup/Contract Prep	4				2	\$ 659.60
1.2	Project Kick-off Meeting	3	3				\$ 739.50
1.3	Prepare Base Map	4	8				\$ 1,441.60
1.4	Community Input Meeting 1/P&R Board Mtg.	4	4				\$ 986.00
1.5	Schematic Site Layout Plans	16	40	2	4		\$ 7,588.80
1.6	Preliminary Opinion of Cost	8	2		2		\$ 1,594.60
1.7	Community Input Meeting 2/P&R Board Mtg.	4	4				\$ 986.00
1.8	Revise Preferred Concept	4	20				\$ 2,808.40
1.9	Design Narrative	8					\$ 1,060.80
1.11	City Council Meeting	3					\$ 397.80
1.12	Design Team Coordination	4	2				\$ 758.20
	Subtotal of Task 1	62	83	2	6	2	\$ 19,021.30

*-to be paid from Park Rec funds  
up to \$20,000*

**CITY OF CUSTER CITY  
COUNCIL PROCEEDINGS- REGULAR SESSION**

August 7<sup>th</sup>, 2017

Mayor Corbin Herman called to order the first meeting of the Common Council for the month of August, 2017 at 5:30 p.m. Present at roll call were Councilpersons Maciejewski, Heinrich, Nielsen, Fischer, Blom and Arseneault. City Attorney Chris Beesley was present. The Pledge of Allegiance was stated.

**AGENDA**

Councilperson Nielsen moved to approve the agenda. Second by Councilperson Blom, the motion unanimously carried.

**MINUTES**

Councilperson Heinrich moved, with a second by Councilperson Fischer, to approve the minutes from the July 17<sup>th</sup> regular council meeting. The motion unanimously carried.

**CONFLICTS OF INTEREST**

No conflicts of interest were stated.

**PUBLIC HEARING – SPECIAL MALT BEVERAGE LICENSE BY CURRENT LICENSEE – FRONTIER BAR & GRILL FOR SOUTHERN HILLS MUSIC AND ARTS FESTIVAL**

Councilperson Fischer moved to approve the special malt beverage license by current licensee for the Frontier Bar & Grill for the Southern Hills Music Festival Event on August 18<sup>th</sup> & 19<sup>th</sup>, 2017. Seconded by Councilperson Blom, the motion unanimously carried.

**CUSTER COUNTY HOUSING PRESENTATION – KARLA EFIRD**

Karla Efird, Property Manager for Metro Plains Management and Matt Fridell, Secretary of Custer County Housing & Redevelopment Commission, presented Council with information regarding the units managed Metro Plains Management and owned by Custer County Housing & Redevelopment.

**SECOND READING – ORDINANCE #792 - TAXIS**

Councilperson Nielsen moved to approve the second reading of Ordinance #792, Taxis. Seconded by Councilperson Blom. After some discussion regarding ride sharing services, Councilperson Nielsen withdrew her motion. Councilperson Fischer moved to table Ordinance #792 to allow the Attorney to research ride sharing services. Seconded by Councilperson Arseneault, the motion unanimously carried.

**REQUEST TO USE VOLLEYBALL COURT & SURROUNDING AREA – KATELYN NEISES**

Councilperson Maciejewski moved to deny the request to use the volleyball court & surrounding area on August 26<sup>th</sup>, 2017. Seconded by Councilperson Arseneault, the motion unanimously carried.

**CHRISTMAS PARADE REQUEST – CHAMBER**

Councilperson Fischer moved to approve the parade request from the Custer Chamber of Commerce for the Annual Christmas Parade to be held on December 2<sup>nd</sup>, 2017 at 5:30 pm with line up on Washington Street and the parade starting at 8<sup>th</sup> Street & Mt Rushmore Road proceeding west on Mt Rushmore Road to Fourth Street. Seconded by Councilperson Heinrich, the motion unanimously carried.

**HARBACH PARK MASTER PLAN**

Councilperson Maciejewski moved to authorize up to \$20,000 to be spent on a Harbach Park Master Plan from Park & Recreation Committee funds contingent upon Park & Recreation Committee approval. Seconded by Councilperson Heinrich, the motion carried with Councilperson Maciejewski, Heinrich, Nielsen, Fischer, Blom and Arseneault voting yes.

**PRELIMINARY & FINAL PLAT – AKERS SUBDIVISION**

Councilperson Fischer moved to approve the preliminary & final plat for Akers Subdivision. Seconded by Councilperson Blom, the motion unanimously carried.

**WAZI LANE PAVING PROJECT BIDS**

Councilperson Heinrich moved to accept the bid from Mainline Contracting Inc for the Wazi Lane Reconstruction Project at \$241,204.71. Seconded by Councilperson Nielsen, the motion carried with Councilperson Heinrich, Nielsen, Fischer, Blom, Arseneault and Maciejewski voting yes.

**CLAIMS**

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

- Albert and Sandy Rodarte, Cruisin Refund, \$500.00
- AE2S, Capital Improvements, \$4,904.00
- A & B Electric, Repair & Maintenance, \$573.24
- AFLAC, Insurance, \$660.28
- AFSCME Council 65, Dues, \$173.26
- Battle Mountain Humane Society, Animal Control Contract, \$800.00
- Beesley Law Office, Professional Fees, \$2,477.50

CITY OF CUSTER  
REQUEST FOR PROPOSAL (RFP)  
WASTEWATER TREATMENT PLANT UPGRADES

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CITY OF CUSTER  
 REQUEST FOR PROPOSAL (RFP)  
 WASTEWATER TREATMENT PLANT UPGRADES

**REQUEST FOR PROPOSALS**  
**Engineer Design Services**  
**Wastewater Treatment Plant Upgrades**

I. The City of Custer is requesting proposals from qualified consultants to study and provide options for possible operational and treatment upgrades to the existing wastewater treatment plant. The intent of the work described in the RFP is to investigate possible improvements based upon existing biological treatment currently used at the City of Custer's wastewater treatment plant. The study will also explore possible future water quality discharge limits which may be imposed by South Dakota Department of Environment and Natural Resources as well as alternative treatment techniques and discharge points which would meet these future requirements. The proposed upgrades to be studied should take into account; advanced technology, cost of upgrades, lifecycle costs and consumer rate consequences in comparison to existing treatment.

**DESCRIPTION OF THE CUSTER WASTEWATER TREATMENT PLANT**

The wastewater collection and treatment facilities serve the City of Custer and the East Custer Sanitary District. The treatment facilities located east of the City limits is served by a 15" PVC gravity interceptor sewer line. The East Custer Sanitary District pumps its wastewater into the 15" interceptor sewer prior to the treatment facilities.

The treatment facilities completed in 1986 consists of primary and secondary wastewater treatment. The raw wastewater is cleaned of large objects and debris by a Rotomat Micro screen as it enters the headworks building. The cleanings from the screen are transported to the sanitary landfill for burial. The volume of wastewater is then measured and recorded by an ultrasonic level sensor flow measuring device in conjunction with the use of a fiberglass 9" Parshall Flume.

Secondary treatment facilities at the treatment plant site include two aeration basins. Wastewater flow from the headworks building is proportioned to each aeration basin by a flow splitter. Each aeration basin holds approximately 1.4 million gallons of wastewater or two and one half days of flow based on design flow of 0.558 MGD and operates parallel to one another. Each basin is equipped with six, 5 Hp surface aerators which supply enough oxygen for BOD reduction and complete mixing of the basins.

The treated wastewater is drawn off the aeration basins to a ten foot diameter, twenty foot deep wet well. Two alternating 100 Hp 4" submersible pumps, pumping at approximately 720 GPM, lift the treated wastewater 150 feet in elevation through an 8" AC force main for approximately 4,500 feet to parallel polishing ponds 1 and 1A, each of which discharge to pond 2 and pond 3 which are operated in series. The level of water in each polishing pond can be controlled by either gate valves or stop gates. Total volume of the polishing ponds is approximately 140 acre feet with a total retention time of approximately 80 days at design flow of 0.558 MGD less evaporation and percolation losses.

The treated wastewater from polishing pond No. 3 is pumped by the high lift vertical turbine pump station located in the treatment plant building through a 12" force main approximately 8.2 miles with a 400 foot vertical lift to the discharge point below the abandoned Flynn Creek Picnic Ground (Outfall 001) or is used for irrigation at Rocky Knolls Golf Course(Outfall 002) during the summer. The alternating 150 Hp high lift vertical turbine pumps are capable of pumping at approximately 1,100 GPM.

A diesel-fired 250 KW generator located in the treatment plant building provides stand-by power for the operation of the micro screen, three aerators in each aeration basin, the submersible pumps and the interior electrical components of the treatment plant during power outages.

The secondary wastewater treatment system is designed to treat the wastewater to the following standards set forth by the South Dakota DENR and authorized by the National Pollutant Discharge Elimination System.

Parameter	30-Consecutive Day	7-Consecutive Day
BOD, mg/l (001)	30	45
TSS, mg/l (001)	30	45
pH, units (001)	shall remain between 6.0 and 9.0	
Fecal Coliform (002)	20 (geomean)	100(max)

**CITY OF CUSTER**  
**REQUEST FOR PROPOSAL (RFP)**  
**WASTEWATER TREATMENT PLANT UPGRADES**

**II. CONSULTANT SERVICES**

The City's standard Agreement for Consulting Services is attached (Attachment 1). Please note the indemnity and insurance requirements for this project (Sections 21 and 22). A proposal is not desired from the consultant unless the consultant is willing to meet those requirements. The consultant must comply with applicable local, State, and Federal laws.

**A. Outline for Content of Consultant's Technical Qualifications**

The submittal should be organized as follows so an evaluation can be made of all consultant submissions on a similar basis:

**1. Cover/Transmittal Letter**

The Technical Qualification Proposal shall be transmitted with a cover letter that must be signed by an official authorized to bind the consultant contractually. The letter accompanying the technical qualification proposal shall also provide the name, title, address, and telephone number of individuals with the authority to negotiate and contractually bind the consultant. The cover letter constitutes certification by the consultant, under penalty of perjury, that the consultant complies with nondiscrimination requirements of the State and Federal Government. An unsigned proposal or one signed by an individual unauthorized to bind the consultant may be rejected.

**2. Introduction**

Introduction of the service proposal, including a statement of understanding for the type of services: discussion on how the objectives of the scope of services will be accomplished; the name of the firm submitting the proposal, its mailing address, telephone number, and the name of the individual to contact if further information is required. Any participating firms and proposed subconsultants shall be identified and included in the proposal (all subconsultants must be approved by City prior to signing the agreement with City).

**CITY OF CUSTER**  
**REQUEST FOR PROPOSAL (RFP)**  
**WASTEWATER TREATMENT PLANT UPGRADES**

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**3. Scope of Work**

Describe the approach and methodology to be used to provide the required Engineering Design Services. Identify any supplemental tasks deemed necessary or suggested/proposed alternatives which may enhance the services, reduce the cost, or speed delivery and approvals. Identify supplemental studies and reports, data collection requirements, and other documents required to complete any task(s) assigned. Identify specific data and methodologies recommended, and any special or innovative considerations that should be a part of the civil engineering service requirements.

**4. Qualifications**

- a. A description of the firm's and subconsultants' qualifications and experience, mentioning specific, similar, or related work pertinent to these services, and list of references.
- b. Identification of all staff assigned to the work: the proposed responsibilities and brief résumés, which highlight special qualifications relevant to any civil engineering tasks.
- c. A description of the staff's present activities and his/her availability to timely accomplish the required services.
- d. Identification of all staff that will be directly/indirectly or periodically involved in any task, citing their responsibilities. This section should identify key personnel assigned to the project.
- e. Identification of any subconsultants, résumés of the key/participating staff proposed for the project, and the tasks to be carried out.

**5. Labor Hours**

Provide examples of typical scope of services that might be assigned and estimate of labor hours separated by key personnel in your firm. The labor hours shall be based upon each task of the type of work that these design services would typically require. **A cost estimate is required** with the submission of the proposal.

**6. Schedule**

Provide a preliminary typical schedule and timeline showing activity and duration for each task that might be assigned; show approximate timing for reaching milestones that would be typical of general civil and/or structural engineering services.

**7. Conflict of Interest**

The consultant shall disclose any financial, business, or other relationships with City that may have an impact on the outcome of this contract or any resulting construction project. The consultant shall also list current clients who may have a financial interest in the outcome of this contract.

**CITY OF CUSTER**  
**REQUEST FOR PROPOSAL (RFP)**  
**WASTEWATER TREATMENT PLANT UPGRADES**

**B. General Proposal Terms and Conditions**

**1. Communications Regarding RFP**

If a consultant is in doubt as to the true meaning or intent of any part of the Request for Proposals ("RFP"), he/she may submit to the Public Works Director (PWD) or his designee a written request for an interpretation or a correction thereof. Interpretation or correction of the RFP shall be made only by the PWD or his designee. All timely requests for information submitted in writing will receive a written response from City. Telephone communications with City staff are not encouraged but will be permitted. However, any such oral communication shall not be binding on City.

Questions about this RFP may be directed to:

Bob Morrison  
Public Works Director  
622 Crook Street  
Custer, SD 57730  
Phone (605) 673-4824  
Fax (605) 673-2411  
[ctybob@gwtc.net](mailto:ctybob@gwtc.net)

All questions, clarifications, and inquiries shall be submitted in writing no later than Five (5) days prior to the due date.

**2. Confidentiality**

Prior to award of the consultant agreement, all proposals will be designated confidential to the extent permitted by law. After award of the consultant agreement, or if not awarded, after rejection of all proposals, all responses will be regarded as public records and will be subject to review by the public. Any language purported to render confidential all or portions of the proposals will be regarded as noneffective and will be disregarded.

**3. Amendments to Request for Proposals**

City reserves the right to amend the Request for Proposals by addendum prior to the final proposal submittal date.

**CITY OF CUSTER  
REQUEST FOR PROPOSAL (RFP)  
WASTEWATER TREATMENT PLANT UPGRADES**

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**4. Non-Commitment of City**

This Request for Proposals does not commit City to award a consultant agreement, to pay any costs incurred in the preparation of a Proposal for this request, or to procure or contract for services. City reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified firm, or to modify or cancel in part or in its entirety the Request for Proposals if it is in the best interest of City to do so.

**C. Submission of Proposal**

The Technical Qualification Proposal must be submitted in an envelope clearly identified and shall be marked "Request for Proposal, General On-Call -Engineering Services."

All proposals must be sealed and submitted no later than **4:00 p.m., Thursday March 26, 2015**. Late proposals will not be accepted.

Should your firm be interested in submitting a proposal for this project, please submit **three (3) copies** of the Technical Qualifications Proposal to the following address:

Bob Morrison  
Public Works Director  
622 Crook Street  
Custer, SD 57730  
Phone 605-673-4824

All responses will constitute firm interest and may not be withdrawn for a period of 90 days following the final day for submissions of proposals. Once submitted, proposals, including the composition of the consulting staff, cannot be altered without the prior written consent of City.

**III. PROPOSAL EVALUATION AND SELECTION**

City staff will use the following criteria to evaluate the Technical Qualification Proposals:

- Understanding of the scope of services
- Demonstrated professional skill and credentials
- Related experience and references
- Quality of proposal
- Approach to performing this type of service
- Familiarity with City, County, State, and Federal procedures and laws.

CITY OF CUSTER  
REQUEST FOR PROPOSAL (RFP)  
WASTEWATER TREATMENT PLANT UPGRADES

The Technical Qualification Proposal will determine the ranking according to the qualification selection procedures. City may request a qualification interview with the highest ranked consultant(s) prior to determining the final ranking. The selection will be conducted according to the City's adopted procedures.

The firm rated as most qualified to provide the requested services and agrees to the City of Custer's Agreement for Consulting Services (Attachment 1) including the Records and Indemnification clauses (Sections 18 and 21 of Attachment 1), and insurance requirements (Attachment 2) will be invited to negotiate a final contract. If an agreement is not reached, negotiations will be terminated and commenced with the next most qualified firm.

The award of the contract will be based on a combination of all of the above factors. City reserves the right to reject any and all proposals.

All responses become the property of City. The proposals are confidential until award of a contract to the selected consultant, at which time all proposals are available for public inspection. City will not be responsible for materials obtained by other parties.

The selected consultant will be required to sign the attached Agreement for Consulting Services (Attachment 1) and provide the necessary insurance coverage.

IV. PROJECT COORDINATION

The City Public Works Director will coordinate the project(s) for the City. The Engineering firm will be responsible for all the activities and meetings associated with a specific assigned project design including meeting minutes and record keeping.

V. CITY'S RESPONSIBILITY

City will provide to the consultant for their use access to any existing reference materials or survey data currently available within City files that are necessary to accomplish a specific assigned project.

CITY OF CUSTER  
REQUEST FOR PROPOSAL (RFP)  
WASTEWATER TREATMENT PLANT UPGRADES

Exhibit A

SCOPE OF TYPICAL PROJECT WORK

The proposal shall identify a concise description of typical scope of work performed by the consultant firm and how the consultant completes the work. It is up to the consultant to determine the best and most cost-effective method to complete the work so that the project can be constructed to the satisfaction of the City of Custer. The consultant agreement will be negotiated per task for the entire duration of the services, which may include but not be limited to, the following services:

- a. Prepare and distribute meeting minutes during design.
- b. Obtain approval of all required permits, City, County, State, and Federal.
- c. Design services for all individual projects as assigned for complete design, during construction, and post construction design services. Assist the City in obtaining all required permits, easements.
- d. Provide quality control.
- e. Perform cost estimates for each milestone.
- f. Perform a constructability analysis.
- g. Construction Services - Review RFI (request for information), submittal, and shop drawings.
- h. Maintain precise record keeping.
- i. Provide a schedule of all or each task, and overall design schedules, and construction.
- j. Schedule monthly progress meetings, or as deemed necessary by City during design.
- k. Provide value engineering recommendations to City staff members and architect/engineer.
- l. Maintain daily communication or as required with City staff and consultants.
- m. Other duties as required by City staff.
- n. Develop a Facilities Master Plan.
- o. Assist in applying for applicable grants and loans

The selected consultant will be required to sign the attached Agreement for Consulting Services (Attachment 1) and provide the necessary insurance coverage (Attachment 2).

## ATTACHMENT 1

Agreement No. [Enter #]

### AGREEMENT FOR PROFESSIONAL SERVICES FOR ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING, OR LAND SURVEYING SERVICES ONLY

This Agreement for Consulting Services ("Agreement") is made and entered into in the County of Custer, State of South Dakota, this [Day] day of [Month], 20[Year], by and between the City of Custer City, a municipal corporation hereinafter ("City"), and [Name of Consultant] hereinafter ("Consultant").

WHEREAS, City desires to hire Consultant to perform certain professional services specified herein as either architectural, landscape architectural, engineering, or land surveying services; and

WHEREAS, Consultant represents that Consultant and/or Consultant's personnel have the qualifications and experience to properly perform such services:

NOW, THEREFORE, City and Consultant hereby agree as follows:

#### 1. Scope of Services

Consultant shall furnish City with professional consulting services as more particularly set forth in Exhibit A attached hereto and incorporated herein by this reference as though set forth in full herein. The City and Consultant agree that this Agreement shall serve as the Basic Services Agreement for multiple small projects that City wishes to complete employing [Consultant]. Each task order under this Agreement shall be sequentially numbered.

#### 2. Method of Performing Services

Subject to the terms and conditions of this Agreement, Consultant may determine the method, details, and means of performing the services described herein.

#### 3. Standard of Performance

Consultant agrees to undertake and complete these services to conclusion, using that standard of care, skill, and diligence normally provided by a professional person in performance of similar consulting services.

#### 4. Nonexclusive Services

This Agreement shall not be interpreted to prevent or preclude Consultant from rendering any services for Consultant's own account or to any other person or entity as Consultant in its sole discretion shall determine. Consultant agrees that performing such services will not materially interfere with services to be performed for the City, nor shall this agreement prevent or preclude the City from procuring services covered under this agreement from other consulting firms if deemed in best interest of the City.

#### 5. Coordination of Services

All services are to be coordinated by or with the Public Works Director (PWD) or Designee, subject to the direction of the City of Custer Common Council.

#### 6. Place of Work

Consultant shall perform the services provided for in this Agreement at any place or location and at such times as the Consultant shall solely determine.

#### 7. Correction of Errors

Consultant agrees to correct, at its expense, all errors which may be disclosed during review of Consultant's services. Should Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be paid by Consultant.

#### 8. Time for Performance

All services performed under this Agreement shall be completed pursuant to the schedule provided in Exhibit B attached hereto and incorporated by this reference as set forth in full herein. City agrees to amend the performance termination date whenever Consultant is delayed by action or inaction of City and Consultant promptly notifies Manager of such delays.

#### 9. Principal in Charge

Consultant hereby designates [Enter name of Principle-in-Charge] as its principal-in-charge and person responsible for necessary coordination with Manager.

#### 10. Permits, Licenses, Certificates

Consultant, at Consultant's sole expense, shall obtain and maintain during the term of this Agreement, all permits, licenses, and certificates required in connection with the performance of services under this Agreement, including a City business license.

#### 11. City's Responsibility

City shall cooperate with Consultant as may be reasonably necessary for Consultant to perform its services. City agrees to provide direction to Consultant as requested regarding particular project requirements.

#### 12. Term of Agreement

This Agreement shall begin on [Start Date], and expire on [End Date]. There may be multi-year options to renew this agreement.

#### 13. Termination

a. This Agreement may be terminated by City if City notifies Consultant, in writing, of City's desire to terminate the Agreement. Such termination shall be effective ten calendar days from the date of delivery or mailing of such notice. City agrees to pay Consultant in full for all amounts due Consultant as of the effective date of termination, including any expenditures incurred on City's behalf, whether for the employment of third parties or otherwise.

b. This Agreement may be terminated by Consultant if Consultant notifies City, in writing, of Consultant's desire to terminate the Agreement. Such termination shall be effective ten calendar days from the date of delivery or mailing of such notice and only if all assignments accepted by Consultant have been completed prior to the date of termination.

#### 14. Compensation

a. City agrees to pay Consultant in an amount not to exceed \$[Amount] for services provided under this Agreement at rates provided in Exhibit C attached hereto and incorporated by this reference as set forth in full herein.

b. The acceptance by Consultant of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for work completed, finished or relating to Consultant's services.

c. Consultant agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant or its employees, subcontractors, agents and subconsultants for the accuracy and competency of the information provided and/or services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the services performed by Consultant, its employees, subcontractors, agents and subconsultants.

d. Consultant shall provide City with a completed Request for Taxpayer Identification Number and Certification, as issued by the Internal Revenue Service.

e. If any sales tax is due for services performed by Consultant or materials or products provided to City by Consultant, Consultant shall pay the sales tax. City shall not reimburse Consultant for sales taxes paid by Consultant.

#### 15. Method of Payment

a. City agrees to pay Consultant monthly upon satisfactory completion of the services and upon submission by Consultant of an invoice delineating the services performed, in a form satisfactory to City. The invoice shall identify services by project as specified by City.

b. Consultant agrees to maintain current monthly records, books, documents, papers, accounts and other evidence pertaining to the services performed and costs incurred. Such items shall be adequate to reflect the time involved and cost of performing the services. Consultant shall provide Manager with copies of payroll distribution, receipted bills and other documents requested for justification of the invoice.

#### 16. Responsibility for Expenses

Except as otherwise expressly provided in this Agreement, City shall not be responsible for expenses incurred by Consultant in performing services under this Agreement. All expenses incident to the performance of services under this Agreement shall be borne by the Consultant, including, but not limited to rent, vehicle, and travel, entertainment and promotion, general liability and health insurance, workers' compensation insurance, and all compensation and benefits of employees, subcontractors, agents and subconsultants engaged by Consultant. Consultant shall, at its own cost and expense, supply all personal property necessary or appropriate to perform the services provided for under this Agreement, including, but not limited to any personal property used by employees, subcontractors, agents and subconsultants of Consultant in the performance of such services.

#### 17. Non-Appropriation of Funds

Payments to be made to Consultant by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted and unencumbered appropriation of City. In the event City does not appropriate sufficient funds for payment of Consultant's services beyond the current fiscal year, this Agreement shall cover payment for Consultant's services only up to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year unless specifically extended by City.

## 18. Records

a. Consultant agrees that all final computations, exhibits, files, plans, correspondence, reports, drawings, designs, data and photographs expressly required to be prepared by Consultant as part of the scope of services ("documents and materials") shall be the property of City and shall, upon completion of the services or termination of this Agreement, be delivered to City.

b. At City's request, City shall be entitled to immediate possession of, and Consultant shall furnish to City within ten days, all of the documents and materials. Consultant may retain copies of these documents and materials.

c. Any substantive modification of the documents and materials by City staff or any use of the completed documents and materials for other City projects, or any use of uncompleted documents and materials, without the written consent of Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant. City agrees to hold Consultant harmless from all damages, claims, expenses and losses arising out of any reuse of the documents and materials for purposes other than those described in this Agreement, unless Consultant consents in writing to such reuse.

## 19. Maintenance and Inspection of Records

Consultant agrees that City or its auditors shall have access to and the right to audit and reproduce any of Consultant's relevant records to ensure that City is receiving all services to which City is entitled under this Agreement, or for other purposes relating to this Agreement. Consultant shall maintain and preserve all such records for a period of at least three years after the expiration of this Agreement, or until an audit has been completed and accepted by City. Consultant agrees to maintain all such records in City Finance Office, or to promptly reimburse City for all reasonable costs incurred in conducting the audit at a location other than in City, including but not limited to expenses for personnel, salaries, private auditor, travel, lodging, meals and overhead.

## 20. Confidentiality of Information

Any documents and materials given to or prepared or assembled by Consultant under this Agreement shall be confidential and shall not be made available to any third person or organization by Consultant without prior written approval of the City.

## 21. Indemnity

Consultant agrees to indemnify, hold harmless and defend City, its City Council, and each member thereof, and every officer, employee, representative or agent of City, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly out of, pertain to, or relate to the negligence, recklessness, or willful misconduct, or any acts, errors, or omissions of Consultant related to this Agreement as performed by Consultant or its employees, subcontractors, agents and subconsultants or other persons acting on Consultant's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, or passive negligence.

## 22. Insurance

a. Consultant shall obtain and maintain during the performance of any services under this Agreement the insurance coverages as specified in Exhibit INS-[ ], attached hereto and incorporated herein by this reference as tho set forth in full, issued by a company satisfactory to the City, unless the City waives, in writing, the requirement that Consultant obtain and maintain such insurance coverages.

b. Consultant shall, prior to performance of any services, file with the City evidence of insurance coverage as specified in Exhibit INS-[ ]. Evidence of insurance coverage shall be forwarded to the City, addressed as specified in Exhibit INS-[ ].

c. Maintenance of proper insurance coverages by Consultant is a material element of this Agreement. Consultant's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

## 23. Independent Contractor

a. City and Consultant agree that in the performance of the services, Consultant shall be, and is, an independent contractor, and that Consultant or its employees, subcontractors, agents and subconsultants are not employees of City. Consultant has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant.

b. Consultant shall be solely responsible for, and shall save City harmless from, all matters relating to the payment of Consultant's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and State income tax withholding and all other regulations governing employer-employee relations.

c. Consultant acknowledges that Consultant and Consultant's employees, subcontractors, agents and subconsultants are not entitled to receive from City any of the benefits or rights afforded employees of City, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, or health, life, dental, long-term disability and workers' compensation insurance benefits.

## 24. Consultant Not Agent

Except as Manager may specify in writing, Consultant, and its employees, subcontractors, agents and subconsultants shall have no authority, expressed or implied, to act on behalf of City in any capacity, as agents or otherwise, or to bind City to any obligation, unless specifically authorized by express prior written consent of City.

## 25. Conflict of Interest

Consultant shall promptly inform City of any contract, agreement, arrangement, or interest that Consultant may enter into or have during the performance of this Agreement that may conflict with City's interests. This requirement includes contracts, agreements and arrangements with manufacturers, suppliers, contractors or other clients whose interests might be served by the services performed under this Agreement and Consultant's or Consultant's clients' interest in land that might be affected by the services. Consultant shall take such measures as are necessary in the performance of this Agreement to prevent actual, or the appearance of conflicts of interest.

## 26. Assignability of Agreement

Consultant agrees that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's personnel's unique competence, experience and specialized personal knowledge. Assignments of any or all rights, duties, or obligations of Consultant under this Agreement will be permitted only with the express prior written consent of City, which consent may be withheld for any reason.

## 27. Successors and Assigns

Consultant and City agree that this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Consultant and City.

## 28. Fair Employment Practices

a. Consultant agrees that all persons employed by Consultant shall be treated equally by Consultant without regard to or because of race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law, and in compliance with all antidiscrimination laws of the United States of America, the State of South Dakota, and City.

b. Consultant agrees that, during the performance of this Agreement, Consultant and any other parties with whom Consultant and its employees, subcontractors, agents and subconsultants may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

c. Consultant agrees to state in all of its solicitations or advertisements for applicants for employment that all qualified applicants shall receive consideration for employment without regard to their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

d. Consultant shall provide City staff with access to and, upon request by City, provide copies to City of all of Consultant's records pertaining or relating to Consultant's employment practices, to the extent such records are not confidential or privileged under State or Federal law.

## 29. Force Majeure

Consultant and City agree that neither City nor Consultant shall be responsible for delays or failures in performance resulting from acts beyond the control of either party. Such acts shall include, but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after this Agreement was executed, fire, communication line failures, earthquakes, or other disasters.

## 30. Time of Essence

Consultant and City agree that time is of the essence in regard to performance of any of the terms and conditions of this Agreement.

## 31. Covenants and Conditions

Consultant and City agree that each term and each provision of this Agreement to be performed by Consultant shall be construed to be both a covenant and a condition.

## 32. Governing Law

City and Consultant agree that the construction and interpretation of this Agreement and the rights and duties of City and Consultant hereunder shall be governed by the laws of the State of South Dakota.

### 33. Compliance with Laws

Consultant agrees to comply with all City, State, and federal laws, rules, and regulations, now or hereafter in force, pertaining to the services performed by Consultant pursuant to this Agreement.

### 34. Severability

City and Consultant agree that the invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

### 35. Waiver

City and Consultant agree that no waiver of a breach of any provision of this Agreement by either Consultant or City shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either City or Consultant to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver of such provision or breach.

### 36. Counterparts

City and Consultant agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

### 37. Arbitration

Consultant and City agree that in the event of any dispute with regard to the provisions of this Agreement, the services rendered or the amount of Consultant's compensation, the dispute may be submitted to arbitration upon the mutual agreement of the parties, under such procedures as the parties may agree upon, or, if the parties cannot agree, then under the Rules of the American Arbitration Association.

### 38. Expenses of Enforcement

Consultant and City agree that the prevailing party's reasonable costs, attorneys' fees (including the reasonable value of the services rendered by the City Attorney's Office) and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

### 39. Authority to Execute

City acknowledges that the person executing this Agreement has been duly authorized by the City Council to do so on behalf of City.

Consultant acknowledges that the person executing this Agreement has been duly authorized by Consultant to do so on behalf of Consultant.

### 40. Notices

a. Any notices to Consultant may be delivered personally or by mail addressed to [Enter name of Consultant], [Enter Consultant's address], [Enter City], [Enter State and Zip], Attention: [Enter Principal-in-Charge].

b. Any notices to City may be delivered personally or by mail addressed to City of Custer, [Enter Department or Division Name], [Enter Address], Custer, South Dakota 57730, Attention: [Enter Project Manager].

41. Amendment

City and Consultant agree that the terms and conditions of the Agreement may be reviewed or modified at any time. Any modifications to this Agreement, however, shall be effective only when agreed to in writing by both the City representative authorized to do so under the City's purchasing policies and Consultant.

42. Entire Agreement

City and Consultant agree that this Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements, and promises, either oral or written.

CITY OF CUSTER

CONSULTANT

\_\_\_\_\_  
Corbin Herman, Mayor

\_\_\_\_\_  
[Consultant]

ATTEST:

\_\_\_\_\_  
Laurie Woodward, Finance Officer

**INSURANCE REQUIREMENTS FOR CONSULTANTS  
(WITH ERRORS AND OMISSIONS REQUIREMENT)**

1. Consultant shall obtain and maintain during the performance of any services under this Agreement the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of services hereunder by Consultant, its agents, representatives, employees or subconsultants.

a. Commercial General Liability Insurance, including Contractual Liability, in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for general liability with coverage equivalent to Insurance Services Office Commercial General Liability Coverage. If a general aggregate limit is used, that limit shall apply separately to the project or shall be twice the occurrence amount;

b. Business automobile liability insurance in an amount not less than \$1,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability.

c. Professional liability/errors and omissions insurance appropriate to Consultant's profession of a minimum coverage of \$1,000,000, with neither Consultant and its employees, subcontractors, agents and subconsultants having less than \$500,000 individually. The professional liability/errors and omissions insurance must be project specific with at least a one year extended reporting period, or longer upon request.

d. Workers' compensation insurance in compliance with the laws of the State of South Dakota, and employer's liability insurance in an amount not less than \$1,000,000 per claimant.

2. Consultant shall, prior to performance of any services, file with the City Finance Officer certificates of insurance with original endorsements effecting coverage required by this Exhibit INS-A. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on the attached forms or on other forms approved by the City Finance Officer. All certificates and endorsements are to be received and approved by the City Finance Officer before commencement of services. City reserves the right to require complete certified copies of all required insurance policies at any time. The certificates of insurance and endorsements shall be forwarded to the City, addressed as follows:

City of Custer  
Finance Officer  
622 Crook Street  
Custer, SD 57730





Planning Department  
622 Crook Street  
Custer, SD. 57730  
Phone: 673-4824 Fax: 673-2411  
e-mail: timh@cityofcuster.com

Staff Report

Request: Preliminary Plat, Keupp Subdivision  
Applicant: Kitty & Lloyd Aman  
Location: South Side of Mount Rushmore Road, at the intersection of Aman Road  
Legal Desc.: Balance of TR KEUPP (Less Rita Tract & Tract Aman) Part of NW4SW4 & Government Lot2 in Sec. 26, T3S, R4E  
Date Prepared: September 12, 2017  
City Council Meeting: October 16, 2017  
Prepared by Tim Hartmann, Planning Administrator

**GENERAL**

The Plat is for a subdivision that is within the corporate limits of the City of Custer. City utilities serve the current parcels. Individual wells and wastewater systems are also available on site.

The plat splits one parcel into two lots. The area was annexed into the city in 2008 but currently has no zoning.

The applicant wishes to divided Tract Keupp into 2 parcels, Tract Kitty and Tract Lloyd. Tract Kitty is proposed to contain 8.79 acres and Tract Lloyd will contain 23.80 acres. Tract Rita and Aman currently is located within the subdivision and no change will occur with this parcel.

The proposed lot line was recently vacated. The planned Keupp subdivision would return the area to plat recorded in Book 12 Page 466. State statute 11-3-26 requires that a previously vacated plat be subdivided in the original platting procedure. Therefore, for the applicant to return to the previous plat the area must be re-platted.

**COMPREHENSIVE PLAN**

The land use section of the Comprehensive Plan identifies this area as Suburban Residential.

**ROUTING SHEET RESPONSES**

Custer County Highway – No Concerns  
Custer County Planning – Legal, Keupp Subdivision/ Plat of Tract Kitty and Tract Loyd of Keupp Subdivision of Tract Keupp, Located in .....  
Custer County ROD - Legal should state (less Rita Tract & Tract Aman)

**ACCESS**

Existing access to the area is provided from Mount Rushmore Road/ Hwy 16.

Tract Kitty will continue to be accessed directly from Mount Rushmore Road/ Hwy 16

Tract Lloyd will have access via a 50' Private Access and Utility Easement. The plat is originally platted with a 50' Right of Way(ROW). For the purpose of platting, a ROW is to be separate from the lots or parcels and not included within the dimensions or area of such lots or parcels, whereas an easement is defined as authorization by a property owner for the use by another, and for a specified purpose, of any designated purpose (CMC 16.04.100). Therefore, a private access and utility easement has been provided to access Tract Lloyd. Should the single parcel be further

developed in the future, the easement would then be transferred public, with possible improvements required under development standards (CMC 16.20.100, CC Ordinance #2)

\*\* Private access easements are intended to serve only one residence. The Board may allow a Private Access Road to be shared by two adjoining residences where topography or access restrictions onto Federal, State, or County highways make such sharing necessary. Development of Private Access Roads is not required. (CC Ordinance #2, Section 1 #5)

#### **PRIVATE AND PUBLIC UTILITIES**

Tract Kitty currently contains one residence and an active auto repair shop. Tract Aman & Rita contains one residence. Each building has been connected to public services, but some upgrades are needed. Public Works staff is working to address the issues with the subdivision applicant.

#### **REVISIONS NEEDED TO PRELIMINARY PLAT**

The Keupp Subdivision legal description will be addressed and assured it is sufficient.

After further discussion with the surveyor, and CC Register of Deeds, the legal has been determined sufficient.

The Right of Way will be changed to a Private Access and Utility Easement.

This change has been completed.

~~Additional Change Post Planning Commission — the easement through Tract Kitty has been adjusted to follow the property line through the length of the parcel. The easement originally did not turn at the 173.08' leg of Tract Kitty. After discussion with the surveyor and applicant it was decided to follow the property line. \*\*\* It has been decided this is not a plausible route for the easement. An issue with the topography of the land was encountered. A large solid rock outcropping exists on the 173.08' leg of Tract Kitty, making it not plausible to place utilities or access should the easement be needed in the future. After discussion with the applicant the easement has been redrawn to match the 2010 plat and original preliminary plat.~~

#### **STAFF RECOMMENDATIONS**

Staff supports a recommendation to council for approval of the preliminary plat, contingent upon the revisions listed above being completed.

#### **RECOMMENDED ACTION BY PLANNING COMMISSION**

The Planning Commission reviewed the preliminary plat at the 9/12/17 meeting. A motion was passed recommending the Council approve the preliminary plat, contingent upon the access to Tract Lloyd being corrected to a Private Access and Utility Easement, and the legal description on the plat being updated to a sufficient description. The two contingency corrections have been completed on the preliminary plat

#### **PREVIOUS ACTION BY CITY COUNCIL**

Council reviewed and approved the preliminary plat at the October 2<sup>nd</sup> meeting. Due to the change in the access and utility easement the plat is presented for review again. Staff recommends approval of the preliminary plat with the corrected Private Access and Utility Easement.

#### **Various References**

CMC 16.20.100

Conformance with other regulations.

CC Ordinance #2

Private Access Roads are intended to serve only one (1) Residence.

CC Road Design Standards

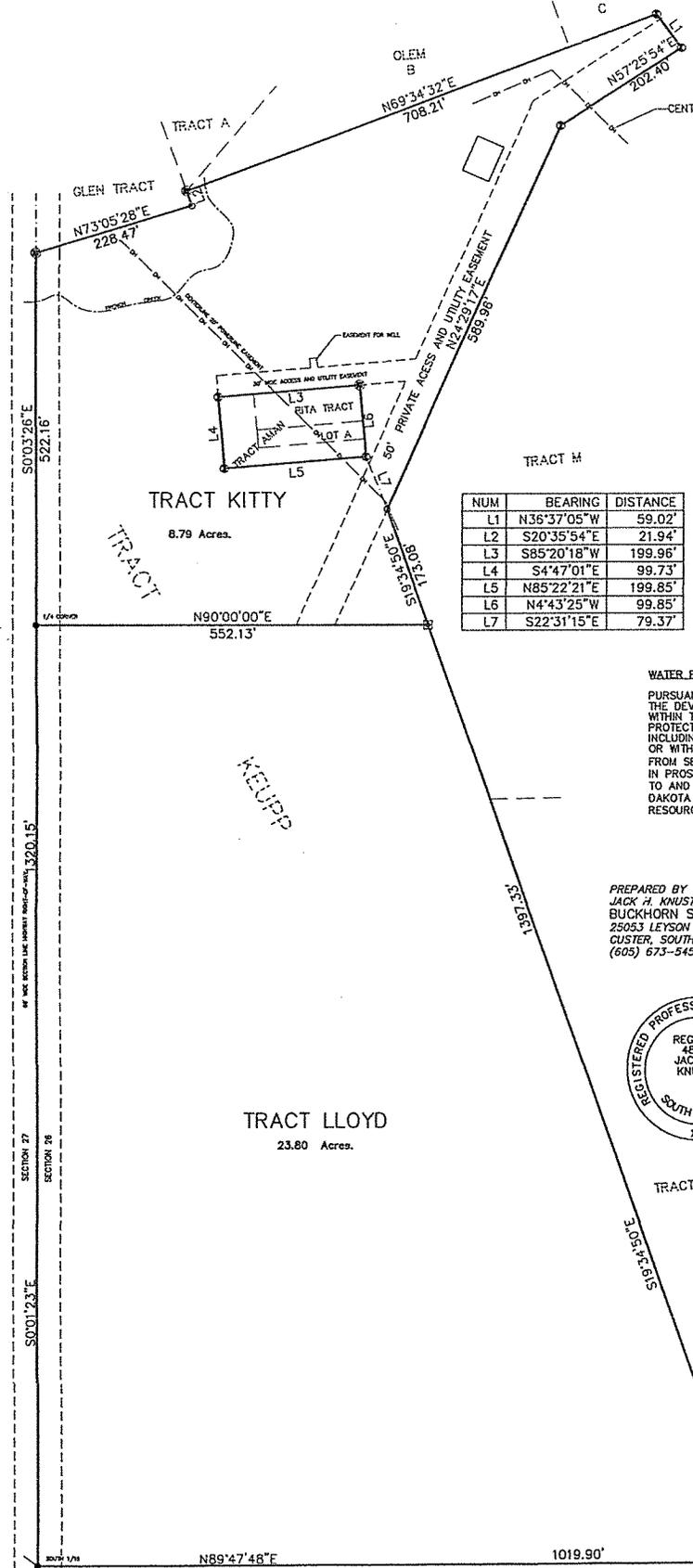
Low-Volume Roads – 18'. Provided access for no more than five (5) Dwelling

Rec 10/10/17

Plat B

# KEUPP SUBDIVISION

PLAT OF TRACT KITTY AND TRACT LLOYD OF KEUPP  
SUBDIVISION OF TRACT KEUPP, LOCATED IN GOVERNMENT LOT 3  
AND NW 1/4 SW 1/4 OF SECTION 26, T3S, R4E, BHM,  
CUSTER CITY, CUSTER COUNTY, SOUTH DAKOTA



**NOTE**  
FIRM PANEL 46033C 0113 F DATED  
JANUARY 6, 2012 INDICATES THE  
PRESENCE OF A FLOOD HAZARD  
AREA WITHIN THE SUBDIVISION AREA  
REPRESENTED ON THIS PLAT

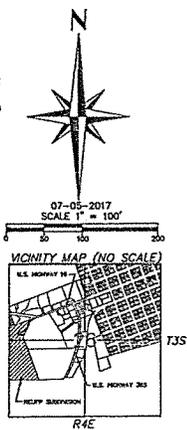
**NOTE**  
AMAN ROAD IS A 50' WIDE  
ACCESS AND UTILITY EASEMENT

**NOTE**  
TRACT AMAN IS RECORDED IN  
PLAT BOOK 10 PAGE 119.  
LOT A IS RECORDED IN PLAT  
BOOK 4 PAGE 61  
RITA TRACT IS RECORDED IN  
PLAT BOOK 2 PAGE 123

NUM	BEARING	DISTANCE
L1	N36°37'05"W	59.02'
L2	S20°35'54"E	21.94'
L3	S85°20'18"W	199.96'
L4	S4°47'01"E	99.73'
L5	N85°22'21"E	199.85'
L6	N4°43'25"W	99.85'
L7	S22°31'15"E	79.37'

**WATER PROTECTION STATEMENT**  
PURSUANT TO SDCL 11-3-8.1 AND 11-3-8.2  
THE DEVELOPER OF THE PROPERTY DESCRIBED  
WITHIN THIS PLAT SHALL BE RESPONSIBLE FOR  
PROTECTING ANY WATERS OF THE STATE,  
INCLUDING GROUNDWATER, LOCATED ADJACENT TO  
OR WITHIN SUCH PLAT AREA FROM POLLUTION  
FROM SEWAGE FROM SUCH SUBDIVISION AND SHALL  
IN PROSECUTION OF SUCH PROTECTIONS CONFORM  
TO AND FOLLOW ALL REGULATIONS OF THE SOUTH  
DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL  
RESOURCES RELATING TO THE SAME.

PREPARED BY  
JACK H. KNUST  
BUCKHORN SURVEYING INC  
25053 LEYSON LOOP  
CUSTER, SOUTH DAKOTA 57730  
(605) 673-5452



- LEGEND**
- CORNER FOUND THIS SURVEY REBAR WITH ALUMINUM CAP
  - ⊙ CORNER FOUND THIS SURVEY REBAR WITH ALUMINUM CAP MARKED BRYANT 2195
  - CORNER FOUND THIS SURVEY B.L.M./G.L.O. BRASS MONUMENT
  - CORNER FOUND THIS SURVEY IRON PIPE
  - ⊕ CORNER FOUND THIS SURVEY REBAR WITHOUT CAP

# KEUPP SUBDIVISION

PLAT OF TRACT KITTY AND TRACT LLOYD OF KEUPP  
SUBDIVISION OF TRACT KEUPP, LOCATED IN GOVERNMENT LOT 3  
AND NW 1/4 SW 1/4 OF SECTION 26, T3S, R4E, BHM,  
CUSTER CITY, CUSTER COUNTY, SOUTH DAKOTA

STATE OF SOUTH DAKOTA  
COUNTY OF CUSTER S.S.

I, WE \_\_\_\_\_ DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE LAND SHOWN AND DESCRIBED HEREON AND THAT  
WE DO AUTHORIZE AND DO HEREBY APPROVE THE SURVEY AND WITHIN PLAT OF SAID LAND, WE FURTHER CERTIFY THAT DEVELOPMENT OF THIS LAND SHALL CONFORM TO ALL EXISTING APPLICABLE

ZONING, SUBDIVISION, AND SEDIMENT CONTROL REGULATIONS. OWNERS: \_\_\_\_\_

ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, BEFORE ME, A NOTARY PUBLIC, PERSONALLY APPEARED \_\_\_\_\_  
KNOWN BY ME TO BE THE PERSON(S) DESCRIBED IN THE FOREGOING CERTIFICATE AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

NOTARY PUBLIC \_\_\_\_\_ MY COMMISSION EXPIRES \_\_\_\_\_

## STATEMENT OF SURVEYOR FOR BUCKHORN SURVEYING INC.

I, JACK H. KNUST, REGISTERED LAND SURVEYOR NO. 4896 OF THE STATE OF SOUTH DAKOTA DO HEREBY STATE THAT BEING SO AUTHORIZED, THE SURVEY AND WITHIN PLAT  
OF THE LAND SHOWN AND DESCRIBED HEREON WERE MADE UNDER MY RESPONSIBLE DIRECTION AND SUPERVISION AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF,  
THE WITHIN PLAT IS A REPRESENTATION OF SAID SURVEY.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

BY JACK H. KNUST, REGISTERED LAND SURVEYOR: \_\_\_\_\_  
FOR BUCKHORN SURVEYING INC.



## CERTIFICATE OF COUNTY TREASURER

I, TREASURER OF CUSTER COUNTY, DO HEREBY CERTIFY THAT ALL TAXES WHICH ARE LIENS UPON THE WITHIN DESCRIBED LANDS ARE FULLY PAID ACCORDING TO THE RECORDS OF MY OFFICE.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

TREASURER: \_\_\_\_\_

## CERTIFICATE OF HIGHWAY AUTHORITY

IT APPEARS THAT EVERY LOT HAS AN ACCEPTABLE APPROACH LOCATION ONTO A PUBLIC ROAD AND THE LOCATION OF THE INTERSECTION(S) OF ANY PROPOSED SUBDIVISION ROAD(S) OR  
PRIVATE ACCESS ROAD(S) WITH EXISTING PUBLIC ROAD IS HEREBY APPROVED

HIGHWAY AUTHORITY: \_\_\_\_\_

## RESOLUTION OF GOVERNING BOARD

STATE OF SOUTH DAKOTA

CITY OF CUSTER S.S.

WHEREAS THERE HAS BEEN PRESENTED TO THE CITY OF CUSTER, SOUTH DAKOTA, THE WITHIN PLAT OF THE ABOVE DESCRIBED LANDS AND IT APPEARING TO THE COUNCIL THAT

- THE SYSTEM OF STREETS SET FORTH THEREIN CONFORM TO THE SYSTEM OF STREETS OF THE EXISTING PLATS OF THE MUNICIPALITY,
  - ALL PROVISIONS OF ANY THREE MILE LIMIT SUBDIVISION HAVE BEEN FULLY COMPLIED WITH,
  - ALL TAXES AND SPECIAL ASSESSMENTS UPON THE SUBDIVISION HAVE BEEN FULLY PAID, AND
  - THE PLAT AND SURVEY THEREOF HAVE BEEN EXECUTED ACCORDING TO LAW.
- NOW THEREFORE, BE IT RESOLVED THAT SAID PLAT IS HEREBY APPROVED IN ALL RESPECTS, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

MAYOR OF THE CITY OF CUSTER: \_\_\_\_\_

I, FINANCE OFFICER OF THE CITY OF CUSTER, DO HEREBY CERTIFY THAT AT AN OFFICIAL MEETING HELD ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

THE \_\_\_\_\_ CITY COUNCIL, BY RESOLUTION DID APPROVE THE PLAT AS SHOWN HEREON.

CUSTER CITY FINANCE OFFICER: \_\_\_\_\_

## CERTIFICATE OF DIRECTOR OF EQUALIZATION

I, DIRECTOR OF EQUALIZATION OF CUSTER COUNTY, DO HEREBY CERTIFY THAT I HAVE ON RECORD A COPY OF THE WITHIN DESCRIBED PLAT, DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

DIRECTOR OF EQUALIZATION: \_\_\_\_\_

## CERTIFICATE OF REGISTER OF DEEDS

FILED FOR RECORD THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, AT \_\_\_\_\_ O'CLOCK \_\_\_\_ M.

AND RECORDED IN BOOK \_\_\_\_\_ OF PLATS ON PAGE \_\_\_\_\_

REGISTER OF DEEDS, CUSTER COUNTY \_\_\_\_\_

Rec 9/16/17

### BLOCK 132 SUBDIVISION

PLAT OF LOT 4R (FORMERLY A PORTION OF LOT 4 AND A PORTION OF FIRST STREET) ALL IN BLOCK 132 LOCATED IN CUSTER CITY, CUSTER COUNTY, SOUTH DAKOTA

#### WATER PROTECTION STATEMENT

PURSUANT TO SDCL 11-3-8.1 AND 11-3-8.2 THE DEVELOPER OF THE PROPERTY DESCRIBED WITHIN THIS PLAT SHALL BE RESPONSIBLE FOR PROTECTING ANY WATERS OF THE STATE INCLUDING GROUNDWATER LOCATED ADJACENT TO OR WITHIN SUCH PLATTED AREA FROM POLLUTION FROM SEWAGE FROM SUCH SUBDIVISION AND SHALL IN PROSECUTION OF SUCH PROTECTIONS CONFORM TO AND FOLLOW ALL REGULATIONS OF THE SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES RELATING TO THE SAME.

#### LEGEND

- CORNER SET THIS SURVEY REBAR WITH ALUMINUM CAP MARKED BUCKHORN SURVEYING R.L.S. 4896
- CORNER FOUND THIS SURVEY REBAR WITH ALUMINUM CAP MARKED BRYANT RLS 2195

#### NOTE

CANAL STREET IS A 120' DEDICATED PUBLIC RIGHT-OF-WAY. PINE STREET IS A 120' DEDICATED PUBLIC RIGHT-OF-WAY. FIRST STREET IS A VARYING WIDTH DEDICATED PUBLIC RIGHT OF WAY THAT CONTAINS A PORTION OF FIRST STREET, TRACT A OF LOT 3, AND THE REMAINDER OF LOT 4 ALL IN IN BLOCK 132

#### NOTE

BLOCK 132 IS RECORDED ON CITY MAP TRACT A OF LOT 3 OF BLOCK 132 IS RECORDED IN PLAT BOOK 10 PAGE 317

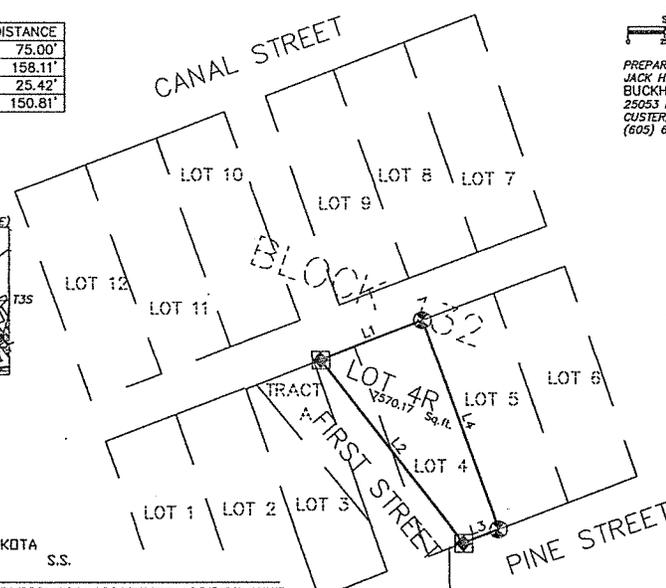
#### NOTE

FIRM PANEL 4603300113F DATED JANUARY 6, 2012 THERE IS NO FLOOD HAZARD AREA WITHIN THE SUBDIVISION AREA PRESENTED ON THIS PLAT.

#### NOTE

A 6' WIDE UTILITY EASEMENT SHALL EXIST CENTERED ON ALL SUBDIVISION LOT LINES NOT ADJACENT TO PUBLIC RIGHTS-OF-WAY OR UNPLATTED LAND AND ON THE INTERIOR SIDE OF LOT LINES THAT BORDER LAND THAT HAS NOT BEEN SUBDIVIDED, UNLESS OTHER SUITABLE UTILITY EASEMENTS HAVE BEEN SHOWN.

NUM	BEARING	DISTANCE
L1	N69°03'52"E	75.00'
L2	N38°28'58"W	158.11'
L3	S69°09'02"W	25.42'
L4	N20°12'39"W	150.81'



PREPARED BY JACK H. KNUST BUCKHORN SURVEYING INC 25053 LEYSON LOOP CUSTER, SOUTH DAKOTA 57730 (605) 673-5452

STATE OF SOUTH DAKOTA COUNTY OF CUSTER S.S.

I, WE DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE LAND SHOWN AND DESCRIBED HEREON AND THAT WE DO AUTHORIZE AND DO HEREBY APPROVE THE SURVEY AND WITHIN PLAT OF SAID LAND. WE FURTHER CERTIFY THAT DEVELOPMENT OF THIS LAND SHALL CONFORM TO ALL EXISTING APPLICABLE ZONING, SUBDIVISION, AND SEDIMENT CONTROL REGULATIONS.

OWNERS: ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_, BEFORE ME, A NOTARY PUBLIC, PERSONALLY APPEARED

KNOWN BY ME TO BE THE PERSON(S) DESCRIBED IN THE FOREGOING CERTIFICATE AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

NOTARY PUBLIC MY COMMISSION EXPIRES \_\_\_\_\_

I, WE DO HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE LAND SHOWN AND DESCRIBED HEREON AND THAT WE DO AUTHORIZE AND DO HEREBY APPROVE THE SURVEY AND WITHIN PLAT OF SAID LAND. WE FURTHER CERTIFY THAT DEVELOPMENT OF THIS LAND SHALL CONFORM TO ALL EXISTING APPLICABLE ZONING, SUBDIVISION, AND SEDIMENT CONTROL REGULATIONS.

OWNERS: ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_, BEFORE ME, A NOTARY PUBLIC, PERSONALLY APPEARED

KNOWN BY ME TO BE THE PERSON(S) DESCRIBED IN THE FOREGOING CERTIFICATE AND ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME.

NOTARY PUBLIC MY COMMISSION EXPIRES \_\_\_\_\_

#### STATEMENT OF SURVEYOR FOR BUCKHORN SURVEYING INC

I, JACK H. KNUST, REGISTERED LAND SURVEYOR NO. 4896 OF THE STATE OF SOUTH DAKOTA, DO HEREBY STATE THAT BEING SO AUTHORIZED, THE SURVEY AND WITHIN PLAT OF THE LAND SHOWN AND DESCRIBED HEREON WERE MADE UNDER MY PERSONAL DIRECTION AND SUPERVISION AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE WITHIN PLAT IS A REPRESENTATION OF SAID SURVEY. IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_

BUCKHORN SURVEYING INC BY JACK H. KNUST, REGISTERED LAND SURVEYOR



#### CERTIFICATE OF HIGHWAY AUTHORITY:

IT APPEARS THAT EVERY LOT HAS AN ACCEPTABLE APPROACH LOCATION ONTO A PUBLIC ROAD AND THE LOCATION OF THE INTERSECTION(S) OF ANY PROPOSED SUBDIVISION ROAD(S) OR PRIVATE ACCESS ROAD(S) WITH THE EXISTING PUBLIC ROAD IS HEREBY APPROVED

NOTARY AUTHORITY:

#### RESOLUTION OF GOVERNING BOARD

STATE OF SOUTH DAKOTA CITY OF CUSTER S.S.

WHEREAS THERE HAS BEEN PRESENTED TO THE CITY OF CUSTER, SOUTH DAKOTA, THE WITHIN PLAT OF THE ABOVE DESCRIBED DESCRIBED LANDS AND IT APPEARING TO THE TOWNAL BOARD:

- THE SYSTEM OF STREETS SET FORTH THEREIN CONFORM TO THE SYSTEM OF STREETS OF THE MUNICIPALITY.
- ALL PROVISIONS OF ANY THREE MILE LATE SUBDIVISION REGULATIONS HAVE BEEN COMPLIED WITH.
- ALL TAXES AND SPECIAL ASSESSMENTS UPON THE SUBDIVISION HAVE BEEN FULLY PAID, AND
- THE PLAT AND SURVEY THEREOF HAVE BEEN EXECUTED ACCORDING TO LAW.

NOW THEREFORE, BE IT RESOLVED THAT SAID PLAT IS HEREBY APPROVED IN ALL RESPECTS, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_

MAYOR OF THE CITY OF CUSTER, DO HEREBY CERTIFY THAT AT AN OFFICIAL MEETING HELD ON

THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_

THE CUSTER CITY COUNCIL, BY RESOLUTION DO APPROVE THE PLAT AS SHOWN HEREON.

CUSTER CITY FINANCE OFFICER:

#### CERTIFICATE OF COUNTY TREASURER

I, TREASURER OF CUSTER COUNTY, DO HEREBY CERTIFY THAT ALL TAXES WHICH ARE DUE UPON THE WITHIN DESCRIBED LANDS ARE FULLY PAID ACCORDING TO THE RECORDS OF MY OFFICE, DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_

TREASURER: \_\_\_\_\_

#### CERTIFICATE OF DIRECTOR OF EQUALIZATION

I, DIRECTOR OF EQUALIZATION OF CUSTER COUNTY DO HEREBY CERTIFY THAT I HAVE ON RECORD A COPY OF THE WITHIN DESCRIBED PLAT, DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_

DIRECTOR OF EQUALIZATION: \_\_\_\_\_

#### CERTIFICATE OF REGISTER OF DEEDS

FILED FOR RECORD THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_ AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M.

AND RECORDED IN BOOK \_\_\_\_\_ OF PLATS ON PAGE \_\_\_\_\_

REGISTER OF DEEDS, CUSTER COUNTY



## ALCOHOLIC BEVERAGE LICENSE OPERATING AGREEMENT

THIS AGREEMENT made and entered into by and between the CITY OF CUSTER CITY, South Dakota, a municipal corporation, hereinafter referred to as the 'City' and the business presently known as \_\_\_\_\_, by and through its operator-manager, \_\_\_\_\_ of \_\_\_\_\_, hereinafter referred to as 'Permittee'.

That whereas the City is the holder of all Off-Sale, On-Sale, and On-Off Sale Alcoholic Beverage Licenses for the sale of alcoholic beverages (liquor, malt beverage, wine, and non-intoxicating beer and wine), and further desires and intends to enter into an operating agreement for such Alcoholic Beverages establishment by the Permittee, known as \_\_\_\_\_, Said establishment location that sells On-Sale or Off-Sale Alcoholic Beverages shall be referred to as 'site'.

### THE PERMITTEE COVENANTS AND AGREE:

1. To furnish a suitable building situated upon the real property as stated on the Uniform Alcoholic Beverage License Application within the city boundaries.
2. To furnish all utilities and to pay all expenses of said site, unless their rental agreement with property owner states otherwise.
3. To pay all taxes attributable to the fixtures, equipment, and real property employed in or upon said site, unless their rental agreement with property owner states otherwise.
4. To not operate said establishment enoutside of the days and during the hours as specified by the laws of the State of South Dakota and the City, as amended, and in accordance with the specific alcoholic beverage license hereinafter designated.
5. To purchase and dispense only alcoholic beverages through the City's Alcoholic Beverage License, and to maintain complete and detailed record of all alcoholic beverages ordered, received, and sold, and to permit the City, the City officials, and personnel of the State of South Dakota to audit and inspect all books and records pertaining to the purchase, inventory and sale of said alcoholic beverages. In the event said audit or inspection reveals a discrepancy between actual purchases and purchases reported to the City by Permittee, Permittee agrees to pay the City not only the amount owed due to such discrepancy, but shall also pay the City the sum of \$50.00 as and for administrative costs of such audit or inspection.
6. To pay directly the distributor of all alcoholic beverages any and all invoices attributable to such establishment. To pay to the City on or before the tenth (10<sup>th</sup>) of each month, a mark-up of ten percent (10%) on all alcoholic, non-alcoholic wine and malt beverage, or malt beverage invoices from the preceding month and submit the monthly Custer City Remittance Form itemizing all invoice costs. Included on the remittance form will be the number of days open the preceding month. Any alcoholic beverage that is manufactured by the Permittee on the Permittees premises shall have a mark-up of \$0.50 per gallon remitted to the City.
7. To furnish to the City when requested, evidence of payment of all Social Security, Withholding, Workmen's Compensation, I-9 forms, and Unemployment Insurance payments or premiums and policies or receipts therefore, along with evidence of payments of all rents, utilities and salaries within 30 days.
8. Permittee agrees to hold harmless the Mayor, all City Council Members, and the City of Custer City, its employees or agents, from any liability for any damages arising out of the Permittee's use, occupation or activities whatsoever on the part of the Permittee pertaining to the sale of alcoholic beverages and to maintain public liability and liquor liability insurance coverage in the amount of one million dollars per person, two million dollars per occurrence, and shall name the City as an additional

insured thereunder. Permittee shall provide the City with a copy of such policy or policies annually or upon request.

9. To observe all statutory laws of the State of South Dakota including SDCL 35-2-6.2, which states licensees must have never been convicted of a felony, and all ordinances of the City.

10. The Permittee authorizes and agrees that any and all distributors shall notify the City at such time the Permittee becomes 30 days' delinquent on any invoice. In any event Permittee is more than 30 days late on any three invoices in a calendar year then the Permittee shall be required to maintain in effect a Financial Guarantee Bond guaranteeing the Permittee's performance there under, in the amount of not less than the highest one (1) month of invoices for the preceding (1) year, which amount shall be determined by the City Council of the City. Said bond may be either a Financial Guarantee Bond or may be a cash deposit in the name of the City and the Permittee jointly, on deposit in an account or accounts approved by the City Council of the City, and any interest accruing on said deposit shall be the sole property of said Permittee.

11. To serve no alcoholic beverages or allow any alcoholic beverages to be consumed after the legal closing hour as prescribed by the laws of the State of South Dakota or Custer City, as amended, and to further allow no individuals other than regularly and currently employed help to remain on said premises beyond closing time, after which no alcoholic beverages or liquor may be served.

12. To close the premises and shut off the lights other than 'night lights' and to cause all personnel to vacate the premises of said alcoholic beverage establishment by no later than one hour subsequent to the foretasted hour after which no alcoholic beverages may be served, except the requirement to vacate the premises stated herein shall not apply to a restaurant. The term restaurant as used herein shall mean only a room regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation which has suitable table accommodations for at least fifty guests therein at the same time, and a kitchen connected therein containing conveniences for cooking sufficient to provide meals in a bona fide manner for fifty guests at the same time.

13. To allow personnel of the City full and complete access at any time to inspect and inventory said alcoholic beverage inventory.

14. Unless otherwise allowed under South Dakota Codified Law, to not allow any minor under the age of twenty-one (21) years to be served or to consume on the premises any alcoholic beverage or liquor of any nature.

15. To make a thorough and complete check of the age of any individual requesting to be served alcoholic beverages as is reasonably necessary to determine if said individual is of lawful age; and to immediately report to the proper officials for prosecution, any individual attempting to falsify his or her lawful age for the purpose of obtaining the service of alcoholic beverages.

THAT Permittee shall require that all it's employees and/or agents shall, at the expense of the Permittee, as a condition of employment, complete a nationally recognized training program approved by the South Dakota State Department of Revenue that provides instruction on techniques to prevent persons under the age of twenty-one (21) years from purchasing alcoholic beverages within sixty (60) days after commencement of employment, or within sixty (60) days after execution of this Agreement, which ever first occurs.

16. To at all times and in every reasonable manner cooperate with the Custer County Sheriff's Office and the law enforcement personnel of the State of South Dakota in allowing access to said premises, to establish the age of any individual or individuals found on said premises, and to maintain law and order of said premises.

17. To pay all miscellaneous expenses including all taxes, and to purchase a Federal Tax Stamp as is required.

18. If the Permittee is a corporation, the corporation agrees to give a complete list of all directors and officers of the corporation for the preceding year to the City.

19. To pay to the City the amount established for each type of license according to the Custer

City Municipal Code and to pay to the City at times as set forth in paragraph six (6) a mark-up percentage over and above the cost of alcoholic beverages and non-alcoholic wine and malt beverages including transportation thereof.

20. If the Permittee allows legalized gambling on the premises, the Permittee agrees to be responsible for any and all liability as a result of such gambling and agrees to reimburse and indemnify the City for any action that would result in any damages or liability being assessed against the City as a result of such legal or illegal gambling activities.

21. The Permittee and City agree that if any statement to be given by the Permittee shall be falsely made with the knowledge of the Permittee as being false, this Agreement shall be null and void.

22. The Permittee agrees to operate said establishment for a minimum of 150 days per calendar year for all licenses, except for the convention license which will be operated for a minimum of 180 days per calendar year with availability for the other 180 days of the year. The establishment will not be open outside of during the hours as specified by the laws of the State of South Dakota and the City, as amended, and in accordance with the specific alcoholic beverage license hereinafter designated. If a license is obtained after the 1<sup>st</sup> of the year, the licensee is required to be open half of the remaining calendar days of that year. After that first year, the licensee will then be subject to the 150 days previously stated in this agreement. If a business under goes a remodel that prevents such establishment from being open 150 days, they must be open half of the remaining calendar days. For construction lasting longer than 1 year the licensee must get permission from Council to be allowed a variance to this section of the agreement.

#### THE CITY COVENANTS AND AGREES:

- A. To furnish the appropriate State of South Dakota Alcoholic Beverage Licenses as hereinafter designated at the location stated in paragraph one (1) and in the name as stated in paragraph two (2) and in the name of the City, pursuant to SDCL 35-3, for sale of alcoholic beverages within the City.
- B. To furnish all policing required, as deemed reasonably necessary by the City Council of the City.
- C. To make all requests and instructions in writing, signed by the Mayor and duly attested by the City Finance Officer.
- D. To make all examinations, audits, inspections and investigations during the hours of operation of the site.

#### IS MUTUALLY AGREED AS FOLLOWS:

That this contract shall terminate immediately upon any breach of the terms or covenants herein contained; that such purported breach shall be reported to the City Council of the City, and that a special City Council meeting shall be called for the purpose of hearing said complaint, and that upon reasonable evidence having been presented to said City Council of said breach or violation, said City Council by a majority vote thereof may immediately terminate said contract. It is specifically covenanted and agreed that the laws and rules of criminal procedure shall not apply to said hearing, and that no conviction in any court of any criminal offense shall be necessary to determine such breach or violation; and that the decision of said City Council shall be in all forms and respect final.

That this Agreement refers to the premises stated in paragraph one (1) and does not depend on any individual. It is further agreed that any Permittee or operator-manager of the premises stated in paragraph one (1) does not become an 'owner' of any City alcoholic beverage license.

It is further agreed that if the Permittee ~~or operator-manager~~ of the premises shall change, said information shall be submitted to and approved by the City prior to the new Permittee or operator-manager conducting business. ~~Said approval shall be in writing and attached to this Agreement and shall not be withheld provided that the new Permittee or operator-manager complies with the qualifications herein.~~

It is further covenanted and agreed that the Permittee or operator-manager hereunder may at

any time request and be granted a hearing before complaints relative to the operation of said site, the terms and conditions of this contract, the policing of said facility, and any and all other grievances may be heard.

That this Agreement is to be for a period of two (2) years commencing January 1 of each year, provided that the Permittee shall not have breached this Agreement and further provided that Permittee shall qualify to use said license. It is further agreed that this Agreement may be terminated by either party upon giving ninety (90) days written notice to the other party of such intention to terminate.

It is further agreed that the Permittee ~~or any operator manager~~ hereunder shall possess the same qualifications as an alcoholic beverage licensee under SDCL 35-2-6.2

It is further agreed that if any part or parts of this contract be declared illegal, unconstitutional, or unenforceable, the same shall not invalidate the remaining sections of this Agreement.

This operating agreement is for the below listed alcoholic beverage license(s) at the listed cost at the appropriate renewal time.

- |                       |   |                      |
|-----------------------|---|----------------------|
| <input type="radio"/> | Package (Off Sale) Malt Beverage              | \$ <del>200.00</del> |
| <input type="radio"/> | Package (Off Sale) Malt Beverage & SD Wines   | \$ <del>325.00</del> |
| <input type="radio"/> | Retail (On-Off Sale) Malt Beverage & SD Wines | \$ <del>325.00</del> |
| <input type="radio"/> | Retail (On-Off Sale) Malt Beverage            | \$ <del>300.00</del> |
| <input type="radio"/> | Retail (On Sale) Wine                         | \$ <del>500.00</del> |
| <input type="radio"/> | Retail (On-Off Sale) Wine                     | \$ <del>500.00</del> |
| <input type="radio"/> | Retail (On Sale) Liquor                       | \$1,200.00           |
| <input type="radio"/> | Retail (On Sale) Convention Center Liquor     | \$1,200.00           |
| <input type="radio"/> | Package (Off Sale) Liquor                     | \$1,500.00           |
| <input type="radio"/> | <u>On-Sale Retail Restaurant License</u>      |                      |

Dated this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Permittee

\_\_\_\_\_  
Title

Dated this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_

City Finance Officer

