

**CITY OF CUSTER CITY
COUNCIL PROCEEDINGS- REGULAR SESSION
February 18th, 2020**

Mayor Corbin Herman called to order the second meeting of the Common Council for the month of February 2020 at 5:30 p.m. Present at roll call were Councilpersons Blom, Whittaker, Moore, Fischer and Ryan. Attorney Beesley was also present. The Pledge of Allegiance was stated.

AGENDA

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

MINUTES

Councilperson Moore moved, with a second by Councilperson Ryan, to approve the minutes from the February 3rd council meeting. The motion unanimously carried.

CONFLICTS OF INTEREST

No conflicts of interest were stated.

PUBLIC HEARING – OFF SALE LIQUOR LICENSE – DAKOTAMART GAS CENTER

Councilperson Fischer moved to approve the off-sale liquor license for Dakotamart Gas Custer contingent upon proof of insurance being provided. Seconded by Councilperson Whittaker, the motion unanimously carried

RESOLUTION #02-18-20A – EAST CUSTER SEWER DISTRICT

Councilperson Blom moved to adopt Resolution #02-18-20A, East Custer Sewer District. Seconded by Councilperson Moore, the motion unanimously carried.

RESOLUTION #02-18-20A

SEWAGE TREATMENT, BILLING AND MAINTENANCE AGREEMENT

This Agreement for treatment, billing and maintenance, is entered into as of the 3rd day of February, 2020, by and between the City of Custer City, South Dakota, hereinafter referred to as the “City” and the East Custer Sanitary Sewer and Water District, Custer, South Dakota, hereinafter referred to as the “District.”

This agreement shall specifically supersede and replace that certain Sewage Treatment contract originally entered into between the parties hereto, signed March 17, 1975, consisting of three pages, and any and all amendments and addendums executed thereafter, including Resolution #11-21-16C.

Witnesseth:

Whereas the District is organized and established under the provisions of SDCL 34A-5 and Acts amendatory thereof, for the purpose of operating, maintaining and repairing sewage collection system serving sewer users within the District, as indicated on exhibit “A” attached hereto, establishing the exterior boundaries of said district.

Whereas, the City now owns and operates a sewage treatment plant with a capacity currently capable of serving the present customers of the City’s system and the estimated number of sewer users to possibly be served by the said District.

Whereas, treatment of sewage for the District in accordance with the terms set forth herein is approved, and the execution of this contract is duly authorized by Resolution hereinafter set forth, and

Whereas, by Resolution of the Board of Trustees of the District hereinafter set forth, treatment of the District’s sewage by the City is hereby approved and the execution of this contract is duly authorized.

Now therefore, in consideration of the foregoing and mutual agreements hereinafter set forth,

A. The City Agrees:

1. (Quality and Quantity) To adequately treat the non-industrial sewage of the District, during the term of this Agreement or any renewal or extension thereof, according to the standards established by the South Dakota Department of Environmental Protection in such quantity as may be required by the District; however, not to exceed the design capacity of the City Sewage Treatment Plant.
2. (Billing Procedure) The District certifies that they are authorized by their bylaws and regulations to enter into this Agreement on behalf of their members. The City shall be responsible to charge for, bill and collect for all sewer fees or charges, or any debt surcharge therefore, directly to the District’s members, and to pay the appropriate amount (\$1,300 monthly) to the District on or before the **20th** day of each month for the preceding month through automatic deposit in the District’s account. Such stated monthly payment shall be utilized by the District to assist with the District’s monthly recurring responsibilities including but not limited to debt payments,

insurance, repairs beyond the terms of this agreement, etc. The City shall charge and apply late fees as stated in section 13.20.090 of the Custer Municipal Code. A Service reduction for those members who do not occupy their residence or business for a period thirty consecutive days or greater, will be applied in accordance with section 13.24.060 of the Custer Municipal Code, except that the rate shall be as set forth in the East Custer Sewer District Rate Schedule, attached hereto as "Exhibit C" .

3. (Rates) The City shall charge each member of the District on a monthly basis at the rate(s) as stated in the East Custer Sewer District Rate Schedule, attached hereto as "Exhibit C", as the same may be amended.
4. (Maintenance/Repairs) The City shall conduct the general maintenance and repairs to the lift stations, read the commercial meters and jet the sewer lines once every 18 months. General maintenance and repairs shall include assisting with freeze ups no more than twice a year, pulling and cleaning each pump no more than twice year. Large repairs shall be excluded from the City's responsibility hereunder, for example replacement of a lift station pump or excavation and repair & replacement of any section of sewer line shall be the District's responsibility.

B. The District Agrees:

1. (Board of Trustees) The District shall maintain their Board of Trustees who shall be responsible for and govern all activities of the District, and the Board shall be the point of contact for the City. The Board shall provide annually by December 31st each year a list of board members and contact information for each board member and shall appear at the First Council meeting the following year with an annual update to Council for the preceding year.
2. (Maintenance/Repair) District hereby agrees to be responsible for costs outside of general repairs and maintenance of the system, including but not limited to meter replacement, pipe repair, manholes, lift station equipment replacement, etc to the point of entry to the City's Sewer Main, as displayed in "Exhibit B" (whether that portion of the system is located on District or City land), attached hereto and incorporated herein by this reference as though set forth in full. If the City does any additional repairs, maintenance outside of their scope, they shall bill the District for additional cost.
3. **All commercial member's properties must be metered.** The City shall be responsible for reading and reporting all meters within the District on a monthly basis and ensuring that said meters are working accurately. At City's discretion, City's employees may enter onto District's property to conduct independent readings of any meters to verify that the same are working accurately.
4. (Outstanding Bills and Debt) The District shall be responsible for all debt, debt payments, insurance, and other expenditures the District sees fit. The District shall be responsible for all debt repayment and any reporting requirements in accordance with such debt.

C. It is Further Mutually Agreed Between the City and District:

1. (Term of Agreement) That this Agreement shall extend for a term of two years from the date of execution of this Agreement/Resolution. This Agreement may be extended for an additional five-year period upon agreement of the parties. Written notice of intent to renew shall be provided at least 90 days prior to termination of this Agreement to the other party by certified mail, return receipt requested.
2. (Treatment of Sewage) That the City will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to treat the District's sewage. Temporary or partial failure to treat sewage shall be remedied with all possible dispatch.
3. (Type of Sewage) That the District will discharge only domestic sewage and will allow no storm water, ground water, or grease or oil to enter its collection system. This Agreement does not allow for any treatment of industrial or trucked in waste. If any industrial or trucked in waste is intended to be discharged by the District, a separate agreement must be made to provide for its monitoring and treatment, prior to any such discharge.
4. (Modification of Agreement) The provisions of this Agreement may be modified or altered only by mutual written agreement executed by both parties. The parties further agree that this

Sewage Treatment Agreement contains the entire agreement of the Parties, and there are no other terms or conditions, oral or written, not contained herein.

5. (Regulatory Agencies) That this Agreement is subject to such rules, regulations, or laws as may be applicable to similar agreements in this state, and the City and District will collaborate in obtaining such permits, certifications, or the like, as may be required to comply therewith.
6. (Miscellaneous) That the construction/operation of the sewage collection system by the District is financed by loans made or insured by, and/or grants from governmental entities. The provisions hereof pertaining to the District's loan obligations for any improvements/upgrades are conditioned upon the written approval of the appropriate governmental entity.
7. (Priority of City's Use) That the City shall have first priority for the use of the City's treatment plant hereunder.
8. (Annexation) That annexation of District by the City shall nullify this Agreement, unless only a portion of District shall be so annexed. In that case, the portion so annexed shall be excluded from this Agreement.
9. (Municipal Code Reference) The parties agree that any reference to the Custer Municipal Code herein shall incorporate all terms of the referred to code section as though set forth in full and shall apply to any future amendments thereof.
10. (Unenforceability) In the event any portion of this Agreement is determined invalid, illegal, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.
11. (Successor to the District) That in the event of any occurrence rendering the District incapable of performing under this Agreement, any successor of the District, whether through result of legal process, assignment, or otherwise shall succeed to the rights of the District hereunder.
12. (Default) Failure by either Party to comply with any term or condition contained in this Agreement shall constitute default; in such an event, the non defaulting Party shall provide written notice to the other Party, advising them they have thirty days to correct such default, and that in the event such default is not satisfactorily resolved within said thirty-day period, the Party claiming default may proceed in accordance with any remedies available to them pursuant to South Dakota law.
13. (Indemnification and Liability Insurance)

(a) District shall indemnify, hold harmless and defend City from and against any and all costs, expenses (including reasonable attorney's fees), liabilities, losses, damages, suits, actions, fines, penalties, claims or demands of any kind asserted by or on behalf of any person, entity or governmental authority, arising out of or in any way connected with operation of the District, and City shall not be liable to District on account of, (i) any failure by District to perform any of the terms, covenants or conditions of this Agreement required to be performed by District, (ii) any failure by District to comply with any statutes, ordinances, regulations or orders of any governmental authority, or (iii) any accident, death or personal injury, or damage to or loss or theft of property, which shall occur in or about the District's premises except as the same may be caused by the gross negligence of City, its employees or agents.

(b) During the term of this Agreement or any renewal thereof, District shall maintain and promptly pay all premiums for general public liability insurance against claims for personal injury, death or property damage occurring upon, in or about the District, such insurance to afford protection in an amount of not less than \$1,000,000 with respect to injury or death to a single person and an amount of not less than \$2,000,000 with respect to any one occurrence, and for damage to property in an amount of not less than \$1,000,000 made by, or on behalf of, any person or entity, firm or corporation arising from, related to or connected with the District's premises, arising from any one occurrence, with such insurance company or companies as shall be satisfactory to City from time to time, and all such policies and renewals thereof shall name the City and the District as insured. On or before the commencement date of the term of this Agreement and thereafter not less than thirty (30) days prior to the expiration dates of said policy or policies, District shall provide copies of policies or certificates of

insurance evidencing coverage required by this Agreement; these policies shall name the City as additional named insured party.

14. (Notice) Any notice required or permitted under this Agreement shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to City to: City of Custer
622 Crook Street
Custer, SD 57730

If to District to: ECSD
PO Box 6046
Custer, SD 57730

In Witness Whereof the acting Mayor of the City of Custer City, South Dakota, and the President of the Board of Trustees of the East Custer Sanitary Sewer and Water District, have hereunto subscribed their names on the date and year hereinbefore mentioned.

Be It Resolved that the Agreement herein written is duly authorized and the terms and conditions thereof are hereby approved.

City of Custer

S/Corbin Herman, Mayor

ATTEST: Laurie Woodward, Finance Officer

PUBLIC COMMENTS

No public comments were received.

STREET CLOSURE REQUEST & SHOWMOBILE USAGE REQUEST – VAN ARP

Councilperson Fischer moved to approve the request from Van Arp for closure of South Fifth Street between Mt Rushmore Road and the south alley and usage of the Showmobile for June 18th – 20th, 2020 for Summer Music Kickoff, pending proof of insurance being provided. Seconded by Councilperson Blom, the motion unanimously carried

ASPHALT SURFACE TREATMENT BIDS

Councilperson Blom moved to accept the bid from Bituminous Paving Inc for the 2020 Asphalt Surface Treatment Project with a bid price of \$55,732.50 (\$3.75/unit) for CRS-2P asphalt emulsion, \$41,775.00 (\$75/unit) for cover aggregate and \$12,771.00 (\$2.75/unit) for CSS-1h fog seal for a total of \$110,278.50. Seconded by Councilperson Whittaker, the motion carried with Councilperson Blom, Whittaker, Moore, Fischer and Ryan voting yes.

DRAINAGE IMPROVEMENTS BIDS

Councilperson Whittaker moved to accept the bid from Simon Contractors of SD, Inc at \$361,235.33 for the Drainage Improvement Project. Seconded by Councilperson Blom, the motion carried with Councilperson Whittaker, Moore, Fischer, Ryan and Blom voting yes.

CUSTER COMMUNITY CENTER GUARANTEED MAXIMUM PRICE – AINSWORTH-BENNING

Councilperson Whittaker moved to approve the guaranteed maximum price and value engineering options for the Custer Community Center totaling \$4,837,857. Seconded by Councilperson Moore. After some discussion, Councilperson Moore, Fischer, Ryan, Blom and Whittaker voted no.

APPLICATION FOR PERMIT TO DISCHARGE WASTEWATER

Councilperson Fischer moved to approve the application for permit to discharge wastewater with SD Department of Environment & Natural Resources for the proposed new discharge location into French Creek below Stockade Lake. Seconded by Councilperson Blom, the motion unanimously carried.

CLAIMS

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

1881 Courthouse Museum, Subsidy, \$7,500.00
American Legal Publishing, Professional Fees, \$886.60
Black Hills Energy, Utilities, \$15,017.90
Butler Machinery, Supplies, \$710.82
Custer Ministerial Alliance, Subsidy, \$1,000.00
Core & Main, Repairs and Maintenance, \$2,554.36

Culligan, Repairs and Maintenance, \$18.50
California State Disbursement, Deduction, \$92.30
Chamber of Commerce, Sales Tax Subsidy, \$5,565.18
Chronicle, Publishing, \$583.00
Custer Ace, Supplies, Repairs & Maintenance, \$865.88
Dakota Pump, Repairs & Maintenance, \$588.50
Discovery Benefits, Supplies, \$30.00
Fastenal, Supplies, \$36.07
Fennel Design, Professional Fees, \$188.00
French Creek Supply, Supplies, Repairs and Maintenance, \$915.63
Green Owl Media, Professional Fees, \$156.00
Hach, Repairs and Maintenance, \$158.06
Hawkins, Supplies, \$5,296.89
Lynn's Dakotamart, Supplies, \$30.00
Mid-American Research Chemical, Supplies, \$341.00
Midcontinent Testing Lab, Professional Fees, \$130.00
Nelson's Oil & Gas, Supplies, \$922.26
Petty Cash, Supplies, \$144.95
Rapid Delivery, Professional Fees, \$66.15
Ryan, Peg, Travel and Conference, \$178.08
Servall, Supplies, \$283.92
SD Division of Criminal Investigation, Municipal License, \$80.25
The Hartford, Insurance, \$59.54
USDA Loan Payment, \$8,910.00
USA Bluebook, Repair and Maintenance, \$515.14
Total Claims \$53,824.98

DEPARTMENT HEADS & COMMITTEE REPORTS

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

EXECUTIVE SESSION

Councilperson Moore moved to go into and out of executive session for personnel and contract negotiations per SDCL 1-25-2(1,3,4) at 6:35 pm, with the Attorney, Public Works Director, Planning Administrator and Finance Officer present. Seconded by Councilperson Ryan, the motion unanimously carried. Council came out of executive session at 7:00 pm, with no action taken.

EMPLOYEE STEP INCREASE

Councilperson Ryan moved to approve a certification increase for Brett Scott to \$21.88 effective January 31st, 2020 and a step increase to Step 5 at \$22.54 effective February 12th, 2020. Seconded by Councilperson Moore, the motion unanimously carried.

ADJOURNMENT

With no further business, Councilperson Ryan moved to adjourn the meeting at 7:01 p.m. Seconded by Councilperson Moore, the motion carried unanimously.

ATTEST:

CITY OF CUSTER CITY

Laurie Woodward
Finance Officer

Corbin Herman
Mayor