

**CITY OF CUSTER CITY  
COUNCIL PROCEEDINGS- REGULAR SESSION  
July 15<sup>th</sup>, 2019**

Mayor Corbin Herman called to order the second meeting of the Common Council for the month of July 2019 at 5:30 p.m. Present at roll call were Councilpersons Whittaker, Blom, Nielsen, Ryan, Fischer and Moore. The Pledge of Allegiance was stated.

**AGENDA**

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

**MINUTES**

Councilperson Nielsen moved, with a second by Councilperson Blom, to approve the minutes from the July 1<sup>st</sup> regular council meeting. The motion unanimously carried.

**CONFLICTS OF INTEREST**

No conflicts of interest were stated.

**PUBLIC HEARING – RETAIL ON – OFF SALE MALT BEVERAGE & SD FARM WINE (RENEWAL) – BAVARIAN INN**

Councilperson Fischer moved to approve the retail on-off sale malt beverage & SD farm wine license renewal for the Bavarian Inn. Seconded by Councilperson Ryan, the motion unanimously carried.

**RESOLUTION #07-15-19A – CUSTER COMMUNITY CENTER CONSTRUCTION AND FINANCING**

Councilperson Nielsen moved to adopt Resolution #07-15-19A, Custer Community Center Construction and Financing contingent upon an amendment to page 6 section 16 final paragraph to be amended to "Finance Officer (Manager)". Seconded by Councilperson Blom, the motion unanimously carried.

RESOLUTION #07-15-2019A

**AUTHORIZING THE CONSTRUCTION AND EQUIPPING OF CERTAIN IMPROVEMENTS TO THE CUSTER COMMUNITY CENTER PURSUANT TO A LEASE AGREEMENT; APPROVING THE EXECUTION OF AN IRREVOCABLE DECLARATION OF TRUST BY TRUSTEE; PROVIDING FOR THE EXECUTION, SALE AND DELIVERY OF NOT TO EXCEED \$4,500,000 AGGREGATE ORIGINAL AMOUNT OF CERTIFICATES OF PARTICIPATION IN THE LEASE AGREEMENT PURSUANT TO A CERTIFICATE PURCHASE AGREEMENT AND THE APPLICATION OF THE PROCEEDS THEREOF TO CONSTRUCT AND EQUIP IMPROVEMENTS TO THE CUSTER COMMUNITY CENTER AND APPROVING AND AUTHORIZING A GROUND LEASE OF THE CUSTER COMMUNITY CENTER TO THE TRUSTEE; AND AUTHORIZING AND APPROVING OTHER ACTIONS AND AGREEMENTS NECESSARY TO CONSUMMATE THE CONTEMPLATED IMPROVEMENT AND FINANCING**

WHEREAS, the City of Custer (the "City") is a duly organized South Dakota municipality; and

WHEREAS, the City has the power pursuant to SDCL Chapter 9-12 and Section 9-21-18.1 to lease and lease-purchase real and personal property; and

WHEREAS, it is the opinion of the City Council that the City would be best served by entering into a Ground Lease and Lease Agreement; and

WHEREAS, it is declared necessary that a Declaration of Trust (the "Declaration of Trust") be executed by a Trustee (the "Trustee") for the purpose of financing the remodeling of three floors of the Custer Community Center. The first floor contains 16,500 square feet of mixed-use space with both City of Custer offices and YMCA training, administration, and daycare space. The second floor contains YMCA fitness areas, locker rooms, and future City office spaces totaling 11,880 square feet. The third floor has additional fitness space and a board room for the YMCA. This project will include selective interior demo, addition/renovation of mechanical, electrical, and plumbing systems, the addition of a fire alarm system, and upgrades to bring the building into ADA compliance. A new HVAC system will be installed to serve the entire building as part of this project. New windows will be installed throughout the building to enhance available natural light and decrease energy usage. Exterior improvements include new entrances, parking, and storm drainage. Landscaping includes new sidewalks, decorative fencing, playground areas, plantings, and flagstone paving.

WHEREAS, the City desires to improve the Custer Community Center and for such purpose intends to enter into a Ground Lease with the City as lessor and the Trustee as lessee (the "Ground Lease"), Lease Agreement with the Trustee as lessor and the City as lessee ("the Lease Agreement") and Certificates of Participation,

Series 2019 (the "Certificates") payable as to principal in the aggregate original amount not to exceed \$4,500,000 evidencing proportionate interests of the owners in the Lease Agreement; WHEREAS, the proceeds of the Certificates will be used to fund the remodel of three floors of the Custer Community Center. The first floor contains 16,500 square feet of mixed-use space with both City of Custer offices and YMCA training, administration, and daycare space. The second floor contains YMCA fitness areas, locker rooms, and future City office spaces totaling 11,880 Square feet. The third floor has additional fitness space and a board room for the YMCA. This project will include selective interior demo, addition/renovation of Mechanical, Electrical, and Plumbing systems, the addition of a fire alarm system, and upgrades to bring the building into ADA compliance. A new HVAC system will be installed to serve the entire building as part of this project. New windows will be installed throughout the building to enhance available natural light and decrease energy usage. Exterior improvements include new entrances, parking, and storm drainage. Landscaping includes new sidewalks, decorative fencing, playground areas, plantings, and flagstone paving, and WHEREAS, a public hearing was held this July 1, 2019 at which all persons were given a reasonable opportunity to be heard regarding the Custer Community Center Project and the lease purchase financing. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CUSTER as follows:

Definitions.

In addition to the words and terms elsewhere defined in this Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meanings, unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

"Act" SDCL Chapter 9-12 and Section 9-21-18.1.

"Authorized Officer" means the Mayor, Finance Manager, or, in the case of any act to be performed or duty to be discharged, any other member, officer, or employee of the City then authorized to perform such act or discharge such duty.

"Bond Counsel/Certificate Counsel" means Meierhenry Sargent LLP, a firm of attorneys recognized as having experience in matters relating to the issuance of state or local governmental obligations.

"Certificate Purchase Agreement" means the Certificate Purchase Agreement authorized pursuant to and described in Section 12 hereof by and between the City and the Underwriter.

"Certificates" means the Certificates of Participation in the Lease Agreement.

"City" means the City of Custer, South Dakota.

"Declaration of Trust" means the trust agreement entered into by the Trustee and the City.

"Ground Lease" means the ground lease agreement between the City, as lessor, and the Trustee, as lessee, and any amendment thereof or supplement thereto.

"Improvements" mean the remodeling of three floors of the Custer Community Center. The first floor contains 16,500 square feet of mixed-use space with both City of Custer offices and YMCA training, administration, and daycare space. The second floor contains YMCA fitness areas, locker rooms, and future City office spaces totaling 11,880 square feet. The third floor has additional fitness space and a board room for the YMCA. This project will include selective interior demo, addition/renovation of Mechanical, Electrical, and Plumbing systems, the addition of a fire alarm system, and upgrades to bring the building into ADA compliance. A new HVAC system will be installed to serve the entire building as part of this project. New windows will be installed throughout the building to enhance available natural light and decrease energy usage. Exterior improvements include new entrances, parking, and storm drainage. Landscaping includes new sidewalks, decorative fencing, playground areas, plantings, and flagstone paving

“Lease Agreement” means the lease purchase agreement between the Trustee, as lessor, and the City, as lessee, and any amendment thereof or supplement thereto.

“Placement Agent” means Dougherty & Company, Inc., Pierre, South Dakota acting for and on behalf of itself and such securities dealers as it may designate.

“Property” means the real property upon which the Improvements will be made located at 371 Crook Street and legal described as Lots 4,5,6; plus the N/S Alley between the North line of Crook Street on the South line of the E/W alley contiguous to Lots 3 and 4; plus the E/W alley contiguous to Lots 4,5, and 6, plus the intersection of the N/S and E/W alley (having said dimension of 30'x30'); plus the North 25' of Crook Street contiguous to Lots 4,5, 6 and the N/S alley between Lots 3 and 4; All in Block Thirty Two (32); plus Fourth Street contiguous to Lot 6 of Block 32 and Lot 1 of Block 15 including the width of the E/W alley between the corners of Lots 6 and 7 of Block 32 and Lots 1 and 12 of Block 15; all in original town, now City of Custer City, NE1/4 of Section 26, SE1/4 of Section 23, T3S, R4E, Custer County, South Dakota.

“Rating Agency” means one or more of the following rating agencies: S&P Global Ratings, Moody's Investors Service Inc. and Fitch IBCA, Inc. Declaration of Necessity and Approval of Improvements.

The governing body of the City in accordance with the Act does hereby declare a necessity to enter into the Ground Lease, Lease Agreement and Trust Indenture; and approves the construction of the Improvements.

“Underwriter” means the entity who purchases the Certificates.

#### Authorization and Approval of Transactions.

Subject to the terms and conditions set forth herein, the City hereby (i) authorizes the lease of the Property to the Trustee for a period not to exceed 30 years pursuant to the Ground Lease, (ii) authorizes the lease of the Property from the Trustee pursuant to the Lease Agreement on an annual appropriation basis for an initial lease term and renewal terms not to exceed in the aggregate 20 years, (iii) approves the Trustee's execution of the Declaration of Trust, (iv) approves the Trustee's execution and delivery of the Certificates, payable as to principal in an aggregate original amount not exceeding \$4,500,000 pursuant to the Declaration of Trust and a Certificate Purchase Agreement between the City and the Underwriter (the “Certificate Purchase Agreement”) and the use of the proceeds thereof to finance the construction and equipping of the Improvements, and to pay the expenses incurred in connection with the execution and delivery of the Certificates.

#### Approval of Documents and Legal Description.

The Authorized Officers of the City are hereby authorized and empowered for and on behalf of the City to approve and execute (i) the Declaration of Trust, (ii) the Ground Lease, (iii) the Lease Agreement, (iv) the Certificate Purchase Agreement, and (v) a Continuing Disclosure Certificate in substantially the respective forms to be filed with the Finance Officer and open to public inspection during regular business hours. The Authorized Officers are authorized and directed to approve the entire legal description or a partial legal description of the Property to be included in the Ground Lease and Lease Agreement.

#### Certificates of Participation.

The Certificates shall be executed and delivered in fully-registered form, shall be dated and numbered, shall be payable as to principal in the denominations of \$5,000 and integral multiples thereof and in such amounts (not exceeding in the aggregate \$4,500,000) and on such dates (not later than thirty (30) years), shall be payable as to interest at such rate or rates to be negotiated by the Authorized Officer and shall be subject to prepayment upon such terms and conditions, in such amounts and on such dates as may be specified in the Declaration of Trust and in the executed Certificate Purchase Agreement. The Authorized Officers are hereby authorized and empowered for and on behalf of the City to approve the Certificate Purchase Agreement, his or her execution and delivery thereof to evidence conclusively the City's approval thereof.

#### Annual Appropriation.

The Lease Agreement is an annual appropriation lease subject to an annual appropriation by the City for each fiscal year.

#### Bond Counsel.

The Authorized Officers are authorized to retain the Bond Counsel upon such terms as they approve.

#### Rating Agency.

The Authorized Officers are authorized to retain the Rating Agency upon such terms as they approve.

#### Trustee.

The Authorized Officers are authorized to retain the Trustee upon such terms as they approve.

#### Placement Agent.

The Authorized Officers are authorized to retain the Placement Agent upon such terms as they approve.  
Certificate Purchase Agreement.

The Certificates shall be sold to the Underwriter at a price to be set forth in the Certificate Purchase Agreement. The Authorized Officers in consultation with the Placement Agent, are authorized to make such changes in the structuring of the terms and sale of the Certificates as they shall deem necessary. In this regard, they, or either of them, in consultation with the Underwriter, are authorized to cause to be sold an aggregate principal amount of the Certificates less than that authorized herein, to sell any or all of the Certificates as term Certificates with annual mandatory redemption requirements which will produce substantially the same annual principal reductions as authorized herein, to change the dated date of the, and to adjust principal and interest payment dates and redemption dates of the Certificates. The form of the Certificate shall be conformed to reflect any changes, if any, as hereinbefore mentioned. The Mayor is hereby authorized to execute and the Finance Officer is authorized to attest the Certificate Purchase Agreement with the Underwriter providing for the purchase and sale of the Certificates. The Certificate Purchase Agreement shall be in form and content acceptable to the Mayor and the execution thereof by either of them to constitute conclusive evidence thereof; provided the Certificate Purchase Agreement effects the sale of the Certificates in accordance with the provisions of this Resolution, and is not inconsistent with the terms hereof. The Mayor and Finance Officer are authorized to cause the Certificates to be authenticated and delivered by the Trustee to the Underwriter and to execute, publish, and deliver all certificates and documents, including the Official Statement, and closing certificates and documents, as they shall deem necessary in connection with the sale and delivery of the Certificates.

#### Official Statement.

The Authorized Officers and the Underwriter are hereby authorized and directed to provide for the preparation and distribution of a Preliminary Official Statement describing the Certificates (the "Preliminary Official Statement"). After the Certificates have been sold, the Authorized Officers shall make such completions, omissions, insertions and changes in the Preliminary Official Statement not inconsistent with this Resolution as are necessary or desirable to complete it as a final Official Statement for purposes of Rule 15c2-12(e)(3) of the Securities and Exchange Commission.

To comply with paragraph (b) (3) of Rule 15c2 12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule") and with Rule G 32 and all other applicable rules of the Municipal Securities Rulemaking Board, the City agrees to deliver to the Underwriter, the Official Statement (which shall be a final official statement, as such term is defined in the Rule, as of its date) in an electronic format as prescribed by the MSRB.

#### Tax Matters.

The City covenants and agrees with the registered owners from time to time of the Certificates that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest component or interest on the Lease Agreement and Certificates to become includable in gross income for federal income tax purposes under the Code and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the basic interest on the Certificates will not become includable in gross income for federal income tax purposes under the Code and the Regulations. The Authorized Officers charged with the responsibility for issuing the Certificates pursuant to this Resolution are hereby authorized and directed to execute and deliver to the Underwriter thereof a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Certificates, it is reasonably expected that the proceeds of the Certificates will be used in a manner that would not cause the Certificates to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations.

#### Miscellaneous.

Each Authorized Officer and any other agent or employee of the City is hereby authorized and empowered to take such other actions and execute and deliver such other instruments and agreements, including appropriate tax certifications and other closing certificates, as may be necessary or appropriate for the purposes of consummating the transactions contemplated herein, the necessity therefor and the appropriateness thereof to be evidenced conclusively by any such Authorized Officer's taking any such action or executing and delivering

any such instrument, agreement or certificate and all actions taken heretofore and hereafter pursuant to the authority hereof are hereby authorized, ratified and approved for and as the actions of the City.

**Invalidity.**

If any one or more of the provisions of this Resolution, or of any exhibit or attachment thereto, shall be held invalid, illegal, or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, or of any exhibit or attachment thereto, but this Resolution, and the exhibits and attachments thereto, shall be construed the same as if such invalid, illegal, or unenforceable provision had never been contained herein, or therein, as the case may be.

**Continuing Disclosure.**

The City hereby covenants and agrees that it will provide financial information and material event notices as required by Rule 15c2-12 of the Securities Exchange Commission for the Certificates. The Mayor is authorized to execute at the Closing of the sale of the Certificates, an agreement for the benefit of and enforceable by the owners of the Certificates specifying the details of the financial information and material event notices to be provided and its obligations relating thereto. Failure of the City to comply with the undertaking herein described and to be detailed in said closing agreement, shall not be a default hereunder, but any such failure shall entitle the owner or owners of any of the Certificates to take such actions and to initiate such proceedings as shall be necessary and appropriate to cause the City to comply with its undertaking as set forth herein and in said agreement, including the remedies of mandamus and specific performance.

**Post Issuance Compliance.**

The City does hereby adopt Meierhenry Sargent Post-Issuance Compliance Policy and Tax-Advantaged Obligations and Continuing Disclosure with regard to the Certificates attached hereto. The City appoints the Finance Officer (Manager) as the chief compliance officer.

**Conflicting Resolutions Repealed.**

All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

Signed this 15<sup>th</sup> day of July 2019.

City of Custer

S/Corbin Herman, Mayor

ATTEST: Sydney Gramkow, Deputy Finance Officer

**PUBLIC COMMENTS**

Steve Pischke gave public comment to Council regarding Park, Recreation and Forestry updates.

**ADDITIONAL STREET CLOSURE REQUEST GOLD DISCOVERY DAYS – CHAMBER OF COMMERCE**

Councilperson Fischer moved to approve the Chamber of Commerce's request which included street closure on Washington Street from 6<sup>th</sup> to 8<sup>th</sup> street and 7th from the alley down to Washington Street Tuesday morning. Seconded by Councilperson Moore, the motion unanimously carried

**MINOR PLAT – HOMESTEAD ADDITION, PLAT OF TRACT MATRANGA**

Councilperson Blom moved to approve the minor plat for Homestead Addition, Plat of Tract Matranga. Seconded by Councilperson Whittaker, the motion unanimously carried.

**PRELIMINARY PLAT – SPRING SUBDIVISION LOT 2R AND LOT 3**

Councilperson Fischer moved to approve the preliminary plat Spring Subdivision Lot 2R and Lot 3 subject to further review of access easements for sewer, water or street extensions. Seconded by Councilperson Nielsen, the motion unanimously carried

**DOT – PERMIT TO OCCUPY RIGHT OF WAY – CUSTER CRUISIN**

Councilperson Whittaker moved to approve the DOT permit to occupy the right-of-way for the Custer Cruisin parking, which included closing the two center lanes on Mt Rushmore Road from Fifth Street to Eighth Street for motorcycle parking, curbside parking restrictions at intersection of Mt Rushmore Road and Fifth Street to provide for wider turning space and vehicle parking only on east side of Fifth Street from Mt Rushmore Road north for approximately 100 feet. Seconded by Councilperson Blom, the motion unanimously carried.

**WREATHS ACROSS AMERICA – CIVIL AIR PATROL**

Councilperson Nielsen moved to allow the Civil Air Patrol to place wreaths on the veteran's graves in the Custer Cemetery as part of Wreaths Across America. Seconded by Councilperson Whittaker, the motion unanimously carried.

## **WELL #2 EXTERIOR REPAIRS PROPOSALS**

Councilperson Nielsen moved to accept the proposal at the cost of \$25,874.23 and approve Cloud Construction as contractor for exterior repairs on Well #2. Seconded by Councilperson Blom, the motion carried with Councilperson Blom, Whittaker, Moore, Fischer, Nielsen and Ryan voting yes.

## **COMMITTEE APPOINTMENTS**

Councilperson Blom move to approve the committee appointments as presented, with list on file in the Finance Office. Seconded by Councilperson Moore, the motion unanimously carried.

## **CLAIMS**

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

3D Specialties, Supplies, \$2,602.90  
A & B Electric, Repairs and Maintenance, \$146.45  
Aeration Industries International, Repairs and Maintenance, \$1,121.00  
American Legal Publishing, Professional Fees, \$1,008.00  
Black Hills Energy, Utilities, \$17,419.07  
California State Disbursement, Deductions, \$92.30  
Carrot – Top Industries, Supplies, \$294.00  
Code Works, Professional Fees, \$130.00  
Culligan, Repair & Maintenance, \$18.50  
Chamber of Commerce, Sales Tax Subsidy, \$19,944.17  
Chronicle, Publishing, \$1,016.09  
Custer County Treasurer, Law Enforcement Contract, \$93,750.00  
Custer Ace Hardware, Supplies, Repairs & Maintenance, \$1,110.31  
Dacotah Bank, TIF #2 Payment, \$17,267.13  
Dales Tire & Retreading, Repairs and Maintenance, \$257.50  
Discovery Benefits, Supplies, \$27.00  
Express Collections, Professional Fees, \$27.12  
First Interstate Bank, TIF #4 Payment, \$1,098.36  
French Creek Supply, Supplies, \$158.89  
Full Source, Supplies, \$50.56  
Golden West Telecommunications, Utilities, \$527.19  
Golden West Technologies, Professional Fees, \$769.50  
Green Owl Media, Professional Fees, \$234.00  
Hespen Excavating, Partial Refund, \$200.00  
Imageall, Supplies, \$6.50  
Jenner Equipment, Repairs & Maintenance, \$100.03  
Lynn's Dakotamart, Supplies, \$19.93  
McDonnell, Chantel, Bid Board, Advertising, \$700.00  
Michael Todd & Company, Supplies, \$364.63  
Midcontinent Testing Labs, Professional Fee, \$606.00  
Mid-West Paint Service, Repairs & Maintenance, \$20,095.91  
Northwest Pipe Fittings, Repairs and Maintenance, \$1,711.53  
Petty Cash, Supplies, \$87.19  
Pitney Bowes, Supplies, \$48.69  
Power House, Supplies, \$7,168.12  
Quill, Supplies, \$270.42  
Rapid City Journal, Publishing, \$143.37  
Rapid Delivery, Supplies, \$66.15  
Regional Health Network, Sales Tax Subsidy, \$52,035.85  
SRF Loan Payment, \$15,377.11  
S & B Motors, Supplies, \$31.98  
Servall, Supplies, \$180.28  
SD DENR, Drinking Water Fees, \$600.00

SD Department of Revenue, Licensing, \$150.00  
Secretary of State, Supplies, \$30.00  
Bit Finance/State Long Distance, \$43.65  
The Hartford, Insurance, \$50.38  
Unemployment Insurance, \$201.65  
USDA Loan Payments, \$8,910.00  
Verizon Wireless, Utilities, \$416.23  
Vista Print, Supplies, \$64.97  
Warne Chemical, Supplies, \$180.95  
TBD INC, Utility Refund, \$451.92  
Galloway, Jennifer, Utility Refund, \$7.12  
Total Claims \$269,390.60

**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 per SDCL 1-25-2(1-4) at 6:04 pm, with the Public Works Director, Planning Administrator, City Attorney and Deputy Finance Officer present. Seconded by Councilperson Ryan, the motion unanimously carried. Council came out of executive session at 6:12 pm, with no action taken.

**NEW HIRE**

Councilperson Ryan moved to hire Brett Scott as Inter-Department Operator starting at Step 4 at the rate of \$20.27 (includes certifications) effective upon successful competition of background check, drug test and physical, and after successful competition of 6-month probation he would be eligible for Step 5 increase. Seconded by Councilperson Moore, the motion unanimously carried.

**ADJOURNMENT**

With no further business, Councilperson Ryan moved to adjourn the meeting at 6:34 p.m. Seconded by Councilperson Moore, the motion carried unanimously.

ATTEST:

CITY OF CUSTER CITY

Sydney Gramkow  
Deputy Finance Officer

Corbin Herman  
Mayor