

All City Council Meetings are recorded.

**CITY OF CUSTER CITY**  
**COUNCIL AGENDA**  
**May 18<sup>th</sup>, 2020 – 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 – May 4<sup>th</sup>, 2020 Council Meeting
4. Declaration of Conflict of Interest
5. COVID-19 Ordinance & Resolutions Review, Business Request for Compliance Modification and General COVID-19 Update
6. Resolution #05-18-20A - Extending Resolution #4-28-20A and Resolution #5-04-20A - Declaring a Public Health Emergency and Limiting Public Gatherings
7. Public Hearings - Public Presentations
  - a. Public Hearing – Retail (On-Off Sale) Malt Beverage & SD Farm Wine and Retail (On-Off Sale) Wine & Cider License Transfers – Custer Outdoor Shop DBA South Dakota Outdoor Shop
  - b. Public Hearing – Malt Beverage & SD Farm Wine License Renewals
  - c. Second Reading - Ordinance #837 – Cable TV Franchise Agreement – Golden West
  - d.
  - e.
8. Public Comments (3-minute max. per person, with total public comment period not to exceed 15 minutes)
9. Old Business
  - a. Variance to Transient Merchant Permit Ordinance – South Dakota Outdoor Shop
  - b.
10. New Business
  - a. Placement of Buffalo Art along Mt Rushmore Road – Custer Area Arts Council
  - b. Minor Plat – Lot 15R and Lot 18R of Tompkins Subdivision
  - c. Subdivision Variance Request – Wheeler Tract North and Wheeler Tract South
  - d. Preliminary Plat – Wheeler Tract North and Wheeler Tract South
  - e. Harbach Park Bridge Engineering Proposal - KLJ
  - f. Attorney Contract – Beesley Law Office
  - g. Employee Termination
  - h.
11. Presentation of Claims -
12. Department Head Discussion & Committee Reports –
13. Possible Executive Session – Personnel (1&4), Proposed/Pending Litigation (3), & Contract Negotiations (3) (SDCL 1-25-2(1,2,3,4,5,6))
14. Adjournment

**REMINDERS**

- Public Works Committee Meeting – June 1<sup>st</sup>, 2020 4:30 P.M.**  
**Regular City Council Meeting – June 1<sup>st</sup>, 2020 5:30 P.M.**  
**General Government Committee Meeting – June 8<sup>th</sup>, 2020 4:00 P.M.**  
**Planning Commission Meeting – June 9<sup>th</sup>, 2020 5:00 P.M.**  
**Regular City Council Meeting – June 15<sup>th</sup>, 2020 5:30 P.M.**

**Please join my meeting from your computer, tablet or smartphone.**

<https://global.gotomeeting.com/join/161087845>

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**Access Code: 161-087-845**

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  
May 4<sup>th</sup>, 2020**

Mayor Corbin Herman called to order the first meeting of the Common Council for the month of May 2020 at 5:30 p.m. Present at roll call were Councilpersons Moore and Nielsen. Present at roll call by phone were Councilperson Whittaker, Fischer, Blom and Ryan. The Pledge of Allegiance was stated.

**AGENDA**

Councilperson Blom moved, with a second by Councilperson Nielsen, to approve the agenda. The motion carried with Councilperson Nielsen, Moore, Whittaker, Fischer, Blom and Ryan voting yes.

**MINUTES**

Councilperson Fischer moved, with a second by Councilperson Moore, to approve the minutes from the April 20<sup>th</sup> Council Meeting and April 28<sup>th</sup>, 2020 Special Council Meeting. The motion carried with Councilperson Moore, Whittaker, Fischer, Blom, Ryan and Nielsen voting yes.

**CONFLICTS OF INTEREST**

No conflicts of interest were stated.

**RESOLUTION #05-04-20A – MODIFYING ORDINANCE #836 AND RESOLUTION #4-28-20A – DECLARING A PUBLIC HEALTH EMERGENCY AND LIMITING PUBLIC GATHERINGS**

Councilperson Fischer moved to adopt Resolution #05-04-20A, Modifying Ordinance #836 and Resolution #4-28-20A – Declaring a Public Health Emergency and Limiting Public Gatherings. Seconded by Councilperson Ryan, the motion carried with Councilperson Whittaker, Fischer, Blom, Ryan, Nielsen and Moore voting yes.

Resolution #05-04-2020A

Resolution Amending Emergency Ordinance #836 and Resolution #04-28-2020A Declaring a Public Health  
Emergency and Limiting Public Gatherings

Whereas, the Custer City Council adopted Emergency Ordinance #836, Declaring a Public Health Emergency and Limiting Public Gatherings on April 2nd, 2020; and

Whereas, Ordinance #836 became effective on April 9th, 2020 at 12:00 am, after publication; and

Whereas, the emergency ordinance allows the City Council to amend by resolution Ordinance #836 regarding public gatherings and public movements it deems necessary to address the current public health emergency; and

Now Therefore Be It Resolved that Emergency Ordinance #836 and Resolution #04-28-20A are amended based on the Custer Community's seasonal nature of its recreational, business and visitation demographics as follows;

Be It Further Resolved that recreational facilities, public pools, health clubs and athletic facilities can request, in writing, exceptions from the City Council allowing them to modify compliance with these requirements so long as their proposal contains alternative means to implement social distancing requirements. The City Council will not approve exceptions which completely exempt a business from implementing social distancing, or from following the CDC guidelines.

Be It Further Resolved that theaters, and other indoor and outdoor venues where people congregate, including music and entertainment venues are not included in this amendment, and shall remain closed until further notice.

Be It Further Resolved that this Resolution shall only amend Ordinance #836 and Resolution #04-28-20A as specifically stated herein, and all other terms and conditions of Ordinance #836 and Resolution #04-28-20A shall remain in effect until further notice.

Be It Further Resolved this Resolution shall remain in full force and effect until May 31, 2020, unless otherwise repealed, modified, or extended.

Be It Further Resolved, by the City of Custer City, that due to the fact a national and statewide emergency has been declared and one of the primary recommendations to combat this emergency is to practice social distancing and limiting person to person contact, this resolution is considered necessary for the immediate preservation of the public peace, health and safety of the City of Custer City and shall be effective immediately upon publication thereof.

Dated this 4th day of May, 2020.

City of Custer City

S/Corbin Herman, Mayor

Attest: Laurie Woodward, Finance Officer

**COVID-19 ORDINANCE & RESOLUTION REVIEW, BUSINESS REQUEST FOR COMPLIANCE MODIFICATION AND GENERAL COVID-19 UPDATE**

Councilperson Moore moved to table Custer Hospitality's request and plan for opening the pool facilities at the Holiday Inn Express & Suites, Comfort Inn & Suites and both pools at Buffalo Ridge Camp Resort until the May 18<sup>th</sup> Council Meeting. Seconded by Councilperson Ryan, the motion carried with Councilperson Fischer, Blom, Ryan, Nielsen, Moore and Whittaker voting yes.

Councilperson Ryan moved to approve the following business request for compliance modification to Ordinance #836, Resolution #04-28-20A and Resolution #05-04-20A. Seconded by Councilperson Nielsen, the motion carried with Councilperson Blom, Ryan, Nielsen, Moore, Whittaker and Fischer voting yes.

\*Our Place, 44 guests while maintaining the 6 feet separation.

\*Black Hills Burger & Bun, maximum of 30 adults while maintaining the 6 feet separation.

\*Baker's Bakery, 8 people in dining room #1, 15 people in dining room #2, 18 people in dining room #3 while maintaining the 6 feet separation.

\*WR Hospitality (Buglin Bull), 19 people in the bar area, 56 guests in the dining room and 20 people in the loft while maintaining the 6 feet separation. A temporary host stand be located outside of the restaurant doors on the sidewalk.

\* Abundant Life Fellowship, 20 chairs in each room with no more than 40 people in attendance while maintaining the 6 feet separation.

\*Custer Fitness Center, 4 members while maintaining separation and proper cleaning.

\*Custer YMCA, 16 members, maximum capacity based on 200 sq feet, maintain 6 feet separation and proper cleaning.

\*Custer Hospitality (Holiday Inn Express & Suites and Comfort Inn & Suites) Fitness Centers, 2 occupants at a time in each while maintaining separation and proper cleaning.

**FIRST READING – ORDINANCE #837 – CABLE TV FRANCHISE AGREEMENT – GOLDEN WEST**

Councilperson Ryan moved to approve Ordinance #837, Cable TV Franchise Agreement with Golden West. Seconded by Councilperson Fischer, the motion carried with Councilperson Ryan, Nielsen, Moore, Whittaker, Fischer and Blom voting yes.

**EXECUTIVE PROCLAMATION – ARBOR DAY**

Councilperson Moore moved to approve the executive proclamation for Arbor Day on May 11<sup>th</sup>, 2020, which is on file in the Finance Office. Seconded by Councilperson Blom, the motion carried with Councilperson Nielsen, Moore, Whittaker, Fischer, Blom and Ryan voting yes.

**EXECUTIVE PROCLAMATION – JACKI WAHLE DAY**

Councilperson Moore moved to approve the executive proclamation for Jacki Wahle Day on May 13<sup>rd</sup>, 2020, which is on file in the Finance Office. Seconded by Councilperson Blom, the motion carried with Councilperson Moore, Whittaker, Fischer, Blom, Ryan and Nielsen voting yes.

**VARIANCE TO TRANSIENT MERCHANT PERMIT ORDINANCE – SOUTH DAKOTA OUTDOOR SHOP**

Councilperson Fischer moved to table the South Dakota Outdoor Shop's request for variance to the Transient Merchant Permit Ordinance. Seconded by Councilperson Blom, the motion carried with Councilperson Whittaker, Fischer, Blom, Ryan, Nielsen and Moore voting yes.

**SENIOR PARADE REQUEST – GRADUATING SENIOR CLASS**

Councilperson Nielsen moved to approve the Custer High School Graduating Senior Class request for a Reverse Senior Parade to be held May 16<sup>th</sup> from 2-4 pm pending parade request form and proof of insurance being provided. The stationary parade will take place on Washington Street from 8<sup>th</sup> Street to 2<sup>nd</sup> Street with one-way traffic moving from east to west. Seconded by Councilperson Blom, the motion carried with Councilperson Fischer, Blom, Ryan, Nielsen, Moore and Whittaker voting yes.

**MINOR PLAT – SHOWERS TRACT AND SCHMITZ TRACT OF SUNSET SUBDIVISION**

Councilperson Ryan moved to approve the minor plat of Showers Tract and Schmitz Tract of Sunset Subdivision contingent upon the filling of a miscellaneous document at the Custer County Register of Deeds Office officially recording the vacation of the South 31' of Public Easement (Sunset Lane) and signatures by the County Treasurers Office, County Highway Authority and all property owners on the mylar. Seconded by Councilperson Blom, the motion carried with Councilperson Blom, Ryan, Nielsen, Moore, Whittaker and Fischer voting yes.

**PUBLIC COMMENTS**

No public comments were received.

**FARMER'S MARKET REQUEST – CHAMBER OF COMMERCE**

Councilperson Ryan moved to approve the Chamber of Commerce request to use Way Park on Saturday's from 8am through 1pm, from June through October, except for Gold Discovery Days weekend, for the Farmer's Market and their COVID-19 plan. Seconded by Councilperson Moore, the motion carried with Councilperson Ryan, Nielsen, Moore, Whittaker, Fischer and Blom voting yes.

#### **2019 AUDIT PRESENTATION**

Shelley Goodrich with Ketel Thorstenson, LLP remotely presented the 2019 audit. Councilperson Fischer moved to accept the 2019 audit as presented. Seconded by Councilperson Moore, the motion carried with Councilperson Nielsen, Moore, Whittaker, Fischer, Blom and Ryan voting yes.

#### **ELECTRIC EASEMENT – BLOCK 32**

Councilperson Nielsen moved to approve the Electrical Easement for Block 32. Seconded by Councilperson Ryan, the motion carried with Councilperson Moore, Whittaker, Fischer, Blom, Ryan and Nielsen voting yes.

#### **PLANNING COMMISSION APPOINTMENTS**

Councilperson Fischer moved to approve the Mayor's recommendations for Planning Commission changes. Fred Mills will move to a voting member for a five-year term expiring May 4<sup>th</sup>, 2025, Marc Moore will move to the Alternate #1 position effective May 4<sup>th</sup>, 2020 and Larry Maciejewski will move to the Alternate #2 position effective May 4<sup>th</sup>, 2020. Seconded by Councilperson Blom, the motion carried with Councilperson Whittaker, Fischer, Blom, Ryan, Nielsen and Moore voting yes.

#### **CLAIMS**

Councilperson Nielsen moved, with a second by Councilperson Moore, to approve the following claims. The motion carried with Councilperson Fischer, Blom, Ryan, Nielsen, Moore and Whittaker voting yes.

AFLAC, Insurance, \$749.14  
Amazon, Supplies, \$24.43  
Battle Mountain Humane Society, Animal Control Contract, \$1,000.00  
Beesley Law Office, Professional Fees, \$6,569.00  
Black Hills Energy, Utilities, \$2,236.10  
Black Hills Gravel, Supplies, \$5,079.99  
California State Disbursement, Deduction, \$115.38  
Century Business Products, Supplies, \$105.14  
Custer Do It Best, Supplies, Repairs & Maintenance, \$38.58  
Dacotah Bank, Loan Payment, \$8,337.63  
Delta Dental, Insurance, \$212.00  
Discovery Benefits, Supplies, \$1,273.06  
EFTPS, Taxes, \$11,881.71  
Environmental Equipment & Services, Repairs & Maintenance, \$516.57  
Express Collections, \$18.92  
Golden West Telecommunications, Utilities, \$517.84  
Golden West Technologies, Professional Fees, \$755.50  
Hawkins, Supplies, \$5,946.98  
Hillyard, Supplies, \$65.55  
Holiday Inn – Spearfish, Travel & Conference, \$335.00  
Iso Pure Water, Repairs & Maintenance, \$28.69  
J & M Lawncare, Cemetery Caretaker Contract, \$5,250.00  
Ketel Thorstenson, Professional Fees, \$14,326.86  
Kothe, Rick, Reimbursement, \$1,000.00  
Log Me In Go to Meeting, Supplies, \$51.12  
Lawrence & Schiller, BID Advertising, \$5,955.03  
Michael Todd, Supplies, \$1,475.00  
NBS Calibrations, Repairs & Maintenance, \$193.00  
Petty Cash, Supplies, \$322.12  
Piedmont Cutting Edge Meat Market, Professional Fees, \$4,350.00  
Sanders Sanitation, Garbage Collection Contract, \$13,253.23  
SDARWS, Repairs & Maintenance, \$100.00  
SD Department of Revenue, Supplies, \$150.00  
SD Retirement System, \$5,939.48

Supplemental Retirement, \$670.00  
The Hartford, Insurance, \$59.54  
Verizon Wireless, Supplies, \$440.97  
Vector Solutions, Supplies, \$50.92  
Wellmark, Insurance, \$12,471.58  
YMCA, Membership, \$84.00  
Granite Building Services, Utility Refund, \$30.91  
Mayor & Council, \$4,665.00  
Finance Department, \$4,414.80  
Public Building Department, \$2,523.20  
Planning Department, \$7,361.22  
Public Works Department, \$2,684.82  
Street Department, \$6,122.74  
Cruisin Department, \$153.44  
Parks Department, \$4,653.10  
Water Department, \$12,057.84  
Wastewater Department, \$12,063.70  
Total Claims \$168,680.83

**EXECUTIVE SESSION**

Councilperson Fischer moved to go into and out of executive session for personnel per SDCL 1-25-2(1,4) at 7:06 pm, with the Public Works Director (by phone), Public Works Supervisor (by phone) and Finance Officer present. Seconded by Councilperson Ryan, the motion carried with Councilperson Blom, Ryan, Nielsen, Moore, Whittaker and Fischer voting yes. Council came out of executive session at 7:21 pm, with no action taken.

**STEP INCREASE**

Councilperson Moore moved to approve a step increase for Tim Hartmann to Step 4 at \$61,053.44 effective April 29<sup>th</sup>, 2020. Seconded by Councilperson Nielsen, the motion carried with Councilperson Ryan, Nielsen, Moore, Whittaker, Fischer and Blom voting yes.

**ADJOURNMENT**

With no further business, Councilperson Moore moved to adjourn the meeting at 7:23 p.m. Seconded by Councilperson Nielsen, the motion carried unanimously.

ATTEST:

CITY OF CUSTER CITY

Laurie Woodward  
Finance Officer

Corbin Herman  
Mayor

**CITY OF CUSTER CITY  
BOARD OF ADJUSTMENT MEETING  
May 4<sup>th</sup>, 2020**

Board Chairman Herman called to order the Board of Adjustment Meeting at 7:23 p.m. Present at roll call were Board Members Herman, Moore, Fischer, Ryan, Nielsen, Whittaker and Blom.

**APPROVAL OF MINUTES**

Board Member Nielsen moved, with a second by Board Member Ryan, to approve the minutes from the April 20<sup>th</sup>, 2020 meeting. The motion carried with Board Member Herman, Moore, Fischer, Ryan, Nielsen, Whittaker and Blom voting yes.

**ADJOURNMENT**

With no further business, Board Member Herman moved to adjourn the meeting at 7:24 p.m. Seconded by Board Member Moore, the motion carried unanimously.

ATTEST:

CITY OF CUSTER CITY

Laurie Woodward  
Finance Officer

Corbin Herman  
Board Chairman

To: City of Custer

Subject: Regarding motion to forgive ordinance of swimming pool closure

From: Custer Hospitality

To Whom it May Concern,

As requested, please see information below regarding opening our swimming pool and hot tub located at Buffalo Ridge Camp Resort.

In addition to the precautions we sent for consideration for the previous meeting, please read as follows:

According to the CDC as posted in an article on 5/10/20, found at [CDC.gov/healthywater/swimming/index.html](https://www.cdc.gov/healthywater/swimming/index.html),

“there is ZERO evidence that COVID-19 can spread to people through the water used in pools, hot tubs, or water playgrounds. Proper operation and disinfection of pools, hot tubs, and water playgrounds should kill the virus that causes COVID-19 “

The recommendation asks facilities to ensure chlorine levels in pools and spas are kept between 1-3mg/l with the pH between 6.8-7.4. Spa pools that use bromine need to maintain their water at 4-6mg/l bromine or 3-5mg/l chlorine. Routine tests for microbiological quality should also be undertaken in line with national guidelines. Custer Hospitality sends water samples weekly to Mid Continent Testing labs for all our pools. In addition, each property is required by both state and brand regulations to monitor chemical level twice daily to ensure they are maintained at the required levels. These logs are found hanging in every one of our operating pool pump rooms.

Custer Hospitality will maintain diligent hygiene standards in changing areas, toilets, and showers. We will ensure pool water standards are at their best by regular water testing and taking actions if they are not acceptable.

Thank you for your consideration.

Sincerely,

Leah Scott  
Chief Operating Officer  
Custer Hospitality

To Whom It May Concern,

5/1/2020

I am writing to inquire about the possibility of opening our pool facility.

It is of utmost importance to Custer Hospitality to do our part in protecting the safety of our staff, guests, and community during these uncertain times.

We would request you consider allowing our facility to open under specific strict guidelines that we would follow to ensure we are offering the best practices for the lowest risk of exposure to Covid-19.

Requested allowance would be for our pool facilities located at both the Holiday Inn Express & Suites in addition to the Comfort Inn & Suites. Both are located on West Mt. Rushmore Rd.

Procedures we are fully committed and prepared to follow are listed below:

A Limited number of guests would be allowed in enclosed pool area at a time.

These pools are both 20' x 30' in size and would be limited to 8 occupants at any given time.

In addition, all furniture would be removed from the area to prohibit and discourage loitering.

Extra efforts to maintain proper cleaning procedures would also be enforced.

We appreciate your time and consideration and look forward to hearing from you soon.

Sincerely,

**Leah Scott** Chief Operating Officer

[www.custerhospitality.com](http://www.custerhospitality.com) | t 605-673-2350 | c 605-517-2354



To Whom It May Concern,

5/1/2020

I am writing to inquire about the possibility of opening our pool facility.

It is of utmost importance to Custer Hospitality to do our part in protecting the safety of our staff, guests, and community during these uncertain times.

We would request you consider allowing our facility to open under specific strict guidelines that we would follow to ensure we are offering the best practices for the lowest risk of exposure to Covid-19.

Requested allowance would be for our two pools located at the Buffalo Ridge Camp Resort located on Centennial Drive. Our large pool is 24'x48' and the smaller is 24' x 12'.

Procedures we are fully committed and prepared to follow are listed below:

A limited number of guests would be allowed in the gated outdoor pool area at one time.

For the larger pool, this would limit occupancy to 12 people and the smaller would be limited to 6 to maintain the 6' apart ordinance.

In addition, all furniture would be removed from the area to prohibit or discourage loitering.

Extra efforts to maintain proper cleaning procedures would be enforced.

We appreciate your time and consideration and look forward to hearing from you soon.

Sincerely,

**Leah Scott** Chief Operating Officer

[www.custerhospitality.com](http://www.custerhospitality.com) | t 605-673-2350 | c 605-517-2354



## Laurie Woodward

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**From:** joel ziolkowski <boj777@icloud.com>  
**Sent:** Wednesday, May 13, 2020 1:22 PM  
**To:** Laurie Woodward; 777boj@live.com  
**Subject:** Living Outreach Church plan, for physical Separation during church...

Living Outreach Church plan, for physical Separation during church service.

First, we started doing our services on Facebook live. Approximately 70 percent of our congregation has been taking advantage of that especially the elderly.

Then we have taken 40% of our chairs out of our sanctuary spread out the remaining chairs into groups of 8 and 10 each, with 6 foot of space in between rows. This is in the main sanctuary. we have also ended our greeting time during church, simply to help with physical distancing.

Then in the lower level of our church building we have a TV set up where 10 Or less can be during the service.

In our children's ministry building we have a room upstairs with close circuit TV so we can have another small group 10 or less there.

Then our children's ministry area is divided into two separate places where we can have two more small groups 10 or less.

We are having families set together.

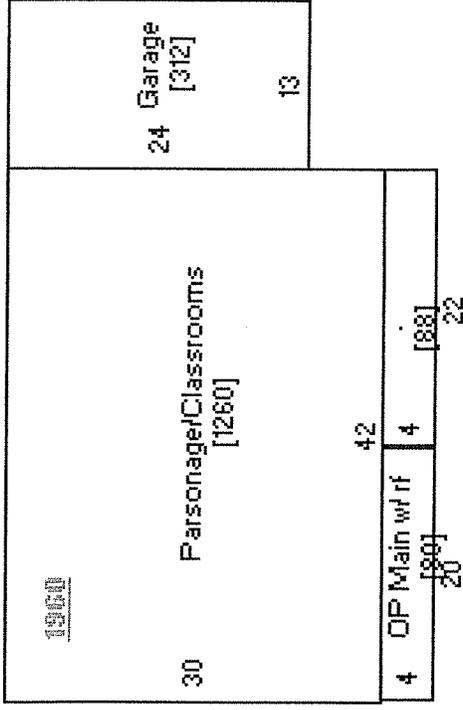
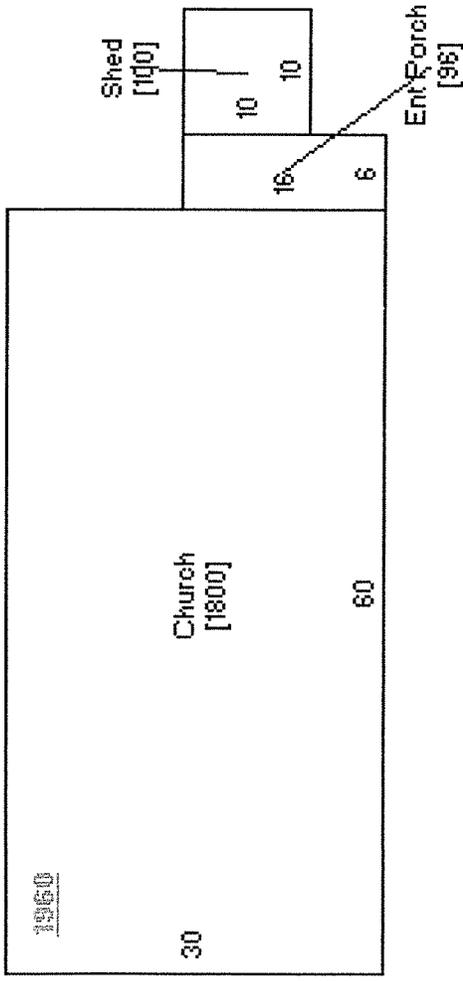
We have been doing extra cleaning taking each week.

We have suspended all of our Sunday morning fellowship gatherings after church, meaning we don't go downstairs and have coffee rolls etc. Once the services is over people leave The building.

Living Outreach Church

Pastor Joel Ziolkowski

Sent from my iPhone





Dear Custer City Council,

Thank you for your leadership in this difficult season. We have been supportive of the distancing steps you have put in place, even choosing out of love for others to cancel services before you instituted the stricter guidelines for gathering. Given the current circumstances of our community and our church family, however, we now believe the most effective way to love our God and our neighbor is to gather and encourage one another in our faith. It is therefore the position of the elders of Southern Hills Bible church that we can safely resume gathering with certain social distancing measures in place.

The following is a proposal from Southern Hills Bible Church seeking an exception to the current ordinance so that we might begin to gather.

1. We will inform parishioners of their obligation to remain home if they are sick.
2. We will utilize every other row of seating. This will maintain appropriate distance between family units.
3. We will maintain 6 feet of separation between family units. This will obviously involve refraining from physical contact like hugging and shaking hands.
4. We will abstain from our weekly potluck lunch that our church is accustomed to observing.
5. We will abstain from providing self-service coffee in our family room.
6. We will have the building cleaned in between our Sunday morning services.
7. We will prop doors open wherever possible to avoid contact with common surfaces like doorknobs.
8. We will refrain from using shared materials like hymnals and bulletins.
9. We will keep our nursery closed while this ordinance is still in place.

Thank you for your consideration. If there are areas that we have overlooked we would love to have a conversation with you about modifications to our proposal. If you would contact Kyle Gangel (417) 840-8700 with your decision that would be much appreciated.

Sincerely,

The Elders of Southern Hills Bible Church

# Resolution #05-18-2020A

## Resolution Extending Resolution #04-28-2020A and Resolution #05-04-2020A Declaring a Public Health Emergency and Limiting Public Gatherings

Whereas, the Custer City Council adopted Emergency Ordinance #836, Declaring a Public Health Emergency and Limiting Public Gatherings on April 2<sup>nd</sup>, 2020; and

Whereas, Ordinance #836 became effective on April 9<sup>th</sup>, 2020 at 12:00 am, after publication; and

Whereas, the emergency ordinance allows the City Council to amend by resolution Ordinance #836 regarding public gatherings and public movements it deems necessary to address the current public health emergency; and

Whereas, Resolution #04-28-20A and Resolution #05-04-20A were previously adopted amending Emergency Ordinance #836;

Now Therefore Be It Resolved that Resolution #04-28-20A and Resolution #05-04-20A are extended based on the Custer Community's seasonal nature of its recreational, business and visitation demographics as follows;

Be It Further Resolved that this Resolution shall only extend Resolution #04-28-20A and Resolution #05-04-20A until July 1, 2020, therefore amending Emergency Ordinance #836 as specifically stated herein, and all other terms and conditions of Resolution #04-28-20A and Resolution #05-04-20A shall remain in effect until further notice.

Be It Further Resolved this Resolution shall remain in full force and effect until July 1, 2020, unless otherwise repealed, modified, or extended.

Be It Further Resolved, by the City of Custer City, that due to the fact a national and statewide emergency has been declared and one of the primary recommendations to combat this emergency is to practice social distancing and limiting person to person contact, this resolution is considered necessary for the immediate preservation of the public peace, health and safety of the City of Custer City and shall be effective immediately upon publication thereof.

Dated this 18<sup>th</sup> day of May, 2020.

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City of Custer City  
Corbin Herman, Mayor

Attest:

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Laurie Woodward, Finance Officer

Vote:

Fischer:	Whittaker:
Nielsen:	Blom:
Moore:	Ryan:

ESTABLISHMENT	LICENSE	TAXES PAID	AGREEMENT	INSURANCE	VIDEO LOTTER Y
CUSTER OUTDOOR SHOP DBA SD OUTDOOR SHOP	MB - TRANSFER	✓	✓	PENDING	X
CUSTER OUTDOOR SHOP DBA SD OUTDOOR SHOP	WINE - TRANSFER	✓	✓	PENDING	X
CUSTER OUTDOOR SHOP DBA SD OUTDOOR SHOP	MB - NEW	✓	✓	PENDING	X

NOTICE OF PUBLIC HEARING UPON APPLICATION FOR THE SALE OF ALCOHOLIC BEVERAGES

Notice is hereby given that the City Council of the City of Custer City, Custer County, South Dakota will hear and consider the following for the sale of alcoholic beverage at a meeting of the City Council to be held on the 18<sup>th</sup> day of May 2020, in the Council Chambers of City Hall in said City at 5:30 p.m. of said day. Application to be considered for now or transfer pursuant to SDCL 35-4 is as follows:

Custer Outdoor Shop DBA South Dakota Outdoor Shop - Retail (On-Off Sale) Malt Beverage & SD Farm Wine - Transfer

Custer Outdoor Shop DBA South Dakota Outdoor Shop - Retail (On-Off Sale) Malt Beverage & SD Farm Wine - New

Custer Outdoor Shop DBA South Dakota Outdoor Shop - Retail (On-Off Sale) Wine and Cider - Transfer

Any person or persons interested either for or against the granting of any such application may appear at the time and place above stated. Individuals needing assistance, pursuant to the Americans with Disabilities Act should contact the City Finance Officer no less than 24 hours prior to this meeting to make necessary arrangements.

Dated this 28<sup>th</sup> day of April 2020.

/s/Sydney Gramkow  
Deputy Finance Officer

Custer County Chronicle - Please Publish May 6<sup>th</sup>, 2020

ESTABLISHMENT	LICENSE	TAXES		AGREEMENT	INSURANCE	10% DUE TO CITY	VIDEO LOTTERY
		PAID	APPLICATION PAID				
AJ'S	RB-2429	✓	✓	✓		✓	✓
BAKER'S BAKERY	RB-24103	✓	✓	✓		✓	
BAVARIAN INN	RB-26324		✓	✓		✓	
BEGGING BURRO	RB-21628	✓	✓	✓		✓	
BH BURGER AND BUN	RB-20219	✓	✓	✓	✓	✓	
BUGLIN BULL - WR HOSPITALITY	RB-2044	✓	✓	✓	✓	✓	
CALAMITY JANE COFFEE SHOP AND GRILL	RB-21213	✓	✓	✓	✓	✓	
COMMON CENTRS - MOYLE	RB-2158	✓	✓	✓	✓	✓	✓
CORNER PANTRY - MG OIL	RB-3616	✓	✓	✓	✓	✓	✓
CUSTER BEACON	RB-25467		✓	✓	✓	✓	
CUSTER CRAZYHORSE CAMPGROUND	RB-25466	✓	✓	✓		✓	
CUSTER HOSPITALITY-BUFFALO RIDGE CAM	RB-25106		✓	✓		✓	
CUSTERWOLF, LLC	RB-20021	✓	✓	✓	✓	✓	
DAKOTA COWBOY (BRADSTREET ENTERPRI)	RB-26534	✓	✓	✓	✓	✓	
DENIAL SD ( SWAN SONG)	RB-24102	✓	✓	✓		✓	
DOLLAR GENERAL STORE #18364	RB-25468	✓	✓	✓	✓	✓	
GOOD KARMA	RB -26890	✓	✓	✓	✓	✓	
FAMILY DOLLAR	RB-26396		✓	✓	✓	✓	
FRONTIER BAR	RB-18955	✓	✓	✓	✓	✓	✓
MT RUSHMORE BREW	RB-22953	✓	✓	✓		✓	
PIZZA HUT	RB-2436	✓	✓	✓	✓	✓	
PIZZA MILL	RB-21140		✓	✓		✓	
PIZZA WORKS	RB-25469	✓	✓	✓	✓	✓	
ROCKY KNOLLS GOLF COURSE	RB-2431	✓	✓	✓	✓	✓	
SAGE CREEK GRILLE	RB-2255	✓	✓	✓	✓	✓	
SKOGEN KITCHEN	RB-23800	✓	✓	✓		✓	
WILD SPRUCE	NEW	✓	✓	✓	✓	✓	
YESWAY #1173	RB-2178		✓	✓	✓	✓	✓

28

LICENSE CODES

RB ~ ON - OFF SALE MALT BEVERAGE

Custer Outdoor Shop

Pending

10/10/2018

NOTICE OF PUBLIC HEARING UPON APPLICATIONS FOR THE SALE OF ALCOHOLIC BEVERAGES

UPON APPLICATION for the sale of alcoholic beverage, notice is hereby given that the City Council of the City of Custer City, Custer County, South Dakota will hear and consider all applications for the sale of malt beverage, at a meeting of the City Council to be held on the 18<sup>th</sup> day of May 2020, in the Council Chambers of City Hall in said City at 5:30 p.m. of said day. Application to be considered for renewal pursuant to SDCL Chapter 35 is as follows:

AJ's Ore Car Saloon - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Baker's Bakery - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Bavarian Inn - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Begging Burro - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Black Hill Burgers & Bun - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Buglin' Bull Restaurant/ WR Hospitality - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Calamity Jane Winery Coffee Shop and Grill - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Mt. Rushmore Brewing Company - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Custer Beacon - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Custer Crazy Horse Campground - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Buffalo Ridge Camp Resort FKA Custer Hospitality - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Custer Wolf LLC - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Dakota Cowboy (Bradstreet Enterprises) - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Denial SD - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Dollar General Store #18364- Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Family Dollar - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Frontier Bar & Grill - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Good Karma - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
MG Oil Company (Corner Pantry) - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Moyle Petroleum Company (Common Cents) - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Pizza Hut - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Pizza Mill LLC - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Pizza Work (Bradstreet Enterprises) - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Rocky Knolls Golf Course - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Sage Creek Grille - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Skogen Kitchen - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Wild Spruce - Retail (On-Off Sale) Malt Beverage & SD Farm Wine  
Yesway #1173 - Retail (On-Off Sale) Malt Beverage & SD Farm Wine

Any person or persons interested either for or against the granting of any such application may appear at the time and place above stated. Individuals needing assistance, pursuant to the Americans with Disabilities Act should contact the City Finance Officer no less than 24 hours prior to this meeting to make necessary arrangements.

Dated this 28<sup>th</sup> day of April 2020.

/s/Sydney Gramkow  
Deputy Finance Officer

Custer County Chronicle - Please Publish May 6<sup>th</sup>, 2020

## ORDINANCE #837

AN ORDINANCE GRANTING A FRANCHISE TO GOLDEN WEST CABLEVISION, INC. TO CONSTRUCT AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF CUSTER; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS

The City Council of the City of Custer ordains:

### STATEMENT OF INTENT AND PURPOSE

The City intends, by the adoption of this Franchise, to bring about the development of a Cable Communications System, and the continued operation of it. Such a development can contribute significantly to the communication needs and desires of many. Further, the City may achieve better utilization and improvement of public services with the development and operation of a Cable Communications System.

Past studies by the City have led the way for organizing a means of procuring and securing of Cable Communications System which, in the judgment of the Council, is best suited to the City. This has resulted in the preparation and adoption of this Franchise.

### FINDINGS

In the review of the Renewal Proposal and application of Golden West Cablevision, Inc. ("Grantee"), and as a result of a public hearing, the City Council makes the following findings:

- 1.) The Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
- 2.) Grantee's plans for constructing, upgrading, and operating the System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
- 3.) The Franchise granted to Grantee by the City complies with the existing applicable state and federal laws and regulations; and
- 4.) The Franchise granted to Grantee is nonexclusive.

### SECTION 1.

#### SHORT TITLE AND DEFINITIONS

- 1.) Short Title. This Franchise Ordinance shall be known and cited as the Cable Communications Ordinance.
- 2.) Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent

with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.

(a) "Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7) (1993).

(b) "City" means City of Custer, a municipal corporation, in the State of South Dakota, acting by and through its City Council.

(c) "City Council" means the Custer, South Dakota City Council.

(d) "Cable Programming Service" means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

(1) Video programming carried on the Basic Service Tier;

(2) Video programming offered on a pay-per-channel or pay-per-program basis; or

(3) A combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service:

a. consists of commonly-identified video programming; and

b. is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. § 543(1)(2) (1993) and 47 C.F.R. 76.901(b) (1993).

(e) "Cable Service" means the one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(f) "Cable Communications System" or "System" means a system which operates the service of receiving and amplifying programs broadcast by one or more television or radio stations and other programs originated by a cable communications company or by another party, and distributing those programs by

wire, cable, microwave or other means, whether the means are owned or leased, to persons who subscribe to the service.

(g) "Class IV Cable Communications Channel" means a signaling path provided by a Cable Communications System to transmit signals of any type from a Subscriber terminal to another point in the System.

(h) "Converter" means an electronic device which converts signal to a frequency acceptable to a television receiver of a Subscriber and by an appropriate selector permits a Subscriber to view all Subscriber signals included in the service.

(i) "Drop" means the cable that connects the ground block on the Subscriber's residence to the nearest feeder cable of the System.

(j) "FCC" means the Federal Communications Commission and any legally appointed, designed or elected agent or successor.

(k) "Franchise" means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 U.S.C. § 546) issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

(l) "Grantee" is Golden West Cablevision, Inc., its agents and employees, lawful successors, transferees or assignees.

(m) "Gross Revenue" means all revenue received from Basic Cable Service, Cable Programming Service and Pay Television directly by the Grantee from the Operation of its System within City. The term "Gross Revenues" shall not include installation fees, disconnection fees, upgrade and downgrade of service fees, fees for telecommunications services, if any, fees for the sales, leasing, or servicing of equipment, franchise fees, advertising revenues, late fees, any fees itemized and passed through as a result of franchise imposed requirements or any taxes or fees on services furnished by Grantee imposed directly on any Subscriber or user by any municipality, state or other governmental unit and collected by Grantee for such governmental unit.

(n) "Installation" means the connection of the System from feeder cable to the point of connection, including Standard Installations and custom installations.

(o) "Lockout Device" means an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable Communication System.

- (p) "Pay Television" means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.
- (q) "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.
- (r) "Standard Installation" means any residential installation which can be completed using a Drop of one hundred fifty (150) feet or less.
- (s) "Street" means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or hereafter held by City.
- (t) "Subscriber" means any Person who lawfully receives Cable Television Service.
- (u) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

## SECTION 2.

### GRANT OF AUTHORITY AND GENERAL PROVISIONS

- 1.) Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a Cable Communications System in City unless such Person or the Person for whom such action is being taken shall have first obtained and shall currently hold a valid Franchise Ordinance. It shall also be unlawful for any Person to provide Cable Television Service in City unless such Person shall have first obtained and shall currently hold a valid Franchise Ordinance. All Cable Communications Franchises granted by City shall contain the same substantive terms and conditions.
- 2.) Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein.
- 3.) Grant of Nonexclusive Authority.
  - (a) The Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in City of a Cable Communications System as herein defined. The Cable Communications System constructed and maintained by Grantee or its agents shall not interfere with other uses of Streets. These rights and privileges will be Granted in accordance with SDCL.

(b) This Franchise shall be nonexclusive, and City reserves the right to grant a similar use of said Streets, alleys, public ways and places, to any Person at any time during the period of this Franchise, provided, however that any additional Cable Franchise grants shall be under the same substantive terms and conditions as this Franchise.

(c) Grantee shall have the authority to use City easements, public rights-of-way, Streets and other conduits for the distribution of Grantee's System at no additional cost. The City shall require all developers of future subdivisions to allow and accommodate the construction of the System as part of any provisions for utilities to serve such subdivisions.

- 4.) Franchise Term. This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee, unless renewed, revoked or terminated sooner as herein provided.
- 5.) Previous Franchises. Upon acceptance by Grantee as required by Section 12 herein, this Franchise shall supersede and replace any previous Ordinance or Agreement granting a Franchise to Grantee to own, operate and maintain a Cable Communications System within City.
- 6.) Compliance with Applicable Laws, Resolutions and Ordinances. The Grantee shall at all times during the life of this Franchise comply with applicable laws, resolutions and ordinances.
- 7.) Rules of Grantee. The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise and to assure uninterrupted service to each and all of its Subscribers; provided that such rules, regulations, terms and conditions shall not be in conflict with provisions hereto, the rules of the FCC, the laws of the State of South Dakota, City, or any other body having lawful jurisdiction thereof.
- 8.) Territorial Area Involved. This Franchise is granted for the corporate boundaries of City, as it exists from time to time. In the event of annexation by City, or as development occurs, any new territory shall become part of the area covered, provided, however, that Grantee shall not be required to extend service beyond its present System boundaries unless there is a minimum of forty (40) homes per cable mile as measured from the last fiber node or terminating amplifier. Access to cable service shall not be denied to any group of potential residential cable Subscribers because of the income of the residents of the area in which such group resides. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas.
- 9.) Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered

personally to any officer of Grantee or City's Administrator of this Franchise or forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to City:                      City of Custer  
   City Hall  
   622 Crook Street  
   Custer, SD 57730-4824

If to Grantee:                    Golden West Cablevision, Inc.  
   PO Box 411  
   Wall, SD 57790  
   Attn: Rick Reed

Such address may be changed by either party upon notice to the other party given as provided in this Section.

Grantee shall provide installation of one (1) cable Drop, one (1) cable outlet, and monthly Basic Cable Service without charge to three (3) City-owned buildings as well as the public and parochial elementary and secondary schools within the city. Video equipment, sound equipment and microphones will be provided for use by government entities at City Hall.

No redistribution of the free Basic Cable Service provided pursuant to this Section shall be allowed. Additional Drops and/or outlets in any of the above locations will be provided by Grantee at the cost of Grantee's time and material. Alternatively, at the institution's request, said institution may add outlets at its own expense, as long as such installation meets Grantee's standards and provided that any fees for Cable Communications Services are paid. Nothing herein shall be construed as requiring Grantee to extend the System to serve additional institutions as may be designed by City. Grantee shall have one (1) year from the date of the City Council designation of additional institution(s) to complete construction of the Drop and outlet.

### **SECTION 3.**

#### **CONSTRUCTION STANDARDS**

1.) Construction Codes and Permits.

(a) Grantee shall obtain all required permits from City before commencing any construction upgrade or extension of the System, including the opening or disturbance of any Street, or private or public property within City. Grantee shall substantially comply with all state

and local laws and building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the System in City and give due consideration at all times to the aesthetics of the property.

(b) The City shall impose no permit fees upon Grantee given that Grantee pays Franchise Fees pursuant to this Franchise.

(c) The City shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law.

2.) Repair of Streets and Property. Any and all Streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly and fully restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work, as approved by City in the case of Streets and other public property, which approval shall not be unreasonably withheld. Grantee shall not be required to repair portions of Streets or public property not damaged or disturbed if repairing the disturbed or damaged portion returns the Street or public property to the same condition as prevailing prior to Grantee's work. If Grantee shall fail to promptly perform the restoration required herein, City shall have the right to put the Streets, public, or private property back into good condition. City shall be reimbursed for such restoration from Grantee, in accordance with the then current fee schedule adopted by the City.

3.) Conditions on Street Use.

(a) Nothing in this Franchise shall be construed to prevent City from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any Street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.

(b) All System transmission and distribution structures, lines and equipment erected by the Grantee within City shall be located so as not to obstruct or interfere with the proper use of Streets, alleys and other public ways and places, and to minimum interference with the rights of property owners who abut any of the said Streets, alleys and other public ways and places, and not to interfere with existing public utility installations. Upon request, the Grantee shall furnish to and file with City the maps, plats, and permanent records of the location and character of all facilities constructed, including underground facilities and Grantee shall file with City updates of such maps, plats and permanent records annually if changes have been made in the System.

(c) If at any time during the period of this Franchise City shall elect to alter, or change the grade or location of any Street, alley or other public way, the Grantee shall, at its own expense, upon reasonable notice by City,

remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the standards and specifications of City. If City reimburses other occupants of the Street, Grantee shall be likewise reimbursed.

(d) The Grantee shall not place poles, conduits, or other fixtures of System above or below ground where the same will interfere with any gas, electric, telephone, water or other utility fixtures and all such poles, conduits, or other fixtures placed in any Street shall be so placed as to comply with all requirements of City. Grantee may access poles owned by the City upon approval of the City. City may access poles owned by Grantee upon approval of Golden West Cablevision Director of Video Services.

(e) The Grantee shall, on request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and the Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

(f) The Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements or City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.

(g) Nothing contained in this Franchise shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.

4.) Undergrounding of Cable.

(a) In all areas of City where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed above ground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe.

(b) In any area of City where there are certain cables, wires and other like facilities of a public utility or public utility district underground and at least one operable cable, wire or like facility of a public utility or public utility district suspended above the ground from poles, Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.

(c) Grantee shall be granted access to any easements granted to a public utility, municipal utility or utility district in any areas annexed by City or new developments.

5.) Erection, Removal and Joint Use of Poles. No poles, conduits or other wire-holding structures shall be erected or installed by the Grantee without prior approval of City with regard to location, height, type and other pertinent aspects.

6.) Safety Requirements.

(a) The Grantee shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(b) The Grantee shall install and maintain its System wires, cables, fixtures and other equipment in substantial compliance with the requirements of the National Electrical Safety Code and all FCC, state and local regulations, and in such manner that they will not interfere with any installations of City or of any public utility serving City.

(c) All System structures and all System lines, equipment and connections in, over, under and upon the Streets, sidewalks, alleys, and public ways and places of City, wherever situated or located, shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any Person.

#### SECTION 4.

##### DESIGN PROVISIONS

1.) System Design and Channel Capacity. Grantee shall provide a Cable System which has a minimum capacity of forty-seven (47) channels.

2.) Operation and Maintenance of System. The Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruption, to the extent feasible, shall be preceded by notice in accordance with Section 2.9 herein and shall occur during periods of minimum use of the System.

3.) Technical Standards. The technical standards used in the operation of the System shall comply, at minimum, with the technical standards promulgated by the FCC relating to cable communications systems pursuant to the Federal Communications Commission's rules and regulations and found in Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time.

4.) Special Testing. City may require special testing of a location or locations within the System if there is a particular matter of controversy or unresolved complaints pertaining to such location(s). Demand for such special tests may be made on the basis of complaints received or other evidence indicating an unresolved controversy or noncompliance. Such tests shall be limited to the particular matter in controversy or

unresolved complaints. The City shall endeavor to so arrange its request for such special testing so as to minimize hardship or inconvenience to Grantee or to the Subscribers caused by such testing. Before ordering such tests, Grantee shall be afforded thirty (30) days to correct problems or complaints upon which tests were ordered. The City shall meet with Grantee prior to requiring special tests to discuss the need for such and, if possible, visually inspect those locations which are the focus of concern. If, after such meetings and inspections, City wishes to commence special tests and the thirty (30) days have elapsed without correction of the matter in controversy or unresolved complaints, the tests shall be conducted by a qualified engineer selected by City. In the event that special testing is required by City to determine the source of technical difficulties, the cost of said testing shall be borne by the Grantee if the testing reveals the source of the technical difficulty to be within Grantee's reasonable control. If the testing reveals the difficulties to be caused by factors which are beyond Grantee's reasonable control then the cost of said test shall be borne by City.

5.) FCC Reports. The City may request the results of tests required to be filed by Grantee with the FCC to City.

6.) Lockout Device. Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

7.) Emergency Override. Grantee shall provide an emergency alert override system consistent with federal law.

## SECTION 5.

### SERVICES PROVISIONS

1.) Regulation of Service Rates.

(a) The City may regulate rates for the provision of cable service, equipment, or any other communications service provided over the System to the extent allowed under federal or state law(s). In exercising its jurisdiction to regulate any such rates, City will adhere to regulations adopted by the Federal Communications Commission at 47 C.F.R. § 76.900 et seq. as they may be amended from time to time.

(b) In the event that City elects to exercise its jurisdiction over locally regulatable rates, it shall, after notice, hold a public hearing for the consideration of views of interested parties with respect to initial rates filed and any subsequent proposed change in rates.

2.) Sales Procedures. Grantee shall not exercise deceptive sales procedures when marketing its Cable Television Services within City. Grantee shall have the right to market its cable services door-to-door during reasonable hours consistent with local ordinances and regulation.

3.) Subscriber Inquiry and Complaint Procedures.

(a) Grantee shall have a publicly listed toll-free telephone number and be operated so as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week basis.

(b) Subject to the privacy provisions of 47 U.S.C. § 521 et seq. (1993), City and Grantee shall prepare and maintain written records of all complaints made to them and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the regional office of Grantee.

4.) Refund Policy. In the event a Subscriber established or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing.

## SECTION 6.

### OPERATION AND ADMINISTRATION PROVISIONS

1.) Franchise Fee.

(a) Grantee pays City an annual franchise fee in the amount of three percent (3%) of Grantee's annual Gross Revenues

(b) The franchise fee shall be payable quarterly together with a brief report showing the basis for the computation.

2.) Access to Records. The City shall have the right to inspect, upon reasonable notice, at any time during normal business hours, those records maintained by Grantee which relate to System operations and to Gross Revenues, subject to the privacy provisions of 47 U.S.C. § 521 et seq.

3.) Reports Reviewed by the City. Grantee shall prepare, at the times and in the form prescribed, such reports with respect to the operations, affairs, transactions or property, as they relate to the System, which Grantee and City may agree upon.

## SECTION 7.

### GENERAL FINANCIAL AND INSURANCE PROVISIONS

1.) Indemnification of City.

(a) City, its officers, boards, committees, commissions, elected officials, employees and agents shall not be liable for any loss or damage to any real or personal property of any Person, or for any injury to or death of

any Person, arising out of or in connection with the construction, operation, maintenance, repair or removal of, or other action or event with respect to the System.

(b) Grantee shall indemnify, defend, and hold harmless City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of the franchise, except claims because of EG programming or the City's operation, administration, promotion or management of the access channel(s) and any use of Internet Services in public institutions.

(c) Nothing in this Franchise relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system.

(d) In order for City to assert its rights to be indemnified, defended, and held harmless, City must with respect to each claim:

(1) Promptly notify Grantee in writing of any claim or legal proceeding which gives rise to such right;

(2) Afford Grantee the opportunity to participate in any compromise, settlement or other resolution or disposition of any claim or proceeding; and

(3) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, , compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.

2.) Insurance.

(a) As a part of the indemnification provided in Section 7.2, but without limiting the foregoing, Grantee shall file with its acceptance of this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of City in its capacity as such, its officers, elected officials, boards, commissions, agents and employees. The policy or policies shall name as additional insured City, and their capacity as such, their officers, agents and employees. The policies of insurance shall be in the sum of not less than Five Hundred Thousand Dollars (\$500,000) for personal injury or death of any one Person, and One Million Dollars (\$1,000,000) for personal injury or death of two or more Persons in any one occurrence, One Million Dollars (\$1,000,000) for property damage to any one person and Two Million Dollars (\$2,000,000) for property damage resulting from any one act or occurrence.

(b) The policy or policies of insurance shall be maintained by Grantee in full force and effect during the entire term of the Franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of Grantee or for other reasons, except after thirty (30) days' advance written notice have been provided to City.

## SECTION 8.

### SALE, ABANDONMENT, TRANSFER AND REVOCATION OF FRANCHISE

- 1.) City's Right to Revoke. In addition to all other rights which City has pursuant to law or equity, City reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto.
- 2.) Procedures for Revocation.
  - (a) City shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent to receipt of the notice in which to correct the violation or to provide adequate assurance of performance in compliance with the Franchise. Together with the notice required herein, City shall provide Grantee with written findings of fact which are the basis of the revocation.
  - (b) Grantee shall be provided the right to a public hearing affording due process before the City Council prior to revocation, which public hearing shall follow the sixty (60) day notice provided in paragraph (a) above. City shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.
  - (c) After the public hearing and upon written determination by City to revoke the Franchise, Grantee may appeal said decision with an appropriate state or federal court or agency.
  - (d) During the appeal period, the Franchise shall remain in force and effect unless the term thereof sooner expires.
  - (e) Upon satisfactory correction by Grantee of the violation upon which said notice was given as determined in the City's sole discretion, the initial notice shall become void.
- 3.) Abandonment of Service. Grantee may not abandon the System or any portion thereof without having first given three (3) months written notice to City.

4.) Sale or Transfer of Franchise.

(a) No sale or transfer of this Franchise shall take place until the parties to the sale or transfer files a written request with the City for its approval, provided however, that said approval shall not be required where Grantee grants a security interest in its Franchise and assets to secure indebtedness.

(b) City shall approve or deny the transfer consistent with federal law. City shall not unreasonably withhold its approval.

(c) In no event shall a transfer or assignment of this Franchise be approved without the transferee becoming a signatory to this Franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the City.

**SECTION 9.**

**PROTECTION OF INDIVIDUAL RIGHTS**

1.) Subscriber Privacy. Grantee shall comply with laws regarding subscriber privacy as required by 47 U.S.C. § 551.

**SECTION 10.**

**UNAUTHORIZED CONNECTIONS AND MODIFICATIONS**

1.) Unauthorized Connections or Modifications Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or governmental body or agency, without the express consent of the Grantee, to make or possess, or assist anybody in making or possessing, any connection, extension, or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of the System.

2.) Removal or Destruction Prohibited. It shall be unlawful for any firm, Person, group, company, corporation, or government body or agency to willfully interfere, tamper, remove, obstruct, or damage, or assist thereof, any part or segment of the System for any purpose whatsoever.

3.) Penalty. Any firm, Person, group, company, corporation or government body or agency found guilty of violating this Section may be fined not less than One Hundred Dollars (\$100.00) and the costs of the action or more than Five Hundred Dollars (\$500.00) and the costs of the action for each and every subsequent offense. Each continuing day of the violation shall be considered a separate occurrence.

## SECTION 11.

### MISCELLANEOUS PROVISIONS

- 1.) Franchise Renewal. Any renewal of this Franchise shall be done in accordance with applicable federal, state and local laws and regulations.
- 2.) Amendment of Franchise Ordinance. Grantee and City may agree, from time to time, to amend this Franchise. Such written amendments may be made subsequent to a review session pursuant to Section 11.6 or at any other time if City and Grantee agree that such an amendment will be in the public interest or if such an amendment is required due to changes in federal, state or local laws. City shall act pursuant to local law pertaining to the ordinance amendment process.
- 3.) Compliance with Federal, State and Local Laws. If any term, condition or provision of this Franchise or the application thereof to any Person or circumstances shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to Persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and complied with provided the loss of the invalid or unenforceable clause does not substantially alter the agreement between the parties.
- 4.) Periodic Evaluation. The field of cable communications is rapidly changing and may see many regulatory, technical, financial, marketing and legal changes during the term of this Franchise. Therefore, in order to provide for a maximum degree of flexibility in this Franchise, and to help achieve a continued advance and modern System, the following evaluation provisions shall apply:
  - (a) Upon thirty days written notice to Grantee, the City may require an evaluation session. Evaluation sessions may occur no more than once annually beginning one (1) year from the Effective Date of this Franchise.
  - (b) All evaluation sessions shall be open to the public and notice of sessions published in the same way as a legal notice.
  - (c) Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies, System performance, programming offered, access channels, facilities and support, municipal uses of cable, customer complaints, amendments to this Franchise, judicial rulings, FCC rulings, line extension policies and any other topics City and Grantee deem relevant.
  - (d) As a result of a periodic review or evaluation session, City and Grantee may develop such changes and modifications to the terms and conditions of the Franchise as are mutually agreed upon.

5.) Grantee Acknowledgment of Validity of Franchise. Grantee acknowledges that it has had an opportunity to review the terms and conditions of this Franchise and that under current law Grantee believes that said terms and conditions are not unreasonable or arbitrary, and that Grantee believes City has the power to make the terms and conditions contained in this Franchise.

**SECTION 12.**

**PUBLICATION EFFECTIVE DATE; ACCEPTANCE AND EXHIBITS**

- 1.) Publication; Effective Date. This Franchise shall be published and become effective in accordance with applicable South Dakota law.
- 2.) Acceptance.
  - (a) Grantee shall accept this Franchise in writing. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes.
  - (b) Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.
  - (c) Grantee shall accept this Franchise in the following manner:
    - (1) This Franchise will be properly executed and acknowledged by Grantee and delivered to City.
    - (2) With its acceptance, Grantee shall also deliver any performance bond and insurance certificates required herein that have not previously been delivered.

Passed and adopted this \_\_\_\_ day of \_\_\_\_\_, 2020.

ATTEST:

CITY OF CUSTER

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

ACCEPTED: This Franchise is accepted and we agree to be bound by its terms and conditions.

GOLDEN WEST CABLEVISION, INC.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Laurie Woodward**

---

**From:** South Dakota Outdoor Shop <adventure@southdakotaoutdoorshop.com>  
**Sent:** Wednesday, May 6, 2020 11:42 AM  
**To:** carrieowns@gmail.com; wnconnected@gwtc.net; dixiewhittaker@kw.com; efischer@gwtc.net; Sydney Gramkow; Laurie Woodward; Mayor  
**Subject:** Variance to the Transient Merchant Ordinance

Hello All!

Thank you all so very much for taking this variance into consideration. I learned a lot from the May 4<sup>th</sup> meeting; we can adjust where we place the Thai Thai Food Trailer. We appreciate you all looking into different options to make this work and hope there is a compromise to be found. We look for this to be a way to keep sales tax revenue in Custer City Limits and keep transient merchants regulated. All while, increasing the foot traffic and business for us & the other Brick & Mortar Businesses of Custer. We would love to see the 12 – 2 day option work but we are also open to looking into the other options that were suggested.

Below are the proposed dates:

Thai Thai Food Trailer at the South Dakota Outdoor Shop

12 - 2 day	8 - 3 day	6 - 4 day
Saturdays & Sundays		
May 23 & 24	May 23, 24 & 25	May 22, 23, 24 & 25
May 30 & 31	June 12, 13, & 14	June 12, 13, 14 & 15
June 13 & 14	June 26, 27 & 28	July 3, 4, 5 & 6
June 27 & 28	July 3, 4 & 5	July 17, 18, 19 & 20
July 4 & 5	July 17, 18 & 19	August 7, 8, 9 & 10
July 11 & 12	August 7, 8 & 9	September 4, 5, 6 & 7
July 18 & 19	September 5, 6 & 7	
August 1 & 2	September 18, 19 & 20	
August 8 & 9		
August 15 & 16		
September 5 & 6		
September 19 & 20		

Once again, thank you for being open-minded and taking this into consideration. This is just one more reason, Custer is the best community to live in!

With gratitude,

Bobbi & Jeremy Schmidt  
South Dakota Outdoor Shop  
757 Mount Rushmore Road  
Custer SD 57730  
605-450-9956 cell

**Proposal letter to City of Custer City, requesting a variance for allowing a transient merchant to purchase a twelve-day permit to be utilized on non-consecutive days.**

City of Custer City  
622 Crook Street  
Custer SD 57730

April 30, 2020

RECEIVED

MAY 01 2020

CITY OF CUSTER

Dear Custer City Council,

This proposal letter is to request a variance to allow a transient merchant to use their (2) twelve-day permits over non-consecutive days. We are not requesting any other portion of the current ordinance to change.

We are requesting that this variance is for the 2020 summer season. We were looking to allow the Thai Thai Food Trailer to park on the private property of 757 Mt Rushmore Rd for special events and to increase business on select days. We would limit it to no more than 24 total days of the year; to keep with the current ordinance. The Thai Thai Food Trailer owners are local residents of Custer County in the community of Pringle.

We truly hope to be an asset to the Custer Community and are just working towards increasing the foot traffic to include us during Custer's busy summer days. We are intentionally wanting to work with the Thai Thai Food Trailer for the fact that this is a specific type of cuisine that is not permanently being offered in Custer. We want to give people one more reason to enjoy Custer a little longer.

We appreciate you taking the time to consider this variance.

Respectfully,



Bobbi Schmidt

South Dakota Outdoor Shop  
757 Mt. Rushmore Rd  
Custer SD 57730  
605-450-9956 cell

## Chapter 5.05

## PEDDLING AND TRANSIENT MERCHANTS

## Sections:

## Article I. Peddling

- 5.05.010 Peddling from vehicles on streets.
- 5.05.020 Peddling in parks.
- 5.05.030 Definitions.
- 5.05.040 Transient merchant's and temporary use/structure license required.
- 5.05.050 Application.
- 5.05.060 Fee and duration of license.
- 5.05.070 Issuance.
- 5.05.080 Exemptions from license fees.
- 5.05.090 Special provisions.
- 5.05.100 Penalty.

## Article I. Peddling

**5.05.010 Peddling from vehicles on streets.**

No person shall sell or offer for sale any goods or merchandise from a cart, wagon, automobile, truck or other vehicle in the streets or thoroughfares of the city except as hereinafter permitted. This section does not apply to the delivery of farm or garden products, where the order for it has been placed in advance, nor does it apply to drayage or the delivery of goods sold in the regular course of an established business. Nothing in this section shall prohibit the city from entering into a contract for the sale of ice cream and sundries for immediate consumption agreed to by common council. (Ord. 707 (part): 2011; Ord. 541 (part), 2001)

**5.05.020 Peddling in parks.**

It is unlawful for any transient merchant, peddler or any other person, except a person occupying a portion of the park under a valid concession agreement, to sell or offer to sell, to any person within any municipal park of the city, any goods, wares, merchandise, books, pictures, novelties, services, souvenirs or trinkets or any other article of commerce and trade, including goods of his own production or manufacture. (Ord. 541 (part), 2001)

**Article II. Licensing of Transient Professional People and Merchants and Temporary Uses and Structures**

**5.05.030 Definitions.**

For the purposes of this section:

5.05.030

"Transient merchant" means any person, firm, corporation, partnership or association not having an operating place of business within the city who, for one to twelve (12) days, engages in temporary or transient business in the city, selling goods, wares, merchandise or services or a permanent business person, firm or corporation which is located within the city limits who, for one to twelve (12) days, is selling such goods, wares, merchandise or services, away from his or her or its usual operating place of business and who, for the purpose of carrying on such business, hires, leases or occupies any public or private property or right-of-way. Excluded herefrom, however, are farmer's markets retailing merchandise or products of the person's own manufacture or production (SDCL 9-34-7) and the sale of fruits, vegetables or farm or garden products in their natural state. The person, firm or corporation so engaged shall not be relieved from the provisions of this section by reason of association with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as a part of or in the name of any local dealer, trader, merchant or auctioneer.

"Year" means a twelve (12) month period.

"Business" means the activity of buying and selling.

"Operating" means functioning in business on a year-round basis.

"Temporary use and structure" means any use or structure that is not located in a permanent structure and is not the primary use of the property. (Ord. 739, 2014; Ord. 707 (part), 2011; Ord. 574 (part), 2002; Ord. 541 (part), 2001)

**5.05.040 Transient merchant's and temporary use/structure license required.**

A. Any firm, person or corporation which intends to operate a temporary business or temporary use/structure within the corporate limits of the city and is located on property that is either zoned central business district, highway commercial district or industrial district shall be required to purchase a transient merchant's license for each structure, stand, tent, vehicle, booth, location or place which is used by such merchant for the sale or distribution of goods or any other commercial activity and which occupies any public or private property or right-of-way. The person so engaged shall not be relieved from the provisions of this section by reason of association with any local operating business, dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with, or as a part of or in the name of any local dealer, trader, merchant, auctioneer or business.

B. The transient merchant/temporary use license must be posted in each individual stand during operation. (Ord. 574 (part), 2002; Ord. 541 (part), 2001)

**5.05.050 Application.**

A. To obtain a license, a transient merchant/temporary use shall file, in the office of the city finance officer, a verified application stating his or her name, and residence, description and identification of the place in which he or she proposes to do business, dates of operation, name, address and phone number of the owner and the description of the goods he or she intends to handle.

B. Upon application, all transient merchants/temporary use must provide proof that all applicable requirements of the Custer Municipal Code, South Dakota Department of Revenue, South Dakota Department of Health, South Dakota Electrical Code and the South Dakota State Plumbing Code for licensing, plumbing and electrical are being met.

C. All transient merchants/temporary uses shall contain approved toilet facilities or shall have contracted with the owners of permanent toilet facilities within three hundred (300) feet for employee access to the facilities or access to temporary sanitation facilities approved by the public works director or designee. Operations that include prepared foods or beverages shall provide or have contracted for access to approved toilet facilities by customers of the business.

D. All transient merchants/temporary uses shall be located outside of clear sight triangles at streets, alleys and driveways. The leg of a clear sight triangle along a public street shall be seventy (70) feet in length. The leg of a clear sight triangle along an alley or driveway shall be twenty-five (25) feet in length.

E. Each temporary business may display one sign to advertise the business. The sign shall be in compliance with the Custer sign code, except that the sign may be no larger than sixteen (16) square feet. (Ord. 574 (part), 2002: Ord. 541 (part), 2001)

#### 5.05.060 Fee and duration of license.

A. Transient merchants/temporary use shall pay a license fee for each twelve consecutive day period, or portion thereof, in any calendar year. Such fee shall be set by resolution of the city council. The finance officer shall note on the license the time period for which it is effective.

B. A business may purchase only two (2) transient merchant's/temporary use licenses per location per twelve-(12) month period. (Ord. 574 (part), 2002: Ord. 548 (part), 2001: Ord. 541 (part), 2001)



#### 5.05.070 Issuance.

A. On filing the application and payment of the fee prescribed in this section, the finance officer shall issue a license to the applicant to do business at the place described in the application, and for the time which the license fee has been paid in advance. (Ord. 574 (part), 2002: Ord. 541 (part), 2001)

#### 5.05.080 Exemptions from license fees.

All vendors as defined in Section 5.05.030 shall be required to obtain a transient merchant's license in accordance with Sections 5.05.040, 5.05.050, and 5.05.060. The following vendors, however, shall be exempted from any fees for such license:

A. Sales where the proceeds are to be used exclusively for religious, charitable or benevolent purposes. Written proof of charitable, nonprofit status as declared by the IRS (i.e., 501(c)(3) documentation) must be presented during application;

B. Sale to wholesale or retail merchants, by sample, for future delivery made by representatives or established wholesalers or manufacturers;

C. The distribution of goods for which there is no charge. All persons, firms or corporations distributing goods or performing a service for which there is no charge, shall be required to register with the city finance officer, their name, address, location of such distribution or service and goods which he or she or it is distributing or service which they are performing. (Ord. 707 (part), 2011: Ord. 574 (part), 2002: Ord. 548 (part), 2001: Ord. 541 (part), 2001)

5.05.090

**5.05.090 Special Provisions.**

The following vendors/uses shall have the following specific regulations.

A. Carnival or Circus. In any nonresidential district, a transient merchant permit may be issued for a carnival or circus but the permit shall be issued for a period not longer than twelve (12) days. The use shall set back from all residential districts a distance of not less than one hundred (100) feet. All provisions of this code shall be met.

B. Christmas Tree Sale. In any district, a transient merchant permit may be issued for the display and open-lot sales of Christmas trees, but the permit shall be issued for a period of time commencing no earlier than the third Saturday of November and ending prior to December thirty-first of that year.

C. Temporary Contractor's Buildings. In any district, a transient merchant/temporary use permit may be issued for a contractor's temporary office and equipment sheds incidental to a construction project. The office or shed shall not contain sleeping or cooking accommodations. The permit shall be valid for the duration of the construction period. The office or shed shall be removed upon completion of the construction of the structure(s);

D. Any proposed transient merchant or temporary use/structure that does not meet the criteria as established by this article may be allowed as a permitted conditional use when approved by the community development director or designee. (Ord. 739, 2014; Ord. 574 (part), 2002)

**5.05.100 Penalty.**

A. Any person, firm and/or corporation violating this chapter or any state laws may be subject to license revocation upon written notice of such violation.

B. Violation of this chapter constitutes a Class II misdemeanor. (Ord. 574 (part), 2002; Ord. 541 (part), 2001)

## Laurie Woodward

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**From:** Laurie Arthur <larthur@gwtc.net>  
**Sent:** Monday, May 11, 2020 9:53 AM  
**To:** Laurie Woodward  
**Subject:** Commission Meeting

Hi Laurie,

I would like to “attend” the next city commission meeting (May 18<sup>th</sup>??) and ask the commission for permission for the Custer Area Arts Council to place 9 of Colleen Hennessy’s buffalo on Mt Rushmore Rd. They will be basically in the same places as they were last year. I’ll have a signed Agreement between the Art Council and Colleen, proof of insurance and a listing of which buffalo will go where. Other than getting those documents to your office, do you need anything else for me to be added to the agenda?

Laurie Arthur  
Treasurer  
Custer Area Arts Council

**Laurie Woodward**

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**From:** Laurie Arthur <larthur@gwtc.net>  
**Sent:** Thursday, May 14, 2020 6:08 PM  
**To:** Laurie Woodward  
**Cc:** Hennessy & Frank; Carrie Moore; Chris Pelczarski; Dawn Murray; Gary Enright; Jan Nuckles; Jason Deuhr; jessica@custerhospitality.com; John Kirk; Krystal Hegerfeld; Lisa Bausell; Luke Burris; Mark Hartman; Matt Fridell; michael@mpward.us; Robin Prior; Steve Leonardi; Thea Teasley; Tommie Leenknecht; Wally & Pat Steele  
**Subject:** City Commission Agenda Packet-The "Herd"  
**Attachments:** Herd Agree Signed.pdf; Herd Insurance.pdf; Herd Placement 2020.xlsx; Herd Stencil.pdf

Hi Laurie W.,  
I've attached the documents that the Custer Area Arts Council request be included in the Commission meeting packets regarding the painted buffalo "herd". I will attend the meeting via "go to meeting" on Monday at 5:30 pm.  
Thank-you,  
Laurie Arthur  
Treasurer  
Custer Area Arts Council

# 2020 BUFFALO "HERD" PLACEMENT

		By
1	"I've Seen Fire and I've Seen Rain"	Way Park
2	"Provider for the Lakota People"	1881 Courthouse Museum
3	"Spirit Guides"	Pizza Hut
4	"Morning Star"	Horatio's Ice Cream
5	"Hitting the High Notes"	Flora's
6	"Riders on the Storm"	Highmark FCU
7	"Black Elk's Center of the Earth"	Post Office
8	"How I've Disappeared"	First Interstate Bank
9	"American Dream"	Jim Sword's Office (305)



**BUFFALO**  
CUSTER AREA ARTS COUNCIL

**AGREEMENT BETWEEN COLLEEN HENNESSY and  
CUSTER AREA ARTS COUNCIL**

This Agreement (this "Agreement") is entered into as of the 1<sup>st</sup> day of May, 2020, (the "Effective Date") by and between, **COLLEEN HENNESSY** ("Hennessy") and **CUSTER AREA ARTS COUNCIL** ("Council")

**WHEREAS**, Hennessy owns a herd of beautifully painted buffalo and is dedicated to her community;

**WHEREAS**, the Hennessy buffalo provide the City of Custer with a unique opportunity to beautify the community and to promote the history and natural beauty of the area;

**WHEREAS**, the Council is dedicated to the promotion of art in the Black Hills of South Dakota;

**WHEREAS**, Hennessy and the Council want to work together to promote the City of Custer and the beauty of the area;

**NOW THEREFORE**, for the reasons set forth, and in consideration of the mutual covenants and promises of the parties hereto, and intending to be legally bound, the parties agree as follows:

**1. Purpose.**

Hennessy grants to the Council the use of her buffalo herd consistent with the terms provided herein. Ownership of the buffalo shall remain with Hennessy.

**2. Term.**

**A.** The term of this Agreement shall be from the effective date through April 1, 2021.

**B.** This Agreement shall automatically renew each successive year, unless written notice of termination is provided as set forth below.

**C.** Each year the parties shall work in good faith to agree upon the number and location of the buffalos to be placed around the City of Custer, South Dakota. A written record of the exact buffalos to be placed and the location shall be signed by both parties and a record kept by both parties.

Council shall be responsible for paying for the meal associated with this meeting.

**3. Transportation.**

Council shall assume all costs and responsibilities for moving each buffalo from the Hennessy property to its location in the City of Custer, South Dakota. At the end of the set term, provided in paragraph 1, the Council shall assume all costs and responsibilities for moving each buffalo back to the Hennessy property.

**4. Insurance.**

The Council shall maintain a liability insurance policy with sufficient coverage to insure each buffalo placed in the City of Custer for the term provided in paragraph 1. Council shall indemnify, defend, and hold harmless Hennessy from any loss, cost, or damage of any kind (including any attorney fees and costs) to the extent arising from the buffalo herd being placed in the City of Custer for the term set forth in paragraph 1.

**5. Damage to Herd.**

**A.** The Council shall be responsible for the repair of any physical damage to the buffalo herd placed in the City of Custer up to an aggregate limit of \$1,000 for the entire term set forth in paragraph 1.

**B.** Any repairs to a buffalo shall be performed by Karen Cade and/or Ross Lampshire.

**C.** Any physical damage to the buffalo herd above the aggregate limit of \$1,000 shall be incurred by Hennessy at her sole discretion.

**6. Notices.**

All notices given under this Agreement must be in writing. A notice is effective upon receipt and shall be sent via US mail certified return receipt to the designated address:

Colleen Hennessy  
245 S. 8<sup>th</sup> St.  
Custer, South Dakota 57730

Custer Area Arts Council

P.O. Box 310  
Custer, South Dakota 57730

**7. Amendment.**

This Agreement may be amended or modified by a written agreement signed by both of the parties.

**8. Binding Effect.**

This Agreement shall be binding upon and shall inure to the benefit of the parties and their successor and assigns. Neither party may assign its rights or delegate its duties under this Agreement without the other party's prior written consent.

**9. Governing Law.**

This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota, without regard to the principles of conflicts of laws.

**10. Termination.**

This Agreement may be terminated by either party. A notice of termination shall be provided to the other party in writing and delivered to the address listed above. The notice shall be provided at least 60 days in advance of the date of termination. No reason need be given for the termination.

**11. Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same document.

**12. Headings.**

The section headings herein are for reference purposes only and shall not otherwise affect the meaning, construction or interpretation of any provision in this Agreement.

**13. No Waiver.**

No party shall be deemed to have waived any provision of this Agreement or the exercise of any rights held under this Agreement unless such waiver is made expressly and in writing.

**14. Severability.**

If any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable part had not been included in this Agreement.

**15. Entire Agreement.**

This Agreement and the attachments and any associated documents represent the entire Agreement between the parties, and there are no representations, warranties, covenants or conditions, except those specified herein.

**DATED** this 12 day of May, 2020.

*Colleen Hennessy*  
\_\_\_\_\_  
**COLLEEN HENNESSY**

State of South Dakota )  
  )  
County of Custer         )

On this 12 day of May, 2020, before me,  
Colleen Hennessy, the undersigned officer, personally appeared **COLLEEN HENNESSY**, known to me or proved to me that she executed the within instrument and for the purposes herein acknowledged.

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

*Sydney M. Galloway*  
\_\_\_\_\_  
Notary Public - South Dakota



DATED this 13<sup>th</sup> day of May, 2020.

BY: CUSTER AREA ARTS COUNCIL

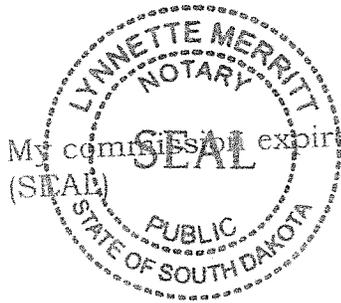
Lynette Merritt - CCA  
Lynette Merritt, President

State of South Dakota )  
County of Custer )

On this 13<sup>th</sup> day of May, 2020, before me,  
Lynette Merritt, the undersigned officer, personally  
appeared Lynette Merritt, known to me or proved to me on the oath to be  
the President of the Custer Area Arts Council that is described in and that  
executed the within instrument and acknowledged to me that such corporation  
executed the same.

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

Lynette Merritt  
Notary Public - South Dakota



My commission expires: June 7, 2024



**COMMERCIAL LIABILITY COVERAGE PART  
DECLARATIONS**

Policy Number: NPP8588562

Effective Date: 05/07/2020  
12:01 AM, Standard Time

**COMMERCIAL GENERAL LIABILITY - LIMITS OF INSURANCE**

General Aggregate Limit (Other Than Products-Completed Operations)	\$ <u>2,000,000</u>	
Products - Completed Operations Aggregate Limit	\$ <u>Included</u>	†
Personal and Advertising Injury Limit	\$ <u>1,000,000</u>	Any One Person or Organization
Each Occurrence Limit	\$ <u>1,000,000</u>	
Damage to Premises Rented to You	\$ <u>100,000</u>	Any One Premises
Medical Expense Limit	\$ <u>5,000</u>	Any One Person
Each Professional Incident Limit (if applicable)	\$ <u>Not Covered</u>	

† If the Limit is shown as Included, Products-Completed Operations are subject to the General Aggregate Limit.

**PREMIUM**

Classification	Code No.	Premium Basis	Rate		Advance Premium	
			Pr/Co	All Other	Pr/Co	All Other
Clubs - civic, service or social - no buildings or premises owned or leased except for office purposes - Not-for-profit only (P1/B1)	41670	Each Member 124.00	Included	6.851	Included	850.00
Concerts & misc events held (P1/B1)	W2705	Attendee 0	Included	0.0965	Included	0.00
Additional Insureds (P1/B1)	00004	Flat Charge 1		0.00		100.00
<b>Total Advance Premium</b>						<b>\$ 950.00</b>

**FORMS AND ENDORSEMENTS**

Forms and Endorsements applying to this coverage part and made part of policy at time of issue:

**See Schedule of Forms and Endorsements**

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

**ADDITIONAL INSURED ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The insurance afforded by this policy for "bodily injury," "property damage" and/or "personal and advertising injury" shall also apply to the "additional insured" listed below for claims, suits, and/or damages made against the "additional insured," but only to the extent the "additional insured" is being held responsible for the acts, omissions and/or negligence of the "named insured."

This insurance afforded shall not apply to claims, suits and/or damages arising out of the acts, omissions and/or negligence of the "additional insured(s)."

The inclusion of the "additional insured(s)" shall not operate to increase the Limits of Insurance.

To the extent, if any, that this policy affords coverage to an "additional insured," the "additional insured" is subject to all of the terms of the policy.

Our obligation to provide coverage to an "additional insured" is further limited by the interest of the "additional insured" as defined below.

Interest of the Additional Insured(s) Defined:

Property Owner

For the purpose of this endorsement, the "named insured" is the person(s) and/or party(ies) designated on the Declarations Page of the policy or on any endorsement. The "additional insured" is the person(s) and/or party(ies) identified below.

Identity of Additional Insured(s):

City of Custer

622 Crook Street

Custer, SD 57730

(Complete this section if endorsement is added after policy is issued.)

Policy Number

Endorsement Number

Endorsement Effective Date

Signature of Authorized Representative

Producer Number



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

#### Staff Report

Request: Minor Plat, Lot 15R and Lot 18R of Tompkins Sub  
Applicant: Kevin Brunk  
Location: Little Italy Road, approximately 0.6 miles West of Custer City  
Legal Desc.: Lot 15R and Lot 18R of Tompkins Subdivision - See plat for full legal.  
Fee: \$150.00  
Date Prepared: May 15, 2020  
City Council Meeting: May 18, 2020  
Prepared by Tim Hartmann, Planning Administrator

#### **GENERAL**

This plat is for a subdivision that is not within the corporate limits of the City of Custer but is within the City's extraterritorial jurisdiction. Private wells and septic systems serve the parcels. The plat is performing a lot line adjustment between proposed Lot 15R and Lot 18R to allow additional setback to structure on proposed Lot 15R and to better to align the lot line with topography. The lot line between the proposed Lot 15R and Lot 18R has been shifted North making proposed Lot 15R 3.32 acres and proposed Lot 18R 2.65 acres.

#### **COMPREHENSIVE PLAN**

The comprehensive plan identifies this area as countryside residential.

#### **ROUTING SHEET RESPONSES**

SDDOT- No Comments

#### **ACCESS**

Access to the property is gained from Highway 16 to Little Italy Road. Both proposed and existing lots then have access directly to Little Italy Road.

#### **PREVIOUS ACTION BY PLANNING COMMISSION**

Planning Commission reviewed this plat at their April 28<sup>th</sup> meeting. After a brief discussion Johnson moved, with a second by Hudson to recommend approval of the minor plat. Motion carried unanimously.

#### **SUMMARY AND STAFF RECOMMENDATION**

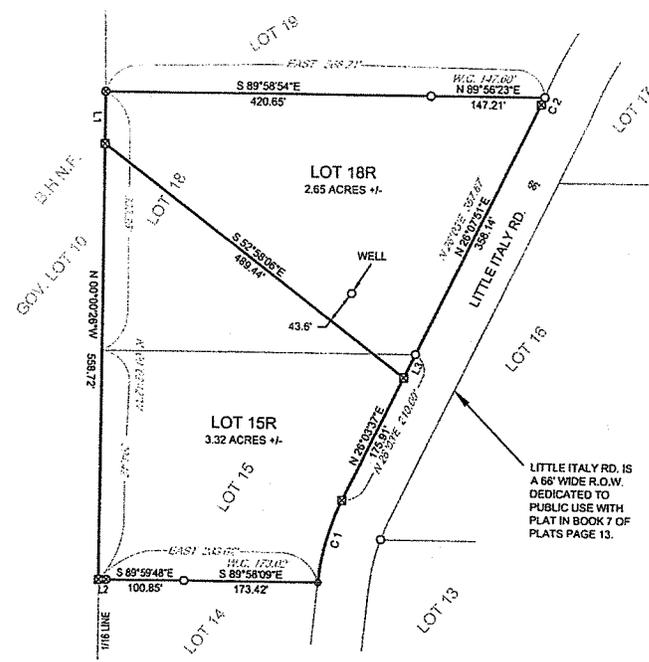
This plat is presented as a lot line adjustment with no affect to existing access, water, or wastewater systems. The proposed shift will align the dividing lot line with a drainage between the lots and give an additional buffer to the home on the proposed Lot 15R. Staff supports approval by the Council.

18  
4/10/20

# A PLAT OF LOT 15R AND LOT 18R OF TOMPKINS SUBDIVISION, LOCATED IN SE 1/4 SW 1/4 OF SECTION 22, T3S, R4E, BHM, CUSTER COUNTY, SOUTH DAKOTA

Formerly Lot 15 and Lot 18

NOTE: See Book 7 of Plats  
on page 13 for a Plat of Lots  
15 & 18.



Curve	Radius	Tangent	Length	Delta	Degree	Chord	Chord Bear.
C1	314.41' 142.27'	55.86'	110.57' 110.57'	20°09'00" 20°09'00"	18°13'24"	110.00'	N 15°26'16" E
C2	336.25' 151.20'	5.01'	10.01' 10.00'	1°42'22" 1°42'15"	17°02'23"	10.01'	N 26°56'58" E

Course	Bearing	Distance
L1	N 00°00'26" W	66.03'
L2	S 89°56'48" E	9.82'
L3	N 26°04'31" E	33.80'

**CERTIFICATE OF SURVEYOR**  
I, John D. McBride Registered Land Surveyor No. 5906 in the State of South Dakota, do hereby certify that being so authorized, I have prepared the within plat of land shown and described hereon from notes taken during an actual survey made by me or under my direct supervision, and that to the best of my knowledge and belief, the same is a true and correct representation of said survey.  
IN WITNESS WHEREOF, I hereunto set my hand and official seal.  
Dated this \_\_\_ day of \_\_\_, 2020.

John D. McBride SDRLS No. 5906

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_  
I, Kevin D. Brunk, do hereby certify that I am the owner of the within described lands and that the within plat was made at my direction for the purposes indicated therein, and that the development of this land shall conform to all existing zoning, subdivision, and erosion and sediment control regulations.  
Dated this \_\_\_ day of \_\_\_, 2020.

Kevin D. Brunk

**ACKNOWLEDGMENT OF OWNERSHIP**  
STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_  
On this \_\_\_ day of \_\_\_, 2020, before me, a Notary Public, personally appeared Kevin D. Brunk, known to me to be the person(s) described in the foregoing instrument, and acknowledged to me that they signed the same. IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public: \_\_\_\_\_ My commission expires \_\_\_\_\_

**CERTIFICATE OF COUNTY TREASURER**  
I, Custer County Treasurer, do hereby certify that all taxes and special assessments which are liens upon the within described lands are fully paid according to the records of this office.  
Dated this \_\_\_ day of \_\_\_, 2020.

Custer County Treasurer

**CERTIFICATE OF COUNTY DIRECTOR OF EQUALIZATION**  
I, Director of Equalization of Custer County, do hereby certify that my office has been furnished with a true copy of the within plat.  
Dated this \_\_\_ day of \_\_\_, 2020.

Director of Equalization of Custer County

**OFFICE OF THE REGISTER OF DEEDS**  
Filed for record this \_\_\_ day of \_\_\_, 2020, at \_\_\_ o'clock \_\_\_ M., and recorded in Book \_\_\_\_\_ of Plats on page \_\_\_\_\_.  
Custer County Register of Deeds

NOTE: 10 FEET EACH SIDE OF REAR AND SIDE LOT LINES ARE RESERVED FOR UTILITY EASEMENTS. IF THE LINE ABUTS LANDS NOT SUBDIVIDED UNDER THE PROVISIONS OF CUSTER COUNTY SUBDIVISION ORDINANCE #2, THE ENTIRE 20' WIDE EASEMENT WILL BE TAKEN FROM THE LOT.  
No area of special flood hazard exists within this subdivision according to Flood Hazard Insurance Rate Map Panel No. 46033C0095F, effective date: Jan. 6, 2012.

**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.

**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 the proposed subdivision road(s) with the existing public road(s) is hereby approved.  
Highway Authority \_\_\_\_\_ Date: \_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL**  
Whereas there has been presented to the City Council of Custer, South Dakota, the within plat of the above described lands, and it appearing to the Council that said plat conforms to the existing plats of said City, that the streets set forth therein conform to the system of streets of the municipality, that all provisions of the subdivision regulations have been complied with, that all taxes and special assessments upon the tract have been fully paid, and that said plat and the survey thereof have been executed according to law, now therefore,  
BE IT RESOLVED, that said plat is hereby approved in all respects.  
Dated at Custer, South Dakota this \_\_\_ day of \_\_\_, 2020.

**CERTIFICATE OF CITY FINANCE OFFICER**  
I, Finance Officer of the City of Custer, South Dakota, do hereby certify that the foregoing instrument is a true and correct copy of the resolution adopted by the City Council of Custer, South Dakota at a meeting held on the \_\_\_ day of \_\_\_, 2020.

Custer City Finance Officer

Prepared by  
**ANDERSEN ENGINEERS**  
*Land Surveyors, Professional Engineering, & Environmental Consultants*

Drawn by RW	Date 3/16/2020	P.O. Box 446 Edgemont, SD 57735 (605)-662-5500
Approved by McB	Date 3/17/2020	andersenengineers@gwic.net
Scale 1"=100'	Sheet 1 of 1	File Name: L15_TOMPKINS



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

#### Staff Report

Request: Preliminary Plat - Wheeler Tract North and Wheeler Tract South  
Applicant: Rick Wheeler  
Legal Desc.: Wheeler Tract North and Wheeler Tract South, of Busskohl Sub - See Plat for full legal  
Fee Paid: \$650.00  
Date Prepared: April 20, 2020  
Planning Commission Meeting: April 28, 2020  
Prepared by Tim Hartmann, CFM Planning Administrator

\* Variance & Plat  
2 separate motions

#### **GENERAL**

This plat is for a subdivision of land within Custer City located near the intersection of Mouth Rushmore Road and Highway 385. The proposed plat will divide the existing Tract 1 into the proposed 2 Tracts, Wheeler Tract North (0.63 acres) and Wheeler Tract South (1.36 acres).

The proposed Wheeler Tract North has City sewer and water services available.

#### **ZONING**

Per the City zoning map the property affected by this plat is currently zoned Highway Commercial and Industrial.

#### **ROUTING SHEET RESPONSES**

SDDOT - No Comments

#### **ACCESS AND PUBLIC SERVICES**

Access to the area is provided by Highway 385 to the West.

A proposed private access easement is shown on the plat to serve Wheeler Tract South.

As referenced on the plat, this property does also contain existing sewer, water, and power line easements. The sewer easement (30' wide) currently serves existing sewer infrastructure through the property and the water easement (20' wide) currently serves existing public water infrastructure. To staff's knowledge these easements are adequate for those existing services.

#### Access & Variance

Staff has reviewed and discussed the access point to the Proposed Wheeler Tract South. The access falls short of full compliance with from two sections of the City subdivision standards. Per standards, a private street shall not be platted in the City, and the 25' easement is lesser than minimum Right of Way standards with the smallest allowed being an alley at 30' in width, and probably more appropriately a minor road standard requiring a 50' right of way (or easement). This parcel is restricted from additional access (width) at this time due to the "bottleneck" where the two proposed parcels meet. For this reason, staff supports the variance as requested and presented and feels that the easement is adequate for this parcel. However, would like to note that if approved, proposed Tract Wheeler S would be restricted for additional subdivision unless additional access was attained. CMC 16.20.020. B & K

#### **REGULATORY FLOODPLAIN**

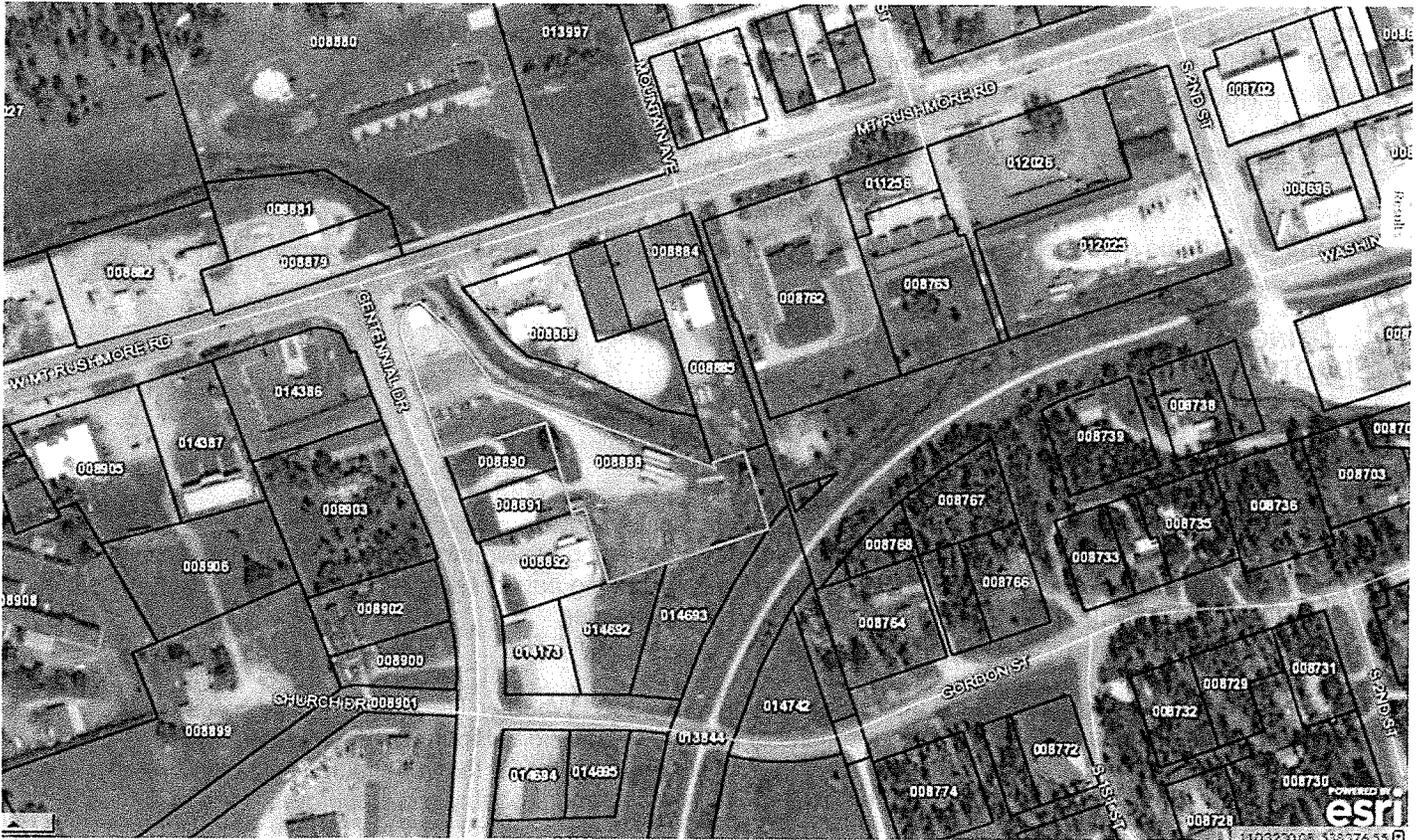
Per flood insurance rate map panel 46033C0113F it may be noticed a large portion of the property is affected by regulatory floodplain and within such, also a portion of Floodway. The presence of the flood hazard has been noted and shown on the plat, and any building or qualifying development within will be subject to local and FEMA Flood Damage Prevention regulations administered by the local floodplain administrator. Staff would also like to note that with the LOMR currently in process with FEMA most of the regulatory floodplain will be eliminated. Such LOMR expected to go into effect fall of 2020.

**PREVIOUS ACTION BY THE PLANNING COMMISSION**

Planning Commission discussed this plat and subdivision variance at their April 28<sup>th</sup> meeting. Some discussion was held primarily concerning the “bottle neck” area in the plat and any additional access possibilities to Wheeler Tr South. Planning Commission then recommended approval of the variance and preliminary plat. PC also recommended imposing a stipulation that Wheeler Tract South cannot be further subdivided without additional access first being granted.

**STAFF RECCOMENDATION**

Staff supports approval of the variance and preliminary plat by the Council. The final plat will return to the PC and Council for final approval. Staff and legal continue to discuss and address the most feasible option to impose a stipulation as noted above in Planning Commission notes.

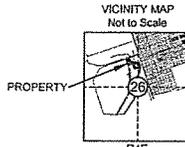
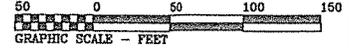


# A PLAT OF WHEELER TRACT NORTH AND WHEELER TRACT SOUTH, OF BUSSKOHL SUBDIVISION, CUSTER CITY, CUSTER COUNTY, SOUTH DAKOTA

(B)  
4/21/20

FOR A PLAT OF TRACT 1 OF  
BUSSKOHL SUBDIVISION  
SEE BOOK 11 OF PLATS ON  
PAGE 78.

Formerly Tract 1

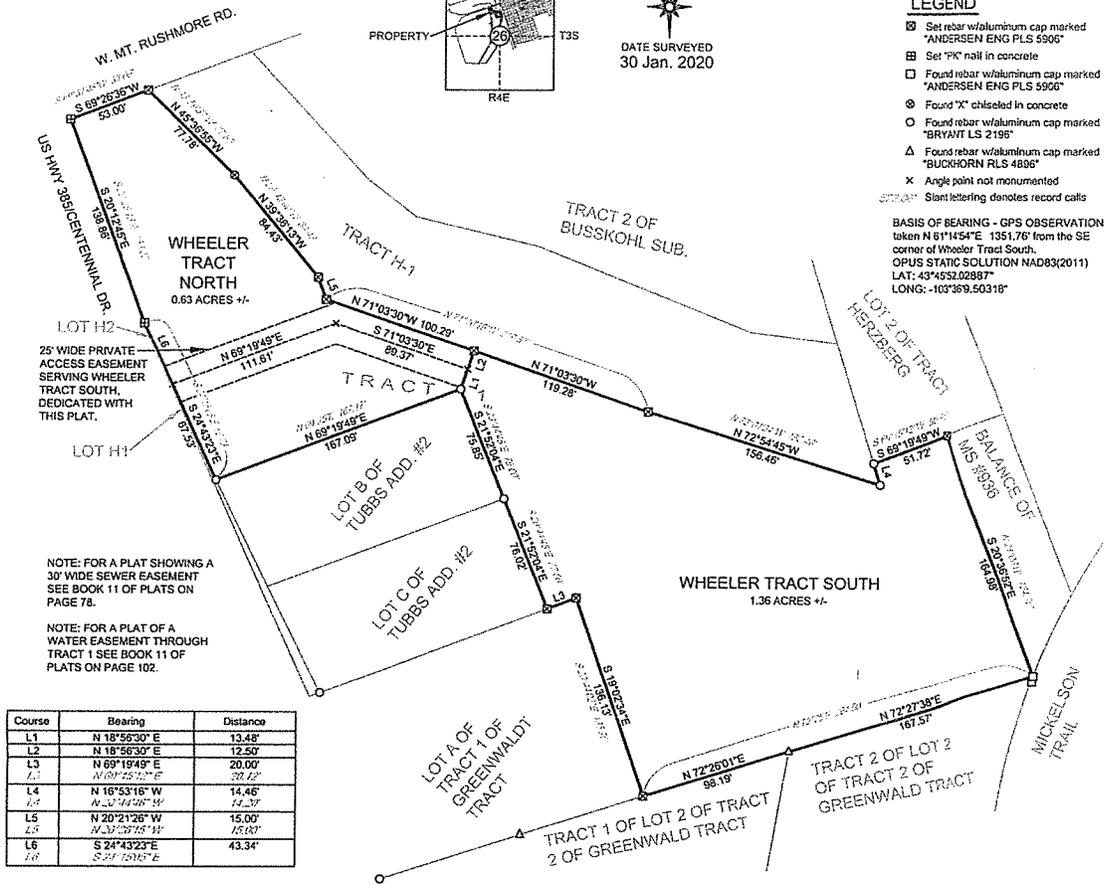


DATE SURVEYED  
30 Jan. 2020

### LEGEND

- ⊠ Set rebar w/aluminum cap marked "ANDERSEN ENG PLS 5906"
- ⊡ Set "PK" nail in concrete
- ⊞ Found rebar w/aluminum cap marked "ANDERSEN ENG PLS 9906"
- ⊙ Found "X" chiselled in concrete
- Found rebar w/aluminum cap marked "BRYANT LS 2198"
- △ Found rebar w/aluminum cap marked "BUCKHORN PLS 4806"
- × Angle point not monumented
- SLANT LETTERING denotes record calls

BASIS OF BEARING - GPS OBSERVATION  
taken N 81°14'54"E 1351.76' from the SE  
corner of Wheeler Tract South.  
OPUS STATO SOLUTION NAD83(2011)  
LAT: 43°45'52.02887"  
LONG: -103°36'9.50318"



NOTE: FOR A PLAT SHOWING A  
30' WIDE SEWER EASEMENT  
SEE BOOK 11 OF PLATS ON  
PAGE 78.

NOTE: FOR A PLAT OF A  
WATER EASEMENT THROUGH  
TRACT 1 SEE BOOK 11 OF  
PLATS ON PAGE 102.

Course	Bearing	Distance
L1	N 18°56'30" E	13.48'
L2	N 18°56'30" E	12.50'
L3	N 69°19'49" E	20.00'
L3	N 69°19'49" E	39.12'
L4	N 16°53'16" W	14.46'
L4	N 16°53'16" W	14.29'
L5	N 20°21'26" W	15.00'
L5	N 20°21'26" W	15.00'
L6	S 24°43'23" E	43.34'
L6	S 24°43'23" E	

**CERTIFICATE OF SURVEYOR**  
I, John D. McBride Registered Land Surveyor No. 5906 in the State of South Dakota, do hereby certify that being so authorized, I have prepared the within plat of land shown and described hereon from notes taken during an actual survey made by me or under my direct supervision, and that to the best of my knowledge and belief, the same is a true and correct representation of said survey.  
IN WITNESS WHEREOF, I hereunto set my hand and official seal.  
Dated this \_\_\_ day of \_\_\_, 2020.

John D. McBride SDRLS No. 5906

An area of special flood hazard exists within this subdivision according to Flood Hazard Insurance Rate Map Panel No. 46033C0113F, effective date: Jan. 6, 2012. The placement of fill, any new construction, substantial improvements, or another development within the 100-year flood plain as designated by the County's Flood Insurance Rate Maps and Flood Boundary and Floodway Maps, shall be in conformity with Custer County's Flood Ordinance.

NOTE: 10 FEET EACH SIDE OF REAR AND SIDE LOT LINES ARE RESERVED FOR UTILITY EASEMENTS. IF BOTH SIDES OF THE LOT LINES ARE NOT CONTROLLED BY THIS PLAT THE ENTIRE 20' WIDE EASEMENT WILL BE TAKEN FROM THE LOT.

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_  
We, Rick D. Wheeler and Wanda K. Wheeler, do hereby certify that we are the owners of the within described lands and that the within plat was made at our direction for the purposes indicated therein, and that the development of this land shall conform to all existing zoning, subdivision, and erosion and sediment control regulations.  
Dated this \_\_\_ day of \_\_\_, 2020.

Rick D. Wheeler  
Wanda K. Wheeler

**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.

**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 the proposed subdivision road(s) with the existing public road(s) is hereby approved.  
Date: \_\_\_\_\_  
Highway Authority \_\_\_\_\_

**ACKNOWLEDGMENT OF OWNERSHIP**  
STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_  
On this \_\_\_ day of \_\_\_, 2020, before me, a Notary Public, personally appeared Rick D. Wheeler and Wanda K. Wheeler, known to me to be the person(s) described in the foregoing instrument, and acknowledged to me that they signed the same.  
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public \_\_\_\_\_ My commission expires \_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL**  
Whereas there has been presented to the City Council of Custer, South Dakota, the within plat of the above described lands, and it appearing to the Council that said plat conforms to the existing plats of said City, that the streets set forth therein conforms to the system of streets of the municipality, that all provisions of the subdivision regulations have been complied with, that all taxes and special assessments upon the tract have been fully paid, and that said plat and the survey thereof have been executed according to law, now therefore,  
BE IT RESOLVED, that said plat is hereby approved in all respects.  
Dated at Custer, South Dakota this \_\_\_ day of \_\_\_, 2020.

**CERTIFICATE OF CITY FINANCE OFFICER**  
I, Finance Officer of the City of Custer, South Dakota, do hereby certify that the foregoing instrument is a true and correct copy of the resolution adopted by the City Council of Custer, South Dakota at a meeting held on the \_\_\_ day of \_\_\_, 2020.  
Custer City Finance Officer \_\_\_\_\_

**CERTIFICATE OF COUNTY TREASURER**  
I, Custer County Treasurer, do hereby certify that all taxes and special assessments which are liens upon the within described lands are fully paid according to the records of this office.  
Dated this \_\_\_ day of \_\_\_, 2020.  
Custer County Treasurer \_\_\_\_\_

**CERTIFICATE OF COUNTY DIRECTOR OF EQUALIZATION**  
I, Director of Equalization of Custer County, do hereby certify that my office has been furnished with a true copy of the within plat.  
Dated this \_\_\_ day of \_\_\_, 2020.  
Director of Equalization of Custer County \_\_\_\_\_

**OFFICE OF THE REGISTER OF DEEDS**  
Filed for record this \_\_\_ day of \_\_\_, 2020, at \_\_\_ o'clock \_\_\_ M., and recorded in Book \_\_\_ of Plats on page \_\_\_\_\_.  
Custer County Register of Deeds \_\_\_\_\_

Prepared by  
**ANDERSEN ENGINEERS**  
*Land Surveyors, Professional Engineering, & Environmental Consultants*

Drawn by RW	Date 3/11/2020	P.O. Box 446 Edgemont, SD 57735 (605)-662-5500
Approved by McB	Date 3/11/2020	andersenengineers@gwcc.net
Scale 1"=50'	Sheet 1 of 1	File Name: BUSSKOHL_SUB



**EXHIBIT A - SCOPE OF SERVICES**  
**Preliminary & Design Engineering for**  
**Prefabricated Pedestrian Bridges**  
**Harbach Park - Custer, SD**

**PURPOSE**

The purpose of this exhibit is to describe the scope of work and responsibilities required to complete Preliminary & Design Engineering for two proposed bridge installations in Harbach Park. KLJ will provide Project Management, Wetland Delineation, Hydraulic Analysis, Permitting, Design Engineering and Plan Preparation for the proposed project.

**PROJECT MANAGEMENT**

**Project Management & Coordination**

The KLJ Project Manager will coordinate internal work tasks and external submittals to effectively complete the project.

**Project Schedule**

KLJ will submit a schedule to the City of Custer. The schedule will include the establishment of milestone dates for the major work items. The schedule will be reviewed and adjusted as necessary to incorporate changes in the work concept and progress to date. Progress reports will be provided concurrently with the monthly invoices.

**PRELIMINARY ENGINEERING**

**Wetland Delineation**

KLJ will conduct a field wetland delineation to determine the limits of existing wetlands to evaluate the potential impacts to wetlands within the project limits.

**Hydraulic Analysis & Floodplain Review**

KLJ will review the hydraulic floodplain model created as part of the FEMA FIS study of French Creek for the new bridge condition. If the project can be completed in a manner that does not create a flow restriction, FEMA may allow the project to be considered a no change to the floodplain. This would require further consultation during the project.

NATIONAL PERSPECTIVE  
REGIONAL EXPERTISE  
TRUSTED ADVISOR



If the proposed bridges do increase headwater, a FEMA map revision may be required as part of the project. After a determination has been made, KLJ could assist with the revision process. *This work would be scoped and completed under a contract amendment.*

A scour analysis would also be needed for the bridge layout. We will recommend scour protection with consideration of the proposed foundation type, depth and bedding material. SDDOT guidelines for recommended countermeasures will be implemented.

### **Bridge Concepts**

KLJ anticipates these crossings be constructed of conventional concrete abutments with a prefabricated steel truss bridge superstructure with timber decking. *If additional concepts are requested, the work will be scoped and completed by amendment.*

### **US Army Corps of Engineers (ACOE) Coordination**

KLJ will complete a wetland delineation to quantify construction impacts. Impacts (if any) will be used in preparation of the ACOE 404 permit application. KLJ assumes USACE will coordinate with SHPO and the project will not have an adverse effect to cultural sites. *If there is an adverse effect, KLJ will be able to provide coordination under a contract amendment.*

### **Utility Coordination**

KLJ will identify utility conflicts and work with the utility companies to inventory and develop any relocation or replacement plans for existing facilities. Utility certification will be provided concurrent with the final plan submission.

## **DESIGN ENGINEERING**

### **Design Calculations**

KLJ will perform tasks associated with the design of the new structure components. The following tasks are included in the design calculations:

- Finalize Bridge Layout
- Finalize Path Layout
- Abutments
- Foundations
- Superstructure Loads
- Decking Design
- Quantity Calculations
- Independent Check

NATIONAL PERSPECTIVE  
REGIONAL EXPERTISE  
TRUSTED ADVISOR



### **Preliminary Plans**

Plan preparation will include the design calculations, drafting and engineering review for the following:

- Bridge Layout
- Plan Notes
- Basis of Estimate
- Quantities
- Superstructure
- Substructure
- Riprap Layout
- Erosion Control
- Standard Plates
- Engineer's Estimate

### **PLAN SUBMITTAL**

#### **Plan QA/QC Review**

KLJ will conduct in-depth quality reviews to all plans, specifications and special provisions. Reviews will be completed prior to plan submittals.

#### **Plan Submittal and Review**

KL&J will assemble and distribute plans at approximate 90% completion for review by the City. We will provide written responses to all comments received.

#### **Final Plans - Revision and Submittal**

Revisions from the client review will be incorporated into the final plans. The final plans submittal will include the stamped plans, calculations, hydraulic & scour reports and utility certifications.

#### **Opinion of Cost**

KLJ will develop the engineer's opinion of cost for submittal to the City.



#### ADDITIONAL INFORMATION

##### **Sub-Consultants**

1. N/A

##### **Deliverables Provided By KLJ**

1. Progress reports at monthly intervals.
2. Field Wetland Delineation Report
3. Applications for permit(s) listed in this scope.
4. Copies of final documents listed in this scope.

##### **Items Not Included in this Scope of Work**

1. Architectural/Historic Survey
2. Cultural Surveys & Reporting
3. Section 4(f) Evaluation
4. Section 6(f) Evaluation
5. Study Utility Relocation Agreements
6. ROW Acquisition including Appraisals, Title Searches, Title Opinions, Deeds
7. Environmental Assessment/Impact Statement
8. AOCE Mitigation Planning
9. Adjacent Land Use Planning
10. FEMA Floodplain Mapping
11. Environmental Clearance for Borrow Sites
12. Geotechnical Study & Reporting
13. Bidding Assistance
14. Construction Administration

**TOTAL FEE FOR EACH STRUCTURE LOCATION COMPLETED INDEPENDENTLY = \$18,850**

**TOTAL FEE IF BOTH STRUCTURE LOCATIONS ARE COMPLETED CONCURRENTLY = \$28,450**

NATIONAL PERSPECTIVE  
REGIONAL EXPERTISE  
TRUSTED ADVISOR

**CUSTER CITY ATTORNEY PROPOSAL  
&  
CONTRACT**

Chris Beesley, Attorney at Law, on behalf of Beesley Law Office, P.C. agrees to act as the Custer City Attorney in return for the agreement of the City of Custer City, by and through the Custer City Council in accordance with the terms of this Contract.

1. Attorney Beesley will provide accurate legal advice, investigate factual situations, recodify and streamline municipal ordinances, prosecute violations, and negotiate contracts as directed by the Custer City Council.

2. Custer City shall pay Attorney Beesley the sum of \$800.00 (Eight Hundred Dollars) as and for retainer each month, for attendance at regular City Council meetings, and to include two hours each month for legal services performed by Attorney Beesley, with all additional services billed and paid at the rate of **\$140.00 per hour**.

3. Attorney Beesley will bill and Custer City will pay for any and all costs incurred on the City's behalf per the State per diem rate, with the exception of gas for travel, as it is covered in mileage.

4. Attorney Beesley will bill and Custer City will pay mileage in accordance with IRS regulations for each and every mile driven by him in connection with Custer City business, but will not charge for his travel time.

5. Bills will be submitted at the end of each month and paid within two weeks thereafter.

6. Any and all services hereinabove-mentioned to be performed by City Attorney Chris Beesley may be performed by an Assistant City Attorney, with the same terms and conditions, upon approval by Council.

7. The duration of this contractual fee arrangement is from and including July 1, 2020, to and including June 30, 2022.

8. This constitutes the complete agreement of the parties and is a final expression of all of the terms agreed upon by both.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

BEESLEY LAW OFFICE, P.C.

\_\_\_\_\_  
Chris Beesley  
Attorney at Law  
428 Mt. Rushmore Rd.  
Custer, SD 57730  
605-673-4181 Phone  
605-673-2624 Fax

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor Corbin Herman  
On behalf of the City of  
Custer City, by and through  
its City Council as authorized  
by vote.

(SEAL)

Aces, Professional Fees, \$1,854.00  
American Solutions for Business, Supplies, \$2,033.62  
Black Hills Energy, Utilities, \$15,296.01  
California State Disbursement, Deduction, \$115.38  
Culligan, Repairs and Maintenance, \$56.50  
Chamber of Commerce, Sales Tax Subsidy, \$5,033.84  
Chronicle, Publishing, \$1,151.23  
Custer Ace, Supplies, Repairs & Maintenance, \$377.47  
Dacotah Bank, TIF # 2 Payment, \$4,243.44  
Discovery Benefits, Supplies, \$27.00  
Display Sales, Supplies, \$483.04  
First Interstate Bank, TIF # 4 Payment, \$4,924.01  
French Creek Supply, Supplies, Repairs and Maintenance, \$151.95  
Green Owl Media, Professional Fees, \$234.00  
Itron, Repairs and Maintenance, \$855.53  
Lynn's Dakotamart, Supplies, \$41.94  
Metering & Technology Solutions, Supplies, \$4,408.15  
Midcontinent Testing Lab, Professional Fees, \$266.00  
Morrison, Bob, Reimbursement, \$102.11  
Northwest Pipe Fittings, \$4,791.01  
Rapid Delivery, Professional Fees, \$79.38  
Regional Health Network, Sales Tax Subsidy, \$38,044.32  
Simon Materials, Repairs and Maintenance, \$1,843.90  
Servall, Supplies, \$27.14  
State of SD, Sales Tax Payable, \$1,070.78  
SD DOT, Professional Fees, \$40,030.23  
SD Division of Criminal Investigation, Municipal License, \$53.50  
Bit Finance/ State Long Distance, \$34.92  
The Rock Room and Garden, Refund, \$5.42  
Wright Express, Fuel, \$776.89  
Total Claims \$ 128,412.71