

All City Council Meetings are recorded.

**CITY OF CUSTER CITY
COUNCIL AGENDA
May 7th, 2018 – 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 – April 30th, 2018 Meeting
4. Declaration of Conflict of Interest
5. Public Presentations - Public Hearings – Public Comments
 - a. 2017 Audit Presentation
 - b. Custer Area Chamber of Commerce Presentation
 - c. Custer BID Board Presentation
 - d. Executive Proclamation – Arbor Day
 - e.
6. Old Business
 - a. HomeSlice Media Contract – Custer BID Board
 - b. Toby Brusseau Productions Contract – Custer BID Board
 - c. Marketing Manager Contract – Dolsee Davenport – Custer BID Board
7. New Business
 - a. Drainage Evaluation & Design Services Proposal - ACES
 - b. West Dam Reconstruction Contract Amendment #3 - Banner
 - c. Mailbox Replacement Policy
 - d.
 - e.
 - f.
8. Presentation of Claims –
9. Department Head Discussion & Committee Reports –
10. Executive Session – Personnel, Proposed Litigation, & Contract Negotiations (SDCL 1-25-2(1-4))
11. Adjournment

REMINDERS

**Planning Commission Meeting – May 8th, 2018 5:00 P.M.
General Government Committee Meeting – May 14th, 2018 4:30 P.M.
Park & Recreation Committee Meeting – May 15th, 2018 5:30 P.M.
Regular City Council Meeting – May 21st, 2018 5:30 P.M.
Public Works Committee Meeting – June 4th, 2018 4:30 P.M.
Regular City Council Meeting – June 4th, 2018 5:30 P.M.**

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

**CITY OF CUSTER CITY
COUNCIL PROCEEDINGS- SPECIAL SESSION
April 30th, 2018**

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

AGENDA

Councilperson Fischer moved to approve the agenda. Seconded by Councilperson Maciejewski, the motion unanimously carried.

MINUTES

Councilperson Nielsen moved, with a second by Councilperson Blom, to approve the minutes from the April 23rd special council meeting. The motion unanimously carried.

CONFLICTS OF INTEREST

No conflicts of interest were stated.

DISCUSSION OF POTENTIAL REFERENDUM – ORDINANCE #802 – RESIDENTIAL DISTRICT

Attorney Beesley explained his receipt of correspondence from citizens requesting information on referral of Ordinance #802. Attorney Beesley indicated he has provided state statues to the requestors with the comment that he did not believe he could appropriately respond to further questions from the citizens requesting referendum information, and inquired of council what direction they would like him to proceed in. After discussion with Council regarding City Attorney responsibilities, obligations and potential conflict of interest. Council advised Attorney Beesley that they agree with the potential conflict regarding the petition and that he should refrain from advising whether the entire Ordinance, or portions thereof, should be referred. Attorney Beesley's responsibilities in this matter would be to assist in placing the referendum on the ballot, with appropriate language, in the event a valid petition is filed with the City on or before the 20th day after publication of said Ordinance. Attorney Beesley also advised the Council to table any further discussion regarding future consequences of Ordinance #802, until the time for filing a referendum has passed.

DISCUSSION OF PROPOSED RESOLUTION TO HAVE EXPEDITED PROCESS FOR EXISTING BUSINESS UNDER ORDINANCE #802

Councilperson Fischer moved to table the discussion of a proposed resolution to have expedited process for existing businesses under ordinance #802. Seconded by Councilperson Nielson, the motion unanimously carried.

NEW HIRES – PUBLIC WORKS DEPARTMENT SEASONALS

Councilperson Nielsen moved to approve hiring Steven Schmidt and Mitchell Riner as Public Works Department Seasonal Laborers at \$11.83 per hour effective upon successful completion of the background check and drug screen. Seconded by Councilperson Heinrich, the motion unanimously carried.

EXECUTIVE SESSION

Councilperson Fischer moved to go into and out of executive session for personnel per SDCL 1-25-2(1-4) at 5:45 pm, with the Attorney, Planning Administrator, Public Works Director and Finance Officer present. Seconded by Councilperson Maciejewski, the motion unanimously carried. Council came out of executive session at 5:56 pm, with no action taken.

NEW HIRE – FINANCE DEPARTMENT

Councilperson Nielsen moved to approve hiring Sydney Gramkow as Deputy Finance Officer at \$15.92 per hour effective May 7th, with her last day as temporary part time office help being May 4th. Seconded by Councilperson Heinrich, the motion unanimously carried

ADJOURNMENT

With no further business, Councilperson Arseneault moved to adjourn the meeting at 5:57 p.m. Seconded by Councilperson, Heinrich, the motion carried unanimously.

ATTEST:

CITY OF CUSTER CITY

Laurie Woodward
Finance Officer

Corbin Herman
Mayor

*City of Custer City
From the Desk of the Mayor*

EXECUTIVE PROCLAMATION

WHEREAS, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

WHEREAS, the holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

WHEREAS, Arbor Day is now observed throughout the nation and the world, and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, lower our heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife, and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal,

THEREFORE, BE IT RESOLVED that I, Corbin Herman, Mayor of the City of Custer City, South Dakota, do hereby proclaim May 14th, 2018 to be

ARBOR DAY

in the City of Custer City, SD, and I urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands. Further, I urge all citizens to plant and care for trees to gladden the heart and promote the well-being of this and future generations.

ATTEST:

CITY OF CUSTER CITY

Laurie Woodward, Finance Officer

Corbin Herman

(SEAL)



ADVERTISING AGENCY RETAINER AGREEMENT

THIS AGREEMENT made effective as of the 1st day of January, 2018 BY AND BETWEEN:

HomeSlice Media Group, LLC

with an office at 660 Flormann St. Rapid City, SD 57701
(the "Agency")

- and -

Custer BID Board.

With an office at 622 Crook Street, Custer, SD 57730

(the "Client")

WHEREAS the Client desires to retain the Agency to provide advertising, marketing and related services, as more particularly described below (the "Services"), and the Agency desires to be so retained and to perform the Services for the Client;

NOW THEREFORE the parties agree as follows:

- 1. Services.* During the term of this Agreement, the Agency shall provide products and services necessary to plan, place and manage the media budget of the Client. All media purchases must be approved by the Client in advance. The Services are more extensively defined in Exhibit A, attached.
- 2. Term.* This Agreement shall commence on the date first above written and shall continue until December 31, 2019, unless sooner terminated in accordance with the terms of this Agreement.
- 3. Independent Contractor.* It is understood and agreed that the Agency is independent in the performance of this Agreement, that the Agency shall perform the Services in the capacity of an independent contractor. The Agency is not an employee of the Client and has no authority whatsoever to bind the Client by contract or agreement of any kind other than as expressly provided under the terms of this Agreement. The Client shall not withhold federal or state/provincial income taxes or any other amounts from the Agency's fees payable hereunder. The Client acknowledges and agrees that the Agency shall act on behalf of the Client but will not be liable for payment of media and purchases placed on behalf of Client but for which the Agency has not been paid by Client.
- 4. Compensation.* Upon execution of this Agreement, the Client agrees to pay the Agency a services fee equal to the industry standard of all media placed (the "Agency Commissions") external of media owned by The Agency (the "Agency Properties") and 0% commission of all media placed at then-current rates internal of the Agency Properties. Agency Properties are defined as: any media company owned by the Agency. A retainer agreement of \$1750 per month shall cover all hourly charges for design and placement. The Client agrees to pay Agency all reasonable out-of-pocket miscellaneous expenses, pre-approved delivery charges and travel expenses when applicable, but only with approval beforehand.
- 5. Payment.* The Agency shall invoice the Client for all media placement, inclusive of Agency Commissions, at the end of each month, along with additional media, products and services, and allowable expenses incurred, if any. All invoices are Net 30 days. Tear sheets or other proof of placement will be provided with all invoices.
- 6. Confidentiality.* The Agency acknowledges that, in the course of providing the Services hereunder, the Agency will have access to confidential information about the Client's business. The Agency agrees to keep all such information strictly confidential and not use it for the Agency's own benefit nor disclose or divulge such information to any third party. The parties acknowledge that the provisions of this Section shall not apply to any information which: (a) had been rightfully in the possession of the recipient prior to its disclosure to the recipient; (b) had been in the public domain prior to its disclosure to the recipient; (c) has become part of the public domain by publication or

by any other means except an unauthorized act or omission on the part of the recipient; (d) had been supplied to the recipient without restriction by a third party who is under no obligation to maintain such information in confidence; or (e) is required to be disclosed by any federal, state/provincial or municipal law, rule or regulation or by any applicable judgment, order or decree or any court or governmental body or agency having jurisdiction in the premises. The provisions of this Section shall survive any termination or expiration of this Agreement.

7. *Ownership of Intellectual Property.* All copyrights, patents, trade secrets, or other intellectual property rights associated with any works of authorship developed or created by the Agency, on behalf of the Client, during the course of performing work for the Client or its clients (collectively, the "Work Product") shall belong exclusively to the Client and shall, to the extent possible, be considered a work made by the Agency for hire for the Client, pursuant to applicable law. The provisions of this Section shall survive any termination or expiration of this Agreement.

8. *Expanded Definition of "Client".* Solely for purposes of Sections 6 through 7 inclusive hereof, the term "Client" also shall include any existing or future agencies, departments or subsidiaries of the Client that are operating during the time periods described herein and any other entities that directly or indirectly, through one or more intermediaries, control, are controlled by or are under common control with the Client during the periods described herein. The provisions of this Section shall survive any termination or expiration of this Agreement.

9. *Indemnification.* The Client shall indemnify, defend and hold harmless the Agency, its subsidiaries, affiliates and their directors, officers, employees, agents, successors and assigns from and against any and all claims relating to this Agreement arising out of acts or omissions of the Client, including, but not limited to, any financial obligations incurred by the Agency on behalf of the Client, with clients approval, at any point during the term of this Agreement. The Client is responsible for reviewing all creative materials and advertisements to ensure compliance with all federal, state/provincial and local laws and regulations and warrants that the creative materials produced or approved by Client do not infringe upon any state or federal copyright or trademark. The indemnification shall include attorney's fees and costs whether an action is threatened or filed. Client's obligations set forth in this section shall survive the termination of this Agreement.

The Agency shall indemnify, defend and hold harmless the Client, its subsidiaries, affiliates and their directors, officers, employees, agents, successors and assigns from and against any and all claims relating to this Agreement arising out of any wrongful acts or omissions of the Agency during the term of this Agreement. The indemnification shall include attorney's fees and costs whether an action is threatened or filed. Agency's obligations shall survive the termination of this Agreement.

10. *Termination Upon Breach.* This Agreement may only be terminated by either party by mutual agreement or material breach. If one party commits any material breach or material default in the performance of any obligation under this agreement and the breach or default continues for a period of 30 business days after the other party delivers notice by Certified Mail, signature required, detailing the breach or default, then the other party may terminate this agreement, with immediate effect, by giving notice by Certified Mail, signature required to the first party. In the event of such termination, the Client shall promptly pay all sums owed to the Agency to and including the effective date of termination, including any future non-cancelable commitments after the termination date when due.

11. In the instance this Agreement is terminated by Client without cause, Agency shall be immediately entitled to payment of all outstanding invoices, including applicable commissions. All amounts owed pursuant to noncancelable commitments entered into by Agency on behalf of the Client during the term of this Agreement shall be paid by Client when due notwithstanding termination of this Agreement.

12. *Representations of the Agency.* The Agency has represented and hereby represents and warrants to the Client that the Agency is not subject to any restriction or non-competition covenant in favor of any other person or entity, and that the execution of this Agreement by the Agency and engagement by the Client, the performance of duties and provision of the Services hereunder will not violate or be a breach of any agreement with a former employer or any other person or entity. Further, the Agency agrees to indemnify the Client for any claim, including, but not limited to, attorneys' fees and expenses of investigation, by any such third party that such third party may now have or may hereafter come to have against the Agency based upon or arising out of any restriction or non-competition agreement or invention and secrecy agreement between the Agency and such third party. The provisions of this Section shall survive any termination or expiration of this Agreement.

13. *Representations of the Client.* The undersigned signatory on behalf of Client represents and warrants that he/she has the legal authority to bind the Client with respect to the rights and obligations undertaken by Client herein, and that Client may lawfully enter into this Agreement.

14. *Attorneys' Fees.* In the event that the services of an attorney are required, or legal action is taken to enforce the terms of this Agreement by either party, or to protect those rights provided by this contract or by law, the prevailing party shall be entitled to an award of actual attorney's fees, costs, and expenses reasonably expended.

15. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of South Dakota. Any legal actions, claims or demands shall be handled in a court of competent jurisdiction within Pennington County, South Dakota.

16. *Counterpart and Scanned Signatures.* This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one and the same instrument. A scanned signature shall be considered the same as an original.

17. *Entire Agreement.* This Agreement and any schedules attached hereto constitute the entire agreement between the parties to this Agreement pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter of this Agreement except as specifically set forth herein. No alteration, amendment, addition or modification of or to this Agreement shall be binding unless the same is in writing executed by each of the parties.

18. *Assignability.* This Agreement is not assignable by either party without the prior written consent of the other party hereto.

19. *Binding Effect.* This Agreement shall inure to the benefit and be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above written.

HomeSlice Media Group, LLC

Custer BID Board

Brad J Jurgensen, GSM

Marcel Wahlstrom, BID Board President

CITY OF CUSTER CITY

ATTEST:

Corbin Herman, Mayor

Laurie Woodward, Finance Officer

STATE OF SOUTH DAKOTA)
COUNTY OF CUSTER)

On this ____ day of _____, _____, before me, the undersigned, personally appeared _____ who acknowledged himself to be the _____ of the HomeSlice Media Group, LLC of Rapid City, SD, and that he as such _____ being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as _____.

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

Notary: _____

My Commission Expires: _____

(Seal)

STATE OF SOUTH DAKOTA)
COUNTY OF CUSTER)

On this ____ day of _____, _____, before me, the undersigned, personally appeared _____ who acknowledged himself to be the President of the Custer BID Board of Custer, SD, and that he as such President being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as _____.

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

Notary: _____

My Commission Expires: _____

(Seal)

EXHIBIT A

Services Included in the Retainer Agreement

- Client Meetings
- Media Planning
- Budget Detail / Spreadsheets
- Timely Media Specs / Materials Deadlines to Client
- Media Placement
- Billing to Client
- 1 new Website creation and execution
- Post Analysis of All Media Invoices
- Payment of Media Invoices (Provided payment has been received from Client)
- Monthly Analytic Reports to Client on All Digital
- Monthly Summary/Activity Report to Client on All Services

EXHIBIT B

List of Agency Properties

- Rapid Digital Solutions™
- KBHB Radio (The Big 81)
- KFXS Radio (100.3 the Fox)
- KKLS Radio (Smash Hits)
- KKMK Radio (93.9 The Mix)
- KRCS Radio (Hot 93.1)
- KOUT Radio (KAT Country 98.7)

TOBY BRUSSEAU PRODUCTIONS, LLC MARKETING SERVICES AGREEMENT

THIS AGREEMENT effective this 1st day of January 2018 BY AND BETWEEN:

Toby Brusseau Productions, LLC
With an office at PO Box 1665, Rapid City, SD 57709
(the "Contractor")

AND

Custer BID Board under the direction & authority of the Common Council of the City
of Custer City
With an office at 622 Crook St, Custer, SD 57730
(the "Client")

This letter will serve as our (Toby Brusseau Productions, LLC) agreement with you (Custer BID Board, under the direction & authority of the City of Custer City), with respect to Toby Brusseau Productions, LLC, services in connection with the production of content, commercial, and social media services.

1. The term of this agreement shall commence as of the date this document is signed and shall continue until, 12/31/18, the completion of Toby Brusseau Productions, LLC, services.

2.a. During the term of this Agreement, Toby Brusseau Productions, LLC, agrees to produce:

*The completion of the Visit Custer BID Board Facebook Social Media.

One post per week for social media during the slow season (Oct. 1- April 31)

3-5 posts per week during the high season (May 1- Sept 30)

One lower-quality video per month (during high season) for social use on Facebook.

* The completion of the Visit Custer BID Board Instagram Social Media Instagram posting will be intermittent deemed to fit the look and feel of the page. *Photos for web advertisements.

*One 30-Second Kelo-Land Regional Commercial Spot Showcasing Aerial views of Custer and the surrounding area, modified with Voice Over and possible new shots in accordance with the BID board and Homeslice Media.

*One promo video showcasing Custer friendly faces and business

– BID to provide guidance

– Lower quality won't cost extra but higher quality will require paid actors/producing/directing which will require a budget.

-The amount of content produced will be dependent on the time taken to produce subsequent videos and material.

Further use of footage produced by Toby Brusseau Productions, LLC (aerial) for other Marketing companies to produce promo videos, other commercials, etc will be a separate negotiated contract.

2.b. The Custer BID Board has rights to the Custer Kelo-Land 30-second commercial spot for regional use and Social Media as well.

*The Custer Chamber and BID Board will have access to all created materials.

3. Toby Brusseau Productions, LLC retains the right to use any footage captured in perpetuity for their in-house demonstration purposes (Demo reel) and future B-Roll purposes.

4. For Toby Brusseau Productions, LLC services, Custer BID Board will pay a total amount of \$3,200 per month for a total of \$38,400 for the calendar year of 2018.

The total payment is Toby Brusseau Productions compensation for the service provided herein. The total is not refundable to Custer BID Board, unless Toby Brusseau Productions, LLC is unable to complete the projects.

5. The concepts contained in section 2.a. for Custer are intellectual property of Toby Brusseau Productions, LLC.

6. The Client shall indemnify, defend and hold harmless the Contractor, its subsidiaries, affiliates and their directors, officers, employees, agents, successors and assigns from and against any and all claims relating to this Agreement arising out of wrongful acts, errors or omissions of the Client, including, but not limited to, any financial obligations incurred by the Contractor on behalf of the Client at any point during the term of this Agreement. The Client's obligations shall survive the termination of this Agreement.

The Contractor shall indemnify, defend and hold harmless the Client, its subsidiaries, affiliates and their directors, officers, employees, agents, successors and assigns from and against any and all claims relating to this Agreement arising out of any wrongful acts, errors or omissions of the Contractor during the term of this Agreement. The indemnification shall include attorney's fees and costs whether an action is threatened or filed. The Contractor's obligations shall survive the termination of this Agreement.

7. The parties hereby agree that either party may terminate this agreement at any time, without cause, by serving at least a 30-day written notice to the other party in advance of the anticipated termination date. In the instance this agreement is terminated by Client without cause, Contractor shall be immediately entitled to payment of all outstanding amounts due for services rendered prior to termination.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above written.

Toby Brusseau Productions LLC

Custer BID Board

Toby Brusseau

Marcel Wahlstrom, BID Board President

CITY OF CUSTER CITY

ATTEST:

Corbin Herman, Mayor

Laurie Woodward, Finance Officer

(SEAL)

STATE OF SOUTH DAKOTA)
COUNTY OF CUSTER)

On this ____ day of _____, _____, before me, the undersigned, personally appeared _____ who acknowledged himself to be the _____ of the Toby Brusseau Productions LLC of Rapid City, SD, and that he as such _____ being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as _____.

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

Notary: _____

My Commission Expires: _____

(Seal)

STATE OF SOUTH DAKOTA)
COUNTY OF CUSTER)

On this ____ day of _____, _____, before me, the undersigned, personally appeared _____ who acknowledged himself to be the President of the Custer BID Board of Custer, SD, and that he as such President being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as _____.

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

Notary: _____

My Commission Expires: _____

(Seal)

**AGREEMENT
CUSTER BID BOARD MARKETINGMANAGER**

THIS AGREEMENT effective this 1st day of January, 2018 BY AND BETWEEN:

Dolsee Davenport
with a home office in Custer, SD 57730
(the "Marketing Manager")

AND

Custer BID Board under the direction & authority of the Common Council of the City
of Custer City
With an office at 622 Crook St, Custer, SD 57730
(the "Client")

WHEREAS the Client desires to retain the Marketing Manager to provide oversight and marketing related services, as more particularly described below (the "Services"), and the Marketing Manager desires to be so retained and to perform the Services for the Client;

NOW THEREFORE the parties agree as follows:

1. **Authority & Services.** It is the intent of the BID Board to provide the Marketing Manager with authority to request and access any and all data/info from all marketing entities in which the Custer BID Board conducts business with or intends to conduct business with.

During the term of this Agreement, the Marketing Manager shall provide the following services and perform the following duties for the Custer Bid Board.

- a. BID Board Secretary – prepare meeting minutes and meeting notices including agendas, email notices of meetings, and setting up meeting location,
- b. Monitor the BID income and expenses in conjunction with city staff and compare with contracts/budgeted amounts,
- c. Prepare the BID Board internal budget to actual comparison reports and present at the BID meeting,
- d. Responsible for verifying invoicing from all 3rd parties,
- e. Make recommendations to the BID Board President and BID Board members regarding expense payments,
- f.
- g. Assemble email lists from the State, BID members, Southern Hills Vacation Guide, and Yellowstone Magazine and send to HomeSlice for email blasts,
- h. Monitor Contractors and Media performance and dashboard on a weekly basis,
- i. Analyze and report to BID Board analytics regarding previous month's advertising,
- j. Review and approve display, retargeting, video, and social media advertisements before they run,

- k. Recommend changes to advertising strategies as necessary,
 - l. Be the primary contact for the BID members, BID vendors, etc.,
 - m. Provide a minimum of bi-weekly feedback to BID members,
 - n. Solicit RFP's as needed,
 - o. Administer the Custer BID Board/Chamber website, and
 - p. Other duties as assigned.
2. **Term.** This Agreement shall commence on January 1, 2018 and shall continue until December 31, 2018, unless sooner terminated in accordance with the terms of this Agreement.
3. **Independent Contractor.** It is understood and agreed that the Marketing Manager is an Independent Contractor in the performance of this Agreement and shall perform the Services in the capacity of an independent contractor. The Marketing Manager is not an employee of the Client or the City and has no authority whatsoever to bind the Client or the City by contract or agreement of any kind other than as expressly provided under the terms of this Agreement. The Client shall not withhold federal or state/provincial income taxes or any other amounts from the Marketing Manager's fees payable hereunder.

As an independent contractor, said contractor shall have no set work schedule or hours of work, but will perform contracted tasks in a timely and satisfactory matter. The contractor shall be responsible for providing their own office space or work environment, and all tools and/or equipment necessary to appropriately perform this contract.

Such independent contractor shall be responsible for furnishing appropriate liability insurance with a licensed insurance agent and a firm licensed to furnish insurance in the State of South Dakota.

4. **Compensation.** Upon execution of this Agreement, the Client agrees to pay the Marketing Manager one-thousand (\$1,000.00) dollars per month for their services.
5. **Payment.** The Marketing Manager will invoice the Client for the services on a monthly basis. Any unbilled compensation from the previous month should be added to the first month billing as a "catch-up".
6. **Confidentiality.** The Marketing Manager acknowledges that, in the course of providing the Services hereunder, the Marketing Manager will have access to confidential information about the Client's business. The Marketing Manager agrees to keep all such information strictly confidential and not use it for the Marketing Manager's own benefit nor disclose or divulge such information to any third party. The parties acknowledge that the provisions of this Section shall not apply to any information which: (a) had been rightfully in the possession of the recipient prior to its disclosure to the recipient; (b) had been in the public domain prior to its disclosure to the recipient; (c) has become part of the public domain by publication or by any other means except an unauthorized act or omission on the part of the recipient; (d) had been

supplied to the recipient without restriction by a third party who is under no obligation to maintain such information in confidence; or (e) is required to be disclosed by any federal, state/provincial or municipal law, rule or regulation or by any applicable judgment, order or decree or any court or governmental body or Marketing Manager having jurisdiction in the premises. The provisions of this Section shall survive any termination or expiration of this Agreement.

7. **Ownership of Intellectual Property.** All copyrights, patents, trade secrets, or other intellectual property rights associated with any works of authorship developed or created by the Marketing Manager, on behalf of the Client, during the course of performing work for the Client or its clients (collectively, the "Work Product") shall belong exclusively to the Client and shall, to the extent possible, be considered a work made by the Marketing Manager for hire for the Client, pursuant to applicable law. The provisions of this Section shall survive any termination or expiration of this Agreement.
8. **Expanded Definition of "Client".** Solely for purposes of Sections 6 through 7 inclusive hereof, the term "Client" also shall include any existing or future agencies, departments or subsidiaries of the Client that are operating during the time periods described herein and any other entities that directly or indirectly, through one or more intermediaries, control, are controlled by or are under common control with the Client during the periods described herein. The provisions of this Section shall survive any termination or expiration of this Agreement.
9. **Indemnification.** The Client shall indemnify, defend and hold harmless the Marketing Manager, its subsidiaries, affiliates and their directors, officers, employees, agents, successors and assigns from and against any and all claims relating to this Agreement arising out of wrongful acts, errors or omissions of the Client, including, but not limited to, any financial obligations incurred by the Marketing Manager on behalf of the Client at any point during the term of this Agreement. The client's obligations shall survive the termination of this Agreement.

The Marketing Manager shall indemnify, defend and hold harmless the Client, its subsidiaries, affiliates and their directors, officers, employees, agents, successors and assigns from and against any and all claims relating to this Agreement arising out of any wrongful acts, errors or omissions of the Marketing Manager during the term of this Agreement. The indemnification shall include attorney's fees and costs whether an action is threatened or filed. Marketing Manager's obligations shall survive the termination of this Agreement.

10. **Termination.** The parties hereby agree that either party may terminate this agreement at any time, without cause, by serving at least a 30-day written notice to the other party in advance of the anticipated termination date. In the instance this agreement is terminated by Client with or without just cause, Marketing Manager shall be immediately entitled to payment of all outstanding amounts due for services rendered prior to termination.

11. **Representations of the Marketing Manager.** The Marketing Manager has represented and hereby represents and warrants to the Client that the Marketing Manager is not subject to any restriction or non-competition covenant in favor of any other person or entity, and that the execution of this Agreement by the Marketing Manger and engagement by the Client, the performance of duties and provision of the Services hereunder will not violate or be a breach of any agreement with a former employer or any other person or entity.
12. **Representations of the Client.** The undersigned signatory on behalf of Client represents and warrants that he/she has the legal authority to bind the Client with respect to the rights and obligations undertaken by Client herein, and that Client may lawfully enter into this Agreement.
13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of South Dakota. Any legal actions, claims or demands shall be handled in a court of competent jurisdiction within Custer County, South Dakota.
14. **Entire Agreement.** This Agreement and any schedules attached hereto constitute the entire agreement between the parties to this Agreement pertaining to the subject matter hereof.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above written.

Dolsee Davenport, Marketing Manager

Marcel Wahlstrom, Custer BID Board President

CITY OF CUSTER CITY

ATTEST:

Corbin Herman, Mayor

Laurie Woodward, Finance Officer

(SEAL)



April 10, 2018

Mr. Bob Morrison
Public Works Director
City of Custer City Public Works Department
622 Crook St.
Custer City, South Dakota 57730

RE: Drainage Evaluation and Design Services Proposal
Crook Street Area Drainage Issues Project
Custer City, South Dakota

Dear Bob,

ACES is pleased to submit this Proposal for Drainage Evaluation and Design Services for the Crook Street Area Drainage Issues Project. The City of Custer City has identified drainage issues in the general area between Montgomery Street and Mt. Rushmore Road/Custer St. and N 5th St./Hwy 16 and Laughing Water Creek. We have included a Map with this Proposal of the area generally described above. Flow is known to be conveyed by surface street flow from N 5th St./Hwy 16, and east on Harney and Crook Streets. During rain events surface flow is conveyed and collects until there is significant flooding in the area of the 8th Street and Mt. Rushmore Road/Custer St. intersection.

ACES proposes to evaluate the surface flow that contributes to the flooding within this area. This evaluation will be documented in a Hydrology and Hydraulic Evaluation Report for the City of Custer City. Results from this study will be used to size and identify the need and type of storm sewer system necessary to reduce or eliminate the flooding issues of the area.

A preliminary concept for a new storm sewer system in this area of Custer City is shown on the attached Map. The system would start at the Harney St. and N 6th St. intersection. The storm sewer would be located under N 6th St. and continue south until turning east just south of Crook St. in the Right-of-Way. The storm sewer main would then continue to the east under the boulevard area until discharging into Laughing Water Creek. Drop inlets would be added at the intersections to collect surface street flow.

The Scope of Services:

- Hydrology and Hydraulic Evaluation Report
 - Contour Data provided by City of Custer City GIS Dept. / Lidar Imaging
- Topographic Survey of Right-of-Way where underground storm sewer shall be located
 - Access or data from Custer County Beacon provided by City of Custer City
- Meet with the SD Department of Transportation (DOT)

- Discuss future storm sewer plans and options in Highway 16.
- Provide a Preliminary and Final Design Concept of new storm sewer system
- Prepare Demolition Plan
- Prepare Site Plan
- Prepare Storm Sewer Plan and Profile(s)
- Prepare Detail Sheets
- Prepare Specifications
- Prepare Complete Bid Package
 - Stamped Construction Documents
 - Ready to Bid
- Provide Design Interpretation and Clarification
- Provide an Engineer's Estimate

All design work will meet Owner/Contractor requirements and City of Custer City Standards.

Geotechnical testing and Engineering report are not included as part of this proposal.

The Lump Sum fee includes the scope of services listed above:

H & H Evaluation, Topographic Survey, Design with Bid Package, & Engineer's Estimate:

Lump Sum Fee: \$ 48,600.00

All reimbursable costs are included. The fee listed above does not include taxes.

ACES will provide bidding and construction administration on a negotiated or hourly basis. We will also provide any additional services upon request and on demand.

The City of Custer City hourly rates are as follows:

Principal Engineer:	\$ 120.00/hour
Engineer:	\$ 100.00/hour
Engineer-In-Training:	\$ 75.00/hour
Clerical:	\$ 65.00/hour

It is understood that the City of Custer City would complete the services outlined in this proposal during this fiscal year, 2018, but the City does not currently have a set schedule for construction of this project. ACES would provide all services outlined in this proposal by September 1, 2018 with a notice to proceed of May 7, 2018.

This proposal is based on our understanding of the services requested by The City of Custer City in a meeting on April 3, 2018 in Custer City. If our understanding of the scope is missing any

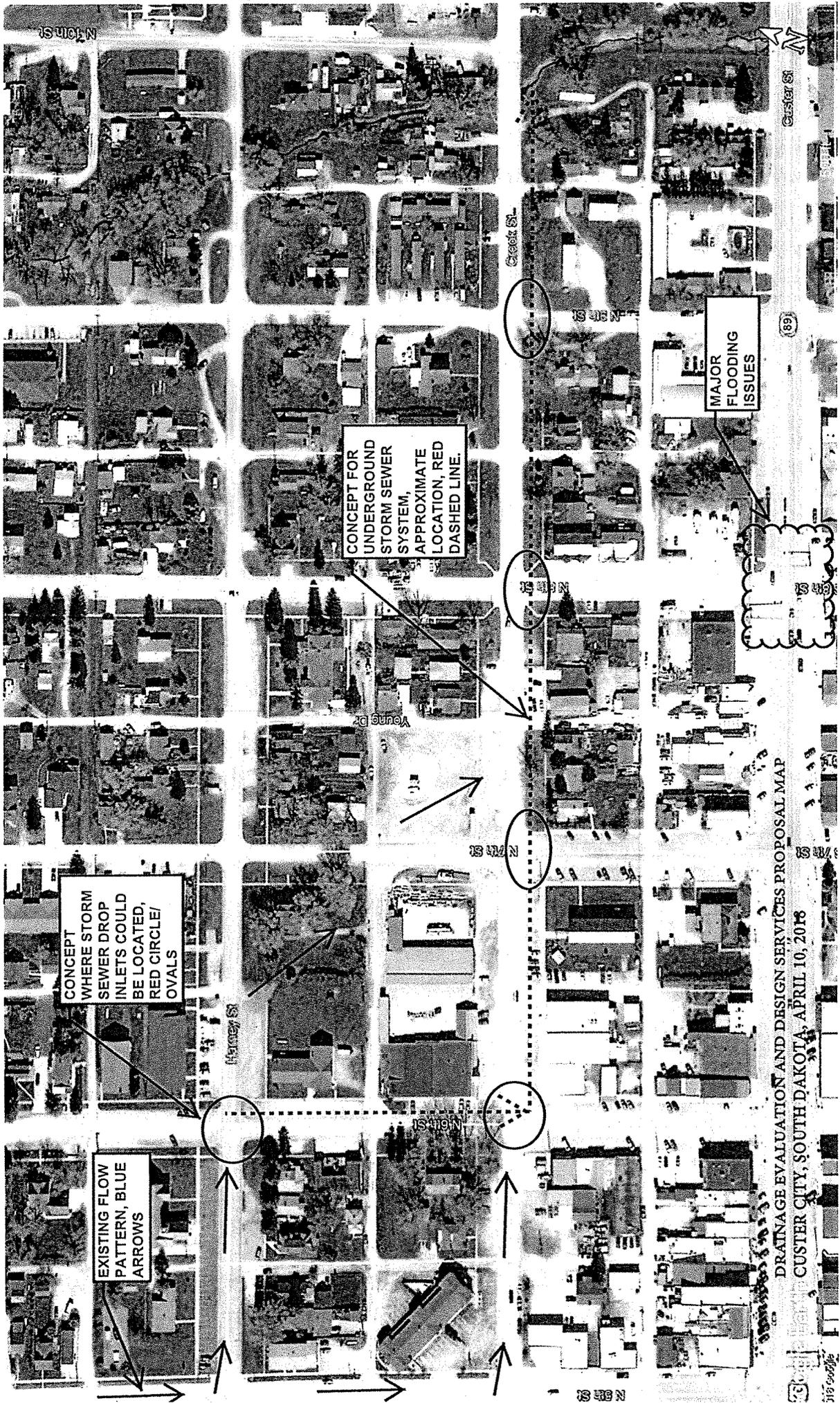
project items, or if we have included a service outside of the request intent, please feel free to let us know so that proper adjustments may be made to this Proposal.

ACES truly appreciates the opportunity to continue to work with the City of Custer City. If you have any questions or comments please free to contact me at 605.545.1120 (LBerg@proacesinc.com) or Mr. Dirk Jablonski, P.E. at 605.415.0794 (DJablonski@proacesinc.com).

Sincerely,

A handwritten signature in cursive script, appearing to read "Leah M. Berg". The signature is written in black ink and is positioned above the printed name.

Leah M. Berg, P.E.
President



CONCEPT WHERE STORM SEWER DROP INLETS COULD BE LOCATED, RED CIRCLE/OVALS

EXISTING FLOW PATTERN, BLUE ARROWS

CONCEPT FOR UNDERGROUND STORM SEWER SYSTEM, APPROXIMATE LOCATION, RED DASHED LINE.

MAJOR FLOODING ISSUES

DRAINAGE EVALUATION AND DESIGN SERVICES PROPOSAL MAP
CUSTER CITY, SOUTH DAKOTA, APRIL 10, 2018

0 50 100

Scale bar and north arrow



Banner Associates, Inc.
2201 Jackson Blvd, Ste 200
Rapid City, SD 57702
Tel 605.692.6342
Toll Free 855.323.6342
www.bannerassociates.com

April 25, 2018

Laurie Woodward, Finance Officer
City of Custer
622 Crook Street
Custer, South Dakota 57730

RE: Contract Proposal (Amendment 3)
West Dam (Gates Park) Reconstruction
Custer, South Dakota

Dear Ms. Woodward:

BANNER Associates is submitting this Letter of Amendment to our original contract to provide additional Engineering Services for the Gates Park - West Dam and Spillway Project. The additional work tasks requested to be performed are summarized below:

Additional Services

- The City of Custer expressed a desire to enhance the features and recreational opportunities along the shoreline and tailwater areas of the reservoir that will be created by West Dam. In the wetlands permitting process coordinated with the US Army Corps of Engineers (USACE - Rapid City Office), it was determined that additional reporting and EPA approvals would be necessary to place fill to create the desired amenities, and would require a formal wetland mitigation plan to be submitted and approved by both the USACE & EPA. As noted in Amendment #2, evaluating and preparing a design acceptable for wetland mitigation was not included, and would be performed as additional services.
- This additional work mostly revolved around an "Alternative Analysis Report" which detailed four separate levels of disturbance to existing wetlands and the economic and ecological impacts incurred from these disturbances. This was requested on behalf of the USACE & EPA which is often standard practice when wetlands are determined to be part of the Waters of the United States (jurisdictional) and filling of these wetlands is desired to meet design objectives. Also included in the report was a preliminary Wetland Mitigation Plan which is required to show how the disturbed wetlands will be replaced, maintained, and monitored. The development of this Alternative Analysis Report required USACE meetings, correspondence, and revisions.
- In the process of completing the Wetlands Permitting & Wetland Mitigation Plan, additional communications were required with the EPA to determine acceptability of options and define information necessary to be submitted. To move the Wetland Mitigation Plan forward, direction and commitments by the City of Custer were necessary. That resulted in additional meetings with Custer officials to present options, prepare cost estimates and receive direction to finalize the Wetlands Mitigation Plan.



- Clarifying Conditions:
 - Land commitments for wetland mitigation areas and City's financial commitment to monitor, maintain and prepare status reports of the wetland mitigation as defined by the Wetlands Mitigation Plan are not included in the Amendment #3 fees.
- Revised Contract Completion Date: August 1, 2018
 [Note: That date includes submission of final Wetlands Mitigation Plan to USACE/EPA, and submission of CLOMR to FEMA, addressed in Amendment #2. Response timeframe of FEMA can be lengthy, and will likely extend beyond that date.]
- The Total Lump Sum Amount for above (Amendment Three): **\$11,800.00**

APPROVAL

If this letter amendment/agreement meets with your approval, please sign and date and return one copy to Banner Associates. Please do not hesitate to contact our office if you have any questions.

Note: The original contract agreement and enclosures provided with that are still applicable to this letter amendment.

Respectfully submitted,

Banner Associates, Inc.
Sigurds R. Zvejnieks, PE
Senior Vice President

ACKNOWLEDGEMENT OF ACCEPTANCE

Accepted this ____ day of _____, 2018

For: _____

By: _____

Title: _____

Cc: Kyle McCutcheon (Banner)

Mailbox Replacement Policy

During snowplowing operations, the City of Custer plows may damage or destroy privately owned mailboxes located in the street right of way. While there is no legal requirement for the City to replace these boxes, it has been the long-standing practice of the City to do so. In recent years, property owners have begun to install more expensive designer mailboxes and have asked the City to install similar replacement mailboxes at a higher cost. In addition, the use of plastic mailboxes that are more easily damaged has increased. The purpose of this policy is to outline the circumstances under which the City will replace private mailboxes or reimburse owners who wish to purchase more expensive replacements than the City will provide.

Eligibility for Reimbursement

In order to be eligible for replacement or reimbursement, the following conditions must be met:

- 2.1 The damaged mailbox and/or post must have met and continue to meet the requirements of the United States Postal Service in regard to construction and location.
- 2.2 The damage must have been caused by direct contact with City equipment. The City will not repair or replace mailboxes or posts damaged solely by snow thrown by City plowing or removal equipment.
- 2.3 The property owner must notify the City within seven days of the date the damage occurred, unless the property owner/tenant/or individual responsible for the property was out of town at the time of occurrence. If the responsible party was out of town, the damage must be reported to the City within seven days of that individuals return.

Policy

In the event that a mailbox and/or its support post is damaged or destroyed by City equipment engaged in snow plowing or snow removal operations, the City will offer the owner of the property the choice of one of the following options:

- 3.1 The City will furnish and install a standard gauge steel, medium sized rural replacement and a standard 4x4 treated wood post. Mail box is approximately 20' long, 9" tall and 7" wide.
- 3.2 The City will reimburse the owner in an amount equal to the cost of the standard post and/or mailbox offered by the City.

Public Works Responsibilities

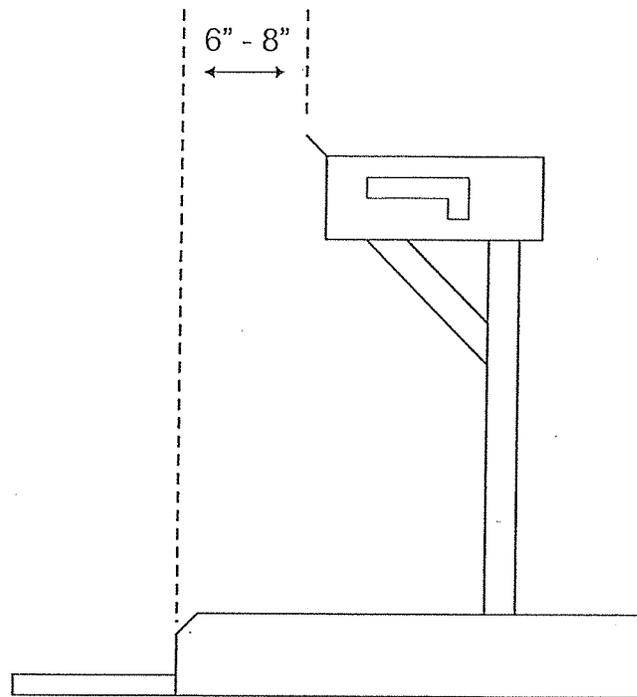
- 4.1 The Director of Public Works shall annually establish the dollar amount of reimbursement to be provided in accordance with section 2.2 above. This amount shall be based on the actual cost to the City of a standard post and/or mailbox.

4.2 The Public Works Department shall install a new box and/or post for those residents requesting this option. Where this work cannot be performed within seven days for any reason, including frozen ground, the Department shall either make temporary repairs or provide a temporary mailbox installation sufficient to allow the postal service to resume mail delivery.

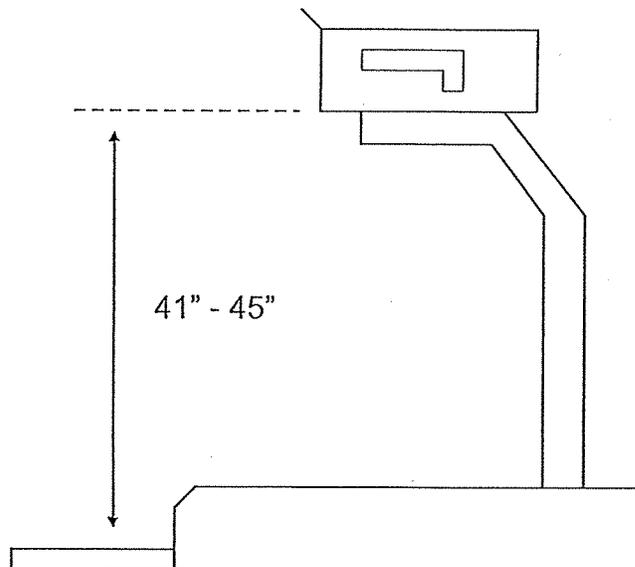
4.3 The Department shall periodically review this policy and, when necessary, recommend changes or revisions to it to the Mayor and City Council.

Reimbursement amount is currently \$75.00

Mailbox Location (POM 632)



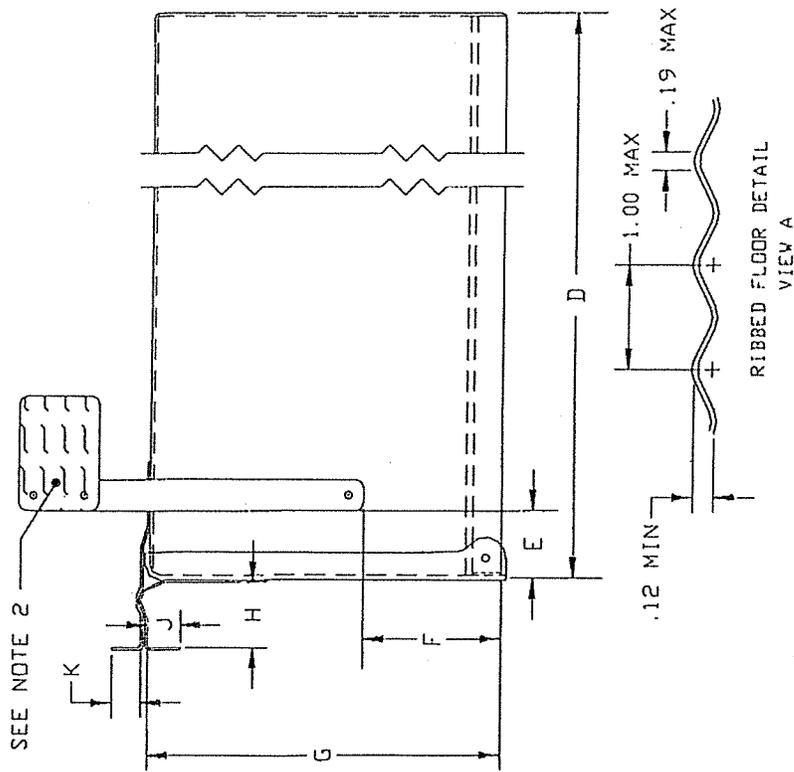
Mailboxes are set back 6" - 8" from the front face of the curb or road edge to the mailbox door.



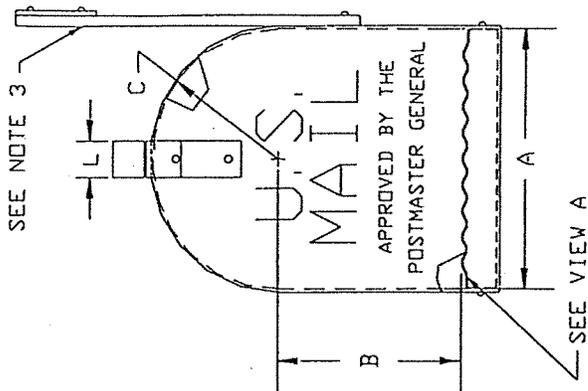
Generally, mailboxes are installed at a height of 41" - 45" from the road surface to the bottom of the mailbox.

The mailbox should ideally be located to the right of the driveway. This allows your letter carrier to serve your mailbox without blocking your driveway.

Note: Check with your local municipality/county for mailbox requirements which may differ from above. Customers should contact the postmaster or carrier before erecting or replacing their mailbox.



- NOTES:
- 1.) DIMENSIONS A, B, C, & D ARE INTERIOR.
 - 2.) SIGNAL PORTION OF FLAG (4 SQ. IN. MIN) ABOVE TOP SURFACE OF BOX.
 - 3.) NO SHARP EDGES.



DIM	MIN	MAX	DIM	MIN	MAX
A	6.25	11.00	G	6.00	15.00
B	4.50	8.25	H	1.00	2.12
C	3.12R	5.50R	J	1.00	2.00
D	18.56	22.81	K	.50	.87
E	-	2.00	L	.87	1.25
F	3.75	8.50			

UNITS: INCHES

TRADITIONAL MAILBOX
FIGURE 1

Advanced Drug Testing, Safety, \$36.00
AFLAC, Insurance, \$588.92
AFCME Council 65, Dues, \$86.14
Battle Mountain Humane Society, Animal Control Contract, \$1,000.00
Beesley Law Office, Professional Fees, \$4,130.00
Black Hills Energy, Utilities, \$3,363.03
Brusseau, Toby, Bid Board Advertising, \$5,600.00
Calamity Jane Winery & Mercantile, Supplies, \$778.00
Century Business Products, Supplies, \$201.59
Core and Main LP, Supplies, \$791.88
Culligan, Repairs and Maintenance, \$18.50
Chronicle, Supplies, Publication, \$926.70
Custer County Housing and Redevelopment Commission, 2018 Subsidy, \$2,000.00
Custer DOIT Best, Supplies, Repairs and Maintenance, \$70.79
Custer Hospitality, Bid Board, \$259.59
Custer True Value, Supplies, Repairs and Maintenance, \$724.16
California State Disbursement, Deductions, \$106.38
Clay County Sheriff, Safety, \$15.00
Dacotah Bank, TIF #2 Payment, \$8,122.07
Dacotah Bank, TIF #4 Payment, \$16.41
Delta Dental, Insurance, \$148.20
Discovery Benefits, Supplies, \$856.92
Edward Enterprises, Cemetery Caretaker Contract, \$4,571.43
EFTPS, Taxes, \$12,643.92
Fastenal, Supplies, \$35.80
First Interstate Bank, TIF #4 Payment, \$16.40
First Interstate Bank, TIF #1 Payment, \$37.01
First Interstate Bank, TIF #1 Payment, \$8,668.27
First Western Insurance, Supplies, \$50.00
French Creek Supply, Supplies, Repairs and Maintenance, \$237.98
Golden West Telecommunications, Utilities, \$614.00
Golden West Technologies, Repairs and Maintenance, \$1,500.00
Golden West Technologies, Professional Fees, \$673.50
Green Owl Media, Professional Fees, \$140.00
Gunderson, Palmer, Nelson & Ashmore, LLP, Professional Fees, \$75.00
Hawkins, Supplies, \$2,816.48
Imageall, Supplies, \$45.50
Jenner Equipment, Repair and Maintenance, \$820.26
Scott Kellogg, Supplies, \$181.00
Ketel Thorstenson, Professional Fees, \$12,788.76
KLJ, Professional Fees, \$5,700.00
Mclain, Mitch, Bid Board, \$830.55
NBS Calibrations, Repairs and Maintenance, \$186.00
Petty Cash, Supplies, \$396.75
Pitney Bowes, Supplies, \$48.69
Quality Auto Body, Repairs and Maintenance, \$95.00
Quill, Supplies, \$78.73
Rapid Delivery, Professional Fees, \$51.76
RYCOM Instruments INC, Supplies, \$681.74

S & B Motors, Supplies, Repairs and Maintenance, \$39.36
Sander Sanitation, Garbage Contract, \$13,422.54
SD State Long Distance, Utilities, \$44.38
SD Secretary of State, Supplies, \$30.00
Servall, Supplies, \$165.02
Simon Materials, Repairs and Maintenance, \$3,537.93
SD DCI, Safety, 173.00
SD Department of Revenue, Professional Fees, \$312.50
SD Retirement System, \$6,058.08
Supplemental Retirement, \$620.00
Taylor Drilling Co., Repairs and Maintenance, \$9,263.21
Unemployment Insurance Division of SD, \$664.89
United Way, Contributions, \$100.00
Verizon Wireless, Utilities, \$446.14
Wellmark, Insurance, \$11,519.05
Wesdak Welding and Diesel LLC, Supplies, Repairs and Maintenance, \$352.00
Wright Express, Supplies, \$732.15
Dicarlo, Christina, Utility Refund, \$49.98
Midtown Partitions, Utility Refund, \$32.87
Briah Player, Utility Refund, \$21.60
Mayor & Council, \$4,400.00
Finance Department, \$5,822.78
Public Buildings, \$2,702.41
Planning Department, \$6,886.55
Public Works Department, \$3,032.99
Street Department, \$7,721.35
Cruisin Department, \$79.10
Parks Department, \$3,327.06
Water Department, \$11,546.14
Wastewater Department, \$11,363.87
Total Claims, \$188,311.76

