

**HERMOSA TOWN BOARD  
PUBLIC HEARING AND REGULAR MEETING  
TUESDAY, FEBRUARY 15, 2022 @ 6:00pm**



- 1) **ROLL CALL:**
  - A. BOT Roll Call: Flug, Henrichsen, Holsworth, King, Schumack
  - B. Acknowledgement of other Attendees
  - C. Pledge of Allegiance to be led by Holsworth
  
- 2) **PUBLIC HEARING:**

The public is invited to attend and comment on the following projects:  
Wastewater Lagoon Expansion and Gumbo Lily Lane Addition Improvements Project  
New Well, WRT System, and Gumbo Lily Lane Addition Improvements Project
  
- 3) **CALL FOR CHANGES:**
  - A. Review of current agenda items
  - B. Motion to accept the agenda as presented/amended
  
- 4) **CONSENT CALENDAR:**
  - A. Approval of the February 1, 2022, regular meeting minutes
  
- 5) **CLAIMS:**
  - A. Review payroll and claims
  - B. Motion to approve the claims as presented/amended
  
- 6) **LAW ENFORCEMENT/ ABATEMENTS/COMPLAINTS:**
  - A. Committee report
  - B. Homeland Security Grant Award
  - C. Custer County Log
  
- 7) **LEGAL:**
  - A. Prepare Extraterritorial Agreement with Pennington County (Platting, Building)  
Letter to Pennington County
  
- 8) **ENGINEER:**
  - A. Water Rehab Project (WRT System): pending due to awaiting results from water test
  - B. N Second Street Box Replacement  
Guard Rail
  - C. Lone Coyote Subdivision (Preston Sub) Preliminary Plat Application  
(Permit 2021-18 was voided and renumbered to Permit #2021-36, Lots 1-23)
  - D. Hermosa Sidewalk Project
  - E. Sewer Project (Lagoon expansion)
  - F. Town of Hermosa Water and Sewer Extension Project, Change Order 1  
Approval of Pay Application No. 1  
Approval of easement reroute
  - G. Water/Sewer Facility Plans
  - H. Hermosa Hills Drainage
  - I. Elmer Claycomb/Dollar General
  - J. Whitney Street Drainage  
SDARWS Report
  
- 9) **PLANNING & ZONING:**
  - A. P&Z February 8, 2022, minutes
  - B. Permit 2021-36; Lone Coyote Subdivision; pending
  - C. Review ADU ordinance; pending
  - D. Permit 2022-01; Informational Permit-Parcel 9339; Proposed Towing Recovery and Used Car Lot, pending
  - E. Hermosa Ordinance 30 – Proposed updates (Under New Business)
  - F. Permit 2022-02; Subdivision Plat Application- G&G Development- Walnut Grove Park
  - G. Review of Chapter 117 to Regulate and License Transient Merchants (Under New Business)
  - H. 1-mile Extraterritorial Area Policy Agreement (Under New Business)

- 10) **PUBLIC WORKS**  
A. Committee Report  
B. Streets, Street Light Repairs, Water & Sewer Department Updates  
C. Land Application Contract
- 11) **FINANCE OFFICE:**  
A. Monthly Financials, pending accountant  
B. Department updates  
C. gWorks discussion  
D. Collection and Disposal of Refuse and Solid Waste  
Request for Bids  
E. Approval to sign SDPAA Liability Coverage
- 12) **OLD BUSINESS:**  
A. Annexation: Gumbo Lilly, Fairgrounds Place  
B. Town Sign, pending  
C. Dollar General Malt Beverage/Wine License, pending  
D. ADU Zoning Ordinance, pending  
E. Town Office: Deck Staining, pending  
F. Library: Deck Staining, Mud Jacking, pending  
G. Casey Peterson Hermosa Audit Engagement Letter, pending  
Independent Audit Services, PC  
H. 2022 South Dakota Legislature, pending  
I. Custer County Extra-territorial Agreement
- 13) **NEW BUSINESS:**  
A. 1<sup>st</sup> Reading Hermosa Ordinance: 30.01  
1<sup>st</sup> Reading Hermosa Ordinance: 30.05  
1<sup>st</sup> Reading Hermosa Ordinance: 30.06  
1<sup>st</sup> Reading Hermosa Ordinance: 30.07  
B. Food Pantry  
Discussion to provide location for service  
Lease agreement  
C. Meeting recordings  
D. 2<sup>nd</sup> Reading Ordinance: Chapter 117, Transient Merchants or leave Ordinance 113 in place with current fee schedule  
E. Reimbursement for sewer bill on city main  
F. Approval of rock and leveling on Nickel's Road  
G. Approval of rock between 3<sup>rd</sup> & 4<sup>th</sup> Streets  
H. Approval of paying redemption of tax lien  
I. Renewal of 250 Main Street Lease Agreement
- 14) **ITEMS FROM CITIZENS:** No action will be taken (3-minute time limit per speaker)
- 15) **TRUSTEE INPUT:**
- 16) **EXECUTIVE SESSION:**  
A. Motion to enter Executive Session allowable by SDCL 1-25-2.1 – Legal/Personnel/Contract  
B. Motion to exit out of Executive Session  
C. Motions resulting from Executive Session
- 17) **ADJOURN:**  
Motion by \_\_\_\_\_; second by \_\_\_\_\_ to adjourn the meeting at \_\_\_\_\_ pm.

Town of Hermosa  
**PUBLIC HEARING OUTLINE**

(Tuesday, February 15, 2022 at 6:00 P.M. Mtn. Time)

**Hearing Regarding DANR Funding Application for  
Wastewater Lagoon Expansion and Gumbo Lily Lane Addition Improvements Project**

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- 1) **Convene Public Hearing** – (Town Board)
  - 2) **Purpose of Hearing** – (by Bill Lass, Black Hills Council of Local Governments)

*This hearing is a requirement of the funding application that was submitted to DANR in December for the Wastewater Lagoon Expansion and Gumbo Lily Lane Addition Improvements project. There are a few specific items that we must cover for the hearing and then at the end of the hearing the Town must formally request public comment.*

- 3) **Need for the Project** – (by Leah Berg, ACES, Inc.)
- 4) **All Alternatives Evaluated and Costs for Each** – (by Leah Berg)
- 5) **Description of the Proposed Projects (or the selected alternatives)** – (by Leah Berg)
- 6) **Proposed Financing for the Project** – (by Bill Lass)

*The funding application submitted to DANR is called a “Sanitary/Storm Sewer Facilities Funding Application”. The DANR may fund this application from one of two primary sources: the Clean Water State Revolving Loan Fund (or SRF) Program, and/or the Consolidated Water Facilities Construction Program. It is most likely this application will be funded via a loan from the Clean Water SRF Program. Some principal forgiveness or grant is also possible.*

*It is also possible that the DANR will have extra grant or principal forgiveness available if the department receives additional ARPA (American Rescue Plan Act) funds in 2022.*

- 7) **Amount of SRF Loan to be Borrowed for Project** – (by Bill Lass)

*\$1,074,000.00 is the total funding request (also to be used will be \$76,000 in local ARPA funds for a total project budget of \$1,150,000.00)*

- 8) **Revenue Source Pledged for Loan Repayment** – (by Bill Lass)

*Sewer Surcharge*

- 9) **Interest Rate and Term of the Loan** – (by Bill Lass)

*2.125% for 30 years*

10) **Effect of the Proposed Financing on User Rates** – (by Bill Lass)

*The approximate per-account monthly surcharge resulting from the financing and based on 100% loan plus a 10% debt reserve requirement is:*

*\$4,037.18/mo. debt service*

*\$403.72/mo. debt reserve*

*\$4,440.90 Total*

*\$4,440.90 divided by 226 accounts = \$19.65/mo. (approx..)*

11) **Formal Call for Public Comments/Questions** – (by Town)

12) **Adjourn Public Hearing**

Town of Hermosa  
**PUBLIC HEARING OUTLINE**

(Tuesday, February 15, 2022 at 6:00 P.M. Mtn. Time)

**Hearing Regarding DANR Funding Application for  
New Well, WRT System, and Gumbo Lily Lane Addition Improvements**

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- 1) **Convene Public Hearing** – (Town Board)
- 2) **Purpose of Hearing** – (by Bill Lass, Black Hills Council of Governments)

*This hearing is a requirement of the funding application that was submitted to DANR in December for the water system project. There are a few specific items that we must cover for the hearing and then at the end of the hearing the Town Board must formally request public comment.*

- 3) **Need for the Project** – (by Leah Berg, ACES, Inc.)
- 4) **All Alternatives Evaluated and Costs for Each** – (by Leah Berg)
- 5) **Description of the Proposed Projects (or the selected alternatives)** – (by Leah Berg, ACES, Inc.)
- 6) **Proposed Financing for the Project** – (by Bill Lass)

*The funding application submitted to DANR is called a “Drinking Water Facilities Funding Application”. The DANR may fund this application from one of two primary sources: the Drinking Water State Revolving Loan Fund (or SRF) Program, and/or the Consolidated Water Facilities Construction Program. It is most likely this application will be funded via a loan from the Drinking Water SRF Program. Some principal forgiveness or grant is also possible.*

*It is also possible that the DANR will have extra grant or principal forgiveness available if the department receives additional ARPA (American Rescue Plan Act) funds in 2022.*

- 7) **Amount of SRF Loan to be Borrowed for Project** – (by Bill Lass)

*\$3,525,000.00 is the total loan request*

- 8) **Revenue Source Pledged for Loan Repayment** – (by Bill Lass)

*Water Surcharge*

- 9) **Interest Rate and Term of the Loan** – (by Bill Lass)

*1.625% for 30 years*

**10) Effect of the Proposed Financing on User Rates – (by Bill Lass)**

*The approximate per-account monthly surcharge resulting from the financing and based on 100% loan plus a 10% debt reserve requirement is:*

*\$12,378.04/mo. debt service*

*\$1,237.81 monthly debt reserve*

*\$13,615.85 Total*

*\$13,615.85 divided by 254 accounts = \$53.61/mo. (approx.)*

**11) Formal Call for Public Comments/Questions – (by Town Board)**

**12) Adjourn Public Hearing**

**HERMOSA TOWN BOARD  
REGULAR MEETING  
TUESDAY, FEBRUARY 1, 2022 @ 6:00pm**



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**ROLL CALL:** Holsworth called the meeting to order at 6:00 pm with the following members present: Holsworth, King, and Schumack. Flug and Henrichsen absent. Attorney Johnson, Berg, Ferguson, Harris and interested citizens also in attendance. Pledge of Allegiance led by Holsworth.

**CALL FOR CHANGES:** Motion made and seconded to approve the agenda as presented; vote; all aye, motion carried.

**CONSENT CALENDAR:** Motion made and seconded to approve the January 18, 2022, regular meeting minutes; vote; all ayes, motion carried.

**CLAIMS:** Motion made and seconded to approve the claims as amended; vote; all ayes; motion carried. A&B Business Solutions, Monthly Charge, \$517.77; ACES, Staff Report: 835 Marie Street, 840 Marie Street, \$367.50; Black Hills Cooperative Inc, Monthly Charge, \$3,756.29; Custer Co Sheriff's Office, Hermosa Dispatch Contract - 2/1/22 - 4/30/22, \$2,000.00; Dakota Supply Group, Street lights, \$1,803.34; Ferguson, Chuck, January 2022 Contract, \$2,446.34; Ferguson, Chuck, Snow removal, Inspections, Lagoon fuel bal, to Belle Fourche, \$306.97; Mt Rushmore Telephone Company, Monthly charges, \$240.45; Pioneer Bank & Trust, 2 Signature Account Charge, \$25.00; SD Department of Revenue, November/December Sales Tax, \$484.07; SD One Call, Service charge, \$36.96; Shorb, Nicole, Customer deposit refund, 244 Donna, \$96.17; Turbiville Industrial Electric Works, Pump motor repair, inspections, \$369.94; US Bank, N Sewer TIF Payment, \$3,820.54; Westergard, Brad, Customer deposit refund, 106 2nd Street, \$90.17; Payroll related: Board of Trustees, \$800.00; Finance Department, \$2,772.00; Meter, \$175.00; FTPS, 941 payroll tax deposit, \$821.29; Health Pool of South Dakota, Monthly premium, \$882.97; SD Retirement Fund, January 2022, \$702.88. TOTAL: \$22,515.65.

**LAW ENFORCEMENT/ ABATEMENTS/COMPLAINTS:** Lieutenant McGraw attended meeting; no action. Follow up on the complaint regarding the semi running – Holsworth reported he had talked to the complainant and explained the truck is parked in a commercial zone and is legally parked; no action. The town has been contacted by a representative from FirstNet to inquire whether the town would be interested in contracting with the company – FirstNet is a nationwide wireless broadband network dedicated to public safety. Custer County contracts for similar services with a different provider; no action taken.

**LEGAL:** Johnson reported he has not received response from Pennington County regarding the extra-territorial agreement; pending.

**ENGINEER:** Water Rehab Project (WRT System): waiting on water test results that have been submitted; this topic is on the February 9 Custer County Commissioner's meeting agenda to discuss funding options through the county, item remains pending. N Second Street Box Replacement, Guard Rail: Holsworth reported the DOT will contract with Hilt to install the guard rails by the school and on the bridge, there is no timeline when the guard rails will be installed. Lone Coyote Subdivision (Preston Sub) Preliminary Plat Application: waiting on revised plans from developer's engineer due to changes in their construction plans. Hermosa Sidewalk Project: no updates other than the bid letting is set March 16, 2022. Sewer Project (Lagoon expansion): pending with no updates. Town of Hermosa Water and Sewer Extension Project, Change Order 1: there will be a change order that involves the Dollar General area and the rerouting or other options for the extension. Water/Sewer Facility Plans: submitted with the funding applications to DANR pending their timeline. Hermosa Hills Drainage, pending. Hermosa Hills: Holsworth reported the land on the north side of the drive-in movie theater is not for sale; thus, expansion of Hermosa Hills to the south side of the subdivision is not an option. Ferguson to contact the landowner by the drive-in to discuss their sewer issue. Elmer Claycomb/Dollar General: the town has not received a response from Claycomb from the letter that the town sent to him regarding the Dollar General construction issues. If no response by next meeting, the item will be removed from the agenda. Whitney Street Drainage: FMG Engineering and the school are investigating the issue and the town engineer is waiting for their response. The water has been tested in four locations – samples were submitted to Midcontinent and all tests depict that the water is spring water. The school engineer is conducting their own test and the town board is waiting for the results. Discussion regarding bringing a culvert from the retention pond on Whitney Street to pump the water into the creek; no action. Discussion regarding placing gravel on the road leading to the citizen's home south of Whitney Street; no action. DANR representatives will be meeting with town officials on February 3 to discuss the issues relative to the water and wastewater issues.

**PLANNING & ZONING:** BOT reviewed minutes from the 1-25-22 BOT meeting; no action. Permit 2021-36; Lone Coyote Subdivision; pending. Review ADU ordinance; pending. Permit 2022-01; Informational Permit-Parcel 9339; Proposed Towing Recovery and Used Car Lot, pending. P&Z requested input from citizens in the area and this issue will return to P&Z for review. Property is not in the floodplain and is zoned Commercial Use. No action. Permit 2021-23; Residential Bldg/Digging Permit-840 Marie St. Lot 10- Approved 8/3/2021 but was revisited because of the direction of the home was revised with a new plot plan submitted. Town engineer provided Staff Report with approval. Motion made and seconded to approve Permit 2021-23 per Staff Report; vote; all ayes, motion carried.

**PUBLIC WORKS:** Ferguson reported the streetlights have been shipped and should begin to arrive. Will be changing the older lights with new. Ferguson said the old lights are in storage and will plan to surplus. Discussion regarding the water surfacing in several locations in town. Although there have been several tests performed by both the town, the school and private citizens, the tests are indicating different results from each test. Further investigation will be occurring to learn the cause of where the water is coming from.

**FINANCE OFFICE:** Holsworth to follow up with citizen on 4<sup>th</sup> Street regarding road maintenance in the Cul-de-Sac. Citizen also requested assistance from town to alleviate the traffic from parents picking up/dropping off their children for school who are parking in his private driveway. Holsworth to request law enforcement on school patrol to assist with informing the parents the Cul-de-Sac is a private road. Citizen in Ferguson Subdivision concerned about the odor from asphalt used to repair potholes; no action. King to follow up with citizens regarding a domestic cat issue in Ferguson Subdivision. King also to follow up with a recall for the Chevy Tahoe. Boddicker provided the 2021 Tax Recap; no action. Boddicker to investigate CPA in Madison to learn whether there is interest in conducting the town's annual audit. The three-year contract for garbage services in Hermosa will conclude at the end of March. Boddicker will send a notice requesting bids for services. Boddicker to further investigate gWorks – a software program to utilize for the town's utility billing and fund accounting. Boddicker and Dybvig will attend a presentation to investigate further and will report at the February 15 meeting. Motion made and seconded to approve applying the \$76,000 Hermosa will receive from the ARPA funds towards the Gumbo Lily project; vote, all ayes, motion carried. Bill Lass, Black Hills Council of Local Governments, will submit an amended budget to indicate Hermosa is planning to use those funds towards that project. Applicants proposing to use local ARPA funds for a project are required to use those funds first and demonstrate to DANR the use of those funds before the state portion of the ARPA funds will be released for reimbursement. The February 15, 2022, meeting must hold public hearings on the funding applications for the projects that have been submitted to the DANR. Motion made and seconded to remove Municipal Tax Recap, ARPA Funds for Water/Sewer Projects, and FirstNet Responder from the agenda; vote, all ayes, motion carried.

**OLD BUSINESS:** Annexation: Gumbo Lilly, Fairgrounds: The town is proceeding with annexing the properties; a voluntary petition needs signatures in order to proceed. Town Sign, pending. The plans were submitted to DOT for right to occupy the Right-of-Way, awaiting DOT response. Dollar General Malt Beverage/Wine License, pending. ADU Zoning Ordinance, pending. Town Office: Deck Staining, pending. Library: Deck Staining, Mud Jacking, pending. A preliminary cost estimate was submitted; no action. Casey Peterson Hermosa Audit Engagement Letter, pending, this issue was discussed under Finance Officer. 2022 South Dakota Legislature, pending. Chapter 30 Ordinance: This item is on agenda for P&Z review for their approval with an intent for 1<sup>st</sup> Reading at the BOT February 15, 2022, meeting.

**NEW BUSINESS:** Custer County Extra-territorial Agreement: There have been some questions regarding the permitting processes to follow when Custer County is involved. Boddicker to request this issue be placed on the Custer County Commissioner's February 9, 2022, agenda for discussion and clarification. 1<sup>st</sup> Reading for Chapter 117, Transient Merchants. P&Z will review and then to BOT for 2<sup>nd</sup> Reading on February 15, 2022.

**ITEMS FROM CITIZENS:** Lois Rudd addressed the board to report the Food Pantry is losing their current location and requested the board to consider utilizing the lower level of the town hall for their program. This item to be on the February 15, 2022, BOT agenda.

**EXECUTIVE SESSION:** Motion made and seconded to enter into executive session at 7:53; allowable by SDCL 1-25-2; unanimous. Motion made and seconded to exit executive session at 8:38; unanimous. No motions made in executive session.

Boddicker reported the Finance Officer Line Item in the supplementary budget will show an overage. Boddicker granted approval to have assistance with an accounting issue. Also discussed was the Alcoholic Beverage Operating Agreement with Pop's – Boddicker to review the Agreement. The Hermosa Community Center must follow Hermosa Liquor License/Malt Beverage Ordinance. All board members plus Boddicker and Dybvig will plan to attend the March 30, 2022, District 9 meeting in New Underwood.

**TRUSTEE INPUT:** Schumack and King: good meeting! Henrichsen: requested the board to reconsider marking her absent from the 2-1-22 meeting because she was scheduled for surgery; the board marked her as absent. Holsworth: appreciated everyone's patience as we move forward with the projects. .

**ADJOURN:** Motion made and seconded to adjourn the meeting at 8:52 vote; all ayes, motion carried.

\_\_\_\_\_  
Dan Holsworth, Town Board President

ATTEST:

\_\_\_\_\_  
Gail Boddicker, Finance Officer

Published once at the approximate cost of \_\_\_

Claims for Approval 2-15-2022		
		\$ 517.77
ACES	Facility Plans	\$ 22,983.50
Current Electric	Replace ballast in ceiling fixture with new	\$ 96.90
Custer Co. Treasurer's Office	Tax lien redemption	\$ 2,816.77
Golden West	Monthly charges	\$ 563.50
Johnson Law Office	January 2022 services	\$ 1,768.00
Metering & Technology Solutions	Meters	\$ 1,223.37
Metering & Technology Solutions	Bare meter, gaskets, nuts	\$ 1,297.92
Miller Construction LLC	Haul 3 loads 1" clean rock and spread	\$ 918.00
Office Depot, Inc.	Supplies: paper, banker's boxes, envelopes	\$ 147.98
Payment Service Network	Monthly services 1/1/2022- 1/31/2022	* \$ 130.65
Pioneer Bank & Trust	Office supplies	* \$ 246.49
R.C.S. Construction	Water/Sewer extension, Pay App #1	\$ 301,260.52
Rapid Rooter	Inspection of PVC storm drain for infiltration	\$ 520.00
Riteway Business Forms	Inspection forms	\$ 246.67
Rural Development #1	Monthly charges	* \$ 417.00
Rural Development #2	Monthly charges	* \$ 222.00
Rural Development #3	Monthly charges	* \$ 1,278.00
Sander Sanitation Service	Monthly charges	* \$ 2,846.25
Schumack, Terri	Reimbursement for root issue which were in the city main	\$ 181.05
Southern Hills Publishing, Inc.	January 2022 charges	\$ 356.15
US Bank	DWSRF	* \$ 1,493.23
Whiting Hagg & Dorsey, LLP	Attorney services	\$ 5,726.90
<b>Payroll related:</b>		
Payroll	Board of Trustees	\$ 2,861.78
Payroll	Finance Department	
Payroll	Planning & Zoning	
Payroll	Janitorial Meter Mosquito Control	
Gail Boddicker	Health insurance	\$ 200.00
EFTPS	941 payroll tax deposit	* \$ 673.34
Health Pool of South Dakota	Monthly premium	
SD Retirement Fund	January 2022 SDRS	
<b>TOTAL</b>		<b>\$ 350,993.74</b>



**CUSTER COUNTY SHERIFF'S OFFICE**  
 SHERIFF MARTY MECHALEY  
 420 MT RUSHMORE ROAD, CUSTER, SOUTH DAKOTA, 57730  
 PHONE: (605) 673-8146 FAX: (605)673-8154



Hermosa - CFS's

Printed on February 1, 2022

CFS Date/Time	CFS #	Case Number	Code	Code : Description	Zone
01/01/22 16:55:13	CFS2200023		EXT	EXT : Extra Patrol	HERMOSA
01/03/22 07:28:34	CFS2200058		SPATROL	SPATROL : School Patrol	HERMOSA
01/03/22 15:26:09	CFS2200070		SPATROL	SPATROL : School Patrol	HERMOSA
01/04/22 07:28:17	CFS2200080		SPATROL	SPATROL : School Patrol	HERMOSA
01/04/22 14:59:12	CFS2200088		SPATROL	SPATROL : School Patrol	HERMOSA
01/04/22 22:10:23	CFS2200104		EXT	EXT : Extra Patrol	HERMOSA
01/05/22 07:31:26	CFS2200106		SPATROL	SPATROL : School Patrol	HERMOSA
01/05/22 17:35:00	CFS2200125		PAPSERV	PAPSERV : Paper Service	HERMOSA
01/05/22 17:49:32	CFS2200126		PAPSERV	PAPSERV : Paper Service	HERMOSA
01/05/22 22:16:19	CFS2200130		EXT	EXT : Extra Patrol	HERMOSA
01/06/22 14:59:16	CFS2200148		SPATROL	SPATROL : School Patrol	HERMOSA
01/06/22 15:24:47	CFS2200149		TSTOP	TSTOP : Traffic Stop	HERMOSA
01/07/22 01:38:17	CFS2200157		911T	911T : 911 Transfer	HERMOSA
01/07/22 07:47:06	CFS2200159		ALM	ALM : Alarm	HERMOSA

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CFS Date/Time	CFS #	Case Number	Code	Code : Description	Zone
01/07/22 12:01:46	CFS2200164		PAPSERV	PAPSERV : Paper Service	HERMOSA
01/07/22 12:16:17	CFS2200165		PAPSERV	PAPSERV : Paper Service	HERMOSA
01/07/22 12:23:34	CFS2200166		EXT	EXT : Extra Patrol	HERMOSA
01/07/22 12:36:12	CFS2200168		SUSP	SUSP : Suspicious	HERMOSA
01/08/22 13:15:05	CFS2200186		EXT	EXT : Extra Patrol	HERMOSA
01/09/22 14:40:50	CFS2200209	2022-00020	BURGLARY	BURGLARY : Burglary /	HERMOSA
01/09/22 16:04:06	CFS2200212		EXT	EXT : Extra Patrol	HERMOSA
01/10/22 07:30:14	CFS2200223		SPATROL	SPATROL : School Patrol	HERMOSA
01/10/22 09:05:37	CFS2200226		KTP	KTP : Keep The Peace	HERMOSA
01/10/22 12:14:45	CFS2200235	2022-00025	WARRANTARR	WARRANTARR : Warrant	HERMOSA
01/10/22 15:29:08	CFS2200244		SPATROL	SPATROL : School Patrol	HERMOSA
01/11/22 04:41:00	CFS2200258		AMB	AMB : Ambulance Calls	HERMOSA
01/11/22 07:36:47	CFS2200260		SPATROL	SPATROL : School Patrol	HERMOSA
01/11/22 13:39:24	CFS2200265		PAPSERV	PAPSERV : Paper Service	HERMOSA
01/11/22 13:50:00	CFS2200266		PAPSERV	PAPSERV : Paper Service	HERMOSA
01/11/22 14:57:03	CFS2200267		SPATROL	SPATROL : School Patrol	HERMOSA
01/11/22 16:18:27	CFS2200270		THEFTOT	THEFTOT : Theft - All	HERMOSA
01/12/22 08:16:12	CFS2200279		SPATROL	SPATROL : School Patrol	HERMOSA

CFS Date/Time	CFS #	Case Number	Code	Code : Description	Zone
01/12/22 10:47:56	CFS2200288		PAPSERV	PAPSERV : Paper Service	HERMOSA
01/12/22 13:09:32	CFS2200291		DIST	DIST : Disturbance	HERMOSA
01/12/22 19:33:46	CFS2200300		PAPSERV	PAPSERV : Paper Service	HERMOSA
01/13/22 15:25:12	CFS2200310		SPATROL	SPATROL : School Patrol	HERMOSA
01/14/22 14:10:03	CFS2200324		TRAFFCOMP	TRAFFCOMP : Traffic	HERMOSA
01/17/22 11:05:35	CFS2200372		VEHSUSP	VEHSUSP : Suspicious	HERMOSA
01/17/22 22:14:10	CFS2200387		EXT	EXT : Extra Patrol	HERMOSA
01/18/22 07:32:41	CFS2200392		SPATROL	SPATROL : School Patrol	HERMOSA
01/18/22 15:51:57	CFS2200404		SPATROL	SPATROL : School Patrol	HERMOSA
01/19/22 07:31:59	CFS2200418		SPATROL	SPATROL : School Patrol	HERMOSA
01/19/22 07:58:06	CFS2200421		PAPSERV	PAPSERV : Paper Service	HERMOSA
01/19/22 15:33:36	CFS2200446		SPATROL	SPATROL : School Patrol	HERMOSA
01/20/22 07:31:25	CFS2200466		SPATROL	SPATROL : School Patrol	HERMOSA
01/20/22 15:33:23	CFS2200474		SPATROL	SPATROL : School Patrol	HERMOSA
01/21/22 07:09:29	CFS2200489		EXT	EXT : Extra Patrol	HERMOSA
01/21/22 16:28:37	CFS2200498		EXT	EXT : Extra Patrol	HERMOSA
01/23/22 09:53:00	CFS2200547		EXT	EXT : Extra Patrol	HERMOSA
01/24/22 07:32:29	CFS2200572		SPATROL	SPATROL : School Patrol	HERMOSA

CFS Date/Time	CFS #	Case Number	Code	Code : Description	Zone
01/24/22 16:18:15	CFS2200582		SCAM	SCAM : Scam Call	HERMOSA
01/24/22 16:44:00	CFS2200583		UNWANTED	UNWANTED : Unwanted	HERMOSA
01/25/22 07:31:48	CFS2200593		SPATROL	SPATROL : School Patrol	HERMOSA
01/25/22 08:21:35	CFS2200594		EXT	EXT : Extra Patrol	HERMOSA
01/25/22 12:49:59	CFS2200600		SCAM	SCAM : Scam Call	HERMOSA
01/25/22 14:47:45	CFS2200606		EXT	EXT : Extra Patrol	HERMOSA
01/26/22 07:32:22	CFS2200623		SPATROL	SPATROL : School Patrol	HERMOSA
01/26/22 09:07:43	CFS2200627		UNWANTED	UNWANTED : Unwanted	HERMOSA
01/26/22 11:01:18	CFS2200631		TSTOP	TSTOP : Traffic Stop	HERMOSA
01/26/22 22:13:02	CFS2200641		EXT	EXT : Extra Patrol	HERMOSA
01/27/22 08:15:48	CFS2200646		SPATROL	SPATROL : School Patrol	HERMOSA
01/27/22 08:16:16	CFS2200647		EXT	EXT : Extra Patrol	HERMOSA
01/27/22 09:28:43	CFS2200649		EXT	EXT : Extra Patrol	HERMOSA
01/27/22 19:38:29	CFS2200662		ATL	ATL : ATL	HERMOSA
01/28/22 16:13:51	CFS2200675		EXT	EXT : Extra Patrol	HERMOSA
01/31/22 07:32:43	CFS2200725		SPATROL	SPATROL : School Patrol	HERMOSA
01/31/22 09:40:13	CFS2200730		SCAM	SCAM : Scam Call	HERMOSA
01/31/22 15:45:22	CFS2200748		SPATROL	SPATROL : School Patrol	HERMOSA

CFS Date/Time	CFS #	Case Number	Code	Code : Description	Zone
01/31/22 20:44:54	CFS2200761		DIST	DIST : Disturbance	HERMOSA

**Total Records: 69**

**Gail Boddicker**

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**From:** Gran, Logan <Logan.Gran@state.sd.us>  
**Sent:** Friday, February 4, 2022 12:56 PM  
**To:** Gail Boddicker  
**Subject:** RE: Hermosa

Hi Gail,

Please see responses below in red. *underscored*

**From:** Gail Boddicker <gail@hermosasd.com>  
**Sent:** Friday, February 4, 2022 1:47 PM  
**To:** Gran, Logan <Logan.Gran@state.sd.us>  
**Subject:** [EXT] Hermosa

Logan,  
After speaking with the board and town engineer, the following questions were asked for me to contact you for your reply:

1. How do we know the construction cost until we go out for bid? We don't. This is only an estimate provided by our bid letting engineer. They have data from years prior for costs of items in that specific area.
2. Can we re-bid next year if it comes in too high? Yes. We do this often.
3. Why does the % for the Town not apply for an increase? Does the SDDOT pick up any increases? This is something we don't normally do. It is stated in the agreement that was signed by both parties that the Town will pay for the overage. That being said, we are having a discussion on Monday regarding inflation costs with the TA projects so you are more than welcome to wait to see what comes from that meeting to respond.
4. How much would the project get reduced to be in budget of the estimate amount? (You and I discussed this and I understand that the bidding office can help with this; they just don't have those details yet.) Correct, we don't have those details yet. That would be something that would have to be worked out.

Thanks for your assistance and attention.  
Gail Boddicker  
255-4291

*See next pages for  
add'l information.*

## Gail Boddicker

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**From:** Weisgram, Sam <Sam.Weisgram@state.sd.us>  
**Sent:** Wednesday, February 2, 2022 3:00 PM  
**To:** Gran, Logan  
**Cc:** Hoffman, Becky; DeMers, Leah  
**Subject:** PCN 07RK - Hermosa  
**Attachments:** 07RK Cost Breakdown(2.1.22).xlsx; Agreement 717147.pdf

Logan,

We have just finished completing the engineer's estimate for the subject project. Our estimate is substantially over the eligible amount of construction contract funding as outlined in Exhibit A of agreement 717147. Therefore, in accordance with part I.H. of the agreement, the City has two options before we can move forward:

- 1. Revised the plans to reduce construction costs to a level at or below the eligible amount of construction funding (\$141,100)
- 2. Agree in writing to fund the difference (\$88,905.80),

Based on current estimated project costs, the City's overall contribution is currently estimated to be \$127,656.95. Please refer to the attached spreadsheet for a complete breakdown of estimated project costs.

Please encourage the City to make a prompt decision on this matter as we can't pursue construction authorization from the FHWA (meaning we can't bid the project) until we have this matter resolved.

Thank You,

**Sam Weisgram**  
SDDOT Project Development Office  
Ph. 605.773.4304

# PCN 07RK - Hermosa Shared Use Path

Reference Agreement #717147

<p><b>Total Project Estimated Amount</b> (per Background item 3 of the agreement)</p> <p style="text-align: right;">\$189,795.00</p>	<p><b>TAP Funds</b> (per I.M of Agreement) <span style="float: right;">\$152,455.00</span></p> <p><b>City Funds:</b> includes 19.68% City Match on federal eligible items per I.M of Agreement <span style="float: right;">\$37,340.00</span></p>																												
<p>State's Construction Estimate (Federal Eligible Costs) Construction Estimate per Agreement (Exhibit A)</p> <p style="text-align: right;">\$230,005.80 \$141,100.00</p>	<p><b>Difference</b></p> <p><i>Per Part 1.H of the Agreement: Plans must either be revised to reduce construction costs, or the City must agree to fund the difference</i></p> <p style="text-align: right;">\$88,905.80</p>																												
<p>Note - per Part 1.K of the Agreement, if the low bid received is over the State Construction Est (Federal Eligible Costs), the exceeding amount will be eligible for TAP Funding at a rate of 80.32% with a 19.68% City Match.</p>																													
<p><b>Current Anticipated Project Funding Breakdown</b> based on latest estimates and cost incurred (considering City is willing to fund the Difference mentioned above)</p>	<table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;"></th> <th style="text-align: right;"><u>TAP Funds</u></th> <th style="text-align: right;"><u>City Funds</u></th> <th style="text-align: right;"><u>Total</u></th> </tr> </thead> <tbody> <tr> <td>Preliminary Engineering</td> <td style="text-align: right;">\$22,363.25</td> <td style="text-align: right;">\$5,479.44</td> <td style="text-align: right;">\$27,842.69</td> </tr> <tr> <td>Construction Costs</td> <td style="text-align: right;">\$113,331.52</td> <td style="text-align: right;">\$116,674.28</td> <td style="text-align: right;">\$230,005.80</td> </tr> <tr> <td>Non-Eligible Construction Costs</td> <td style="text-align: right;">\$0.00</td> <td style="text-align: right;">\$780.00</td> <td style="text-align: right;">\$780.00</td> </tr> <tr> <td>Construction Engineering</td> <td style="text-align: right;">\$10,521.92</td> <td style="text-align: right;">\$2,578.08</td> <td style="text-align: right;">\$13,100.00</td> </tr> <tr> <td>Non-Infrastructure (Bikes, etc.)</td> <td style="text-align: right;">\$0.00</td> <td style="text-align: right;">\$2,145.15</td> <td style="text-align: right;">\$2,145.15</td> </tr> <tr> <td><b>TOTALS =</b></td> <td style="text-align: right;"><b>\$146,216.69</b></td> <td style="text-align: right;"><b>\$127,656.95</b></td> <td style="text-align: right;"><b>\$273,873.64</b></td> </tr> </tbody> </table>		<u>TAP Funds</u>	<u>City Funds</u>	<u>Total</u>	Preliminary Engineering	\$22,363.25	\$5,479.44	\$27,842.69	Construction Costs	\$113,331.52	\$116,674.28	\$230,005.80	Non-Eligible Construction Costs	\$0.00	\$780.00	\$780.00	Construction Engineering	\$10,521.92	\$2,578.08	\$13,100.00	Non-Infrastructure (Bikes, etc.)	\$0.00	\$2,145.15	\$2,145.15	<b>TOTALS =</b>	<b>\$146,216.69</b>	<b>\$127,656.95</b>	<b>\$273,873.64</b>
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**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION  
TRANSPORTATION ALTERNATIVES (TA)  
AGREEMENT**

THIS AGREEMENT is made by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "STATE," and the town of Hermosa, South Dakota, referred to in this Agreement as the "TOWN."

**BACKGROUND:**

1. The STATE has determined that TA project number P TAPR(36) PCN 07RK in the town of Hermosa, South Dakota, referred to in this Agreement as the "Project," is eligible for funding under the Fixing America's Surface Transportation Act (FAST Act) for Transportation Alternatives.
2. The TOWN has submitted an application to sponsor the Project, which the STATE has accepted. A copy of the application is made part of this Agreement by reference.
3. The Project's total cost estimate is One Hundred Eighty-nine Thousand Seven Hundred Ninety-five Dollars (\$189,795.00), as shown in Exhibit A, attached to and incorporated in this Agreement.

**THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

**I. THE STATE'S DUTIES AND RESPONSIBILITIES:**

- A. The STATE will provide technical assistance for the Project and review plans and specifications.
- B. The STATE will develop the scope of services for the design of the Project and will issue the work order for the consulting firm the TOWN selects from the STATE consultant retainer list to design the Project.
- C. The STATE will use the STATE'S best efforts to obtain Federal Highway Administration ("FHWA") authorization of the Project.
- D. The STATE will issue a Notice to Proceed letter for the work order to the consulting firm selected by the TOWN from the STATE consultant retainer list following full execution of this Agreement and receipt of federal authorization of the Project for the scope of services for the design portion of the Project.
- E. The STATE will make all progress payments for the design engineering portion of the Project directly to the consultant.
- F. The STATE will prepare a construction cost estimate for work the TOWN anticipates performing under force account had the work been competitively bid. The force account work contemplated must be federal aid eligible. If the TOWN'S force account estimate is less than the STATE'S competitive bid estimate, the STATE will complete a finding of cost effectiveness. The STATE will then prepare a Public Interest Finding and submit a request for FHWA'S approval of local force account. The STATE will notify the TOWN once FHWA has approved use of force account. Local agency force account is not eligible for federal aid until the TOWN receives notice of FHWA approval from the STATE and a written notice to proceed. If the TOWN'S force account estimate is more than the STATE'S competitive bid estimate of the TOWN'S force account work, the TOWN will not be eligible to pursue Force Account and Paragraphs II.C. and II. D. will not apply.
- G. The STATE will review the TOWN'S donated labor and materials estimate. To receive credit as donated labor and materials the work must be federal aid eligible. The STATE will submit a request to FHWA to approve use of donated labor and materials pursuant to Paragraph II. F. below. The STATE will notify the TOWN once FHWA has approved use of donated labor and materials. Donated labor and material are not eligible for federal aid until the TOWN receives notice of FHWA approval and written notice to proceed from the STATE. The STATE will credit donated labor and materials approved against the required TOWN match.
- H. Prior to bid letting advertisement and upon receiving the final plans, if the STATE, in its sole discretion, estimates the amount of the construction contract portion of the Project (the STATE'S estimated

amount) will be more than the eligible amount of construction contract funding, as outlined in Exhibit A, the STATE will not pursue FHWA construction authorization for the Project until either: a) the plans are revised to reduce construction contract costs to a level at or below the eligible amount of construction contract funding, or b) the TOWN agrees in writing to fund the difference between the STATE'S estimated amount and the eligible amount of construction contract funding.

- I. The STATE will advertise, let to contract, award, and be the contracting party for the construction contract items of the Project, as detailed in the attached Exhibit A.
- J. The STATE will obtain the TOWN'S concurrence before authorizing any changes to the Project work detailed in the STATE-approved Project plans and specifications.
- K. Once the Project has been let and the contract is awarded to the successful low bidder, if the as-bid cost of the construction contract exceeds the STATE'S construction contract estimate, the as-bid costs exceeding the STATE'S construction contract estimate will be eligible for FHWA funding. The STATE will pay the as-bid costs and the TOWN will pay the STATE for the TOWN'S match of the as-bid costs.
- L. The STATE will provide construction engineering for the construction contract portion of the Project and make all progress payments for the construction contract portion of the Project directly to contractors, suppliers, and vendors with TA funds.
- M. The STATE will bill the TOWN for the TOWN'S 19.68% match on TA funds up to a maximum of One Hundred Fifty-two Thousand Four Hundred Forty-five Dollars (\$152,445.00), minus any donations and force account work completed pursuant to Paragraph II.D. below; any costs exceeding One Hundred Eighty-nine Thousand, Seven Hundred Ninety-five Dollars (\$189,795.00), including the TOWN'S additional match of the as-bid costs as detailed in Paragraph I.K. above; one hundred percent (100%) of any non-participating costs; one hundred percent (100%) of any costs deemed ineligible; and, if applicable pursuant to Paragraph I.H. above, one hundred percent (100%) of the difference between the STATE'S estimated amount of the construction contract portion of the Project and the eligible amount of the construction contract funding.

## II. THE TOWN'S DUTIES AND RESPONSIBILITIES:

- A. The TOWN will concur with the design of the Project to ensure the design meets the TOWN'S needs.
- B. The TOWN will arrange for all needed right-of-way and utility adjustments and certify that all right-of-way and utility adjustments or agreements are in place prior to the STATE'S advertisement and the letting of the Project.
- C. Prior to receiving final plans, the TOWN will provide the STATE with a cost estimate representing the TOWN'S anticipated cost for self-performing work, also known as force account. The force account work contemplated must be federal aid eligible. This estimate will be used to pursue FHWA approval of local agency force account in accordance with Paragraph I.F. The TOWN will submit cost effectiveness documentation for use of force account to STATE for review.
- D. The TOWN will provide force account services, labor, material, and equipment as follows:
  - i. The TOWN will provide the following force account services for the non-infrastructure portion of the project:
    - a. 10 bikes
    - b. 10 helmets
    - c. Sheriff's Department Bike Education Program
    - d. Locks
    - e. Water Bottles
  - ii. To receive credit for the force account services as described above, the TOWN will provide the following information to the STATE'S Office of Project Development upon completion of the force account work:

- a. The TOWN will provide a daily labor record containing the name of the person providing the service, dates the person worked, number of hours worked, the project number, and a description of the type of work completed. A sample form of the daily labor records is attached as **Exhibit C**.
  - b. The TOWN will provide a weekly labor record containing the name of the person providing the service, the gross hours worked, the regular hours worked, the overtime hours worked, the pay rate for both regular hours and overtime hours, the dates the person worked, a description of the type of work completed, and the project number. A sample form of the weekly labor record is attached as **Exhibit D**.
  - c. The TOWN is not required to use the forms provided as exhibits but must provide the information contained in the forms.
- E. Prior to receiving final plans, the TOWN will provide the STATE with a cost estimate representing the TOWN'S anticipated value of donations. This estimate will be used to pursue FHWA approval of donations accordance with Paragraph I.G.
- F. The TOWN will provide the STATE a separate cost estimate for donations. To receive credit as donated labor and materials the work must be federal aid eligible.

In order to receive credit for donations, the TOWN will calculate rates as follows:

- a. For donated labor, the TOWN should use the Value of a Volunteer Hour for South Dakota per the Federal Highway Administration's (FHWA'S) recommend Independent Sector website at: [http://www.independentsector.org/volunteer\\_time](http://www.independentsector.org/volunteer_time) to calculate the most current value of a volunteer for one hour of work.
  - b. For donated materials, the TOWN should determine the fair market value at the time of donation.
- G. Upon completion of force account work and receipt of donations, the TOWN will provide to the STATE proper documentation of force account as identified in Paragraph II.D.ii. and donations to be applied to offset the TOWN'S 19.68% match on TA funds.
- H. After offsetting force account and donations to TOWN'S 19.68% match on TA funds, the STATE will submit billing to the TOWN for one hundred percent (100%) of any costs exceeding One Hundred Eighty-nine Thousand, Seven Hundred Ninety-five Dollars (\$189,795.00), including the TOWN'S additional match of the as-bid costs as detailed in Paragraph I.K. above; one hundred percent (100%) of any non-participating costs; one hundred percent (100%) of any costs deemed ineligible; and, if applicable pursuant to Paragraph I.H. above, one hundred percent (100%) of the difference between the STATE'S estimated amount of the construction contract portion of the Project and the eligible amount of the construction contract funding.
- I. The TOWN will perform all management, operation, and maintenance of the Project once the Project is completed. The required maintenance will include, but not be limited to:
- i. Debris and litter removal;
  - ii. Maintenance and replacement of sidewalks, curb ramps, and detectable warnings, in accordance with the Americans with Disabilities Act;
  - iii. Maintenance, repair, and replacement of the Project;
  - iv. Snow and ice removal and any necessary hauling of snow that has been removed all in accordance with the TOWN'S policy and practices;
  - v. Sweeping;
  - vi. Mowing where undesirable or noxious vegetation exists; and
  - vii. Any repair or maintenance of the STATE'S right-of-way related to or necessitated by the installation, repair, and maintenance of the Project.
- J. The TOWN will obtain all the necessary Project related environmental clearances, approvals, and permits and any other federally required clearances, approvals, or permits, including, but not limited to, Federal Emergency Management Agency (FEMA) flood plan insurance maps and those from the State Historical Preservation Office, Tribal Consultation, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and the Departments of Game, Fish and Parks and Environment and Natural

Resources. The TOWN will submit documentation to the STATE verifying Project approval has been obtained from the required agencies prior to receiving the STATE'S approval of the Project.

- K. The TOWN will make no operational adjustments without prior written approval from the STATE and FHWA.
- L. If the TOWN defaults under this Agreement, the TOWN will reimburse the STATE and the Federal Highway Trust Fund the amount of all funds expended under the Project for the TOWN'S construction contract Project items.
- M. The TOWN will submit an invoice to the STATE not more often than monthly or less often than quarterly, except when quarterly invoices are less than One Hundred Dollars (\$100.00), for 19.68% of eligible incurred non-infrastructure costs. The TOWN must submit proper documentation with the invoice for the STATE'S review and approval.
- N. The TOWN will indemnify and defend the STATE, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceedings that arise as a result of any act or omission of the TOWN or the TOWN'S officers, agents, or employee. The TOWN is not required to be responsible for nor to defend against claims or damages arising solely from errors or omissions of the STATE, its officers, agents, or employees.
- O. The TOWN will comply with all federal, state, and local laws, together with all ordinances and regulations applicable to the work and will be solely responsible for obtaining current information on such requirements. The TOWN will procure all licenses, permits, or other rights necessary for the fulfillment of their obligations under this Agreement. The TOWN'S noncompliance with these requirements will be cause for the STATE to withhold participation and reimbursement.
- P. The TOWN warrants that the TOWN has not employed or retained any company or person, other than a bona fide employee working solely for the TOWN, to solicit or secure this Agreement, and that the TOWN has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the TOWN, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the STATE will have the right to terminate this Agreement without liability, or, in the TOWN'S discretion to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- Q. The TOWN will be bound by **Exhibit B**, entitled, "Standard Title VI/Nondiscrimination Assurances Appendix A & E," attached to and made a part of this Agreement by reference.
- R. The TOWN will provide services in compliance with the Americans with Disabilities Act of 1990 and any amendments.
- S. All project charges will be subject to audit in accordance with the STATE'S current procedures and U.S. Office of Management and Budget (OMB) Circular regulations, found at 2 CFR Part 200. The CFDA Number for these funds is 20.205. Allowable costs will be determined in accordance with 2 CFR Part 200.

The TOWN will maintain accurate cost accounting systems for all costs incurred under this Agreement and clearly identified with activities performed under this Agreement.

Upon reasonable notice, the TOWN will allow the STATE, through any authorized representative to have access to and the right to examine and copy all records, books, papers, or documents related to services rendered under this Agreement. The TOWN will keep these records clearly identified and readily accessible for a period of three (3) years after the date final payment under this Agreement is made and all other pending matters are closed.

If the TOWN expends Seven Hundred Fifty Thousand Dollars (\$750,000.00) or more in federal funds during any TOWN fiscal year covered, in whole or in part, under this Agreement, then the TOWN will be subject to the single agency audit requirements of the US Office of Management and Budget (OMB) Circular regulations, found at 2 CFR Part 200. If the TOWN expends less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) during any TOWN fiscal year, the STATE may perform a more limited program or performance audit related to the completion of Agreement objectives, the eligibility of services or costs and adherence to Agreement provisions.

- T. The TOWN will report to the STATE any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject the TOWN, the STATE, or the STATE'S officers, agents, or employees to liability. The TOWN will report any such event to the STATE immediately upon discovery.

The TOWN'S obligation under this section will only be to report the occurrence of any event to the STATE and to make any other report provided for by their duty or applicable law. The TOWN'S obligation to report will not require disclosure of any information subject to privilege or confidentiality under law (such as attorney-client communications). Reporting to the STATE under this section will not excuse or satisfy any obligation of the TOWN to report any event to law enforcement or other entities under the requirements of any applicable law.

- U. The TOWN may not assign, sublet, or transfer this Agreement or any interest in this Agreement without the STATE'S written permission to do so.
- V. The TOWN certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- W. The TOWN certifies, to the best of the TOWN'S knowledge and belief, that no federal appropriated funds have been paid or will be paid, by or on behalf of the TOWN, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or cooperative Agreement. If any funds other than federal appropriated funds have been paid or will be paid to any of the above-mentioned parties, the TOWN will complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The TOWN will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontract, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

- X. The TOWN will be solely responsible for any damages to the Project, including, but not limited to, damages as a result of traffic accident impact and vandalism.
- Y. The TOWN will assume all risk of loss or damage to the Project, inclusive of free or unused materials, supplies, and equipment, however caused, resulting directly or indirectly, by reasons of the construction, repair, replacement, maintenance, removal, or use of the Project, and releases the STATE from any and all liability on account of such loss or damage, whether or not the negligence of the STATE contributed to this loss or damage in whole or in part.
- Z. The TOWN will be responsible for any injury or property damage suffered by any user of the Project traveling through or within the STATE'S right-of-way.
- AA. The TOWN will limit the use of the Project to use by the general public and for no other purpose.
- BB. If the TOWN anticipates performing construction activities, the TOWN will be required to furnish the STATE the following certificates of insurance and assure that the insurance is in effect for the life of this Agreement:
- i. Commercial General Liability Insurance:

The TOWN will maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it will apply separately to this Agreement or be no less than \$2,000,000.00.

ii. Business Automobile Liability Insurance:

The TOWN will maintain business automobile liability insurance or equivalent form with a limit of not less than \$500,000.00 for each accident. Such insurance will include coverage for owned, hired, and non-owned vehicles.

iii. Workers' Compensation Insurance:

The TOWN will procure and maintain workers' compensation coverage as required by South Dakota law.

**III. THE PARTIES FURTHER UNDERSTAND AND MUTUALLY AGREE AS FOLLOWS:**

- A. Neither the STATE nor the FHWA will be responsible for any expenses or costs incurred by the TOWN under this Agreement prior to the date of the STATE'S written Notice to Proceed.
- B. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement may be terminated by the STATE. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.
- C. This Agreement depends upon the continued availability of federally appropriated funds and expenditure authority from Congress for the Transportation Alternative Program. If for any reason Congress fails to appropriate Transportation Alternative Program funds or grant expenditure authority, or Transportation Alternative Program funds become unavailable by operation of law or federal funds reductions, this Agreement may be terminated by the STATE. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.
- D. If any court of competent jurisdiction holds any provision of this Agreement unenforceable or invalid, such holding will not invalidate or render unenforceable any other provision of this Agreement.
- E. All other prior discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and, except as specifically provided in this Agreement, this Agreement constitutes the entire Agreement with respect to the subject matter.
- F. The STATE may terminate this Agreement with or without cause. If the TOWN breaches any term or condition of this Agreement, the STATE may terminate this Agreement at any time with or without notice. If the STATE terminates this Agreement for such a default, the STATE may adjust any payment due to the TOWN at the time of termination to cover any additional costs to the STATE due to the TOWN'S default. If after the STATE terminates for a default by the TOWN it is determined the TOWN was not at fault, then the TOWN will be paid for eligible services rendered and expenses incurred up to the date of termination.
- G. If the STATE terminates this Agreement for fault on the part of the TOWN, the STATE will be entitled to recover payments made to the TOWN.
- H. This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- I. This Agreement may not be amended, except in writing, which writing will be expressly identified as a part of this Agreement and be signed by an authorized representative of each of the parties.
- J. Any dispute between the parties concerning this Agreement will be referred to the Secretary of the South Dakota Department of Transportation or duly authorized representative for determination, whose decision in the matter will be final and conclusive on the parties to this Agreement.
- K. Any notice or other communication required under this Agreement will be in writing and sent to the STATE at 700 East Broadway, Pierre, SD 57501-2586. Notices will be given by and to Jerry Ortbahn, Office of Project Development on behalf of the STATE, and by and to Vicki Henrichsen, Town Board President, on behalf of the TOWN, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties will be deemed to have been delivered when mailed by first class mail, or, if personally delivered, when received by

such party; provided, however, that notice of default or termination will be sent by registered or certified mail.

- L. The STATE may, at any time, revoke this Agreement and notify the TOWN that the TOWN must remove or permit the removal of the Project from the right-of-way by a date certain. Removal of the Project will consist of removing the sidewalk and back-filling the disturbed area to maintain or restore adequate stability. If revocation of this Agreement is due to a proposed change in the highway, the STATE will give the TOWN at least ninety (90) days' written notice of the need to remove the Project. Upon notification from the STATE that the Project must be removed, the TOWN will, at the TOWN'S sole cost and expense, remove the Project from the right-of-way no later than the date designated by the STATE. The TOWN will not be entitled to any compensation of any kind for removal of the Project from the right-of-way. If the TOWN does not remove the Project by the designated deadline, the STATE may remove and dispose of the Project. The parties agree that removal of the Project from the right-of-way may entail removal of those portions of the Project which do not occupy the right-of-way. The TOWN will hold the STATE, its employees, officers, agents, and contractors, harmless for any damage to the Project, including any portion of the Project which does not occupy the right-of-way, and for any damage to the TOWN'S property.

#### IV. TERM

The effective date of this Agreement will be the date this Agreement is signed by the STATE'S Project Development Engineer. This Agreement will terminate on December 31, 2023, unless extended by written agreement between the parties.

If applicable, the TOWN will complete the non-infrastructure portion of the Project work contemplated by the Agreement by December 31, 2023.

- V. **SIGNATURE AUTHORITY.** The TOWN has designated its Town Board President as the TOWN'S authorized representative and has empowered the Town Board President with the authority to sign this Agreement on behalf of the TOWN. A copy of the TOWN'S Board, Commission, or Council minutes or resolution authorizing the execution of this Agreement by the TOWN'S authorized representative is attached to this Agreement as **Exhibit G**.

SIGNATURE PAGE FOLLOWS

The TOWN and the STATE, by signing this Agreement, evidence authority to enter into this Agreement through formal action of their governing bodies.

Town of Hermosa, South Dakota

By: Tucker Amundson

Its: Town Board President

Date: May 20, 2020

Attest:

Paul Bodstad

Town Auditor/Clerk

(Town Seal)

State of South Dakota  
Department of Transportation

By: Mark A. Reynolds

Its: Project Development Engineer

Date: 6/3/20

EXHIBIT A

<b>Type of work</b>	<b>Federal share</b>	<b>Sponsor share/local match</b>	<b>Total</b>
Design/engineering	\$ 18,310.00	\$ 4,290.00	\$ 22,600.00
Right-of-way acquisition	\$ 0.00	\$ 0.00	\$ 0.00
Utility relocations	\$ 0.00	\$ 0.00	\$ 0.00
Environmental mitigation	\$ 3,240.00	\$ 760.00	\$ 4,000.00
Construction	\$ 114,290.00	\$ 26,810.00	\$ 141,100.00
Construction engineering	\$ 10,610.00	\$ 2,490.00	\$ 13,100.00
Non-infrastructure	\$ 5,995.00	\$ 3,000.00	\$ 8,995.00
	<b>Federal share</b>	<b>Local Match</b>	<b>Total</b>
<b>TOTAL</b>	<b>\$ 152,445.00</b>	<b>\$ 37,350.00</b>	<b>\$ 189,795.00</b>

# Contractor's Application For Payment No. #01

Application Period: 1/28/2022		Via (Engineer): Affordably Creative Engineering Services	
To (Owner): Town of Hermosa	From (Contractor): R.C.S. Construction	Pay Application #1	
Project: Extension Project	Contract: 202149	Engineer's Project No.: 21-1144d	
Owner's Contract No.:	Contractor's Project No.:		

## Application for Payment

### Change Order Summary

Approved Change Orders	Number	Additions	Deductions
1. ORIGINAL CONTRACT PRICE			\$ 564,981.04
2. Net change by Change Orders			\$ -
3. CURRENT CONTRACT PRICE (Line 1 ± 2)			\$ 564,981.04
4. TOTAL COMPLETED AND STORED TO DATE (Column F on Progress Estimate)			\$ 333,473.39
5. RETAINAGE (5%) <span style="border: 1px solid black; padding: 2px;">10%</span>			\$ 16,859.96
a. Work Completed			\$ -
b. 0% x \$0.00 Stored Material			\$ -
c. Total Retainage (Line 5a + Line 5b)			\$ 16,859.96
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c)			\$ 320,339.25
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)			\$ -
8. AMOUNT DUE THIS APPLICATION			\$ 320,339.25
9. BALANCE TO FINISH, PLUS RETAINAGE (Column G on Progress Estimate + Line 6 above)			\$ 244,544.79
TOTALS			
NET CHANGE BY			
CHANGE ORDERS			

## Contractor's Certification

The undersigned Contractor certifies that: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

By:  Approved by:  2/7/2022

Payment of: \$ **\$ 301,260.52**

(Line 8 or other - attach explanation of other amount)

is recommended by: 

Payment of: \$ \_\_\_\_\_

(Line 8 or other - attach explanation of other amount)

is approved by: \_\_\_\_\_ (Owner)

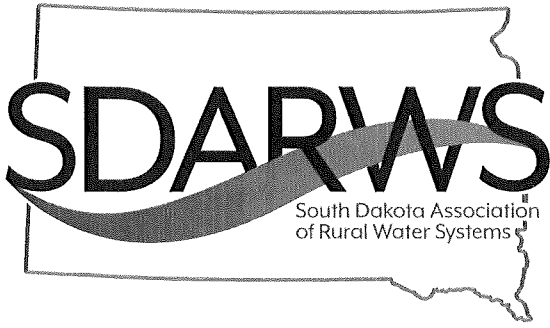
Approved by: \_\_\_\_\_ Funding Agency (if applicable)

∞ TT

# Progress Estimate Contractor's Application #01

Application Period:		Town of Hermosa - Water & Sewer Extension Project		Application Number: #01		January 28, 2022							
A		B		C		D		E		F		G	
Item		Contract Information		Work Completed		Value of Work Installed to Date		Materials Presently Stored (not in C or D)		Total Completed and Stored to Date (D + E)		Balance to Finish (B - F)	
Bid Item No.	Item	Units	Unit Price	Total Value of Item (\$)	Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C or D)	Total Completed and Stored to Date (D + E)	% (F / B)	Balance to Finish (B - F)			
1	Mobilization	1.0	\$ 36,966.36	\$36,966.36	0.8	\$ 29,573.09		\$ 29,573.09	80%	\$ 7,393.27			
2	Miscellaneous and Incidentals	1.0	\$ 16,670.31	\$16,670.31	0.8	\$ 13,336.25		\$ 13,336.25	80%	\$ 3,334.06			
3	Erosion and Sediment Control	1.0	\$ 5,443.75	\$5,443.75	0.8	\$ 4,355.00		\$ 4,355.00	80%	\$ 1,088.75			
4	Traffic Control	1.0	\$ 3,792.69	\$3,792.69	0.8	\$ 3,034.15		\$ 3,034.15	80%	\$ 758.54			
5	8" Water Main C-900, DR-18	2876.0	\$ 61.11	\$175,752.36	2444.6	\$ 149,389.51		\$ 149,389.51	85%	\$26,362.85			
6	6" Water Main C-900, DR-18 (PH LEADS)	36.0	\$ 64.31	\$2,315.16	21.6	\$ 1,389.10		\$ 1,389.10	60%	\$926.06			
7	8" 90° Horiz. Bend	2.0	\$ 724.35	\$1,448.70		\$ -		\$ -	0%	\$1,448.70			
8	8" 11.25" Vertical Bend	6.0	\$ 613.54	\$3,681.24	4.8	\$ 2,945.95	\$2,454.16	\$ 3,681.24	100%	\$0.00			
9	8" 22.5" Vertical Bend	4.0	\$ 619.11	\$2,476.44	2.4	\$ 1,476.44	\$1,238.22	\$ 2,476.44	100%	\$0.00			
10	8" Gate Valve	6.0	\$ 2,328.71	\$13,972.26	4.02	\$ 9,361.41		\$ 9,361.41	67%	\$4,610.85			
11	8" x 6" x 8" Tee	6.0	\$ 832.59	\$4,995.54		\$ -		\$ -	0%	\$4,995.54			
12	8" Cap	1.0	\$ 408.69	\$408.69	1	\$ 408.69		\$ 408.69	100%	\$0.00			
13	Broiling of Shorls Road for water and sewer mains	1.0	\$ 30,020.99	\$30,020.99	1	\$ 30,020.99		\$ 30,020.99	100%	\$0.00			
14	Sanitary Sewer Main, 10" PVC	2901.0	\$ 59.28	\$171,971.28	725.25	\$ 42,992.82		\$ 42,992.82	25%	\$128,978.46			
15	48" PCC Manhole	8.0	\$ 3,981.35	\$32,889.20	2	\$ 7,162.70		\$ 7,162.70	25%	\$21,488.10			
16	Fire Hydrant w/Aux Valve	5.0	\$ 6,477.46	\$32,387.30	3	\$ 19,432.38		\$ 19,432.38	60%	\$12,954.92			
17	Flush Mounted Tracer Wire Access Box	200.0	\$ 477.84	\$95,568.00	200	\$ 17,886.00		\$ 17,886.00	100%	\$0.00			
18	Sewer Main Encasement with Insulation	3225.0	\$ 89.43	\$288,000.00		\$ -		\$ -	0%	\$288,000.00			
19	Seed, Fertilize and Mulch	1.0	\$ 1.85	\$1.85		\$ -		\$ -	0%	\$1.85			
20	Material Testing	1.0	\$ 4,499.07	\$4,499.07	0.6	\$ 2,699.44		\$ 2,699.44	60%	\$1,799.63			
21	1" Water Service with curb stop location TBD	1.0	\$ 3,286.65	\$3,286.65		\$ -		\$ -	0%	\$3,286.65			
				\$564,981.04		\$ 332,495.21		\$ 332,495.21	60%	\$232,485.83			
						\$334,733.91		\$334,733.91		\$232,485.83			

The field work only supports the revised bends. A section of water main remains incomplete. Contractor shall submit As-Builts if quantities change or if extra bends were provided.



8J

**MADISON**  
203 Center Street West  
PO Box 287  
Madison, SD 57042  
605-556-7219

**SPEARFISH**  
301 Seaton Circle  
PO Box 815  
Spearfish, SD 57783  
605-642-4031

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### Leak Detection Report

South Dakota Association of Rural Water Systems (SDARWS) conducted leak detection from Tuesday February 8<sup>th</sup> thru Thursday February 10<sup>th</sup> in the Town of Hermosa. The reason for the leak detection was an unusually large amount of run off from around the new school addition and an elevated water loss percentage.

SDARWS utilized it's leak detection trailer and started with its focus being the area around and North of the school. The water mains were evaluated coming from the water storage tanks south to Vilas Street and east to 2<sup>nd</sup> street. No water leaks were found in this area.

The water main from the booster station that feeds south to the north edge of the school property and then turns west to feed water to the west side of highway 79 was then evaluated to the valve at the west end of the school property. No leaks were found on this water main.

The next focus area was the dedicated 8-inch water main that comes from the well on the south side of town to the water storage tanks. This line runs completely around the school property except for the east side. No leaks were found on this water main.

SDARWS then evaluated from the valve at the west edge of the school property across highway 79 to all the users west and north of the valve. This would include the Flying J and mains west and North of there. No leaks were found in this area.

The final area that was evaluated was from 4<sup>th</sup> Street west along Vilas Street to 2<sup>nd</sup> Street and everything south of Vilas. The mobile home park, grocery store area and Ferguson development was also included in this area. This is an exceptionally large area to evaluate at one time and the flows exiting the trailer were at there lowest at 3.2 gallons per minute. The size of the area being evaluated and number of users that were in that area makes SDARWS believe that 3.2 gallons per minute is acceptable. This area could be evaluated again in the future, but all users would have to be shut off so that possibility of water being used during the testing would not skew the results.

Chlorine testing – Low chlorine residuals can be the result of minerals in ground water acting with the reagent that is used to test for chlorine. This will cause the water to turn pink when the reagent is added, giving a false sense of chlorinated water.

Sincerely,  
Mike Moeller  
Trainer/Technical Assistance Provider

110

**REQUEST FOR BIDS  
TOWN OF HERMOSA, SD**

**NOTICE IS HEREBY GIVEN** that the Town of Hermosa, Custer County, South Dakota is accepting sealed bids for a three-year contract providing for the collection and disposal of refuse and solid waste with the Town of Hermosa.

Bid specifications can be obtained from the Town of Hermosa Finance Office, 230 Main St., PO Box 298, Hermosa SD 57744, (605) 255-4291. Sealed bids plus proof of insurance must be received no later than 5:00 p.m. on Tuesday, March 15, 2022. Bids to be submitted to the Town of Hermosa Finance Officer should be clearly marked as SOLID WASTE CONTRACT BID on the outside envelope. Bids will be opened on Tuesday, March 15, 2022, during the regular Town Board Meeting, beginning at 6pm, MST, located at 230 Main St., Hermosa SD. The Town of Hermosa reserves the right to reject any or all bids.

Gail Boddicker  
Finance Officer

Published twice at the cost of \$\_\_\_\_  
(February 23, 2022 & March 2, 2022)

DRAFT FOR  
BD REVIEW

**TOWN OF HERMOSA, SOUTH DAKOTA  
SOLID WASTE COLLECTION AND DISPOSAL BID**

---

THIS BID has been prepared for services between the TOWN OF HERMOSA, SOUTH DAKOTA, a Municipal Corporation, hereinafter referred to as the “Town”, and

\_\_\_\_\_ (contractor)

\_\_\_\_\_ (address)

\_\_\_\_\_ (address)

hereinafter referred to as “Contractor”.

WHEREAS, the Town has is authorized to contract out for garbage collection and disposal, and

WHEREAS, the Contractor is in the business of garbage (solid waste) collection and disposal and is equipped to provide said service to the Town of Hermosa, and has made arrangements for an acceptable disposal site for all solid waste collected from the Town of Hermosa, and

WHEREAS, the Parties to this Agreement desire to enter into an Agreement for the collection and disposal of refuse and solid waste in the Town of Hermosa, South Dakota, now therefore,

IN CONSIDERATION OF THE MUTUAL AGREEMENTS AND COVENANTS HEREIN CONTAINED, THE TOWN AND THE CONTRACTOR DO HEREBY AGREE AS FOLLOWS:

**Section 1. Term of Amended Agreement**

The term of this Agreement shall begin upon execution by both parties hereto and shall terminate on April 1<sup>st</sup>, 2025.

**Section 2. Areas of Service**

The Areas of Service in the Town in which the Contractor will perform services pursuant to the Agreement shall include all residential dwelling units as described, and provided by, of the Town of Hermosa.

**Section 3. Scope of Services**

SOLID WASTE COLLECTION AND DISPOSAL. The Contractor shall provide garbage collection service to the Town as follows:

**RESIDENTIAL GARBAGE COLLECTION**

Rates to be set at \_\_\_\_\_ per month, per each single family domestic unit or residence, as described, and garbage collected once a week on \_\_\_\_\_ mornings.

- Collection of garbage on major holidays to be delayed by \_\_\_\_\_ day(s).
- Billing for residential services to be done monthly by the Town of Hermosa.
- Garbage to be placed along road by \_\_\_\_\_ a.m. on collection day(s).
- Garbage to be placed in (type of container) \_\_\_\_\_.

- Limitations (#bags, lbs, etc., if any) \_\_\_\_\_.
- Restrictions on collection \_\_\_\_\_

- Additional fees for collection of garbage must be reported and documented, to be settled between the contractor and the Town of Hermosa, and will be billed directly to the resident by the Town of Hermosa.

\_\_\_\_\_ to be settled between resident and Contractor and will be billed directly by Contractor for those circumstances.

- Ashes or cinders must be handled in such a manner to insure driver and equipment safety.
- Exclusions for collections \_\_\_\_\_

**COMMERCIAL GARBAGE COLLECTION**

Each business or institution may choose to, but not required, arrange independently with Contractor for necessary collection services and fees.

**YARD WASTE**

Will be picked up on an ‘as needed’ basis, with at least \_\_\_\_\_ business day notice provided by the Town of Hermosa to the contractor, at a rate of \_\_\_\_\_ per pull.

**RECYCLING OFFERED ( ) Yes ( ) No**

**(NOTE: The Town of Hermosa has opted out of mandatory recycling, but is not opposed to it being offered as an optional item to residents)**

**Additional Cost?** \_\_\_\_\_

**Curbside** \_\_\_\_\_ **or Community drop** \_\_\_\_\_

**Pickup day(s)** \_\_\_\_\_

**Other Recycling Info** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## SPRING AND FALL CLEANUP

- One day each in the spring and fall (optional) will be designated for Town wide clean up
  - Clean-up days to be scheduled and agreed upon between the Town of Hermosa and Contractor
  - Exclusions for pickup are vehicle batteries, chemically contaminated containers or any other materials or items that would be deemed unacceptable by the Rapid City Landfill
  - Two 30 yard dumpsters shall be provided at a charge of \_\_\_\_\_, per dumpster.
  - Other
- 
- 
- 

## GENERAL PERFORMANCE REQUIREMENTS

1. **COLLECTION VEHICLES.** The Collection Vehicles used to perform this Agreement shall be licensed in the State of South Dakota and shall be operated in compliance with applicable State, Federal and Municipal regulations. All vehicles must be manufactured and maintained in proper repair and sanitary condition.
2. **SAFETY REQUIREMENTS.** The Contractor shall comply with ANSI, OSHA, and other federal, state and local laws and regulations applicable to the operation of Collection Vehicles. No vehicle shall be overloaded.
3. **STANDARD OF PERFORMANCE.** The Contractor's responsibilities under this Agreement shall be performed to the satisfaction of the Town, with the determination of the level of performance being in the sole discretion of the Town.

### **Section 4. Compensation**

- A. It is understood and agreed that the total number of residential pickup units shall be determined from time to time by the Municipal Finance Officer of the Town of Hermosa, and it shall be the duty of the Contractor to notify said Municipal Finance Officer from time to time as to any variance in the number of units from which Contractor is collecting garbage and waste.
- B. **Adjustment.** In the event Contractor shall incur increased landfill costs in the performance of its duties as specified hereunder, then it shall be entitled to submit a modified rate schedule to the Town of Hermosa, incorporating said increased landfill costs into a new proposed rate schedule and said proposed rate schedule shall be considered by the Town Board of Trustees of the Town of Hermosa at its next regularly scheduled Board of Trustees meeting. The Town Board of Trustees of the Town of Hermosa shall have the power to either adopt or reject said proposed modifications and in the event they shall adopt same then this Contract shall be amended accordingly. In the event the Town Board of Trustees shall reject said increased rate schedule, then Contractor shall have the election of continuing under the Contract then existing or may terminate its services to the Town of Hermosa and thereby cancel this Contract upon six months Notice to said Town Board of Trustees.

### **Section 5. Independent Contractor**

The Contractor shall perform all work and services described herein as an independent Contractor and not as an officer, agent, servant or employee of the Town. The Contractor shall have exclusive control of and the exclusive right to control the details of the services and work performed

hereunder and all persons performing the same and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be construed as creating a partnership or joint venture between the Town and the Contractor. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of the Town, nor shall any such person be entitled to any benefits available or granted to employees of the Town. The Contractor shall not enter into any subcontracts for performance of its responsibilities under this Agreement or its amendments without the written consent of the Town.

#### **Section 6. Non-assignment**

The Contractor shall not assign, transfer or convey this Agreement or its amendments or the Contractor's rights, duties or obligations hereunder or any part thereof without the previous written consent of the Town. The Town may, at its option, terminate this Agreement and/or its amendments if the Contractor attempts to assign, transfer or convey this Agreement and/or its amendments or Contractor's rights, duties or obligations hereunder.

#### **Section 7. Permits and Licenses**

The Contractor, at its sole cost and expense, shall obtain and maintain through the term of this Agreement and its amendments, all permits, licenses and approvals necessary or required for the Contractor to perform the work and services described herein.

#### **Section 8. Compliance with Laws and Regulations**

The Contractor agrees that, in the performance of work and services under this Agreement and/or its amendments, the contractor will qualify under and comply with any and all federal, state and local laws and regulations now in effect, or hereinafter enacted during the term of this Agreement and/or its amendments which are applicable to the Contractor, its employees, agents or subcontractors, if any, with respect to the work and services described herein.

#### **Section 9. Insurance**

The Contractor shall obtain and maintain throughout the term of this Agreement and/or its amendments at the contractor's sole cost and expense, worker's compensation insurance, and liability insurance coverage. The insurance provided herein shall hold harmless the Town for actions of the Contractor, injuries to the Contractor's employees and to also hold harmless the Town for actions of the Contractor's subcontractors.

**Proof of insurance, as required above, must be included with bid.**

#### **Section 10. Indemnification and Hold Harmless Agreement**

The Contractor agrees to indemnify, hold harmless and defend the Town, its officers, employees, agents and servants from and against any and all liability, claims, demands, actions or suits, of whatsoever character or kind, arising or resulting from, or in any way connected with, the Contractor's performance of this Agreement and/or its amendments, the operations of the Contractor, its agents, employees or subcontractors, or the failure of the Contractor to comply with the provisions and requirements of all applicable permits, licenses, laws or regulations.

### **Section 11. Termination**

- A. In the event the contractor defaults in the performance of any of the covenants or agreements to be kept or performed by it under the terms of this Agreement and/or its amendments, or in the event the performance of the Contractor becomes unsatisfactory to the Town, the Town shall notify the Contractor in writing of the nature of such default or unsatisfactory condition. Within fifteen (15) days following such notice, the Contractor shall:
1. Correct the default or unsatisfactory condition, or
  2. In the case of a default or unsatisfactory condition not capable of being corrected within fifteen (15) days, the Contractor shall commence correcting the default within fifteen (15) days of the Town's notification thereof, and thereafter correct the default or unsatisfactory condition with diligence, and within such specified time beyond fifteen (15) days as the Town shall in its sole discretion agree to allow.
- B. If the Contractor fails to correct the default or unsatisfactory condition as provided above, the Town, without further notice, shall have all of the following rights and remedies which the Town may exercise singly or in combination:
1. The right to declare that this Agreement and/or its amendments together with all rights granted to the Contractor hereunder are terminated, effective upon such date as the Town shall designate.
  2. The right to contract with others to perform the services otherwise to be performed by the contractor hereunder, or to perform such service itself; however, if the cost is more than reasonable, the Contractor will agree to pay the difference in cost incurred.

### **Section 12. Insolvency of Contractor – Termination of Agreement**

Either the appointment of a receiver to take possession of all or substantially all of the assets of the Contractor, or a general assignment by the Contractor for the benefit of creditors, or any action taken by or suffered by the Contractor under any insolvency or bankruptcy act shall constitute a breach of this Agreement by the Contractor and shall, at the option of the Town, terminate this Agreement and/or its amendments.

### **Section 13. Notices**

All notices required or contemplated by this Agreement and/or its amendments shall be personally served or mailed, postage prepaid and addressed to the parties as follows:

To the Town:

Town of Hermosa  
Town Finance Officer  
PO Box 298  
Hermosa, SD 57744

To the Contactor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 14. Waiver**

Failure of the Town to enforce its remedies with respect to any breach of any provision of this Agreement and/or its amendments shall not constitute or operate as a waiver of such breach or of any other breach of such provision or of any other provisions of this Agreement and/or its amendments.

**Section 15. Governing Laws**

This Agreement is entered into and is to be performed in the State of South Dakota. The Town and the Contractor agree that the law of the State of South Dakota shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

**Section 16. Amendment**

This Agreement and/or its amendments may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.

**Section 17. Entirety**

This Agreement contains the entire Agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

**Section 18. Contractor’s Representation**

The Contractor represents that:

1. The Contractor has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement.
2. This Agreement has been duly entered into and delivered and constitutes a legal, valid and binding obligation of the Contractor enforceable in accordance with its terms.

**Section 19. Non-Exclusive Rights**

The parties hereto understand and agree that certain organizations and non-profit groups shall be permitted to collect recyclables.

\_\_\_\_\_  
Contractor signature

\_\_\_\_\_  
Contractor phone

\_\_\_\_\_  
Date

Proof of insurance attached as described in Section 9 of this bid.

12G

**INDEPENDENT AUDIT SERVICES, PC**

Benjamin Elliott, CPA  
P.O. Box 262  
Madison, South Dakota 57042  
605.270.3020

February 5, 2022

Dan Holsworth, President  
Trustees of the Town of Hermosa  
Gail Boddicker, Finance Officer  
Town of Hermosa  
230 Main Street  
P.O. Box 298  
Hermosa, South Dakota 57744  
605.255.4291

Cash Basis  
Audit Engagement Letter  
For the One Year Ending December 31, 2021

Greetings,

01. This letter will confirm our understanding of the services I am to provide the Town of Hermosa (the Government) as of and for the one year ending December 31, 2021, subject to authorization by the Auditor General.

02. I will audit the financial statements of, as applicable, governmental activities, business-type activities, aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, which collectively comprise the basic financial statements of the Government as of and for the one year ending December 31, 2021.

03. Accounting standards generally accepted in the United States of America provide for certain supplementary information (SI), such as management's discussion and analysis (MD&A), to supplement the Government's basic financial statements. Such information, although not a part of the basic financial statements, is recommended by the Government Accounting Standards Board who consider it to be an essential part of financial reporting by placing the basic financial statements in an appropriate operational, economic, or historical context. Management acknowledges that it is responsible for the SI, that SI is measured and presented in accordance with prescribed guidelines, whether the methods of measurement or presentation have changed from those used in the prior period and, if applicable, the reasons for the change, and any significant assumptions underlying the measurement or presentation of SI. As part of my engagement, I will apply certain limited procedures to the Government's SI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to my inquiries, the basic financial statements, and other knowledge I obtained during my audit of the basic financial statements. I will not express an opinion or provide any assurance on the information because the limited procedures do not provide me with sufficient evidence to express an opinion or provide any assurances. The following SI is required by generally accepted accounting principles and will be subject to certain limited procedures, but will not be audited.

- (1) Management's Discussion and Analysis
- (2) Budgetary Comparison Schedules - Budgetary Basis
- (3) Schedule of the City's Proportionate Share of the South Dakota Retirement System's Net Pension (Asset)/Liability
- (4) Schedule of the City's Contributions to the South Dakota Retirement System

04. Supplementary information other than SI also accompanies the Government's financial statements. Management acknowledges that it is responsible for (a) preparing the supplementary information, (b) providing the auditor with written representation concerning the supplementary information, (c) including the auditor's report on the supplementary information in any document that both contains the supplementary information and indicates the auditor has reported on the supplementary information, and (d) either presenting the supplementary information with the audited financial statements or, if the supplementary information will not be presented, making the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information and auditor's report thereon are issued. I will subject the following supplementary information to the auditing procedures applied in my audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America and will provide an opinion on it in relation to the financial statements taken as a whole. Supplementary information will include the following.

- (1) Schedule of Long-term Debt (if required)
- (2) Schedule of Expenditures of Federal Awards (if required)
- (3) Combining Nonmajor Fund Financial Statements (if required)

05. Additional supplementary information other than SI and audited supplementary information mentioned above, may also accompany the Government's financial statements. I will not subject the following supplementary information to the auditing procedures applied in my audit of the financial statements and will not provide an opinion on it in relation to the financial statements taken as a whole.

- (1) Other schedules (as required)

#### AUDIT OBJECTIVES

06. The audit is conducted knowing that I am independent of the Town of Hermosa in both fact and appearance. The objective of my audit is the expression of independent opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with a modified cash basis of accounting (Special Purpose Framework) and to report on the fairness of the supplementary information referred to in paragraph 04 above when considered in relation to the financial statements as a whole. The objective also includes reporting on: (1) Internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on financial statements in accordance with *Government Auditing Standards*. (2) If required, internal control related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and OMB *Uniform Guidance* (Title 2 U.S. Code of Federal Regulations, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

07. The reports on compliance and internal control will each include a statement that the purpose of this report is solely to describe the scope of my testing of compliance and internal control over financial reporting, and the results of that testing, and not to provide an opinion on the effectiveness of the Town of Hermosa's compliance or internal control over financial reporting. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Government's compliance and internal control over financial reporting. Accordingly, this report is not suitable for any other purpose.

08. My audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Controller General of the United States; the Single Audit Act Amendments of 1996 (if required); and the provisions of OMB Uniform Guidance (if required), and will include tests of accounting records, a determination of major programs(s) in accordance with OMB Uniform Guidance (if required), and other procedures I consider necessary to enable me to express such opinions and to render the required reports. If my opinion on the financial statements or the Single Audit compliance opinions (if required) are other than unqualified, I will fully discuss the reasons with you in advance. If circumstances occur related to the condition of your records, the availability of sufficient, appropriate audit evidence, or the existence of a significant risk of material misstatement of the financial statements caused by error, fraudulent financial reporting, or misappropriation of assets, which in my professional judgment prevent me from completing the audit or forming an opinion on the financial statements, I retain the right to take any course of action permitted by professional standards, including declining to express an opinion or issue a report, or withdrawing from the engagement.

#### MANAGEMENT RESPONSIBILITIES

09. Management is responsible for the basic modified cash basis financial statements and all accompanying information as well as all representations contained therein. Management is also responsible for identifying government award programs and understanding and complying with the compliance requirements, and for preparation of the schedule of expenditures of federal awards (if required) in accordance with the requirements of OMB Uniform Guidance.

10. I will assist with preparation of your modified cash basis financial statements, related notes to the financial statements, and the schedule of expenditures of federal awards. You are responsible for making all management decisions and performing all management functions relating to the financial statements, related notes to the financial statements, and the schedule of expenditures of federal awards (if required) and for accepting full responsibility for such decisions and the substantive outcome of the work. You will be required to acknowledge in the management representation letter my assistance preparation of the financial statements, notes to the financial statements, and the schedule of expenditures of federal awards (if required) and that you have reviewed and approved the financial statements, notes to the financial statements, and schedule of expenditures of federal awards (if required) prior their issuance and have accepted responsibility for them. Further, you are required to designate an individual with suitable skill, knowledge, or experience to oversee any nonaudit services I provide and for evaluating the adequacy and results of those services and accepting responsibility for them. Unless otherwise indicated, that individual for this audit shall be the Town of Hermosa's finance officer. Also, I will prepare the trial balance for use during the audit. My preparation of the trial balance will be limited to formatting information into a working trial balance based on the Government's chart of accounts and related general ledger. Further, it is understood that my assistance with the preparation of your trial balance, financial statements, related notes to the financial statements (including suggesting journal entries), and the schedule of expenditures of federal awards (if required) are nonaudit services which do not constitute an audit under *Government Audit Standards*.

11. Management is responsible for the design, implementation, and maintenance of effective internal controls, including internal controls over compliance, relevant to the preparation and fair presentation of financial statements that are free from material misstatements, whether due to fraud or error. Management is responsible for evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met and that there is reasonable assurance that government programs are administered in compliance with compliance require-

ments. Management is also responsible for the selection and application of accounting principles; for the fair presentation in the financial statements of the respective financial position of the applicable governmental activities, business-type activities, aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the Government and the respective changes in financial position and, where applicable, cash flows in conformity with United States modified cash basis accounting principles; and for compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

12. Management is also responsible to provide us with (1) access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation, and other matters; (2) additional information that I may request from management for the purpose of the audit; and (3) unrestricted access to persons within the Government from whom I determine it is necessary to obtain audit evidence. Management is also responsible for ensuring that financial records are reliable and properly recorded. Your responsibilities also include identifying significant vendor relationships in which the vendor has responsibility for program compliance and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to me in the representation letter that the effects of any uncorrected misstatements aggregated by me during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

13. You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing me about all known or suspected fraud or illegal acts affecting the government involving

- (1) management,
- (2) employees who have significant roles in internal control, or
- (3) others where the fraud or illegal acts could have a material effect on the financial statements.

Your responsibilities include informing me of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants.

14. Additionally, as required by OMB Uniform Guidance (if required), it is management's responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan. The summary schedule of prior audit findings should be available for my review by the date the draft is submitted for review. You are responsible for the preparation of supplementary information in conformity with United States generally accepted accounting principles. You agree to include my report on the supplementary information in any document that contains and indicates that I have reported on the supplementary information. You also agree to present the supplementary information with the audited financial statements OR make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with my report thereon.

15. Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for me previous financial audit, attestation engagements, performance audits, or other studies related to the objectives discussed in the "Audit Objectives" section of this letter. This responsibility includes relaying to me corrective actions taken to address significant findings and

recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on my current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

#### AUDIT PROCEDURES - GENERAL

16. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, my audit will involve judgment about the number of transactions to be examined and the areas to be tested. I will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from:

- (1) errors,
- (2) fraudulent financial reporting,
- (3) misappropriation of assets, or
- (4) violations of law or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity.

Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance on detecting abuse.

17. Because an audit is designed to provide reasonable, but not absolute assurance and because I will not perform a detailed examination of all transactions, there is a risk that material or noncompliance may exist and not be detected by me. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs (if required). However, I will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that come to my attention. I will also inform you of any violations of law or governmental regulations that come to my attention, unless clearly inconsequential, and of any material abuse that comes to my attention. I will include such matters in the audit report itself, my Letter of Comments which accompanies the audit report, and/or Single Audit reports (if required). My responsibility as an auditor is limited to the period covered by my audit and does not extend to any later periods for which I am not engaged as an auditor.

18. My procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories (if material), and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. I will request written representations from your attorney as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of my audit, I will require certain written representations from you about the financial statements and related matters.

#### AUDIT PROCEDURES - INTERNAL CONTROL

19. My audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risk of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that I consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial

statements. My tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in my report on internal control issued pursuant to *Government Auditing Standards*.

20. If this audit is subject to OMB Uniform Guidance Single Audit requirements, I will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that I consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, my tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in my report on internal control issued pursuant to OMB Uniform Guidance.

21. An audit is not designed to provide assurance on internal control or to identify significant deficiencies. However, during the audit, I will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards* and OMB Uniform Guidance.

#### AUDIT PROCEDURES - COMPLIANCE

22. As part of obtaining reasonable assurance about whether the modified cash basis financial statements are free of material misstatement, I will perform test of the Town of Hermosa's compliance with applicable laws and regulations and the provisions of contracts and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and I will not express such an opinion in my report on compliance issued pursuant to *Government Auditing Standards*.

23. If this audit is subject to OMB Uniform Guidance Single Audit requirements, OMB Uniform Guidance requires that I also plan and perform the audit to obtain reasonable assurance about whether the government has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs. My procedures will consist of tests of transactions and other applicable procedures described in the OMB Uniform Guidance and related addenda for the types of compliance requirements that could have a direct and material affect on each of the Government's major programs. The purpose of these procedures will be to express an opinion on the government's compliance with requirements applicable to each of its major programs in my report on compliance issued pursuant to OMB Uniform Guidance.

#### ENGAGEMENT ADMINISTRATION, FEES, AND OTHER

24. I will not use third-party service providers to provide auditing services for this engagement. The South Dakota Department of Legislative Audit or a licensed certified public accounting firm may be used to review the financial statements covered by this engagement letter or the related workpapers.

25. I understand that your employees will locate documents I select for testing, including information needed for confirmations.

26. Upon completion of my audit, I will issue a written report on the Government's financial statements. I cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify my opinion, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement. I will also issue a written report on compliance and internal control upon completion of my audit.

27. If this audit is subject to OMB Uniform Guidance Single Audit requirements, at the conclusion of this engagement, I will complete appropriate sections of the Data Collection Form that summarizes my audit findings. It is management's responsibility to submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditor's reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. I will coordinate with you the electronic submission and certification. If applicable, I will provide copies of my report for you to include with the reporting package you will submit to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditor's reports or nine months after the end of the audit period, unless a longer time is agreed to in advance by the organization or oversight agency for audits.

28. The audit documentation for this engagement is the property of Independent Audit Services, PC and constitutes confidential information. However, pursuant to authority given by law or regulation, I may be requested to make certain audit documentation available to the South Dakota Department of Legislative Audit or its designee, a federal agency providing direct or indirect funding, or the United States Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. I will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of myself. Furthermore, upon request, I may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other government agencies.

29. The audit documentation for this engagement will be retained for a minimum of five years after the report release or for any additional period requested by an applicable federal agency or pass-through entity. If I am aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, I will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

30. You have not requested that I extend my normal auditing procedures to address any specific area of your organization.

31. I expect to begin fieldwork for my audit in the summer of 2022 and to issue the draft of my report, including any suggested audit journal entries, by August 2022. Benjamin Elliott is the CPA who is responsible for supervising this engagement and signing the reports or authorizing another individual to sign them.

32. The estimated time to complete the audit is 80 hours.

33. My fee to audit the Town of Hermosa for the one year ending December 31, 2022 is a fixed price of \$5,000 with an additional charge of \$1,500 if the Town of Hermosa received \$750,000 or more of federal awards in 2021 and is subject to federal Single Audit requirements. There are no separate charges for out-of-pocket travel cost, lodging, telephone or copying. My audit billing will include a summary of professional time spent on this engagement.

34. Included in the above fee will be my availability for questions during 2022.

35. Billing of the audit fee will be for 75% of the amount owed on submission of the draft of the audit report and 25% upon acceptance of the final audit report by the Department of Legislative Audit. It is agreed, after the final audit report has been delivered to Town of Hermosa, that a billing for the remaining 25% of the audit will be submitted to the Commission for approval pending a final

Town of Hermosa  
Audit Engagement Letter  
February 5, 2022 -- Page Eight

acceptance by the Department of Legislative Audit. If payment is approved, payment will be held until after final acceptance by the Department of Legislative Audit is received.

36. Should unforeseen circumstances arise that would require a significant extension of my auditing procedures, I will discuss with you the specific matters involved before extending my audit scope and incurring additional costs. Any additional cost will be agreed to in advance and will be based on an hourly fee of \$125 per hour or a fixed amount depending on the circumstance.

37. The Department of Legislative Audit or I will prepare and publish, at your expense, a legal notice stating that an audit has been completed, where a copy of the audit report may be found on file for public inspection, together with a brief recital of the substantial items of error, irregularity or loss, in sufficient detail so that the public may be informed of the important findings of the audit.

38. *Government Auditing Standards* require that I provide you with a copy of my most recent external peer review report and any letter of comments, and any subsequent peer review reports and letter of comment received during the period of the contract. My 2016 peer review is attached to this proposal and a finding related to compilation reports has been corrected, but remains in effect and there have been no additional peer review reports or letters of comment.

39. I appreciate the opportunity to be of service to the Town of Hermosa and believe this letter accurately summarizes the significant terms of my engagement. If you have any questions, please contact me. If you agree with the terms of the engagement as described in this letter, please sign both copies where indicated: keep one copy for your records and return one copy to me. I will handle filing with the Department of Legislative Audit.

Thank you for the opportunity to present this proposal to the Town of Hermosa.

Sincerely,  
INDEPENDENT AUDIT SERVICES, P.C.

  
Benjamin Elliott, CPA

This letter correctly sets forth the understanding of the Town of Hermosa.

\_\_\_\_\_  
Dan Holsworth, President  
Board of Trustees

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gail Boddicker, Finance Officer

\_\_\_\_\_  
Date

**AN ORDINANCE TO AMEND THE TOWN OF HERMOSA ORDINANCE SECTION 30.01 (DEFINITIONS) BY ADDING A NEW SUBPARAGRAPH THERETO TO DEFINE THE TERM LEGAL VOTER FOR PURPOSES OF THE TOWN OF HERMOSA ORDINANCES CHAPTER 30 AND QUALIFICATION AS A HERMOSA BOARD OF TRUSTEE CANDIDATE**

**BE IT ORDAINED BY THE TOWN OF HERMOSA BOARD OF TRUSTEES THAT THE TOWN OF HERMOSA AMENDS THE TOWN OF HERMOSA ORDINANCE SECTION 30.01 (DEFINITIONS) BY ADDING A NEW SUBPARAGRAPH THERETO TO DEFINE THE TERM LEGAL VOTER FOR PURPOSES OF THE TOWN OF HERMOSA ORDINANCES CHAPTER 30 AND QUALIFICATION AS A HERMOSA BOARD OF TRUSTEE CANDIDATE AS FOLLOWS:**

LEGAL VOTER: To qualify as a *legal voter* in the Town of Hermosa elections as a candidate for public office to become a member of the Hermosa Board of Trustees, the candidate must be:

1. Be a citizen of the United States;
2. Actually live at and have no present intention of leaving the address described as their residency;
3. Be at least 18 years of age on the date of the next election
4. Has not been adjudged mentally incompetent
5. Is not currently serving a sentence for a felony conviction
6. Has canceled any previous voter registration
7. Further, pursuant to SDCL § 9-14-2, the candidate must have resided in the municipality at least three (3) months prior to the election. Specifically, SDCL § 9-14-2 provides that except as otherwise provided, no person may hold any elected municipal office who is not a qualified voter of the municipality and who has not resided therein at least three months next preceding his election or appointment. If the person has resided in an area annexed, pursuant to chapter 9-4, for at least three months, he may hold any municipal office. No person may hold any municipal office who is a defaulter to the municipality. This section does not apply to appointive officers.

Dared this \_\_\_ day of \_\_\_\_\_, 2022

BOARD OF TRUSTEES:

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Finance Officer

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Publication: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

**AN ORDINANCE TO AMEND THE TOWN OF HERMOSA ORDINANCE SECTION 30.05 (PLANNING AND ZONING BOARD; WAIVER) BY AMENDING SECTION 30.05 THERETO TO REDACT ITS CURRENT REFERENCE TO THE “Town Board” AND CHANGE THE REQUIRED MEETING ATTENDANCE TO REGULAR MEETINGS TO FOUR.**

**BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF HERMOSA THAT THE BOARD OF TRUSTEES AMENDS ORDINANCE SECTION 30.05 (PLANNING AND ZONING BOARD; WAIVER) BY AMENDING SECTION 30.05 THERETO TO REDACT ITS CURRENT REFERENCE TO THE “TOWN BOARD” AND CHANGE THE REQUIRED MEETING ATENDANCE TO REGULAR MEETING TO FOUR AS FOLLOWS:**

§ 30.05 PLANNING AND ZONING BOARD; WAIVER

All members of the Planning and Zoning Board appointed into office before or after the effective date of this chapter, are hereby required to attend at a minimum of four of the Planning And Zoning Board’s regularly scheduled meetings per quarter year; with the fiscal year being from June 1 of the current year to June 1 the following calendar year. In the event the member fails to attend meetings as required or should violate any provisions of this chapter, the “at-fault” member may be removed by the Board of Trustees governing board, at which time the governing board, with a two-thirds majority vote, may either allow the at-fault member to retain his or her appointed or elected seat, or request a notice of resignation from the at-fault member. Reasons for accepting or denying the appeal must be solely based on what is in the best interest of the town, and the at-fault member’s current and future ability to serve their community and board.

Dared this \_\_\_ day of \_\_\_\_\_, 2022

BOARD OF TRUSTEES:

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Finance Officer

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Publication: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

**AN ORDINANCE TO AMEND THE TOWN OF HERMOSA ORDINANCE SECTION 30.06 (BOARD OF TRUSTEES; WAIVER) BY AMENDING SECTION 30.06 THERETO TO ADD SPECIFIC GROUNDS FOR EXPULSION OF A BOARD OF TRUSTEE MEMBER AS A MEMBER OF THE BOARD OF TRUSTEES**

**BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF HERMOSA THAT THE TOWN OF HERMOSA ORDINANCE SECTION 30.06 (BOARD OF TRUSTEES; WAIVER) BE AMENDED TO ADD SPECIFIC GROUNDS FOR EXPULSION AND REMOVAL OF A BOARD OF TRUSTEE MEMBER AS A MEMBER OF THE BOARD OF TRUSTEES AS FOLLOWS:**

§ 30.06 BOARD OF TRUSTEES; PLANNING AND ZONING ;WAIVER.

- (A) All members of the Board of Trustees appointed or voted into office before or after the effective date of this chapter are hereby required to attend four of the Board's regularly scheduled meetings per quarter; with the fiscal year being from June 1 of the current year to June 1 of the following calendar year.
- (B) The Board of Trustees may expel and remove any member of the Board of Trustees upon the following grounds: misconduct, malfeasance, nonfeasance, crimes in office, drunkenness, gross incompetency, corruption, theft, oppression, gross partiality, any violation of the Town of Hermosa's Code of Conduct or failure to physically attend at least four of the six regularly scheduled Board of Trustee scheduled meeting per quarter as described in §30.06(A).
- (C) All members of the Board of Trustees appointed or voted into office before or after the effective date of this chapter shall execute the Town of Hermosa's Code of Conduct at the time they are sworn into office and shall comply with the same.
- (D) If it appears to the Board of Trustees that a member has violated any provisions of this chapter or grounds exist to expel and remove the violating member, the Board of Trustees shall conduct a fair and public hearing on whether the violating member should retain his or her appointed or elected position as a member of the Hermosa Board of Trustees.
- (E) Any expulsion and removal of a member of the Board of Trustees shall require a vote for expulsion and removal by ~~four (4) members~~ a quorum of the Board of Trustees.

Dared this \_\_\_\_ day of \_\_\_\_\_, 2022

BOARD OF TRUSTEES:

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Finance Officer

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Publication: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

**AN ORDINANCE TO AMEND THE TOWN OF HERMOSA ORDINANCE SECTION 30.07 (BOARD MEMBER COMPENSATION) BY AMENDING SECTION 30.07 THERETO TO REQUIRE A BOARD OF TRUSTEE MEMBER TO PHYSICALLY APPEAR FOR ALL REGULAR MEETINGS OF THE BOARD OF TRUSTEES, THE COMPENSATION PAID TO A MEMBER OF THE BOARD OF TRUSTEES AND PROHIBITING MEETINGS BY ELECTRONIC OR TELECONFERENCE MEANS.**

**BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF HERMOSA THAT THE TOWN OF HERMOSA ORDINANCE SECTION 30.07 (BOARD MEMBER COMPENSATION) BE AMENDED TO REQUIRE A BOARD OF TRUSTEE MEMBER TO PHYSICALLY APPEAR FOR ALL REGULAR MEETINGS OF THE BOARD OF TRUSTEES, THE COMPENSATION PAID TO A MEMBER OF THE BOARD OF TRUSTEES AND PROHIBITING MEETINGS BY ELECTRONIC OR TELECONFERENCE MEANS AS FOLLOWS:**

§ 30.07 BOARD MEMBER ATTENDANCE AND COMPENSATION.

- (A) In order to receive payment for meeting attendance, members must be physically present within ~~15 minutes of~~ ten minutes after the opening of the meeting, and remain physically present until adjournment of the meeting. Any variance of this regulation requires a 60 % (i.e. 3/5ths) vote from the present governing body to approve the payment.
- (B) Barring ~~exigent and exceptional~~ emergency circumstances, no regular or special Board of Trustees meeting shall be conducted through electronic means, teleconference, telephone or the like. All members of the Board of Trustees shall be physically present for the regular or special meetings.

Dated this \_\_\_ day of \_\_\_\_\_, 2022

BOARD OF TRUSTEES:

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Finance Officer

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Publication: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

13B

## Gail Boddicker

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**From:** Lynn Bren <lbren.sdpaa@sdmunicipalleague.org>  
**Sent:** Monday, February 7, 2022 10:10 AM  
**To:** Gail Boddicker  
**Cc:** Jerry Krambeck  
**Subject:** FW: Liability Question

Hello Gail

Thank you for reaching out to the SDPAA.

For anyone using Member property, we always recommend the use of a facilities use agreement. The agreement transfers the risk associated with the use of the member property back to the user, in this case Food Pantry. The facilities use agreement requires that the user agree to hold harmless and indemnify the town from claims arising out of the property use. In this case, we'd also recommend that you include a notice that the Town is not responsible for damage or loss of any kind to the property owned by or in the care custody or control of the Food Pantry. This would help insulate the Town from any claims relative to lost or spoiled food if there is a power outage or a failure of their equipment. May want to consider a clause which acts like a lease agreement with the Food Pantry, which outlines the rights and responsibilities of each party, including any physical changes to the property (if the cabinets are mounted vs free standing for example). The document would further discuss that the Town would not be responsible for any accident or injury to anyone working or volunteering for the food pantry/Feeding SD.

While putting up signs may dissuade people from filing claims, there is always the possibility that if someone slips and falls, they will seek out compensation from the Town as well as the Food Pantry. The sign does not relieve anyone of any responsibility. Courts will look at what the duty owed to the public is, and whether that duty was breached and resulted in an injury for which the Town or Feeding SD / Food Pantry would be responsible. Any coverage afforded by the SDPAA would not extend to claims made against the Food Pantry/Feeding SD. The SDPAA coverage may respond to claims against the Town only.

If you'd like Jerry or I to be available, depending on the timing, one of us can call into your meeting to discuss further. The Town's attorney should also be involved in the discussion of any agreements prior to any final execution of the same.

Lynn Bren, AIC SCLA  
SDPAA Deputy Director  
Cell: 605.254.6542  
Office: 800.658.3633 or 605.224.8654 (Option 2)

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**From:** Gail Boddicker <[gail@hermosasd.com](mailto:gail@hermosasd.com)>  
**Date:** Monday, February 7, 2022 at 9:32 AM  
**To:** Kristina Peterson <[kpeterson.sdpaa@sdmunicipalleague.org](mailto:kpeterson.sdpaa@sdmunicipalleague.org)>  
**Subject:** Liability Question

Kristina,

The Hermosa town board has been approached by a citizen who runs the local Food Pantry regarding using the lower level of our building for the Food Pantry. This would entail putting a freezer, cabinets, and food in the basement. Once a month they have families that will stop in and pick up meals. The workers may also be down there a few other times

to bring in food or any other activity that may arise. When asked about insurance, Lois (the person from the Food Pantry) said they have been told by Feeding South Dakota to just put up a sign indicating that they are not liable for any injuries, etc. Is this true/legal notice in case of an accident?

We are putting this on the February 15 agenda for further discussion.

Thanks for your attention.  
Gail

**Gail Boddicker**

Town of Hermosa  
230 Main St., PO Box 298  
Hermosa, SD 57744  
Phone: 605-255-4291



**AN ORDINANCE AMENDING THE TOWN OF HERMOSA ORDINANCES BY ADDING CHAPTER 117 TO REGULATE AND LICENSE TRANSIENT MERCHANTS**

**BE IT ORDAINED BY THE TOWN OF HERMOSA TO ENACT AN ORDINANCE AMENDING THE TOWN OF HERMOSA ORDINANCES BY ADDING CHAPTER 117 THERETO TO REGULATE AND LICENSE TRANSIENT MERCHANTS**

**§ 117.01 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context indicates or requires a different meaning.

***EVENT.*** An organized occurrence or happening where the town provides extraordinary services, including but not limited to, law enforcement or traffic control.

***PERMANENT BUSINESS.*** A business operating more than 4 months in 1 place by the same person.

***TEMPORARY BUSINESS.*** A business established for temporary operation only.

***TRANSIENT MERCHANT.*** Any person, firm, corporation, partnership or association not having an operating place of business within the town, who engages in temporary or transient business in the town selling goods, wares, merchandise or services, or a permanent business person, firm or corporation which is located within the town limits is selling the goods, wares, merchandise or services, away from his or her or its usual operating place of business and who, for the purpose of carrying the business, hires, leases or occupies any room, building, structure or space for the sale of the goods, wares, merchandise or services. 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 the temporary or transient business in connection with, or as a part of or in the name of any local dealer, trader, merchant or auctioneer.

***TRANSIENT PROFESSIONAL.*** One who does not have any established studio, office or place of business in the town, but who practices his or her profession in a hotel room, motel room, rooming house or in the customer's home.

**§ 117.02 LICENSE FOR TRANSIENT MERCHANTS AND PROFESSIONALS**

(A) *Fee.* Each transient merchant and transient professional practicing his or her profession shall obtain a license and pay a fee of \$800 minimum, per month.

(B) *Town sponsored events.* Transient merchant's fees for town sponsored events will be in the amount of \$25.

**§ 117.03 TRANSIENT MERCHANT LICENSE.**

No person shall engage in business as a transient merchant or transient professional, without a transient merchant's license for each structure, stand, tent, car, vehicle, booth or place used by the transient merchant or transient professional

#### **§ 117.04 APPLICATION FOR TRANSIENT MERCHANT LICENSE.**

To obtain a license, a transient merchant shall file, in the office of the 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, description of the goods he or she intends to handle, the date he or she acquired the goods, the name and address of the person from whom he or she acquired them and the place from whence they were last moved.

#### **§ 117.05 APPLICANT'S BOND.**

Each applicant for the transient merchant's license shall file with his or her application, a bond to the town to be approved by the Board of Trustees in the sum of \$1,000, conditioned for the payment of any license fee to become due to the town should any merchant continue to operate beyond any time for which he or she has paid, and further, the bond shall remain in effect for 1 year from the date of filing with the Finance Officer, which bond may be attached by any individual aggrieved by the acts or product of the licensee or his or her agents.

#### **§ 117.06 ISSUANCE OF LICENSE.**

On filing the application, bond and payment of the fee prescribed in this chapter, the town Finance Officer shall issue a license to the applicant to do business at the place described in the application, and for the time for which a license fee has been paid in advance.

#### **§ 117.07 EXEMPTIONS FROM DIVISION.**

This section shall not apply to the buying and selling of goods by cooperative associations, nor to sales where the proceeds are to be used exclusively for religious, charitable or benevolent purposes, nor to sales to wholesale or retail merchants, by sample, for future delivery made by representatives or established wholesalers or manufacturers, nor to sales by licensed peddlers, nor to the sale of fruits, vegetables, farm or garden products grown or raised within this state by persons selling or offering the same for sale.

#### **§ 117.08 PEDDLING FROM VEHICLES ON STREETS.**

(A) 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 town.

(B) This section does not apply to the delivery of farm or garden products, where the order for same 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.

#### **§ 117.09 PEDDLING IN PARKS.**

It shall be unlawful for any peddler or other person, except a person occupying a portion of the park under the valid concession agreement to sell or offer to sell, to any person within any municipal park of the town, any goods, wares, merchandise, books, pictures, novelties, souvenirs, trinkets or any other article of commerce and trade, including goods of his or her own production or manufacture.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022

BOARD OF TRUSTEES:

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Finance Officer

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Publication: \_\_\_\_\_

Effective Date: \_\_\_\_\_

# CHAPTER 113: PEDDLERS, SOLICITORS AND VENDORS

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## Section

- 113.01 Purpose
- 113.02 Definitions
- 113.03 License
- 113.04 Fees
- 113.05 Duration
- 113.06 Exemptions
- 113.07 Hours
- 113.08 Special provisions
- 113.09 Zoning and other regulations
- 113.10 Enforcement
  
- 113.99 Penalty

### § 113.01 PURPOSE.

(A) For the protection of the citizens of the town, and to prevent undesired, unhealthful and/or criminal activity.

(B) The town shall require all transient vendors and peddlers to register with, and obtain a vendor's permit from the town office prior to commencing business within the jurisdictional boundaries of the town.

(Ord. 1.004R, passed 9-6-2011)

### § 113.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**EMERGENCY SITUATION.** An unforeseen occurrence that requires immediate attention, the absence of which would endanger the health or safety of others, cause the loss of perishable goods, or create an economic hardship due to the unavoidable imminent nature of the circumstance.

**FOOD VENDOR.** Any person, partnership, corporation or similar business entity (whether a town resident or not) who is the vendor of produce, prepared or prepackaged foods.

**NON-PROFIT ORGANIZATION.** An incorporated organization which exists for educational, religious or charitable reasons, and from which its shareholders or trustees do not benefit financially. Any money earned must be retained by the organization, and used for its own expenses, operations and programs.

**SPECIAL EVENT.** Any public gathering, approved by the governing body of the town.

**STAND.** A table, bench, booth, rack, handcart, pushcart or any other fixture or device used for the purpose of displaying, distributing, storing or transporting merchandise.

**STREET FAIR.** A community event in the town that uses and occupies a portion of a public way, designated by the town, for the sale of merchandise by commercial retailers or for other promotions by nonprofit organizations.

**TEMPORARY USE AND STRUCTURE.** Any use or structure that is not located in a permanent structure and is not the primary use of property.

**TRANSIENT VENDOR.** Any person who opens a temporary place of business for the sale of goods or whom, on the streets or while traveling about the town, sells, offers for sale or solicits orders for the future delivery of goods where payment is required prior to the delivery of the goods. **TRANSIENT VENDOR** also includes any person who represents a business or organization, including, but not limited to, any entity that notifies the Town Board of Trustees that its representatives are present in the township for the purpose of selling, offering for sale, or soliciting orders for future delivery of goods, or an auction or an auctioneer company.

**VENDOR.** Any person who has been issued a valid vendor permit.

**VENDOR PERMIT.** The approved application of a person under the conditions as set forth in this chapter. A **VENDOR PERMIT** provides a person with a license to sell, distribute or display merchandise at a designated temporary outlet within the town.

(Ord. 1.004R, passed 9-6-2011)

### **§ 113.03 LICENSE.**

Applicants applying for a special event vendor license shall present to any entity sponsoring the event the following:

- (A) Name, address and phone number of the person, partnership, partner, corporation or similar business entity;
- (B) A description of the nature of the sales to be conducted and type of business that will conduct sales;
- (C) Description of the location where the sales will be conducted within the town;
- (D) The times when the sales will be conducted within the town;
- (E) License or permits with the county and/or the state;
- (F) If electrical access, open fires or use of propane: certificate from Fire Marshal's office showing that all codes are met;
- (G) All food vendors must be registered with the County and/or State Board of Health and present proof of that registration with their submission; and
- (H) All current governmental registrations and licenses must be displayed at the sale.

(Ord. 1.004R, passed 9-6-2011)

### **§ 113.04 FEES.**

Upon presentation of a completed copy of the town vendor/peddlers permit application and a state sales tax license, picture identification card, and payment of the registration fee (as set per current fee schedule), made payable to the town, the Finance Officer shall issue a receipt of authorization.

(Ord. 1.004R, passed 9-6-2011)

### **§ 113.05 DURATION.**

The registration and fee authorize the transient vendor or peddler to market their wares within the jurisdictional boundaries of the town for a period not to exceed the seven calendar days, one month or one year, time limit depending upon the permit purchased.

(Ord. 1.004R, passed 9-6-2011)

### **§ 113.06 EXEMPTIONS.**

(A) Any non-profit that is the entity applying for the vendors licensing is exempt from any fees but must still complete the application process and comply with all other requirements as set forth in this chapter.

(B) Residential yard sale activities that do not run more than four days within any three-month period are exempt from this chapter.

(C) Any persons, firms or organizations distributing goods or services for which there is no charge shall not be required to obtain a vendors permit, nor pay any fee.

(D) Any emergency situation shall be exempt.

(Ord. 1.004R, passed 9-6-2011)

### **§ 113.07 HOURS.**

No vendor or peddler shall peddle door to door between the hours of 8:00 p.m. and 9:00 a.m., except by specific appointment with, or invitation from, the prospective customer.

(Ord. 1.004R, passed 9-6-2011) Penalty, see § 113.99

### **§ 113.08 SPECIAL PROVISIONS.**

The following vendors may have the following specific regulations.

(A) Fireworks sales: fees as per fee schedule, insurance requirements

(B) Carnivals: fees as per fee schedule, insurance requirements and show that the rides are certified.

(Ord. 1.004R, passed 9-6-2011)

### **§ 113.09 ZONING AND OTHER REGULATIONS.**

(A) An applicant shall comply with all zoning requirements and other regulations and ordinances of the town.

(B) Where there is a conflict of these provisions with the zoning regulations, the zoning regulations shall control or supersede this chapter.

(Ord. 1.004R, passed 9-6-2011)

### **§ 113.10 ENFORCEMENT.**

(A) Any transient vendor or peddler not in compliance with this chapter shall pay a fine in accordance with § 10.99.

(B) It shall be the duty of any police officer or code enforcement official of the town to enforce the provisions of this chapter.

(Ord. 1.004R, passed 9-6-2011)

**§ 113.99 PENALTY.**

(A) Any person, who violates any of the provisions of this chapter shall upon conviction, be subject to a fine as per the town's current fee schedule.

(B) Each day the violation shall exist shall be construed as a separate offense.

(Ord. 1.004R, passed 9-6-2011)

LEASE AGREEMENT – 250 MAIN STREET

In consideration of the Landlord’s leasing of the premises to the Tenant, the Tenant’s leasing from the Landlord the premises, and the mutual benefits and obligations conferred by this lease on the Parties, and in recognition of the receipt and sufficiency of said consideration, the Parties hereby agree to the following terms and conditions:

- I. **The Parties** – Lease agreement is between Lessor under the individual/entity (hereinafter known as the “Landlord”) known as The Town of Hermosa and the Lessee under the individual/entity (hereinafter referred to as the “Tenant”) known as Brad Westergard.
- II. **Premises** – The space/property being leased shall be described as: 250 Main Street; a portion of Parcel 9158, Lots 20-23 Blk 3, Town of Hermosa (Hereinafter referred to as the “Premises”).
- III. **Space Rented** – The space described equals: 1,368 Square Feet (SF)
- IV. **Term** – The term of the lease shall be one [1] year beginning on the 17 day of February, 2021 and ending on the 16 day of February, 2022.
- V. **Rent** – Rent shall be paid on the 1<sup>st</sup> of every month in the amount of three hundred fifty dollars (\$350.00).  
Check One  
 Rent shall increase \_\_\_\_\_ percent ( \_\_\_\_\_ %) on an annual basis.  
 Rent shall increase \_\_\_\_\_.  
 Rent shall remain fixed for the term of the lease.
- VI. **Common Areas** – The Tenant, along with any of their employees, may use the following common area(s) along with other inhabitants:  
 \_\_\_\_\_ Parking Space(s)  All Parking Space(s)  
 Restroom(s)  
 Storage Area(s)  
 Entrance(s) (Including Stairs & Elevators)  
 Conference/Meeting Room(s)  
 Trash Area(s)  
 Kitchen(s)  
 Other \_\_\_\_\_
- VII. **Renewals**  
Check One  
 - Tenant shall have the option to renew the lease for \_\_\_\_\_ year(s) under the following conditions: \_\_\_\_\_  
 - Tenant does not have the right to renew the lease.
- VIII. **Security Deposit** – The Tenant is required to pay zero dollars (\$0.00) as a Security Deposit. If the Tenant follows the terms and conditions of this agreement in good faith and without damaging the Premises, the Security Deposit will be returned within ten (10) business days at end of lease. Otherwise, any repairs needed for the Premises will be deducted from the Security Deposit.

**IX. Condition Upon Move-In**

Check One

- The Tenant agrees to take tenancy of the property on an "as is" basis, willing to make all fit-ups (if needed) on the Premises at the expense of the Tenant.

- The Landlord accepts building the fit-ups for the Tenant that includes improvements to be made  as an addendum  described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All fixtures shall  remain  not remain on the premises at the end of the lease term.

**X. Improvement During Lease Term** – The Tenant, with written approval of the Landlord that may not be reasonably withheld, shall be able to make any type of improvement to the Premises.

**XI. Use** – The Tenant will occupy the Premises for the following use:

No vehicle repairs or work will be done outside of the building. No extra vehicles will be left unattended on premises.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note the American with Disabilities Aca (ADA): All businesses that are open to the public or employ fifteen (15) or more people require that the premises be accessible by persons with disabilities. In the event that the premises must be altered for ADA compliance, the cost of improvements, alterations, and/or modifications necessary for compliance with the ADA shall be the responsibility of:

Check One

Tenant

Landlord

Cost to be split equally between Landlord and Tenant

**XII. Utilities and Other Expenses**

Check Who Pays

Tenant  Landlord - Air Conditioning (AC)

Tenant  Landlord - Cable

Tenant  Landlord - Electricity

Tenant  Landlord - Gas

Tenant  Landlord - Heat

Tenant  Landlord - Internet

Tenant  Landlord - Oil / Propane

Tenant  Landlord - Water/Sewer

Tenant  Landlord - Other: Snow Removal

Tenant  Landlord - Other: Property Maintenance (grass, weeds,etc.)

Tenant  Landlord - Other: \_\_\_\_\_

**XIII. Landlord Representations** - At the time of lease signing, the Premises shall be properly zoned for the Tenant's stated use as stated in Section XI and will be in compliance with all applicable state and federal laws and regulations. The Premises shall not have been used for the storage or disposal of any toxic or hazardous substances, and the Landlord has received no notice from any governmental authority concerning removal of any toxic or hazardous substances from the property.

**XIV. Landlord Responsibility**

- Landlord shall maintain and make any and all necessary repairs to :
  1. The roof, structural components, exterior walls, and interior common walls of the premises
  2. Plumbing, electrical, heating, ventilating, and air-conditioning systems

**XV. Tenant Responsibility**

- Tenant shall keep the Premises clean and well maintained at all times, so that the Premises shall be in marketable condition.

**XVI. Insurance**

Landlord agrees to carry property coverage insurance for the Premises.

Tenant agrees to carry Public Liability Insurance that includes the Landlord as an insured party for personal injury.

The coverage the Tenant shall provide will be in the amount(s) of \$1,000,000.00 which shall include the building & grounds plus public liability.

Check All That Apply

\_\_\_ \$ \_\_\_\_\_ per occurrence

\_\_\_ \$ \_\_\_\_\_ per year

This agreement automatically releases the Landlord and Tenant from each other in reference to liability for property, loss, damage, personal injury, or anything else covered by the insurance plan.

**XVII. Taxes**

Check Who Pays

\_\_\_ Tenant \_\_\_ Landlord – **Real Property Taxes**

\_\_\_ Tenant \_\_\_ Landlord – **Personal Property Taxes**

- For Properties with Multiple Tenants – If the Tenant pays for the real property taxes it should be noted that the calculation should be equal to that Tenant's portion of the property/total square feet.

**XVIII. Subletting** – The Tenant \_\_\_ does X does not have the right to sublet the Premises. Any new Tenant under a sublease must meet the approval of the Landlord and such approval shall not be unreasonably withheld.

**XIX. Damage to the Premises** – The Tenant may terminate the lease agreement if necessary repairs to the Premises due to fire, flood, or any natural catastrophe keep the Tenant from being open for over ninety (90) days.

- If the Tenant is not able to be open for the ninety (90) day period due to damage to the Premises, there will be no rent paid during said period.

- XX. Default** – If the Tenant defaults on the lease agreement for non-payment of rent or for any other reason, the Landlord agrees to give notice to the Tenant giving the Tenant the right to cure the issue(s). If the Tenant does not cure the issue(s) within the amount of time stated in the notice, the Landlord has the right to take legal action.
- XXI. Notice of Quiet Enjoyment** – During the term of the lease agreement, the Tenant has the right of quiet enjoyment of the Premises.
- XXII. Eminent Domain** – The lease automatically becomes void if the Premises are taken by eminent domain. During the process, the Tenant will have the right to claim:
- Value of the Lease Agreement
  - Loss of Business Revenue
  - Moving and Relocation Expenses
- XXIII. Holding Over** – If the Tenant remains in possession of the Premises after the lease agreement ends, the tenancy shall continue on a month-to-month, to “Tenancy at Will” basis unless the Landlord gives notice for the Tenant to vacate.
- XXIV. Disagreements During the Lease Period** – If a disagreement arises during the lease period, the following actions shall take place:

Check All That Apply

Litigation – If a dispute arises from either the Landlord or Tenant; the parties have the right to take the matter to the court under the Premises’ jurisdiction.

Mediation with Possible Litigation – If there is a dispute between the Landlord and Tenant, all parties agree to attempt to come to an agreement through the use of an agreed upon mediator.

- It is agreed that the cost(s) involved in hiring the mediator shall be shared equally and that each party shall cooperate in a good faith attempt to reach a resolution. Both parties agree that they shall allow the mediator thirty (30) days from the first (1<sup>st</sup>) meeting to reach a compromise before going to court.

Mediation with Possible Arbitration – If there is a dispute between the Landlord and Tenant; all parties agree to attempt to come to an agreement through the use of an agreed upon mediator.

- It is agreed that the cost(s) involved in hiring the mediator shall be shared equally and that each party shall cooperate in a good faith attempt to reach a resolution. Both parties agree that they shall allow the mediator thirty (30) days from the first (1<sup>st</sup>) meeting to reach a compromise before going to the arbitrator.
- The arbitrator selected will be a third (3<sup>rd</sup>) party to be mutually agreed upon. The arbitrator shall decide all costs directed towards hiring the arbitrator.

The Landlord shall not have to attend the mediation or arbitration process unless Tenant is current with the rental payments, either submitting to the Landlord directly or depositing the funds in an escrow account.

**XXV. Additional Agreements** – Landlord and Tenant additionally agree to the following: \_\_\_\_\_  
The Town of Hermosa has the right to park city vehicles plus utilize the building for storing town property on an as needed basis.

**Entire Lease Agreement** – This document supersedes any other writings in relation to the Premises and has authority over any oral agreements made between the Landlord and Tenant.

**XXVI. Successors and Assignees** – All assignees of the parties including heirs, successors, or anyone else that may be considered is mutually bound by this lease agreement

**XXVII. Notices** – All notices in relation to the Premises or this lease agreement shall be in writing and delivered to the following address below via Certified Mail with Return Receipt:

Landlord - \_\_\_\_\_  
Town of Hermosa  
P.O.Box 298  
Hermosa, SD 57744  
\_\_\_\_\_

**Tenant** Brad Westergard, 106 2<sup>nd</sup> Street, PO Box 408, Hermosa, SD 57744

**XXVIII. Governing Law** – This lease agreement will be governed by and construed in accordance with the laws in the State of South Dakota.

**XXIX. Counterparts and Modifications**

- The Landlord and Tenant agree that they shall sign several identical counterparts of this lease and any fully signed counterpart shall be treated as an original.
- Only writing(s) signed by the party against whom such a modification is sought to be enforced shall modify this lease.

**XXX. Waiver** – If either Landlord or Tenant waives any term or provision of this lease at any time, that waiver will be effective only for the specific instance and specific purpose for which the waiver was given. If either party fails to exercise or delays exercising any of its rights or remedies under this lease, that party retains the right to enforce that term or provision at a later time.

**XXXI. Early Termination** – The landlord and/or the tenant X \*has \_\_\_ does not have the option to terminate the lease.

\*The landlord shall allow the tenant to quit or terminate the lease via a penalty of zero Dollars (\$ 0.00 ).

In addition, the landlord and/or tenant must provide written notice to the address state in Section XXVIII within least 30 days \_\_\_ months of the intended end date.

**XXXII. Severability** – If any court determines that any provision of this lease is invalid or unenforceable, any invalidity or unenforceability will affect only that provision. It will not make any other provision of this lease invalid or unenforceable, and shall be modified, amended, or limited only to the extent necessary to render it valid and enforceable.

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**Signatures**

**Landlord**

**Tenant**

Name: \_\_\_\_\_  
Vicki Henrichsen, Town Board President

Name: \_\_\_\_\_  
Brad Westergard

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_ **Personal Guaranty** – Upon my authorization of this agreement, I personally guarantee the performance of all financial obligations under this lease.

\_\_\_\_\_  
Brad Westergard

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Gail Boddicker, Finance Officer

Date: \_\_\_\_\_

FYI

**Gail Boddicker**

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**From:** Western Dakota Tech Foundation <nora.leinen@wdt.edu>  
**Sent:** Monday, February 7, 2022 4:34 PM  
**To:** Gail Boddicker  
**Subject:** You're Invited - 2022 Mayoral Breakfast

**YOU'RE INVITED**

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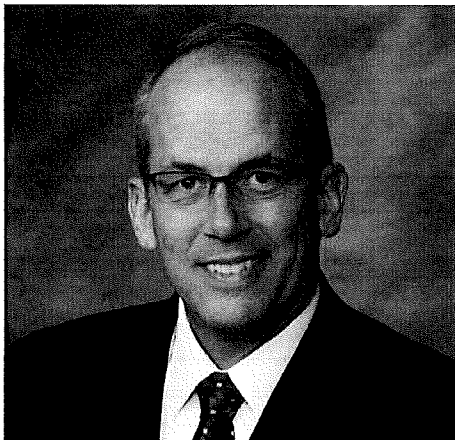
WESTERN  
**DAKOTA**  
TECH  
FOUNDATION



**2022**

**MAYORAL  
BREAKFAST**

**KEYNOTE SPEAKER**  
Rapid City Mayor Steve Allender



Wednesday, March 9



8:00 a.m. - 9:15 a.m.



Western Dakota Technical College Event Center  
800 Mickelson Dr., Rapid City, SD

Event **FREE** to invitees.

**RSVP by Feb. 23**

## Gail Boddicker

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**From:** Lisa Nold <lisa@sdmunicipalleague.org>  
**Sent:** Thursday, February 10, 2022 11:00 AM  
**To:** Lisa Nold  
**Subject:** Paint - South Dakota 2022 Campaign

South Dakota Housing Development Authority is offering an opportunity for 25 communities to participate in Paint – South Dakota for 2022.

Paint – South Dakota was started in celebration of SDHDA’s 25th Anniversary in 1998. To Date, 7,884 volunteers have applied 10,655 gallons of paint and primer to 549 homes across the State.

We would like your help to spread the word and to encourage a volunteer group within your community to submit an application.

SDHDA will purchase the paint and primer needed. The volunteer group will be responsible for organizing the necessary equipment, as well as preparing and painting the house. In the past, communities and businesses have worked together to provide meals for the volunteers, printed t-shirts, and donated supplies.

The intent of the program is to help someone in need. Please keep in mind:

- \* The home must be a single family, owner-occupied residence in need of painting.
- \* The owner should be physically or financially unable to paint their home.

Nominations may be submitted to SDHDA and must be received in our office by 5:00 pm CT, April 22, 2022. Applicants will be able to select a weekend in June to complete the final painting of the home.

Thank you in advance for your assistance with this Campaign! If you have any questions, please feel free to contact Sheila Olson at 605.773.7603 or [sheila@sdhda.org](mailto:sheila@sdhda.org).

For more information, campaign flyer and application click here<<https://www.sdhda.org/social-programs/paint-south-dakota>>.

Lisa Nold

SOUTH DAKOTA MUNICIPAL LEAGUE

Office Manager

[lisa@sdmunicipalleague.org](mailto:lisa@sdmunicipalleague.org)

208 Island Drive, Ft. Pierre, SD 57532  
Tel | 605.224.8654 or 800.658.3633 Fax | 605.224.8655  
<http://www.sdmunicipalleague.org>

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