

**HERMOSA TOWN BOARD  
TUESDAY, NOVEMBER 18, 2025  
REGULAR MEETING @ 6:00 PM**



- 1) **ROLL CALL:**
  - A. BOT Roll Call: Kramer, Ferguson, Koontz, Serviss
  - B. Acknowledgement of other Attendees
  - C. Pledge of Allegiance to be led by Koontz
- 2) **CALL FOR CHANGES:**
  - A. Review of current agenda items
  - B. Motion to accept the agenda as presented/amended
- 3) **CONSENT CALENDAR:**
  - A. Approval of November 4, 2025, regular meeting minutes and November 12, 2025, special meeting minutes
- 4) **CONFLICT OF INTEREST DECLARATION:**
- 5) **TOWN/FEMA UPDATES:**
  - A. Approve FEMA Grant administration change
    - FEMA BRIC Scoping Grant \$436,920
- 6) **ENGINEER:**
  - A. Approval to discontinue Benesch contract
    - Motion for direction on payments of invoices to Benesch
  - B. Approval of Anthony Theodorou and Company contracts:
    - Water Distribution Model \$3,175
    - North Water Tank \$118,500
    - DWSRF Project \$250,000
    - Wastewater Treatment Plant \$50,000
    - Lone Coyote Sewer Extension \$39,500
    - TIF #2 \$16,200
    - CMOM Update \$7,900
- 7) **PLANNING & ZONING:**
  - A.
- 8) **LEGAL:**
  - A. Opinion on operational use of Vaktor truck by private contractor
  - B. Approve Brophy Road Water Users Agreement
- 9) **LAW ENFORCEMENT/ABATEMENTS/COMPLAINTS:**
  - A. Marshal report
  - B. Custer County Log
- 10) **PUBLIC WORKS:**
  - A. Streets, Street Light Repairs, Water & Sewer Department Updates
  - B. Open Work Orders
  - C. Streets- Contract work
  - D. Approve protocol for notifying residents when public utilities work is being performed
  - E. Vaktor Truck Operator proposal

F. Discussion on town public works employee

11) **ECONOMIC DEVELOPMENT:**

A.

12) **CLAIMS:**

A. Review of payroll and claims. Motion to approve as presented/amended.

13) **FINANCE OFFICE:**

A. Monthly financials

B. Department updates

C. Approve reinvestment of CD funds

D. Approve new vendor for phone/internet/fax services

E. Approve closure of town office Friday, November 28 and allow town staff to use vacation hours

14) **OLD BUSINESS:**

A. Appointment of vacant trustee position

B. Motion to schedule special election for vacant trustee position

C. Rescind motion from 10-21-2025 BOT meeting regarding donation to HAHA Santa's Village

D. Approve new motion for donation to HAHA Santa's Village

E. Approve use of BBB money to fund prizes for Annual Christmas Lighting Contest

15) **NEW BUSINESS:**

A. 1<sup>st</sup> Reading Ordinance 73: Traffic Schedules

B. Approve request to use BBB money to fund hanging of light pole Christmas decorations

16) **ITEMS FROM CONSTITUENTS:** No action can be taken by the board on any issue related without being first placed on a future agenda, to allow for proper notice.

1. Reserved time for public comment is **15 minutes**.

2. This is a time for citizens of the town of Hermosa or owners of property within town  
Limits to express concerns or discuss issues having relevance to the town.

3. Anyone wishing to address the Town Board during this time shall be asked to stand and  
Identify themselves after being recognized the Board President.

4. Each person will be allotted **3 minutes** to speak.

5. After these time limits are reached, all further commentary shall be made only with the  
Chair's approval.

17) **TRUSTEE INPUT:**

18) **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

19) **ADJOURN: Motion** by \_\_\_\_\_; Second by \_\_\_\_\_ to adjourn the meeting at \_\_\_\_\_ PM.

HERMOSA TOWN BOARD  
TUESDAY, NOVEMBER 4, 2025  
REGULAR MEETING @ 6:00pm

3A

ROLL CALL: Koontz called the meeting to order on Tuesday, November 4, 2025, at 6:00 p.m. Roll Call was held with Kramer, Ferguson, Koontz and Serviss in attendance. Interested citizens and Town Attorney James were also present. Pledge of Allegiance led by Koontz.

CALL FOR CHANGES: Motion by Kramer and seconded by Serviss to add Item 2.5 Oath of Office for Town Attorney, Item 7 A Discussion on Christmas Parade and Christmas Party and approve agenda as amended; vote: all aye, motion carried.

OATH OF OFFICE: President Koontz administered the Oath of Office to Town Attorney James.

EXECUTIVE SESSION: Motion by Koontz and seconded by Serviss to enter Executive Session allowable by SDCL 1-25-2 – Contracts and Legal at 6:06 p.m. (after a two-minute recess); vote: all aye, motion carried. Motion by Koontz and seconded by Ferguson to exit Executive Session at 6:33 p.m.; vote: all aye, motion carried. There were no motions made from Executive Session.

CONSENT CALENDAR: Motion by Ferguson and seconded by Kramer to approve October 7, 2025, regular meeting minutes as presented; vote: all aye, motion carried.

CONFLICT OF INTEREST DECLARATION: All board members are responsible for refraining from discussion and voting on issues where they may have a conflict of interest.

LEGAL: Discussion was held on Attorney James providing an opinion on the operational use of Vaktor truck by private contract and drafting an agreement for the Brophy Road water users. These topics will be placed on the next regular meeting agenda.

TOWN/FEMA UPDATES: Discussion was held on the Christmas Parade on December 15, 2025, and a Christmas party. The board will host a town board Christmas Party prior to their regular meeting on December 16, 2025, with the party beginning at 4:30 p.m.

ENGINEER: No items were presented.

PLANNING & ZONING: Motion by Koontz and seconded by Kramer to approve Town Planner to consult with Town Attorney regarding Extraterritorial Agreements with Custer and Pennington County; vote: all aye, motion carried.

CLAIMS: Motion by Koontz and seconded by Kramer to approve the Payroll and Claims as presented: vote: all aye, motion carried. .A & B BUSINESS, monthly printer/fax fee, \$554.05; BANKWEST, monthly classic web banking fee, \$25.00; BANKWEST CREDIT CARD, keys/stamps/adobe/staples/copy paper/certified mail, \$259.74; BAROQUE ADVANTAGE LLC, final pay application #12/processing and stockpiling; \$135,726.53; BENESCH, engineering fees for WWTP, North Water Tank, FY22 DWSRF, TIF #2, Operations Contract and On-call Inspection Agreement, \$17,132.13; BLACK HILLS ELECTRIC COOP, electric utilities-September 2025, \$3,007.01; DAKOTA PUMP, shipping for lagoon pump, \$502.98; CHUCK FERGUSON, contract services for October 2025, \$3,120.00; GWORKS, annual subscription, \$9,000.00; MIDCONTINENT TESTING LAB, water an lagoon testing, \$608.00; MINDY HOLSWORTH, reimbursement for demo permit #2025-20, \$25.00; QUINN CONSTRUCTION, pay application #1 North Water Tank Project, \$32,647.36; US BANK, November 2025 quarterly SRF loan payment, \$1,493.23; **Accounts Payable Total: \$204,101.03.** UTILITY DEPOSIT REFUNDS: JUSTINA PETERS, \$42.68; KYLE SHARPE, \$200.00; **Deposit Refund Total: \$242.68.** Payroll related: Total Paid on 10/31/2025; General, \$4,463.69; Water, \$341.15; Sewer, \$125.48;

Promoting City/BBB, \$41.82; EFTPS-Electronic Federal Tax, FED/FICA TAX, \$1,332.16; SOUTH DAKOTA RETIREMENT, \$1,196.42; HEALTH POOL OF SD, \$1043.57; **Total Payroll Related Paid: \$8,544.29.**  
**REPORT TOTAL: \$212,888.00.**

**LAW ENFORCEMENT/ABATEMENTS/COMPLAINTS:** Marshal Alias gave a Marshal report. He has been responding to a lot of wildlife calls. Motion by Serviss and seconded by Koontz to approve the change of Law Enforcement title form Marshal to Chief of Police; vote: all nay, motion failed. Motion by Serviss to approve use of title Chief of Police by Marshal Alias with no change to duties or pay. Motion failed for a lack of a second.

**PUBLIC WORKS:** Ferguson reported on four streetlights that need repair. Open Work Orders were provided in the packet. Koontz and Holsworth will meet to review work that has been completed by Holsworth on streets. Item 12 D Approve protocol for notifying residents when public utilities work being performed was tabled until the next regular meeting. A Vak Truck Operator proposal was received from Serviss. It was suggested that Serviss find another municipality that could give him guidance and training on operating the Vak Truck. The item was pended until the next regular meeting or if needed a special meeting will be called to approve.

**ECONOMIC DEVELOPMENT:** Motion by Serviss and seconded by Kramer to table Resolution 06-2025 Resolution Establishing the Hermosa Economic Development Committee until the second meeting in January 2026; vote: all aye, motion carried. Discussion was held on the ambulance meeting held on Tuesday, October 28, 2025. A second informational forum is planned for Thursday, December 11, 2025, with discussion on the ambulance, BHEC progress on moving office and Battle Creek Fire Department explaining results of opt-out.

**FINANCE OFFICE:** October financial report was provided in the packet. Cornelison developed a new format for the report as requested at a prior meeting. Cornelison will gather information on phone and internet service costs and have Koontz and Serviss review and make recommendations. Motion by Serviss and seconded by Ferguson to approve the switch to the HP 3500 HSA health plan for 2026 at a proposed single rate of \$875.96 per month and approve the town contribution of \$75 per month toward an employee HSA debit card for a net saving from previous plan cost; vote: all aye, motion carried.

**OLD BUSINESS:** Motion by Koontz and seconded by Kramer to approve the 2026 Operating Agreements for Corner Pantry, Hermosa Deli & Lounge, Lazy R Bar and Grill and Pop's Grocery Shoppe, pending review from Town Attorney James and Board President Koontz to ensure that we have the correct reference to the new fee schedule and then also listing what that amount would be per month for that purveyor under their current number of hours of operation; vote: all aye, motion carried. Items 15 B and C are pending until the next regular meeting.

**NEW BUSINESS:** Kathy Pillen and Trena Matheny were given the opportunity to introduce themselves and state the reason they are interested in the appointment for the vacant trustee position. Motion by Kramer and seconded by Koontz to nominate Trena Matheny for the vacant trustee position; vote: two aye and two nays, motion failed. Motion by Serviss and seconded by Ferguson to nominate Kathy Pillen for the vacant trustee position; vote: two ayes, Koontz abstained, motion failed. Motion by Ferguson and seconded by Koontz to extend the timeframe for accepting letters of interest for the vacant trustee position until 5:00 p.m. on November 17, 2025, and vote to fill the vacant trustee position at the November 18, 2025 meeting; vote: all aye, motion carried. Item 16 B is tabled until the next regular meeting.

**CITIZENS/TRUSTEE INPUT:** Audience and trustees had input. For full verbiage, please see the video recording posted on the town's You Tube channel.

**ADJOURN:** Motion made by Koontz and seconded by Kramer to adjourn meeting at 9:26 p.m., vote: all aye, motion carried.

ATTEST:

\_\_\_\_\_  
Terri Cornelison  
Finance Officer

\_\_\_\_\_  
Kelburn Koontz  
Town Board President

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



**HERMOSA TOWN BOARD  
TUESDAY, NOVEMBER 12, 2025  
SPECIAL MEETING @ 2:00 pm**

ROLL CALL: Koontz called the meeting to order on Wednesday, November 12, 2025, at 2:00 p.m. with the following members present: Ferguson, Kramer, Koontz, and Serviss. Interested citizens and Town Attorney were also present.

CALL FOR CHANGES: Motion by Koontz and seconded by Serviss to add Item Discussion of possible contract with Anthony Theodorou and Company he may be forming after Executive Session and accept the agenda as amended; vote: all aye, motion carried.

CONFLICT OF INTEREST DECLARATION: All board members are responsible for refraining from discussion and voting on issues where they may have a conflict of interest.

EXECUTIVE SESSION: Motion by Koontz and seconded by Kramer to enter Executive Session allowable by SDCL 1-25-2- to consult with legal counsel about proposed or current or pending contractual matters and possible pending litigation at 2:05 p.m.; vote: all aye, motion carried. Motion made by Kramer and seconded by Ferguson to exit Executive Session at 2:54 p.m.; vote: all aye, motion carried. There were no motions made from Executive Session.

BREAK: The board took a short break.

ITEMS OF BUSINESS: Anthony Theodorou met with the board regarding his exit from Benesch and starting a new company and services he can provide for the town.

CITIZENS/TRUSTEE INPUT: Audience and trustees had input. For full verbiage, please see the video recording posted on the town's You Tube channel.

ADJOURN: Motion made by Ferguson and seconded by Kramer to adjourn meeting at 3:47 p.m., vote: all aye, motion carried.

ATTEST:

\_\_\_\_\_  
Terri Cornelison  
Finance Officer

\_\_\_\_\_  
Kelburn Koontz  
Town Board President

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







# Southern Hills Law

Legal Solutions for the Black Hills

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5A

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## ***VIA EMAILED DELIVERY TO TOWN CLERK***

Hermosa Town Board  
230 Main St  
Hermosa, SD 57744

November 14, 2025

RE: Legal Opinion on requirement for bids re Town Engineering projects  
Town of Hermosa Legal Opinion No: 2025-2

Dear Members of the Board:

You asked me to research issues surrounding the termination of a contract for engineering/construction services with the Benesch company and potentially retaining the new company associated with the town's existing Town Engineer. There are two issues here that I wish to comment on: 1) Are bids required to move from the Benesch contract to the new contract and 2) Can the engineer also provide all of the services Benesch was providing?

### **1) NO REQUIREMENT TO BID OUT PROFESSIONAL SERVICES**

Pursuant to South Dakota AG Opinion 11-01, Engineering and Construction management services are "professional services" under

(19) "Professional services," services arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual;

The requirement to advertise bids comes from SDCL 5-18A-14:

**5-18A-14. Public improvement contracts--Supplies and services contracts--Advertisement for bids or proposals.**

If the purchasing agency intends to enter into a contract for any public improvement that involves the expenditure of one hundred thousand dollars or more, or a contract for the purchase of supplies or services, other than professional services, that involves the expenditure of fifty thousand dollars or more, the purchasing agency shall advertise for

bids or proposals. The advertisement shall appear as a legal notice in the appointed legal newspaper. The advertisement shall be printed at least twice, with the first publication at least ten days before opening of bids or the deadline for the submission of proposals. The first publication shall be in each official newspaper of the purchasing agency, and the second publication may be in any legal newspaper of the state chosen by the purchasing agency. If the purchasing agency has no official newspaper, the first publication shall be made in a legal newspaper with general circulation in the jurisdiction of the purchasing agency to be selected by the purchasing agency. The advertisement shall state the time and place where the bids will be opened or the deadline for the submission of proposals. In each notice, the purchasing agency shall reserve the right to reject any or all bids or proposals.

Professional services are not subject to the ordinary procurement process per SDCL 5-18A-14

While State agencies have a requirement to bid out professional services over \$50,000.00 (see for comparison SDCL 5-18D-1, this requirement does not apply to municipalities like the Town of Hermosa. Thus, there is no statutory requirement to request bids on engineering services like those presently being performed by Benesch. Of course there is nothing prohibiting the Town from seeking bids for such services either, if it chose to do so for other public policy reasons.

#### **B) ENGINEER CANNOT SERVE AS "CONSTRUCTION MANAGER" ON PROJECTS OVER \$100,000.00**

In the course of researching this question, I also came across the statute below which could apply to a grant like the BRIC/FEMA grant the Town is engaged in:

**5-18B-15.** Architect or engineer may not be contractor or construction manager on project exceeding one hundred thousand dollars--Exemption.

No person, firm, or corporation may act as architect or engineer and also as contractor or construction manager on any public improvement project if the amount to be expended exceeds one hundred thousand dollars. Any public improvement of an emergency nature that affects the public health and safety of the state and is funded through the use of an emergency appropriation or special appropriation, and any full-service firm that specializes in the design, fabrication, or installation of cultural or educational exhibits is exempt from this section.

*J. Scott James  
Attorney at Law  
Licensed in SD, NY*

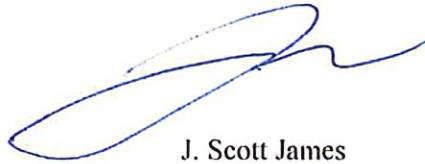
*Gina Ruggieri  
Attorney at Law  
Licensed in SD*

Source: SL 2010, ch 31, § 54; SL 2017, ch 45, § 1.

From reading the Benesch BRIC/FEMA contract, it appears to counsel that the duties being requested are all of a design and research nature. The Town should just remain careful that on this particular project the Engineer's duties do not run into general contractor/construction side. I am too new to know all the parameters of this project, but this limitation applies on any project exceeding \$100,000.00.

If anything else is needed on this matter, do not hesitate to inquire further.

Very Truly Yours,



J. Scott James  
Interim City Attorney  
Hermosa, South Dakota







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5A

### **Attachment A: FEMA BRIC Scoping Grant**

8/5/2025 awarded, Benesch job no. 1126-6000035.00

Project Amount: \$436,920.00

Remaining Balance: \$436,920.00 on 11/13/2025. Invoices may be pending.

#### **Background to the Project**

The town of Hermosa was awarded a Federal Emergency Management Agency (FEMA) Building Resilient Infrastructure and Communities (BRIC) scoping grant in 2025. The purpose of the grant is to strengthen the town's infrastructure (especially its sewer and wastewater facilities) against flooding and failure. The town has recently completed its Clean Water State Revolving Fund (CWSRF) loan and grant to expand the Lagoon Facilities. These facilities are in the Battle Creek Floodplain and Floodway. That project was started by Leah Berg (previous town engineer) and redesigned and completed by the current town engineer Anthony Theodorou. Ms. Berg had omitted a floodplain model and FEMA CLOMR application in her environmental clearance. Thus, the first task Mr. Theodorou had as the town's engineer was to complete that study of the Battle Creek Floodplain, the section of which is called Ferguson's Reach. The model was conducted by Mr. Dan Fife, who was the certified floodplain manager (CFM) and modeler at Kadrmas, Lee and Jackson (KLJ) at the time Mr. Theodorou worked there. Subsequently, Mr. Theodorou moved to Benesch and using his detailed knowledge of the town, its infrastructure and the areas endangered by flooding, submitted qualifications for the FEMA BRIC scoping grant awarded to the town of Hermosa. As the sole bidder, Benesch was automatically awarded the project through Mr. Theodorou. On November 10, 2025, Benesch terminated Mr. Theodorou's employment, thereby severing any connection with the Town of Hermosa and their FEMA BRIC grant.



**TOUR DE HERMOSA** — Town, state and county officials were among those who recently participated in a tour of Hermosa that highlighted current and future projects in the town. From left are Blair Jonas, Vanessa Castillo, Steve Esser, Joan Harris, Anthony Theodorou, Katie Braun, Jill Dybvig, Kel Kelburn, Dan Holsworth, Linda Kramer, Aaron Serviss and Elmer Claycomb. [Submitted Photo]



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[www.gotheodorou.com](http://www.gotheodorou.com)

## Scope of the Project

The project has several tasks that need to be accomplished as a part of the grant:

- Identify projects valuable to the public through public engagement
- Prioritize projects and run three scenarios in the HEC-RAS model
- Design to 90% the most cost-effective project to mitigate major flooding risk to the town. This involves running the FEMA Benefit/Cost calculator to prove project value.
- Design to 90% the localized flood issues along Fairground Place, Whitney+2<sup>nd</sup> Street and West Court.
- Design to 35% a gravity trunk sewer line to increase the resiliency of the sanitary system in the Ferguson Subdivision, which is located in the floodway. See the updated FEMA map prepared by Dan Fife of the Battle Creek Ferguson Reach at the lagoons. Ferguson Subdivision is directly to the west and was part of that model.
- Conduct and Infiltration and Inflow (I&I) evaluation of the Ferguson Subdivision sanitary sewer system. This involves flow meter monitoring and CCTV sewer camera inspection to determine the risk to the critical infrastructure.
- Conduct and Environmental Clearances study and coordinate with agencies.
- Research & apply for Grants that will fund the construction phases of the projects.

Status of Project: Incomplete. Only a cursory review by Benesch of the project documents has been accomplished. In addition, the sewer camera has been on rent for two months.

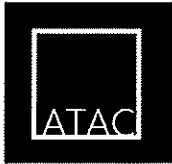
Remaining Scope: The entire scope of work remains to be accomplished. In addition, the FEMA BRIC grant activities are intertwined with on-going projects such as the CMOM program update, wastewater facilities plan update and developments that require sewer.

## **Proposed Scope to Anthony Theodorou and Company (ATAC)**

The town of Hermosa will acquire all HEC-RAS files and project files from Benesch and provide them to ATAC. The scope will be to complete requirements of the FEMA BRIC scoping grant fully.

ATAC will team with Dakota Headwaters (Dan Fife, CFM) to complete all tasks of the grant. Grant . Mr. Fife is replacing the role that Maria Neeland had on the project team as CFM and the role that Mr. Vasquez had as grant writer. To complete the project, ATAC has a tentative agreement with Edge AI to take over the rental of the sewer camera unit at no additional cost to the town or the grant. This project must be awarded concurrently with the CMOM





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update, Wastewater Treatment Plant, Lone Coyote Extension and TIF #2 in order to meet developer deadlines and DANR compliances.

**Fees: Time and Materials (T&M) not to exceed:**

From remaining projected Benesch balance: **\$400,000.00**

**Task 1: Public Engagement – Neil Putnam, AICP, Town Planner**

220 hours of Planner Time @\$130/hour = \$ 28,600.00

**Task 2: Identify Scenarios and Run HEC-RAS models – Dan Fife, CFM, proposed town floodplain manager.**

162 hours of Principal Time @\$180/hour = \$ 29,160.00

138 hours of CFM/Designer Time @\$170/hour = \$ 23,460.00

**Task 3: 90% Design from Battle Creek and Billover Models & in-Town Projects**

Surveyor Subconsultants = \$30,000.00

178 hours of Principal Time @\$180/hour = \$32,040.00

100 hours of Designer Time @\$170/hour = \$ 17,000.00

**Task 4: 35% design of Trunk Sewer – Anthony Theodorou, PE, Town Engineer**

Surveyor Subconsultants = \$20,140.00

180 hours of Principal Time @\$180/hour = \$32,400.00

120 hours of Designer Time @\$170/hour = \$ 20,400.00

**Task 5: CCTV Ferguson Sub and I&I Study – John Burckhard, Town Wastewater Treatment Plant Operator**

Edge AI rental plus supplies (\$4,000/month x 22 months) \$ 88,000.00

80 hours of Operator in Charge time @\$150/hour \$12,000.00

80 hours of Shift Operator time @\$50/hour \$10,400.00

Vaktor Rental from Town \$30,000.00



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Task 6 : Environmental Clearances – Dan Fife, CFM and proposed town CFM.

100 hours of CFM time @ \$170/hour = \$17,000.00

Task 7 : Grant Writing – Dan Fife, CFM and Neil Putnam, AICP

40 hours of CFM time @\$170/hour = \$6,800.00

20 hours of Planner time @ \$130/hour = \$2,600.00

**Hourly Rates:**

Principal PE = \$180/hour

Certified Flood Plan Manager/Design Engineer = \$170/hour

Operator-in-charge = \$150/hour

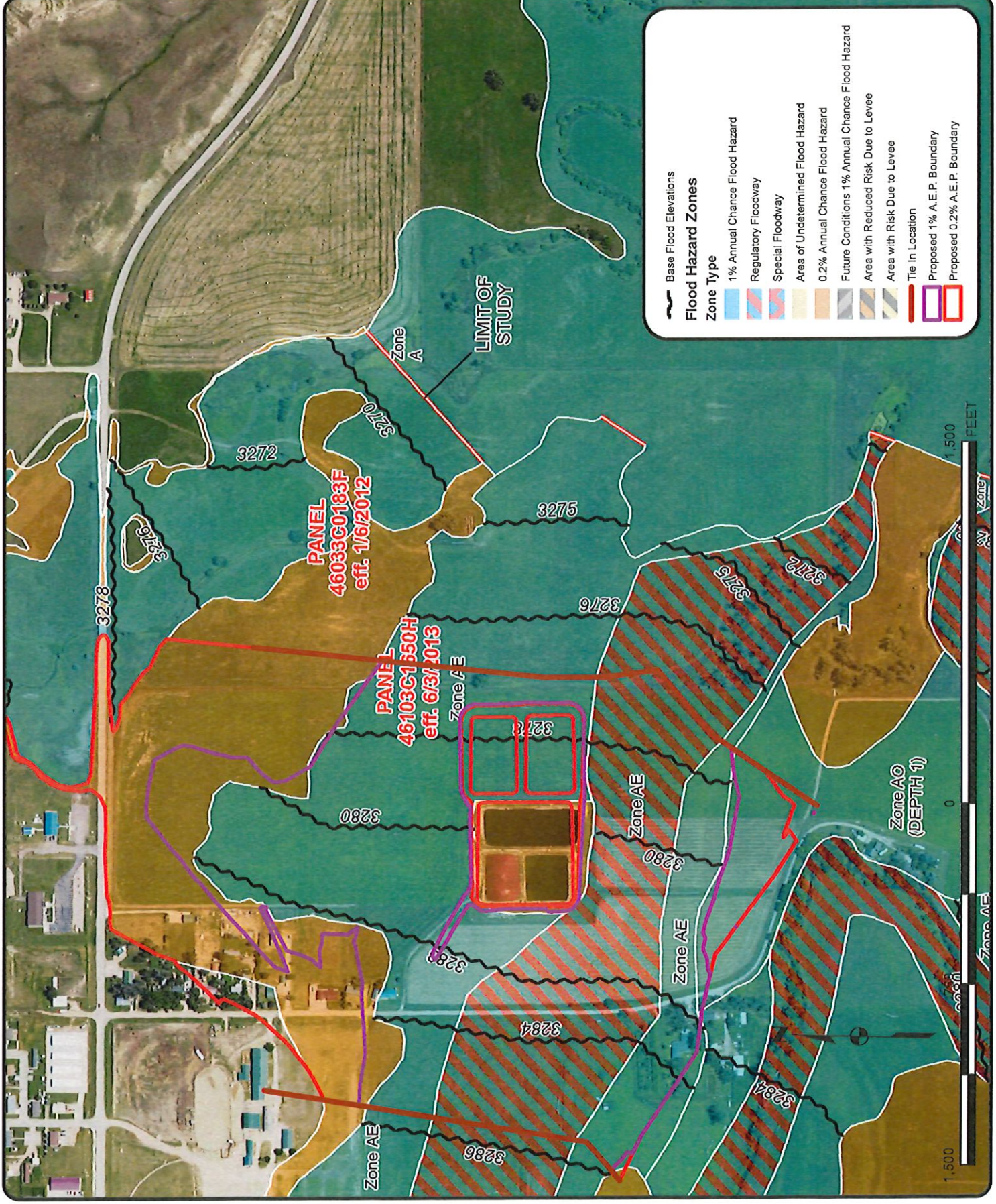
Planner/Building Official/Shift Operator = \$130/hour

Intern/CAD draftsman = \$110/hour

Technician = \$80/hour

General Labor = \$50/hour





Base Flood Elevations

Flood Hazard Zones

Zone Type

- 1% Annual Chance Flood Hazard
- Regulatory Floodway
- Special Floodway
- Area of Undetermined Flood Hazard
- 0.2% Annual Chance Flood Hazard
- Future Conditions 1% Annual Chance Flood Hazard
- Area with Reduced Risk Due to Levee
- Area with Risk Due to Levee
- Tie In Location
- Proposed 1% A.E.P. Boundary
- Proposed 0.2% A.E.P. Boundary

ANNOTATED FIRM MAP  
CLOMR FOR HERMOSA, SOUTH DAKOTA  
HORIZONTAL DATUM: NAD 1983 BLM ZONE 13N  
VERTICAL DATUM: NAVD 88  
AERIAL IMAGERY SOURCE: 2023 NAIP



PROJECT NUMBER:  
2304-01701  
PROJECT LOCATION:  
HERMOSA, S.D.  
DATE:  
MARCH 20, 2024







## **Daniel Fife, CFM**

Fargo, North Dakota • Daniel.fife@dakotaheadwaters.com • (281) 832-9754

### **Professional Summary**

Certified Floodplain Manager and Water Resource modeler with 7+ years delivering hydrologic/hydraulic modeling, FEMA floodplain compliance, and drainage design on municipal, county, and DOT projects across the Northern Plains and Black Hills. Proficient with CLOMR/LOMR/LOMR-F submittals, 1D/2D HEC-RAS, HEC-HMS, HY-8, ArcGIS/ArcGIS Pro, and LiDAR workflows. Experienced aligning designs with South Dakota DANR stormwater permits, SDDOT's Drainage Manual, and FEMA Region VIII policy, coordinating as needed with the USACE Omaha District for Section 404/10 activities.

### **Certifications**

- Certified Floodplain Manager (CFM) — ASFPM, Cert. No. US-24-13340
- Member: ASCE; Association of State Floodplain Managers (ASFPM)

### **Education**

- M.Eng., Civil Engineering (Water Resources) — University of North Dakota
- B.S., Environmental Engineering — South Dakota School of Mines & Technology

### **Technical Proficiencies**

Hydrology/Hydraulics: HEC-RAS (1D/2D), HEC-HMS, HY-8, XPSWMM, SewerGEMS

GIS & Data: ArcGIS, ArcGIS Pro, LiDAR analysis, StreamStats, AutoCAD

Regulations & Standards (SD-focused): DANR Construction Stormwater General Permit, SDDOT Drainage Manual, FEMA NFIP / Region VIII, USACE Omaha District, MS4 Programs

Documentation: CLOMR/LOMR/LOMR-F packages, drainage reports, riprap/energy dissipation (HEC-14), erosion & sediment control plans, SWPPPs

### **Professional Experience**

Dakota Headwater LLC — Lead Water Resource Designer | Apr 2025–Present

Leads water resources scopes for civil site and municipal projects, integrating stormwater management, floodplain compliance, and drainage infrastructure with site grading and roadway design; prepares SWPPPs and permitting packages aligned with DANR construction stormwater requirements and MS4 expectations where applicable.

KLJ Engineering — Water Resource Engineer | Nov 2021–Mar 2025

Delivered hydrologic/hydraulic design and FEMA deliverables for DOT and local programs, including 1D/2D modeling, culvert/bridge sizing, riprap design, and extensive HY-8 analyses; supported grant-funded BRIC studies.

### **Featured South Dakota & Black Hills Floodplain Experience**

**CLOMR Submittal & Modeling** — Battle Creek, Hermosa, SD (Custer County): Updated the Battle Creek HEC-RAS models supporting a Conditional Letter of Map Revision for proposed floodplain modifications along Battle Creek. Evaluated BFE/no-rise, conveyance, and backwater through iterative 1D simulations; compiled CLOMR (MT-2) package consistent with FEMA Region VIII review practices.

**CLOMR Submittal & Modeling** - Freedom Estates Drainage & Flood Resilience — City of Box Elder & Pennington County, SD: Updated an existing HEC-RAS models supporting a Letter of Map Revision for floodplain modifications along East Tributary To Box Elder Creek. Evaluated BFE/no-rise, conveyance, and backwater calculations; compiled LOMR (MT-2) package consistent with FEMA Region VIII review practices. Worked directly with FEMA Cooperating Technical Partners (CTP) during model review.

**LOMR-F** — Spearfish, SD: Delivered hydraulic analyses and fill-placement documentation for a Letter of Map Revision based on Fill. Verified encroachment limits and floodway impacts, demonstrated compliance with NFIP and local stormwater program expectations, and responded to FEMA RFIs to secure map amendment.

**FEMA BRIC Flood Impact Study** — Agency Village, SD (Sisseton-Wahpeton Oyate): Modeled watershed hydrology (HEC-HMS) to quantify upstream/downstream effects of structure replacements; documented that a CLOMR was not required (Zone D context), supporting BRIC funding narrative.

### **Additional Representative Projects (Regional)**

**US 85 Reconstruction** — McKenzie Co., ND: 1D/2D flow paths, centerline/approach culvert design, erosion protection per HEC-14; integrated XPSWMM for system checks.

**ND-17 Rehabilitation** — Adams, ND: HY-8 modeling for 100+ culverts across prairie-pothole terrain; equalizer strategy and storage accounting.

**Chateau Road Drainage Improvements** — Medora, ND: 2D analysis for complex topography; culvert extension/resizing and ditch regrading.

**Oak Ridge Reconstruction** — Harrisburg, SD: Floodway culvert upgrades achieving No-Rise certification; erosion control and outlet protection measures.

### **Lockwood, Andrews & Newnam — Water Resource Engineer | 2019–2021**

Supported hydrologic/hydraulic analyses for transportation and land development; storm sewer layout, grading coordination, drainage structures, and permitting documentation.

### **Town of Buena Vista, Colorado — Floodplain Manager | [2024-2025]**

Administered NFIP locally: development review in SFHA, BFE determinations, no-rise certifications, and LOMA/LOMR coordination; maintained interagency coordination with FEMA and state partners; led community outreach and CRS-oriented activities.

## **Awards**

2024 National Design-Build Project/Team Award — Design-Build Institute of America (TH-52 Design-Build)



## BENESCH AGREEMENTS

6A

| DATE       | NAME                           | TOTAL         | BALANCE       |
|------------|--------------------------------|---------------|---------------|
| 6/20/2024  | LONE COYOTE SEWER EXTENSION    | \$ 39,500.00  | \$ 9,979.50   |
| 6/20/2024  | RATE MANAGEMENT (WATERWORTH)   | \$ 5,500.00   | \$ 500.00     |
| 7/3/2024   | LAGOON EXPANSION               | \$ 108,240.00 | \$ -          |
| 7/3/2024   | WATER DISTRIBUTION MODEL       | \$ 31,000.00  | \$ 3,175.00   |
| 9/4/2024   | NORTH WATER TANK               | \$ 118,500.00 | \$ 36,487.12  |
| 9/4/2024   | WASTEWATER TREATMENT PLANT     | \$ 50,000.00  | \$ 8,268.00   |
| 10/22/2024 | SMOKE TESTING                  | \$ 2,100.00   | \$ 525.00     |
| 12/18/2024 | COMP PLAN UPDATE               | \$ 65,000.00  | \$ -          |
| 12/24/2024 | FY22 DWSRF                     | \$ 250,000.00 | \$ 162,842.50 |
| 1/21/2025  | WATERSMART GRANT               | \$ 22,500.00  | \$ 21,245.04  |
| 1/31/2025  | TIF #2                         | \$ 16,200.00  | \$ 6,630.00   |
| 2/18/2025  | EXTRATERRITORIAL-PENNINGTON CO | \$ 5,400.00   | \$ 5,400.00   |
| 5/20/2025  | FRA GRANT                      | \$ 29,800.00  | \$ 29,800.00  |
| 5/21/2025  | CMOM UPDATE                    | \$ 7,900.00   | \$ 3,555.00   |
| 7/23/2025  | OPERATIONS-INSPECTIONS         | \$ 49,445.00  | \$ 35,860.50  |
| 8/5/2025   | FEMA BRIC GRANT                | \$ 436,920.00 | \$ 436,920.00 |
| 9/23/2025  | ON-CALL OFFICE/PLANNER         | \$ 15,600.00  | \$ 15,600.00  |
| 9/23/2025  | ON-CALL BUILDING OFFICIAL      | \$ 7,514.00   | \$ 7,514.00   |







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6B

### **Attachment A: Water Distribution Model**

7/3/2024 awarded, Benesch job no. 112532.00

Project Amount: \$31,000.00

Remaining Balance: \$3,175.00 on 11/13/2025

#### **Summary of Project**

To support the update of the Water Facilities Plan for DANR compliance, Benesch was paid to prepare a waterGEMS model using surveying data completed by All Aspects Inc. The model was used to determine the feasibility of a new water tank, which the town received \$500,000 in ARPA funds to construct. The model also determined that raising the existing water tanks was not substantial enough to prevent the need for booster pumps.

Status of Project: Model Complete.

Remaining Scope: Update to the Water Facilities Plan needs to be completed.

#### **Proposed Scope to Anthony Theodorou and Company (ATAC)**

The town of Hermosa will acquire all Bentley files and project files from Benesch and provide them to ATAC. The scope will be to update the water facilities plan for the town.

ATAC will import the data from the Benesch model into their own software. A test of the model will determine it is still functional and provide both static and fire flow pressure calculations.

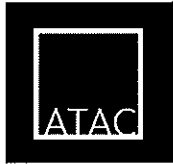
This project is tied with the DWSRF FY22 project and must be awarded together as a pre-requisite for sufficient hours to be available for report preparation.

#### **Fees: Time and Materials (T&M) not to exceed:**

From remaining Benesch balance: **\$3,175.00**

OpenFlows (or similar) software 12-month Subscription = \$1,100.00

11.5 hours of Principal Time @\$180/hour = **\$2,075.00**



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**Hourly Rates:**

Principal PE = \$180/hour

Certified Flood Plan Manager/Design Engineer = \$170/hour

Operator-in-charge = \$150/hour

Planner/Building Official/Shift Operator = \$130/hour

Intern/CAD draftsman = \$110/hour

Technician = \$80/hour

General Labor = \$50/hour



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### **Attachment A: North Water Tank**

9/4/2024 awarded, Benesch job no. 1125-600002.00

Project Amount: \$118,500.00

Remaining Balance: \$36,487.12 on 11/13/2025

#### **Summary of Project**

Benesch was paid to design a 120,000 Gallon water tank on the property the town purchased from PFI. The water model was used to determine the feasibility of a new water tank, which the town received \$500,000 in ARPA funds to construct from Custer County. After all bids came in, a substantial value-engineering redesign was done. Expanded capacity can be up to 180,000 gallons with the same foundation design. There are no connecting pipework or well house associated with the awarded contract as those funds must come from the DWSRF loan.

Status of Project: Design and Bid Complete.

Remaining Scope: Additional easements to Shorb road and to HWY 79 ROW need to be prepared. On-Site Observation and Contract Administration remains with Quinn starts in the Spring of 2026.

#### **Proposed Scope to Anthony Theodorou and Company (ATAC)**

The town of Hermosa will acquire all CAD files and project files from Benesch and provide them to ATAC. The scope will be to complete the construction phase of the North tank.

ATAC will prepare as-built plans when the tank is complete. Additional surveying will be done to support the as-built preparations. This project is tied to the DWSRF FY22 project and must be awarded together as a pre-requisite for design and system functionality.

#### **Fees: Time and Materials (T&M) not to exceed:**

From remaining Benesch balance: **\$36,400.00**

|                                                  |             |
|--------------------------------------------------|-------------|
| Surveying by Sub-consultant.                     | \$ 6,900.00 |
| 80 hours of Principal Time @\$180/hour =         | \$14,400.00 |
| 20 hours of Designer Time @\$170/hour =          | \$ 3,400.00 |
| 90 hours of Building Official Time @\$130/hour = | \$11,700.00 |



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**Hourly Rates:**

Principal PE = \$180/hour

Certified Flood Plan Manager/Design Engineer = \$170/hour

Operator-in-charge = \$150/hour

Planner/Building Official/Shift Operator = \$130/hour

Intern/CAD draftsman = \$110/hour

Technician = \$80/hour

General Labor = \$50/hour



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### **Attachment A: DWSRF Project**

12/24/2024 awarded, Benesch job no. 1125-600006.00

Project Amount: \$250,000.00

Remaining Balance: \$162,842.50 on 11/13/2025

#### **Summary of Project**

The town of Hermosa was awarded a \$2.2M State Revolving Fund (SRF) loan in 2022. The interest rate at that time was 1.75%. Benesch was contracted to negotiate with the state on how the funds could best be spent to improve the quality and resiliency of the town's drinking water system. After a system review, it was determined that the town can use the funds to:

- Drill a new well into the Madison Aquifer.
- Install drinking water treatment equipment at the well contaminated with radio-nuclides.
- Make pipework connections and construct new ancillary buildings at the new well at the north water tank and at the existing tank property.
- Make control panel improvements at all three well locations.

Status of Project: Designs are 90% Complete. Environmental Clearance from DANR complete and FONSI is in the public comments period.

Remaining Scope: Sole-source sealed bids are to be requested next. Plans and Specifications for the pipework and ancillary buildings, treatment plant and well house number 3 still need to be completed and submitted to DANR for final approvals. Bid on the pipework and ancillary buildings will follow DANR approval and require construction observation, standard operating procedures, commissioning and as-built plans.

#### **Proposed Scope to Anthony Theodorou and Company (ATAC)**

The town of Hermosa will acquire all CAD files and project files from Benesch and provide them to ATAC. The scope will be to complete the design, bid and construction phases.

ATAC will prepare as-built plans and standard operating procedures. To complete the project, ATAC will update to the Water Facilities Plan. The Water Distribution Model and North Water Tank projects are tied to this project and must be awarded together.



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**Fees: Time and Materials (T&M) not to exceed:**

From remaining Benesch balance: **\$162,840.00**

**Task 1: Bid Requests (Sole Source and Design-Bid-Build contracts)**

80 hours of Principal Time @\$180/hour = \$ 14,400.00

**Task 2: 100% Plans and Specifications, Water Facilities Plan update**

200 hours of Principal Time @\$180/hour = \$ 36,000.00

80 hours of Designer Time @\$170/hour = \$ 13,600.00

**Task 3: Construction and Commissioning Phase, As-builts and SOP**

Surveyor Subconsultants = \$24,000.00

378 hours of Principal Time @\$180/hour = \$68,040.00

40 hours of Designer Time @\$170/hour = \$ 6,800.00

**Hourly Rates:**

Principal PE = \$180/hour

Certified Flood Plan Manager/Design Engineer = \$170/hour

Operator-in-charge = \$150/hour

Planner/Building Official/Shift Operator = \$130/hour

Intern/CAD draftsman = \$110/hour

Technician = \$80/hour

General Labor = \$50/hour





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### **Attachment A: Wastewater Treatment Plant**

9/4/2024 awarded, Benesch job no. 1125-600001.00

Project Amount: \$50,000.00

Remaining Balance: \$8,268.00 on 11/13/2025

#### **Summary of Project**

Benesch was paid to design a 60,000 Gallon per day Wastewater Treatment Plant at the SW corner of the town's lagoons. The treatment equipment and building materials were purchased from H2O Clear Solutions (Apple Springs development in Lawrence County SD) and used in the design plans and specifications. Benesch was also tasked to apply for an NPDES discharge permit with DANR. The project was linked with the Lagoon Expansion project, which was substantially completed in October 2025 apart from some grass seed establishment and the potential disposal of biosolids on the east side of the Lagoon. The wastewater treatment plant was moved and erected on the lagoon site by Conifer Construction. The building is roughed in and insulated and waiting on final control panels, a heater/lighting, and a replacement transmission.

Status of Project: Design and Sole-sourcing Complete.

Remaining Scope: Construction is at 90% and the treatment equipment was tested and performed to the permit level for 1 month before a mechanical failure. The final commissioning of the plant once all control panels are in and the reconfiguration of the transmission to not fail again is also remaining work to be done.

#### **Proposed Scope to Anthony Theodorou and Company (ATAC)**

The town of Hermosa will acquire all CAD files and project files from Benesch and provide them to ATAC. The scope will be to complete the commissioning phase of the WWTP. ATAC will prepare as-built plans, a standard operating procedure. Additional funds from the TIF #2 and FEMA BRIC grant will be needed to update to the Wastewater Facilities Plan and these projects must be awarded together with this project.

#### **Fees: Time and Materials (T&M) not to exceed:**

From remaining Benesch balance: **\$8,260.00**

27 hours of Principal Time @\$180/hour = \$ 4,860.00

20 hours of Designer Time @\$170/hour = \$ 3,400.00



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**Hourly Rates:**

Principal PE = \$180/hour

Certified Flood Plan Manager/Design Engineer = \$170/hour

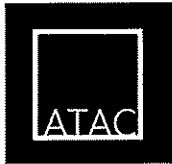
Operator-in-charge = \$150/hour

Planner/Building Official/Shift Operator = \$130/hour

Intern/CAD draftsman = \$110/hour

Technician = \$80/hour

General Labor = \$50/hour



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### **ATTACHMENT A: Lone Coyote Sewer Extension**

6/20/2024 awarded, Benesch job no. 112529.00

Project Amount: \$39,500.00

Remaining Balance: \$9,979.50 on 11/13/2025

#### **Summary of Project**

To address the deficiencies in the sewer extension to the proposed Preston Family Incorporated property, originally named "Lone Coyote Subdivision". The sewer main was installed in the creek bottom of the Billover Creek and required the design of a siphon to allow that extension to be safely used. Flooding from the Billover Creek is part of the larger FEMA BRIC scoping grant project.

Status of Project: Design Complete.

Remaining Scope: Construction Supervision pending a source of funds for the project.

#### **Proposed Scope to Anthony Theodorou and Company (ATAC)**

The town of Hermosa will acquire all CAD files and project files from Benesch and provide them to ATAC. The scope will be to add to the design drawings and administer construction, when funds become available.

ATAC will incorporate the replacement of the 200 linear feet of sewer main in the Billover creek into the TIF#2 project scope to fund the project. In addition, at least one manhole along the line (north of Shorb Road/Hwy 79 intersection) requires raising to eliminate Inflow from the surround drainage. Additional defects could be discovered during camera inspection of the remaining two segments of pipe going north to the PFI property line.

This project is tied to the FEMA BRIC scoping grant and must be awarded together.

#### **Fees: Time and Materials (T&M) not to exceed:**

|                                                |                   |
|------------------------------------------------|-------------------|
| From remaining Benesch balance:                | <b>\$9,740.00</b> |
| 20 hours of Principal Time @\$180/hour =       | \$3,600           |
| 30 hours of Designer Time @\$170/hour =        | \$5,100           |
| 8 hours of Building Official Time \$130/hour = | \$1,040           |



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**Hourly Rates:**

Principal PE = \$180/hour

Certified Flood Plan Manager/Design Engineer = \$170/hour

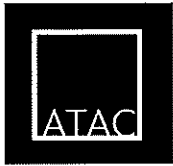
Operator-in-charge = \$150/hour

Planner/Building Official/Shift Operator = \$130/hour

Intern/CAD draftsman = \$110/hour

Technician = \$80/hour

General Labor = \$50/hour



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### **ATTACHMENT A: TIF #2**

1/31/2025 awarded, Benesch job no. 1125-600012.00

Project Amount: \$16,200.00

Remaining Balance: \$6,630.00 on 11/13/2025

#### **Summary of Project**

To develop a Tax Increment Financing District for the proposed Preston Family Incorporated property, originally named "Lone Coyote Subdivision". The sewer main was installed, requires changes to avoid destruction during a Billover Creek flood/surge and inspection as it has never been used. FEMA BRIC scoping grant project will assist in some of the scope of work, however the Preston's have not signed a developer's agreement, provided a master plan for planner approval and have not annexed additional property to secure two ingress/egresses required to develop the 105 homes in the preliminary plat submitted. In addition, new developers on the west side of the highway are ready and willing to sign a developer's agreement for their project.

Status of Project: Incomplete.

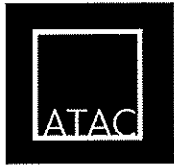
Remaining Scope: The project fell apart with the developer, PFI. A new developer is willing to step in and continue the TIF #2 for his project and sign a developer's agreement.

#### **Proposed Scope to Anthony Theodorou and Company (ATAC)**

The town of Hermosa will acquire all CAD files and project files from Benesch and provide them to ATAC. The scope will be to prepare a developer's agreement with the new developer on the west side of Hwy 79 and prepare a district map, which includes the section of sewer over the Billover Creek that needs replacement.

ATAC will incorporate the replacement of the 200 linear feet of sewer main in the Billover creek into the TIF#2 project scope to fund the project. In addition, at least one manhole along the line (north of Shorb Road/Hwy 79 intersection) requires raising to eliminate Inflow from the surround drainage. Additional defects could be discovered during camera inspection of the remaining two segments of pipe going north to the PFI property line. This project is tied to the FEMA BRIC scoping grant and must be awarded together.

The developer agreement will stipulate an Feasibility Study must be conducted by the town, which will require the developer to pay refundable funds to create the bond.



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**Fees: Time and Materials (T&M) not to exceed:**

From remaining Benesch balance: **\$6,560.00**

8 hours of Designer Time @\$170/hour = \$1,360

8 hours of Planner Time \$130/hour = \$5,200

**Hourly Rates:**

Principal PE = \$180/hour

Certified Flood Plan Manager/Design Engineer = \$170/hour

Operator-in-charge = \$150/hour

Planner/Building Official/Shift Operator = \$130/hour

Intern/CAD draftsman = \$110/hour

Technician = \$80/hour

General Labor = \$50/hour



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**ATTACHMENT A: Capacity, Management, Operations and Maintenance (CMOM) update**

5/21/2025 awarded, Benesch job no. 112529.00

Project Amount: \$7,900.00

Remaining Balance: \$3,555.00 on 11/13/2025

**Summary of Project**

The CMOM program is a planning approach for managing sanitary sewer collection system and prevent overflows and basement backups, protect public health and safeguard the environment. A CMOM program involves assessing and ensuring the system has adequate capacity, implementing proper management and operational practices and conducting ongoing maintenance. The lagoon expansion, new wastewater treatment plant, siphon to Lone Coyote and the findings of the sewer camera team will all be inputs into the CMOM program update.. Flooding from the Battle and Billover Creek is a major risk to the resiliency of the wastewater system and part of the larger FEMA BRIC scoping grant project.

Status of Project: Incomplete.

Remaining Scope: Some inventory and some updates to the GIS is all that Benesch accomplished. The CMOM report has not been prepared. Most of the graphs and figures are also unaccomplished.

**Proposed Scope to Anthony Theodorou and Company (ATAC)**

The town of Hermosa will acquire all project files from Benesch and provide them to ATAC. The scope will be to prepare graphs and tables for the CMOM with the remaining funds. The work product of the Wastewater Facilities Plan update and the findings during camera work on the FEMA BRIC grant will provide the remaining funding necessary to prepare the CMOM program report to stay in DANR compliance.

This project is tied to the FEMA BRIC scoping grant and must be awarded together.

**Fees: Time and Materials (T&M) not to exceed:**

From remaining Benesch balance: **\$3,400.00**

20 hours of Designer Time @\$170/hour = \$3,400



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**Hourly Rates:**

Principal PE = \$180/hour

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Planner/Building Official/Shift Operator = \$130/hour

Intern/CAD draftsman = \$110/hour

Technician = \$80/hour

General Labor = \$50/hour





**Southern  
Hills Law**  
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***VIA EMAILED DELIVERY TO TOWN CLERK***

Hermosa Town Board  
230 Main St  
Hermosa, SD 57744

November 11, 2025

RE: Legal Opinion on Use of "Vactor Truck" by Trustee Servis  
Town of Hermosa Legal Opinion No: 2025-1

Dear Members of the Board:

You asked me to research issues surrounding a proposed use of the "Vactor" Truck recently purchased by the Town by Trustee Servis. Principally, you requested that I look at two issues 1) Are there any concerns surrounding the 3 page proposal by Trustee Servis which he presented to the Board at the November 4, 2025 meeting titled "Proposal to Operate and Maintain the Municipal Vactor Truck" and 2) If approved, can Trustee Servis operate the truck within town limits without a commercial driver's license?

**A. CONCERNS WITH THE PROPOSAL**

The document is essentially a policy proposal about retaining Trustee Servis's limited contractor status to operate the Vactor Truck for the town to use for town operations. As a policy, it is completely up to the board as to whether this is a sound use of taxpayer monies and town resources. That said, there are a few minor concerns with the proposal as drafted.

- 1) First, there is a fundamental conflict between the proposal document and the question posed in issue 2. We are being asked to allow Trustee Servis to operate the Vactor Truck without a Commercial Driver's license, but in the proposal Section 4 the language states that the "Lead Operator" will obtain a class B Commercial Driver's license. Either the proposal should not include this, or Trustee Servis should obtain it and question 2 becomes moot.
- 2) Presuming that this truck will be insured under the Town's policy, we may want some language in the agreement ensuring compliance with any requirements from our insurance carrier.

- 3) There should be language in the proposal that Trustee Servis is acting in the capacity of a contractor and is not, by virtue of this proposal, an employee of the Town of Hermosa, which would create a conflict.
- 4) While the \$5000.00 limit is referenced in paragraph 6, it would be preferable to state this as a limitation in the contract, that the Town shall not pay the Lead Operator more than \$5000.00 in a calendar year, otherwise, SDCL 22-30A-46 likely treats any amounts exceeding \$5000.00 as unauthorized by law, and theft:

**22-30A-46. Public official's use of public funds for official's financial benefit as theft.**

Any public official who knowingly uses funds or property that has been entrusted to the public official in violation of the public trust and that results in a direct financial benefit to the public official commits a direct criminal conflict of interest.

Any public official who commits a direct criminal conflict of interest is guilty of theft.

Source: SL 2017, ch 98, § 2.

- 5) Additionally, language that Trustee Servis shall recuse himself from any votes which relate to this contract is also recommended.

These changes are minor in nature and I believe the drafted proposal can be altered to include these changes if the Board so instructs.

**B) USE OF VEHICLE IN TOWN LIMITS WITHOUT CDL**

A driver's license of the appropriate class is required on all public highways, which includes roads within the Town of Hermosa.

**"31-1-1. Highway defined.**

Every way or place of whatever nature open to the public, as a matter of right, for purposes of vehicular travel, is a highway. The term, highway, does not include a roadway or driveway upon grounds owned by private persons, colleges, universities, or other institutions, but the term includes a roadway or driveway upon grounds owned by any state agency, college, university, or institution if the governing agency, board, or commission by resolution so determines and the Department of Transportation concurs.

Source: SL 1929, ch 251, § 1 (n); SDC 1939, § 28.0101; SL 1968, ch 120; SL 2010, ch 145, § 10.

J. Scott James  
Attorney at Law  
Licensed in SD, NY

Gina Ruggieri  
Attorney at Law  
Licensed in SD

It is presumed that the “Vactor Truck” is over the weight limit of 26,000 pounds which requires a commercial driver’s license.

**32-12A-6. Possession of commercial driver license or learner's permit required for vehicle operation--Violation as misdemeanor.**

No person may drive a commercial motor vehicle on the highways of this state unless the person holds and has in immediate possession a commercial learner's permit or commercial driver license with applicable endorsements valid for the vehicle the person is driving. A violation of this section is a Class 2 misdemeanor.

**Source:** SL 1989, ch 267, § 5; SL 1997, ch 190, § 1; SDCL § 32-12-82; SL 2001, ch 171, §§ 76, 115; SL 2015, ch 168, § 5.

Potentially, I am assuming that there may have been confusion about the term “highways of this state” in this statute as if it meant “state highway” or US Highway”, but in this context it means the more generic term of any “way” in the state that is not on private property.

The only exceptions to this rule are found at SDCL 32-12A-9 which are as follows:

**32-12A-9. Operators exempt from provisions of chapter.**

The following are exempt from the provisions of this chapter:

- (1) Operators involved in farm to market transportation movements, at least sixteen years of age holding a valid operator's license, limited to those operators of a farm vehicle:
  - (a) Controlled and operated by a farmer;
  - (b) Used to transport either agricultural products, farm machinery, or farm supplies to or from a farm; and
  - (c) Not used in the operations of a common or contract motor carrier;
- (2) Operators of emergency fire fighting equipment necessary to the preservation of life or property or the execution of emergency governmental functions performed under emergency conditions that are not subject to normal traffic regulation, or nonemergency conditions when operated by members of a fire fighting agency;
- (3) Operators of commercial motor vehicles for military purposes including:
  - (a) Active duty military personnel;
  - (b) Members of the military reserves;
  - (c) Members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training and national guard military technicians (civilians who are required to wear military uniforms); and

- (d) Active duty U.S. Coast Guard personnel;
- (4) Operators of recreational vehicles;
- (5) Operators of rental transporting equipment used as personal family use vehicles;  
and
- (6) Operators of a covered farm vehicle as defined in 49 CFR 390.5 as of January 1, 2015.

United States reserve technicians are not exempt under the provisions of subdivision (3) of this section.

Cities do maintain some authority to set rules for vehicle operation in town limits; SDCL 9-31-1 provides as follows:

**9-31-1. General authority to regulate use of motor vehicles, bicycles, trailers, and road machinery.**

Except as otherwise provided, every municipality may regulate the use of motor vehicles, bicycles, house cars, house trailers, trailer coaches, traction engines, tractors, and road rollers.

These rules are further set out that a municipality can regulate speed limits, etc., but NOT licensing standards. I cannot find any exception that allows a town to permit someone to operate a commercial vehicle when it is limited to town roads. This makes sense intuitively, as CDL's would be devalued

In my opinion operation of this vehicle by a person without a valid CDL likely voids any insurance coverage if there is an accident, and exposes the town to a claim for negligent entrustment. If Trustee Servis wants to operate the Vactor Truck, it is necessary for him to obtain at least a Class B (or A) Commercial Driver's license.

Secondarily, if work is being done where the Vactor Truck will be remaining for any longer period of time within the State Highway right of way, they will need a permit from SD DOT per SD Admin Regs.

If anything else is needed on this matter, do not hesitate to inquire further.

Very Truly Yours,



*J. Scott James  
Attorney at Law  
Licensed in SD, NY*

*Gina Ruggieri  
Attorney at Law  
Licensed in SD*

**J. Scott James  
Interim City Attorney  
Hermosa, South Dakota**





8B

To: \_\_\_\_\_

Address: \_\_\_\_\_

---

Date

**Re: Brophy Road Water Users Agreement**

Dear Brophy Road Water Users,

The Town of Hermosa would like to thank you for your cooperation and patience during the recent water service discussions and repairs along Brophy Road. It appears that water service to this area was originally extended with the Town's permission some time ago, but no formal written agreement was ever put in place.

As the Town reviewed the situation following the recent maintenance concerns, it became clear that a written agreement would help clarify responsibilities for both the Town and the users, particularly regarding maintenance and repairs to the shared service line beyond the Town's main connection point.

Enclosed is a Brophy Road Water Users Agreement that reflects existing practice while clearly outlining responsibility for the service connection, shared maintenance, and repair costs. The agreement does not change the Town's willingness to continue providing water service; it simply ensures that everyone has the same understanding going forward.

We appreciate your attention to this matter and ask that each property owner review, sign, and return a copy of the agreement to the Town office at your earliest convenience. Please feel free to contact the Town Board or Clerk with any questions.

Thank you again for your cooperation and for being part of the Hermosa community.

Warm regards,

TOWN OF HERMOSA, SOUTH DAKOTA

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

Title: \_\_\_\_\_

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





## **TOWN OF HERMOSA/BROPHY ROAD WATER USERS AGREEMENT**

This Agreement is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ by and between the Town of Hermosa, South Dakota ("Town"), a South Dakota municipal corporation, and the undersigned property owner(s) ("Users"), whose properties lie outside the corporate limits of the Town but within its extraterritorial water service area.

### **1. Authority**

This Agreement is entered under SDCL 9-47-1 and 9-47-2, which authorize municipalities to operate waterworks systems and furnish water to persons outside the corporate limits upon such terms and conditions as the governing body determines.

### **2. Purpose**

The Town agrees to furnish potable water to the Users through a single connection point to the Town's distribution system, and the Users agree to share responsibility for operation, maintenance, and payment of the service in accordance with this Agreement and applicable Town ordinances and resolutions.

### **3. Term**

This Agreement shall take effect upon execution and shall continue on a month-to-month basis unless terminated under Section 9.

### **4. Rates and Charges**

Each User shall pay the rates, fees, and connection costs established by the Town for outside-city water users, as amended by ordinance or resolution. Rates may be higher than those charged to users within the Town limits.

### **5. Connection, Maintenance, and Repairs**

- a. The Users, at their joint expense, shall maintain the service line extending from the Town's main to the Users' individual properties, including all pipes, fittings, valves, and related appurtenances beyond the Town's distribution main. The Town will be responsible for maintenance of a shared meter which will monitor the water user's collective usage and which will be apportioned among said Users.
- b. The Town's responsibility ends at the point of connection to the municipal main. From that point forward—including the shared line, any branch lines, and all individual service connections—maintenance, repair, and replacement are the Users' sole responsibility.
- c. The Users shall coordinate and bear all costs of repair, maintenance, or replacement to keep the system past the Municipal main line connection point in safe working order and in compliance with Town and State health regulations.
- d. The Town may shut off service in the event of leakage, unsafe conditions, or non-compliance until proper repairs are completed at the Users' expense.

## 6. Liability and Indemnity

The Town shall not be liable for loss, damage, or interruption of service beyond the municipal main. The Users shall indemnify and hold harmless the Town, its officers, and employees from all claims arising from the Users' shared service line, private distribution, or on-property facilities.

## 7. Access

Authorized Town personnel may enter upon Users' premises at reasonable times for inspection, maintenance verification, or disconnection for nonpayment or emergency purposes.

## 8. Future Annexation

If any User's property is annexed into the Town, that User's service shall automatically convert to in-town status and be governed by then-current ordinances and rates.

## 9. Termination

Either party may terminate this Agreement upon thirty (30) days' written notice. The Town may also suspend or terminate service immediately for nonpayment, system hazard, or violation of Town policy.

## 10. Entire Agreement

This Agreement constitutes the entire understanding among the parties and may be amended only in writing approved by the Hermosa Town Board.

TOWN OF HERMOSA, SOUTH DAKOTA

By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

USERS: (Each property owner to sign)

Print Name: \_\_\_\_\_ Address: \_\_\_\_\_ Date: \_\_\_\_\_

Signature \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_ Date: \_\_\_\_\_

Signature \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_ Date: \_\_\_\_\_

Signature \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_ Date: \_\_\_\_\_

Signature \_\_\_\_\_

12A

## Claims for approval 11-18-2025

| VENDOR                          | REFERENCE                                                        | AMOUNT              |
|---------------------------------|------------------------------------------------------------------|---------------------|
| GOLDEN WEST TECHNOLOGIES        | MONTHLY SERVICE FEE - NOVEMBER 2025                              | \$ 583.65           |
| KIEFFER SANITATION              | MONTHLY SANITATION FEE - OCTOBER 2025                            | \$ 4,158.96         |
| MG OIL                          | FUEL FOR MARSHAL VEHICLE - OCTOBER 2025                          | \$ 129.95           |
| MT RUSHMORE TELEPHONE           | PHONE & INTERNET INSTALLATION-MARSHAL OFFICE- NOV 2025, 13716901 | \$ 237.32           |
| MT RUSHMORE TELEPHONE           | PHONE & INTERNET-NOV 2025, 2ND LINE, 13718352                    | \$ 67.40            |
| MT RUSHMORE TELEPHONE           | PHONE & INTERNET-NOV 2025, MAIN LINE, 13736924                   | \$ 136.08           |
| MT RUSHMORE TELEPHONE           | FAX - NOVEMBER 2025, 13717227                                    | \$ 57.67            |
| NORTHWEST PIPE FITTINGS INC     | COMBINATION KEY                                                  | \$ 93.87            |
| RURAL DEVELOPMENT               | RD 1 LOAN-OCTOBER INTEREST & PRINCIPAL                           | \$ 1,278.00         |
|                                 | RD 2 LOAN - OCTOBER INTEREST & PRINCIPAL                         | \$ 417.00           |
|                                 | RD 3 LOAN - OCTOBER INTEREST & PRINCIPAL                         | \$ 222.00           |
| SOUTHERN HILLS PUBLISHING       | PUBLISHING/LEGAL NOTICES - OCTOBER 2025                          | \$ 316.84           |
| STEEN SERVICE & REPAIR          | CYLINDER REBUILD VAKTOR TRUCK                                    | \$ 1,025.00         |
|                                 |                                                                  |                     |
| <b>Accounts Payable Total</b>   |                                                                  | <b>\$ 8,723.74</b>  |
|                                 |                                                                  |                     |
|                                 |                                                                  |                     |
| <b>Payroll related</b>          |                                                                  |                     |
| Total Paid On: 11/14/2025       |                                                                  |                     |
|                                 |                                                                  |                     |
|                                 | Legislative, Financial Administration, Govt Blds                 | \$ 3,316.85         |
|                                 | Water                                                            | \$ 178.06           |
|                                 | Sewer                                                            | \$ 106.84           |
|                                 | Promoting City/BBB                                               | \$ 35.61            |
| EFTPS-ELECTRONIC FEDERAL TAX    | FED/FICA TAX                                                     | \$ 930.56           |
| <b>Payroll Total</b>            |                                                                  |                     |
|                                 |                                                                  | <b>\$ 4,567.92</b>  |
| <b>***** REPORT TOTAL *****</b> |                                                                  |                     |
|                                 |                                                                  | <b>\$ 13,291.66</b> |

CLAIMS REPORT  
Check Range: 11/05/2025-11/18/2025

| VENDOR NAME                  | REFERENCE                      | AMOUNT | VENDOR TOTAL | CHECK# | CHECK DATE |
|------------------------------|--------------------------------|--------|--------------|--------|------------|
| A & B BUSINESS EQUIPMENT INC | MONTHLY PRINTER/FAX FEE        |        |              |        |            |
| DANR                         | WASTEWATER DISCHARGE PERMIT    |        |              |        |            |
| EFTPS-Electronic Federal Tax | FED/FICA TAX                   |        | 930.56       | 625    | 11/14/25   |
| GOLDEN WEST TECHNOLOGIES     | MONTHLY SERVICE FEE-NOV 2025   |        | 583.65       | 18459  | 11/18/25   |
| KIEFFER SANITATION           | MONTHLY SANITATION FEE/OCT 25  |        | 4,158.96     | 631    | 11/17/25   |
| MG OIL                       | FUEL FOR MARSHAL VEHICLE       | 129.95 |              | 632    | 11/18/25   |
| MG OIL                       | FUEL FOR MARSHAL - SEPT 2025   |        | 129.95       |        |            |
| MT RUSHMORE TELEPHONE        | PHONE/INTERNET-MARSHAL OFFICE  | 237.32 |              | 633    | 11/15/25   |
| MT RUSHMORE TELEPHONE        | PHONE/INTERNET,13736924 MAIN   | 261.15 | 498.47       | 634    | 11/15/25   |
| NORTHWEST PIPE FITTINGS Inc. | COMBINATION KEY                |        | 93.87        | 18460  | 11/18/25   |
| Southern Hills Publishing    | PUBLISHING/LEGAL NOTICES 10/25 |        | 316.84       | 18461  | 11/18/25   |
| SILVERSMITH DATA             | SOFTWARE INTEGRATION/SETUP     |        |              |        |            |
| STEEN SERVICE & REPAIR       | CYLINDER REBUILD VAKTOR TRUCK  |        | 1,025.00     | 18462  | 11/18/25   |
|                              | Accounts Payable Total         |        | 7,737.30     |        |            |
|                              | Utility Refund Checks          |        |              |        |            |
|                              | Refund Checks Total            |        |              |        |            |
| Payroll Checks               |                                |        |              |        |            |
|                              | 101 GENERAL                    |        | 3,316.85     |        |            |
|                              | 211 BBB GROSS RECEIPTS TAX     |        | 35.61        |        |            |
|                              | 602 WATER                      |        | 178.06       |        |            |
|                              | 604 SEWER                      |        | 106.84       |        |            |
|                              | Total Paid On: 11/14/25        |        | 3,637.36     |        |            |
|                              | Total Payroll Paid             |        | 3,637.36     |        |            |
|                              | Report Total                   |        | 11,374.66    |        |            |

+ 1917.00  
13,291.66  
Rural Development  
should have been  
included on  
11-4-25 Claims  
Report

CLAIMS REPORT  
CLAIMS FUND SUMMARY

| FUND  | NAME                   | AMOUNT    |
|-------|------------------------|-----------|
| 101   | GENERAL                | 9,874.75  |
| 211   | BBB GROSS RECEIPTS TAX | 42.34     |
| 602   | WATER                  | 211.68    |
| 604   | SEWER                  | 1,245.89  |
| ----- |                        |           |
|       | TOTAL FUNDS            | 11,374.66 |

+ 1917.00 Rural Development  
Should have been reported  
on 11-4-25 Claims Report



130

Current Mt Rushmore Telephone Internet Cost \$62.95/month

Current Mt Rushmore Telephone Telephone Cost \$63.00/month

\$60.75/month

\$52.05/month

main line

2<sup>nd</sup> line

fax

7 cent Long distance

#### Fiber Optic Costs – Mt Rushmore Telephone

Fiber Internet 100 Mbs \$90.00/month

Fiber Internet 250 Mbs \$150.00/month

#### Fiber Optic Costs – Midco

| Internet Speed | 12 Months | 24 Months | 36 Months |
|----------------|-----------|-----------|-----------|
| 100MB          | \$105     | \$95      | \$85      |
| 200MB          | \$135     | \$125     | \$115     |
| 500MB          | \$165     | \$155     | \$145     |
| 1GIG           | \$200     | \$190     | \$180     |
| 1.25GIG        | \$225     | \$215     | \$205     |

Long Distance  
5¢ per minute

|                      | 12 Months | 24 Months | 36 Months |
|----------------------|-----------|-----------|-----------|
| Basic Phone/Fax Line | \$30      | \$25      | \$20      |





11-19-2024 BOT Mtg

13 E

LAW ENFORCEMENT/ABATEMENTS/COMPLAINTS: No Custer County log was available and there are no new abatements.

LEGAL: Motion by Ferguson and seconded by Serviss to approve Revised Resolution 2024-06 Resolution Dissolving Tax Increment District No. 1; vote: all aye, motion carried.

AMENDED

RESOLUTION NO. 2024-06

A RESOLUTION DISSOLVING TAX INCREMENT DISTRICT NO. 1.

WHEREAS, on September 20, 2005, the Town adopted Resolution No. 2005-12 creating the Town of Hermosa Tax Increment District No. 1 pursuant to SDCL 11-9; and

WHEREAS, on September 20, 2005, the Town adopted Resolution No. 2005-12 approving the Project Plan for the Town of Hermosa Tax Increment District No. 1 pursuant to SDCL 11-9; and

WHEREAS the development and improvements have occurred as contemplated within the Project Plan and all project costs and obligations have been paid; and

WHEREAS, pursuant to SDCL 11-9-45, a total reimbursement of \$91,409.60 shall be paid to the Custer County Treasurer to be disbursed among the tax-levying entities entitled thereto in such amounts as belong to each respectively;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF HERMOSA, SD:

That pursuant to SDCL 11-9-46(2) the Town of Hermosa Tax Increment District No. 1 is hereby dissolved this nineteenth day of November, 2024.

PUBLIC WORKS: Ferguson provided updates on streets, water, and sewer departments.

FINANCE OFFICE: Monthly financials were presented. Motion by Kramer and seconded by Ferguson to allow town staff to use vacation hours for Friday, November 29, 2024, and to close the town office that day; vote: all aye, motion carried.

OLD BUSINESS: Gravel on Tower Road is pending until after water project construction is completed. Motion by Kramer and seconded by Serviss to approve the purchase of a couple loads of gravel, if necessary for street maintenance; vote: three ayes, one abstain, motion carried. Motion by Serviss and seconded by Kramer to approve the town to pay the \$639 closing fee for the Preston land being purchased; vote: all aye, motion carried.

NEW BUSINESS: Motion by Koontz and seconded by Serviss to approve the reimbursement of water testing fees of \$83.90 to Cheryl Neugebauer; vote: all aye, motion carried.

CITIZENS/TRUSTEE INPUT: Audience and trustees had input.

EXECUTIVE SESSION: No Executive Session was held.



TOWN OF HERMOSA  
BUDGET REPORT  
CALENDAR 11/2025, FISCAL 11/2025

14B

| ACCOUNT NUMBER  | ACCOUNT TITLE        | TOTAL<br>BUDGET | PTD<br>BALANCE | YTD<br>BALANCE | PERCENT<br>EXPENDED | UNEXPENDED |
|-----------------|----------------------|-----------------|----------------|----------------|---------------------|------------|
| 101-41300-41100 | WAGE                 | 850.00          | .00            | .00            | .00                 | 850.00     |
| 101-41300-41200 | PAYROLL TAXES        | 65.00           | .00            | .00            | .00                 | 65.00      |
| 101-41300-42300 | PUBLISHING           | 250.00          | .00            | 20.93          | 8.37                | 229.07     |
| 101-41300-42600 | SUPPLIES & MATERIALS | 90.00           | .00            | .00            | .00                 | 90.00      |
| 101-41300-42700 | TRAVEL & CONFERENCE  | .00             | .00            | .00            | .00                 | .00        |
|                 |                      | =====           | =====          | =====          | =====               | =====      |
|                 | DIFFERENCE           | 1,255.00        | .00            | 20.93          | 1.67                | 1,234.07   |
|                 |                      | =====           | =====          | =====          | =====               | =====      |
|                 |                      | =====           | =====          | =====          | =====               | =====      |
|                 | PROOF                | 1,255.00        | .00            | 20.93          | 1.67                | 1,234.07   |
|                 |                      | =====           | =====          | =====          | =====               | =====      |

| <b>ELECTION</b>   |                        | 2026 Budget        |
|-------------------|------------------------|--------------------|
| E 101-41300-41100 | WAGE EXPENSE           | \$ 900.00          |
| E 101-41300-41200 | PAYROLL TAX EXPENSE    | \$ 70.00           |
| E 101-41300-42300 | PUBLISHING EXPENSE     | \$ 250.00          |
| E 101-41300-42600 | SUPPLIES AND MATERIALS | \$ 100.00          |
| E 101-41300-42700 | TRAVEL AND CONFERENCE  |                    |
| E 101-43100-42900 | OTHER EXPENSES         | \$ 2,000.00        |
|                   |                        | <b>\$ 3,320.00</b> |



LAW ENFORCEMENT/ABATEMENTS/COMPLAINTS: Cornelison stated that Aric Alias is enrolled in the Basic Law Enforcement Officer Certification Course that will start on November 24<sup>th</sup>. There was no Custer County log provided. Motion by Koontz and seconded by Kramer to approve the claim from the Animal Control Volunteer; vote: all nay, motion failed. Motion by Koontz and seconded by Kramer that board addressed complaint received and determined no action was needed; vote: three aye and Ferguson abstained, motion carried.

14C

LEGAL: Motion by Ferguson and seconded by Serviss to approve Town Attorney to review Operating Agreements for Liquor Licenses; vote: all aye, motion carried. Motion by Serviss and seconded by Kramer to request an opinion from Town Attorney, Scott James, regarding the operational use of vaktor truck by private contractor; vote: all aye, motion carried.

CLAIMS: Motion by Serviss and seconded by Serviss to approve the Payroll and Claims as presented: vote: all aye, motion carried. BAROQUE ADVANTAGE LLC, Pay Application #11, \$84,122.12; BENESCH, On-Call Building Official Services, Operations Contract and On-Call Inspection Agreement, \$5,324.00; CONIFER CONSTRUCTION LLC, Pay Application #4, \$13,503.00; CUSTER COUNTY SHERIFF, Dispatch Contract – November 1, 2025 to January 31, 2026, \$2,000.00; GOLDEN WEST TECHNOLOGIES, Monthly service fee, \$583.65; KIEFFER SANITATION, Monthly sanitation fee, \$4,657.96; MG OIL COMPANY, Fuel for Town Marshal vehicle, \$336.18; MILLS TRUCK SERVICE, haul 1 load 1” base coarse, \$461.88; MT RUSHMORE TELEPHONE, phone and fax, \$263.76; SIMPSON PRINTING, regular envelopes, \$120.00; SOUTH DAKOTA 811, message/voice out fees, \$48.09; **Accounts Payable Total: \$111,420.64.** Payroll related: Total Paid on 10/15/2025; General, \$2,477.37; Water, \$80.74; Sewer, \$48.44; Promoting City/BBB, \$16.15; EFTPS- Electronic Federal Tax, FED/FICA TAX, \$709.58; **Total Payroll Related Paid: \$3,332.28. REPORT TOTAL: \$114,752.92.**

ECONOMIC DEVELOPMENT: Serviss gave an update on the mixer he had attended on Monday, October 20, 2025.

FINANCE OFFICE: Monthly financials will be presented at the next regular meeting. Motion by Ferguson and seconded by Kramer to approve the revised town office hours for October 22, 2025 through October 29, 2025, as Cornelison is on vacation; vote: all aye, motion carried. Discussion was held on the cost of upgrading the town office to fiber optic internet. Cornelison will do more research and bring it to the next regular meeting.

OLD BUSINESS: Motion by Kramer and seconded by Koontz to approve the removal of the \$250 annual off-sale liquor license fee from the fee schedule; vote: three aye and Serviss abstained, motion carried.

NEW BUSINESS: Motion by Koontz and seconded by Ferguson to approve the renewal of all the liquor licenses as presented (Corner Pantry off-sale Liquor; Hermosa Deli & Lounge on-sale Liquor; Lazy R Bar & Grill on-sale Liquor-Restaurant; and Pop's Grocery Shoppe off-sale Liquor); vote: all aye, motion carried. Motion by Kramer and seconded by Koontz to approve the pending of approval of Operating Agreement Renewals until the next meeting as Town Attorney reviews; vote: all aye, motion carried. Motion by Koontz to reclassify non-profit utility accounts from commercial to residential rates. Motion failed for a lack of a second. Motion by Kramer and seconded by Ferguson to approve all 5013c entities that provide town office with proper paperwork to change utility accounts from commercial to residential rates: vote: all nay, motion failed. Motion by Kramer and seconded by Ferguson to have town attorney to look at non-profit billing for water and sewer and town staff to contact SDML and research loan requirements; vote: all aye, motion carried. **Motion by Kramer and seconded by Ferguson to approve \$500 donation pending review of requirements for BBB funds, to HAHHA Santa Village; vote: all aye, motion carried.** Discussion was held on the wording of Item 16 and Koontz will review and present updated version at the next regular meeting.





# Town of Hermosa – Point Paper

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## Use of 1% Bed, Board & Booze (BBB) Funds for Santa's Village Gifts

### Purpose:

To document and support the lawful use of municipal gross receipts (1% Bed, Board & Booze) tax revenues for the purchase of small prizes or gifts awarded to children participating in the annual Santa's Village carnival event.

### Background

The Hermosa Area Historical Association hosts the annual Santa's Village event within the Town of Hermosa. The event includes a children's carnival, community gathering activities, and festive displays that draw residents and visitors from Hermosa, Custer County, and surrounding areas. This event is recognized as one of Hermosa's signature community attractions and directly contributes to the town's tourism visibility, visitor engagement, and local business activity during the holiday season.

### Legal Authority

The Town's municipal gross receipts tax (commonly called the Bed, Board & Booze or "BBB" tax) is established under SDCL Chapter 10-52A and Town of Hermosa Ordinance § 31.14, which states:

*"Any revenues received under this subchapter may be used only for the purpose of land acquisition, architectural fees, construction costs, payment for civic centers, auditoriums, or athletic facility buildings, including the maintenance, staffing, and operations of such facilities, and the promotion and advertising of the municipality, its facilities, attractions, and activities."*

### Justification

- Santa's Village qualifies as a municipal attraction and activity. The event is hosted within Hermosa and functions as a community-wide attraction, open to the public, promoting the Town's identity and civic engagement.
- Event gifts and prizes directly support "promotion and advertising." The purchase of small gifts and prizes for the carnival portion of the event enhances attendance, family participation, and public interest, thereby promoting the municipality and one of its recognized attractions.
- The expenditure aligns with the ordinance purpose. The gifts are not general giveaways but tied specifically to the operation and success of the Santa's Village

## DRAFT

attraction, which is expressly within the scope of “promotion and advertising of the municipality, its facilities, attractions, and activities.”

- Precedent and legislative intent support inclusion of event-enhancement expenses. SDCL 10-52A’s language has consistently been interpreted by municipalities across South Dakota to allow expenditures that promote or enhance community events and attractions which generate local tourism and visibility.

### Conclusion

The use of BBB funds for the purchase of small gifts or prizes associated with the Santa’s Village carnival complies with Ordinance § 31.14 and SDCL 10-52A as a legitimate promotional expense in support of one of Hermosa’s key community attractions. This expenditure promotes public participation, encourages tourism, and strengthens the Town’s image as a welcoming and family-oriented municipality.



## ***Municipal Gross Receipts Tax***

- [31.10](#) Purpose
- [31.11](#) Effective date and enactment of tax
- [31.12](#) Collection
- [31.13](#) Interpretation
- [31.14](#) Use of revenue

- [31.99](#) Penalty

## **MUNICIPAL SALES AND SERVICE TAX**

### **§ 31.01 PURPOSE.**

The purpose of this subchapter is to provide needed revenue for the town by imposing a municipal retail sales and use tax, pursuant to the powers granted to the municipality by the state, by SDCL § 10-52, entitled Uniform Municipal Non-Ad Valorem Tax Law, and acts amendatory thereto.

(Ord. 7.3, passed 10-3-2006)

### **§ 31.02 EFFECTIVE DATE AND ENACTMENT OF TAX.**

From and after January 1, 2007, there is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax measured by 2% on the gross receipts of all persons engaged in business within the jurisdiction of the municipality of the town, who are subject to the State Retail Occupational Sales and Service Tax, SDCL § 10-45 and acts amendatory thereto.

(Ord. 7.3, passed 10-3-2006)

### **§ 31.03 USE TAX.**

In addition there is hereby imposed an excise tax on the privilege of use, storage and consumption within the jurisdiction of the municipality of tangible personal property or services purchases from and after January 1, 2007, at the same rate as the municipal sales and service tax upon all transactions or use, storage and consumption which are subject to the State Use Tax Act, SDCL § 10-46, and acts amendatory thereto.

(Ord. 7.3, passed 10-3-2006)

### **§ 31.04 COLLECTION.**

The tax is levied pursuant to authorization granted by SDCL § 10-52 and acts amendatory thereto, and shall be collected by the State Department of Revenue and Regulation in accordance with the same rules and regulations applicable to the state sales tax and under additional rules and regulations as the Secretary of Revenue and regulation of the state shall lawfully prescribe.

(Ord. 7.3, passed 10-3-2006)

### **§ 31.05 INTERPRETATION.**

It is declared to be the intention of this subchapter and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the State Retail Occupational Sales and Service Act, SDCL § 10-45, and acts amendatory thereto and the State Use Tax, SDCL § 10-46 and acts amendatory hereto, and that this shall be considered a similar, tax except for the rate thereof to that tax.

(Ord. 7.3, passed 10-3-2006)

## **MUNICIPAL GROSS RECEIPTS TAX**

### **§ 31.10 PURPOSE.**



The purpose of this subchapter is to provide additional needed revenue for the Municipality of Hermosa, Custer County, South Dakota, by imposing a municipal gross receipts tax pursuant to the powers granted to the municipality by the State of South Dakota by SDCL § 10-52A, and acts amendatory thereto.

(Ord. 31.06, passed 3-6-2018)

#### **§ 31.11 EFFECTIVE DATE AND ENACTMENT OF TAX.**

From and after July 1, 2018, there is hereby imposed a municipal gross receipts tax of 1% upon the gross receipts from the sale of leases or rentals of hotel, motel, campsites, or other lodging accommodations within the municipality for periods of less than 28 consecutive days, the sale of alcoholic beverages as defined in SDCL § 35-1-1, establishments where the public is invited to eat, dine, or purchase and carry out prepared food for immediate consumption, and ticket sales or admissions to places of amusement, athletic, and cultural events. The tax applies to the gross receipts of all persons engaged in business within the jurisdiction of the Municipality of Hermosa, Custer County, South Dakota, who are subject to the South Dakota Retail Occupational Sales and Service Tax, SDCL § 10-45 and acts amendatory thereto.

(Ord. 31.06, passed 3-6-2018)

#### **§ 31.12 COLLECTION.**

Such tax is levied pursuant to authorization granted by SDCL § 10-52A and acts amendatory thereto, and shall be collected by the South Dakota Department of Revenue in accordance with the same rules and regulations applicable to the State Sales Tax and such additional rules and regulations as the Secretary of Revenue of the State of South Dakota shall lawfully prescribe.

(Ord. 31.06, passed 3-6-2018)

#### **§ 31.13 INTERPRETATION.**

It is declared to be the intention of this subchapter and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the South Dakota Retail Occupational Sales and Service Tax, SDCL § 10-45 and acts amendatory thereto, and that this shall be considered a similar tax except for the rate of that tax.

(Ord. 31.06, passed 3-6-2018)

#### **§ 31.14 USE OF REVENUE.**

Any revenues received under this subchapter may be used only for the purpose of land acquisition, architectural fees, construction costs, payment for civic centers, auditoriums, or athletic facility buildings, including the maintenance, staffing, and operations of such facilities, and the promotion and advertising of the municipality, its facilities, attractions, and activities.

(Ord. 31.06, passed 3-6-2018)

#### **§ 31.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § [10.99](#).

(B) In addition to the penalty in division (A) above, for §§ [31.01](#) through [31.05](#), all the collection remedies authorized by SDCL Chapter 10-45, and acts amendatory thereto, and SDCL Chapter 10-46, and acts amendatory thereto, are hereby authorized for the collection of these excise taxes by the Department of Revenue and Regulation.

(C) In addition to the penalty in division (A) above, for §§ [31.10](#) through [31.14](#), any person failing or refusing to make reports or payments prescribed by the subchapter and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$2,000 or imprisoned in the municipal jail for 30 days or both such fine and imprisonment. In addition, all such collection remedies authorized by SDCL § 10-45, and acts amendatory thereto, are hereby authorized for the collection of these excise taxes by the Department of Revenue.  
(Ord. 7.3, passed 10-3-2006; Ord. 31.06, passed 3-6-2018)





## Position Paper

Use of BBB Funds for Hermosa Christmas Lighting Contest

Prepared for: Hermosa Board of Trustees

Prepared by: Jerry Styles

For the 4 November 2025 BOT meeting

### Purpose

This position paper supports the proposed motion (bottom of Position Paper) to authorize \$1,000.00 from the Town's Bed, Board, and Booze (BBB) fund for prize payouts in the 2025 Hermosa Christmas Lighting Contest.

### Background

Hermosa has a long-standing tradition of residents decorating their homes and businesses for the Christmas season. Deb and Dan Holsworth's presentation is at the heart of the Christmas Decorations. Each year, (it is estimated over 500) families from across Custer County and neighboring areas visit Hermosa to enjoy these displays (some of the best in the state), which enhances the town's visibility and reputation as a welcoming, community-oriented destination. Encouraging and rewarding local participation in this event helps sustain that tradition while promoting Hermosa as a place where people want to visit, live, and invest. It also shows the Businesses, who pay the 1% BBB tax, that the money is being used to bring more people to our community and therefore more money being spent in our Town at their businesses.

**Bottom line this event Increases economic activity**, since visitors often stop for gas, dining, or shopping.

### Legal Basis

Under SDCL 10-52A-9, BBB revenues may be used "for the promotion and advertising of the municipality, its attractions, and activities." The Christmas Decorations Contest qualifies as a promotional activity because it:

- Encourages public participation within town limits,
- Attracts non-residents to visit and view displays, and
- Promotes Hermosa's community image and tourism appeal.

### Implementation

The contest will be administered by Hermosa Wondering Minds a local nonprofit LLC on behalf of the Town. Participation will be limited to properties within Hermosa municipal limits. BBB funds will be used solely for contest prize payouts, awarded as follows:

| Place | Prize |
|-------|-------|
| 1st   | \$250 |
| 2nd   | \$200 |
| 3rd   | \$175 |
| 4th   | \$150 |
| 5th   | \$125 |
| 6th   | \$100 |

Proper documentation of prize awards and promotional materials will be retained for the Town's records in compliance with state and municipal requirements.

### Recommendation

Approval of the motion authorizing \$1,000.00 in BBB funds for the Hermosa Christmas Decorations Contest is recommended as a legitimate and beneficial promotional expenditure

that aligns with SDCL 10-52A-9 and advances Hermosa's community and tourism objectives while increasing economic activity for the Hermosa Business's.

**Proposed Motion – Use of BBB Funds for Hermosa Christmas Decorations Contest**

Motion:

I move that the Town of Hermosa approves the expenditure of \$1,000.00 (up front to allow payout at the time of the judging) from the Bed, Board, and Booze (BBB) fund for prizes in the 2025 Hermosa Christmas Lighting Contest, limited to properties within town limits and administered by Hermosa Wondering Minds a local nonprofit LLC.

Prizes shall be awarded as follows:

- 1st Place – \$250
- 2nd Place – \$200
- 3rd Place – \$175
- 4th Place – \$150
- 5th Place – \$125
- 6th Place – \$100

## CHAPTER 73: TRAFFIC SCHEDULES

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Schedule

*Current*

### I. Speed limits

#### **SCHEDULE I. SPEED LIMITS.**

(A) It shall be unlawful for any person or persons, except law enforcement officers, ambulances and fire equipment drivers to drive or operate any automobile, truck, motorcycle or other vehicle at a speed exceeding 25 mph on South Dakota State Highway #79 through the corporate limits of the town within a zone marked by highway speed signs.

(B) Upon conviction of a violation of division (A) above, the person shall be punished by a fine in an amount set by the Board of Trustees, as per the current fee schedule, or by imprisonment for a period not exceeding 30 days or by both a fine and imprisonment.

(Ord. 7, passed 6-6-1949; Ord. passed 8-5-1974)

Proposed 50 mph

## CHAPTER 73: TRAFFIC SCHEDULES

### Schedule

#### I. Speed limits

#### SCHEDULE I. SPEED LIMITS.

(A) It shall be unlawful for any person or persons, except law enforcement officers, ambulances and fire equipment drivers to drive or operate any automobile, truck, motorcycle or other vehicle at a speed exceeding 50 mph on South Dakota State Highway #79 through the corporate limits of the town within a zone marked by highway speed signs.

(B) Upon conviction of a violation of division (A) above, the person shall be punished by a fine in an amount set by the Board of Trustees, as per the current fee schedule, or by imprisonment for a period not exceeding 30 days or by both a fine and imprisonment.

(Ord. 7, passed 6-6-1949; Ord. passed 8-5-1974)



Proposed 55 mph

## CHAPTER 73: TRAFFIC SCHEDULES

### Schedule

#### I. Speed limits

#### SCHEDULE I. SPEED LIMITS.

(A) It shall be unlawful for any person or persons, except law enforcement officers, ambulances and fire equipment drivers to drive or operate any automobile, truck, motorcycle or other vehicle at a speed exceeding 55 mph on South Dakota State Highway #79 through the corporate limits of the town within a zone marked by highway speed signs.

(B) Upon conviction of a violation of division (A) above, the person shall be punished by a fine in an amount set by the Board of Trustees, as per the current fee schedule, or by imprisonment for a period not exceeding 30 days or by both a fine and imprisonment.

(Ord. 7, passed 6-6-1949; Ord. passed 8-5-1974)