

**HERMOSA TOWN BOARD
MONDAY, JULY 20, 2026
SPECIAL MEETING @ 6:00PM**

REVISED



- 1) **ROLL CALL:**
 - A. BOT Roll Call: Ferguson, Kramer, Matheny, Miller, Serviss
 - B. Acknowledgment of other Attendees
 - C. Pledge of Allegiance to be led by the Board President

- 2) **COMMENTS FROM THE PUBLIC:** 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. However, **citizens may request items for discussion.**
 1. Reserved time for public comment under this section is **15 minutes.**
 2. Each member of the public is allotted **90 seconds** for comment during this section.
 3. Anyone addressing the Board during this time shall take the podium after being recognized.
 4. A sign up sheet shall be available at the door to allow for priority in speaking.
 5. After these time limits are reached, all further commentary shall be made only with the Chair's approval.

- 3) **CALL FOR CHANGES:**
 - A. Review of current agenda items
 - B. Motion to accept the agenda as presented/amended

- 4) **CONFLICT OF INTEREST DECLARATION:**
(Roll call voting for any agenda item where a conflict of interested is formally identified)

- 5) **OLD BUSINESS:**
 - A. Preston Family Negotiations for finalization of NWS project

- 6) **NEW BUSINESS:**
 - A. Motion to support emergency proposal – Cleaning and decontamination of 33,000 underground water tank and 135,000 welded steel water tank
 - B. Approve full contingency road map to secure and sustain potable water supply
 - C. Assign authorized agents for approval of emergency expenditures related to contingency road map
 - D. Approve hourly pay rate for and terms for historical knowledge consultation contract – Chuck Ferguson

- 7) **CLOSING COMMENTS FROM THE PUBLIC:**
 1. Reserved time for public comment under this section is **15 minutes.**
 3. Anyone addressing the Board during this time shall take the podium after being recognized.
 4. Each person will be allotted **3 minutes** to speak.
 5. All comments shall be directed toward the chair.
 5. After these time limits are reached, all further commentary shall be made only with the Chair's approval.

- 8) **TRUSTEE INPUT:**

- 9) **EXECUTIVE SESSION:**
 - A. Motion to enter Executive Session allowable by SDCL 1-25-2 – Legal/Personnel/Contract/Security
 - B. Motion to exit out of Executive Session
 - C. Motions resulting from Executive Session

- 10) **ADJOURN: Motion** by _____; Second by _____ to adjourn the meeting at _____ PM.

**AGREEMENT FOR CONTRIBUTION
OF DEVELOPER FUNDS FOR PUBLIC IMPROVEMENTS**

THIS AGREEMENT FOR CONTRIBUTION OF DEVELOPER FUNDS FOR PUBLIC IMPROVEMENTS (hereinafter "Agreement") is made and entered into this 8 day of December, 2021, by and between the Town of Hermosa, a municipal corporation of the state of South Dakota, whose address is PO Box 298, Hermosa, South Dakota 57744 (hereinafter "Town"), and Preston Family Inc., whose address is 22760 Stone Meadow Rd., Rapid City, South Dakota 57702 (hereinafter "Developer" or "Owner").

WHEREAS, Developer owns certain real property which it seeks to voluntarily annex into the Town generally located west of Highway 79 and more specifically described in Exhibit A attached hereto and incorporated herein by this reference (hereinafter "Property"); and

WHEREAS, the Town is continuing with of the extension of its water and sewer system consistent with its multi-phase sewer and water expansion plan started in 2007; and

WHEREAS, Developer in expectation of the Town's water and sewer mains reaching Developer's land, intends to subdivide and/or develop the Property into residential lots, the effect of which will directly impact and generate the need for on-site and off-site improvements; and

WHEREAS, the Developer acknowledges that the public infrastructure improvements (also referred to as the "Improvements") required herein are reasonably attributable to the special impacts that will be generated by the proposed uses of the Property and that the terms and conditions set forth in this Agreement are reasonable, necessary and appropriate; and

WHEREAS, Developer has requested that Town provide sewer and water services and has agreed to participate in the funding of the extension of certain municipal water and sewer mains in order to provide said services to residential lots in future Lone Coyote Subdivision; and

WHEREAS, the Town has the authority to regulate the subdivision of land within its jurisdiction pursuant to SDCL §11-6-27; and

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

1. FINANCIAL CONTRIBUTION BY DEVELOPER.

A. Within 30 days of this Agreement Developer hereby agrees to remit \$150,000 to be held by the Town which shall be applied to costs associated with the construction and installation of the subject public Improvements on a 50/50 basis as invoices are received from subcontractors. A \$150,000 irrevocable letter of credit (ILOC) from Black Hills Federal Credit Union will be also simultaneously provided with remittance from which Town may draw upon to pay half of additional invoices. Upon final acceptance by Town of the Improvements, any remaining developer funds shall be refunded to Developer.

(i) Town agrees that Developer's contribution shall not exceed \$300,000. Developer warrants that its \$300,000 contribution will be tendered to the Town and placed into a designated fund for the sole purpose of paying Project costs as described and

illustrated in Exhibit "B" attached hereto and incorporated herein by this reference; said costs may include costs associated with the city engineer review of plans and normal administrative fees associated with the development and the construction of the water and sewer line.

(ii) The anticipated completion date of the Project is March 1, 2022.

B. Developer acknowledges and agrees that additional future sewer connection fees and water tap fees, will be required totaling a combined amount of \$2,000.00 per each connection and which tap fees will be chargeable to the lots who want to hook up to the water and sewer.

C. Town agrees to cooperate with PFI pursuing additional funding sources as permitted by South Dakota Codified Law including but not limited to Tax Assessment Districts and for Tax Increment Financing Districts for certain infrastructure improvements for future phases.

2. PENDING LITIGATION.

Parties acknowledge that there is a pending legal action between the Town of Hermosa and Southern Black Hills Water System which may result in a Federal Court Order prohibiting to the Town from providing water to Lone Coyote Subdivision; however Developer agrees that with or without Hermosa providing water, sewer service is critical to the development of its subdivision and will release Town from any obligation to provide water regardless of any obligations of Town created herein and the consideration paid by Developer.

3. INDEMNIFICATION.

Developer agrees to indemnify and hold harmless the Town and its officers and employees from and against all liability, claims, demands and expenses, including court costs and attorney fees, resulting from any act on account of any injury, loss or damage, which arise out of or are in any manner connected with the work to be performed under this Agreement if such death injury, loss or damage is caused in whole or in part by the negligent act or omission, error, professional error, mistake, accident or other fault of Developer, any Subcontractor of Developer or any officer, employee or agent of Developer. The obligations of this section shall not apply to the extent the Town becomes liable by final judgment to pay a third party as the result of the negligent act or omission, error, professional error, mistake, accident or other fault of the Town.

Town agrees to indemnify and hold harmless the Developer and its officers, directors and employees from and against all liability, claims, demands and expenses, including court costs and attorney fees, resulting from any act on account of any injury, loss or damage, which arise out of or are in any manner connected with the work to be performed under this Agreement if such death injury, loss or damage is caused in whole or in part by the negligent act or omission, error, professional error, mistake, accident or other fault of Town, any Subcontractor of Town or any officer, employee or agent of Town. The obligations of this section shall not apply to the extent the Developer becomes liable by final judgment to pay a third party as the result of the negligent act or omission, error, professional error, mistake, accident or other fault of the Developer.

4. MISCELLANEOUS PROVISIONS.

A. Governing Law and Venue. This Agreement shall be governed by the laws of the state of South Dakota, and venue shall be in the Circuit Court for the Seventh Judicial Circuit, County of Custer, state of South Dakota. The parties hereto agree and acknowledge that this Agreement may be enforced at law or in equity.

B. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of South Dakota Codified Law.

C. Title and Authority. Developer warrants to the City that it is the record owner of the Property. Each individual executing this Agreement covenants and warrants that he or she is fully authorized to execute this Agreement on behalf of the party he or she represents.

D. No Waiver. The failure of the Town to take timely action with respect to the breach of any term, covenant or condition hereof shall not be deemed to be a waiver of such performance by Developer, or a waiver of any subsequent breach of the same, or any other term, covenant, or condition herein contained.

E. Binding Effect. This Agreement shall be binding on the parties hereto and their respective heirs, successors and assigns.

F. Entire Agreement. This Agreement shall constitute the entire agreement between the parties with regard to the subject matter herein. No subsequent amendment shall be valid unless made in writing and executed by the parties hereto.

G. Notice. Any notice that may be given under the terms of this Agreement shall be made in writing and shall be deemed made upon personal service or upon mailing by United States Mail, postage prepaid, to the other party, unless amended by written notice, as follows:

DEVELOPER:

Preston Family, Inc.
22760 Stone Meadow Rd.
Rapid City, SD 57702

TOWN:

Town of Hermosa
PO Box 298
Hermosa, SD 57744

H. Severability. To the extent that this Agreement may be executed and performance of the obligation of the parties may be accomplished within the intent of this Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

I. No Third-Party Beneficiary. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Town and Developer, and nothing contained in this Agreement shall give or allow any such claim or action of any third person regarding this Agreement. It is the expressed intention of the Town and the Developer that no person other than the Town or Developer receiving services or benefits under this Agreement shall be deemed a beneficiary hereof.

J. No Partnership or Agency. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, neither the Town or Developer shall be deemed or constitute a partner, joint venturer or agent of the other. Any actions taken by the parties pursuant to this Agreement shall be deemed actions as an independent contractor of the other

IN WITNESS WHEREOF and agreeing to be fully bound by the terms of this Agreement, the parties have executed this Agreement as of the date first written above.

DEVELOPER:

PRESTON FAMILY, INC.

By: [Signature]
Printed Name Robert C. Preston
Its President

TOWN:

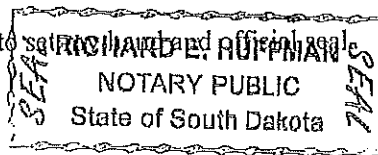
TOWN OF HERMOSA

By: [Signature]
Printed Name
Its: [Signature]

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF PENNINGTON)

On this the 3rd day of December 2021, before me, the undersigned Notary Public, personally appeared Robert C. Preston who acknowledged himself to be the President of Preston Family, Inc., a South Dakota corporation, and that he, as such, President being authorized so to do, executed the foregoing instrument for the purposes herein contained, by signing the name of the corporation by himself as President

IN WITNESS WHEREOF, I have hereunto set my hand and official seal
[Signature]
Richard E. Huffman Notary Public
My commission expires March 20, 2023
(S E A L)



STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF CUSTER)

On this the 8 day of December, 2021, before me, the undersigned Notary Public, personally appeared Dan Helsworth, who acknowledged himself to be the President of the Town Board for the Town of Hermosa, and that he, as such President being authorized so to do, executed the foregoing instrument for the purposes herein contained, by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal
[Signature]
Notary Public
My commission expires: 6-14-2024
(S E A L)



DRAWING NUMBER
12 PLAT 893

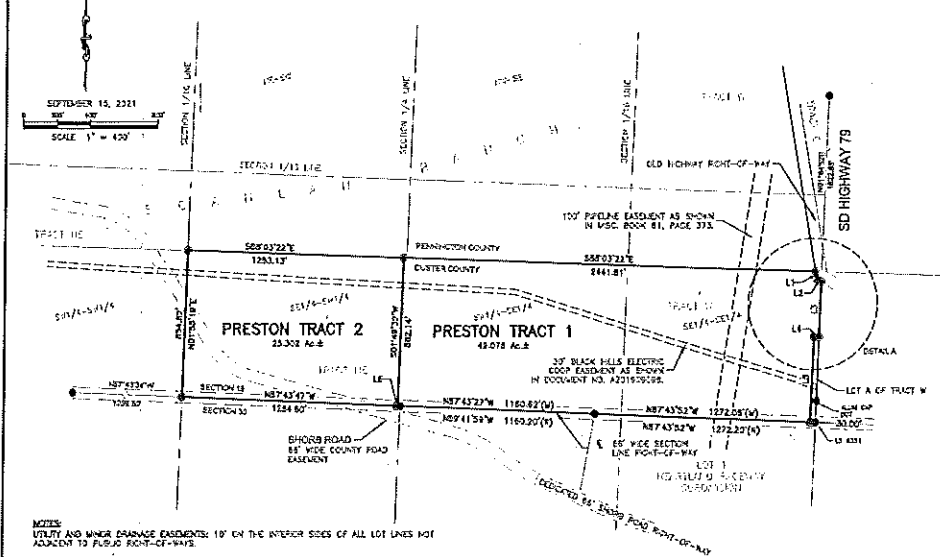
DRAWING NUMBER
12 PLAT 893

64 PG 28 / OUT 1 PG 36

PLAT OF

**LONE COYOTE SUBDIVISION
PLAT OF PRESTON TRACTS 1 & 2**

(formerly a portion of Tract W of the SE1/4 of the SE1/4; a portion of the SW1/4 of the SE1/4; and portion of Tract NE of the SE1/4 of the SW1/4, Section 19, T2S, R8E, BHM)
LOCATED IN SECTION 19, T2S, R8E, BHM, CUSTER COUNTY, SOUTH DAKOTA



NOTES

UTILITY AND UNDER DRAINAGE EASEMENTS: 10' ON THE INTERIOR SIDES OF ALL LOT LINES NOT ADJACENT TO PUBLIC RIGHT-OF-WAYS.

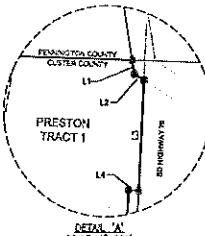
ANY EASEMENT EASEMENT SHOWN HEREIN SHALL BE KEPT FREE OF ALL OBSTRUCTIONS INCLUDING BUT NOT LIMITED TO BUILDINGS, WALLS, FENCES, TREES AND SHRUBS. THESE EASEMENTS GRANT TO ALL PUBLIC UTILITIES THE RIGHT TO CONSTRUCT, MAINTAIN, INSPECT, AND REPAIR SUCH IMPROVEMENTS AND STRUCTURES AS IT DEEMS EXPEDIENT TO FACILITATE DRAINAGE FROM ANY SOURCE.

BASED ON: BOUNDARY SOUTH DAKOTA STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD83(2011), CORNED 1984 CURV.

WATER PROTECTION STATEMENT: PURSUANT TO SDCL 11-3-3.1 AND 11-3-3.2, THE DEVELOPER OF THE PROPERTY DESCRIBED WITHIN THIS PLAT SHALL BE RESPONSIBLE FOR PROTECTING ANY WATERS OF THE STATE, INCLUDING GROUNDWATER, LOCATED ADJACENT TO OR WITHIN SUCH PROTECTIONS. CONFORM TO AND FOLLOW ALL REGULATIONS OF THE SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES RELATING TO THE SAME.

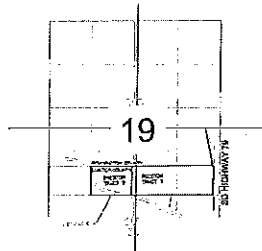
FLOODPLAIN STATEMENT: BASED ON THE FLOOD INSURANCE RATE MAP NUMBER 4903K0202F (NOT PRINTED), EFFECTIVE DATE JANUARY 6, 2012, INDICATES THE SUBJECT PROPERTY IS LISTED IN ZONE 0.

Line #	Distance	Bearing
L1	40.50	S09° 47' 23"E
L2	31.89	S07° 21' 23"E
L3	32.73	S01° 51' 33"W
L4	33.00	N87° 43' 52"W
L5	48.72	S01° 51' 33"W
L6	15.00	N87° 43' 47"W



LEGEND

- Denotes each 5/8" iron with survey cap marked "Warner - Assoc. 9213".
- Denotes Round Survey Monument marked US 5908, unless otherwise noted.
- (P) Denotes recorded in previous plat or description.
- (V) Denotes measured in this survey.



WITNESS MAP

State of SD, Certificate of Register of Deeds
County of Custer, Document # 84359
Filed this 29th day of October, 2021 at 3:02 p.m.
In Book 12 of Plats, Page 893. Fee: \$60.00
County of Custer, South Dakota
Eric D. Howard, Registered Land Surveyor No. 5213 in the State of South Dakota, do hereby certify that the plat of the above described land, which is a representation of said survey, conforms to the original plat and field notes, and that the same are not known to me to be in error.

In witness whereof, I have hereunto set my hand and seal
Eric D. Howard, Registered Land Surveyor
9-15-21

CERTIFICATE OF OWNER
State of South Dakota
County of Custer

As the undersigned do hereby certify that we are the owners of the land shown and described herein, that the survey was done at our request for the purpose indicated herein; that we do hereby approve the survey and within plot of said land, and that the development of the land shall conform to all existing applicable zoning, subdivision, and other local ordinances.

Any land shown on the within plot as dedicated to public right-of-way is hereby dedicated to public use and public utility use as such, however, but such dedication shall not be construed to be a donation of the fee of such land.

In witness whereof, I have set my hand and seal:
OWNER: Preston Family, Inc.

By: [Signature]
On this 20th day of September, 2021, before me, a Notary Public, personally appeared [Signature], known to me to be the person described in the foregoing instrument and acknowledged to me that he signed the same.

NOTARY PUBLIC: [Signature]
My commission expires: October 20, 2026

CERTIFICATE OF TOWN FINANCE OFFICER
I, Finance Officer of the Town of Hermosa, South Dakota, do hereby certify that the foregoing instrument is a true and correct copy of the instrument adopted by the Town Board of Hermosa, South Dakota, at a meeting held on the 11th day of October, 2021.

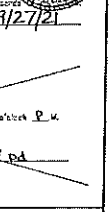
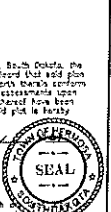
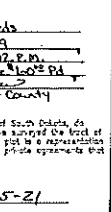
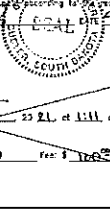
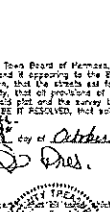
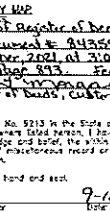
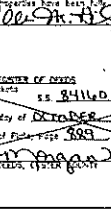
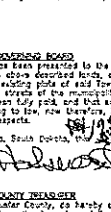
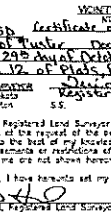
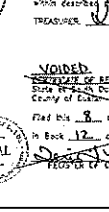
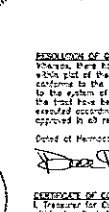
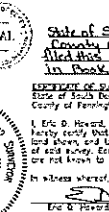
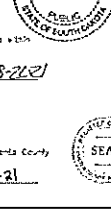
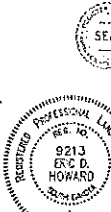
Hermosa Finance Officer: [Signature]
Date: 10-15-21

CERTIFICATE OF DIRECTOR OF REGISTRATION
I, Director of Registration for Custer County, do hereby certify that I have a copy of the within described plat in my office.

DIRECTOR OF REGISTRATION: [Signature] DATE: 10-8-21

CERTIFICATE OF COUNTY AUDITOR
The inclusion of this plat meets the requirements of the county as it relates to access onto County roads.

CUSTER COUNTY HIGHWAY AUTHORITY: [Signature] DATE: 9-27-21



PREPARED BY: REINER ASSOCIATES, LLC • 3231 TEEWNOT DRIVE • RAPID CITY, SD 57703 • 605/721-7310

64 PG 28 / OUT 1 PG 36

893 889

BID FORM
REVISED 09/22/2021

TOWN OF HERMOSA WATER AND SEWER EXPANSION PROJECT
HERMOSA, SOUTH DAKOTA

DATE: 9/29/2021

PROPOSAL OF: R.C.S. Construction, Inc.

hereinafter called the Contractor, proposes and agrees to and with The Town of Hermosa, hereinafter called the Owner, to complete the work according to the contract documents and to furnish the following at the price stated:

Item No.	Description of Item	Estimated Quantity	Unit	Unit Cost	Extended Cost
1	Mobilization	1.0	LS	\$ 36,966.36	\$ 36,966.36
2	Miscellaneous and Incidentals	1.0	LS	\$ 16,670.31	\$ 16,670.31
3	Erosion and Sediment Control	1.0	LS	\$ 5,443.75	\$ 5,443.75
4	Traffic Control	1.0	LS	\$ 3,792.69	\$ 3,792.69
5	8" Water Main C-900, DR-18	2876.0	LF	\$ 61.11	\$ 175,752.36
6	6" Water Main C-900, DR-18 (FH LEADS)	36.0	LF	\$ 64.31	\$ 2,315.16
7	8" 90° Horiz. Bend	2.0	EA	\$ 724.35	\$ 1,448.70
8	8" 11.25° Vertical. Bend	6.0	EA	\$ 613.54	\$ 3,681.24
9	8" 22.5° Vertical. Bend	4.0	EA	\$ 619.11	\$ 2,476.44
10	8" Gate Valve	6.0	EA	\$ 2,328.71	\$ 13,972.26
11	8" x 6" x 8" Tee	6.0	EA	\$ 832.59	\$ 4,995.54
12	8" Cap	1.0	EA	\$ 408.69	\$ 408.69
13	Broing of Shorb Road for water and sewer mains	1.0	EA	\$ 30,020.99	\$ 30,020.99
14	Sanitary Sewer Main, 10" PVC	2901.0	LF	\$ 59.28	\$ 171,971.28
15	48" PCC Manhole	8.0	EA	\$ 3,581.35	\$ 28,650.80
16	Fire Hydrant w/Aux Valve	5.0	EA	\$ 6,477.46	\$ 32,387.30
17	Flush Mounted Tracer Wire Access Box	5.0	EA	\$ 477.84	\$ 2,389.20
18	Sewer Main Encasement with insulation	200.0	LF	\$ 89.43	\$ 17,886.00
19	Seed, Fertilize and Mulch	3225.0	SY	\$ 1.85	\$ 5,966.25
20	Material Testing	1.0	LS	\$ 4,499.07	\$ 4,499.07
21	1" Water Service with curb stop location TBD	1.0	EA	\$ 3,286.65	\$ 3,286.65
				TOTAL BID AMOUNT	\$ 564,981.04

Five hundred sixty four thousand nine hundred eighty one dollars and four cents

(Total Bid Price Written in Words)

All Bid Prices include any applicable federal, state and local taxes. This includes SD excise tax.

The within proposal and agreement are based upon the conditions, stipulations, and specifications named in the notice inviting bids for the Town of Hermosa Water and Sewer Expansion Project, which notice, drawings and detailed specifications are made as definitely a part of this contract as if written herein at length.

In the possible case of a discrepancy in bid amount, the written amount shall rule.

In submitting this Bid, Bidder represents that:

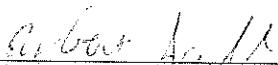
- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda:

<u>Addendum #/Date</u>	<u>Addendum #/Date</u>
<u>#1</u>	<u>9/22/2021</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

- B. Bidder has visited the site, has become familiar with it and is satisfied as to the general, local and site conditions that may affect cost, progress, and performance of the Work.
- C. The Project Final Completion date is March 1, 2022. Contractor agrees with the provisions for liquidated damages of \$250.00 Per Calendar Day, for failure to complete the project within the stated completion time.

In submitting this Bid Form it is understood that the Owner reserves the right to reject any and all bids and to waive all informalities.

Respectfully submitted:

<u>R.C.S. Construction, Inc.</u>	Date: <u>9/29/2021</u>
Name of Company (Contractor)	
<u>Robert C. Scull II (RC)</u>	
<u></u>	Address: <u>PO Box 9337</u>
Authorized Signature	<u>Rapid City, SD 57709</u>
Title: <u>President</u>	Contact: <u>Robert C. Scull II (RC)</u>
Phone / Fax: <u>(605)342-3787</u>	Email: <u>rc@rcsconst.com</u>

(Seal if corporation)

Submit this Bid Form in duplicate with other required materials in a sealed opaque envelope with the notation of "Sealed Bid Enclosed: Town of Hermosa Water and Sewer Expansion Project" on the face thereof. No electronic or facsimile bids will be accepted.

END OF BID FORM

1099 & Shipping | Recur | Transactions | Checks/Deposits | Invoice/PO | Assets Purchased | Attachment |
 Display Format  Simple  Detail  Extended ☐ Extended History File Print

Batch	Posted	Amount	Check No.	Date	Invoice	Account
Cash Receipt	9/2022	\$5,180.00				R 101-32100 BUILDING PERMIT REVENUE
Cash Receipt	9/2022	\$845.00				R 101-32100 BUILDING PERMIT REVENUE
Cash Receipt	8/2022	\$75.00				R 101-32100 BUILDING PERMIT REVENUE
Cash Receipt	8/2022	\$50.00				R 101-32100 BUILDING PERMIT REVENUE
Cash Receipt	4/2022	\$35,325.46				R 604-38390 OTHER SEWER REVENUE
Cash Receipt	4/2022	\$35,325.46				R 602-38190 OTHER WATER REVENUE
Cash Receipt	3/2022	\$30,175.63		03/31/22		R 604-38390 OTHER SEWER REVENUE
Cash Receipt	3/2022	\$30,175.62		03/31/22		R 602-38190 OTHER WATER REVENUE
Cash Receipt	3/2022	\$75,000.00	486423			R 604-38390 OTHER SEWER REVENUE
Cash Receipt	3/2022	\$75,000.00	486423			R 602-38190 OTHER WATER REVENUE

\$281,002.17

Record: 14 (1 of 10) Unfiltered Search

⏮ | ⏪ | ⏩ | ⏭ | ⏭* | Delete Vendor

Options

\$ 140,501.09 Sewer

48 140,501.09 Water

Customer/Vendor

23

Search 1361
 Check Name RCS CONSTRUCTION
 Attention
 Address PO Box 9337
 Print Label
 Envelope # Rapid City SD 57709-9337

Status Type Active ☒ Use In Batch Entry ☐ One Time Only
 Phone
 Email
 Website

1099 & Shipping Recur Transactions Checks/Deposits Invoice/PO Assets Purchased Attachment
 Display Format Sample Detail Extended ☐ Extended Report File Print

Batch	Posted	Amount	Check No.	Date	Invoice	Account
Cash Payment	6 2022	\$6,838.54	16735	06/16/22		E 604-43200-43300 CAPITAL IMPROVEMENTS
Cash Payment	6 2022	\$6,838.53	16735	06/16/22		E 602-43300-43300 CAPITAL IMPROVEMENTS
Cash Payment	4 2022	\$70,650.92	16663	04/08/22		E 602-43300-43300 CAPITAL IMPROVEMENTS
Cash Payment	4 2022	\$70,650.92	16663	04/08/22		E 604-43200-43300 CAPITAL IMPROVEMENTS
Cash Payment	4 2022	\$16,284.37	16663	04/08/22		E 604-43200-43300 CAPITAL IMPROVEMENTS
Cash Payment	4 2022	\$16,284.36	16663	04/08/22		E 602-43300-43300 CAPITAL IMPROVEMENTS
Cash Payment	3 2022	\$89,720.99	16615	03/16/22		E 604-43200-43300 CAPITAL IMPROVEMENTS
Cash Payment	3 2022	\$89,720.99	16615	03/16/22		E 602-43300-43300 CAPITAL IMPROVEMENTS
Cash Payment	2 2022	\$150,630.26	16576	02/18/22		E 604-43200-43300 CAPITAL IMPROVEMENTS
Cash Payment	2 2022	\$150,630.26	16576	02/18/22		E 602-43300-43300 CAPITAL IMPROVEMENTS
Cash Receipt	23 2023	\$75.00	58924			R 101-32000 LICENSES & MISC PERMITS

Total \$ 608,250.14

Record: 1 of 11 Unfiltered Search
 Delete Vendor Options

9-3-24	Original Agreement with \$130,501.08 as amount for water tap fees
9-5-24	Revised Agreement changed water tap fees to \$140,501,08
9-17-24	BOT Packet included agreement with selling price of \$15,000 and closing at Title Company
10-1-24	BOT Packet Agenda listed Approval of final purchase agreement – no item in packet. Motion to approve and authorize Linda to sign once legal description added
11-1-24	Updated agreement in my email – included legal description and Pennington Title for closing
11-5-24	Included on BOT Agenda – no item in packet – minutes state agreement is ready for signature
11-7-24	BOT Agenda included purchase of piping and Benesch Lone Coyote Sewer Extension Work Authorization
11-20-24	Final land agreement signed – included “Any interest earned will be kept by the town.”
10-25-24 to 10/30/25	\$6,395.26 interest earned on 12-month CD
11/24/25-5-1/26	\$2,477.49 interest earned on 6-month CD

LAND PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is made and entered into as of September __, 2024, by and between:

Seller:

Preston Family
22760 Stone Meadow Rd
Rapid City, South Dakota 57702

Buyer:

Town of Hermosa
PO Box 298
230 Main Street
Hermosa, South Dakota 57744

RECITALS

WHEREAS, the Seller owns certain land currently located at _____ in Custer County, South Dakota;

WHEREAS, the Buyer desires to purchase, and the Seller desires to sell, the land under the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Sale of Assets

The Preston Family agrees to sell the Town of Hermosa a portion of their property as indicated in the attached Exhibit. The property is 0.48 acres (21,015 SF) and is located entirely in Lot 13 of the proposed Lone Coyote Subdivision plat. The agreed upon purchase price is \$_____.

Along with the agreed upon purchase price, the town also agrees to set aside an amount of \$130,501.08 that was paid to the town for water tap and benefit fees, which will be put in a segregated interest-earning account to be used exclusively for the development of the sewer collection system and related infrastructure to connect to the town's sewer trunk line, located at the south property line. Related infrastructure can include road improvements where the sewer line is active and present. The funds and accrued interest cannot be used for other purposes and must be used on land that is inside the town of Hermosa town limits. The town will cover the costs of surveying the parcel and the cost of the parcel split for the recorded deeds.

2. Purchase Price

2.1. The total purchase price for the land shall be Three Thousand Six Hundred Dollars (\$3,600.00) (the "Purchase Price").

2.2. The Purchase Price shall be paid by the Buyer to the Seller in the following manner:

2.2.a. _____ paid at the time of Closing.

3. Closing

3.1. The closing of the transaction contemplated by this Agreement (the "Closing") shall take place on September __, 2024 at the Law Offices of _____, South Dakota, or at such other time and place as the parties may mutually agree in writing.

3.2. At the Closing, the Seller shall deliver to the Buyer the following:

- a) A duly executed Bill of Sale transferring ownership of the land to the Buyer.
- b) Copies documents related to the land
- c) Any other documents necessary to complete the transfer of the Assets.

3.3. At the Closing, the Buyer shall deliver to the Seller the following:

- a) _____ dollars in certified funds.
- b) A resolution, order, ordinance or other evidence of approval of the purchase by the Town of Hermosa;
- c) Any other documents required to complete the purchase.

4. Representations and Warranties

4.1. Seller's Representations and Warranties: The Seller represents and warrants to the Buyer that:

- a) The Seller is the sole owner of the Assets and has the full legal right and authority to sell and transfer them.
- b)
- c) There are no pending or threatened lawsuits, claims, or proceedings against the Plant.

4.2. Buyer's Representations and Warranties: The Buyer represents and warrants to the Seller that:

- a) The Buyer has the legal authority to purchase the land and the financial capacity to pay the Purchase Price and perform its obligations under this Agreement.
- b) The Buyer has obtained all necessary approvals and authorizations to purchase the Assets.
- c) The buyer would expect a Warranty Deed

5. Disclaimer of Warranties

5.1 Other than as specifically set forth herein, Seller makes no representations or warranties, either express or implied, concerning the land and assets subject to this Agreement.

5.2 Buyer has had the opportunity to inspect and examine the land and has been given access to review each and all documentation Buyer deems necessary to enter into this Agreement. Buyer is not relying upon any representations or warranties of Seller regarding the condition of the land, nor its suitability for Buyer's intended purposes. The land shall be sold to the Buyer "AS IS" and "SUBJECT TO ALL FAULTS."

6. Indemnification

6.1. The Seller agrees to indemnify, defend, and hold harmless the Buyer from and against any and all claims, liabilities, losses, damages, costs, and expenses (including reasonable attorney's fees) arising out of or related to any breach of the Seller's representations, warranties, or covenants in this Agreement.

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7. Governing Law

7.1. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to its conflict of laws principles.

8. Dispute Resolution

8.1. Any legal action, suit or proceeding in law or equity arising out of or relating to this Agreement and the transaction contemplated by this Agreement may only be instituted in a state or federal court in the State of South Dakota. If any action or proceeding in law or equity is instituted for the alleged breach of any obligation under this Agreement, then the prevailing party shall be entitled to recover reasonable attorney's fees, expert witness fees, and court costs, in addition to any other remedy afforded by law.

9. Entire Agreement

9.1. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, and negotiations, whether written or oral, between the parties.

10. Amendments

10.1. This Agreement may be amended or modified only by a written agreement signed by both parties.

11. Severability

11.1. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

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12.1 In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

13. Binding Effect

13.1 This Agreement shall extend to and be binding upon the heirs, administrators, personal representatives, successors, and assigns of the parties hereto.

14. Counterparts

14.1. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Dated this ____ day of August, 2024, effective September 1, 2024.

Seller:
Preston Family

By:
Its:

Dated this ____ day of August, 2024, effective September 1, 2024.

Buyer:
Town of Hermosa

By:
Its:

LAND PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is made and entered into as of September ___, 2024, by and between:

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22760 Stone Meadow Rd
Rapid City, South Dakota 57702

Buyer:

Town of Hermosa
PO Box 298
230 Main Street
Hermosa, South Dakota 57744

RECITALS

WHEREAS, the Seller owns certain land currently located at _____ in Custer County, South Dakota;

WHEREAS, the Buyer desires to purchase, and the Seller desires to sell, the land under the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

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Along with the agreed upon purchase price, the town also agrees to set aside an amount of \$140,501.08 that was paid to the town for water tap and benefit fees, which will be put in a segregated interest-earning account to be used exclusively for the development of the sewer collection system and related infrastructure to connect to the town's sewer trunk line, located at the south property line. Related infrastructure can include road improvements where the sewer line is active and present. The funds and accrued interest cannot be used for other purposes and must be used on land that is inside the town of Hermosa town limits. The town will cover the costs of surveying the parcel and the cost of the parcel split for the recorded deeds.

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Dated this ____ day of August, 2024, effective September 1, 2024.

Seller:

Preston Family

By:

Its:

Dated this ____ day of August, 2024, effective September 1, 2024.

Buyer:

Town of Hermosa

By:

Its:

LAND PURCHASE AGREEMENT

9-17-24
BOT
Packet

This Purchase Agreement ("Agreement") is made and entered into as of September____, 2024, by and between:

Seller:

Preston Family
22760 Stone Meadow Rd
Rapid City, South Dakota 57702

Buyer:

Town of Hermosa
PO Box 298
230 Main Street
Hermosa, South Dakota 57744

RECITALS

WHEREAS, the Seller owns certain land currently located at **Lot 13 in Lone Coyote Development** in Custer County, South Dakota;

WHEREAS, the Buyer desires to purchase, and the Seller desires to sell, the land under the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Sale of Assets

The Preston Family agrees to sell the Town of Hermosa a portion of their property as indicated in the attached Exhibit. The property is 0.48 acres (21,015 SF) and is located entirely in Lot 13 of the proposed Lone Coyote Subdivision plat. The agreed upon purchase price is \$ **15,000.00.**

Along with the agreed upon purchase price, the town also agrees to set aside an amount of **\$140,501.08** that was paid to the town for water tap and benefit fees, which will be put in a segregated interest-earning account to be used exclusively for the development of the sewer collection system and related infrastructure, including replatting, to connect to the town's sewer trunk line, located at the south property line. Any interest earned will be kept by the town. Related infrastructure can include road improvements where the sewer line is active and present. The funds and accrued interest cannot be used for other purposes and must be used on land that is inside the town of Hermosa town limits. The town will cover the costs of surveying the parcel and the cost of the parcel split for the recorded deeds.

2. Purchase Price

2.1. The total purchase price for the land shall be no more than Fifteen Thousand Dollars (\$15,000.00) (the "Purchase Price").

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2.2.a. \$15,000.00 paid at the time of Closing.

3. Closing

3.1. The closing of the transaction contemplated by this Agreement (the "Closing") shall take place on September __, 2024 at the Title Company of _____, South Dakota, or at such other time and place as the parties may mutually agree in writing.

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- a) A duly executed Deed transferring ownership of the land to the Buyer.
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Dated this ____ day of September 2024, effective September __, 2024.

Seller:
Preston Family

By:
Its:

Dated this ____ day of September, 2024, effective September __, 2024.

Buyer:
Town of Hermosa

By:
Its:

**HERMOSA TOWN BOARD
TUESDAY, OCTOBER 1, 2024
REGULAR MEETING @ 6.00pm**

- 1) **ROLL CALL:**
 - A. BOT Roll Call: Kramer, Ferguson, Koontz, Harris, Serviss
 - B. Acknowledgement of other Attendees
 - C. Pledge of Allegiance to be led by Kramer
- 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 the September 17, 2024, regular meeting minutes
- 4) **CONFLICT OF INTEREST DECLARATION:**
- 5) **ENGINEER:**
 - A. Smoke Testing Services - Approve Benesch Work Authorization to perform smoke testing services for 7 sewer customers at \$300 per customer
 - B. Approve final Purchase Agreement with Preston's -.48 acre parcel for North Water Tank
 - C. Approve the transfer of \$140,501.08 from checking account to an interest-bearing CD for up to 12 months.
 - D. Review and Approve Burckhardt Construction Proposal to move and install Apple Springs WWTP
 - E. Approve Ferguson Construction 1725 ft x \$8/LF for 1-inch water line to new WWTP = limit not to exceed \$13,800 (from WWTP loan budget)
 - F. Gradual or Immediate rate increase on WWTP surcharge – Vote on two options from Colliers
 - G. Approve purchase of 342 LF of 4-inch SDR-35 Sewer Pipe from Preston Family for the WWTP. The original design called for SCH-40 (92LF) and SCH-80 (250 LF) at prices of \$6.41/LF and \$11.08/LF, respectively. The SDR35 from Preston's is \$5.68/LF, for a total savings of \$1,417.16
 - H. Town planner to discuss by phone his recommendations for the TIF 1 and future TIF
- 6) **PLANNING & ZONING:**
 - A. 2024-35 – Floodplain Development – 259 Donna St.
 - B. 2024-33 – Floodplain Development/Subdivision Plat Application – Parcel 004139
 - C. 2024-38 – Digging/Grading – 500 & 510 Walter St. – FYI
- 7) **CLAIMS:**
 - A. Review payroll and claims. Motion to approve as presented/amended
- 8) **LAW ENFORCEMENT/ABATEMENTS/COMPLAINTS:**
 - A. Custer County Log
 - B. Abatements
- 9) **PUBLIC HEARING AT 7:00 PM**
 - A. Public Hearing for transfer of malt beverage South Dakota wine license – TW Saloon LLC
 - B. Motion for approval
 - C. Public Hearing for new application for on-sale liquor license – TW Saloon LLC
 - D. Motion for approval

**HERMOSA TOWN BOARD
TUESDAY, OCTOBER 1, 2024
REGULAR MEETING @ 6:00pm**

ROLL CALL: Kramer called the meeting to order on Tuesday, October 1, 2024, at 6:03 pm with the following members present: Ferguson, Kramer, Koontz, Harris and Serviss. Interested citizens and attorney Hagg were also present. Pledge of Allegiance led by Kramer.

CALL FOR CHANGES: Motion made by Ferguson and seconded by Serviss to approve agenda with the change of moving Item 7 Claims to Item 5, Item 8 Law Enforcement moved to Item 7, Item 9 Public Hearing moved to Item 8 and Item 5 Engineer moved to Item 9; vote: all aye, motion carried.

CONSENT CALENDAR: Motion made by Ferguson and seconded by Serviss to approve September 17, 2024, regular meeting minutes; 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.

CLAIMS: Motion made by Ferguson and seconded by Harris to approve Payroll and Claims as presented; vote: all aye, motion carried. AMERICAN LEGAL PUBLISHING, 2-7 supplement pages, \$802.35; BLACK HILLS ELECTRIC COOP, power at lagoon for wastewater treatment system, \$29,872.50; BLACK HILLS LANDSCAPES, sewer line excavate/repair 470 Manning Street, \$2,847.34; CONNIE LEIMER, trap/neuter/release program, \$20.00; DOOR SECURITY PRODUCTS, replace dumpster camera/IC real time/smart IR, \$652.43; DAKOTA SUPPLY GROUP, 8 FLEX CPLG Concxpvc, \$31.38; CHUCK FERGUSON, September 2024 services, \$3,120.00; CHUCK FERGUSON, discharge pipe/pull pump #1/waterline for lagoon, \$3,536.00; GOLDEN WEST TECHNOLOGIES, MFA setup for Administrative Assistant, \$90.00; H2I CKEAR SOLUTIONS, down payment on wastewater treatment system, \$100,000.00; HAGG & HAGG LLP, October retainer/8 billable hours and 98 copies, \$4,724.50; RURAL DEVELOPMENT, RD1 loan-September interest/principal, \$1,278.00, RD2 loan-September interest/principal, \$417.00, RD3 loan-September interest/principal, \$222.00; NORTHWEST PIPE FITTINGS, test ball plug/extension hose for pump/NPT saddle/bushing/PVC sewer, \$545.25; SOUTH DAKOTA DEPARTMENT OF REVENUE, sales tax July and August 2024, \$569.45; **Accounts Payable Total: \$ 148,728.20. Utility Deposit Refunds:** Brandon/Elizabeth Allen, \$65.04; Nicole/Jared Barlow, \$154.95; Triple J & K Properties, \$200.00. **Deposit Refund Total: \$419.99.** Payroll related: Total Paid On: 9/30/2024: General, \$3,686.60, Water, \$454.58, Sewer, \$191.29, Promoting City/ BBB, \$63.67, SOUTH DAKOTA RETIREMENT, \$972.54; EFTPS-Electronic Federal Tax, FED/FICA TAX, \$1,100.94; HEALTH POOL OF SOUTH DAKOTA, \$1,969.00; **Total Payroll Related Paid: \$8,438.62. REPORT TOTAL: \$157,586.81.**

PLANNING & ZONING: Motion made by Kramer and seconded by Serviss to direct Floodplain Administrator to complete hydraulic analysis for Permit #2024-35 – Floodplain Development Application – 259 Donna Street – 10' x 8' wooden shed and to pend permit until next meeting; vote: four aye and one abstain, motion carried. Motion by Serviss and seconded by Ferguson to allow Floodplain Administrator to review Plat for Permit #202-33 – Floodplain Development/Subdivision Plat Application – Parcel 004139 and review at next meeting; vote: all aye, motion carried. Information Permit #2024-38 – Digging/Grading – 500 & 510 Walter Street was presented for information purposes only.

PUBLIC HEARING: Motion made by Ferguson and seconded by Serviss to open public hearing at 7:07 p.m.; vote: all aye, motion carried. Motion by Ferguson and seconded by Serviss to approve the transfer of Malt Beverage License #RB-27834 from Hermosa Community Center LLC to TW Saloon LLC; vote: all aye, motion carried. Motion by Ferguson and seconded by Serviss to approve the new application from TW Saloon LLC for a Retail (on-sale) Liquor License; vote: all aye, motion carried. Motion by Harris and seconded by Ferguson to close the public hearing at 7:08 p.m.; vote: all aye, motion carried.

LAW ENFORCEMENT/ABATEMENTS/COMPLAINTS: There was no Custer County log provided. There are no new current abatements.

ENGINEER: Motion made by Serviss and seconded by Ferguson to approve the cost of smoke testing, unless it was proven there was negligence by the homeowner, for seven sewer customers at \$300 each; vote: four aye and one abstain, motion carried. **Motion made by Koontz and seconded by Ferguson to approve the purchase price of \$15,000 and authorize Kramer to sign the land agreement with the Preston family for the North Water Tank once the legal description is received;**

vote: all aye, motion carried. Motion made by Kramer and seconded by Koontz to authorize the finance officer to transfer \$140,501.08 from the checking account into a six-month interest-bearing CD at the financial institution offering the best interest rate; vote: all aye, motion carried. This amount represents the amount paid by the Preston family for water tap fees and will be used for sewer development. Motion made by Kramer and seconded by Koontz to approve the proposal with Conifer Construction in the amount of \$149,212.00 for the transport and set-up of the Apple Springs wastewater treatment system; vote: all aye, motion carried. Motion by Harris and seconded by Koontz to approve Ferguson Construction to install a 1,725 foot 1-inch water line to the new Wastewater Treatment Plant at a cost of \$8 per lineal feet and not to exceed the amount of \$13,800; vote: four aye and one abstain, motion carried. Motion made by Ferguson and seconded by Serviss to approve the purchase of 350 lineal feet of 4-inch SDR-35 sewer from the Preston Family for the wastewater treatment plant at a cost of \$5.68 per lineal foot; vote: all aye, motion carried. Neil Putnam, Planner with Benesch joined the meeting by phone to give recommendations for TIF #1 and future TIFs.

BREAK: The board took a 5-minute break and reconvened at 8:30 p.m.

LEGAL: Hagg explained that the project plan for TIF #1 can be amended, and current funds can be used to complete the project identified. Motion by Harris to direct the Town Engineer and Town Attorney to create an amendment to TIF #1 after a work session and be reviewed by the Board of Trustees and present to the county. Motion died for a lack of a second. Motion by Serviss and seconded by Ferguson to dissolve TIF #1; vote, two aye, three nay, motion failed. Motion by Harris and seconded by Koontz to direct the Town Engineer and Town Attorney to create an amendment to TIF #1 and present to the Board of Trustees; vote: three aye, two nay, motion carried.

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

FINANCE OFFICE: The bank reconciliation report was presented. The SDML conference will be held in Sioux Falls, South Dakota, October 8th through October 11th. Cornelison will reserve motel rooms for those wishing to attend. The Finance Officer presented the list of volunteers for the Town of Hermosa, which included Trena Matheny for town website design and Dan Holsworth for town street maintenance. Volunteers for the Town of Hermosa for 2024 were recognized and it is the intent of the Hermosa Town Board of Trustees to cover these volunteers for Work Comp purposes. Motion by Harris and seconded by Koontz to approve the Work Comp coverage for the two volunteers listed; vote: four aye and one nay, motion carried.

OLD BUSINESS: Gravel on Tower Road is pending. Motion by Koontz and seconded by Ferguson to approve the payment for two registrations for members of Hermosa Connects to attend the Fuel the Growth conference being held in Rapid City, October 7th through October 10th, with those attending to report back to the Town Board on what they learned at the conference; vote: all aye, motion carried. Motion made by Harris and seconded by Koontz to support a contest for artwork for the new website design; vote: all aye, motion carried.

NEW BUSINESS: Motion by Koontz and seconded by Harris to approve the proposal from Dan Holsworth in the amount of \$2,750.00 for machine time and fuel expenses; Kramer amended the motion and Serviss seconded the amendment to approve the proposal from Holsworth in the amount of \$2,750.00 for street maintenance; vote: four aye and one nay, motion carried. Motion made by Koontz and seconded by Harris to approve the use of electric service from the town office building for the Christmas tree lights on the tree located between the town office building and the post office building; vote: four aye and one nay, motion carried. The street sign height was pending until the next meeting.

ITEMS FROM CITIZENS/TRUSTEE INPUT: Audience and trustees had input.

EXECUTIVE SESSION: Motion made by Harris and seconded by Koontz to enter Executive Session allowable by SDCL 1-25-2.1- Personnel at 11:07 p.m.; vote: all aye, motion carried. Motion made by Harris and seconded by Serviss to exit Executive Session at 11:17 p.m.; vote: all aye, motion carried. There were no motions made from executive session.

ADJOURN: Motion made by Ferguson and seconded by Serviss to adjourn meeting at 11:17 p.m., vote: all aye, motion carried.

ATTEST:

LAND PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is made and entered into as of November____, 2024, by and between:

Seller:

Preston Family
22760 Stone Meadow Rd
Rapid City, South Dakota 57702

Buyer:

Town of Hermosa
PO Box 298
230 Main Street
Hermosa, South Dakota 57744

RECITALS

WHEREAS, the Seller owns certain land currently located at:

A PARCEL OF LAND LOCATED IN SECTION 19, TS2, R8E, CUSTER COUNTY, SOUTH DAKOTA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHEAST CORNER OF BISON RIDGE SUBDIVISION, PRESTON TRACT 1, SECTION 19, TS2, R8E, CUSTER COUNTY, SOUTH DAKOTA; THENCE N38°15'26"W 193.77 FEET; THENCE N01°54'53"E 94.48 FEET; THENCE S87°43'52"E 125.00 FEET; THENCE S01°54'53"W 241.76 FEET TO THE POINT OF BEGINNING. CONTAINING 0.48 ACRES OF LAND. SUBJECT TO ANY AND ALL EASEMENTS, RESTRICTIONS AND/OR RIGHTS-OF-WAY OF RECORD.

WHEREAS, the Buyer desires to purchase, and the Seller desires to sell, the land under the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Sale of Assets

The Preston Family agrees to sell the Town of Hermosa a portion of their property as indicated in the attached Exhibit. The property is 0.48 acres (21,015 SF) and is located entirely in the above described lot of the proposed Bison Ridge Subdivision plat. The agreed upon purchase price is \$ 15,000.

Along with the agreed upon purchase price, the town also agrees to set aside an amount of **\$140,501.08** that was paid to the town for water tap and benefit fees, which will be put in a segregated interest-earning account to be used exclusively for the development of the sewer collection system and related infrastructure, including replatting, to connect to the town's sewer trunk line, located at the south property line. Any interest earned will be kept by the town. Related infrastructure can include road improvements where the sewer line is active and present. The funds and accrued interest cannot be used for other

purposes and must be used on land that is inside the town of Hermosa town limits. The town will cover the costs of surveying the parcel and the cost of the parcel split for the recorded deeds.

2. Purchase Price

2.1. The total purchase price for the land shall be no more than Fifteen Thousand Dollars (\$15,000.00) (the "Purchase Price").

2.2. The Purchase Price shall be paid by the Buyer to the Seller in the following manner:

2.2.a. \$15,000 paid at the time of Closing.

3. Closing

3.1. The closing of the transaction contemplated by this Agreement (the "Closing") shall take place on November __, 2024 at the Title Company of Pennington Title, 725 Kansas City Street, Rapid City, South Dakota, or at such other time and place as the parties may mutually agree in writing.

3.2. At the Closing, the Seller shall deliver to the Buyer the following:

- a) A duly executed Deed transferring ownership of the land to the Buyer.
- b) Copies of documents related to the land
- c) Any other documents necessary to complete the transfer of the Assets.

3.3. At the Closing, the Buyer shall deliver to the Seller the following:

- a) \$15,000 dollars in certified funds.
- b) A resolution, order, ordinance or other evidence of approval of the purchase by the Town of Hermosa;
- c) Any other documents required to complete the purchase.

4. Representations and Warranties

4.1. Seller's Representations and Warranties: The Seller represents and warrants to the Buyer that:

- a) The Seller is the sole owner of the Assets and has the full legal right and authority to sell and transfer them.
- b) There are no pending or threatened lawsuits, claims, or proceedings against the Plant.

4.2. Buyer's Representations and Warranties: The Buyer represents and warrants to the Seller that:

- a) The Buyer has the legal authority to purchase the land and the financial capacity to pay the Purchase Price and perform its obligations under this Agreement.
- b) The Buyer has obtained all necessary approvals and authorizations to purchase the Assets.
- c) The buyer would expect a Warranty Deed

5. Disclaimer of Warranties

5.1 Other than as specifically set forth herein, Seller makes no representations or warranties, either express or implied, concerning the land and assets subject to this Agreement.

5.2 Buyer has had the opportunity to inspect and examine the land and has been given access to review each and all documentation Buyer deems necessary to enter into this Agreement. Buyer is not relying upon any representations or warranties of Seller regarding the condition of the land, nor its suitability for Buyer's intended purposes. The land shall be sold to the Buyer "AS IS" and "SUBJECT TO ALL FAULTS."

6. Indemnification

6.1 The Seller agrees to indemnify, defend, and hold harmless the Buyer from and against any and all claims, liabilities, losses, damages, costs, and expenses (including reasonable attorney's fees) arising out of or related to any breach of the Seller's representations, warranties, or covenants in this Agreement.

6.2 The Buyer agrees to indemnify, defend, and hold harmless the Seller from and against any and all claims, liabilities, losses, damages, costs, and expenses (including reasonable attorney's fees) arising out of or related to any breach of the Buyer's representations, warranties, or covenants in this Agreement.

7. Governing Law

7.1 This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to its conflict of laws principles.

8. Dispute Resolution

8.1 Any legal action, suit or proceeding in law or equity arising out of or relating to this Agreement and the transaction contemplated by this Agreement may only be instituted in a state or federal court in the State of South Dakota. If any action or proceeding in law or equity is instituted for the alleged breach of any obligation under this Agreement, then the prevailing party shall be entitled to recover reasonable attorney's fees, expert witness fees, and court costs, in addition to any other remedy afforded by law.

9. Entire Agreement

9.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, and negotiations, whether written or oral, between the parties.

10. Amendments

10.1. This Agreement may be amended or modified only by a written agreement signed by both parties.

11. Severability

11.1. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

12. Construction

12.1 In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

13. Binding Effect

13.1 This Agreement shall extend to and be binding upon the heirs, administrators, personal representatives, successors, and assigns of the parties hereto.

14. Counterparts

14.1. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Dated this ____ day of November 2024, effective November __, 2024.

Seller:
Preston Family

By:
Its:

Dated this ____ day of November, 2024, effective November __, 2024.

Buyer:
Town of Hermosa

By:
Its:

**HERMOSA TOWN BOARD
TUESDAY, NOVEMBER 5, 2024
REGULAR MEETING @ 6.00pm**



- 1) **ROLL CALL:**
 - A. BOT Roll Call: Kramer, Ferguson, Koontz, Harris, 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 October 15, 2024, regular meeting minutes and October 23, 2024, special meeting minutes
- 4) **CONFLICT OF INTEREST DECLARATION:**
- 5) **PRESTON FAMILY DEVELOPMENT:**
 - A. Update on Preston Family Development
- 6) **ENGINEER:**
 - A. Update on Lagoon Expansion Project
 - B. Update on Wastewater Treatment Plant construction
 - C. Siphon Design for Preston Sewer
 - D. North Water Tank property acquisition
 - E. Smoke Testing review and approval to pour non-toxic antifreeze in the traps of un-finished house on the NE corner of 3rd Street and Manning
 - F. Engineer recommendation on Greg Barnier's plat
- 7) **PLANNING & ZONING:**
 - A. 2024-33 – Plat Application – Barnier Tracts 1 – 4 of McDermard Subdivision.
 - B. Ken Ward – Proposed future development of Carriage Hills Subdivision
 - C. 2024-22 – Plat Application – 194 Fairgrounds Pl. – Grasman Tract
 - D. Refund to Our Savior's Lutheran Church – incorrect meter readings
- 8) **CLAIMS:**
 - A. Review payroll and claims. Motion to approve as presented/amended
- 9) **LAW ENFORCEMENT/ABATEMENTS/COMPLAINTS:**
 - A. Custer County Log
 - B. Abatements – Complaints – 165 N. 2nd St.
- 10) **LEGAL:**
 - A. Resolution 2024-06 A Resolution Dissolving Tax Increment District No. 1
- 11) **PUBLIC WORKS:**
 - A. Committee Report
 - B. Streets, Street Light Repairs, Water & Sewer Department Updates
 - C. Open Work Orders

**HERMOSA TOWN BOARD
TUESDAY, NOVEMBER 5, 2024
REGULAR MEETING @ 6:00pm**

ROLL CALL: Koontz called the meeting to order on Tuesday, November 5, 2024, at 6:01 pm with the following members present: Ferguson, Koontz, Harris and Serviss. Kramer attended via electronic means. Interested citizens and Attorney Hagg were also present. Pledge of Allegiance led by Koontz.

CALL FOR CHANGES: Motion made by Ferguson and seconded by Harris to amend agenda with the addition of Item 7 E under Planning & Zoning 2024-23 Plat Application Lone Coyote Subdivision Preston Tract 1 R & Utility Lot 1 and approve agenda as amended; vote: all aye, motion carried.

CONSENT CALENDAR: Motion made by Ferguson and seconded by Serviss to approve October 15, 2024, regular meeting minutes and October 23, 2024, special meeting minutes; 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.

PRESTON FAMILY DEVELOPMENT: Jim Preston presented the Preston Family's intention to auction lots in their new development sometime in May 2025.

ENGINEER: Engineer Theodorou gave an update on the Lagoon Expansion project. Bids will be accepted, with a bid opening on December 2, 2024. The Wastewater Treatment Plant has been staked out and the system is currently being dismantled at Apple Springs. The Siphon design for the Preston sewer is complete. **The North Water Tank property acquisition is ready for signature.** Smoke testing has been completed and found a potential source of odor. Engineer Theodorou gave his recommendation to the Town to approve Barniers Tracts 1-4 of McDermand Subdivision plat.

PLANNING & ZONING: Motion by Harris and seconded by Koontz to approve the 2024-03 – Plat Application – Barnier Tracts 1 – 4 of McDermand Subdivision; vote: all aye, motion carried. Ken Ward from Iseman Homes presented to the board on the proposed future development of the Carriage Hills Subdivision. Motion by Koontz and seconded by Harris to approve the 2024-22 – Plat Application – 194 Fairgrounds Place – Grasman Tract; vote: four aye, 1 abstain, motion carried. Motion by Ferguson and seconded by Serviss to approve a refund in the amount of \$1,561.12 to Our Savior Lutheran Church for error on meter reading over the last several months; vote: four aye, 1 abstain, motion carried. The board set a special meeting for Thursday, November 7, 2024 at 2:00 p.m. to address the 2024-43 Plat Application – Lone Coyote Subdivision Preston Tract 1R & Utility Lot 1.

CLAIMS: Motion made by Ferguson and seconded by Koontz to approve Payroll and Claims as presented; vote: all aye, motion carried. A & B BUSINESS SOLUTIONS, monthly printer/fax fee, \$539.52; BANKWEST MASTERCARD, stamps/adobe software/conference registration/laptop case/clips, \$512.14; BENESCH, professional services July 29 through October 20, 2024/lagoon expansion design/DANR permit/Lone Coyote water and sewer expansion/wastewater treatment plant/north water tank, \$47,164.44; BLACK HILLS ELECTRIC COOP, utilities-electric October 2024, \$2,962.53; CONNIE LEIMER, Trap/Neuter/Release Program, \$25.00; TERESA CORNELISON, roundtrip mileage to SDML conference in Sioux Falls, SD, \$364.14; Custer County Sheriff, dispatch contract, \$2,000.00; Chuck Ferguson, September 2024 services, \$3,120.00; Chuck Ferguson, Lay pipes for lagoon discharge/electric pump/50 amp breaker/round trip to Rapid City/inspection/street light inspection, \$1,837.63; HAAG & HAGG LLP, November retainer/1.75 billable hours/280 copies, \$3,051.25; HARLAND CLARKE, original check order for new BankWest checking account, \$173.86; HAWKINS, water chemicals, \$592.04; KELBURN KOONTZ, roundtrip mileage to SDML conference in Sioux Falls, SD, \$364.14; MIDCONTINENT TESTING LABS, water testing for 3rd Quarter 2024, \$719.00; NORTHWEST PIPE FITTINGS, pipes/parts water to lagoon, \$849.00; RURAL DEVELOPMENT, RD1 loan-October interest/principal, \$1,278.00, RD2 loan-October interest/principal, \$417.00, RD3 loan-October interest/principal, \$222.00; SDML WORKER'S COMP FUND, 2025 work comp renewal, \$584.00; SOUTH DAKOTA 811, message fees/voice out July-September, 2024, \$59.22; JERRY STYLES, registration fee for Fuel the Growth Conference, \$850.00; SUMMIT SIGNS, slow down/dead end signs/white flagging tape, \$266.50; USA BLUE BOOK, Stenner S Series S-30 pump, \$1,467.08; LEO VAN SAMBEEK, registration fee for Fuel the Growth Conference, \$850.00; NEW CD AT FIRST NATIONAL BANK, \$140,501.08; **Accounts Payable Total: \$ 210,769.57. Utility Deposit Refunds:** Lisa Hussey, \$186.70; **Deposit Refund Total: \$186.70;** Payroll related: Total Paid On:10/31/2024: General, \$3,912.29, Water, \$441.62, Sewer, \$181.62, Promoting City/ BBB, \$60.50; EFTPS-Electronic Federal Tax, FED/FICA TAX, \$1,156.91;

**HERMOSA TOWN BOARD
THURSDAY, NOVEMBER 7, 2024
SPECIAL MEETING @ 2:00 PM**

- 1) **ROLL CALL:**
 - A. BOT Roll Call: Kramer, Ferguson, Koontz, Harris, Serviss
 - B. Acknowledgement of other Attendees
 - C. Pledge of Allegiance to be led by Kramer
- 2) **CALL FOR CHANGES:**
 - A. Review of current agenda items
 - B. Motion to accept the agenda as presented/amended
- 3) **CONFLICT OF INTEREST DECLARATION:**
- 4) **PLANNING & ZONING:**
 - A. 2024-43 Plat Application – Lone Coyote Subdivision Preston Tract 1R and Utility Lot 1
 - B. Plat filing fee
- 5) **ENGINEER:**
 - A. Work Authorization – Lone Coyote Sewer Extension in the amount of \$6,550.00
- 6) **ADJOURN:** Motion by _____; Second by _____ to adjourn the meeting at _____ P.M.

LONE COYOTE SUBDIVISION

PRESTON TRACT 1R & UTILITY LOT 1

(formerly Preston Tract 1 of Lone Coyote Subdivision)
LOCATED IN SECTION 19, T2S, R8E, 84M, CUSTER COUNTY, SOUTH DAKOTA

NOTES:

1. L&P AND UNDER EASEMENTS EXISTING 15' ON THE INTERIOR SIDES OF ALL LOT LINES NOT ADJACENT TO PUBLIC ROADS OR RAILS.
2. ANY MAJOR EASEMENT EXISTING FROM HEREON SHALL BE KEPT FREE OF ALL OBSTRUCTIONS INCLUDING BUT NOT LIMITED TO BUILDINGS, WALLS, FENCES, HEDGES, TREES AND SHRUBS. THESE EASEMENTS SHALL BE TO ALL PUBLIC UTILITIES FOR THE RIGHT TO CONDUIT, OPERATE, MAINTAIN, REPAIR, AND REPAIR SUCH IMPROVEMENTS AND STRUCTURES AS IT DEEMS NECESSARY TO MAINTAIN EASEMENTS FROM ANY SOURCE.
3. BASE OF BEARING SOUTH EARTH STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD83(2011), LISTED FROM LEFT.
4. ALL EASEMENTS EXISTING PURSUANT TO SDCL 41-2-31 AND (1-2-32), THE ENCLOSURES OF THE PROPERTY DESCRIBED HEREIN THIS PLAT SHALL BE RESPONSIBLE FOR PROTECTING AND MAINTAINING THE SAME. FOLLING EASEMENTS, LISTED ADJACENT TO OR FROM SUCH PROTECTING CONFORM TO AND FULLY ALL REGULATIONS OF THE SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION AND NATIONAL RESOURCES RELATING TO THE SAME.
5. DISTANCE MEASUREMENT BASED ON S&P 110000 SURVEY RATE MAP MARSH (4413000000) (NOT PRINTED). EFFECTIVE DATE JUNE 1, 2012, INDICATES THE PROPERTY PROPERTY IS LISTED IN PAGE 10.

LEGEND:

1. Dashed red 5/8" line with survey top marked 'Bearing + Distance, 1117'.
2. Dashed red Survey monument marked 15 1113, unless otherwise noted.
3. Dashed recorded in previous plat or description.
4. Dashed recorded in this survey.

PARCEL LINE TABLE

Line #	Distance	Bearing
111240	45.51	S04° 07' 37"E
111241	33.59	S27° 21' 37"E
111242	311.23	S01° 04' 37"E
111243	34.20	S07° 43' 02"E
111244	25.51	S16° 54' 37"E
111245	11.20	S07° 43' 07"E
111246	311.78	S01° 04' 37"E
111247	112.77	S08° 18' 16"E
111248	14.48	N01° 04' 37"E
111249	115.00	S27° 43' 37"E

STATEMENT OF CONVEYANCE:
State of South Dakota
County of Custer, S.D.

I, the undersigned, do hereby certify that we are the owners of the land shown and described herein, that the survey was done at our request for the purpose indicated herein, that we do hereby convey the survey and utility plat of said land and that the development of the lot shall conform to all existing applicable zoning, subdivision, and other laws and regulations.

Any land shown on the above plat as dedicated to public right-of-way is hereby dedicated to public use and public utility use as such, forever, but such dedication shall not be construed to be a transfer of the fee of such land.

In witness whereof, I have set my hand and seal.

DATED: Preston Family, Inc.
By: _____

STATEMENT OF SURVEY:
State of South Dakota
County of Custer, S.D.

I, Eric B. Hovind, Registered Land Surveyor No. 5113 in the State of South Dakota, do hereby certify that at the request of the owners listed herein, I have surveyed the land or land shown, and to the best of my knowledge and belief, the above plat is a representation of said survey, easements or rights-of-way, and no other persons or private interests that are not shown on the above plat have been shown.

In witness whereof, I have hereunto set my hand and seal.

Dated at Custer, Registered Land Surveyor _____ Date _____

STATEMENT OF CONVEYANCE:
Whereas, there has been presented to the Town Board of Harwood, South Dakota, the above plat of the above described land, and it appearing to the Board that said plat conforms to the zoning laws of said Town, and that the above plat forth therein conforms to the system of records of the municipality, and all provisions of laws relating to the land have been fully paid, and that said plat and the survey thereof have been approved according to law, now therefore, BE IT RESOLVED, that said plat is hereby approved in all respects.

Dated at Harwood, South Dakota this _____ day of _____, 20____.

STATEMENT OF COUNTY TOWNSHIP:
I, Treasurer of Custer County, do hereby certify that at least which are first upon the above described property have been fully paid according to the records of my office.

Treasurer _____ Date _____

STATEMENT OF TOWNSHIP OFFICER:
I, Treasurer of the Town of Harwood, South Dakota, do hereby certify that the foregoing plat is a true and correct copy of the plat as filed by the Town Board of Harwood, South Dakota, at a meeting held on the _____ day of _____, 20____.

Township Officer _____

STATEMENT OF COUNTY TOWNSHIP:
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Treasurer _____ Date _____

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Township Officer _____

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Township Officer _____

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I, Treasurer of the Town of Harwood, South Dakota, do hereby certify that the foregoing plat is a true and correct copy of the plat as filed by the Town Board of Harwood, South Dakota, at a meeting held on the _____ day of _____, 20____.

Township Officer _____



EXHIBIT A

WORK AUTHORIZATION NO. 1

PROJECT NO. 112529.00 DATE November 5, 2024
PROJECT NAME Lone Coyote Sewer Extension
CLIENT Town of Hermosa
CLIENT PM _____ CONSULTANT PM Anthony Theodorou, PE
PHONE NO. _____ PHONE NO. (605)569-3646

SCOPE OF SERVICES

This WORK AUTHORIZATION Number 1, with the Agreement dated November 5, 2024, between _____, herein called Client and Alfred Benesch & Company herein called Consultant, constitutes the express authority given Consultant by Client to do work as follows (or as shown in Attachment A):

Prepare a new Plat of roads and single-family lots for 87.22 + 49.08 acres owned by the Preston Family, Inc. for the estimation of a Tax Increment Financing. (TIF). 8 hours (Analysis of Topographic Survey provided), 36 hours (Evaluate road and lot options and develop the plat), 2 hours review by Town Engineer.

The following are attached to and hereby made a part of this Work Authorization:

- ☐ Attachment A: Scope of Services and Fee Estimate
- ☐ Attachment B: Schedule of Unit Rates
- ☐ _____
- ☐ _____

FEE ESTIMATE

CONSULTANT will perform the Scope of Services described above or in Attachment A, and invoice monthly as noted below in accordance with the selected payment method:

- ☐ Client will pay a Fee based on a Time and Materials not to exceed \$_____ and invoice using Attachment B: Schedule of Unit Billing Rates.
- ☒ Client will pay a Lump Sum Fee of \$6,550.00 and invoice using a percentage completed basis.
- ☐ Client will pay by another method as described: _____

CLIENT

BY: _____
AUTHORIZED REPRESENTATIVE

PRINT NAME: _____

TITLE: _____

DATE: _____, 20____

ALFRED BENESCH & COMPANY

BY: Anthony Dirks
AUTHORIZED REPRESENTATIVE

PRINT NAME: Anthony Dirks

TITLE: Senior Vice President

DATE: November 5, 2024

BENESCH OFFICE: Lincoln

ADDRESS: 825 M.Street, Ste.100, Lincoln, NE 68508

• Analyze the topographic survey, 8 hours x \$140 =	\$1,120.00
• Evaluate options for roads and storm drainage, 8 hours x \$140 =	\$1,120.00
• Assess land for build-able lots, 24 hours x \$140 =	\$3,360.00
• Review for compliance with Hermosa ordinance, 4 hours x \$140 =	\$ 560.00
• <u>Developer Meeting, 2 hours x \$195 =</u>	<u>\$ 390.00</u>
	\$6,550.00

LAND PURCHASE AGREEMENT

This Purchase Agreement ("Agreement") is made and entered into as of November 20, 2024, by and between:

Seller:

Preston Family
22760 Stone Meadow Rd
Rapid City, South Dakota 57702

Buyer:

Town of Hermosa
PO Box 298
230 Main Street
Hermosa, South Dakota 57744

RECITALS

WHEREAS, the Seller owns certain land currently described:
UTILITY LOT 1 OF LONE COYOTE SUBDIVISION (FORMERLY PRESTON TRACT 1 OF LONE COYOTE SUBDIVISION) LOCATED IN SECTION 19, TS2, R8E, CUSTER COUNTY, SOUTH DAKOTA; CONTAINING 0.48 ACRES OF LAND. SUBJECT TO ANY AND ALL EASEMENTS, RESTRICTIONS AND/OR RIGHTS-OF-WAY OF RECORD.

WHEREAS, the Buyer desires to purchase, and the Seller desires to sell, the land under the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Sale of Assets

The Preston Family agrees to sell the Town of Hermosa a portion of their property as indicated in the attached Exhibit. The property is 0.48 acres (21,015 SF) and is located entirely in the above described lot of the proposed Bison Ridge Subdivision plat. The agreed upon purchase price is \$ 15,000.

Along with the agreed upon purchase price, the town also agrees to set aside an amount of \$140,501.08 that was paid to the town for water tap and benefit fees, which will be put in a segregated interest-earning account to be used exclusively for the development of the sewer collection system and related infrastructure, including replatting, to connect to the town's sewer trunk line, located at the south property line. Any interest earned will be kept by the town. Related infrastructure can include road improvements where the sewer line is active and present. The funds and accrued interest cannot be used for other purposes and must be used on land that is inside the town of Hermosa town limits. The town will cover the costs of surveying the parcel and the cost of the parcel split for the recorded deeds.

2. Purchase Price

2.1. The total purchase price for the land shall be no more than Fifteen Thousand Dollars (\$15,000.00) (the "Purchase Price").

2.2. The Purchase Price shall be paid by the Buyer to the Seller in the following manner:

2.2.a. \$15,000 paid at the time of Closing.

3. Closing

3.1. The closing of the transaction contemplated by this Agreement (the "Closing") shall take place on November 20, 2024 at the Title Company of Pennington Title, 725 Kansas City Street, Rapid City, South Dakota, or at such other time and place as the parties may mutually agree in writing.

3.2. At the Closing, the Seller shall deliver to the Buyer the following:

- a) A duly executed Deed transferring ownership of the land to the Buyer.
- b) Copies of documents related to the land
- c) Any other documents necessary to complete the transfer of the Assets.

3.3. At the Closing, the Buyer shall deliver to the Seller the following:

- a) \$15,000 dollars in certified funds.
- b) A resolution, order, ordinance or other evidence of approval of the purchase by the Town of Hermosa;
- c) Any other documents required to complete the purchase.

4. Representations and Warranties

4.1. Seller's Representations and Warranties: The Seller represents and warrants to the Buyer that:

- a) The Seller is the sole owner of the Assets and has the full legal right and authority to sell and transfer them.
- b) There are no pending or threatened lawsuits, claims, or proceedings against the Plant.

4.2. Buyer's Representations and Warranties: The Buyer represents and warrants to the Seller that:

- a) The Buyer has the legal authority to purchase the land and the financial capacity to pay the Purchase Price and perform its obligations under this Agreement.
- b) The Buyer has obtained all necessary approvals and authorizations to purchase the Assets.
- c) The buyer would expect a Warranty Deed

5. Disclaimer of Warranties

5.1 Other than as specifically set forth herein, Seller makes no representations or warranties, either express or implied, concerning the land and assets subject to this Agreement.

5.2 Buyer has had the opportunity to inspect and examine the land and has been given access to review each and all documentation Buyer deems necessary to enter into this Agreement. Buyer is not relying upon any representations or warranties of Seller regarding the condition of the land, nor its suitability for Buyer's intended purposes. The land shall be sold to the Buyer "AS IS" and "SUBJECT TO ALL FAULTS."

6. Indemnification

6.1 The Seller agrees to indemnify, defend, and hold harmless the Buyer from and against any and all claims, liabilities, losses, damages, costs, and expenses (including reasonable attorney's fees) arising out of or related to any breach of the Seller's representations, warranties, or covenants in this Agreement.

6.2 The Buyer agrees to indemnify, defend, and hold harmless the Seller from and against any and all claims, liabilities, losses, damages, costs, and expenses (including reasonable attorney's fees) arising out of or related to any breach of the Buyer's representations, warranties, or covenants in this Agreement.

7. Governing Law

7.1 This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to its conflict of laws principles.

8. Dispute Resolution

8.1 Any legal action, suit or proceeding in law or equity arising out of or relating to this Agreement and the transaction contemplated by this Agreement may only be instituted in a state or federal court in the State of South Dakota. If any action or proceeding in law or equity is instituted for the alleged breach of any obligation under this Agreement, then the prevailing party shall be entitled to recover reasonable attorney's fees, expert witness fees, and court costs, in addition to any other remedy afforded by law.

9. Entire Agreement

9.1 This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, and negotiations, whether written or oral, between the parties.

10. Amendments

10.1. This Agreement may be amended or modified only by a written agreement signed by both parties.

11. Severability

11.1. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

12. Construction

12.1. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

13. Binding Effect

13.1. This Agreement shall extend to and be binding upon the heirs, administrators, personal representatives, successors, and assigns of the parties hereto.

14. Counterparts

14.1. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Dated this 20 day of November 2024, effective November 20, 2024.

Seller:
Preston Family

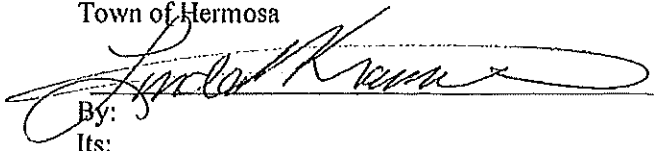


By:

Its: *Board President*

Dated this 20 day of November, 2024, effective November 20, 2024.

Buyer:
Town of Hermosa


By:
Its:



Southern Hills Law

Legal Solutions for the Black Hills

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

*Gina Ruggieri
Attorney at Law
Licensed in SD*

8 W. Mt Rushmore Rd, Custer, SD 57730 tel: 605.673.2503

southernhillslaw@gmail.com

VIA EMAILED DELIVERY TO TOWN CLERK

Hermosa Town Board
230 Main St
Hermosa, SD 57744

February 17, 2026

RE: Legal Opinion on return of funds to Preston Family Inc., from 2021 agreement

Town of Hermosa Legal Opinion No: 2026-5

Dear Members of the Board:

I. You asked me to look at a 2021 agreement between the Town of Hermosa and Preston Family Inc, in which PFI donated money to the Town for water and sewer development. In my inquiries to the Town Office, it is my understanding that water and sewer lines were partially constructed toward the PFI land and that the water and sewer presently extend to their land, but that the town can only offer sewer service due to water service being controlled by Southern Black Hills Water.

The relevant portions of the December 8, 2021 "Agreement for Contribution of Developer Funds for Public Improvements" are listed below:

The Agreement states that **"within 30 days of this Agreement Developer hereby agrees to remit \$150,000.00 to be held by the Town which shall be applied to costs associated with the construction and installation of the subject public Improvements on a 50/50 basis as invoices are received from subcontractors...."**

(although the Agreement refers to \$150,000.00, it is my understanding that the Prestons actually contributed \$300,000.00 (potentially \$150,000.00 is from the "line of credit" referenced in the agreement) and that \$150,000.00 was supposed to go to the water services, and \$150,000.00 was supposed to go for the sewer services).

The agreement further states that **"upon final acceptances by the Town of the Improvements, any remaining developer funds shall be refunded to Developer."**

Notably, section 2 “Pending Litigation” states that if the anticipated litigation halts the water development, that the agreement remains effective with respect to sewer development.

No South Dakota statutes govern this arrangement save for the specific power of South Dakota municipalities to receive gifts and to contract:

9-12-1. General corporate powers--Municipal property.

Every municipality has the power:

- (1) To sue and be sued and to contract in its corporate name;
- (2) To acquire by lease, purchase, gift, condemnation, or other lawful means and hold in its corporate name, or use and control as provided by law, both real and personal property and easements and rights of way within or without the corporate limits for all purposes authorized by law or necessary to the exercise of any power granted;
- (3) To provide that supplies needed for the use of the municipality are furnished by contract let to the lowest responsible bidder, except as otherwise provided by law;
- (4) To construct, operate, and maintain an auditorium and all public buildings necessary for the use of the municipality;
- (5) To insure the public property of the municipality;
- (6) To convey, sell, give, dispose of, or lease the personal and real property of the municipality as provided by the laws of this state; and
- (7) To perform all administrative and financial functions for all purposes authorized by law or necessary to the exercise of any power granted.

Source: SDC 1939, § 45.0201 (12)-(15), (17), (18); SL 2002, ch 33, § 3; SL 2014, ch 49, § 1; SL 2025, ch 38, § 59.

Thus, the interpretation of the arrangement between the Town of Hermosa and PFI is purely a matter of contract law. Clearly the contract outlines the conditions for the return of funds. That condition is the “acceptance” by the Town of the Improvements. So, if the Town were to accept the portion of work as concluded or as not possible to be completed, then under the contract terms, remaining funds could be disbursed.

A second consideration is whether public funds were expended on partially completed improvements. The contract anticipates that the contributed funds will be drawn down “as invoices come in” on the project. Thus, if the Town actually expended money on this project, through invoices that were paid, then the Town, as steward of those funds, would rightfully be expected to draw down 50% of those invoiced costs from the Funds before refunding them. The wording of the contract does not condition

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

*Gina Ruggieri
Attorney at Law
Licensed in SD*

expenditure of the funds on successful completion of the project, but rather on a pay as you go model.

II. In the course of investigating this matter, I also discovered a second contract entered into on November 20, 2024 titled "Land Purchase Agreement". This agreement was primarily about the Town purchasing rights to real property for the placement of a water tower, but it also contained references to money donated by the Prestons. It is my understanding that this references money for water only which was credited here in this agreement because the Board at the time was not able to provide water service because of the Southern Black Hills Water suit.

Relevantly, the agreement states "Along with the agreed upon purchase price, the town also agrees to set aside an amount of \$140,501.08 that was paid to the town for water tap and benefit fees." After investigation of prior invoices and conversations with former and current Board members, it is my understanding that amounts were invoiced for well over \$600,000.00 for this project by RCS Construction. I also reviewed minutes of an October 1, 2024 Board Meeting in which the Town Engineer explained, prior to a vote, that the money was "for water taps, and since they couldn't use them, this was a way of keeping the funds earmarked for development and then getting their money refunded to them" (approximately 1 hr, 40 minute into recording of 10-1-24 meeting). It appeared that there was some sentiment at that time that the 2021 contract needed to be revisited because the water service was not able to be provided.

The items I was not able to confirm were 1) were funds actually drawn down for water and sewer improvements from either of the \$150,000.00 sources and 2) Why was the amount put into the CD \$140,501.08 instead of \$150,000.00? Did that represent the amount of funds drawn down. It is assumed for the answers below that the \$150,000.00 for sewer was used up or should be drawn down.

Depending on the answer to those questions, the Board could take the position that the contract provides that improvements were to be drawn down as invoices came in, and since the invoices exceeded 200% of the contribution, then there is no money that needs to be refunded and the fund can be applied to the costs already expended by the Town on RCS construction. This is a "hard line" approach that could expose the town to potential litigation, as arguably the 2021 contract does anticipate that "water service" would be provided to PFI, and since that didn't happen, the Town didn't meet its obligation.

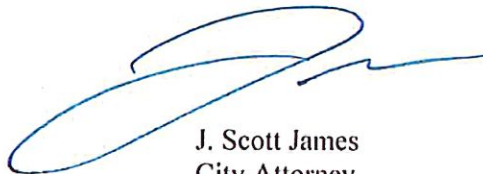
Secondly, the Town could take the position that the 2024 Board essentially already decided this, and that the 2024 agreement supersedes the 2021 agreement and that

the \$150,000.00 (or \$140,501.08) must be used for development purposes inside the development as the 2024 agreement contemplates. This, again is a bit of a hard line, though more moderate than the first position as it gives the landowner more money to use for development.

Third, the Town could certainly decide that the agreement, as it did in 2024, merits further reconsideration, and that, because having PFI develop the community as envisioned in the 2024 agreement is no longer practical, that they should receive a full refund of the \$150,000.00 (or the \$140,501.08), but not for the sewer. This would be a softer position to take, but likely the one with the least legal exposure.

In the end, these three approaches are all policy decisions that the Board can choose what they think is a) fair to the Prestons and b) in the Town's best interest. The contracts themselves did not contain specific language about the refunding process other than what is mentioned above. Certainly, the Prestons got some benefit from the developed infrastructure, though not exactly the benefit that they bargained for. The Town needs to confirm whether any draw down of these funds took place for both the water and sewer and why the \$140,501.08 is less than the contribution of \$150,000.00. If the Town needs further assistance on this matter, please do not hesitate to ask.

Very Truly Yours,



J. Scott James
City Attorney
Hermosa, South Dakota

DeMERsSEMAN JENSEN
TELLINGHUISEN & HUFFMAN, LLP

LAWYERS

P.O. Box 1820, Rapid City SD 57709-1820
516 Fifth Street, Rapid City SD 57701-2703
TELEPHONE 605-342-2814 FAX 605-342-0732

MICHAEL B. DeMERsSEMAN
CURTIS S. JENSEN
ROGER A. TELLINGHUISEN
RICHARD E. HUFFMAN, P.C.

MICHAEL V. WHEELER
GREGORY G. STROMMEN
NATHAN R. CHICONE

April 14, 2026

VIA EMAIL ONLY

J. Scott James
Attorney at Law
southernhillslaw@gmail.com

Re: Hermosa Town Board Meeting to be Held April 14, 2026

Dear Mr. James:

I have been assisting Krista Preston put together information for the family and it has come to my attention that there is a work session scheduled for today and I have received a copy of the Table of Contents for the work session and the attached documents.

In those documents I note you have included the Purchase Agreement signed by Jim Preston on November 20, 2024. I also have reviewed your opinion.

I need to tell you that someone in the City pulled a fast one on the Preston family. The initial Purchase Agreement that was sent to them on September 3, 2024, copy attached, in a forwarded email from Krista to me, had no dollars on it but it also failed to mention the provision you referred to as the City of Hermosa keeping the interest. The phrase "any interest earned will be kept by the town" was added to the 2nd draft that was sent to Krista on September 13, 2024. I will forward both of the emails from her to me right after I send this.

On the September 13th, 2024, email an identical looking Purchase Agreement containing the purchase price of \$15,000 was sent to the family but the phrase "any interest earned will be kept by the town" was inserted in that Agreement but not pointed out.

At the time Jim Preston signed this document he was having some memory issues and no one else had looked at this Agreement after the first draft sent on September 3rd.

I think someone in the Town is playing fast and loose with the Prestons. I would hope at your meeting today you can put some of this to bed and return all of

April 14, 2026

Page

the Preston's money you are holding plus all of the interest you did receive and will receive because that was not the Agreement.

In addition, while the Town claims that the sewer is operable, DANR never received notice that the work was complete to be placed in service and we are looking for confirmation that the status of the new ponds/treatment facilities were also completed and approved by the DANR.

I will not attend but I think this is a good opportunity to clean up this deal.

Very truly yours,



Richard E. Huffman (reh@demjen.com)

DeMERSEMAN JENSEN

TELLINGHUISEN & HUFFMAN, LLP

REH:ned

Emails forwarded after this

6A



Proposal from
UTILITY SERVICE CO., INC.

535 Gen. Courtney Hodges Blvd · P O Box 1350 · Perry, GA 31069
Toll-free: 855-526-4413 | Fax: 478-987-2991
usgwater.com

Date: 07/18/26

Submitted by: Select a Preparer

Local Phone: (515) 344-6391

SFID: 203550

MP / CS Asset: ☐

Entity Proposal Submitted To ("Customer"): CITY OF HERMOSA SD			Phone Number: 845-381-6790		Fax Number:	
Street Address: 230 MAIN STREET			Description of Work to be Performed: Steel Tank Washout - Condition Assessment - Disinfection			
City: HERMOSA		State: SD	Zip Code: 57744	Asset Name: 33000 UNDERGROUND TANK		
Accounts Payable Contact Name: FAYE MILLER		Email: boardvp@hermosasd.com		Job Site Address: 550 MAIN STREET		
Job Contact (Inspection Reports): AARON SERVISS		Email: boardpersident@hermosasd.com		County / Parish: CUSTER	Asset Size: 33000	
				Asset Style: UNDERGROUND		

Utility Service Co., Inc. agrees to provide all labor, equipment, and materials needed to complete the following:

Please see attached Exhibit(s), which are incorporated herein by reference:

1. Exhibit A – Scope of Work
2. Exhibit B – Terms and Conditions

Please sign and date this proposal and fax one copy to our office.

EIGHTEEN HUNDRED FIFTY AND -----00 /100 Dollars \$ 1850.00

Payment to be made as follows: Payment Due in Full Upon Completion of Work – plus all applicable taxes

Remittance Address: Utility Service Co., Inc., P O Box 207362, Dallas, TX 75320-7362

This Proposal, together with its Exhibit A – Scope of Work and Exhibit B - Terms and Conditions, and any additional exhibits that Utility Service Co., Inc. and the Customer agree to incorporate and attach to this Proposal (collectively, this "Proposal") constitutes the entire and exclusive agreement between Utility Service Co., Inc. (which for purposes herein shall collectively include its affiliate companies) and Customer (collectively, the "Parties"). This Proposal may be withdrawn by Utility Service Co., Inc. at any time prior to acceptance. Customer assents to the terms and conditions in Exhibit B and agrees that the terms and conditions in Exhibit B shall govern with respect to this Proposal and the services provided by Utility Service Co., Inc. No additional or conflicting terms or conditions included in any purchase order, hyperlink, acknowledgement or invoice of Customer not expressly incorporated into this Proposal shall be binding on the Parties or this Proposal.

Note: This proposal shall expire automatically
Ninety (90) days following the date of this Proposal.

Authorized
USCI Signature

Melinda Kuty

Acceptance of Proposal The prices, scope of work, and terms and conditions of this Proposal are satisfactory and are hereby accepted. Payment will be made by Customer to Utility Service Co., Inc. as set forth herein.

Is Customer Exempt from Sales Tax? ☐ No ☐ Yes If Exempt, please provide Sales Tax Exemption Certificate.

Fiscal Year Beginning Month _____ Customer Signature _____

Date of Acceptance _____ Printed Name _____

FOR INTERNAL USE ONLY

SFID:

CN:

SO:

MP / CS PN:



Proposal from
UTILITY SERVICE CO., INC.
535 Gen. Courtney Hodges Blvd · P O Box 1350 · Perry, GA 31069
Toll-free: 855-526-4413 | Fax: 478-987-2991
usgwater.com

Exhibit A – Scope of Work

Steel Tank Washout - Condition Assessment - Disinfection

1. A date shall be coordinated by both parties for the Owner to drain the tank.
2. The Owner agrees to provide a potable water source within 250' of the tank that is suitable for a hose connection.
3. The interior floor and lower walls of the tank will be cleaned using a pressure washer to remove all mud, silt, and foreign sediment. The tank is not to be rigged to pressure wash the upper walls, and roof unless specified by this agreement. This cleaning will not completely remove all staining or any Bio-film that may be present.
4. The tank will be inspected to assess the sanitary, safety, structural, security, and coatings conditions.
5. Exterior and interior paint samples will be taken and the samples will be analyzed at a certified laboratory to determine the total lead and chromium content of the existing coatings. The laboratory test results will be included in the inspection report.
6. After all inspection work is completed, the tank will be disinfected in accordance with AWWA C652.
7. The tank will be sealed and made ready for service.
8. A comprehensive written report with color digital photographs will be submitted detailing the condition of the tank. A representative of Utility Service Co., Inc. will schedule a date with the Owner to present the report and findings.
9. This price does not include containment, testing, or off-site disposal of sediment or debris from the tank, or costs associated with a vacuum truck or other equipment that may be necessary to remove excessive sediment.
10. The above pricing is contingent upon accessibility of the site and the ability of USCI to perform tasks required unobstructed, and to complete the task in one (1) full work day. (\$1,500.00 per day for each additional day)



Proposal from
UTILITY SERVICE CO., INC.
535 Gen. Courtney Hodges Blvd · P O Box 1350 · Perry, GA 31069
Toll-free: 855-526-4413 | Fax: 478-987-2991
usgwater.com

Exhibit A – Scope of Work Continued

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Proposal from
UTILITY SERVICE CO., INC.

535 Gen. Courtney Hodges Blvd · P O Box 1350 · Perry, GA 31069

Toll-free: 855-526-4413 | Fax: 478-987-2991

usgwater.com

Exhibit B – Terms and Conditions

A. GENERAL TERMS AND CONDITIONS

The Terms and Conditions (the "Terms") of this Proposal govern the sale of services (the "Services") by Utility Service Co., Inc. (which for purposes herein shall include its affiliates) to the Customer. All other terms, or variations to these Terms are excluded unless agreed explicitly in writing by a numbered amendment to this Proposal executed by Utility Service Co., Inc. and the Customer. Execution of the Proposal by the Customer, whether in writing, on the Internet, by electronic signature, or by e-mail transmission of a signed Proposal shall mean acceptance that these Terms are deemed incorporated into the Proposal and shall form the contract between the Customer and Utility Service Co., Inc. These Terms shall supersede all prior terms, understandings or Proposals between the Customer and Utility Service Co., Inc. If any part of the Terms should be found to be invalid or unenforceable by a court or other competent authority, then the remainder of the Terms shall not be affected. Any notice to be given with respect to these Terms by either of the Parties shall be in writing. Notices to the Customer shall be sent to the Customer's address on the Proposal, and any notices to Utility Service Co., Inc., including notice of warranty claims by the Customer, shall be sent to: Utility Service Co., Inc., ATTN: Customer Service Department, 535 General Courtney Hodges Boulevard, Post Office Box 1350, Perry, Georgia 31069.

This Proposal has been issued based on the information provided by the Customer and on information currently available to Utility Service Co., Inc. at the time of Proposal issuance. Any changes or discrepancies in site conditions, concealed conditions where the Services will be performed, changes in environmental, health, and safety regulations or conditions, changes in Customer's financial standing, Customer's requirements, or any other relevant change or discrepancy in the factual basis upon which this Proposal was created may lead to changes in the offering, including but not limited to, changes in pricing, warranties, quoted scope of work, and/or terms and conditions. Unless stated otherwise in the Proposal, performance and/or payment bonds are not included in the price. These bonds can be purchased on request but will be at an additional cost.

B. PRICES, PAYMENT TERMS, COMMITMENT OF CUSTOMER, CREDIT REPORTING AND TAXES

Prices, which are expressed in US Dollars, are only valid for the period stated in the Proposal. If not stated, the validity period is ninety (90) days. Unless otherwise stated in the Proposal, the full price shall be due and payable upon completion of the Services, which may or may not include the installation of Equipment. All of Utility Service Co., Inc.'s invoices are due and payable upon receipt. If any payment is not made by the Customer within sixty (60) calendar days following the date of the invoice, Utility Service Co., Inc. reserves the right to charge a late payment charge of one and one-half percent (1.5%) per month of the outstanding past due balance. Any failure by Customer to make timely payment of any obligation under this Proposal shall be deemed a breach. Customer agrees to reimburse Utility Service Co., Inc. for all charges, costs, expenses and attorney's fees incurred to enforce or collect the amounts due under this Proposal. In the event Customer has a valid dispute with any invoice or amount due, such dispute must be communicated in writing to Utility Service Co., Inc. within thirty (30) days of the invoice date, describing the amount, issue and the reason for any dispute. Any amounts not disputed within this time frame will be deemed to be valid. Utility Service Co., Inc. and Customer agree to work expeditiously to resolve any dispute. Customer agrees to notify Utility Service Co., Inc. within thirty (30) days of any change in Customer's name, address, or phone number. By executing this Proposal, Customer authorizes Utility Service Co., Inc. to periodically request your credit reports and bank and trade references. Upon your request, we will inform you of the name and address of the reporting agency from which we received such a report, if any. The price listed in the Proposal excludes all taxes unless specifically stated otherwise in the Proposal. The Customer is responsible for payment of all applicable taxes, however designated or incurred in connection with the transactions under this Proposal, and agrees to reimburse Utility Service Co., Inc. for any taxes paid on Customer's behalf.

C. DELIVERY OF SERVICES AND INSTALLATION OF EQUIPMENT

The provision of Services as contemplated herein might require the installation of certain equipment (the "Equipment") on the Customer's real property or on the improvements to the Customer's real property (e.g., water storage tank, etc.). All times and dates for the delivery of Services and/or installation of Equipment are approximate, but Utility Service Co., Inc. shall use its reasonable efforts to respect them. The Parties shall each make commercially reasonable efforts to schedule the Services after the date this Proposal is executed by the Customer. Utility Service Co., Inc. shall not be liable for any loss or damage resulting from late delivery of the Services or installation of Equipment.

D. ACCESS TO CUSTOMER'S FACILITY OR REAL PROPERTY

Customer hereby agrees to provide Utility Service Co., Inc. with reasonable access to its facility or real property to perform the Services. "Reasonable access" shall include passable roads for ingress and egress as well as sufficient usable ground space for Utility Service Co., Inc.'s equipment and materials needed to perform the Services. Unless otherwise provided in this Proposal, the price of this Proposal does not include the cost to lease additional real property so that Utility Service Co., Inc. will have sufficient usable ground space to stage its equipment and materials needed to perform the Services. Any such cost would be in addition to the price of the Proposal, and if needed, the Customer agrees to negotiate an amendment to this Proposal to modify the pricing in good faith.

E. RISK OF LOSS

Risk of loss or damage to the Equipment, if applicable to this Proposal, shall pass to the Customer upon delivery of the Equipment to the named place of destination.

F. TITLE TO EQUIPMENT

If the sale of Equipment is included in this Proposal, the title in the Equipment shall remain with Utility Service Co., Inc. until the price of the Proposal is paid in full. The Customer assents that Utility Service Co., Inc. may enter upon the Customer's real property and/or facility to repossess the Equipment if payment(s) are not received in full by their due date(s).

G. SCOPE OF WARRANTY

Subject to the limitations contained herein, Utility Service Co., Inc. represents that for a period of one (1) year from the earlier of: (i) the completion of the Services (to include the installation of the Equipment, if applicable to this Proposal) or (ii) the Customer's return to use of the asset that is the subject matter of this Proposal ("Warranty Period"), the Services and Equipment, if applicable, will be free from defects in materials and workmanship and will substantially conform to the specifications set forth in Exhibit A ("Warranty"). WITH THE EXCEPTION OF THE REPRESENTATION IN THE FOREGOING SENTENCE, UTILITY SERVICE CO., INC. MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WITH RESPECT TO THE SUBJECT MATTER HEREOF AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

H. NOTIFICATION OF WARRANTY CLAIM

All claims filed under the Warranty provided in Section G shall be made in writing by the Customer within thirty (30) calendar days of identifying a defect. Customer shall provide the written notice of the claim to Utility Service Co., Inc. pursuant to Section A above, and the Customer shall provide the following information in the written notice: (i) a description of the defect giving rise to the claim; (ii) photographs showing the defect; and (iii) if the claim is related to Equipment, the serial number(s) of the Equipment which is (are) the subject of the claim.

I. EXCLUSIONS FROM WARRANTY

Occurrence of any of the following, as reasonably determined by Utility Service Co., Inc., will void the Warranty: (i) unauthorized alteration of any component(s) of the Services or the Equipment, if applicable, originally supplied by Utility Service Co., Inc., or (ii) intentional or negligent damage to Utility Service Co., Inc.'s work product or the Equipment, if applicable to this Proposal, caused by any other person or entity, including but not limited to, the Customer and its officers, employees, agents, contractors, and assigns.

J. VERIFICATION OF WARRANTY CLAIM

Utility Service Co., Inc. shall contact Customer following its receipt of notice of a claim under the Warranty. Utility Service Co., Inc. reserves the right to request additional information from the Customer or to conduct an on-site inspection of its work or the Equipment, if applicable to this Proposal, before accepting a claim. The Parties agree to cooperate and work in good faith to provide any additional information needed or to schedule an on-site visit by Utility Service Co., Inc.'s personnel to visibly inspect the work and the Equipment, if applicable. Furthermore, Utility Service Co., Inc. reserves the right to have a third party participate in the inspection of the work to verify whether the work or Equipment, if applicable, is defective under the terms of the Warranty.



Proposal from
UTILITY SERVICE CO., INC.

535 Gen. Courtney Hodges Blvd · P O Box 1350 · Perry, GA 31069

Toll-free: 855-526-4413 | Fax: 478-987-2991

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Exhibit B – Terms and Conditions (Continued)

K. SATISFACTION OF WARRANTY CLAIM

If Utility Service Co., Inc. verifies, in good faith, that a claim under the Warranty is valid and not subject to an exclusion pursuant to Section I above, Utility Service Co., Inc. agrees to repair or replace, without expense to the Customer, any workmanship, materials, and/or Equipment, if applicable, furnished hereunder that may prove defective within the Warranty Period. The Warranty provided in this Proposal shall be the sole and exclusive remedy of the Customer.

L. INDEMNIFICATION

Utility Service Co., Inc. shall indemnify and hold harmless Customer from all claims for physical damage to third party property or injury to persons, including death, to the extent caused by the negligence of Utility Service Co., Inc. or its officers, agents, employees, and/or assigns while engaged in activities under this Proposal. Customer shall likewise indemnify and hold harmless Utility Service Co., Inc. from all claims for physical damage to third party property or injury to persons, including death, to the extent caused by negligence of the Customer or its officers, agents, employees, and/or assigns. In the event such damage or injury is caused by joint or concurrent negligence of Utility Service Co., Inc. and Customer, the loss shall be borne by each Party in proportion to its negligence. For the purpose of this Section L, (i) "Third party" shall not include Customer or any subsequent owner of the property where the Services were performed or Equipment, if applicable, their subsidiaries, parents, affiliates, agents, successors or assigns including any operation or maintenance contractor, or their insurer; and (ii) no portion of the Equipment is "third party property".

M. FORCE MAJEURE

Utility Service Co., Inc. shall not be liable to the Customer for non-performance or delay in performance of any of its obligations under this Proposal due to: (i) acts of God (which include, but are not limited to, tropical storms, hurricanes, tornadoes, and earthquakes), (ii) failure of the Internet or another network, (iii) war, (iv) riot, (v) civil commotion, (vi) embargo, (vii) labor disputes, (viii) labor strikes, (ix) fire, (x) flood, (xi) theft, (xii) epidemic, (xiii) pandemic (including COVID-19), (xiv) delay in delivery of services, materials, or equipment by subcontractors, suppliers, or manufacturers, (xv) shortage of labor or materials, or (xvi) any other unforeseen event (whether or not similar in nature to those specified) outside the reasonable control of Utility Service Co., Inc.

N. LIMITATION OF LIABILITY

Neither the Customer nor Utility Service Co., Inc. shall be liable to the other for any economic (including, without limitation, loss of revenues, profits, contracts, business or anticipated savings), special, indirect, incidental, exemplary, punitive or consequential losses or damages or loss of goodwill in any way whether such liability is based on tort, contract, negligence, strict liability, product liability or otherwise arising from or relating to this Proposal or resulting from the use or the inability to use the Services or Equipment, if applicable to this Proposal, or the performance or non-performance of the Services or Equipment, if applicable. It is the responsibility of the Customer to insure itself in this regard if it so desires. The liability limit of Utility Service Co., Inc. and its affiliate companies under this Proposal, whether based in contract, warranty, tort (including negligence), strict liability, product liability or otherwise shall not exceed the price that the Customer agrees to pay Utility Service Co., Inc. in this Proposal.

O. GOVERNING LAW AND DISPUTE RESOLUTION

This Proposal and these Terms shall be construed in accordance with the laws of the state of Georgia without regard to the conflict of law principle. In the event of a dispute concerning this Proposal, the complaining Party shall notify the other Party in writing thereof. Management level representatives of both Parties shall meet at an agreed location and attempt to resolve the dispute in good faith. Should the dispute not be resolved within sixty (60) days after such notice, the complaining Party shall seek remedies exclusively through arbitration. The seat of arbitration shall be the federal district court closest to the location where the Services were performed or are scheduled to be performed, and the rules of arbitration will be the Commercial Arbitration Rules of American Arbitration Association, which are incorporated herein by reference into this Section O.



Proposal from
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usgwater.com

Date: 07/18/26

Submitted by: Select a Preparer

Local Phone: (515) 344-6391

SFID: 203549

MP / CS Asset: ☐

Entity Proposal Submitted To ("Customer"): CITY OF HERMOSA, SD			Phone Number: 845-381-6790		Fax Number:
Street Address: 230 MAIN STREET			Description of Work to be Performed: Steel Tank Washout - Chemical Cleaning - Disinfection		
City: HERMOSA	State: SD	Zip Code: 57744	Asset Name: 135,000 Elevated		
Accounts Payable Contact Name: Faye Miller	Email: boardvp@hermosasd.com		Job Site Address: 550 MAIN STREET		
Job Contact (Inspection Reports): Aaron Serviss	Email: boardpresident@hermosasd.com		County / Parish: CUSTER	Asset Size: 135,000	Asset Style: ELEVATED

Utility Service Co., Inc. agrees to provide all labor, equipment, and materials needed to complete the following:

Please see attached Exhibit(s), which are incorporated herein by reference:

1. Exhibit A – Scope of Work
2. Exhibit B – Terms and Conditions

Please sign and date this proposal and fax one copy to our office.

Thirty Three hundred and -----00 /100 Dollars \$ 3300.00

Payment to be made as follows: Payment Due in Full Upon Completion of Work – plus all applicable taxes

Remittance Address: Utility Service Co., Inc., P O Box 207362, Dallas, TX 75320-7362

This Proposal, together with its Exhibit A – Scope of Work and Exhibit B - Terms and Conditions, and any additional exhibits that Utility Service Co., Inc. and the Customer agree to incorporate and attach to this Proposal (collectively, this "Proposal") constitutes the entire and exclusive agreement between Utility Service Co., Inc. (which for purposes herein shall collectively include its affiliate companies) and Customer (collectively, the "Parties"). This Proposal may be withdrawn by Utility Service Co., Inc. at any time prior to acceptance. Customer assents to the terms and conditions in Exhibit B and agrees that the terms and conditions in Exhibit B shall govern with respect to this Proposal and the services provided by Utility Service Co., Inc. No additional or conflicting terms or conditions included in any purchase order, hyperlink, acknowledgement or invoice of Customer not expressly incorporated into this Proposal shall be binding on the Parties or this Proposal.

Note: This proposal shall expire automatically
Ninety (90) days following the date of this Proposal.

Authorized
USCI Signature

Melinda Kuty

Acceptance of Proposal The prices, scope of work, and terms and conditions of this Proposal are satisfactory and are hereby accepted. Payment will be made by Customer to Utility Service Co., Inc. as set forth herein.

Is Customer Exempt from Sales Tax? ☐ No ☐ Yes If Exempt, please provide Sales Tax Exemption Certificate.

Fiscal Year Beginning Month

Customer Signature

Date of Acceptance

Printed Name

FOR INTERNAL USE ONLY

SFID:

CN:

SO:

MP / CS PN:



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Exhibit A – Scope of Work

Steel Tank Washout - Chemical Cleaning - Disinfection

1. A date shall be coordinated by both parties for the Owner to drain the tank.
2. The Owner agrees to provide a potable water source within 250' of the tank that is suitable for a hose connection.
3. The interior floor and lower walls of the tank will be cleaned using a pressure washer to remove all mud, silt, and foreign sediment. The tank is not to be rigged to pressure wash the upper walls, and roof unless specified by this agreement.
4. Apply NSF 60 approved patented chemical cleaning agent to the interior walls up to the high water line and to floor surfaces.
5. Fresh water rinse all interior surfaces to remove cleaning agent and dilute/neutralize residual concentrations. Pricing assumes that neutralized wash-water and sediment can be disposed of through on-site drainage.
6. The tank will be inspected to assess the sanitary, safety, structural, security, and coatings conditions.
7. Exterior and interior paint samples will be taken and the samples will be analyzed at a certified laboratory to determine the total lead and chromium content of the existing coatings.
8. After all inspection work is completed, the tank will be disinfected in accordance with AWWA C652.
9. The tank will be sealed and made ready for service.
10. A comprehensive written report with color digital photographs will be submitted detailing the condition of the tank. A representative of Utility Service Co., Inc. will schedule a date with the Owner to present the report and findings.
11. This price does not include containment, testing, or off-site disposal of sediment or debris from the tank, or costs associated with a vacuum truck or other equipment that may be necessary to remove excessive sediment.
12. The above pricing is contingent upon accessibility of the site and the ability of USCI to perform tasks required unobstructed, and to complete the task in one (1) full work day. (\$1,500.00 per day for each additional day)



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Exhibit A – Scope of Work Continued

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Exhibit B – Terms and Conditions

A. GENERAL TERMS AND CONDITIONS

The Terms and Conditions (the "Terms") of this Proposal govern the sale of services (the "Services") by Utility Service Co., Inc. (which for purposes herein shall include its affiliates) to the Customer. All other terms, or variations to these Terms are excluded unless agreed explicitly in writing by a numbered amendment to this Proposal executed by Utility Service Co., Inc. and the Customer. Execution of the Proposal by the Customer, whether in writing, on the Internet, by electronic signature, or by e-mail transmission of a signed Proposal shall mean acceptance that these Terms are deemed incorporated into the Proposal and shall form the contract between the Customer and Utility Service Co., Inc. These Terms shall supersede all prior terms, understandings or Proposals between the Customer and Utility Service Co., Inc. If any part of the Terms should be found to be invalid or unenforceable by a court or other competent authority, then the remainder of the Terms shall not be affected. Any notice to be given with respect to these Terms by either of the Parties shall be in writing. Notices to the Customer shall be sent to the Customer's address on the Proposal, and any notices to Utility Service Co., Inc., including notice of warranty claims by the Customer, shall be sent to: Utility Service Co., Inc., ATTN: Customer Service Department, 535 General Courtney Hodges Boulevard, Post Office Box 1350, Perry, Georgia 31069.

This Proposal has been issued based on the information provided by the Customer and on information currently available to Utility Service Co., Inc. at the time of Proposal issuance. Any changes or discrepancies in site conditions, concealed conditions where the Services will be performed, changes in environmental, health, and safety regulations or conditions, changes in Customer's financial standing, Customer's requirements, or any other relevant change or discrepancy in the factual basis upon which this Proposal was created may lead to changes in the offering, including but not limited to, changes in pricing, warranties, quoted scope of work, and/or terms and conditions. Unless stated otherwise in the Proposal, performance and/or payment bonds are not included in the price. These bonds can be purchased on request but will be at an additional cost.

B. PRICES, PAYMENT TERMS, COMMITMENT OF CUSTOMER, CREDIT REPORTING AND TAXES

Prices, which are expressed in US Dollars, are only valid for the period stated in the Proposal. If not stated, the validity period is ninety (90) days. Unless otherwise stated in the Proposal, the full price shall be due and payable upon completion of the Services, which may or may not include the installation of Equipment. All of Utility Service Co., Inc.'s invoices are due and payable upon receipt. If any payment is not made by the Customer within sixty (60) calendar days following the date of the invoice, Utility Service Co., Inc. reserves the right to charge a late payment charge of one and one-half percent (1.5%) per month of the outstanding past due balance. Any failure by Customer to make timely payment of any obligation under this Proposal shall be deemed a breach. Customer agrees to reimburse Utility Service Co., Inc. for all charges, costs, expenses and attorney's fees incurred to enforce or collect the amounts due under this Proposal. In the event Customer has a valid dispute with any invoice or amount due, such dispute must be communicated in writing to Utility Service Co., Inc. within thirty (30) days of the invoice date, describing the amount, issue and the reason for any dispute. Any amounts not disputed within this time frame will be deemed to be valid. Utility Service Co., Inc. and Customer agree to work expeditiously to resolve any dispute. Customer agrees to notify Utility Service Co., Inc. within thirty (30) days of any change in Customer's name, address, or phone number. By executing this Proposal, Customer authorizes Utility Service Co., Inc. to periodically request your credit reports and bank and trade references. Upon your request, we will inform you of the name and address of the reporting agency from which we received such a report, if any. The price listed in the Proposal excludes all taxes unless specifically stated otherwise in the Proposal. The Customer is responsible for payment of all applicable taxes, however designated or incurred in connection with the transactions under this Proposal, and agrees to reimburse Utility Service Co., Inc. for any taxes paid on Customer's behalf.

C. DELIVERY OF SERVICES AND INSTALLATION OF EQUIPMENT

The provision of Services as contemplated herein might require the installation of certain equipment (the "Equipment") on the Customer's real property or on the improvements to the Customer's real property (e.g., water storage tank, etc.). All times and dates for the delivery of Services and/or installation of Equipment are approximate, but Utility Service Co., Inc. shall use its reasonable efforts to respect them. The Parties shall each make commercially reasonable efforts to schedule the Services after the date this Proposal is executed by the Customer. Utility Service Co., Inc. shall not be liable for any loss or damage resulting from late delivery of the Services or installation of Equipment.

D. ACCESS TO CUSTOMER'S FACILITY OR REAL PROPERTY

Customer hereby agrees to provide Utility Service Co., Inc. with reasonable access to its facility or real property to perform the Services. "Reasonable access" shall include passable roads for ingress and egress as well as sufficient usable ground space for Utility Service Co., Inc.'s equipment and materials needed to perform the Services. Unless otherwise provided in this Proposal, the price of this Proposal does not include the cost to lease additional real property so that Utility Service Co., Inc. will have sufficient usable ground space to stage its equipment and materials needed to perform the Services. Any such cost would be in addition to the price of the Proposal, and if needed, the Customer agrees to negotiate an amendment to this Proposal to modify the pricing in good faith.

E. RISK OF LOSS

Risk of loss or damage to the Equipment, if applicable to this Proposal, shall pass to the Customer upon delivery of the Equipment to the named place of destination.

F. TITLE TO EQUIPMENT

If the sale of Equipment is included in this Proposal, the title in the Equipment shall remain with Utility Service Co., Inc. until the price of the Proposal is paid in full. The Customer assents that Utility Service Co., Inc. may enter upon the Customer's real property and/or facility to repossess the Equipment if payment(s) are not received in full by their due date(s).

G. SCOPE OF WARRANTY

Subject to the limitations contained herein, Utility Service Co., Inc. represents that for a period of one (1) year from the earlier of: (i) the completion of the Services (to include the installation of the Equipment, if applicable to this Proposal) or (ii) the Customer's return to use of the asset that is the subject matter of this Proposal ("Warranty Period"), the Services and Equipment, if applicable, will be free from defects in materials and workmanship and will substantially conform to the specifications set forth in Exhibit A ("Warranty"). WITH THE EXCEPTION OF THE REPRESENTATION IN THE FOREGOING SENTENCE, UTILITY SERVICE CO., INC. MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WITH RESPECT TO THE SUBJECT MATTER HEREOF AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

H. NOTIFICATION OF WARRANTY CLAIM

All claims filed under the Warranty provided in Section G shall be made in writing by the Customer within thirty (30) calendar days of identifying a defect. Customer shall provide the written notice of the claim to Utility Service Co., Inc. pursuant to Section A above, and the Customer shall provide the following information in the written notice: (i) a description of the defect giving rise to the claim; (ii) photographs showing the defect; and (iii) if the claim is related to Equipment, the serial number(s) of the Equipment which is (are) the subject of the claim.

I. EXCLUSIONS FROM WARRANTY

Occurrence of any of the following, as reasonably determined by Utility Service Co., Inc., will void the Warranty: (i) unauthorized alteration of any component(s) of the Services or the Equipment, if applicable, originally supplied by Utility Service Co., Inc., or (ii) intentional or negligent damage to Utility Service Co., Inc.'s work product or the Equipment, if applicable to this Proposal, caused by any other person or entity, including but not limited to, the Customer and its officers, employees, agents, contractors, and assigns.

J. VERIFICATION OF WARRANTY CLAIM

Utility Service Co., Inc. shall contact Customer following its receipt of notice of a claim under the Warranty. Utility Service Co., Inc. reserves the right to request additional information from the Customer or to conduct an on-site inspection of its work or the Equipment, if applicable to this Proposal, before accepting a claim. The Parties agree to cooperate and work in good faith to provide any additional information needed or to schedule an on-site visit by Utility Service Co., Inc.'s personnel to visibly inspect the work and the Equipment, if applicable. Furthermore, Utility Service Co., Inc. reserves the right to have a third party participate in the inspection of the work to verify whether the work or Equipment, if applicable, is defective under the terms of the Warranty.



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Exhibit B – Terms and Conditions (Continued)

K. SATISFACTION OF WARRANTY CLAIM

If Utility Service Co., Inc. verifies, in good faith, that a claim under the Warranty is valid and not subject to an exclusion pursuant to Section I above, Utility Service Co., Inc. agrees to repair or replace, without expense to the Customer, any workmanship, materials, and/or Equipment, if applicable, furnished hereunder that may prove defective within the Warranty Period. The Warranty provided in this Proposal shall be the sole and exclusive remedy of the Customer.

L. INDEMNIFICATION

Utility Service Co., Inc. shall indemnify and hold harmless Customer from all claims for physical damage to third party property or injury to persons, including death, to the extent caused by the negligence of Utility Service Co., Inc. or its officers, agents, employees, and/or assigns while engaged in activities under this Proposal. Customer shall likewise indemnify and hold harmless Utility Service Co., Inc. from all claims for physical damage to third party property or injury to persons, including death, to the extent caused by negligence of the Customer or its officers, agents, employees, and/or assigns. In the event such damage or injury is caused by joint or concurrent negligence of Utility Service Co., Inc. and Customer, the loss shall be borne by each Party in proportion to its negligence. For the purpose of this Section L, (i) "Third party" shall not include Customer or any subsequent owner of the property where the Services were performed or Equipment, if applicable, their subsidiaries, parents, affiliates, agents, successors or assigns including any operation or maintenance contractor, or their insurer; and (ii) no portion of the Equipment is "third party property".

M. FORCE MAJEURE

Utility Service Co., Inc. shall not be liable to the Customer for non-performance or delay in performance of any of its obligations under this Proposal due to: (i) acts of God (which include, but are not limited to, tropical storms, hurricanes, tornadoes, and earthquakes), (ii) failure of the Internet or another network, (iii) war, (iv) riot, (v) civil commotion, (vi) embargo, (vii) labor disputes, (viii) labor strikes, (ix) fire, (x) flood, (xi) theft, (xii) epidemic, (xiii) pandemic (including COVID-19), (xiv) delay in delivery of services, materials, or equipment by subcontractors, suppliers, or manufacturers, (xv) shortage of labor or materials, or (xvi) any other unforeseen event (whether or not similar in nature to those specified) outside the reasonable control of Utility Service Co., Inc.

N. LIMITATION OF LIABILITY

Neither the Customer nor Utility Service Co., Inc. shall be liable to the other for any economic (including, without limitation, loss of revenues, profits, contracts, business or anticipated savings), special, indirect, incidental, exemplary, punitive or consequential losses or damages or loss of goodwill in any way whether such liability is based on tort, contract, negligence, strict liability, product liability or otherwise arising from or relating to this Proposal or resulting from the use or the inability to use the Services or Equipment, if applicable to this Proposal, or the performance or non-performance of the Services or Equipment, if applicable. It is the responsibility of the Customer to insure itself in this regard if it so desires. The liability limit of Utility Service Co., Inc. and its affiliate companies under this Proposal, whether based in contract, warranty, tort (including negligence), strict liability, product liability or otherwise shall not exceed the price that the Customer agrees to pay Utility Service Co., Inc. in this Proposal.

O. GOVERNING LAW AND DISPUTE RESOLUTION

This Proposal and these Terms shall be construed in accordance with the laws of the state of Georgia without regard to the conflict of law principle. In the event of a dispute concerning this Proposal, the complaining Party shall notify the other Party in writing thereof. Management level representatives of both Parties shall meet at an agreed location and attempt to resolve the dispute in good faith. Should the dispute not be resolved within sixty (60) days after such notice, the complaining Party shall seek remedies exclusively through arbitration. The seat of arbitration shall be the federal district court closest to the location where the Services were performed or are scheduled to be performed, and the rules of arbitration will be the Commercial Arbitration Rules of American Arbitration Association, which are incorporated herein by reference into this Section O.

DOCUMENT
DISTRIBUTED AT 7-20-
2026 BOT SPECIAL
MEETING AND NOT
INCLUDED IN THE PACKET

– Land Purchase: The actual contract versions in the packet begin on pages **17, 21, 25, 33, and 45.**

Starting page	Version	Important differences
17	Original, dated 8-29-24	Uses \$130,501.08 , not \$140,501.08. The \$15,000 land price is blank. The property recital is blank. It restricts the principal and accrued interest to sewer development but does not expressly say the Town keeps the interest.
21	Revised 9-5-24	Changes the set-aside from \$130,501.08 to \$140,501.08. The \$15,000 purchase price and formal property description remain blank. It still does not expressly state that the Town owns or keeps the interest.
25	September 17 Board packet version	Adds the \$15,000 purchase price , identifies the property as 0.48 acres in Lot 13 of Lone Coyote, and adds the sentence: “Any interest earned will be kept by the town.” It also expressly includes replating as an eligible sewer-development expense.
29	October 1 agenda—not a contract	Calls for approval of the “final Purchase Agreement” for the 0.48-acre parcel and transfer of \$140,501.08 into a CD. It describes the parcel as being for the North Water Tank , but does not contain the contract’s actual terms.
33	Updated 11-1-24 draft	Replaces the simple Lot 13 description with a detailed metes-and-bounds legal description tied to the southeast corner of Bison Ridge Subdivision/Preston Tract 1. Changes the contemplated closing from September to November and identifies Pennington Title, 725 Kansas City Street, Rapid City. Still unsigned.
45	Signed 11-20-24 agreement	Changes the legal description again to “Utility Lot 1 of Lone Coyote Subdivision (formerly Preston Tract 1 of Lone Coyote Subdivision)” ; fills in November 20 as the agreement, closing, and effective date; and contains both parties’ signatures.

The last Board vote concerning the Prestons was May 19, 2026.

After executive session, the motion was:

“To instruct Attorney Schutz to draft a termination-of-partnership proposal between the Town of Hermosa and Preston Family Inc.”

April 21, 2026 vote to write a settlement agreement for the Board to review.