

**HERMOSA TOWN BOARD  
TUESDAY, SEPTEMBER 3, 2024  
REGULAR MEETING @ 6.00pm**

- 1) **ROLL CALL:**
  - A. BOT Roll Call: Kramer, Ferguson, Koontz, Harris
  - 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) **SPECIAL ITEMS:**
  - A. Meeting Protocol
  
- 4) **CONSENT CALENDAR:**

A. Approval of the August 20, 2024, regular meeting minutes; August 22, 2024 budget meeting minutes, August 27, 2024 special and budget meeting minutes, and August 29, 2024 budget meeting minutes
  
- 5) **CONFLICT OF INTEREST DECLARATION:**
  
- 6) **ENGINEER:**
  - A. Land Purchase Agreement for North Water Tank
  - B. North Water Tank Engineering Proposal
  - C. Black Hills Energy – quote for power at water tank (\$3.7k)
  - D. Wastewater Treatment Plant Purchase Agreement
  - E. Wastewater Treatment Plan Construction Management and Startup Support Agreement
  - F. Black Hills Energy – quote for power at Lagoons (\$35k)
  - G. Resolution 2024-03 Resolution Authorizing the Use of ARPA Grant Funding and FY22 DWSRF Loan Funding
  
- 7) **PLANNING & ZONING:**
  - A. Hermosa Arts & History Museum – Artist Reception/Art Sale on October 5, 2024 -Waive Vendor Fee
  - B. Permit 2024-27 – Plat Application – 440 Main St. – Parcel 013913
  - C. Permit 2024-29 – Floodplain Development – 500 & 510 Walter St.- Placement of fill for future development.
  
- 8) **CLAIMS:**
  - A. Review payroll and claims. Motion to approve as presented/amended
  
- 9) **LAW ENFORCEMENT/ABATEMENTS/COMPLAINTS:**
  - A. Marshal’s Report
  - B. Custer County Log
  - C. Abatements
  
- 10) **LEGAL:**
  - A. Oath of Office – Kent Hagg

- 11) **PUBLIC WORKS:**
  - A. Committee Report
  - B. Streets, Street Light Repairs, Water & Sewer Department Updates
  - C. Open Work Orders
  
- 12) **FINANCE OFFICE:**
  - A. Monthly financials
  - B. Department updates
  
- 13) **OLD BUSINESS:**
  - A. Update on gravel on Tower Road
  - B. 2024 Christmas Parade-Motion to approve Hwy 40 on December 14, 2024-6:00 pm-approx 7:00 pm
  
- 14) **NEW BUSINESS:**
  - A. Resolution 2024-04 Initiated Measure 28
  - B. 1<sup>st</sup> Reading of Budget 2.076 – 2025 Appropriations Ordinance
  
- 15) **ITEMS FROM CITIZENS:** No action will be taken by the board on any issue related without being first placed on a future agenda, by the board, to allow for proper notice. (Reserved time for public comment is 15 minutes). Meetings of the Board of Trustees are open to the public. The audience will be allowed to comment on specific agenda items during the time allotted on the agenda for those items, according to established procedures of the Board. This is a time for members of the public (citizens, business owners, and those living within one mile of the town limits) to express concerns or discuss issues having relevance to the town. Anyone wishing to address the Town Board during this time shall be asked to stand and identify themselves after being recognized by the Board President.
  
- 16) **TRUSTEE INPUT:**
  
- 17) **EXECUTIVE SESSION:**
  - A. Motion to enter Executive Session allowable by SDCL 1-25-2.1 – Legal/Personnel/Contract
  - B. Motion to exit out of Executive Session
  - C. Motions resulting from Executive Session
  
- 18) **ADJOURN:** Motion by \_\_\_\_\_; Second by \_\_\_\_\_ to adjourn the meeting at \_\_\_\_\_ PM.

HERMOSA TOWN BOARD  
TUESDAY, AUGUST 20, 2024  
REGULAR MEETING @ 6:00pm

4A

ROLL CALL: Kramer called the meeting to order on Tuesday, August 20, 2024, at 6:02 pm with the following members present: Ferguson, Kramer, Koontz, and Harris. Interested citizens and attorney Hagg were also present. Pledge of Allegiance led by Kramer.

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

SPECIAL ITEMS: meeting protocol presented.

CONSENT CALENDAR: Motion made and seconded to approve August 6, 2024, minutes with the correction of changing the date under Roll Call to August 6, 2024: vote: all aye, motion carried.

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

EXECUTIVE SESSION: Motion made and seconded to enter Executive Session allowable by SDCL 1-25-2.1 – Contracts 5:36 p.m.; vote: all aye, motion carried. Motion made and seconded to exit Executive Session at 6:30 p.m.; vote: all aye, motion carried. No action taken.

ENGINEER: Engineer Anthony Theodorou reviewed the Wastewater Treatment Plant Purchase Agreement Proposal and the WaterGEMS Model Preliminary Analysis.

PLANNING & ZONING: Permit #2024-09 and Permit #2024-27 are pending.

CLAIMS: Motion made and seconded to approve Payroll and Claims as amended; vote: all aye, motion carried. BENESCH, professional service/survey/design/construction administration/civil service/design/permitting, \$34,462.62; CHERYL NEUGEBAUER, prairie dog control, \$300.00; CHUCK FERGUSON, ball valve/repair street sign/round trip to Belle Fourche, \$179.13; GOLDEN WEST TECHNOLOGIES, monthly service, \$543.00; HARRIS CONTRACTING, research/meeting/minutes/emails, \$168.75; IXOM, tether cable, \$363.84; MT RUSHMORE TELEPHONE, phone/internet, \$264.36; PIONEER BANK & TRUST, software/furnace filters/labels/2 signature account, \$5,380.01; SANDER SANITATION, monthly sanitation service, \$4,590.88; SOUTHERN HILLS PUBLISHING, publishing/legal notices July 2024, \$175.86; SUMMIT SIGNS AND SUPPLY, stop sign/no outlet sign/fairgrounds place sign, \$227.50; TURBIVILLE repair 3HP grinder pump, \$3,139.50; **Accounts Payable Total: \$ 49,795.45.** Payroll related: Total Paid On: 8/15/2024: General, \$2,631.69, Water, \$307.99, Sewer, \$184.77, Promoting City/ BBB, \$61.69, EFTPS-Electronic Federal Tax, FED/FICA TAX, \$828.70; **Total Payroll Related Paid: \$4,014.84. REPORT TOTAL: \$53,810.29.**

LAW ENFORCEMENT/ABATEMENTS/COMPLAINTS: Ferguson gave an update on a speed monitoring sign and will have more information at the next meeting. No Custer County log was received. Kramer reviewed current abatements and complaints. Board member Vicky Hendricksen had tendered her resignation at the August 6, 2024, meeting and full verbiage of her resignation letter and discussion can be heard on the town website. Motion made and seconded to not approve the request from Vicki Hendricksen to include her full resignation letter in the published Town of Hermosa board meeting minutes; vote: three aye and one abstained, motion carried. Motion made and seconded to have Trustee Ferguson and Town of Hermosa write an apology letter to Auralee Jobgen and thank her for her J-A Trucking business; vote: all aye, motion carried.

LEGAL: Two proposals were received for the Town Attorney position and will be discussed at an Executive Session at the end of the meeting. A request was received from Rick Mills with Hermosa Connects for a transcript of one of the July Town Board meetings. The town does not provide a transcript of their meetings, but voice recordings are available on the town website.

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

FINANCE OFFICE: Monthly financial reports will be provided at the next meeting. Finance Officer Cornelison gave an update on the repairs needed for the air conditioning unit. Discussion was held on the date for the next regular board

meeting as it falls right after the Labor Day Holiday. Consensus was to leave the meeting date on Tuesday, September 3, 2024. Discussion was held on software to allow board members and public to participate in town board meetings via electronic means, teleconferencing, telephone or the like as per Ordinance 30.07. Cornelison gave an update on Initiated Measure 28.

OLD BUSINESS: Gravel on Tower Road is pending.

NEW BUSINESS: Motion made and seconded to accept the resignation of Vicky Hendricksen effective August 6, 2024; vote: all aye, motion carried. The town will advertise for letters of interest for the open board position. Discussion was held on a SD DOT Application for Permit to Occupy the Right of Way (for parade of lights on Saturday, December 14, 2024) and the board requested more information. This item will be addressed at the next regular meeting.

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

EXECUTIVE SESSION: Motion made and seconded to enter Executive Session allowable by SDCL 1-25-2.1-Contracts; vote: all aye, motion carried. Motion made and seconded to exit Executive Session at 8:32 p.m.; vote: all aye, motion carried. Motion made and seconded to accept the revised proposal from Kent Hagg for the town attorney position; vote: all aye, motion carried.

ADJOURN: Motion made and seconded to adjourn meeting at 8:35 p.m., vote: all aye, motion carried.

ATTEST:

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

\_\_\_\_\_  
Linda Kramer  
Town Board President

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

HERMOSA TOWN BOARD  
BUDGET MEETING  
TUESDAY, AUGUST 22, 2024, @ 6PM



ROLL CALL: Kramer called the meeting to order at 6:21 pm with the following members present: Ferguson, and Koontz. Kramer and Harris joined the meeting at 6:18 p.m. Interested citizen was present. Pledge of Allegiance led by Kramer.

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

2024 BUDGET: Cornelison presented the projected revenues in support of the 2024 fiscal year budget. No action taken.

ITEMS FROM CITIZENS: There was no input from citizens.

TRUSTEE INPUT: Trustees had input.

EXECUTIVE SESSION: No items for executive session.

ADJOURN: Motion made and seconded to adjourn the meeting at 7:42 pm; vote; all ayes, motion carried.

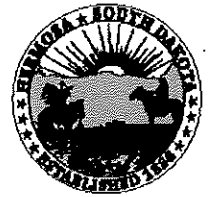
ATTEST:

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

\_\_\_\_\_  
Linda Kramer  
Town Board President

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

HERMOSA TOWN BOARD  
SPECIAL AND BUDGET MEETING  
TUESDAY, AUGUST 27, 2024, @ 6PM



ROLL CALL: Kramer called the meeting to order at 6:01 pm with the following members present: Kramer, Ferguson, and Koontz. Harris was absent. Interested citizen was present. Pledge of Allegiance led by Kramer.

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

Alexander Naefken joined via Zoom and gave a presentation for the Waterworth program on scenarios for the impact on water and sewer rates with proposed loans for lagoon expansion and new well.

2024 BUDGET: Cornelison presented the projected expenses in support of the 2024 fiscal year budget. No action taken.

ITEMS FROM CITIZENS: Citizen had input.

TRUSTEE INPUT: Trustees had input.

EXECUTIVE SESSION: Motion made and seconded to enter Executive Session allowable by SDCL 1-25-2.1 – Contracts at 8:34 p.m.; vote: all aye, motion carried. Motion made and seconded to exit executive session at 8:43 p.m.; vote: all aye, motion carried. No motions made out of executive session.

ADJOURN: Motion made and seconded to adjourn the meeting at 8:44 pm; vote; all ayes, motion carried.

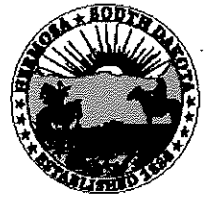
ATTEST:

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

\_\_\_\_\_  
Linda Kramer  
Town Board President

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

HERMOSA TOWN BOARD  
BUDGET MEETING  
THURSDAY, AUGUST 29, 2024, @ 6PM



ROLL CALL: Kramer called the meeting to order at 6:03 pm with the following members present: Kramer, Ferguson, and Koontz. Harris was absent. Interested citizen was present. Pledge of Allegiance led by Kramer.

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

2024 BUDGET: Cornelison presented the projected revenues and expenses in support of the 2024 fiscal year budget. No action taken.

ITEMS FROM CITIZENS: Citizen had input.

TRUSTEE INPUT: Trustees had input.

EXECUTIVE SESSION: No items for executive session.

ADJOURN: Motion made and seconded to adjourn the meeting at 6:55 pm; vote; all ayes, motion carried.

ATTEST:

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

\_\_\_\_\_  
Linda Kramer  
Town Board President

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

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.

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 August, 2024, effective September 1, 2024.

**Seller:**  
Preston Family

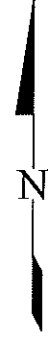
\_\_\_\_\_  
By:  
Its:

Dated this \_\_\_\_ day of August, 2024, effective September 1, 2024.

**Buyer:**  
Town of Hermosa

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

PENNINGTON COUNTY  
CUSTER COUNTY



LOT 12

LONE COYOTE SUBDIVISION  
CUSTER COUNTY, SOUTH DAKOTA

LOT 13

EX. 30' BLACK HILLS  
ELECTRIC COOP  
EASEMENT

LOT 15

LOT 14

94.48'  
125.00'  
0.48 ACRES  
21,015 SF.  
193.17'  
241.77'

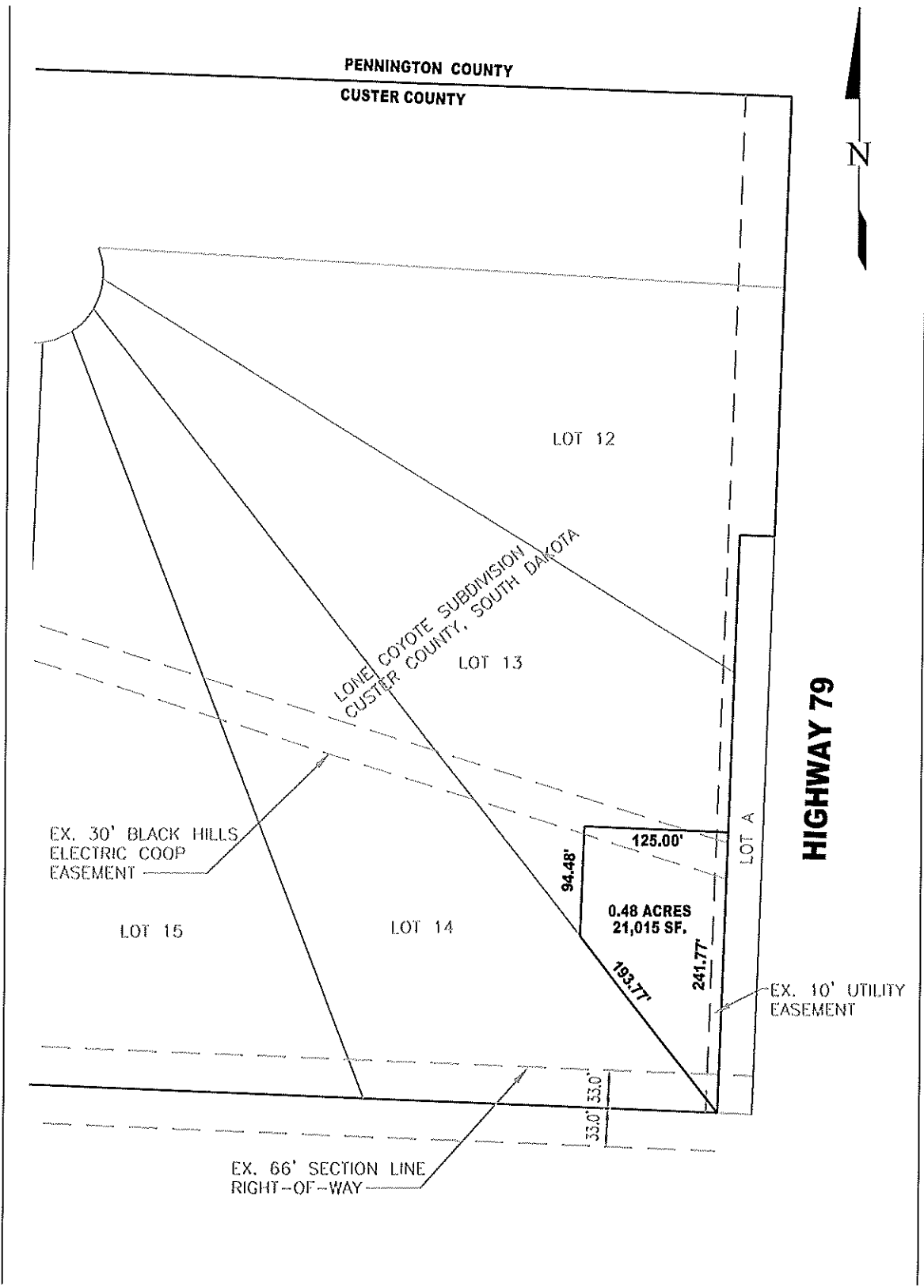
LOT A

HIGHWAY 79

EX. 10' UTILITY  
EASEMENT

EX. 66' SECTION LINE  
RIGHT-OF-WAY

33.0'  
33.0'





COPY

6B

**CONSULTING SERVICES AGREEMENT**

CLIENT	Town of Hermosa	Project Name	North Water Tank
Address	PO Box 298	Survey, Geotechnical Investigation, Water Model	
	230 Main Street	Final Design, Permitting, Construction Management	
	Hermosa, SD 57744	Project Location Hermosa, SD	
Telephone	(605) 255-4291		
Client Contact	Linda Kramer, President	Consultant PM	Anthony L. Theodorou PE
Client Job No.		Consultant Job No.	

This Agreement is made by and between the Town of Hermosa, SD, hereinafter called "Client," and Alfred Benesch & Company, hereinafter called "Consultant", for professional consulting services as specified herein. Consultant agrees to provide Client with requested consulting services more specifically described as follows (or shown in Attachment A):

Assist the town in land acquisition for a new water tank for the western pressure zone of the drinking water distribution system. Design the new tank using surveying, soil investigation and water model data. Prepare permit and contract documents for submission to DANR. Conduct bid phase for contractor selection. Provide Construction Management services including inspection services. Coordinate testing for materials quality (excluding the cost of lab/field testing).

The General Conditions and the following Attachments are hereby made a part of the Agreement:

- Attachment A: Scope of Services and Fee Estimate
  - Attachment B: Schedule of Unit Rates
  - Attachment C: \_\_\_\_\_
- or
- Exhibit A: Work Authorizations specifying Method of Payment, Scope, and Fee

By signing this Agreement, Client acknowledges that it has read and fully understands this Agreement and all attachments thereto. Client further agrees to pay Consultant for services described herein upon receipt of invoice by Client for the Consultant's estimated fee as described below:

- By Lump Sum: \$118,500.00.
- By Time and Materials: \$\_\_\_\_\_.
- By Other Payment Method (See Attachment \_\_\_\_\_): \$\_\_\_\_\_.
- As shown on serially numbered Work Authorizations Using Exhibit A

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement:

**CLIENT**

**ALFRED BENESCH & COMPANY**

BY: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

BY: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

PRINT NAME: \_\_\_\_\_

PRINT NAME: Anthony Dirks

TITLE: \_\_\_\_\_

TITLE: Senior Vice President

DATE: \_\_\_\_\_, 20\_\_\_\_\_

DATE: August 29, 2024

BENESCH OFFICE: Lincoln

ADDRESS: 825 M. Street, Suite 100

Lincoln, NE 68508

**PLEASE SIGN AND RETURN ONE COPY TO ALFRED BENESCH & COMPANY (ADDRESS ABOVE).**



## STANDARD TERMS AND CONDITIONS

### SECTION 1 – Services by Consultant

#### 1.1 General

Consultant shall provide services under this Agreement only upon request of the Client, and only to the extent defined and required by the Client. These services may include the use of outside services, outside testing laboratories, and special equipment.

Attachments to this Agreement are as identified on the signature page to this Agreement or using serially numbered Work Authorizations, and with these GENERAL CONDITIONS, are all as attached hereto, and made a part of this Agreement.

#### 1.2 Scope of Services and Fees

The services to be performed by Consultant and the associated fee are attached hereto and made a part of this Agreement or by using serially numbered Work Authorizations, all as identified on the signature page to this Agreement, and shall be performed by the Consultant in accordance with the Client's requirements. The Scope of Services and Fee Estimate (Attachment A) is valid for sixty (60) days, after which Consultant reserves the right to revise the Scope or Fee Estimate.

It is mutually understood that Consultant's fee is not a firm contractual amount, except the total fee by the Consultant shall not be exceeded unless authorized in writing by the Client. The intent of the Scope of Services is to identify the services to be provided by Consultant. However, it is specifically understood that by written notice to Consultant, Client can decrease or, with concurrence of Consultant, increase the Scope of Services.

### SECTION 2 – Payments to Consultant

#### 2.1 Method of Payment

Payment for Consultant's personnel services and direct expenses shall be based on the Method of Payment which is identified on the signature page to this Agreement or serially numbered Work Authorizations, attached hereto, and made a part of this Agreement.

#### 2.2 Payment for Personnel Services

##### 2.2.1 Payment

Payment for the services rendered by Consultant's personnel shall be based on the hours of chargeable time and in accordance with Consultant's Schedule of Unit Rates, which is identified on the signature page to this Agreement and attached hereto, and made a part of this Agreement.

##### 2.2.2 Chargeable Time

Chargeable time for Consultant's personnel is that portion of their time devoted to providing services requested by Client. Chargeable time for field personnel located away from Consultant's office for more than one week is a minimum of eight hours per day and five days per calendar week, except for Consultant observed legal holidays or during an employee's sick leave or vacation time. Travel

time from Consultant's office to an assigned work site, and return to Consultant's office, is chargeable time; or if more economical for Client, Consultant shall lodge its personnel overnight near the work site in lieu of traveling back to Consultant's office at the end of each work day.

##### 2.2.3 Overtime Rates

The basis for payment to Consultant for each hour worked in excess of forty (40) hours in any calendar week shall be the applicable hourly rate as specified in the Schedule of Unit Rates.

#### 2.3 Payment for Direct Expenses

##### 2.3.1 Payment

For Direct Expenses incurred by Consultant, payment to Consultant by the Client shall be in accordance with Consultant's Schedule of Unit Rates.

##### 2.3.2 Direct Expenses

For the purposes of this Agreement, Direct Expenses to be contracted and managed by Consultant and payable by Client to Consultant shall include: Outside Services including the services and reimbursable expenses for firms other than Consultant which are necessary for the work the Consultant is directed to perform; Laboratory Tests and related reports necessary for the work the Consultant is directed to perform, either by the Consultant or by an outside service for the Consultant; Special Equipment expenses including the costs of the Consultant locating, acquiring, leasing, or renting any equipment or facilities not currently owned, leased, or rented by Consultant at the time of the request for services which are necessary to enable Consultant to provide the services requested; vehicles furnished by Consultant for Consultant's authorized travels and for Consultant's field personnel; Per Diem expense or actual costs of maintaining Consultant's field personnel on or near the Project site, for each day of field assignment away from Consultant's office; and Other Direct Expenses associated with all services provided hereunder and identified in the Schedule of Unit Rates.

#### 2.4 Payment Conditions

2.4.1 Consultant shall submit monthly invoices for all personnel services and direct expenses under this Agreement and a final invoice upon completion of services.

2.4.2 Invoices are due and payable upon receipt by Client. Interest at a rate of 1.5% per month, or the maximum allowed by law, will be charged on all past due amounts starting thirty (30) days after date of invoice. Payments will first be credited to interest and then to principal.

2.4.3 In the event of a disputed or contested invoice, Client must provide written notice to Consultant within ten (10) days of the date of any invoice, otherwise the invoice will be considered to be correct. In the event Client timely submits in writing a dispute on a particular invoice, only that portion so contested will be withheld from payment and the Client will pay the undisputed portion. No interest will accrue on any reasonably contested portion of the invoice until mutually resolved.

**2.4.4** If Client fails to make payment in full to Consultant of amounts owed pursuant to this Section 2 within forty-five (45) days of the date of the invoice, Consultant may, after giving seven (7) days' written notice to Client, suspend services under this Agreement until paid in full, including interest. Consultant shall have no liability to Client for delays or damages caused by such suspension of services. Client agrees to pay all costs of collection, including reasonable attorney's fees, incurred by Consultant as a result of Client's failure to make payments in accordance with this Agreement. No final plans, documents or reports will be released for any purpose until Consultant has been paid in full.

**2.4.5** The billing rates specified in the Schedule of Unit Rates for subsequent years shall be adjusted annually in accordance with Consultant's costs of doing business, subject to Client's review and concurrence.

## **SECTION 3 - Term of Agreement**

### **3.1 Term**

Consultant's obligations to perform under this Agreement shall extend from the date of execution until terminated by either party.

### **3.2 Abandonment of Work**

Client shall have the absolute right to abandon any work requested hereunder or to change the general scope of the work at any time, and such action on its part shall in no event be deemed a breach of contract.

### **3.3 Termination of Agreement**

#### **3.3.1 Termination with Cause**

The obligation to provide further services under this Agreement may be terminated with cause by either party by written notice stating the basis for the termination and providing 7 days to cure. The termination will be effective seven (7) days after delivery of written notice thereof if the basis for the termination has not been cured. In the event of termination by Consultant caused by failure of the Client to perform in accordance with the terms of this Agreement, Client shall pay for all services performed prior to the effective date of the termination, including all project termination expenses, collection fees and legal expenses. Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this Agreement to the Client upon receipt of final payment. In the event of termination by the Client caused by failure by Consultant to perform in accordance with the terms of this Agreement, Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination and provide information and documents developed under the terms of this Agreement to the Client. Upon receipt of all other information and documents, Client shall pay Consultant for services performed prior to the effective date of the termination.

#### **3.3.2 Termination without Cause**

Either party may, at its sole discretion, terminate this

Agreement without cause at any time. In the event of such termination, the terminating party will promptly notify and confirm the termination in writing to the other party. The termination will be effective seven (7) days after delivery of written notice thereof. Upon termination, Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this Agreement to the Client upon receipt of final payment.

### **3.4 Payment for Work Upon Abandonment or Agreement Termination**

If Client abandons requested work or terminates this Agreement, Consultant shall be paid on the basis of work completed to the date of abandonment or effective date of termination. Consultant shall perform no activities other than reasonable wrap-up activities after receipt of notice of abandonment or termination. Payment for the work shall be as established under Section II.

## **SECTION 4 - General Considerations**

### **4.1 Assignment and Responsibility for Personnel**

**4.1.1** The assignment of personnel and all phases of the undertaking of the services which Consultant shall provide hereunder shall be subject to the oversight and general guidance of Client.

**4.1.2** While upon the premises of Client or property under its control, all employees, agents, and subconsultants of Consultant shall be subject to Client's rules and regulations respecting its property and the conduct of its employees thereon.

**4.1.3** However, it is understood and agreed that in the performance of the work and obligations hereunder, Consultant shall be and remain an independent Consultant and that the employees, agents or subconsultants of Consultant shall not be considered employees of or subject to the direction and control of Client. Consultant shall be responsible for the supervision and performance of all subconsultants which are to perform hereunder.

### **4.2 Insurance**

**4.2.1** Consultant shall furnish Client a certificate of insurance upon request showing amounts and types of insurance carried by Consultant, which certificate shall contain a commitment by the Insurance Company that during the time any work is being performed by Consultant under this Agreement it will give Client notice of cancellation or non-renewal of the insurance coverage shown on such certificates in accordance with policy provisions.

**4.2.2** Any construction contracts relative to Consultant's Services shall require that the Client and Consultant be included as additional insureds on the contractor's and contractor's subcontractors' commercial general liability and commercial automobile liability insurance policies and that the coverage afforded Client and Consultant is primary to any insurance maintained by Client or Consultant and that Client and Consultant's insurance is non-contributory with any coverage afforded by contractor and subcontractors. Client will also require contractor and all subcontractors to purchase and maintain workers' compensation and employer's liability insurance.

Consultant will name the Client as additional insured on Consultant's commercial general liability insurance.

#### **4.3 Successors and Assigns**

**4.3.1** Client and Consultant each binds itself and its partners, successors, executors, administrators, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this Agreement.

**4.3.2** Neither Consultant nor Client shall assign or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other party, except as stated in paragraph 4.3.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Consultant from employing such independent consultants, associates, and subconsultants as it may deem appropriate to assist in the performance of services hereunder.

**4.3.3** Nothing herein shall be construed to give any rights or benefits hereunder to any one other than Client and Consultant except as otherwise provided herein.

#### **4.4 Compliance with Law**

**4.4.1** Consultant shall exercise the professional standard of care to comply with, and cause its subconsultants to comply with, applicable Federal, state, and local laws, orders, rules, and regulations in effect at the time services are rendered, and relating to the performance of the services Consultant is to perform under this Agreement. If the Scope of Services requires Consultant to prepare an application for a permit, Consultant does not represent or warrant that said permit or approval will be issued by any governmental body.

**4.4.2** Neither the Consultant nor the Consultant's agents or employees shall discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, or national origin.

#### **4.5 Ownership and Reuse of Documents**

**4.5.1** All drawings, specifications, test reports, and other materials and work products which have been prepared or furnished by Client prior to this Agreement shall remain Client's property. Consultant shall be permitted to rely on Client furnished documents and Client shall make available to Consultant copies of these materials as necessary for the Consultant to perform the services requested hereunder.

**4.5.2** All drawings, specifications, test reports, and other materials and work products, including computer aided drawings, designs, and other data filed on electronic media which will be prepared or furnished by Consultant (and Consultant's independent professional associates and subconsultants) under this Agreement, are instruments of

service in respect to the Project and Consultant shall retain an ownership and property interest therein whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the use and the occupancy of the Project by Client and others; however, such documents are not intended or represented to be suitable for reuse by Client or others acting on behalf of Client on extensions of the Project or on any other project. Further, Consultant makes no warranty as to the compatibility of computer data files with computer software and software releases other than that used by Consultant in performing services herein, and to the condition or availability of the computer data after an acceptance period of thirty (30) days from delivery to Client. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Consultant or to Consultant's independent professional associates or subconsultants, and Client shall indemnify and hold harmless Consultant and Consultant's independent professional associates and subconsultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Consultant to further compensation at rates to be agreed upon by Client and Consultant.

#### **4.6 Consultant's Personnel at Project Site**

**4.6.1** The presence or duties of the Consultant personnel at a Project site, whether as onsite representatives or otherwise, do not make the Consultant or its personnel in any way responsible for those duties that belong to the Client and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the project documents and any health or safety precautions required by such construction work. The Consultant and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor or other entity or any other persons at the site except Consultant's own personnel.

**4.6.2** To the extent Consultant's Scope of Work includes construction observation, the Consultant shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Consultant neither guarantees the performance of the contractor(s) nor assumes responsibility for contractor(s)' failure to perform their work in accordance with the project documents.

#### **4.7 Opinions of Cost, Financial Considerations, and Schedules**

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, the Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions. Consultant's opinions of probable Total Project Costs and Construction Costs provided for herein as appropriate are made on the basis of Consultant's experience and qualifications and represent Consultant's judgments as an experienced and qualified professional consultant familiar with the construction industry. Consultant makes no warranty that the Client's actual Total Project or Construction Costs, financial aspects, economic feasibility, or schedules will not vary from the Consultant's opinions, analyses, projections, or estimates. If Client wishes greater assurance as to any element of the Total Project or Construction cost, feasibility, or schedule, Client will employ an independent cost estimator, contractor, or other appropriate advisor.

#### **4.8 Discovery of Unanticipated Pollutant and Hazardous Substance Risks**

**4.8.1** If Consultant, while performing the services, discovers pollutants and/or hazardous substances that pose unanticipated risks, it is hereby agreed that the scope of services, schedule, and the estimated cost of Consultant's services will be reconsidered and that this Agreement shall immediately become subject to renegotiation or termination.

**4.8.2** In the event that the Agreement is terminated because of the discovery of pollutants and/or hazardous substances posing unanticipated risks, it is agreed that Consultant shall be paid for its total charges for labor performed and reimbursable charges incurred to the date of termination of this Agreement, including, if necessary, any additional labor or reimbursable charges incurred in demobilizing.

**4.8.3** Client also agrees that the discovery of unanticipated pollutants and/or hazardous substances may make it necessary for Consultant to take immediate measures to protect health and safety. Consultant agrees to notify Client as soon as practically possible should unanticipated pollutants and/or hazardous substances be suspected or encountered. Client authorizes Consultant to take measures that in Consultant's sole judgment are justified to preserve and protect the health and safety of Consultant's personnel and the public. Client agrees to compensate Consultant for the additional cost of taking such additional precautionary measures to protect employees' and the public's health and safety. This section is not intended to impose upon Consultant any duties or obligations other than those imposed by law.

### **SECTION 5 - Professional Responsibility**

#### **5.1 Performance of Services**

Consultant shall perform its services consistent with the professional skill and care ordinarily provided by firms practicing in the same or similar locality under the same or similar circumstances (hereinafter the "Standard of Care").

Consultant expressly disclaims all express or implied warranties and guarantees with respect to the performance of professional services, and it is agreed that the quality of such services shall be judged solely as to whether the services were performed consistent with the Standard of Care. Consultant owes Client only that level of performance defined in this Section 5.1, and nothing herein shall be construed as creating a fiduciary relationship.

If at any time prior to construction Client believes Consultant's services are deficient due to not meeting the Standard of Care, Client must immediately inform Consultant in writing and shall afford Consultant the opportunity to correct such deficiency. If, upon review by Consultant it is determined there is a deficiency that fails to meet the standard of care and it is attributable to Consultant, the deficiency shall be corrected at no additional cost to Client.

#### **5.2 Limitation of Liability**

Client and Consultant agree to allocate certain of the risks so that, to the fullest extent permitted by law, Consultant's total liability to Client is limited to the amount paid under the contract or \$50,000 whichever is greater, this being the Client's sole and exclusive remedy for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this Agreement from any cause or causes. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

#### **5.3 No Special or Consequential Damages**

Client and Consultant agree that to the fullest extent permitted by law neither party shall be liable to the other for any special, indirect, or consequential damages whatsoever, whether caused by either party's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, or other cause or causes.

#### **5.4 Indemnification**

To the fullest extent permitted by law, Client and Consultant mutually agree to indemnify and hold each other harmless from and against any and all claims, damages, losses and expenses, defense costs including reasonable attorneys' fees, and court or arbitration costs and other liabilities arising from their own negligent acts, errors or omissions in performance of their services under this Agreement, but only to the extent caused that each party is responsible for such damages, liabilities and costs on a comparative basis of fault.

#### **5.5 No Third Party Beneficiaries**

Client and Consultant expressly agree that this Agreement does not confer upon any third party any rights as beneficiary to this Agreement. Consultant accepts no responsibility for damages, if any, suffered by any third party as the result of a third party's use of the work product, including reliance, decisions, or any other action taken based upon it.

Client agrees that Consultant's services and work products are for the exclusive present use of Client. Client agrees

that Consultant's compliance with any request by Client to address or otherwise release any portion of the work product to a third party shall not modify, rescind, waive, or otherwise alter provisions of this Agreement nor does it create or confer any third party beneficiary rights on any third party.

## **SECTION 6 - Miscellaneous Provisions**

### **6.1 Notices**

Any notice to either party herein shall be in writing and shall be served either personally or by registered or certified mail addressed to the signing party shown on the signature page.

### **6.2 Joint Preparation**

For purposes of contract interpretation and for the purpose of resolving any ambiguity in this Agreement, the parties agree that this Agreement was prepared jointly by them and/or their respective attorneys.

### **6.3 Headings**

Headings used in this Agreement are for the convenience of reference only and shall not affect the construction of this Agreement

### **6.4 Severability**

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

### **6.5 Dispute Resolution**

If negotiation in good faith fails to resolve a dispute within thirty (30) days of written notice of the dispute by either party, then the parties agree that, with the exception of claims that are subject to the applicable venue's small claims court jurisdiction, each dispute, claim or controversy arising from or related to this Agreement or the relationships which result from this Agreement shall be subject to mediation as a condition precedent to initiating legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No legal or equitable action may be instituted for a period of ninety (90) days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties and shall be held in a location mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a mediated settlement agreement, which agreement shall be enforceable as a settlement in any court having jurisdiction thereof.

During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations

hereunder. Any dispute not resolved through mediation shall be subject to litigation in a court of competent jurisdiction in the state in which the project is located.

### **6.6 Equal Opportunity**

Consultant will, in the performance of this Agreement, comply with federal, state, and local laws, and all regulations and orders issued under any applicable law related to equal employment opportunity, non-discrimination, or employment generally.

Consultant certifies that it will not knowingly employ or contract with a non-legal resident of the United States to perform work under this Agreement, and verifies or attempts to verify employee eligibility of its employees through participation in the U.S. Department of Homeland Security and Social Security Administration's E-Verify system.

### **6.7 Governing Law**

This Agreement is to be governed by the laws of the jurisdiction in which the project is located. For locations outside of the United States, this Agreement shall be governed by the laws of the State of Illinois.

### **6.8 Entire Agreement**

This Agreement, along with those documents specified, attached, or hereby cited together, and serially numbered Work Authorizations if used, constitute the entire Agreement between the parties hereto and no changes, modifications, extensions, terminations, or waivers of this Agreement, or other documents, or any of the provisions herein, or therein contained, shall be valid unless made in writing and signed by duly authorized representatives of both parties.

## **SUPPLEMENTAL CONDITIONS FOR SURVEY, ENVIRONMENTAL OR GEOTECHNICAL SERVICES**

*Supplemental Condition is incorporated herein when the applicable box is checked.*

**S.1 Location of Underground Utilities**

It shall be the Client's responsibility to locate and physically mark all underground utilities and structures which lie within the work area prior to the start of subsurface investigations. If the Client elects not to assume this responsibility, Client shall notify Consultant and shall compensate Consultant for all costs associated with locating and physically marking said underground utilities and structures over and above the estimated project fee. Client shall indemnify and hold Consultant harmless from any damages and delays resulting from unmarked or improperly marked underground utilities and structures. For reasons of safety, Consultant will not begin work until this has been accomplished.

**S.2 Subsurface Investigations**

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics might vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the Consultant.

**S.3 Disposition of Samples and Equipment**

**S.3.1 Disposition of Samples**

No samples and/or materials will be kept by Consultant

longer than thirty (30) days after submission of the final report unless agreed otherwise.

**S.3.2 Hazardous or Potentially Hazardous Samples and Materials**

In the event that samples and/or materials contain or are suspected to contain substances or constituents hazardous or detrimental to health, safety, or the environment as defined by federal, state, or local statutes, regulations, or ordinances, Consultant will, after completion of testing, return such samples and materials to Client, or have the samples and materials disposed of in accordance with Client's directions and all applicable laws. Client agrees to pay all costs associated with the storage, transportation, and disposal of samples and materials. Client recognizes and agrees that Consultant at no time assumes title to said samples and materials, and shall have no responsibility as a handler, generator, operator, transporter, or disposer of said samples and materials.

**S.3.3 Contaminated Equipment**

All laboratory and field equipment contaminated in Consultant's performance of services will be cleaned at Client's expense. Contaminated consumables will be disposed of and replaced at Client's expense. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of Client. At Client's expense, such equipment shall be delivered to Client, or disposed of in the same manner specified in S.3.2 above. Client agrees to pay Consultant the fair market value of any such equipment which cannot reasonably be decontaminated and is delivered to Client pursuant to this Agreement.



EXHIBIT A

WORK AUTHORIZATION NO. \_\_\_\_\_

PROJECT NO. \_\_\_\_\_ DATE \_\_\_\_\_, 20\_\_\_\_

PROJECT NAME \_\_\_\_\_

CLIENT \_\_\_\_\_

CLIENT PM \_\_\_\_\_ CONSULTANT PM \_\_\_\_\_

PHONE NO. \_\_\_\_\_ PHONE NO. \_\_\_\_\_

**SCOPE OF SERVICES**

This WORK AUTHORIZATION Number \_\_\_\_\_, with the Agreement dated \_\_\_\_\_, 20\_\_\_\_, 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):

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 \$\_\_\_\_\_ and invoice using a percentage completed basis.
- Client will pay by another method as described: \_\_\_\_\_

**CLIENT**

**ALFRED BENESCH & COMPANY**

BY: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

BY: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

PRINT NAME: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_, 20\_\_\_\_

DATE: \_\_\_\_\_, 20\_\_\_\_

BENESCH OFFICE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

**PLEASE SIGN AND RETURN ONE COPY TO ALFRED BENESCH & COMPANY (ADDRESS ABOVE).**

**Engineer's Services**  
**North Water Tank – Town of Hermosa, SD**

Attachment A of the Agreement is supplemented to include the following agreement of the parties. Engineer shall provide Basic Services as set forth below.

**BASIC SERVICES**

**Project Location:**

The location for which Engineer's services are being provided is to assist the town in constructing a Water Tank at an elevated location at the northern part of town, along Highway 79, as indicated in Figure 2. The location was chosen based on a water system model developed by Benesch, which indicates the town's water system needs to be divided into 2 pressure zones, a western and eastern zone. The western zone pressure can then be boosted, and the fire volume provided by sufficient water volume on stand-by in the new North water tank. An elevation profile and pressure distribution map are found in Figures 1a-b.

Figure 1a. Elevation of Proposed Tank Location

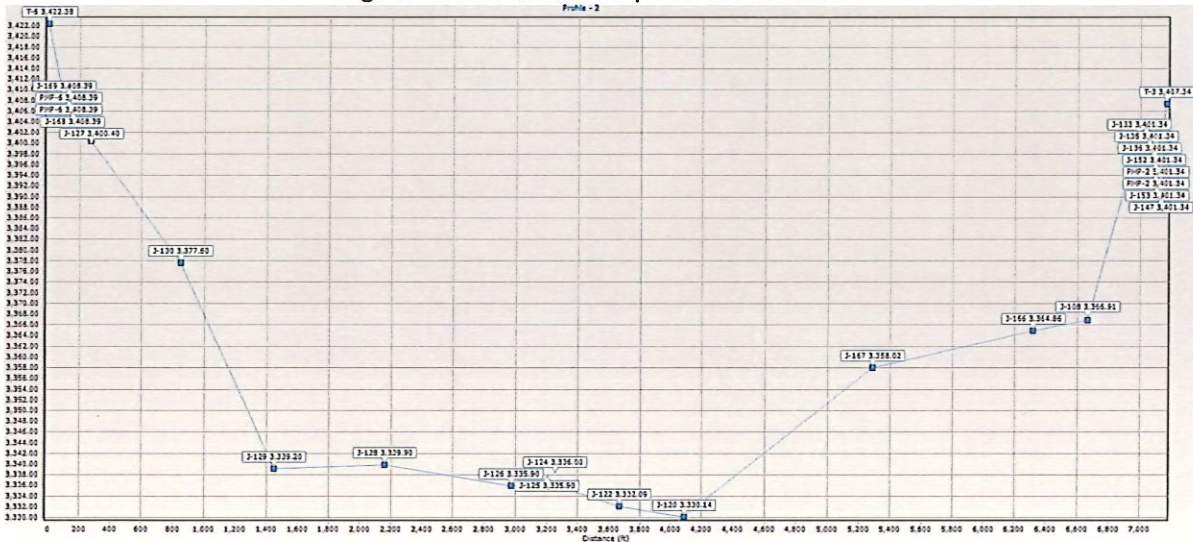
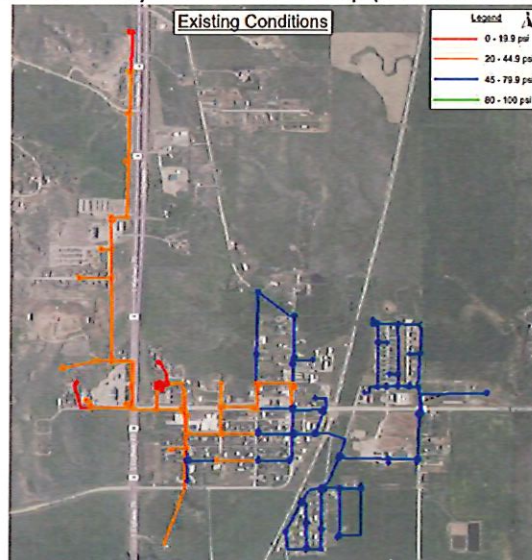


Figure 1b. Hermosa Water System Pressure Map (Red and Orange Color < 45 psi)



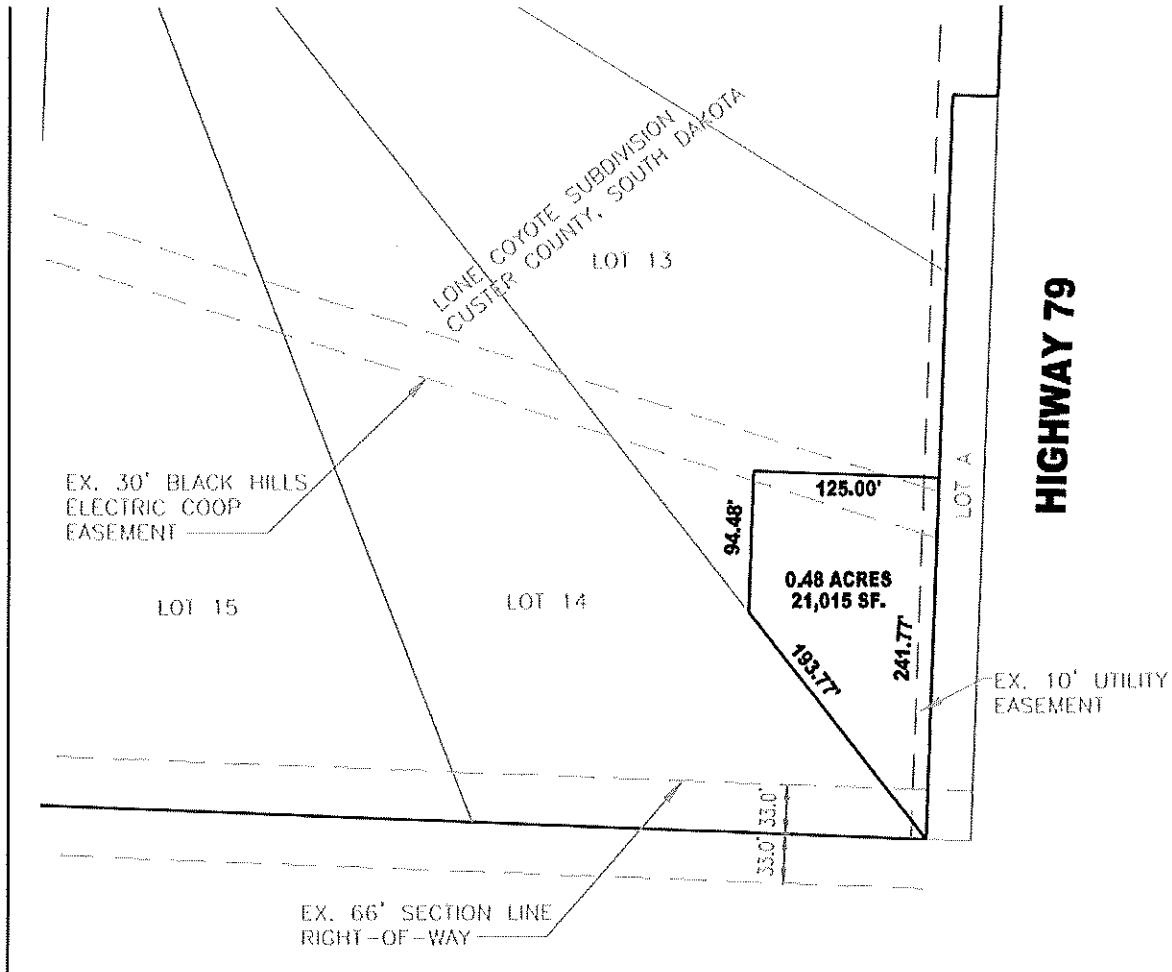


Fig. 2 Future Water Tank Parcel Location Map

**Project Understanding:**

The water tank proposed is to be constructed before and concurrent to the town's DWSRF Loan project (C462278-03) which will construct a new well, water treatment system and make small watermain connectivity improvements to facilitate segregation of the water system into two pressure zones. Funding for the water tank and booster pumps shall come from the \$500,000 ARPA grant provided to Hermosa by Custer County. The target date for selection of a contractor for the water tank and booster pumps is December 31<sup>st</sup>, 2024, with all construction being completed in the 2025 construction season. Meeting the target date is dependent on several factors outside the control of the Engineer. Any potential delays in meeting the target date will be immediately brought to the town board's attention with a recommended workaround plan and any extra cost anticipated.

The design and construction phases of Water Tank will be composed of the following services:

- Design of the water tank, based on the scenarios of 50% full (filling and not filling scenario). The two 40 gpm pumps that are currently in the booster station are to be repurposed to fill the tank.
- A scenario with the new water tank in service, where the Large 314,000 gallon tank is taken out of service to add additional height and repair a leak will be run, to complete the water facilities plan supplement. The height will be sufficient to provide at least 45 psi to all portions of the distribution system in the town's east pressure zone (to complement the improved pressure in the western pressure zone).

- Engineering Support Services during the selection of the tank manufacturer to be specified.
- Update to the Engineering Cost Estimate for the Water Tank and Booster Pump upgrade.
- Coordinate with suppliers to procure booster pumps and panel drawings for the new tank and upgraded booster station. Both pump systems require new control panels (with controls and possibly telemetry).
- Develop an engineer's estimate of probable costs for the well2, WRT and watermain improvements to pressure zones for DANR current DWSRF loan project scope approval.
- Surveying Support Services necessary to perform a parcel split for the land acquisition for the water tank, as indicated in Figure 2.
- Geotechnical Investigation of the soils at the proposed tank for foundation design.
- Topographic survey of the proposed site for the water tank, filling pump house, connecting pipework and access roads and ingress/egress easements and driveways.
- Preparation of construction plans and specifications for water system DANR construction permitting and a bid phase by November 2024
- Conducting the bid phase for contractor selection. This will include advertisement (cost of advertising not included), bidder Q&A, bid tabulation and review and recommendation of award to the town board.
- Inspection of the on-site earthwork and roads preparing the site for the water tank as per plans. The proposal assumes a 6-month construction period in 2025.
- Coordinate materials testing requirements, all testing costs are to be billed directly to the town.
- Inspect tank, pipe, valves, pumps and building constructed to verify work meets plans and specs.
- Prepare Standard Operation Procedure for tank operation and maintenance.
- Coordinate with the power company to run a service to the water tank location.
- Prepare sampling requirements and locations for startup of the water tank.
- Review laboratory results and report back to DANR the results before bringing tank online.

Until DANR's review and approval, we will not open valving to the town drinking water supply. If they allow us to bring the tank online, we will be under the current drinking water permit requirements. If additional time is required by DANR, our contract shall be updated accordingly with additional Engineering fees required for associated Administration services.

**Engineering Fees:**

Estimated fees for services:

This would be a Lump Sum budget based on the scope provided above.

Surveying Phase: Surveying Fees for Topo, Legal, easement and/or platting surveys = \$6,000.00

Geotechnical Engineering: \$8,000.00

Preliminary Design Phase: Design of Water Tank, Modeling Scenarios, QA/QC, Cost Estimates = \$14,225.00

Final Design Phase: Plans and Specifications Preparation = \$24,500.00

Bid Phase: Administration and Contractor Selection = \$11,700.00

Construction Phase: Inspection and Testing Coordination (12 weeks of onsite time) = \$44,075.00

Permitting Phase: Standard Operation and Maintenance Procedures Preparation, Reporting = \$10,000.00

The total amount of \$118,500.00 does not include state and local sales tax, as applicable.

**Services not Included:**

The following services are not included in this proposal:

1. Laboratory Testing fees
2. State and Local sales tax, permitting, filing and submittal fees
3. Water Treatment design
4. Water Permit modifications

5. Design of off-site improvements
6. Environmental and cultural evaluation and permitting
7. Irrigation and Landscape design
8. Construction staking, and materials testing
9. ROW, Soil Erosion and Driveway permit fees.

***Project Schedule:***

It is anticipated that the design will commence in September 2024, and the bid phase and contractor notice to proceed will be completed by December 31, 2024. The contractor shall complete all work in 2025.

***Parties:***

Owner – Town of Hermosa – Shall refer to the Owner in the Agreement.

Consultant – Alfred Benesch & Company– Shall be synonymous with Engineer in this document.

***Scope of Services:***

Engineer’s scope includes the following tasks:

***A1.00 Survey Phase***

***A. Owner’s Responsibilities:***

1. Provide known owned utility locations.
2. Ensure access to ROW and Town owned property

***A1.01 Environmental & Floodplain Phase (not included)***

***A. Owner’s Responsibilities: All environmental clearances.***

***A1.02 Preliminary Design Phase***

- A. Phase Description: Using the topographic survey data and imagery previously acquired in the water model study, fire flow analysis will be evaluated with the proposed scenarios herein.***
- B. Engineer will: Develop a hydraulic model of the tank and distribution system within the project area. Prepare Preliminary Design Phase documents consisting of an updated memorandum of the model results. The criteria will consist of average day demands, peak day demands and any fire flow characterization to the system. The technical memo along with the previous water model analysis will be combined into a supplement to the facilities plan.***
- C. Deliverables: (2) review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any approved/amended Survey Phase deliverables.***
- D. Owner’s Responsibilities: Review Deliverables and provide comments in a timely manner.***
- E. Assumptions: Cost estimates will be based on input from local contractors of the preliminary design documents. The time for these contractors to provide probable costs can vary depending on their prior commitments but is assumed to take 5-10 business days.***

A1.03 *Final Design Phase*

- A. Phase Description: After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project.
- B. Engineer will: Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
- C. Deliverables: (2) copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- D. Owner's Responsibilities: It will be important to take into consideration the maintenance procedures necessary for the proposed design and help the Water Department understand those requirements.

Some critical pathways to stay within budget will be how much of the proposed improvement is associated with fire flow volume requiring ARPA grant funding and which improvements can be funded through the SRF loan program. If the minimum improvements are categorized under fire flow, the cost of the project funded under the ARPA grant can be minimized.

- E. Assumptions: The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Permitting Phase*

- A. Phase Description:

Assist Owner in completing the DANR review of the water system construction permit application (DANR permit review phase of 30 days, September – October 2024).

- B. Engineer will:

- 1. Provide information or assistance needed by DANR in the course of permit revision.

- C. Deliverables: Permit Application

- D. Owner's Responsibilities: All permit fees to DANR.

- E. Assumptions: DANR will issue a NPDES permit in early November 2024 to allow for contractor selection for the project before December 31<sup>st</sup>, 2024.

A1.05 *Bidding Phase*

- A. Phase Description.

Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.

B. Engineer will:

1. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
2. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
3. Consult with Owner as to the qualifications of prospective contractors.
4. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
5. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work.
6. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
7. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
8. Review bids for contractors who meet the needs of the project regarding wages, bonds and insurances and the use of American Steel, etc.

C. Deliverables: Bid Tabulation, Recommendation for Award to Owner.

D. Owner's Responsibilities: Advertisement of Bid and all related publication cost. The Owner's Staff shall conduct the Bid opening at the Owner's location with the Engineer present to record the results only. Award shall be made by the Owner based on recommendations from the Engineer.

E. Assumptions: The bid will have enough bidders participate. If at least one bidder participates in the bid, the Owner will reserve the right to select that bidder or advise on additional services required to rebid to acquire sufficient bidders.

A1.06 *Construction Phase:*

A. Phase Description:

1. During this phase, engineer shall complete the general administration of the construction contract. Engineer will consult with owner and act as owners representative as provided in the construction agreement.

B. As basic services, Engineer Will:

1. Conduct a preconstruction meeting
2. Review civil submittals
3. Review and respond to Civil RFIs
4. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
5. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed. Construction staking shall include the Lagoon excavation, piping, and structures.
6. Conduct Four (4) periodic site visits and corresponding observation reports. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Approximately 3 hours per day for a maximum of 6 days per week is assumed for the 3-month continuous duration construction period.
7. Conduct a final walkthrough and generate punch list

C. Deliverables: Review and approval of Contractor pay applications. Supporting documentation, such as photos and reports will be provided, as needed.

D. Owner's Responsibilities

E. Assumptions

1. Contractor will be responsible for Complete material testing of subgrade compaction, aggregate base course, concrete or asphalt.
2. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
3. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.

4. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
5. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews, obtain information, and prepare findings, conclusions, and recommendations for Owner's use, subject to the limitations and responsibilities under the Agreement and the Construction Contract.
6. *Substitutes and "or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.
7. *Applications for Payment (6):* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
  - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
  - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement or this Task Order. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment,

has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

8. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
  9. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
  10. *Final Notice of Acceptability of the Work:* Conduct a final visit to the specific Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") (also available as a construction form, EJCDC® C-626 (2013)) that the Work is acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under the Agreement and this Task Order.
  11. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- F. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the final Construction Contract under the Task Order.

- G. Other Services: Each specific Task Order may include Basic Services that do not fit into the categories above. Such services should be expressly stated in the specific Task Order itself.



**Black Hills  
Electric Cooperative, Inc.**  
P.O. Box 792  
Custer, South Dakota 57730-0792

Telephone: (605) 673-4461  
Toll Free: (800) 742-0085  
E-mail: bhec@bhec.coop  
Fax: (605) 673-3147

6C

Rory Halverson  
Staking Technician

**MEMBER INFORMATION SHEET  
FOR NEW CONSTRUCTION ORDERS**

Listed below are the most common requirements needed to process new service and service upgrades. Please take the time to review the list. Any items checked are required for your specific request and have to be processed by our Engineering Department before the work order can be released to the Operations Department for consideration.

**Deed or Title Insurance**

Please provide BHEC a copy of the deed or title insurance & legal description of the property.

**Right-Of-Easement Form**

This form provides the Cooperative with the permission we need to install your new facilities. It is required from each landowner the new line will cross, including your own property.

**South Dakota Wiring Certificate**

This form is required by the State for all new construction and/or any time there is a change made to existing wiring. It will alert the State Wiring Inspector that changes have been made. He will inspect the electrical work to ensure that safety codes are met.

**Membership Application for Electrical Service**

This form must be completed, signed, and returned to the Cooperative in order to receive electric service.

**Security Deposit / Credit Reference**

The Cooperative requires a minimum of \$250 security deposit or a good credit reference from a former utility.

**Copy of Driver's License**

**Construction Advance**

A deposit is required for all new service for which permanency cannot be established. The deposit amount is equal to the estimated total cost of construction and is held until the Cooperative's requirements of permanency of the account have been met.

Construction Advance Amount Due: \$3500 + Tax = \$3571.44 Total

**Other**

200A service on existing Pole

Your cooperation is necessary and appreciated. Our goal is to process your requested work order without delay. If you have any questions, please call Rory at (605) 673-2829 x515, or the office at (800) 742-0085 or (605) 673-4461.

Sincerely,

**BLACK HILLS ELECTRIC COOPERATIVE, INC.**

A Touchstone Energy® Partner  
The power of human connections



Black Hills Electric Cooperative is an equal opportunity provider, employer and lender.

## WASTEWATER TREATMENT PLANT PURCHASE AGREEMENT

**This Purchase Agreement** ("Agreement") is made and entered into as of October 1, 2024, by and between:

**Seller:**

H2O Clear Solutions, LLC  
PO Box 271316  
Flower Mound, Texas 75027-1316

**Buyer:**

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

### RECITALS

WHEREAS, the Seller owns certain Dropbox Waste Water Treatment Plant currently located at the Apple Springs Subdivision in Lawrence County, South Dakota; (the "Plant");

WHEREAS, the Buyer desires to purchase, and the Seller desires to sell, the Plant and related assets 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 Seller agrees to sell, transfer, and convey to the Buyer, and the Buyer agrees to purchase from the Seller, all of Seller's rights, title, and interest in and to the following assets (collectively, the "Assets"):

- 1.1. The Dropbox Wastewater Treatment Plan;
- 1.2. All manuals and related documentation associated with the Plant and operation of the Plant.
- 1.3. All inventory, supplies, and spare parts on hand, if any, as of the Closing Date.
- 1.4. Any other assets specifically listed in Schedule A attached hereto.

## **2. Purchase Price**

2.1. The total purchase price for the Assets shall be Three Hundred Ninety-Five Thousand Dollars (\$335,000.00) (the "Purchase Price").

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

2.2.a. Fifty Thousand Dollars (\$75,000.00) paid at the time of Closing;

2.2.b. The remaining balance of \$260,000 shall be paid pursuant to the terms of a Promissory Note in a form set forth in Schedule B. The payments due shall be as set forth in the Amortization Table (Exhibit A) attached to Schedule B.

## **3. Closing**

3.1. The closing of the transaction contemplated by this Agreement (the "Closing") shall take place on October 1, 2024 at the Law Offices of Clayborne, Loos & Sabers, LLP in 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 Bill of Sale transferring ownership of the Assets to the Buyer.
- b) Copies documents related to the Plant.
- 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) Fifty thousand dollars in certified funds.
- b) A duly executed Promissory Note for the principal amount of \$260,000.00 assumption of any liabilities or obligations as specified in this Agreement.
- c) A resolution, order, ordinance or other evidence of approval of the purchase by the City of Hermosa;
- d) Any other documents required to complete the purchase.

## **4. Disassembly and Transport**

4.1 Buyer shall be responsible at its own expense to disassemble the Plant to the extent necessary to transport the same to Buyer's designated location of use, said transport also at Buyer's expense.

4.2 Seller shall insure Buyer's access to the Plant at its location at the time of Closing.

4.3 Buyers shall remove the Plant no later than seven (7) days after Closing.

## **5. Representations and Warranties**

5.1. 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) The Plant is operational in its present location and Seller is not aware of any repairs or maintenance which needs to be performed at this time.
- c) There are no pending or threatened lawsuits, claims, or proceedings against the Plant.

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

- a) The Buyer has the legal authority to purchase the Plant 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.

## **6. Disclaimer of Warranties**

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

6.2 Buyer has had the opportunity to inspect, examine and test the Plant 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 Plant, nor its suitability for Buyer's intended purposes. The Plant shall be sold to the Buyer "AS IS" and "SUBJECT TO ALL FAULTS."

## **7. Indemnification**

7.1. 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.

7.2. 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.

## **8. Governing Law**

8.1. 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.

## **9. Dispute Resolution**

9.1. 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.

## **10. Entire Agreement**

10.1. 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.

## **11. Amendments**

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

## **12. Severability**

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

## **13. Construction**

13.1 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.

## **14. Binding Effect**

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

## **15. Counterparts**

15.1. 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 September, 2024, effective October 1, 2024.

**Seller:**  
H2O Clear Solutions, LLC

---

By:  
Its:

Dated this \_\_\_\_ day of September, 2024, effective October 1, 2024.

**Buyer:**  
Town of Hermosa

---

By:  
Its:

### Apple Springs DropBox Treatment System

Item	Description	Unit Price	Quantity	Total
1	Dropbox System Container		1	
2	Drive Transmission		1	(maybe 2)
3	in-well lift pump		2	
4	Chemical feed motor/pump		1	Peristaltic
5	Chemical dispensor tank		1	50 gal.
6	UV light		1	
7	UV system controller		1	
8	Ultrafiltration system		1	
9	Wood-Framed Building		2	
10	Lifting hoist for RBC's		1	
Included	RBC drum		4	
Included	Shaft Bearing		5	
Included	Drive Motor		1	(maybe 3)
Included	Drive Transmission		1	
Included	Dropbox Control Panel		1	
<b>Total</b>				<b>\$ 345,000.00</b>



COPY 6E

**CONSULTING SERVICES AGREEMENT**

CLIENT	Town of Hermosa	Project Name	Wastewater Treatment Plant
Address	PO Box 298	Construction Management and Startup Support	
	230 Main Street		
	Hermosa, SD 57744	Project Location	Hermosa, SD
Telephone	(605) 255-4291		
Client Contact	Linda Kramer, President	Consultant PM	Anthony L. Theodorou PE
Client Job No.		Consultant Job No.	

This Agreement is made by and between the Town of Hermosa, SD, hereinafter called "Client," and Alfred Benesch & Company, hereinafter called "Consultant", for professional consulting services as specified herein. Consultant agrees to provide Client with requested consulting services more specifically described as follows (or shown in Attachment A):

Assist the town in assembling a contractor team to dismantle, transport and re-assemble the wastewater treatment plant from Apple Springs, SD at the lagoon property in Hermosa. Services include 80 hours of commissioning time to assist town staff in treatment plant start up. Support the town in DANR discussions on the discharge permit usage and the conducting of lab testing to verify effluent water quality (excluding the cost of lab testing).

The General Conditions and the following Attachments are hereby made a part of the Agreement:

- Attachment A: Scope of Services and Fee Estimate
  - Attachment B: Schedule of Unit Rates
  - Attachment C: \_\_\_\_\_
- or
- Exhibit A: Work Authorizations specifying Method of Payment, Scope, and Fee

By signing this Agreement, Client acknowledges that it has read and fully understands this Agreement and all attachments thereto. Client further agrees to pay Consultant for services described herein upon receipt of invoice by Client for the Consultant's estimated fee as described below:

- By Lump Sum: \$50,000.00.
- By Time and Materials: \$\_\_\_\_\_.
- By Other Payment Method (See Attachment \_\_\_\_\_): \$\_\_\_\_\_.
- As shown on serially numbered Work Authorizations Using Exhibit A

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement:

**CLIENT**

**ALFRED BENESCH & COMPANY**

BY: \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

BY: Anthony Dirks  
AUTHORIZED REPRESENTATIVE

PRINT NAME: \_\_\_\_\_

PRINT NAME: Anthony Dirks

TITLE: \_\_\_\_\_

TITLE: Senior Vice President

DATE: \_\_\_\_\_, 20

DATE: August 23, 2024

BENESCH OFFICE: Lincoln

ADDRESS: 825 M. Street, Suite 100

Lincoln, NE 68508

**PLEASE SIGN AND RETURN ONE COPY TO ALFRED BENESCH & COMPANY (ADDRESS ABOVE).**



## STANDARD TERMS AND CONDITIONS

### SECTION 1 – Services by Consultant

#### 1.1 General

Consultant shall provide services under this Agreement only upon request of the Client, and only to the extent defined and required by the Client. These services may include the use of outside services, outside testing laboratories, and special equipment.

Attachments to this Agreement are as identified on the signature page to this Agreement or using serially numbered Work Authorizations, and with these GENERAL CONDITIONS, are all as attached hereto, and made a part of this Agreement.

#### 1.2 Scope of Services and Fees

The services to be performed by Consultant and the associated fee are attached hereto and made a part of this Agreement or by using serially numbered Work Authorizations, all as identified on the signature page to this Agreement, and shall be performed by the Consultant in accordance with the Client's requirements. The Scope of Services and Fee Estimate (Attachment A) is valid for sixty (60) days, after which Consultant reserves the right to revise the Scope or Fee Estimate.

It is mutually understood that Consultant's fee is not a firm contractual amount, except the total fee by the Consultant shall not be exceeded unless authorized in writing by the Client. The intent of the Scope of Services is to identify the services to be provided by Consultant. However, it is specifically understood that by written notice to Consultant, Client can decrease or, with concurrence of Consultant, increase the Scope of Services.

### SECTION 2 – Payments to Consultant

#### 2.1 Method of Payment

Payment for Consultant's personnel services and direct expenses shall be based on the Method of Payment which is identified on the signature page to this Agreement or serially numbered Work Authorizations, attached hereto, and made a part of this Agreement.

#### 2.2 Payment for Personnel Services

##### 2.2.1 Payment

Payment for the services rendered by Consultant's personnel shall be based on the hours of chargeable time and in accordance with Consultant's Schedule of Unit Rates, which is identified on the signature page to this Agreement and attached hereto, and made a part of this Agreement.

##### 2.2.2 Chargeable Time

Chargeable time for Consultant's personnel is that portion of their time devoted to providing services requested by Client. Chargeable time for field personnel located away from Consultant's office for more than one week is a minimum of eight hours per day and five days per calendar week, except for Consultant observed legal holidays or during an employee's sick leave or vacation time. Travel

time from Consultant's office to an assigned work site, and return to Consultant's office, is chargeable time; or if more economical for Client, Consultant shall lodge its personnel overnight near the work site in lieu of traveling back to Consultant's office at the end of each work day.

##### 2.2.3 Overtime Rates

The basis for payment to Consultant for each hour worked in excess of forty (40) hours in any calendar week shall be the applicable hourly rate as specified in the Schedule of Unit Rates.

#### 2.3 Payment for Direct Expenses

##### 2.3.1 Payment

For Direct Expenses incurred by Consultant, payment to Consultant by the Client shall be in accordance with Consultant's Schedule of Unit Rates.

##### 2.3.2 Direct Expenses

For the purposes of this Agreement, Direct Expenses to be contracted and managed by Consultant and payable by Client to Consultant shall include: Outside Services including the services and reimbursable expenses for firms other than Consultant which are necessary for the work the Consultant is directed to perform; Laboratory Tests and related reports necessary for the work the Consultant is directed to perform, either by the Consultant or by an outside service for the Consultant; Special Equipment expenses including the costs of the Consultant locating, acquiring, leasing, or renting any equipment or facilities not currently owned, leased, or rented by Consultant at the time of the request for services which are necessary to enable Consultant to provide the services requested; vehicles furnished by Consultant for Consultant's authorized travels and for Consultant's field personnel; Per Diem expense or actual costs of maintaining Consultant's field personnel on or near the Project site, for each day of field assignment away from Consultant's office; and Other Direct Expenses associated with all services provided hereunder and identified in the Schedule of Unit Rates.

#### 2.4 Payment Conditions

2.4.1 Consultant shall submit monthly invoices for all personnel services and direct expenses under this Agreement and a final invoice upon completion of services.

2.4.2 Invoices are due and payable upon receipt by Client. Interest at a rate of 1.5% per month, or the maximum allowed by law, will be charged on all past due amounts starting thirty (30) days after date of invoice. Payments will first be credited to interest and then to principal.

2.4.3 In the event of a disputed or contested invoice, Client must provide written notice to Consultant within ten (10) days of the date of any invoice, otherwise the invoice will be considered to be correct. In the event Client timely submits in writing a dispute on a particular invoice, only that portion so contested will be withheld from payment and the Client will pay the undisputed portion. No interest will accrue on any reasonably contested portion of the invoice until mutually resolved.

**2.4.4** If Client fails to make payment in full to Consultant of amounts owed pursuant to this Section 2 within forty-five (45) days of the date of the invoice, Consultant may, after giving seven (7) days' written notice to Client, suspend services under this Agreement until paid in full, including interest. Consultant shall have no liability to Client for delays or damages caused by such suspension of services. Client agrees to pay all costs of collection, including reasonable attorney's fees, incurred by Consultant as a result of Client's failure to make payments in accordance with this Agreement. No final plans, documents or reports will be released for any purpose until Consultant has been paid in full.

**2.4.5** The billing rates specified in the Schedule of Unit Rates for subsequent years shall be adjusted annually in accordance with Consultant's costs of doing business, subject to Client's review and concurrence.

## **SECTION 3 - Term of Agreement**

### **3.1 Term**

Consultant's obligations to perform under this Agreement shall extend from the date of execution until terminated by either party.

### **3.2 Abandonment of Work**

Client shall have the absolute right to abandon any work requested hereunder or to change the general scope of the work at any time, and such action on its part shall in no event be deemed a breach of contract.

### **3.3 Termination of Agreement**

#### **3.3.1 Termination with Cause**

The obligation to provide further services under this Agreement may be terminated with cause by either party by written notice stating the basis for the termination and providing 7 days to cure. The termination will be effective seven (7) days after delivery of written notice thereof if the basis for the termination has not been cured. In the event of termination by Consultant caused by failure of the Client to perform in accordance with the terms of this Agreement, Client shall pay for all services performed prior to the effective date of the termination, including all project termination expenses, collection fees and legal expenses. Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this Agreement to the Client upon receipt of final payment. In the event of termination by the Client caused by failure by Consultant to perform in accordance with the terms of this Agreement, Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination and provide information and documents developed under the terms of this Agreement to the Client. Upon receipt of all other information and documents, Client shall pay Consultant for services performed prior to the effective date of the termination.

#### **3.3.2 Termination without Cause**

Either party may, at its sole discretion, terminate this

Agreement without cause at any time. In the event of such termination, the terminating party will promptly notify and confirm the termination in writing to the other party. The termination will be effective seven (7) days after delivery of written notice thereof. Upon termination, Consultant shall prepare a progress report, including information as to all the services performed by Consultant and the status of the services as of the date of the termination, and provide information and documents developed under the terms of this Agreement to the Client upon receipt of final payment.

### **3.4 Payment for Work Upon Abandonment or Agreement Termination**

If Client abandons requested work or terminates this Agreement, Consultant shall be paid on the basis of work completed to the date of abandonment or effective date of termination. Consultant shall perform no activities other than reasonable wrap-up activities after receipt of notice of abandonment or termination. Payment for the work shall be as established under Section II.

## **SECTION 4 - General Considerations**

### **4.1 Assignment and Responsibility for Personnel**

**4.1.1** The assignment of personnel and all phases of the undertaking of the services which Consultant shall provide hereunder shall be subject to the oversight and general guidance of Client.

**4.1.2** While upon the premises of Client or property under its control, all employees, agents, and subconsultants of Consultant shall be subject to Client's rules and regulations respecting its property and the conduct of its employees thereon.

**4.1.3** However, it is understood and agreed that in the performance of the work and obligations hereunder, Consultant shall be and remain an independent Consultant and that the employees, agents or subconsultants of Consultant shall not be considered employees of or subject to the direction and control of Client. Consultant shall be responsible for the supervision and performance of all subconsultants which are to perform hereunder.

### **4.2 Insurance**

**4.2.1** Consultant shall furnish Client a certificate of insurance upon request showing amounts and types of insurance carried by Consultant, which certificate shall contain a commitment by the Insurance Company that during the time any work is being performed by Consultant under this Agreement it will give Client notice of cancellation or non-renewal of the insurance coverage shown on such certificates in accordance with policy provisions.

**4.2.2** Any construction contracts relative to Consultant's Services shall require that the Client and Consultant be included as additional insureds on the contractor's and contractor's subcontractors' commercial general liability and commercial automobile liability insurance policies and that the coverage afforded Client and Consultant is primary to any insurance maintained by Client or Consultant and that Client and Consultant's insurance is non-contributory with any coverage afforded by contractor and subcontractors. Client will also require contractor and all subcontractors to purchase and maintain workers' compensation and employer's liability insurance.

Consultant will name the Client as additional insured on Consultant's commercial general liability insurance.

### **4.3 Successors and Assigns**

**4.3.1** Client and Consultant each binds itself and its partners, successors, executors, administrators, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this Agreement.

**4.3.2** Neither Consultant nor Client shall assign or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other party, except as stated in paragraph 4.3.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Consultant from employing such independent consultants, associates, and subconsultants as it may deem appropriate to assist in the performance of services hereunder.

**4.3.3** Nothing herein shall be construed to give any rights or benefits hereunder to any one other than Client and Consultant except as otherwise provided herein.

### **4.4 Compliance with Law**

**4.4.1** Consultant shall exercise the professional standard of care to comply with, and cause its subconsultants to comply with, applicable Federal, state, and local laws, orders, rules, and regulations in effect at the time services are rendered, and relating to the performance of the services Consultant is to perform under this Agreement. If the Scope of Services requires Consultant to prepare an application for a permit, Consultant does not represent or warrant that said permit or approval will be issued by any governmental body.

**4.4.2** Neither the Consultant nor the Consultant's agents or employees shall discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, or national origin.

### **4.5 Ownership and Reuse of Documents**

**4.5.1** All drawings, specifications, test reports, and other materials and work products which have been prepared or furnished by Client prior to this Agreement shall remain Client's property. Consultant shall be permitted to rely on Client furnished documents and Client shall make available to Consultant copies of these materials as necessary for the Consultant to perform the services requested hereunder.

**4.5.2** All drawings, specifications, test reports, and other materials and work products, including computer aided drawings, designs, and other data filed on electronic media which will be prepared or furnished by Consultant (and Consultant's independent professional associates and subconsultants) under this Agreement, are instruments of

service in respect to the Project and Consultant shall retain an ownership and property interest therein whether or not the Project is completed. Client may make and retain copies for information and reference in connection with the use and the occupancy of the Project by Client and others; however, such documents are not intended or represented to be suitable for reuse by Client or others acting on behalf of Client on extensions of the Project or on any other project. Further, Consultant makes no warranty as to the compatibility of computer data files with computer software and software releases other than that used by Consultant in performing services herein, and to the condition or availability of the computer data after an acceptance period of thirty (30) days from delivery to Client. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to Consultant or to Consultant's independent professional associates or subconsultants, and Client shall indemnify and hold harmless Consultant and Consultant's independent professional associates and subconsultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Consultant to further compensation at rates to be agreed upon by Client and Consultant.

### **4.6 Consultant's Personnel at Project Site**

**4.6.1** The presence or duties of the Consultant personnel at a Project site, whether as onsite representatives or otherwise, do not make the Consultant or its personnel in any way responsible for those duties that belong to the Client and/or the construction contractors or other entities, and do not relieve the construction contractors or any other entity of their obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the project documents and any health or safety precautions required by such construction work. The Consultant and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor or other entity or any other persons at the site except Consultant's own personnel.

**4.6.2** To the extent Consultant's Scope of Work includes construction observation, the Consultant shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Consultant neither guarantees the performance of the contractor(s) nor assumes responsibility for contractor(s)' failure to perform their work in accordance with the project documents.

#### **4.7 Opinions of Cost, Financial Considerations, and Schedules**

In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, the Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions. Consultant's opinions of probable Total Project Costs and Construction Costs provided for herein as appropriate are made on the basis of Consultant's experience and qualifications and represent Consultant's judgments as an experienced and qualified professional consultant familiar with the construction industry. Consultant makes no warranty that the Client's actual Total Project or Construction Costs, financial aspects, economic feasibility, or schedules will not vary from the Consultant's opinions, analyses, projections, or estimates. If Client wishes greater assurance as to any element of the Total Project or Construction cost, feasibility, or schedule, Client will employ an independent cost estimator, contractor, or other appropriate advisor.

#### **4.8 Discovery of Unanticipated Pollutant and Hazardous Substance Risks**

**4.8.1** If Consultant, while performing the services, discovers pollutants and/or hazardous substances that pose unanticipated risks, it is hereby agreed that the scope of services, schedule, and the estimated cost of Consultant's services will be reconsidered and that this Agreement shall immediately become subject to renegotiation or termination.

**4.8.2** In the event that the Agreement is terminated because of the discovery of pollutants and/or hazardous substances posing unanticipated risks, it is agreed that Consultant shall be paid for its total charges for labor performed and reimbursable charges incurred to the date of termination of this Agreement, including, if necessary, any additional labor or reimbursable charges incurred in demobilizing.

**4.8.3** Client also agrees that the discovery of unanticipated pollutants and/or hazardous substances may make it necessary for Consultant to take immediate measures to protect health and safety. Consultant agrees to notify Client as soon as practically possible should unanticipated pollutants and/or hazardous substances be suspected or encountered. Client authorizes Consultant to take measures that in Consultant's sole judgment are justified to preserve and protect the health and safety of Consultant's personnel and the public. Client agrees to compensate Consultant for the additional cost of taking such additional precautionary measures to protect employees' and the public's health and safety. This section is not intended to impose upon Consultant any duties or obligations other than those imposed by law.

### **SECTION 5 - Professional Responsibility**

#### **5.1 Performance of Services**

Consultant shall perform its services consistent with the professional skill and care ordinarily provided by firms practicing in the same or similar locality under the same or similar circumstances (hereinafter the "Standard of Care").

Consultant expressly disclaims all express or implied warranties and guarantees with respect to the performance of professional services, and it is agreed that the quality of such services shall be judged solely as to whether the services were performed consistent with the Standard of Care. Consultant owes Client only that level of performance defined in this Section 5.1, and nothing herein shall be construed as creating a fiduciary relationship.

If at any time prior to construction Client believes Consultant's services are deficient due to not meeting the Standard of Care, Client must immediately inform Consultant in writing and shall afford Consultant the opportunity to correct such deficiency. If, upon review by Consultant it is determined there is a deficiency that fails to meet the standard of care and it is attributable to Consultant, the deficiency shall be corrected at no additional cost to Client.

#### **5.2 Limitation of Liability**

Client and Consultant agree to allocate certain of the risks so that, to the fullest extent permitted by law, Consultant's total liability to Client is limited to the amount paid under the contract or \$50,000 whichever is greater, this being the Client's sole and exclusive remedy for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this Agreement from any cause or causes. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

#### **5.3 No Special or Consequential Damages**

Client and Consultant agree that to the fullest extent permitted by law neither party shall be liable to the other for any special, indirect, or consequential damages whatsoever, whether caused by either party's negligence, errors, omissions, strict liability, breach of contract, breach of warranty, or other cause or causes.

#### **5.4 Indemnification**

To the fullest extent permitted by law, Client and Consultant mutually agree to indemnify and hold each other harmless from and against any and all claims, damages, losses and expenses, defense costs including reasonable attorneys' fees, and court or arbitration costs and other liabilities arising from their own negligent acts, errors or omissions in performance of their services under this Agreement, but only to the extent caused that each party is responsible for such damages, liabilities and costs on a comparative basis of fault.

#### **5.5 No Third Party Beneficiaries**

Client and Consultant expressly agree that this Agreement does not confer upon any third party any rights as beneficiary to this Agreement. Consultant accepts no responsibility for damages, if any, suffered by any third party as the result of a third party's use of the work product, including reliance, decisions, or any other action taken based upon it.

Client agrees that Consultant's services and work products are for the exclusive present use of Client. Client agrees

that Consultant's compliance with any request by Client to address or otherwise release any portion of the work product to a third party shall not modify, rescind, waive, or otherwise alter provisions of this Agreement nor does it create or confer any third party beneficiary rights on any third party.

## **SECTION 6 - Miscellaneous Provisions**

### **6.1 Notices**

Any notice to either party herein shall be in writing and shall be served either personally or by registered or certified mail addressed to the signing party shown on the signature page.

### **6.2 Joint Preparation**

For purposes of contract interpretation and for the purpose of resolving any ambiguity in this Agreement, the parties agree that this Agreement was prepared jointly by them and/or their respective attorneys.

### **6.3 Headings**

Headings used in this Agreement are for the convenience of reference only and shall not affect the construction of this Agreement

### **6.4 Severability**

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

### **6.5 Dispute Resolution**

If negotiation in good faith fails to resolve a dispute within thirty (30) days of written notice of the dispute by either party, then the parties agree that, with the exception of claims that are subject to the applicable venue's small claims court jurisdiction, each dispute, claim or controversy arising from or related to this Agreement or the relationships which result from this Agreement shall be subject to mediation as a condition precedent to initiating legal or equitable actions by either party. Unless the parties agree otherwise, the mediation shall be in accordance with the Commercial Mediation Procedures of the American Arbitration Association then currently in effect. A request for mediation shall be filed in writing with the American Arbitration Association and the other party. No legal or equitable action may be instituted for a period of ninety (90) days from the filing of the request for mediation unless a longer period of time is provided by agreement of the parties. Cost of mediation shall be shared equally between the parties and shall be held in a location mutually agreed upon by the parties. The parties shall memorialize any agreement resulting from the mediation in a mediated settlement agreement, which agreement shall be enforceable as a settlement in any court having jurisdiction thereof.

During the pendency of any dispute, the parties shall continue diligently to fulfill their respective obligations

hereunder. Any dispute not resolved through mediation shall be subject to litigation in a court of competent jurisdiction in the state in which the project is located.

### **6.6 Equal Opportunity**

Consultant will, in the performance of this Agreement, comply with federal, state, and local laws, and all regulations and orders issued under any applicable law related to equal employment opportunity, non-discrimination, or employment generally.

Consultant certifies that it will not knowingly employ or contract with a non-legal resident of the United States to perform work under this Agreement, and verifies or attempts to verify employee eligibility of its employees through participation in the U.S. Department of Homeland Security and Social Security Administration's E-Verify system.

### **6.7 Governing Law**

This Agreement is to be governed by the laws of the jurisdiction in which the project is located. For locations outside of the United States, this Agreement shall be governed by the laws of the State of Illinois.

### **6.8 Entire Agreement**

This Agreement, along with those documents specified, attached, or hereby cited together, and serially numbered Work Authorizations if used, constitute the entire Agreement between the parties hereto and no changes, modifications, extensions, terminations, or waivers of this Agreement, or other documents, or any of the provisions herein, or therein contained, shall be valid unless made in writing and signed by duly authorized representatives of both parties.

## **SUPPLEMENTAL CONDITIONS FOR SURVEY, ENVIRONMENTAL OR GEOTECHNICAL SERVICES**

*Supplemental Condition is incorporated herein when the applicable box is checked.*

**S.1 Location of Underground Utilities**

It shall be the Client's responsibility to locate and physically mark all underground utilities and structures which lie within the work area prior to the start of subsurface investigations. If the Client elects not to assume this responsibility, Client shall notify Consultant and shall compensate Consultant for all costs associated with locating and physically marking said underground utilities and structures over and above the estimated project fee. Client shall indemnify and hold Consultant harmless from any damages and delays resulting from unmarked or improperly marked underground utilities and structures. For reasons of safety, Consultant will not begin work until this has been accomplished.

**S.2 Subsurface Investigations**

In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics might vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect Project cost and/or execution. These conditions and cost/execution effects are not the responsibility of the Consultant.

**S.3 Disposition of Samples and Equipment**

**S.3.1 Disposition of Samples**

No samples and/or materials will be kept by Consultant

longer than thirty (30) days after submission of the final report unless agreed otherwise.

**S.3.2 Hazardous or Potentially Hazardous Samples and Materials**

In the event that samples and/or materials contain or are suspected to contain substances or constituents hazardous or detrimental to health, safety, or the environment as defined by federal, state, or local statutes, regulations, or ordinances, Consultant will, after completion of testing, return such samples and materials to Client, or have the samples and materials disposed of in accordance with Client's directions and all applicable laws. Client agrees to pay all costs associated with the storage, transportation, and disposal of samples and materials. Client recognizes and agrees that Consultant at no time assumes title to said samples and materials, and shall have no responsibility as a handler, generator, operator, transporter, or disposer of said samples and materials.

**S.3.3 Contaminated Equipment**

All laboratory and field equipment contaminated in Consultant's performance of services will be cleaned at Client's expense. Contaminated consumables will be disposed of and replaced at Client's expense. Equipment (including tools) which cannot be reasonably decontaminated shall become the property and responsibility of Client. At Client's expense, such equipment shall be delivered to Client, or disposed of in the same manner specified in S.3.2 above. Client agrees to pay Consultant the fair market value of any such equipment which cannot reasonably be decontaminated and is delivered to Client pursuant to this Agreement.

**Engineer's Services**

**Wastewater Treatment Plant Construction Management & Startup – Town of Hermosa, SD**

Attachment A of the Agreement is supplemented to include the following agreement of the parties. Engineer shall provide Basic Services as set forth below.

**BASIC SERVICES**

***Project Location:***

The Treatment Plant Construction Support for which Engineer's services are being provided are to assist the town in assembling a contractor team who can dismantle the existing treatment plant in Apple Springs, Boulder Canyon, SD, load all equipment and structures onto transportation and re-assemble the treatment plant in Hermosa, to the south of the existing Lagoons, as indicated in Figure 2. In addition, we will spend 80 hours of commissioning time after the construction phase to train operator staff in how to build up the biological process, which is critical to meeting permit limits and maintain lagoon capacity. An overall map of the two areas is found in Figures 1a and 1b.

Figure 1a. Apple Springs Location

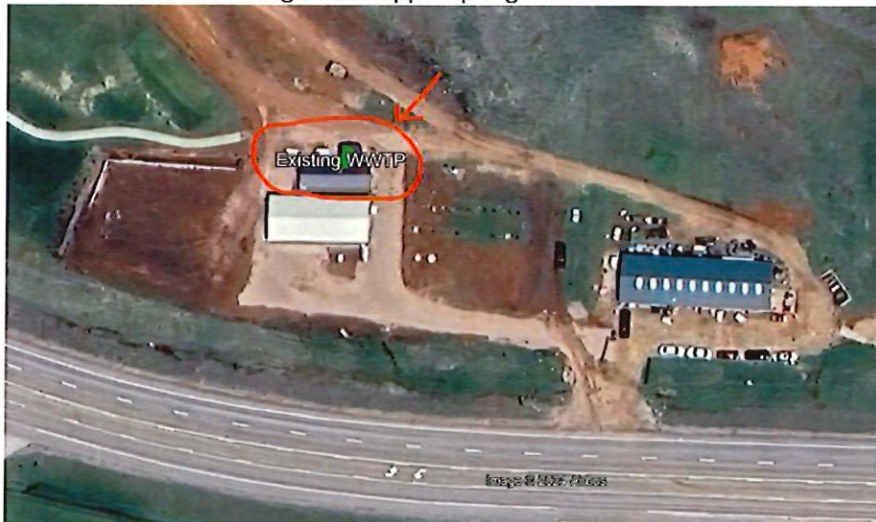


Figure 1b. Hermosa Location



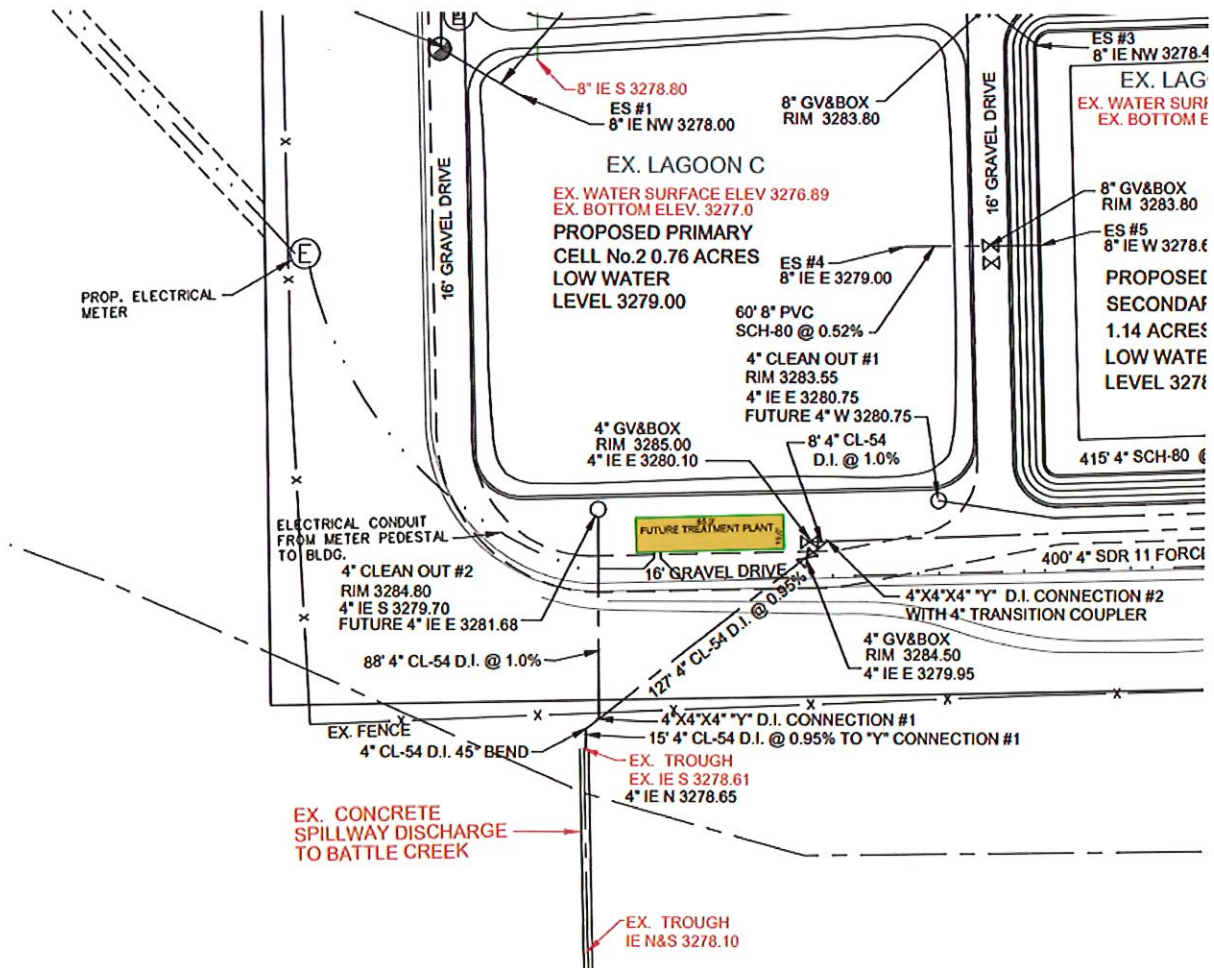


Fig. 2 Future Treatment Plant Location Map

**Project Understanding:**

The services proposed are to occur before and concurrent to the town’s CWSRF Loan project (C461278-03) which will expand the lagoon area. Funding for the purchase of the Apple Springs treatment plant, dismantling, transport and construction in Hermosa is to come from private financing sources organized by the town. The target date for completion is October 31<sup>st</sup>, 2024 in order to begin treating and discharging during the winter of 2024-25. Meeting the target date is dependent on several factors outside the control of the Engineer. Any potential delays in meeting the target date will be immediately brought to the town board’s attention with a recommended workaround plan and any extra cost anticipated.

The construction phase of Wastewater Treatment Plant will be composed of the following services:

- Inspection of the Equipment at Apple Springs while in operation, prior to shipment. This includes all Pumps, treatment equipment, filters and associated electronic equipment being provided to the town.
- Support to the Town board in the preparation of contract documents for contractor selection.
- Engineering Support Services during the transportation of the equipment from Apple Springs to Hermosa. Includes, photos and documentation of the means/methods for loading and delivery.
- Inspection of the on-site work in Hermosa preparing the site for the treatment plant as per plans.
- Coordinate materials testing requirements, all testing costs are to be billed directly to the town.

- Inspect equipment and buildings erected in Hermosa to verify work meets plans and specs.
- Prepare Standard Operation Procedure for Start-up of treatment system and sequencing.
- Coordinate with town staff to have them install a temporary feeder pump from Lagoon C (SW lagoon) to run the treatment plant.
- Prepare sampling requirements and locations for startup of the treatment plant and two-week commissioning phase.
- Review laboratory results and report back to DANR the results after two weeks of commissioning.

Until DANR's review and approval, we will recirculate flows back to the Lagoons. If they allow us to discharge into the existing outfall to Battle Creek, it will be under the new NPDES discharge permit requirements. If additional time is required by DANR, our contract shall be updated accordingly with additional Engineering fees required per bid phase as well as associated Construction Administration services.

***Engineering Fees:***

Estimated fees for services:

This would be a Lump Sum budget based on the scope provided above.

Construction Plans and Relocation Construction Management = \$34,400.00

Commissioning Start-up Time (80 hours) = \$15,600.00

The total amount of \$50,000.00 does not include state and local sales tax, as applicable.

***Services not Included:***

The following services are not included in this proposal:

1. Laboratory Testing fees
2. Legal, easement or platting surveys.
2. State and Local sales tax, permitting, filing and submittal fees
3. Biological Process design
4. Discharge Permit modifications
5. Design of off-site improvements
6. Environmental and cultural evaluation and permitting
7. Lift station design
9. Irrigation and Landscape design
10. Site power and road lighting design
11. Construction staking, and materials testing
12. Sanitary collection system design

***Project Schedule:***

It is anticipated that the relocation will commence in September 2024, and the construction will be completed by October 31, 2024. The contractor notices to proceed must be by September 17, 2024.

***Parties:***

Owner – Town of Hermosa – Shall refer to the Owner in the Agreement.

Consultant – Alfred Benesch & Company– Shall be synonymous with Engineer in this document.

***Scope of Services:***

Engineer's scope includes the following tasks:

A1.00 *Project Management*

- A. Phase Description: Prime Contractor will be selected by the Owner and the equipment and infrastructure from Apple Springs will be relocated to Hermosa's Lagoons property.
- B. Engineer will: Prepare the contract between the Contractor and Owner. Inspect the disassembly, transport and reassembly of the treatment plant and equipment.
- C. Deliverables: Inspection Logs and Report, with photos. Reviewed and Approved pay applications. Verified lien releases and declarations of payment of all subcontractors and suppliers.
- D. Owner's Responsibilities: Ensure timely review and payment of pay applications.
- E. Assumptions: (1) one prime contractor and at least one subcontractor and supplier. Power will be brought to the site under this contract. Assuming a six-week construction period.

A1.01 *Survey Phase (not included)*

- A. Owner's Responsibilities:
  - 1. Provide known owned utility locations.
  - 2. Ensure access to ROW and Town owned property

A1.02 *Environmental & Floodplain Phase (not included)*

- A. Owner's Responsibilities: All environmental clearances.

A1.03 *Permitting Phase*

- A. Phase Description:

Assist Owner in completing the DANR review of the new NPDES discharge permit application (DANR permit review phase of 30 days, September – October 2024).

- B. Engineer will:

- 1. Provide information or assistance needed by DANR in the course of permit revision.

- C. Deliverables: Permit Application

- D. Owner's Responsibilities: All permit fees to DANR.

- E. Assumptions: DANR will issue a NPDES permit in early November 2024 to allow for treatment and discharge to facilitate the subsequent Lagoon Expansion project.

A1.04 *Commissioning Phase*

- A. Phase Description:

Assist Owner and town staff in start-up of the treatment plant upon construction completion. A temporary feed pump will need to be installed in Lagoon C of the current lagoon system and piped to the equalization tank of the treatment plant. During startup, the biofilm will need two weeks to

develop on the rotating biological contactors (RBCs) before it is capable of fully treating the wastewater. During that time, the effluent will recycle back to the lagoons. When it has been determined by laboratory testing that the effluent is meeting permit limits, the effluent will be directed to the outfall trench leading to the Battle Creek. Approval to use the outfall will come from DANR based on lab results.

B. Engineer will:

1. Prepare Standard Operating Procedures (SOP) for the startup of the treatment plant.
2. Provide information or assistance needed by town staff in the course of startup.
3. Consult with Owner as to the progress of startup.
4. Provide contract operation services, as needed, beyond the 80 hour commissioning phase, by written work authorization from the town board.

C. Deliverables: Support to the town staff, communications with DANR on commissioning phase. Written SOP documents for startup and initial operations.

D. Owner's Responsibilities: Laboratory test costs. Review and response to progress reports in a timely manner.

E. Assumptions: The Treatment plant commission phase will require 80 hours of engineering time. Time beyond that will be provided under written work authorizations from the Owner.

**From:** Theodorou, Anthony <ATheodorou@benesch.com>  
**Sent:** Monday, August 26, 2024 12:01:41 PM  
**To:** Theodorou, Anthony <ATheodorou@benesch.com>  
**Subject:** Fw: Revised Quote for 3-Phase Service for Water Treatment Lagoons in Hermosa

6F

Add \$6/ft. for digging in the line and putting sand bedding.

Total cost for service: \$35,000

**Anthony Theodorou, PE**  
Project Manager

atheodorou@benesch.com  
direct: 605-910-7095 mobile: 605-569-3646



**INSIGHTS** from our **READ**  
**EXPERTS** **MORE**

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**From:** Rory S. Halverson <rhalverson@bhec.coop>  
**Sent:** Monday, August 26, 2024 10:34 AM  
**To:** Theodorou, Anthony <ATheodorou@benesch.com>  
**Cc:** jill@hermosasd.com <jill@hermosasd.com>  
**Subject:** Revised Quote for 3-Phase Service for Water Treatment Lagoons in Hermosa

Anthony,

Here is the revised quote for a 3-Phase Service to serve the Water Treatment Lagoons in Hermosa. This includes all the material from the riser pole, the cable, transformer, and all metering equipment. Hermosa will need to provide the excavation of the ditch and necessary bedding. If you have any questions let me know. Thanks.

\$29,275.00 plus excise tax = **\$29,872.50 Total**

Rory Halverson  
Black Hills Electric Cooperative  
Staking Technician  
1-800-742-0085

This message has originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links or responding to this email.

**Town of Hermosa  
Resolution Number 2024-03**

COPY 66

**A RESOLUTION AUTHORIZING THE USE OF ARPA GRANT FUNDING AND  
FY22 DWSRF LOAN FUNDING**

WHEREAS, the American Rescue Plan Act (ARPA) was signed into law by President Biden on March 11, 2021, providing financial assistance to local governments to address the economic impacts of the COVID-19 pandemic;

WHEREAS, the Town of Hermosa has received ARPA funds from Custer County in accordance with the guidelines set forth by the U.S. Department of Treasury;

WHEREAS, the Town of Hermosa Board of Trustees has identified specific needs and projects that align with the eligible uses of ARPA funds;

WHEREAS, the Town of Hermosa is also eligible to receive funds from the Drinking Water State Resolving Fund Loan;

NOW, THEREFORE BE IT RESOLVED by the Hermosa Board of Trustees of the Town of Hermosa that the Trustee President of Hermosa may execute any and all documents as required by the State in order to receive ARPA and DWSRF loan funding.

It is further

RESOLVED that the funding received by the Town of Hermosa from Custer County, which derived from the County's General funds/American Rescue Plan Act (ARPA), shall be used to address the Fire Flow/Volume deficiencies in the town's drinking water system. The reason for the use of the funds for this purpose is that Fire Flow/Volume related projects are ineligible for State Drinking Water Loan funding. The town's engineer has conducted a water hydraulic model on the town's system and determined that a ground water storage tank, located at the end of the 8-inch water main extension that extends to just south of the Custer County/Pennington County line on the west side of Highway 79, would be the ideal location for a 120,000 gallon or greater tank. The tank and related land acquisition and infrastructure would be included in this funding, estimated at approximately \$500,000.

The board also hereby resolves to use the Fiscal Year 2022 Drinking Water State Resolving Fund Loan (estimated at no more than \$2.2 M with 1.625% interest) to be used for the drilling of a new well to replace the contaminated well near the town's current ground storage tanks on Main Street. In addition, a Water Treatment system will be designed and built using the same SRF loan as well as necessary improvements to the transmission system, which include pipework to properly separate the town's water system into two pressure zones, an additional height added to the large storage tank to address eastern pressure zone deficiency and upgrades the booster pumps to serve pressure needs in the western pressure zone.

Approved and adopted this 3rd day of September 2024.

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President, Board of Trustees  
Town of Hermosa, South Dakota

ATTEST:

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Finance Officer  
Town of Hermosa, South Dakota

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

# Town of Hermosa

7B

PO Box 298 • 230 Main Street • Hermosa, SD 57744

Phone (605) 255-4291 • Fax (605) 255-4094, Email: town@hermosasd.com

## SUBDIVISION PLAT APPLICATION / PLAT APPLICATION

Sketch Plan \_\_\_\_\_ Preliminary Plan X Final Plat X

Date: 10 July 2024

Permit # 2024-27

Is any property in the Flood Plain? No Yes \_\_\_\_\_ **\*\*IF YES-YOU WILL NEED A FLOODPLAIN DEVELOPMENT PERMIT\*\***

Receipt # \_\_\_\_\_ Cash \_\_\_\_\_ Check # 1459 Amount (\$75.00) **\*Engineering fees may apply\***

Applicant: J&K Properties LLC Other Owners: \_\_\_\_\_  
 Name: J & K E Styles Triple J&K properties LLC Name: \_\_\_\_\_  
 Address: PO Box 300 Address: \_\_\_\_\_  
 City, State, Zip: Hermosa SD 57744 City, State, Zip: \_\_\_\_\_  
 Phone & Email: 605 290 1257 kstyles9070 Phone & Email: \_\_\_\_\_  
 Sign & Date: [Signature] 10 July 2024 Sign & Date: \_\_\_\_\_

Agent: \_\_\_\_\_ Name: \_\_\_\_\_  
 Address: \_\_\_\_\_ Address: \_\_\_\_\_  
 City, State, Zip: Same as above City, State, Zip: \_\_\_\_\_  
 Phone & Email: \_\_\_\_\_ Phone & Email: \_\_\_\_\_  
 Sign & Date: \_\_\_\_\_ Sign & Date: \_\_\_\_\_

Surveyor/Engineer: \_\_\_\_\_ Name: \_\_\_\_\_  
 Name: Anderson Engineers Address: \_\_\_\_\_  
 Address: P.O. Box 448 City, State, Zip: \_\_\_\_\_  
 City, State, Zip: Edgemont SD 57735 City, State, Zip: \_\_\_\_\_  
 Phone & Email: 605 662 5500 Phone & Email: Andersonengineers@custco.net  
 Registration Number: \_\_\_\_\_ Sign & Date: [Signature]  
 Sign & Date: \_\_\_\_\_

Electronic copy, Original mylar and seven paper copies of the final plat.

Current Legal Description:  
 Subdivision/H.E.S./M.S. Title: Lot C - Whiterail Estates Subdivision  
 Secondary Title/Description: SW4SW4 SEC 29 T2 R8  
 Aliquot Location: \_\_\_\_\_ Total Acres: 1.434  
 Township: \_\_\_\_\_ Range: \_\_\_\_\_ Section(s): \_\_\_\_\_ Book: \_\_\_\_\_ Page: \_\_\_\_\_

Proposed Legal Description:  
 Primary Title (Subdivision Name): Lot C1 & Lot C2 440 main St  
 Secondary Title (Description): \_\_\_\_\_

Does this plat continue to divide an existing subdivision? Yes \_\_\_\_\_ No \_\_\_\_\_ FIRM Panel \_\_\_\_\_  
 Will this subdivision require construction of roads or installation of other improvements? \_\_\_\_\_  
 What is the intended land use within the subdivision? Residential \_\_\_\_\_ Commercial \_\_\_\_\_ Industrial X Mixed Use \_\_\_\_\_ (Specify on attached plat copy)

ALL APPLICATIONS MUST BE APPROVED BY THE HERMOSA BOARD OF TRUSTEES PRIOR TO COMMENCEMENT

<p style="text-align: center;">PLANNING ADMINISTRATOR</p> <p><input type="checkbox"/> Approved <input type="checkbox"/> Denied</p> <p>Name: _____        Title: _____        Signature: _____        Date: _____ Application Fee: <u>\$75.00</u></p> <p>**Register of Deeds Fee: <u>\$60.00</u> Date Paid: _____ Balance Due: _____        **MUST PAY AT CUSTER COUNTY**</p>	<p style="text-align: center;">HERMOSA BOARD OF TRUSTEES</p> <p><input type="checkbox"/> Approved <input type="checkbox"/> Denied</p> <p>Name: _____        Title: _____        Signature: _____        Date: _____        Date Permit Issued: _____</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Original Parcel # 013913 Office Use

Mylar original of the approved final plat must be submitted to the Custer County Register of Deeds to be recorded within 15 days after approval by the governing body or all formal action shall become void.

Parcel 013913



Alternate ID n/a  
Class Commercial  
Acreage 1.434

Owner Address TRIPLE J & K PROPERTIES, LLC  
PO BOX 300  
HERMOSA, SD 57744-0300

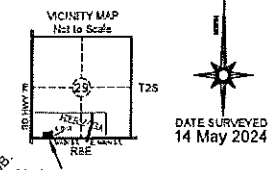
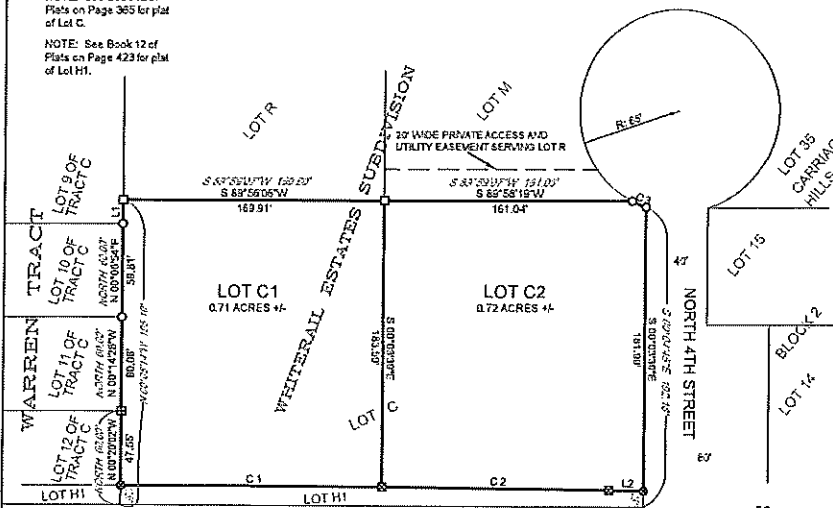
16.1-7-0-0-2

WHITERAIL ESTATES SUB - LOT C (FORM LOTS 1-10 OF TR B OF WARREN TR) IN SW4SW4 SEC 29 T2 R8 1.434 AC, HERMOSA  
7440005100001401

A PLAT OF  
**LOT C1 AND LOT C2 OF WHITERAIL ESTATES SUBDIVISION,**  
 LOCATED IN THE SW1/4 SW1/4 OF SECTION 29, T2S, R8S,  
 BHM, HERMOSA, CUSTER COUNTY, SOUTH DAKOTA  
 FORMERLY LOT C

NOTE: See Book 12 of  
Plats on Page 365 for plat  
of Lot C.

NOTE: See Book 12 of  
Plats on Page 423 for plat  
of Lot H1.



**PROPERTY**  
 BASIS OF BEARING - GPS OBSERVATION  
 taken N 55°56'01" W 408.50' from the NW  
 corner of LOT C1.  
 OPUS STATIC SOLUTION NAD83(2011)  
 LAT: 43°50'27.39356"  
 LONG: -103°11'51.19037"

- LEGEND**
- Set rebar w/ aluminum cap marked "ANDERSEN ENG PL 8 5530"
  - Found rebar w/ plastic cap marked "HOWE 11917"
  - Found rebar w/ aluminum cap marked "D.C. SCOTT LS 2540"
  - Found rebar w/ plastic cap marked "HAUSON 6251"
  - Found rebar
- 3.22 cft Slant lettering denotes record calls



Curve	Radius	Tangent	Length	Delta	Degree	Chord	Chord Bear.
C1	20026.66'	84.85'	169.71'	0°28'06"	0°17'10"	169.71'	S 89°44'50" E
C2	20026.66'	73.70'	147.42'	0°25'18"	0°17'10"	147.40'	S 89°17'45" E
C3	65.07'	4.99'	9.99'	8°45'49"	85°08'50"	9.95'	S 67°10'35" E

Course	Bearing	Distance
L1	N 00°03'54" E	15.23'
L2	S 69°03'07" E	22.67'
L3	S 67°10'35" E	32.57'

**CERTIFICATE OF SURVEYOR**  
 I, John D. McBride Registered Land Surveyor No. 5906 in the State of South Dakota, do hereby certify that being so authorized, I have prepared the within plat of land shown and described hereon from notes taken during an actual survey made by me or under my direct supervision, and that to the best of my knowledge and belief, the same is a true and correct representation of said survey.  
 IN WITNESS WHEREOF, I have set my hand and official seal.  
 Dated this \_\_\_ day of \_\_\_, 2024.

John D. McBride SDALS No. 5906

**NOTE: 10 FEET EACH SIDE OF REAR AND SIDE LOT LINES ARE RESERVED FOR UTILITY EASEMENTS. IF THE LINE ABUTS LANDS NOT SUBDIVIDED UNDER THE PROVISIONS OF CUSTER COUNTY SUBDIVISION ORDINANCE #2, THE ENTIRE 20' WIDE EASEMENT WILL BE TAKEN FROM THE LOT.**

No area of special flood hazard exists within this subdivision according to Flood Hazard Insurance Rate Map Panel No. 46033C0179F, effective date: Jan. 6, 2012.

**WATER PROTECTION STATEMENT**  
 Pursuant to SDCL 11-3-8.1 and 11-3-8.2, the developer of the property described within this plat shall be responsible for protecting any waters of the state, including groundwater, located adjacent to or within such planned area from pollution from sewage from such subdivision and shall in prosecution of such protections, conform to and follow all regulations of the South Dakota Department of Agriculture and Natural Resources relating to the same.

**STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_**  
 Triple J & K Properties, LLC, does hereby certify that it is the owners of the within described lands and that the within plat was made at its direction for the purposes indicated therein, and that the development of this land shall conform to all existing zoning, subdivision, and erosion and sediment control regulations.  
 Dated this \_\_\_ day of \_\_\_, 2024.

Triple J & K Properties, LLC.

**CERTIFICATE OF COUNTY TREASURER**  
 I, Custer County Treasurer, do hereby certify that all taxes and special assessments which are liens upon the within described lands are fully paid according to the records of this office.  
 Dated this \_\_\_ day of \_\_\_, 2024.

Custer County Treasurer

**ACKNOWLEDGMENT OF OWNERSHIP**  
 STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_  
 On this the \_\_\_ day of \_\_\_, 2024, before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged him/herself to be a member of Triple J & K Properties, LLC, a Limited Liability Company, and that she, as such member being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by him/herself as member.  
 IN WITNESS WHEREOF I hereunto set my hand and official seal.

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

**RESOLUTION OF THE TOWN BOARD OF TRUSTEES**  
 Whereas there has been presented to the Town Board of Trustees of Hermosa, South Dakota, the within plat of the above described lands, and it appearing to the Board that said plat conforms to the existing plats of said Town, that the streets set forth therein conforms to the system of streets of the municipality, that all provisions of the subdivision regulations have been complied with, that all taxes and special assessments upon the tract have been fully paid, and that said plat and the survey thereof have been executed according to law, now therefore,  
**BE IT RESOLVED**, that said plat is hereby approved in all respects.  
 Dated at Hermosa, South Dakota this \_\_\_ day of \_\_\_, 2024.

Town Board Chairman

**CERTIFICATE OF HIGHWAY AUTHORITY**  
 It appears that every lot has an acceptable approach location onto a public road and the location of the intersection(s) of the proposed subdivision road(s) with the existing public road(s) is hereby approved.  
 Date: \_\_\_\_\_  
 Highway Authority

**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 resolution adopted by the Town Board of Trustees of Hermosa, South Dakota at a meeting held on the \_\_\_ day of \_\_\_, 2024.

Town of Hermosa Finance Officer

**CERTIFICATE OF COUNTY DIRECTOR OF EQUALIZATION**  
 I, Director of Equalization of Custer County, do hereby certify that my office has been furnished with a true copy of the within plat.  
 Dated this \_\_\_ day of \_\_\_, 2024.

Director of Equalization of Custer County

**Prepared by**  
  
**ANDERSEN ENGINEERS**  
 Land Surveyors

Drawn by RW	Date 5/21/2024	P.O. Box 446 Edgemont, SD 57735 (605) 662-5500
Approved by L.C.B.	Date 5/21/2024	andersenengineers@svt.com
Scale 1"=50'	Sheet 1 of 1	File Name: L_C_WHITERAIL

**OFFICE OF THE REGISTER OF DEEDS**  
 Filed for record this \_\_\_ day of \_\_\_, 2024, at \_\_\_ o'clock \_\_\_ M, and recorded in Book \_\_\_ of Plats on page \_\_\_\_  
 Custer County Register of Deeds



July 15, 2024

TO: City of Hermosa, SD

FR: Neil Putnam AICP and Anthony Theodorou PE

RE: Permit No. 2024-27

Applicant: Jerald Styles, Triple J & K Enterprises PO BOX 300, Hermosa SD

Action Requested: Preliminary Plat and Final Plat

Legal Description: Lot C1 and C2 of Whiterail Estates Subdivision, Located in the SW ¼ SW1/4 of Section 29, T2S, R8S, BHM, Hermosa, Custer County, South Dakota (Formerly Lot C)

Current Zoning District: R2 Manufactured Home

Comments: The property is inside the city limits.

Existing Use: vacant

Comments: Subdivision larger parcel into two parcels. Note the easements for utilities and access

Recommendations:

1. Prior to approval, all fees are to be paid.
2. Custer County Register of Deeds reviews and accepts the plat, legal description, and other requirements of the plat.
3. If approved by the Town of Hermosa, a mylar copy will be provided by the owner to the Board of Trustees for final review, approval, and signature.
4. The owner is responsible for submitting the plat to Custer County and paying applicable taxes, and having the plat signed and recorded.

## Jill Dybvig

---

**From:** Davis, Edward - FS, SD <Edward.Davis2@usda.gov>  
**Sent:** Tuesday, July 16, 2024 8:11 AM  
**To:** Jill Dybvig  
**Subject:** RE: [External Email]Hermosa- Permit 2024-27-Plat Application

I do not see any issues involving the USFS.

Thank you,

## Jill Dybvig

---

**From:** Steven Esser <sesser@custercountysd.com>  
**Sent:** Thursday, July 11, 2024 8:17 AM  
**To:** Jill Dybvig  
**Subject:** RE: Hermosa- Permit 2024-27-Plat Application

Nothing for Emergency Services.

Steve Esser  
Emergency Management Director  
Custer County Emergency Services  
420 Mt. Rushmore Rd.  
Custer, Sd 57730  
Phone: 605.673.8152



**CUSTER COUNTY**

## Jill Dybvig

---

**From:** Teri L. Morgan <tlmorgan@custercountysd.com>  
**Sent:** Tuesday, July 23, 2024 10:51 AM  
**To:** Jill Dybvig  
**Subject:** FW: Message from "RNP583879691A45"  
**Attachments:** 20240723111205979.pdf

Looks good

Teri L Morgan  
Custer County Register of Deeds  
420 Mt Rushmore Rd | Custer, SD 57730  
Office:(605) 673-8171 | Fax:(605) 673-8148 tlmorgan@custercountysd.com

7C

# Town of Hermosa

PO Box 298 • 230 Main Street • Hermosa, SD 57744

Phone (605) 255-4291 • Fax (605) 255-4094

Email: town@hermosasd.com

## FLOODPLAIN DEVELOPMENT PERMIT APPLICATION INFORMATION

AES No.:

DATE 07/26/24

PERMIT # 2024-29

Receipt # _____	Cash _____	Check # <u>657</u>	Application Fee <u>500<sup>00</sup></u>
-----------------	------------	--------------------	-----------------------------------------

\*\*\*Please be advised all permits are reviewed by the town engineer; those expenses will be included with the permit fees and applicant will be responsible for those expenses.

OWNER Tad Rocco TELEPHONE 907 371 0415

ADDRESS 2820 Lanark Rd., Rapid City, SD, 57702

EMAIL roc electric llc sd@gmail.com

CONTRACTOR roc Electric

ADDRESS 2820 Lanark

PROJECT LOCATION/DIRECTIONS Lot 23 & Lot 24 Walter st., - 510 + 500  
Hermosa SD.

### PROJECT DESCRIPTION

<input type="checkbox"/> Single Family Residential	<input checked="" type="checkbox"/> New Construction <u>Commercial</u>	<input type="checkbox"/> Channelization
<input type="checkbox"/> Multi-Family Residential	<input type="checkbox"/> Substantial (>50%) Improvements	<input checked="" type="checkbox"/> Fill
<input type="checkbox"/> Manufactured (Mobile) Home	<input type="checkbox"/> Improvements (<50%)	<input type="checkbox"/> Bridge/Culvert
<input checked="" type="checkbox"/> Nonresidential	<input type="checkbox"/> Rehabilitation	<input type="checkbox"/> Levee

Other/Explanations We want to get lots served so we can  
put commercial buildings on property and raise land  
above flood plain.

Project Valuation: \$100,000

Market Value of Structure: \$500,000

### FLOOD HAZARD DATA

Watercourse Name \_\_\_\_\_

The project is proposed in the Floodway \_\_\_\_\_ Floodway Fringe \_\_\_\_\_

Base (100-year flood elevations(s)) at project site \_\_\_\_\_

Elevation required for Lowest Floor \_\_\_\_\_ NAVD/Floodproofing \_\_\_\_\_ NAVD

Source Documents: Reports/Maps \_\_\_\_\_

Parcel # 015192  
015193

FOR OFFICE USE ONLY

Emailed to Elmer 7.25.2024

(Lot #, Subdivision, City/Town, State)

COMPLETE IF APPLICABLE TO THIS PROJECT

Does this project involve the placement of an external fuel storage tank? NO  
Compliance of FEMA regulation CFR44 60.3, (a) (3) requires that all liquid storage tanks be properly anchored.

Does this project involve the placement of a manufactured/mobile home? No  
Compliance of FEMA regulation CFR44 60.3, (b) (8) requires that all manufactured/mobile homes be properly anchored.

TSR  
Initial

*In accepting this permit, the applicant understands that all conditions of the permit must be met, all other regulatory permits have been obtained, an elevation certificate will be provided once project is completed, and agrees to allow on-site inspections, as needed during or after construction, to determine compliance with this permit.*

TSR  
Initial

The applicant also acknowledges that he/she is aware of the risks associated with the above development within the Flood Plain and has evaluated that risk.

TSR  
Initial

The applicant acknowledges that Flood Insurance is available to anyone in an eligible community, which Hermosa is eligible, whether in the Flood Plain or Not.

TSR  
Initial

It's the Applicants responsibility is to provide copies of the approved documents to all architect(s), engineer(s), general contractor(s) and any other interested parties as are appropriate for each job.

Accepted this 26th day of July year 2024.

Tad S. Roccaro (Tad S. Roccaro)

(Applicant)

PROPOSAL REVIEW CHECKLIST

- Site development plan is complete and depicts flood hazard.
- Engineering data is provided for proposed map and floodway revision.
- Floodway Certification and data document no increase in flood heights.
- Subdivision proposal minimizes flood damage and protects utilities.
- Lowest floor elevation is 1' above the BFE.
- Manufactured homes meet elevation and anchoring requirements.
- A Floodproofing Certificate certifies floodproofing designs.

Other: \_\_\_\_\_

PERMIT ACTION

PERMIT APPROVED WITH CONDITIONS: The information submitted for the proposed project was reviewed and is in compliance with approved floodplain management standards (site development plans are on file). (Building Site Plan)

PERMIT DENIED: The proposed project does not meet approved floodplain management standards (explanation is on file).

VARIANCE GRANTED: A variance was granted from the base (100-year) flood elevations established by FEMA consistent with variance requirements of NFIP regulations Part 60.6 (variance action documentation is on file).

Recommendation by Authorized Staff:

\_\_\_\_\_  
Floodplain Administrator's Signature

\_\_\_\_\_  
Date

Comments: See Conditions of Approval - page 4 of 4

APPROVAL CONDITIONS

(Lot #, Subdivision, City/Town, State)

NOTES:

1. Lowest Floor must be 1-foot above the BFE per local ordinance.
2. An elevation certificate will be required following construction to verify compliance.
3. All fill must be placed in accordance with FEMA requirements and cannot be placed to raise natural grade above BFE.
4. (Stick Built) Recommend that the enclosed AREA meet FEMA defined crawl space requirements. (See Tech Bulletin 11-01, Fig. 3)
5. (Stick Built) Enclosed space below the BFE must be vented in accordance with FEMA requirements.
6. No Mechanical Equipment is allowed below BFE.
7. Lowest floor of attached garage **must be** above the BFE or will require venting as an enclosed space.
8. Detached Garage is an accessory building and cannot be used for living space and the use cannot be converted at a later time.
9. (Modular) Skirting on modular must meet FEMA definitions of Breakaway Skirting or the enclosed space under the modular must meet FEMA requirements of an Enclosed Area, (Vented).
10. (Modular) Must be Anchored in accordance with FEMA requirements

It is the Owner's and Builder's responsibility to insure ALL FEMA requirements are understood and complied with before beginning construction in the flood plain.

The BFE is calculated but may change if FEMA reviews – this document provides no guarantee that the calculated BFE will match FEMA's determined BFE.

Flood Insurance can be purchased on this structure and should be evaluated by the Owner.

**ALL APPLICATIONS MUST BE APPROVED BY THE HERMOSA PLANNING AND ZONING COMMISSION AND THE HERMOSA BOARD OF TRUSTEES PRIOR TO COMMENCEMENT**

PLANNING AND ZONING COMMISSION <input type="checkbox"/> Approved <input type="checkbox"/> Denied	HERMOSA BOARD OF TRUSTEES <input type="checkbox"/> Approved <input type="checkbox"/> Denied
NAME: _____	NAME: _____
TITLE: _____	TITLE: _____
SIGNATURE: _____	SIGNATURE: _____
DATE: _____	DATE: _____
APPLICATION FEE: <b>\$100.00</b> DATE PAID: _____	DATE PERMIT ISSUED: _____

**COMPLIANCE DOCUMENTATION**

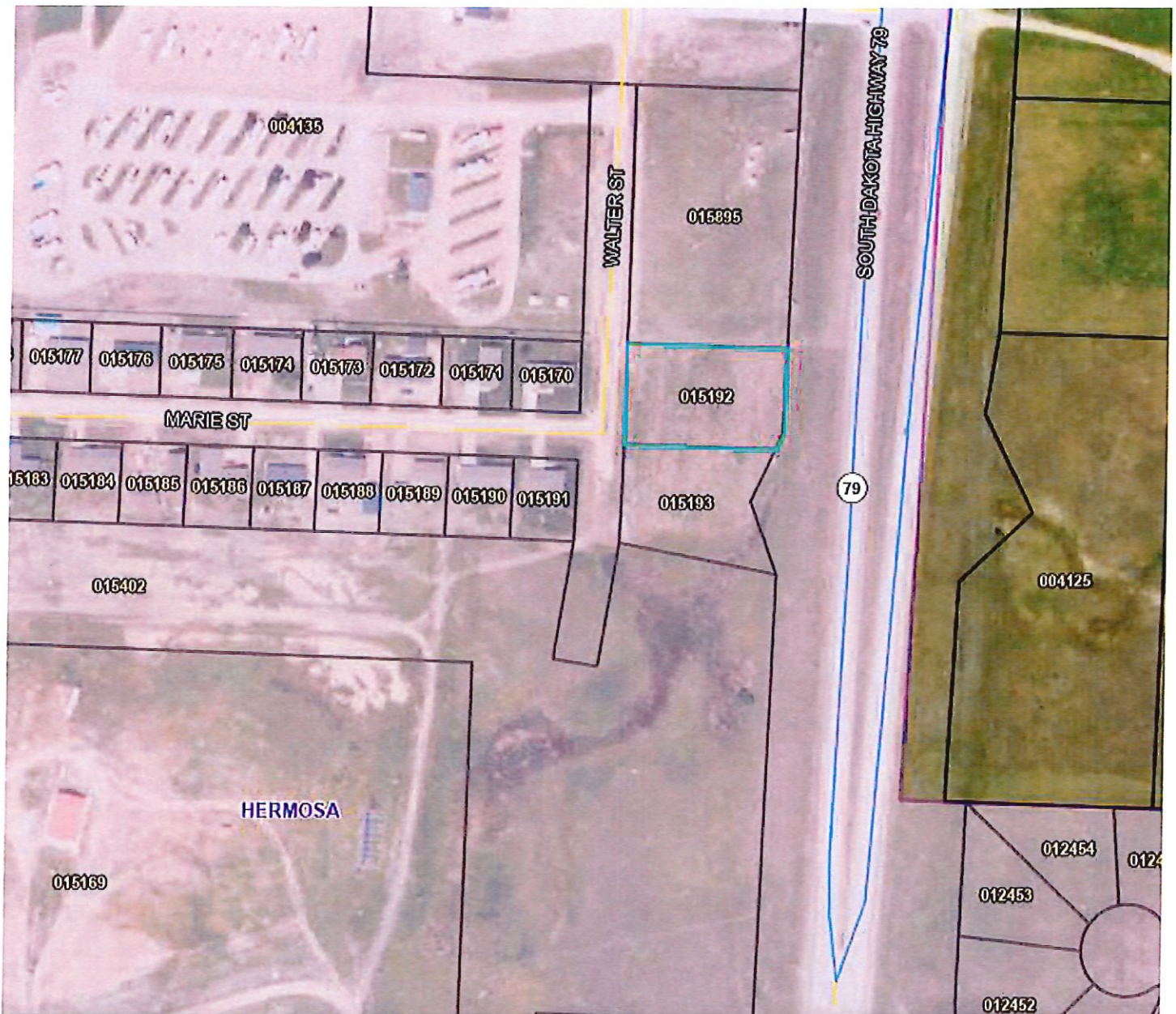
\_\_\_\_\_ MAP REVISION DATA: Certified documentation by a registered professional engineer of as-built conditions for floodplain alterations were received and submitted to FEMA for a flood insurance map revision.

\_\_\_\_\_ FILL CERTIFICATE: A community official certified the elevation, compaction, slope, and slope protection for all fill placed in the floodplain consistent with NFIP regulations Part 65.5 for map revisions.

\_\_\_\_\_ ELEVATION AND FLOODPROOFING CERTIFICATES: The as-built elevation of the building's lowest floor was certified as \_\_\_\_\_ NGVD; or the building's floodproofings level was certified as \_\_\_\_\_ NGVD by a registered professional engineer or licensed surveyor and is on file.

\_\_\_\_\_ CERTIFICATE OF OCCUPANCY OR COMPLIANCE ISSUED ON \_\_\_\_\_  
Date

500 Walter St. – Parcel 015193 & 510 Walter St. – Parcel 015192



Alternate IDn/a  
 Class Residential  
 Acreage 0.74

Owner Address ROC ELECTRIC, LLC  
 2820 LANARK RD  
 RAPID CITY, SD 57702-4240

16.1-7-0-0-0  
 HERMOSA HILLS ADDITION - LOT 23 IN SE4 SEC 30 T2 R8 0.74 AC, HERMOSA  
 7440006800000123  
 (Note: Not to be used on legal documents)

**CLAYCOMB ENGINEERING**  
**815 2<sup>nd</sup> Street**  
**PO Box 57**  
**FAIRBURN, SD 57738**

(605)255-4049  
elclaycomb@gmail.com

August 27, 2024

TOWN OF HERMOSA

PERMIT # 2024-29

FLOODPLAIN ADMINISTRATOR STAFF REPORT: Floodplain Development Permit for placing fill on Lots 23 and 24, Hermosa Hills, Town of Hermosa.

Background

A Floodplain Development Permit to place fill on Lot 23 was approved by The Town of Hermosa in 2016. The application for the Permit was submitted by the subdivision developer Hermosa Hills LLC. The Engineer's Report submitted with the application recommends "Lot 24 be either vacated or dedicated to the Town as a park due to the excessive fill which would be required to raise this lot." A field investigation of Lots 23 and 24 revealed that some fill has been placed on both Lots. The Town has no record of how the fill was placed and to what elevation the lots may have been raised.

Physical Conditions

Lots 23 and 24 are in the flood hazard AE Zone of Rock N R Drainage on the current Flood Insurance Rate Map. A copy of a map from the County GIS shows the lots and the existing AE Flood Hazard Zone. The original ground elevation at the time the FIRM was prepared ranged from about 1 foot above to about 5 feet below the Base Flood Elevation (BFE) of 3339 NAVD88. The hazard zone is essentially a backwater area controlled by the amount of flow that can pass through the culverts beneath Highway 79. There is essentially no velocity of flow and therefore very little probability of scour of fill placed to raise the building pad above the BFE.

Proposed Construction

The Floodplain Development Permit Application calls for placement of fill to raise the minimum elevation of the lots above the BFE.

NFIP Requirements state the following

*Where fill is the method of choice, it should be properly designed, installed in layers and compacted. Simply adding dirt to the building site may result in differential settling over time.*

*The fill should also be properly sloped and protected from erosion and scour during flooding. To provide a factor of safety for the building and its residents, it is recommended that the fill extend 10 – 15 feet beyond the walls of the building before it drops below the BFE.*

### Ordinance Provisions

The Flood Damage Prevention Ordinance requires that the finished floor of a residential building be at least 1 foot above the BFE.

The Flood Damage Prevention Ordinance states the following requirements for nonresidential buildings:

*(C) Nonresidential construction. New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is water-tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.*

The Ordinance does not set requirements for the elevation of fill that may be placed to raise the ground elevation within a flood hazard area.

### Letter of Map Revision-Fill (LOMR-F)

The filling of lots 23 & 24 to an elevation above the BFE will modify the AE Zone. This will be adequate to allow the Town to issue building and grading permits, but will not legally move the AE Zone to coincide with the grading. The developer will need to submit the necessary forms, data, and fees to FEMA to obtain a Letter of Map Revision-Fill to legally move the Zone Boundary. A LOMR-F can only be obtained based on as-built conditions.

### General Comments about the Application

I have struck out the statement in the Approval Conditions, page 4 of 4, that fill cannot be placed to raise natural grade above BFE. This statement is not part of the Flood Damage Prevention Ordinance, but has been on the printed form for as long as I have worked with the Town.

Recommendations

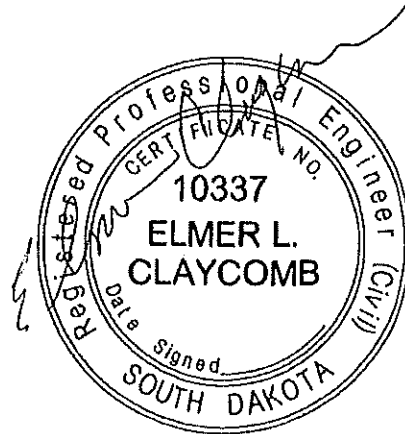
The Floodplain Development Permit is recommended for approval.

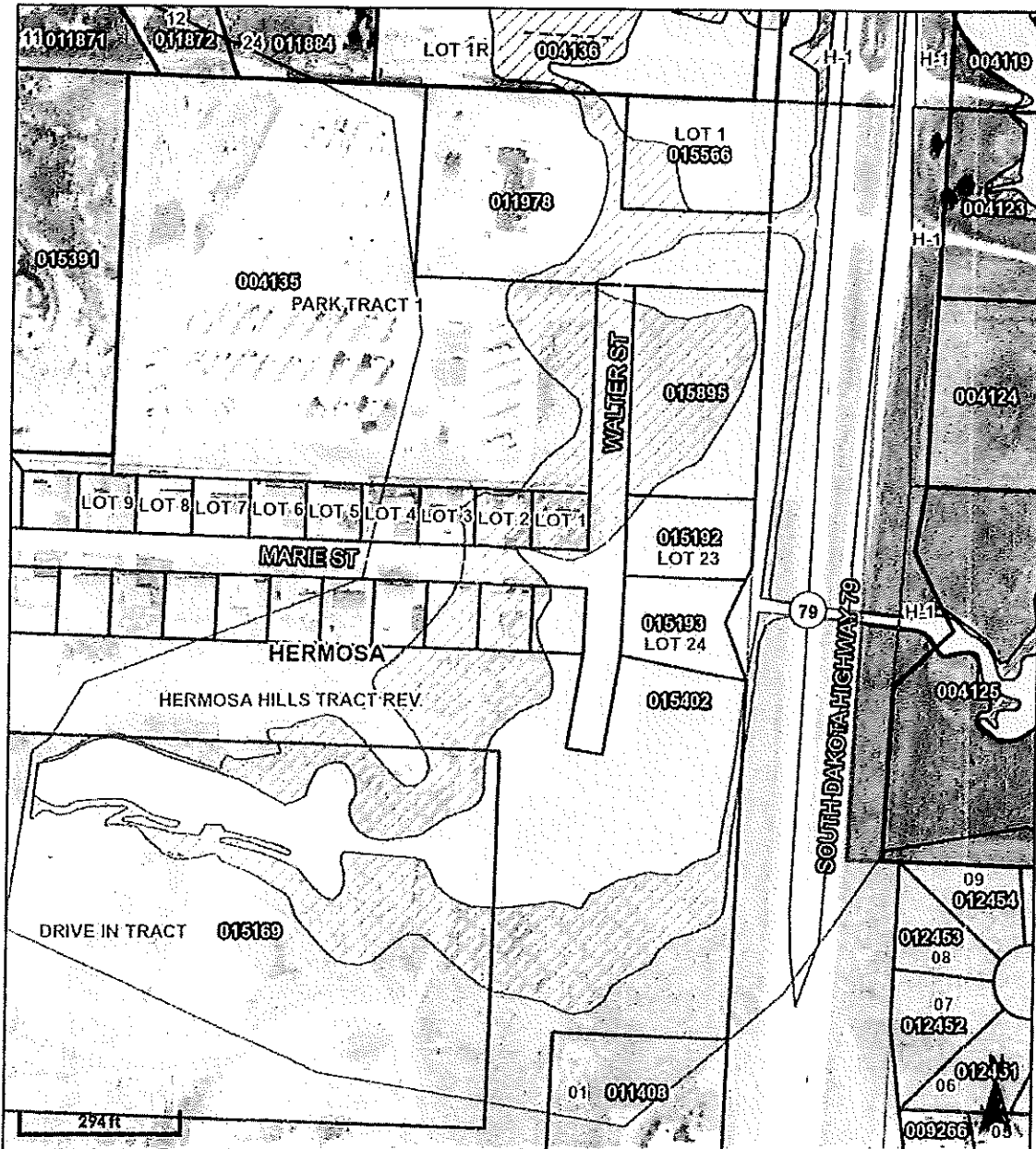
Elmer Claycomb, P.E.  
Floodplain Administrator

Attachments:

GIS Map Showing Location of Project

Approved Permit Application
















Overview



Legend

-  Corporate Limits
- Highways**
  -  SD Hwy
  -  US Hwy
- Roads**
  -  Lots
  -  Parcels
- Flood Zones**
  -  A
  -  AE
  -  AE, FLOODWAY
  -  AO
  -  X, 0.2 PCT ANNUAL CHANCE FLOOD HAZARD
  -  X, AREA OF MINIMAL FLOOD HAZARD

Parcels are not adjusted to match aerial background. GIS information is for reference purposes only and is not a legal document. Data may contain errors.

Date created: 8/27/2024

Last Data Uploaded: 8/27/2024 5:51:07 AM

Developed by  **Schneider**  
GEOSPATIAL

# Town of Hermosa

PO Box 298 • 230 Main Street • Hermosa, SD 57744  
 Phone (605) 255-4291 • Fax (605) 255-4094  
 Email: town@hermosasd.com

## FLOODPLAIN DEVELOPMENT PERMIT APPLICATION INFORMATION

AES No.:

DATE 07/26/24

PERMIT # 2024-29

Receipt # _____	Cash _____	Check # _____	Application Fee <u>500<sup>00</sup></u>
-----------------	------------	---------------	-----------------------------------------

\*\*\*Please be advised all permits are reviewed by the town engineer; those expenses will be included with the permit fees and applicant will be responsible for those expenses.

OWNER Tad Roccero TELEPHONE 907 371 0415

ADDRESS 2820 Lenark Rd., Rapid City, SD, 57702

EMAIL RocElectricHc.SD@gmail.com

CONTRACTOR Roc Electric

ADDRESS 2820 Lenark

PROJECT LOCATION/DIRECTIONS Lot 23 & Lot 24 Walter St., - 510 + 500  
 Hermosa SD.

### PROJECT DESCRIPTION

<input type="checkbox"/> Single Family Residential	<input checked="" type="checkbox"/> New Construction <u>Commercial</u>	<input type="checkbox"/> Channellization
<input type="checkbox"/> Multi-Family Residential	<input type="checkbox"/> Substantial (>50%) Improvements	<input checked="" type="checkbox"/> Fill
<input type="checkbox"/> Manufactured (Mobile) Home	<input type="checkbox"/> Improvements (<50%)	<input type="checkbox"/> Bridge/Culvert
<input checked="" type="checkbox"/> Nonresidential	<input type="checkbox"/> Rehabilitation	<input type="checkbox"/> Levee

Other/Explanations We want to get lots served so we can  
 put commercial buildings on property and raise land  
 above flood plain.

Project Valuation: \$1,700,000

Market Value of Structure: \$1,500,000

### FLOOD HAZARD DATA

Watercourse Name ROCK N R TRIBUTARY

The project is proposed in the Floodway NO Floodway Fringe YES

Base (100-year flood elevations(s)) at project site 3339

Elevation required for Lowest Floor 3340 RESIDENTIAL 3339 NONRESIDENTIAL

Source Documents: Reports/Maps CURRENT FIRM

Parcel # 015192  
015193  
 FOR OFFICE USE ONLY

(Lot #, Subdivision, City/Town, State)

LOTS 23 & 24 HERMOSA HILLS, HERMOSA, SD

COMPLETE IF APPLICABLE TO THIS PROJECT

Does this project involve the placement of an external fuel storage tank? No  
Compliance of FEMA regulation CFR44 60.3, (a) (3) requires that all liquid storage tanks be properly anchored.

Does this project involve the placement of a manufactured/mobile home? No  
Compliance of FEMA regulation CFR44 60.3, (b) (8) requires that all manufactured/mobile homes be properly anchored.

TGR  
Initial

In accepting this permit, the applicant understands that all conditions of the permit must be met, all other regulatory permits have been obtained, an elevation certificate will be provided once project is completed, and agrees to allow on-site inspections, as needed during or after construction, to determine compliance with this permit.

TGR  
Initial

The applicant also acknowledges that he/she is aware of the risks associated with the above development within the Flood Plain and has evaluated that risk.

TGR  
Initial

The applicant acknowledges that Flood Insurance is available to anyone in an eligible community, which Hermosa is eligible, whether in the Flood Plain or Not.

TGR  
Initial

It's the Applicants responsibility is to provide copies of the approved documents to all architect(s), engineer(s), general contractor(s) and any other interested parties as are appropriate for each job.

Accepted this 26th day of July year 2024.

Tad S. Roccaro (Tad S. Roccaro)

(Applicant)

PROPOSAL REVIEW CHECKLIST

- Site development plan is complete and depicts flood hazard.
- Engineering data is provided for proposed map and floodway revision.
- Floodway Certification and data document no increase in flood heights.
- Subdivision proposal minimizes flood damage and protects utilities.
- Lowest floor elevation is 1' above the BFE.
- Manufactured homes meet elevation and anchoring requirements.
- A Floodproofing Certificate certifies floodproofing designs.
- Other: \_\_\_\_\_

PERMIT ACTION

- PERMIT APPROVED WITH CONDITIONS: The information submitted for the proposed project was reviewed and is in compliance with approved floodplain management standards (site development plans are on file). (Building Site Plan)
- PERMIT DENIED: The proposed project does not meet approved floodplain management standards (explanation is on file).
- VARIANCE GRANTED: A variance was granted from the base (100-year) flood elevations established by FEMA consistent with variance requirements of NFIP regulations Part 60.6 (variance action documentation is on file).

Recommendation by Authorized Staff:

Elmer Clayman  
Floodplain Administrator's Signature

AUGUST 27, 2024

Date

Comments: See Conditions of Approval - page 4 of 4

COMPLIANCE DOCUMENTATION

\_\_\_\_\_ MAP REVISION DATA: Certified documentation by a registered professional engineer of as-built conditions for floodplain alterations were received and submitted to FEMA for a flood insurance map revision.

\_\_\_\_\_ FILL CERTIFICATE: A community official certified the elevation, compaction, slope, and slope protection for all fill placed in the floodplain consistent with NFIP regulations Part 65.5 for map revisions.

\_\_\_\_\_ ELEVATION AND FLOODPROOFING CERTIFICATES: The as-built elevation of the building's lowest floor was certified as \_\_\_\_\_ NGVD; or the building's floodproofing level was certified as \_\_\_\_\_

\_\_\_\_\_ NGVD by a registered professional engineer or licensed surveyor and is on file.

\_\_\_\_\_ CERTIFICATE OF OCCUPANCY OR COMPLIANCE ISSUED ON \_\_\_\_\_  
Date

APPROVAL CONDITIONS

(Lot #, Subdivision, City/Town, State)

**LOTS 23 & 24, HERMOSA HILLS, HERMOSA, SD**

NOTES:

1. Lowest Floor must be 1-foot above the BFE per local ordinance.
2. An elevation certificate will be required following construction to verify compliance.
3. All fill must be placed in accordance with FEMA requirements and ~~cannot be placed to raise natural grade above BFE.~~
4. (Stick Built) Recommend that the enclosed AREA meet FEMA defined crawl space requirements. (See Tech Bulletin 11-01, Fig. 3)
5. (Stick Built) Enclosed space below the BFE must be vented in accordance with FEMA requirements.
6. No Mechanical Equipment is allowed below BFE.
7. Lowest floor of attached garage must be above the BFE or will require venting as an enclosed space.
8. Detached Garage is an accessory building and cannot be used for living space and the use cannot be converted at a later time.
9. (Modular) Skirting on modular must meet FEMA definitions of Breakaway Skirting or the enclosed space under the modular must meet FEMA requirements of an Enclosed Area, (Vented).
10. (Modular) Must be Anchored in accordance with FEMA requirements

It is the Owner's and Builder's responsibility to insure ALL FEMA requirements are understood and complied with before beginning construction in the flood plain.

The BFE is calculated but may change if FEMA reviews – this document provides no guarantee that the calculated BFE will match FEMA's determined BFE.

Flood insurance can be purchased on this structure and should be evaluated by the Owner.

**ALL APPLICATIONS MUST BE APPROVED BY THE HERMOSA PLANNING AND ZONING COMMISSION AND THE HERMOSA BOARD OF TRUSTEES PRIOR TO COMMENCEMENT**

PLANNING AND ZONING COMMISSION	HERMOSA BOARD OF TRUSTEES
<input type="checkbox"/> Approved <input type="checkbox"/> Denied	<input type="checkbox"/> Approved <input type="checkbox"/> Denied
NAME: _____	NAME: _____
TITLE: _____	TITLE: _____
SIGNATURE: _____	SIGNATURE: _____
DATE: _____	DATE: _____
APPLICATION FEE: <b>\$100.00</b> DATE PAID: _____	DATE PERMIT ISSUED: _____

## Claims for approval 09-03-2024

VENDOR	REFERENCE	AMOUNT
BANK WEST CREDIT CARD	STAMPS/LABEL MAKER/LABELS	\$ 570.41
BENESCH	UPDATE WATER MAP FOR WELL #2/WATER MODEL	\$ 15,110.00
CONNIE LEIMER	TRAP/NEUTER/RELEASE PROGRAM	\$ 66.00
CHUCK FERGUSON	AUGUST 2024 SERVICES	\$ 3,120.00
CHUCK FERGUSON	CONSULT WITH ENGINEER	\$ 925.00
HAGG & HAGG LLP	ATTORNEY SERVICE 7/17/24-8/29/24	\$ 5,841.25
PENNINGTON TITLE COMPANY	OWNERSHIP/ENCUMBRANCE REPORT	\$ 650.00
RAMKOTA HOTEL	TWO ROOMS FOR NEW OFFICIALS WORKSHOP	\$ 297.00
RURAL DEVELOPMENT	RD 1 LOAN-AUGUST INTEREST & PRINCIPAL	\$ 1,278.00
	RD 2 LOAN - AUGUST INTEREST & PRINCIPAL	\$ 417.00
	RD 3 LOAN - AUGUST INTEREST & PRINCIPAL	\$ 222.00
US BANK	DWSRF - AUGUST QUARTERLY PAYMENT	\$ 1,493.23
<b>Accounts Payable Total</b>		<b>\$ 29,989.89</b>
<b>Utility Deposit Refund</b>		
TYLER WEYANT	815 MARIE ST	\$ 64.23
	<b>Deposit Refund Total</b>	<b>\$ 64.23</b>
<b>Payroll related</b>		
Total Paid On: 8/30/24		
	Legislative, Financial Administration, Govt Blds	\$ 3,541.63
	Water	\$ 463.09
	Sewer	\$ 209.31
	Promoting City/BBB	\$ 69.72
SOUTH DAKOTA RETIREMENT	SDRS	\$ 1,001.26
EFTPS-ELECTRONIC FEDERAL TAX	FED/FICA TAX	\$ 1,143.62
HEALTH POOL OF SD	ADMIN/FO SINGLE HEALTH 8/24	\$ 1,969.00
<b>Payroll Total</b>		<b>\$ 8,397.63</b>
<b>***** REPORT TOTAL *****</b>		<b>\$ 38,451.75</b>

**CLAIMS REPORT**  
 Check Range: 8/22/2024- 9/03/2024

VENDOR NAME	REFERENCE	AMOUNT	VENDOR TOTAL	CHECK#	CHECK DATE
A & B BUSINESS EQUIPMENT INC	MONTHLY PRINTER/FAX FEE		570.41	304	8/26/24
BANK WEST	STAMPS/LABEL MAKER AND LABELS			17740	9/03/24
BENESCH	UPDATE WATER MAP/WATER MODEL		15,110.00	17741	9/03/24
CONNIE LEIMER	TRAP/NEUTER/RELEASE PROGRAM		66.00	17741	9/03/24
EFTPS-Electronic Federal Tax	FED/FICA TAX		1,143.62	303	8/30/24
CHUCK FERGUSON	AUGUST 2024 SERVICES	3,120.00		17729	8/30/24
CHUCK FERGUSON	CONSULT WITH ENGINEER	925.00	4,045.00	17742	9/03/24
HAGG & HAGG LLP	ATTORNEY SERVICES 7/17-8/29/24		5,841.25	17746	9/03/24
HEALTH POOL OF SOUTH DAKOTA	LIFE INS	21.00		17738	8/30/24
HEALTH POOL OF SOUTH DAKOTA	FO SINGLE HEALTH INSURANCE	1,969.00	1,990.00	17743	9/03/24
PENNINGTON TITLE COMPANY	OWNERSHIP/ENCUMBRANCE REPORT		650.00	17745	8/29/24
RAMKOTA HOTEL	MOTEL ROOM/HENDRICHSEN		297.00	17744	9/03/24
RURAL DEVELOPMENT	RD 1 LOAN - AUGUST INTEREST	1,278.00		305	8/22/24
RURAL DEVELOPMENT	RD LOAN - AUGUST INTEREST	222.00		309	8/22/24
RURAL DEVELOPMENT	RD 2 LOAN - INTEREST	417.00	1,917.00	311	8/22/24
SOUTH DAKOTA RETIREMENT SYSTEM	SDRS		1,001.26	17737	8/30/24
US BANK	PRINCIPAL-LOAN #462278-0		1,493.23	310	8/22/24
			=====		
	Accounts Payable Total		34,124.77		
	Utility Refund Checks				
	-----				
	602 WATER		64.23		
			-----		
	Refund Checks Total		64.23		
	Payroll Checks				
	-----				
	101 GENERAL		3,541.63		
	211 BBB GROSS RECEIPTS TAX		69.72		
	602 WATER		463.09		
	604 SEWER		209.31		
			-----		
	Total Paid On: 8/30/24		4,283.75		
			=====		
	Total Payroll Paid		4,283.75		
			=====		
	Report Total		38,472.75		
			=====		

*- 21.00 Less Life Ins  
 Pd by Employees*  
38,451.75

**CLAIMS REPORT**  
**CLAIMS FUND SUMMARY**

FUND	NAME	AMOUNT
101	GENERAL	29,582.84
211	BBB GROSS RECEIPTS TAX	90.67
602	WATER	6,319.71
604	SEWER	2,479.53
-----		
	TOTAL FUNDS	38,472.75





### SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION APPLICATION FOR PERMIT TO OCCUPY RIGHT OF WAY

Highway No. 40 east County CUSTER  Approximately .25 Miles  N  S  E  W

From (City or well defined point) hermosa sd

Description and Purpose of occupancy:

corner of 3rd and Whitney east to 2nd north to main(hwy40)east to fairgrounds place (christmas parade) parade starts at 6pm

Duration of occupancy: PERMANENT  TEMPORARY  If temporary, give the estimated date of removal or completion:

12/14/2024 7pm 6:00 pm - Approx 7:00 pm

I, the undersigned, request permission to occupy public right-of-way at the above location and as shown on the attached layout sheet. In consideration for this permission, I agree to abide by all conditions as herein stated.

1. To furnish all materials, labor, incidentals and pay all costs involved with this occupancy including restoration of any damage to the roadway and right-of-way to equal or better conditions than existed prior to the occupancy covered by this permit.
2. To provide protection to highway traffic during occupancy by the use of proper signs, barricades, flagpersons and lights as prescribed in the "Manual of Uniform Traffic Control Devices."
3. To indemnify and hold the State of South Dakota, its Department of Transportation, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings of any kind or nature brought because of any injuries or damage received or sustained by any person or property on account of the use or occupancy of right-of-way designated in this application.

APPLICANT NAME (please print) Breezy Simpson

SIGNATURE B Simpson DATE 8/9/24

ADDRESS 72 fairgrounds place CITY hermosa STATE ABBV SD ZIP

57744

TELEPHONE 6052090907

REPRESENTING breezy Simpson  
(Name of Individual, Company, Organization, etc.)

EMAIL ADDRESS austinylee1001@yahoo.com

\*\*\*To be completed by Department of Transportation\*\*\*

Project (Const.) 40-491 Station/Milepost 47.92 to 48.64 Maintenance Unit 491

Project (Maint.) \_\_\_\_\_

1. Prior to commencing occupancy and at completion of occupancy the applicant shall notify Bruce Schroeder at Custer Area Office Telephone 605-673-4949

2. Special Conditions Local Police and or Certified Flaggers to assist with traffic control. Hermosa City Council Approval needed. Notify local Law Enforcement

3. Failure to accomplish the occupancy in accordance with the provisions of this permit will automatically render this permit null and void and where applicable, constitute grounds for its removal and/or full restoration of the occupancy site all at the applicant's expense.

This permit to occupy the right-of-way is granted to all conditions as herein stated on this 23 day of August, 2024.

Bruce Schroeder  
Area Engineer

RESOLUTION 2024-04  
TOWN OF HERMOSA, SOUTH DAKOTA

COPY

WHEREAS Initiated Measure 28 was certified for the November 2024 General Election Ballot by the South Dakota Secretary of State;

WHEREAS Initiated Measure 28, if passed, would remove state, municipal and tribal taxes on all items sold for human consumption except alcohol and prepared food;

WHEREAS "human consumption" is undefined in South Dakota Codified Law or the South Dakota Constitution. Black's Law Dictionary defines "consumption" as "the act of destroying a thing by using it; the use of a thing in a way that exhausts it.";

WHEREAS South Dakota Codified Law 34-45-1(7) defines tobacco products as "any item made of tobacco intended for human consumption, including cigarettes, cigars, pipe tobacco, and smokeless tobacco, and vapor products as defined in § 34-46-20.";

WHEREAS South Dakota Codified Law 10-52-2 allows incorporated municipalities to impose a tax on the sale, use, storage and consumption of items that conform in all respects to the state tax on such items up to two percent;

WHEREAS the Attorney General's explanation of the measure states legislative or judicial clarification would be needed if the measure passes;

WHEREAS The Town of Hermosa levies a two-percent sales tax and collected \$274,419.00 in the 2023 fiscal year and \$137,592.00 year-to-date in the 2024 fiscal year;

WHEREAS The Town of Hermosa estimates annual lost revenue of \$52,000.00 unless Initiated Measure 28 is rejected by voters in South Dakota.

NOW, THEREFORE, BE IT RESOLVED, by the Town Board of Trustees, that Initiated Measure 28 would negatively impact the municipal budget in our community.

Dated this \_\_\_\_\_ day of September 2024

\_\_\_\_\_  
Linda Kramer, Town Board President

ATTEST:

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

**TOWN OF HERMOSA  
ORDINANCE 2.077**

COPY

14B

**AN ORDINANCE APPROPRIATING FUNDS FOR THE FISCAL YEAR 2025**

**SECTION ONE:**

Be it ordained by the Town of Hermosa that the following sums are appropriated to meet the financial needs of the municipality for the fiscal year 2025.

REVENUE	General	Water	Sewer	Debt Service	Gross Receipts	
<b><u>General Government</u></b>						
Sales Tax	\$258,000.00				\$15,000.00	
Property Tax	\$68,000.00					
Other Misc. Tax	\$175.00					
Licenses	\$4,000.00					
Permits	\$2,500.00					
State Shared	\$5,200.00					
County Shared	\$11,300.00					
Animal License	\$1,200.00					
Interest, Misc, Donations	\$9,000.00					
Rentals	\$10,000.00					
Liquor Operating	\$35,000.00					
Garbage Collection	\$56,000.00					
<b><u>Water Department</u></b>						
Permits						
Operating Revenue		\$205,700.00				
Surcharge Revenue		\$4,600.00				
Misc. Revenue		\$608,460.00				
Transfer In						
<b><u>Sewer Department</u></b>						
Permits						
Operating Revenue			\$146,635.00			
Surcharge Revenue			\$5,600.00			
Misc. Revenue						
Grants/Loans						
Transfer In						
<b><u>Debt Service</u></b>						
Tax Increment Financing District:						
Property Tax						
Penalty/Int/Other Taxes						
Unassigned Fund Balance						
	\$460,375.00	\$818,760.00	\$152,235.00	\$0.00	\$15,000.00	\$1,446,370.00

**SECTION TWO:**

The following designates the fund or funds to which the money derived from the following sources is applied.

EXPENDITURES	General	Water	Sewer	Debt Service	Gross Receipts
<b><u>General Government</u></b>					
Town Board	\$31,169.00				
Election Board	\$1,255.00				
Planning & Zoning					
Finance Office/Administration	\$140,790.00				

Street Department	\$56,607.00					
Garbage Collection	\$61,500.00					
<b>Public Safety</b>						
Law Enforcement	\$66,897.00					
<b>Professional Fees</b>						
Attorney	\$30,000.00					
Engineer/Planning	\$65,000.00					
Building Inspector	\$1,000.00					
Govt Buildings	\$2,557.00					
Transfer Out						
<b>Misc. Expenses</b>						
Charitable Donations						
Capital Outlay Expense – land	\$3,600.00					
Transfer Out						
<b>Water Department</b>						
Water Expenses		\$818,760.00				
Capital Improvement Expenses						
Transfer Out						
<b>Sewer Department</b>						
Sewer Expenses			\$152,235.00			
Capital Improvement Expenses						
Transfer Out						
<b>Debt Service</b>						
Hermosa Administration Expense					15000	
Capital Improvement Expenses						
<b>Debt Retirement Fund</b>						
Rural Development Water Project						
SRF Loan						
TIF Water/Sewer Loans						
Rural Development DOT Main St.						
Lagoon Land Purchase						
<b>Reserves</b>						
Reserves for Issued Debt						
Contingency Funds / Reinvest						
<b>FEMA Fund</b>						
Fema Expenses						
<b>Gross Receipts</b>						
Promotional Expenses						
	\$460,375.00	\$818,760.00	\$152,235.00	\$0.00	\$15,000.00	\$1,446,370.00

**SECTION THREE:**

That there is hereby levied upon all taxable property within the Town of Hermosa, for the fiscal year 2025, a tax sufficient to raise the following funds, to-wit:

For the General Fund	\$68,000.00
Total Levy	<u>\$68,000.00</u>

**SECTION FOUR:**

The Town Finance Officer is hereby authorized and directed to certify said tax levy to the Custer County Auditor of Custer County, State of South Dakota, to the end that the same may be spread and assessed as provided by law.

Dated this 3rd day of September 2024.

TOWN OF HERMOSA

\_\_\_\_\_  
Linda Kramer, Town Board President

ATTEST:

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

(SEAL)

First Reading: September 3, 2024

Second Reading: September 17, 2024

Publication: September 25, 2024

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

Vote:

Kramer

Koontz

Ferguson

Harris