

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



- 1) **ROLL CALL:**
 - A. BOT Roll Call: Kramer, Ferguson, Koontz, Serviss, Matheny
 - B. Acknowledgement of other Attendees
 - C. Pledge of Allegiance
- 2) **CALL FOR CHANGES:**
 - A. Review of current agenda items
 - B. Motion to accept the agenda as presented/amended
- 3) **CONFLICT OF INTEREST DECLARATION**
(Roll call voting for any agenda item that may have a conflict of interest)
- 4) **ITEMS OF BUSINESS:**
 - A. Preston Family negotiations for finalization of NWS project
- 5) **ITEMS FROM CONSTITUENTS:** No action can be taken by the board on any issue related without being first placed on a future agenda, to allow for proper notice.
 1. Reserved time for public comment is **15 minutes**.
 2. This is a time for citizens of the town of Hermosa or owners of property within town Limits to express concerns or discuss issues having relevance to the town.
 3. Anyone wishing to address the Town Board during this time shall be asked to stand and Identify themselves after being recognized the Board President.
 4. Each person will be allotted **3 minutes** to speak.
 5. After these time limits are reached, all further commentary shall be made only with the Chair's approval.
- 6) **TRUSTEE INPUT:**
- 7) **EXECUTIVE SESSION:**
 - A. Motion to enter Executive Session allowable by SDCL 1-25-2 – Legal/Personnel/Contract
 - B. Motion to exit out of Executive Session
 - C. Motions resulting from Executive Session
- 7) **ADJOURN:** Motion by _____; Second by _____ to adjourn the meeting at _____ PM.

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

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

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

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

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

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

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

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

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

1. FINANCIAL CONTRIBUTION BY DEVELOPER.

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

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

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

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

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

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

2. PENDING LITIGATION.

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

3. INDEMNIFICATION.

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

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

4. MISCELLANEOUS PROVISIONS.

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

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

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

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

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

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

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

DEVELOPER:

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

TOWN:

Town of Hermosa
PO Box 298
Hermosa, SD 57744

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

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

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

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

DEVELOPER:

PRESTON FAMILY, INC.

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

TOWN:

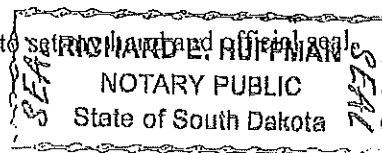
TOWN OF HERMOSA

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

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

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

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



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

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

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



DRAWING NUMBER
12 PLAT 893

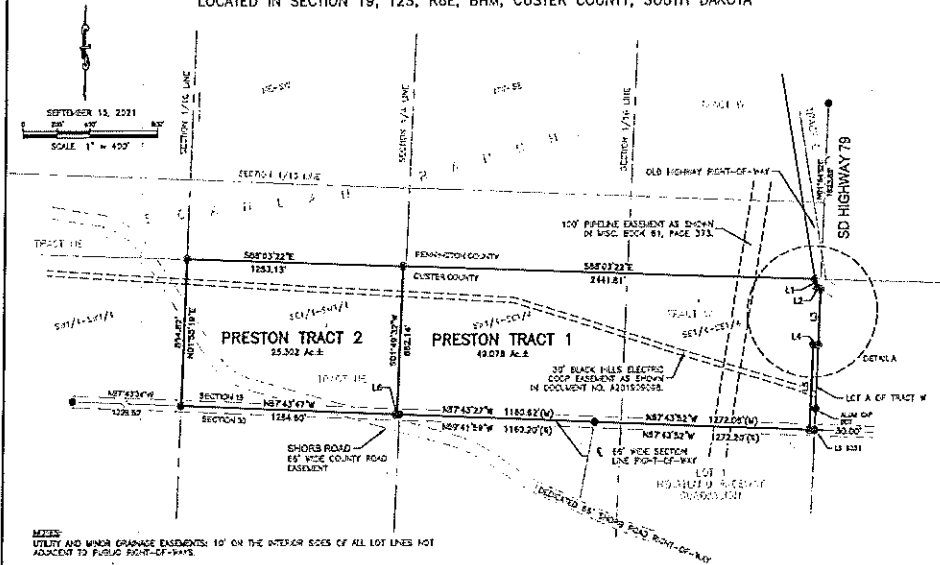
DRAWING NUMBER
12 PLAT 893

604 PG 28 / OUT 1 PG 30

PLAT OF

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

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



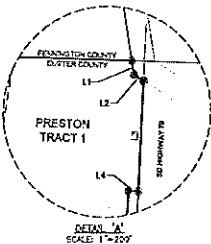
NOTES:
UTILITY AND MINOR GRASSHOLE EASEMENTS: 10' ON THE INTERIOR SIDES OF ALL LOT LINES NOT ADJACENT TO PUBLIC RIGHT-OF-WAYS.

ANY MAJOR DRAINAGE EASEMENT SHOWN HEREIN SHALL BE KEPT FREE OF ALL OBSTRUCTIONS INCLUDING BUT NOT LIMITED TO BRIDGES, WALLS, FENCES, HEDGES, TREES AND SHRUBS. THESE EASEMENTS GRANT TO ALL PUBLIC AUTHORITIES THE RIGHT TO CONSTRUCT, OPERATE, MAINTAIN, REPAIR, AND REPAIR SUCH IMPROVEMENTS AND STRUCTURES AS IT DEEMS EXPEDIENT TO FULFILL ITS DUTY FROM ANY SOURCE.

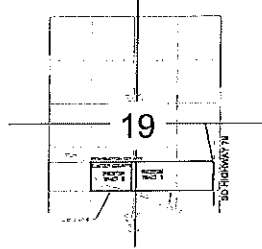
BASES OF BEARINGS: SOUTH DAKOTA STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD83(2011), DERIVED FROM SP05.

FLOODPLAIN STATEMENT:
BASED ON THE FLOOD INSURANCE RATE MAP NUMBER 49335C0220F (NOT PRINTED), EFFECTIVE DATE JANUARY 8, 2012, INDICATES THE SUBJECT PROPERTY IS LISTED IN ZONE D.

Line #	Distance	Bearing
L1	40.55	S00° 47' 23"E
L2	33.89	S57° 21' 23"E
L3	321.73	S01° 54' 33"W
L4	39.00	N87° 43' 52"W
L5	497.70	S01° 54' 53"W
L6	15.00	N87° 43' 47"W



- LEGEND:**
- Denotes set 5/8" rebar with survey cap marked "Banner - Assoc. 9213".
 - Denotes Found Survey Monument marked LS 5906, unless otherwise noted.
 - (*) Denotes Easement in previous plat or description.
 - (v) Denotes Measured in this survey.



CERTIFICATE OF OWNER:
State of South Dakota
County of Custer

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

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

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

OWNER: Preston Family, Inc.

By: [Signature]
On this 13th day of September, 2021, before me, a Notary Public, personally appeared Preston Family, Inc. known to me to be the person described in the foregoing instrument and acknowledged to me that he signed the same.

My commission expires: October 20, 2026

CERTIFICATE OF TOWN JUDGE OFFICE:
I, Town Judge of the Town of Memphis, South Dakota, do hereby certify that the foregoing instrument is a true and correct copy of the instrument as recorded in the Public Records of the Town of Memphis, South Dakota, at a meeting held on the 13th day of September, 2021.

Town Judge: [Signature]
Date: 10-8-21

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

Director of Equitization: [Signature] DATE: 10-8-21

CERTIFICATE OF COUNTY HIGHWAY AUTHORITY:
The location of these lots meet the requirements of the county as it relates to access onto County roads.

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



CERTIFICATE OF REGISTER OF DEEDS:
County of Custer, Document # 84359
Filed this 29th day of October, 2021, at 2:02 P.M.
In Book 17 of Plats, Page 893, Fee \$100.00
County of Custer, State of South Dakota
Register of Deeds, Custer County

I, Eric D. Howard, Registered Land Surveyor No. 5213 in the State of South Dakota, do hereby certify that of the request of the owner of the above described land, I have surveyed the land of land shown, and to the best of my knowledge and belief, the within plat is a representation of said survey, and no restrictions or encumbrances of record or of public record are shown herein.

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

[Signature]
Eric D. Howard, Registered Land Surveyor
Date: 9-15-21

RESOLUTION OF CUSTER COUNTY BOARD OF MEMBERS:
Whereas, there has been presented to the Town Board of Members, South Dakota, the within plat of the above described land, and it appearing to the Board that said plat conforms to the existing plat of said town, that the Board set forth hereby conform to the system of streets of the municipality, that all provisions of statements upon the tract have been fully paid, and that said plat and the survey thereof have been recorded according to law, now therefore, BE IT RESOLVED, that said plat is hereby approved in all respects.

Dated at Memphis, South Dakota, this 13th day of October, 2021.
[Signature] Pres.

CERTIFICATE OF COUNTY TREASURER:
I, Treasurer for Custer County, do hereby certify that the within described property has been fully paid according to the records of the County Treasurer.

Treasurer: [Signature] DATE: 9/27/21

VOIDED:
State of South Dakota
County of Custer
Filed this 8th day of October, 2021, at 11:11 a.m.
In Book 17 of Plats, Page 893
[Signature] Fee: \$100.00
Register of Deeds, Custer County

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

604 PG 28 / OUT 1 PG 30

893

BID FORM
REVISED 09/22/2021

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

DATE: 9/29/2021

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

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

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

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

(Total Bid Price Written in Words)

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

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

Page 1 of 2

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

In submitting this Bid, Bidder represents that:

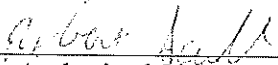
- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda:

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

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

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

Respectfully submitted:

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

(Seal if corporation)

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

END OF BID FORM

Search

1389
Check Name PRESTON FAMILY INC.
Attention
Address 22760 Stone Meadow Rd
Print Label
Envelope » Rapid City SD 57702

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

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

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

\$281,002.17

Record: 1 of 10 ☒ Unfiltered Search

Options

\$140,501.09 Sewer

\$140,501.09 Water

✕

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

✓ 608,250.14

Options

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

LAND PURCHASE AGREEMENT

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

Seller:

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

Buyer:

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

RECITALS

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

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

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

1. Sale of Assets

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

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

2. Purchase Price

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

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

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

3. Closing

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

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

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

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

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

4. Representations and Warranties

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

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

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

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

5. Disclaimer of Warranties

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

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

6. Indemnification

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

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:

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

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) 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.

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

Seller:
Preston Family

By:
Its:

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

Buyer:
Town of Hermosa

By:
Its:

LAND PURCHASE AGREEMENT

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

Seller:

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

Buyer:

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

RECITALS

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

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

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

1. Sale of Assets

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

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

6B
9-17-24
BOT
Packet

2. Purchase Price

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

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

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

3. Closing

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

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

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

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

- a) \$15,000.00 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.

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

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

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

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

5. Disclaimer of Warranties

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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."

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

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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 September 2024, effective September __, 2024.

Seller:
Preston Family

By:
Its:

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

Buyer:
Town of Hermosa

By:
Its:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTEST:

LAND PURCHASE AGREEMENT

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

Seller:

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

Buyer:

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

RECITALS

WHEREAS, the Seller owns certain land currently located at:

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

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

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

1. Sale of Assets

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

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

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

3. Closing

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

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

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

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

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

4. Representations and Warranties

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

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

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

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

5. Disclaimer of Warranties

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

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

6. Indemnification

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

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

7. Governing Law

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

8. Dispute Resolution

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

9. Entire Agreement

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

10. Amendments

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

11. Severability

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

12. Construction

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

13. Binding Effect

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

14. Counterparts

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

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

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

Seller:
Preston Family

By:
Its:

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

Buyer:
Town of Hermosa

By:
Its:

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



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

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

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

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

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

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

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

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

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

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

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

- 1) **ROLL CALL:**
 - A. BOT Roll Call: Kramer, Ferguson, Koontz, Harris, Serviss
 - B. Acknowledgement of other Attendees
 - C. Pledge of Allegiance to be led by Kramer

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

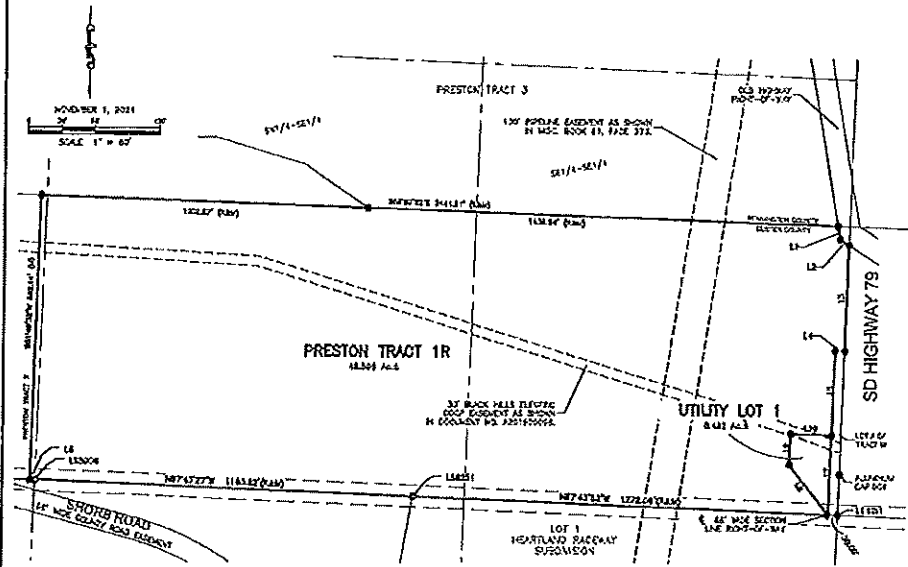
- 3) **CONFLICT OF INTEREST DECLARATION:**

- 4) **PLANNING & ZONING:**
 - A. 2024-43 Plat Application – Lone Coyote Subdivision Preston Tract 1R and Utility Lot 1
 - B. Plat filing fee

- 5) **ENGINEER:**
 - A. Work Authorization – Lone Coyote Sewer Extension in the amount of \$6,550.00

- 6) **ADJOURN:** Motion by _____; Second by _____ to adjourn the meeting at _____ P.M.

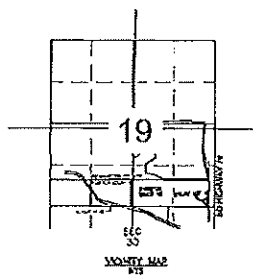
PLAT OF
LONE COYOTE SUBDIVISION
PRESTON TRACT 1R & UTILITY LOT 1
 (formerly Preston Tract 1 of Lone Coyote Subdivision)
 LOCATED IN SECTION 19, T2S, R8E, GHU, CLUSTER COUNTY, SOUTH DAKOTA



NOTES
 EXISTING AND NEW DRAINAGE EASEMENTS: 12' ON THE INTERIOR SIDES OF ALL LOT LINES NOT ADJACENT TO PAVED ROADS-OF-WAY.
 ANY MAJOR DRAINAGE EASEMENT SHOWN HEREON SHALL BE 100' WIDE OF ALL OBSTRUCTIONS INCLUDING BUT NOT LIMITED TO BUILDINGS, WALLS, FENCES, TREES AND SHRUBS. THESE EASEMENTS GRANT TO ALL PUBLIC AUTHORITIES THE RIGHT TO CONSTRUCT, MAINTAIN, REPAIR, AND REMOVE SUCH IMPROVEMENTS AND STRUCTURES AS IT DEEMS NECESSARY TO PREVENT DAMAGE FROM ANY SOURCE.
 BASIS OF BEARING: SOUTH DAKOTA STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD83(2011), DERIVED FROM CORS.
 NOTES: PRESTON TRACT 1R IS SITUATE IN S20, 31-2-51 AND 11-3-51, THE COORDINATES OF THE PROPERTY LOCATED WITHIN THIS PLAT SHALL BE RESPONSIBLE FOR FURNISHING ANY SURVEY OF THE STATE, FOLLOWING DISCREPANCIES, LOCATED ADJACENT TO OR WITHIN SUCH PROPERTY, CONFORM TO AND FULFILL ALL REGULATIONS OF THE SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES RELATING TO THE SAME.
EASEMENT SCHEDULE
 BASED ON THE FLOOD INSURANCE RATE MAP NUMBER 4410000000 (NOT PART), EFFECTIVE DATE JANUARY 4, 2012, INDICATES THE SUBJECT PROPERTY IS UNFIRM IN FIRM A.

- LEGEND**
 (1) Boundary and 5/8" note with survey cap marked 'Survey' = 1/8" = 1/16".
 (2) Boundary and Survey monument marked 'LS 1113', unless otherwise noted.
 (3) Boundary located by previous plat of description.
 (4) Boundary located in this survey.

Parcel Line Table			
Line #	Distance	Bearing	Notes
1113100	45.51	S09° 07' 11"E	
1113100	33.94	S09° 31' 11"E	
1113100	51.72	S09° 54' 53"W	
1113100	30.00	S09° 43' 58"W	
1113100	33.54	S10° 04' 53"W	
1113100	15.00	S09° 43' 07"W	
1113100	21.74	S09° 54' 53"W	
1113100	11.77	S09° 13' 24"W	
1113100	5.68	N01° 04' 57"E	
1113100	125.00	S09° 43' 53"E	



CERTIFICATE OF PREPARATION
 State of South Dakota
 County of Cluster
 S.S.
 We, the undersigned, do hereby certify that we are the owners of the land shown and described herein, that the survey was done at our request for the purpose indicated herein, that we do hereby certify the survey and this plat of said land, and that the boundaries of said land shall conform to all existing applicable zoning, subdivision, and other relevant laws and regulations.
 Any land shown on this plat is dedicated to public right-of-way is hereby dedicated to public use and public utility use and such, however, that such dedication shall not be construed to be a creation of the fee of said land.
 In witness whereof, I have set my hand and seal.
 DATED: Preston Family, Inc.
 BY: _____
 On this _____ day of _____, 20____, before me, a Notary Public, personally appeared _____, known to me to be the person described in the foregoing instrument and acknowledged to me that he signed the same.
 My commission expires: _____
CERTIFICATE OF NOTARY PUBLIC OFFICE
 I, _____, Notary Public for the State of South Dakota, do hereby certify that the foregoing instrument is a true and correct copy of the original signed by the _____ of _____, South Dakota, at a meeting held on the _____ day of _____, 20____.
NOTARIAL PUBLIC OFFICE
 I, _____, Director of Registration for Cluster County, do hereby certify that I have a copy of the above described plat in my office.
DIRECTOR OF REGISTRATION _____ DATE _____
CERTIFICATE OF COUNTY CLERK
 The function of these two and the requirements of the county as it relates to Cluster County records.
CLUSTER COUNTY NOTARY AUTHORITY _____ DATE _____



CERTIFICATE OF A SURVEYOR
 State of South Dakota
 County of Precinct
 S.S.
 I, _____, Registered Land Surveyor No. 1113 in the State of South Dakota, do hereby certify that at the request of the persons stated herein, I have surveyed the land and shown on the face of my knowledge and belief, the above plat is a representation of said survey, containing no reflection of fraudulent intent or other statements that are not known to me and not shown herein.
 In witness whereof, I have hereunto set my hand and seal.
 DATED: _____, Registered Land Surveyor _____ DATE _____
ACKNOWLEDGMENT OF SUNDAY SCHOOL
 Whereas, there has been presented to the Town Board of Precinct, South Dakota, the plat of the above described land, and it appearing to the Board that said plat conforms to the existing laws of said State, and that the survey and this plat conform to the public interest of the municipality, that all provisions of laws and regulations upon the land have been fully paid, and that said plat and the survey thereon have been recorded according to law, then therefore, BE IT RESOLVED, that said plat is hereby approved in all respects.
 Dated at Precinct, South Dakota, this _____ day of _____, 20____.
CERTIFICATE OF COUNTY TREASURER
 I, _____, Treasurer for Cluster County, do hereby certify that all taxes which are due upon the above described property have been fully paid according to the records of my office.
TREASURER _____ DATE _____
CERTIFICATE OF REGISTER OF DEEDS
 State of South Dakota
 County of Cluster
 S.S.
 That this _____ day of _____, 20____, at _____, of _____, S.D., to Book _____ of _____ Page _____
 REC'D BY: _____ FILE # _____
RECORD OF RECORD, CLUSTER COUNTY



EXHIBIT A

WORK AUTHORIZATION NO. 1

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

SCOPE OF SERVICES

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

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

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

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

FEE ESTIMATE

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

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

CLIENT

BY: _____
AUTHORIZED REPRESENTATIVE

PRINT NAME: _____

TITLE: _____

DATE: _____, 20____

ALFRED BENESCH & COMPANY

BY: Anthony Dirks
AUTHORIZED REPRESENTATIVE

PRINT NAME: Anthony Dirks

TITLE: Senior Vice President

DATE: November 5, 2024

BENESCH OFFICE: Lincoln

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

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

LAND PURCHASE AGREEMENT

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

Seller:

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

Buyer:

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

RECITALS

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

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

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

1. Sale of Assets

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

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

2. Purchase Price

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

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

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

3. Closing

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

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

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

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

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

4. Representations and Warranties

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

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

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

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

5. Disclaimer of Warranties

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

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

6. Indemnification

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

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

7. Governing Law

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

8. Dispute Resolution

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

9. Entire Agreement

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

10. Amendments

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

11. Severability

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

12. Construction

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

13. Binding Effect

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

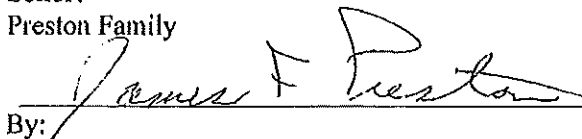
14. Counterparts

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

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

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

Seller:
Preston Family



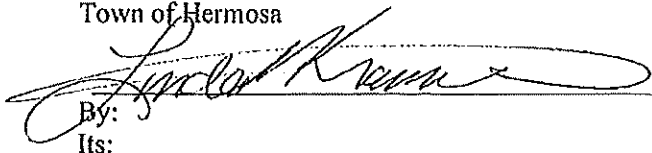
By:

Its:

Board Pres. & on +.

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

Buyer:
Town of Hermosa



By:

Its:



Southern Hills Law

Legal Solutions for the Black Hills

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

*Gina Ruggieri
Attorney at Law
Licensed in SD*

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

southernhillslaw@gmail.com

VIA EMAILED DELIVERY TO TOWN CLERK

Hermosa Town Board
230 Main St
Hermosa, SD 57744

February 17, 2026

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

Town of Hermosa Legal Opinion No: 2026-5

Dear Members of the Board:

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

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

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

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

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

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

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

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

Every municipality has the power:

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

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

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

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

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

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

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

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

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

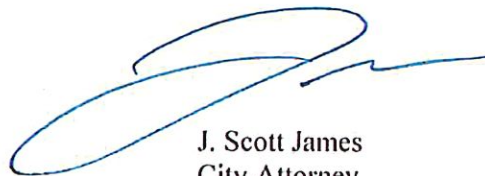
Secondly, the Town could take the position that the 2024 Board essentially already decided this, and that the 2024 agreement supersedes the 2021 agreement and that

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

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

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

Very Truly Yours,

A handwritten signature in blue ink, appearing to read 'J. Scott James', with a stylized flourish extending to the right.

J. Scott James
City Attorney
Hermosa, South Dakota

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April 14, 2026

VIA EMAIL ONLY

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

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

Dear Mr. James:

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

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

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

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

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

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

April 14, 2026

Page

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

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

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

Very truly yours,



Richard E. Huffman (reh@demjen.com)

DEMERSEMAN JENSEN

TELLINGHUISEN & HUFFMAN, LLP

REH:ned

Emails forwarded after this