

**HERMOSA TOWN BOARD  
WEDNESDAY, JULY 5, 2023  
REGULAR MEETING @ 6.00pm**

- 1) **ROLL CALL:**
  - A. BOT Roll Call: Styles, Henrichsen, Ferguson, Kramer, Holsworth
  - B. Acknowledgement of other Attendees
  - C. Pledge of Allegiance to be led by Styles
  
- 2) **PUBLIC HEARING:**
  - A. Transfer of a retail (on-off sale) malt beverage & SD farm wine license from Daniel C Martin to Philip Preston to operate within the municipality at Pop's Grocery, 30 N. Ferguson Street, G & G Sub - Lot 1 (Formerly Out lot E) IN SW4SE4 Sec 29 T2 R8, Hermosa, Custer County, South Dakota, 57744, for the licensing period ending June 30, 2024
  
- 3) **CALL FOR CHANGES:**
  - A. Review of current agenda items
  - B. Motion to accept the agenda as presented/amended
  
- 4) **CONSENT CALENDAR:**
  - A. Approval of the June 20th, 2023, Regular meeting minutes
  
- 5) **CONFLICT OF INTEREST DECLARATION**
  
- 6) **CLAIMS:**
  - A. Review payroll and claims
  - B. Motion to approve the claims as presented/amended
  
- 7) **LAW ENFORCEMENT/ ABATEMENTS/COMPLAINTS:**
  - A. Committee report
  - B. Custer County Log
  - C. Abatements  
Properties, Dumpster
  
- 8) **LEGAL:**
  - A. Engineer expense reimbursement.
  
- 9) **ENGINEER:**
  - A. Water Rehab Project (WRT System)
  - B. Hermosa Sidewalk Project
  - C. Sewer Project (Lagoon design & expansion)
  - D. Water/Sewer Facility Plans - pending  
Resolution(s) review  
DANR Award  
Bruels Email
  - E. Black Hills Council of Local Governments - pending
  - F. Town of Hermosa Water and Sewer Extension Project - pending
  - G. Hermosa Hills Drainage  
Town accept Marie Street-pending  
Town accept Walter Street-pending
  - H. Whitney Street Drainage – pending for monitoring
  - I. Facility Plan for Booster, Water Meters  
Possibly to add to USDA-pending
  - J. Rural Development  
Application pending
  
- 10) **PLANNING & ZONING**
  - A. Permit 2022-25 - REVISED- Digging/ROW-Sewer Connection- Parcels 009318 & 009319
  - B. 2023-06 – Commercial Remodeling Permit Application – 250 Main St. – Storage Loft – pending
  - C. ADA Compliance – Hermosa Community Center
  - D. 2023-18 – Manufactured Home Moving Permit Application – Walnut Grove Mobile Home Park – Lot #57
  - E. Vendors Application/Fireworks – Black Powder Fireworks – June 27 – July 5 at Hermosa Community Center

- 11) **PUBLIC WORKS**  
A. Committee Report  
B. Streets, Street Light Repairs, Water & Sewer Department Updates  
Trustee report on town lighting needs  
C. Agreement for performance of services of public works and town maintenance  
D. Chuck Irvine training expenses  
E. Walter street maintenance – add gravel
- 12) **FINANCE OFFICE:**  
A. Monthly financials.  
B. Department updates  
C. SDPAA renewal  
D. Transportation economic development grants  
E. Grant research  
F. 2024 Budget  
G. Pioneer and SDFIT account holders  
H. Additional Federal holidays  
I. Tax Levy Request  
J. 2021 Audit results – Audit engagement letter 2022  
K. Office Personnel
- 13) **OLD BUSINESS:**  
A. Annexation: Gumbo Lilly, Fairgrounds Place, McDermand Street  
B. Town Sign, pending  
C. Town Office: Deck Staining, pending  
D. Library: Deck Staining, pending  
E. Hermosa Connects  
F. Law enforcement contract  
G. Sidewalk extension. – from Ingalls Blvd  
H. Chicken ordinance - Backyard hen permit application form and fees
- 14) **NEW BUSINESS:**  
A. Agenda item - Public comment  
B. Sales tax on Copies/Fax/Notary  
C. Letter to CCC regarding ARPA grant use  
D. SBHW presentation  
E. Town Engineer - synopsis  
F. Motion made and seconded to appoint \_\_\_\_\_ as Liaison and \_\_\_\_\_ as alternate for Custer County Commissioners meetings.  
G. Town Hall locks and security system  
H. Contractors Licensing Ordinance – Chapter 112 – Review 112.03 - Requirement and Obligations
- 15) **ITEMS FROM CITIZENS:** No action will be taken by the board on any issue related without being first placed on a future agenda, by the board, to allow for proper notice. (Reserved time for public comment is 15 minutes). Meetings of the Board of Trustees are open to the public. The audience will be allowed to comment on specific agenda items during the time allotted on the agenda for those items, according to established procedures of the Board. This is a time for members of the public (citizens, business owners, and those living within one mile of the town limits) to express concerns or discuss issues having relevance to the town. Anyone wishing to address the Town Board during this time shall be asked to stand and identify themselves after being recognized by the Board President.
- 16) **TRUSTEE INPUT:**
- 17) **EXECUTIVE SESSION:**  
A. Motion to enter Executive Session allowable by SDCL 1-25-2.1 – Legal/Personnel/Contract  
B. Motion to exit out of Executive Session  
C. Motions resulting from Executive Session
- 18) **ADJOURN:** Motion by \_\_\_\_\_; Second by \_\_\_\_\_ to adjourn the meeting at \_\_\_\_\_ PM.

**A. CORPORATION, LLC OR SOLE PROPRIETOR NAME AND MAILING ADDRESS**

|                                |                     |                                  |                  |
|--------------------------------|---------------------|----------------------------------|------------------|
| Name <u>Philip Preston LLC</u> |                     | Phone Number <u>605-863-1170</u> |                  |
| Address <u>14092 SD Hwy 40</u> | City <u>Hermosa</u> | State <u>SD</u>                  | Zip <u>57744</u> |

**B. DOING BUSINESS AS NAME AND PHYSICAL ADDRESS** 2 A.

|                                  |                     |                                  |                  |
|----------------------------------|---------------------|----------------------------------|------------------|
| Name <u>Pop's Grocery Shoppe</u> |                     | Phone Number <u>605-255-5977</u> |                  |
| Address <u>30 W. Ferguson St</u> | City <u>Hermosa</u> | State <u>SD</u>                  | Zip <u>57744</u> |

**C. INDICATE CLASS OF LICENSE BEING APPLIED FOR**  
 (Submit separate application for each class of license).

- Retail (on-sale) Liquor
- Retail (on-sale) Liquor - Restaurant
- Convention Center (on-sale) Liquor
- Package (off-sale) Liquor
- Retail (on-off sale) Wine and Cider
- Retail (on-off sale) Malt Beverage & SD Farm Wine
- Package Delivery
- Hunting Preserve
- Other \_\_\_\_\_

|  |  |
|--|--|
| Is this license in active use?   | <input checked="" type="checkbox"/> YES [ ] NO     |
| Do you or any officers, directors, partners, or stockholders hold any other alcohol retail, manufacturing, or wholesaler licenses? (If yes, please list on additional sheet) | [ ] YES [ <input checked="" type="checkbox"/> ] NO |

|  |   |
|--|---|
| Is place of business located in a municipality?                          | <input checked="" type="checkbox"/> YES [ ] NO    |
| County   | <u>Custer</u>                                     |
| Do you own or lease this property?                                       | [ ] OWN <input checked="" type="checkbox"/> LEASE |
| Are real property taxes paid to date?                                    | <input checked="" type="checkbox"/> YES [ ] NO    |
| Are you of good moral character having never been convicted of a felony? | <input checked="" type="checkbox"/> YES [ ] NO    |

**D. LEGAL DESCRIPTION OF LICENSED PREMISE:**

Legal Description:  
Lot 1 (Formerly Outlet E) IN SW4SE4 Sec 29 T28 R8

- E. State Sales Tax Number 1040-1405-ST
- F. [ ] New License  Transfer? (\$150) [ ] Re-issuance

**G. CERTIFICATE:** The undersigned applicant certifies under the penalties of perjury that all statements provided herein are correct; that the said applicant complies with all of the statutory requirements for the class of license being applied in SDCL 35-2-2.1 and agrees this application shall constitute a contract between applicant and the State of South Dakota entitling the same or any peace officers to inspect the premises, books and records at any time for the purpose of enforcing the provisions of Title 35 SDCL, as amended.

|                       |                                  |                                    |
|-----------------------|----------------------------------|------------------------------------|
| Date <u>6-22-2023</u> | Print Name <u>Philip Preston</u> | Signature <u>Philip Y. Preston</u> |
|-----------------------|----------------------------------|------------------------------------|

**H. APPROVAL OF LOCAL GOVERNING BODY** Notice of hearing was published on \_\_\_\_\_, Public hearing on the application was held \_\_\_\_\_, not less than SEVEN (7) days after official publication. The governing body by majority vote recommends the approval and granting of this license and certifies that requirements as to location and suitability of premises and applicant have been reviewed and conform to the requirements of local and South Dakota law.

**FOR LOCAL GOVERNMENT USE**

|                          |      |
|--------------------------|------|
| (Seal) Mayor or Chairman | Date |
|                          |      |

Renewal—no public hearing held: [ ]  
 Establishment is ineligible for video lottery: [ ]  
 Amount of fee collected with application: \$ \_\_\_\_\_  
 Amount of fee retained: \$ \_\_\_\_\_  
 Forwarded with application: \$ \_\_\_\_\_

If disapproved, endorse reason thereon and return to applicant

**Uniform Alcoholic Beverage License Application**  
**(For corporate/partnership/LP/LLC applicants)**

|   |                    |   |
|---|--------------------|---|
| Name of corporation/partnership/LP/LLC<br><i>Philip Preston LLC</i>   |                    |   |
| Address of office and principal place of business of corporation/partnership/LP/LLC<br><i>30 W. Ferguson St.</i>                  |                    |   |
| City<br><i>Hermosa</i>  | State<br><i>SD</i> | Zip Code<br><i>57744</i>  |
| Are all managing officers of this corporation/partnership/LP/LLC of good moral character having never been convicted of a felony? |                    | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |

Name, title of office, occupation, and address of each of the officers/owners of the corporation, partnership, LP or LLC:

| Name                  | Office               | Address                | Occupation                   |
|-----------------------|----------------------|------------------------|------------------------------|
| <i>Philip Preston</i> | <i>Manager/Owner</i> | <i>14092 SD Hwy 40</i> | <i>Grocery Store Manager</i> |
|                       |                      |                        |                              |
|                       |                      |                        |                              |
|                       |                      |                        |                              |

Name of any officers, directors, partners, or stockholders of applicant having a financial interest or capital stock in any other alcoholic beverage license:

| Name | Type of License | License # | Financial Interest Held | Address of Business Location |
|------|-----------------|-----------|-------------------------|------------------------------|
|      |                 |           |                         |                              |
|      |                 |           |                         |                              |
|      |                 |           |                         |                              |
|      |                 |           |                         |                              |

Where and with whom are all company records kept, such as charter, by-laws, minutes, accounts, notes payable, and notes and accounts receivable, etc.?

|   |                       |
|---|-----------------------|
| <i>30 W. Ferguson St. Hermosa, SD 57744</i> | <i>Philip Preston</i> |
|---|-----------------------|

**With signature the applicant agrees to the following:**

That the applicant company will comply with all provisions of ARSD chapter No. 64:75:02 of the Department of Revenue, relating to the transfer of stock and prior approval of the transfer of such stock by the Secretary of Revenue and violation of any of the provisions of said regulation or failure to comply therewith, whether by the undersigned corporation, partnership/LP/LLC or by any stockholder thereof, or by anyone interested in said company, shall constitute cause for revocation or suspension of any license issued pursuant to and in reliance on this application, or for refusal to renew such license upon expiration thereof.

We the undersigned officers and directors of the applicant company acknowledge that the within supplement application form is true and correct in every respect and that there exists no financial arrangement concerning this or any other alcoholic beverage license that that expressly set forth above. If company stock is to be transferred we ask for approval of such voluntary stock transfer.

|   |                        |
|---|------------------------|
| Signature of Authorized Officer/Director/Partner<br><i>Philip Preston</i> | Date<br><i>6-22-23</i> |
|---|------------------------|

A F F I D A V I T

STATE OF SOUTH DAKOTA )  
 ) SS  
COUNTY OF CUSTER

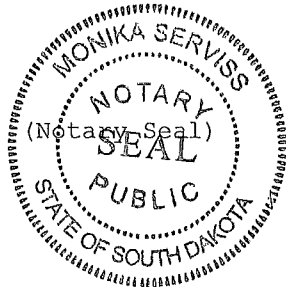
DANIEL C MARTIN being first duly sworn on oath deposes and says: That on the 3 day of JULY 2023 he was the owner of the license/business/stock of POPS GROCERY SHOPPE situated on (legal description) 30 N. FERGUSON ST DUB LOT 1 in the city/county of CUSTER HANCOCK South Dakota and that on the said date he made a transfer/sale of said license operated under an alcoholic beverage license to Philip Preston of Hermosa  South Dakota.

Daniel C Martin (owner)  
(signature)

\_\_\_\_\_  
(signature) (owner)

Subscribed and sworn to before me this 16 day of June 2023.

Monika Serviss (Notary Public)  
Commission Expires: 01/26/29



4 A.

**HERMOSA TOWN BOARD  
TUESDAY, JUNE 20, 2023  
REGULAR MEETING @ 6.00pm**

ROLL CALL: Holsworth called the meeting to order on Tuesday, June 20<sup>th</sup> at 6.05 pm with the following members present: Henrichsen, Holsworth, Kramer, Schumack. Also present: Jerry Styles, Donna Ferguson, Kent Hagg, Chuck Ferguson, Mitch Johnson and citizens. Pledge of Allegiance led by Dan Holsworth.

CALL FOR CHANGES: Changes made to add items to the agenda: Conflict of interest declaration to follow after Claims, Liaison assignment for Custer County Commissioners meetings under Assignment of Subcommittees section, public meeting room microphones-pricing as 15) I. item, also move item 11) Legal before adjournment of Old Board members and add Kent Hagg comments under this section. Motion made, seconded to approve agenda as amended; Vote: unanimous, motion carried.

CONSENT CALENDAR: Motion made, seconded to approve June 5<sup>th</sup>, 2023 regular meeting minutes as presented; Vote: unanimous, motion carried. Motion made, seconded to approve June 12<sup>th</sup> 2023 Special Meeting minutes as presented; Vote: abstained by Kramer, 4 ayes, motion carried.

CLAIMS Chuck Irvine Training expense June 2023 \$105.00; Custer County Sheriff: Law enforcement contract 6666.67; Flowers Plus: 5 Potted planters- Town office \$94.05; Golden West Technologies: Monthly service-June23 \$563.50; Hagg & Hagg LLP: DANR Issue/Legal Water/Sewer \$9,641.90; Monika Serviss: Annual FO school travel expense \$552.10; Sanders Sanitation: Monthly sanitation service 05/23 \$3,873.87; Southern Hills Publishing: Legal/Election notices \$1,281.42. Accounts Payable Total: \$22,778.51; Payroll related: 6/15/23 Financial administration \$1,920.49, Water \$157.94; Sewer \$263.24; Promoting City/ BBB \$52.64; Health Pool of SD: FO/Admin single health/life 06/23 \$1,835.74; EFTPS-Electronic Federal Tax: FED/FICA TAX \$604.03; Payroll Total: \$4,834.08. \*REPORT TOTAL \* \$27,612.59. GENERAL \$26,887.87; BBB GROSS RECEIPTS TAX \$68.83; WATER \$399.30; SEWER \$256.59. Discussion held for Hagg & Hagg invoice. Motion made by Kramer, seconded by Schumack to approve claims list as presented; Vote: unanimous, motion carried.

CONFLICT OF INTEREST DECLARATION: None

OLD BUSINESS: Annexation: Gumbo Lilly, Fairgrounds Place, McDermand Street-pending. Town Sign- pending. Town Office and Library deck Staining-pending. Hermosa connects- minutes included in the packet. Farmer's Market & Vendor Fair: Saturday June 24<sup>th</sup> with over 50 vendors. Information about Hermosa Connects group and upcoming events can be found at [www.hermosaconnects.com](http://www.hermosaconnects.com) website as well as Facebook page. Law enforcement contract – will be discussed at Custer County Commissioners meeting on Wednesday 06/21/2023 – pending. Town interest in hiring a police officer has been advertised and one interest has been received, will discuss setting up an interview with Law enforcement committee. Sidewalk extension: Motion made by Holsworth, seconded by Henrichsen to accept the sidewalk extension project proposed and costs covered by DOT 100%, from Ingalls Blvd. to Senior center/American legion location; Vote: Unanimous, motion carried.

LEGAL: Update on legal side of Engineering projects by Kent Hagg. Additional requested testing for ammonia levels in the sewer delayed the approval process in which the town is not meeting settlement agreement with DANR dates for lagoon expansion project. Mr. Hagg continues monitoring the situation. Citizens voiced concerns about the Engineer for the Lagoon Design not meeting the Settlement Agreement deadlines for the project and the fines that are occurring as a result of the noncompliance

ADJOURN Motion made by Schumack, seconded by Kramer to adjourn the meeting with the old board members at 6.44 pm; Vote Unanimous, motion carried.

BOARD OF TRUSTEES Oath of Office by Donna Ferguson, Jerry Styles and Vicki Henrichsen. Certificate of election: THIS IS TO CERTIFY that on the 6<sup>th</sup> day of June 2023, at the municipal election held throughout the city of Hermosa Jerry Styles and Vicki Henrichsen was duly elected by the qualified voters of the city of Hermosa to the office of Trustee for a term of 3 year(s) beginning June 20, 2023. Donna Ferguson was duly elected by the qualified voters of the city of Hermosa to the office of Trustee for a term of 2 year beginning June 20, 2023

RECOMMENCEMENT WITH NEW BOARD OF TRUSTEES Holsworth reconvened the meeting at 6:53 p.m. with the following members present: Henrichsen, Styles, Ferguson, Holsworth and Kramer. Officers presented and signed Policy 1.1, Trustee & Board Conduct and Obligations 2023.

2023-2024 APPOINTMENTS:

PRESIDENT: Motion made by Henrichsen and seconded by Ferguson to nominate Jerry Styles as Town Board President for one year term. Vote: unanimous; motion carried.

VICE PRESIDENT: Motion made by Ferguson and seconded by Styles to nominate Vicki Henrichsen as Town Board Vice President for one year term. Vote: unanimous; motion carried.

Assignment of Subcommittees:

Motion made and seconded to appoint Henrichsen as Chairman and Kramer as Vice Chair of the Water Committee; Vote: Unanimous, motion carried.

Motion made and seconded to appoint Kramer as Chairman and Holsworth as Vice Chair of the Sewer Committee; Vote: Unanimous, motion carried.

Motion made and seconded to appoint Holsworth as Chairman and Styles as Vice Chair of the Streets Committee; Vote: Unanimous, motion carried.

Motion made and seconded to appoint Ferguson as Chairman and Styles as Vice Chair of the Law Enforcement ; Vote: Unanimous, motion carried.

Motion made and seconded to appoint Styles as Chairman and Henrichsen as Vice Chair of the Finance Committee; Vote: Unanimous, motion carried.

Motion made, seconded to appoint Styles as Liaison and Henrichsen as an alternate for The Planning and Zoning board meetings for one year; Vote: Unanimous, motion carried.

Motion made, seconded to appoint Kramer as Liaison and Henrichsen as an alternate for Custer County Commissioners meetings for one year; Vote: Unanimous, motion carried.

Motion made and seconded to appoint Mitch Johnson as town attorney valid through June 18, 2024; Vote; Unanimous, motion carried.

Oath of Office by Mitch Johnson, Town Attorney. Motion made and seconded to appoint Elmer Claycomb as floodplain administrator valid through June 18, 2024; vote; Unanimous, motion carried. Oath of Office by Elmer Claycomb, Floodplain Administrator. Motion made and seconded to allow Monika Serviss to take an Oath of Office as Finance officer, hired employee for the Town of Hermosa; Vote; Unanimous, motion carried. Oath of Office by Monika Serviss.

LAW ENFORCEMENT/ ABATEMENTS/COMPLAINTS: May's Custer County Log included in the meeting packet. Abatements:

Motion made, seconded to appoint the Chairman of Law enforcement, Donna Ferguson, to be the head of abatements and work together with Linda Kramer; Vote: Unanimous, motion carried. Linda Kramer and Jerry Styles to attend Custer County Commissioners meeting on 06/21/2023.

ENGINEER: Water Rehab Project (WRT System)- designs submitted June 13<sup>th</sup> to DANR-pending. Hermosa Sidewalk Project-projected start date in August and completion in October of 2023-pending. Sewer Project (Lagoon design & expansion) –plans resubmitted on June 6th to DANR for review and approval-pending. Motion made, seconded to leave Water/Sewer Facility Plans as pending; Vote: Unanimous, motion carried. Black Hills Council of Local Governments – pending. Town of Hermosa Water and sewer extension project-pending. Motion made, seconded to allow Elmer Claycomb to review last water/sewer extension design denial letter sent by DANR and request Mr. Claycomb and ACES engineering to attend next BOT meeting to discuss possible solutions; Vote: Unanimous, motion carried. Hermosa Hills drainage-awaiting final walk-through. Whitney street drainage- pending for purposes of monitoring the situation. Facility plans for booster, water meters and Rural development - pending. Motion made, seconded to remove item SDARWS Report, Pending technician assistance, update on timeline and Camera drainage-awaiting meeting with school board items under 12) H. section from the agenda; Vote: Unanimous, motion carried. Motion made by Holsworth, seconded by Henrichsen to continue using ACES engineering on the 3 active projects: WRT system, Sewer project (Lagoon expansion) and Water/Sewer extension to the North project, but any future projects to be advertised for bids and directed to a different Engineering company; Vote: Unanimous, motion carried.

PLANNING & ZONING: Review of P&Z 06-13-2023 minutes. Permit 2022-25-Digging/Row– pending. Permit 2023-06–commercial remodeling permit application – pending. Motion made, seconded to remove item 13) D. Permits for Custer County Fairgrounds from the agenda; Vote: Unanimous, motion carried. ADA compliance – Hermosa Community Center: Motion made, seconded to allow Town attorney to review the rules and regulations for enforcing ADA compliance onto local businesses; Vote: 1 Nay, 4 Ayes, motion carried. Motion made, seconded to leave ADA compliance item as pending until the Town Attorney reviews the information and can advise the board on what actions need to be taken; Vote: Unanimous, motion carried. Motion made, seconded to approve 2023-18 – Manufactured Home Moving Permit Application – Walnut Grove Mobile Home Park – Lot #57; Vote: Unanimous, motion carried. Motion made, seconded to approve Vendors Application/Fireworks – Black Powder Fireworks – June 27 – July 5 at Hermosa Community Center for a fee of \$150 due 06/20/2023 and additional 5% fee from the gross sales amount after July 5th; Vote: Unanimous, motion carried. Contractor's licensing ordinance: discussion, Motion made, seconded to allow Mitch Johnson to review the changes considered and advice the Town Board on further actions; Vote: Unanimous, motion carried.

PUBLIC WORKS: Streets, streetlights, water, sewer update report by Chuck Ferguson: Considering getting an additional water well pump to have for emergencies, additional samples for sewer/lagoon project to detect the source of high ammonia levels has been performed-pending results. Public works agreement – pending. Chuck Irvine's training expenses included in the Claims. Stop sign has been moved. Motion made, seconded to remove section: move "Stop" sign request, from the agenda item 14) E and leave section "add gravel"; Vote: Unanimous, motion carried.

FINANCE OFFICE: Monthly financials will be presented at the next BOT meeting. Department updates: FO school was very informative. Motion made, seconded to choose Battle Mountain Humane society as a Black Hills nonprofit organization for 20% donation from Custer County Chronicle subscription fee; Vote: 1 Nay, 4 Ayes, motion carried. Custer County Sheriff informed about upcoming events in Town. SDPAA renewal – pending. Grant research – further research for Community forestry grant. 2024 Budget – pending. State sales tax changing from 4.5% to 4.2%. Microphone pricing – pending research.

NEW BUSINESS: Agenda – public comments, discussion held, changes accepted. Motion made, seconded to approve amended 2023 Policy #2 Fees & Payments schedule showing Sales tax for Copies/fax and Notary charges; Vote: Unanimous, motion carried. Motion made, seconded for Jerry Styles, Donna Ferguson, Vicki Henrichsen and Linda Kramer to attend 2023 Elected Officials Workshop on July 26<sup>th</sup>, 2023 in Pierre; Vote: Unanimous, motion carried. Motion made, seconded to leave chicken ordinance/permit application form as pending and forward it to the next P & Z meeting for review and discussion; Vote: 1 Nay, 4 Ayes, motion carried. Motion made, seconded to renew the MAP GIS contract including Editors license of \$385.00 and Hosting fee of \$100; Vote: Unanimous, motion carried. Motion made, seconded to remove items 15) F. and H. also items 16) B. C. and E. from the agenda; Vote: Unanimous, motion carried.

ITEMS FROM CITIZENS: Audience had input.

EXECUTIVE SESSION: Motion made by Kramer, seconded by Holsworth at 9.46 pm for personnel issues; Vote: Linda Aye, Holsworth Aye, Henrichsen Nay, Ferguson Nay, Styles Nay, motion failed. No Executive session.

TRUSTEE INPUT: Welcome to new board members. Good meeting.

ADJOURN: Motion made, seconded to adjourn the meeting at 9.51 pm; Vote: Unanimous, motion carried.

ATTEST:

\_\_\_\_\_  
Jerry Styles, Town Board President

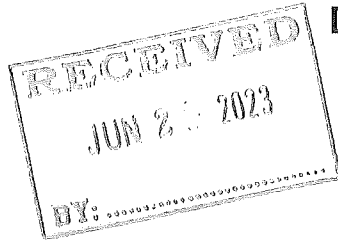
\_\_\_\_\_  
Monika Serviss, Finance Officer

Published once at the approximate cost of \_\_

6 A.

## Claims for approval 06-20-2023

| VENDOR                          | REFERENCE                             | AMOUNT              |
|---------------------------------|---------------------------------------|---------------------|
| A & B BUSINESS EQUIPMENT INC    | MONTHLY PRINTER/FAX FEE               | \$ 569.78           |
| AMERICAN LEGAL PUBLISHING Corp  | Internet Renewal:07/23-07/24          | \$ 450.00           |
| BLACK HILLS ELECTRIC COOP.,Inc  | Utilities-Electric 06/2023            | \$ 3,075.37         |
| CHUCK FERGUSON                  | Monthly agreement 06/2023             | \$ 2,600.00         |
|                                 | Sewer manhole tests-126 samples       | \$ 875.00           |
| DANR                            | Violation of settlement agreement     | \$ 2,500.00         |
| Independent audit services      | Audit-Final for 2021                  | \$ 1,250.00         |
| JOHNSON LAW OFFICE              | Ordinances, e-mail response, BOT meet | \$ 1,909.50         |
| SD MUNICIPAL LEAGUE             | Elected officials workshop            | \$ 150.00           |
| Southern Hills Publishing       | Annual subscription renewal           | \$ 50.00            |
| Temperature technology Inc.     | Water pressure transducer repair      | \$ 763.21           |
| VAN DIEST SUPPLY COMPANY        | Mosquito control supplies             | \$ 1,972.47         |
| Vanway trophy & award           | Name plates: Styles, Ferguson         | \$ 17.50            |
| YESCO Rapid City                | Street lights, new fixture            | \$ 367.51           |
|                                 |                                       |                     |
| <b>Accounts Payable Total</b>   |                                       | <b>\$ 16,550.34</b> |
|                                 |                                       |                     |
| <b>Payroll Paid On: 6/30/23</b> | Legislative                           | \$ 973.36           |
|                                 | Financial administration              | \$ 1,916.89         |
|                                 | Gen. Gov't buidings                   | \$ 103.89           |
|                                 | Water                                 | \$ 366.98           |
|                                 | Sewer                                 | \$ 156.96           |
|                                 | Planing/Zoning                        | \$ 535.62           |
|                                 | Promoting City/ BBB                   | \$ 52.32            |
| EFTPS-Electronic Federal Tax    | FED/FICA TAX                          | \$ 962.43           |
| HEALTH POOL OF SOUTH DAKOTA     | Admin single health 07/23             | \$ 1,835.74         |
| SOUTH DAKOTA RETIREMENT SYSTEM  | SDRS                                  | \$ 709.38           |
| <b>Payroll Total</b>            |                                       | <b>\$ 7,613.57</b>  |
|                                 |                                       |                     |
| <b>* REPORT TOTAL *</b>         |                                       | <b>\$ 24,163.91</b> |
| GENERAL                         |                                       | \$ 13,876.34        |
| BBB GROSS RECIPITS TAX          |                                       | \$ 296.34           |
| WATER                           |                                       | \$ 4,412.88         |
| SEWER                           |                                       | \$ 5,578.35         |



DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES

JOE FOSS BUILDING  
523 E CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

9 A.

June 26, 2023

President Jerry Styles  
Town of Hermosa  
PO Box 298  
Hermosa, SD 57744-0298

RE: Hermosa – Proposed WRT Water Treatment System (23-125)

Dear Mr. Styles:

The Department of Agriculture and Natural Resources (DANR) received one electronic copy of the Town of Hermosa Water Treatment System project in Hermosa, South Dakota on June 12, 2023. The department has reviewed the submitted plans and specifications and is requiring more information before an approval can be granted.

1. The submittal did not contain any specifications for any of the ancillary piping associated with connecting the well and pumps to the WRT system. **Please provide specifications for materials and installation of these items.**
2. The submitted plans did not show how the WRT system was going to be connected to the existing plumbing within the pumphouse. At a minimum, the plans need to show details of the overall pipe layout, location of sampling taps and location of chlorine injection. **Please revise the plan sheets and/or details and submit for approval.**

We look forward to receiving revised plans and specifications for approval. If you have any specific questions on what else is needed for approval, please contact me.

Sincerely,

Mark McIntire, P.E.  
Natural Resources Engineer  
Drinking Water Program  
(605) 773-3351

Cc: Leah Berg, PE – Affordably Creative Engineering Services, Inc., 324 Saint Joseph Street, Suite 200, Rapid City, SD 57701

9 B

**From:** Noem, Jay  
**Sent:** Tuesday, June 27, 2023 12:51 PM  
**To:** Gran, Logan; Monika Serviss  
**Cc:** Noem, Jay  
**Subject:** RE: 07rk - Hermosa Sidewalk Replacement Tentative Start Date

Good afternoon!

I just got a call from TruForm Construction and they would like to have the precon here in Custer on July 5<sup>th</sup> (next week) at 1 pm. Work to begin possibly the same day. I will send out an invite to the meeting also.

Thanks - Jay

**From:** Noem, Jay <[Jay.Noem@state.sd.us](mailto:Jay.Noem@state.sd.us)>  
**Sent:** Friday, June 16, 2023 10:03 AM  
**To:** Gran, Logan <[Logan.Gran@state.sd.us](mailto:Logan.Gran@state.sd.us)>; [monika@hermosasd.com](mailto:monika@hermosasd.com)  
**Cc:** Noem, Jay <[Jay.Noem@state.sd.us](mailto:Jay.Noem@state.sd.us)>  
**Subject:** 07rk - Hermosa Sidewalk Replacement Tentative Start Date

Good morning Logan!

In Red below is what I received from Chris Garrigan with TruForm Construction.

Don't hold me to this.... Looking roughly an August start and October completion. Would be nice to start earlier if possible.

If I hear any updates I will forward along to you and Monika.

Thank you,



**JAY NOEM**  
**PROJECT MANAGER**  
**SOUTH DAKOTA DEPARTMENT OF**  
**TRANSPORTATION**  
**CUSTER AREA DOT**  
**PO BOX 431**  
**CUSTER, SD 57730**  
**O: 605-673-4948 | C: 605-440-1220**  
**DOT.SD.GOV**

**From:** Gran, Logan <[Logan.Gran@state.sd.us](mailto:Logan.Gran@state.sd.us)>  
**Sent:** Friday, June 16, 2023 9:42 AM

9c.



**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 E CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

June 23, 2023

Re: CWSRF, Town of Hermosa  
C461278-02 – Lagoon Expansion Project

Jerry Styles, Board President  
Town of Hermosa  
PO Box 298  
Hermosa, SD 57744

Dear Mr. Styles:

The Department of Agriculture and Natural Resources received a revised set of electronic set of plans and specifications for the Lagoon Expansion project for the Town of Hermosa on June 6, 2023. The department reviewed the plans and specifications the following information must be submitted to prior to the department approving the plans and specifications:

**Specifications**

1. In Article 8.01 or the Instructions to Bidders, please specify that the certified check is in the amount 5% or 10% bid bond. Remove reference to the certified check being in the amount of 10%.
2. Article 27.03 A. of the Instructions to Bidders should read “DBE/MBE – 1.0%”
3. In Article 27.04 of the Instructions to Bidders, change the bolded “shall” to “may”.
4. Please fill in the county on page EEO-1 of the SRF General Conditions.
5. The “General Notes,” “Material Testing,” and “Bentonite Liner” specifications on general notes sheet 2.0 do not include enough information to meet the requirements of Chapter 4 Parts D and E of the department’s Recommended Design Criteria Manual, Wastewater Collection and Treatment Facilities. Revised plans and specifications for this project shall include information on pond construction; acceptable soils for the pond bottom and embankments; and an acceptable testing program and minimum test requirements for the pond floor and embankments. The revised specifications must meet the requirements of the departments design criteria and any deviation from the design criteria must include justification.
6. The general notes indicate no geotechnical investigation was conducted for this project. The department’s design criteria requires soil boring information and results of

percolation, porosity, or permeability tests, as these are used to select an acceptable location for a wastewater pond. Not conducting a subsurface soil exploration program may expose the town to significant risk in costs due to unexpected subsurface soil conditions that may preclude pond construction at a chosen location.

For questions or clarifications on any of the above listed comments on specifications, please contact Abbey Larson at [Abbey.Larson@state.sd.us](mailto:Abbey.Larson@state.sd.us) or Dan Gerhardt at [Dan.Gerhardt@state.sd.us](mailto:Dan.Gerhardt@state.sd.us). Please revise the plans and specifications and upload the revised set on the DANR Sharepoint site using the original link you were provided.

**Plans**

Using the department’s *Recommended Design Criteria Manual, Wastewater Collection and Treatment Facilities*, the lagoon system design will meet the hydraulic and organic capacity for the Town of Hermosa’s current needs. Based on standard wastewater flow rates (75 gallons per day per capita), organic loading (0.2 pounds BOD per day per capita), and the required 210 storage days required for land application, the proposed design for the Town of Hermosa’s Lagoon Expansion project has the capacity to support a population equivalent of 519 people.

**Hydraulic Capacity**

|                       | <b>Total Operating Volume</b> | <b>Total Storage Volume</b> | <b>Storage Time</b> | <b>Maximum Influent Flow Rate*</b> | <b>Population Equivalent</b> |
|-----------------------|-------------------------------|-----------------------------|---------------------|------------------------------------|------------------------------|
| Hermosa Lagoon System | 11.143 MG                     | 6.714 MG                    | 210 days            | 38,958 gpd                         | 519                          |

\* Maximum Influent Flow Rate= Influent + I/I + Precipitation – Allowable Seepage

**Organic Capacity**

|                       | <b>Allowable Primary Cell Loading†</b> | <b>Allowable System Loading‡</b> | <b>Most Restrictive</b> | <b>Population Equivalent</b> |
|-----------------------|--|----------------------------------|-------------------------|------------------------------|
| Hermosa Lagoon System | 114.6 lb. BOD/day                      | 138.4 lb. BOD/day                | Primary                 | 573                          |

† Loading to the primary cell cannot exceed 30 lb. BOD/acre/day

‡ Loading to the entire system cannot exceed 20 lb. BOD/acre/day

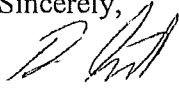
For questions or clarifications on any of the above listed comments on specifications, please contact Tina McFarling at [Tina.McFarling@state.sd.us](mailto:Tina.McFarling@state.sd.us).

Our review is primarily to determine compliance with minimum sanitary engineering requirements and does not cover items, such as, quality of material, structural soundness, electrical and mechanical design features. Approval of the plans, specifications and addenda does

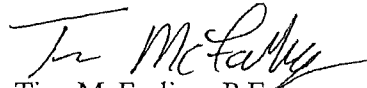
*Mr. Jerry Styles*  
*June 23, 2023*  
*Page 3 of 3*

not release the applicant from the responsibility that the project will be an operable facility and compliant with the Town's Surface Water Discharge Permit when construction is completed.

Sincerely,



Dan Gerhardt, P.E.  
Natural Resources Engineer  
Environmental Funding Program  
(605) 773-4216



Tina McFarling, P.E.  
Administrator  
Environmental Funding Program  
(605) 773-4216

cc: Bill Lass, Black Hills Council of Local Governments, Rapid City  
Leah Berg, P.E., ACES



## MEMORANDUM

PROJECT: CWSRF, Town of Hermosa C461278-02  
Lagoon Expansion Project  
LOCATION: Hermosa, South Dakota  
DATE: June 29, 2023  
TOPIC: Project review Comments and Responses

This Memorandum shall outline each Review Comment received and shall provide the response, action, and/or request. Note, some comments received have already been received previously and have been addressed as requested previously. It is also unknown why additional comments are being sent that have not been sent on previous reviews being completed by SDDANR.

### Specifications

1. In Article 8.01 or the Instructions to Bidders, please specify that the certified check is in the amount 5% or 10% bid bond. Remove reference to the certified check being in the amount of 10%.  
*Response: Information has been updated to Article 8.01 in "Instructions to Bidders"*
2. Article 27.03 A. of the Instructions to Bidders should read "DBE/MBE- 1.0%"  
*Response: Information has been updated in "Instructions to Bidders"*
3. In Article 27.04 of the Instructions to Bidders, change the bolded "shall" to "may".  
*Response: Information has been updated in "Instructions to Bidders"*
4. Please fill in the county on page EEO-I of the SRF General Conditions.  
*Response: Information has been updated in "SRF General Conditions"*

5. The "General Notes," "Material Testing," and "Bentonite Liner" specifications on general notes sheet 2.0 do not include enough information to meet the requirements of Chapter 4 Parts D and E of the department's Recommended Design Criteria Manual, Wastewater Collection and Treatment Facilities. Revised plans and specifications for this project shall include information on pond construction; acceptable soils for the pond bottom and embankments; and an acceptable testing program and minimum test requirements for the pond floor and embankments. The revised specifications must meet the requirements of the department's design criteria and any deviation from the design criteria must include justification.

*Response: Additional information has been provided within the following sections "Material Testing", "Bentonite Liner", and "Phasing and by-pass Pumping". Information on pond and embankment constructions has been provided as well. These additions address the acceptable soils, testing program, and minimum test requirements for the pond bottom and embankment.*

6. The general notes indicate no geotechnical investigation was conducted for this project. The department's design criteria require soil boring information and results of percolation, porosity, or permeability tests, as these are used to select an acceptable location for a wastewater pond. Not conducting a subsurface soil exploration program may expose the town to significant risk in costs due to unexpected subsurface soil conditions that may preclude pond construction at a chosen location.

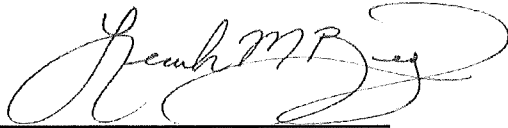
*Response: The project does not include selecting a new location. The system is existing and the project includes expanding the existing system in the current location. There are no site conditions that would indicate that there are issues with the current system's subsurface soils and therefore the Town of Hermosa has conducted onsite exploration with a backhoe through the public works contractor. The results of the subsurface exploration did not indicate any changes in soil conditions, unexpected items or groundwater being present to the depth of excavation.*

Previous comments from SDDANR expressed concerns with the elevated ammonia levels reported by the Town of Hermosa. The Town had implemented a testing program with the intent of tracking the source of the ammonia along the collection system and gaining more data at the lagoon manhole to develop a base average. The results of the tests are included with this Memorandum. All test data has also been charted in order to review a visual representation of the data/results, See

Figures 1 & 2. The average of the lagoon manhole over the testing program are shown on Figure 2. More results over a longer testing duration will likely deliver a better or more accurate account of the values.

With the results available, the results continue to reflect unanticipated elevated ammonia levels. However, even with the current elevated levels the historical effluent test results do not continue to reflect the elevated levels. This means that the current system does treat the ammonia component sufficiently. The proposed system shall be more effective and efficient in treatment and therefore it is understood that the ammonia will continue to and even be improved upon for treatment results.

It should be noted that the State imposed completion date of October 31, 2023, will be nearly impossible to achieve for the Town. If you need any technical question(s) answered or additional information is needed, please contact the Town of Hermosa.

A handwritten signature in cursive script, appearing to read "Leah M. Berg". The signature is written in black ink and is positioned above a horizontal line.

Leah M. Berg, P.E.

FIGURE 1: WEEKLY RESULTS FROM SIX (6) MANHOLE LOCATIONS AROUND HERMOSA

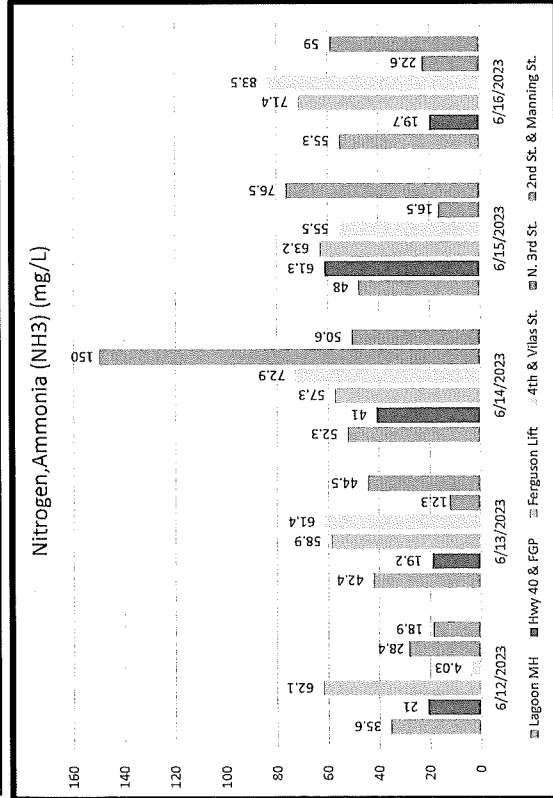
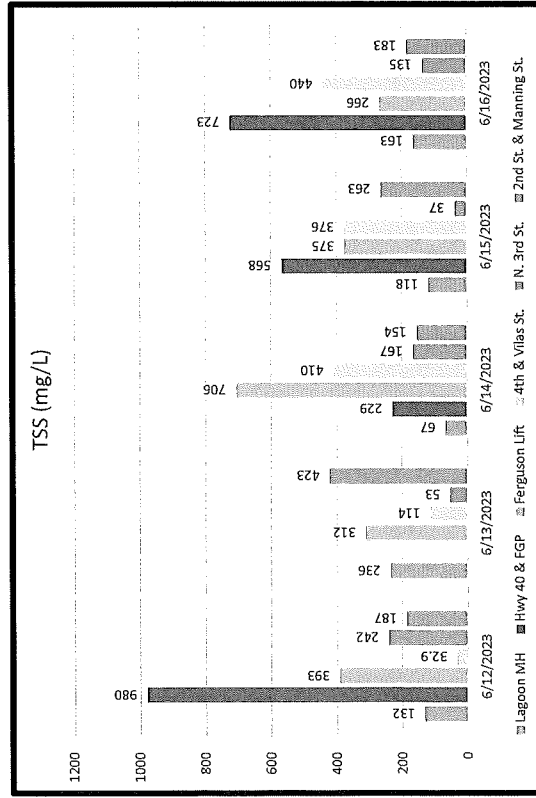
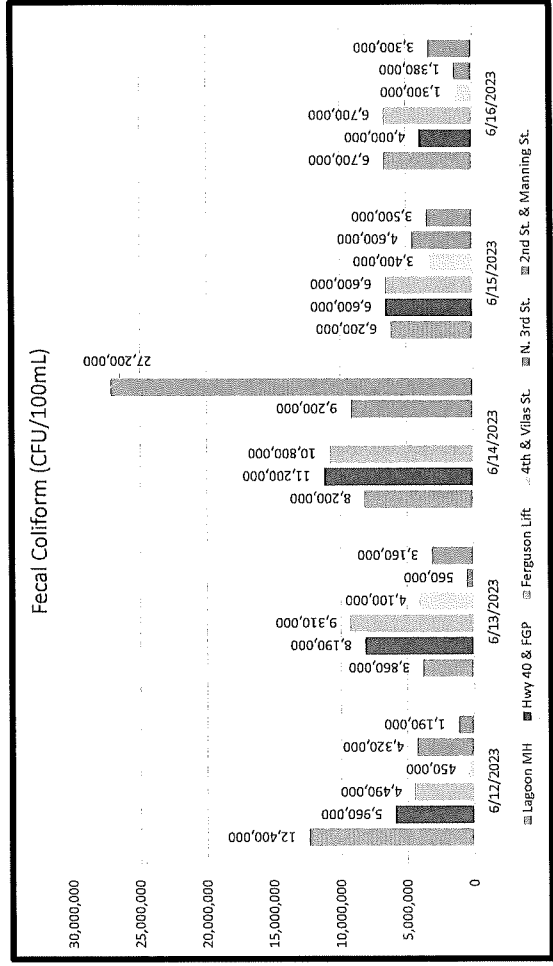
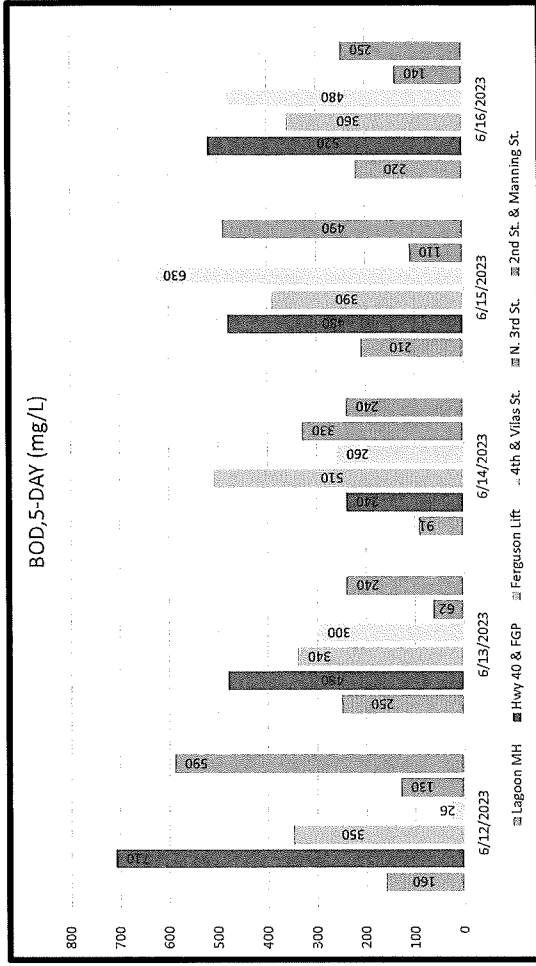
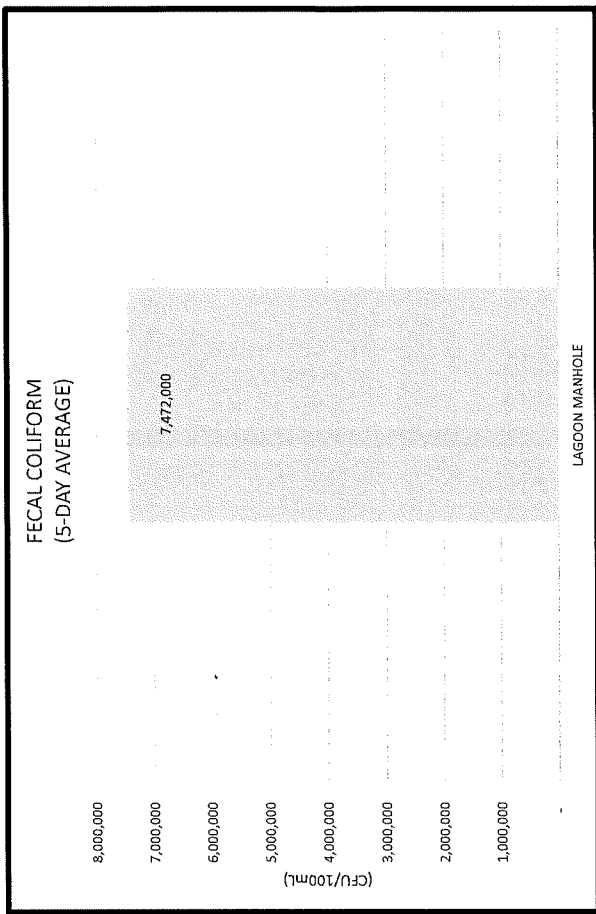
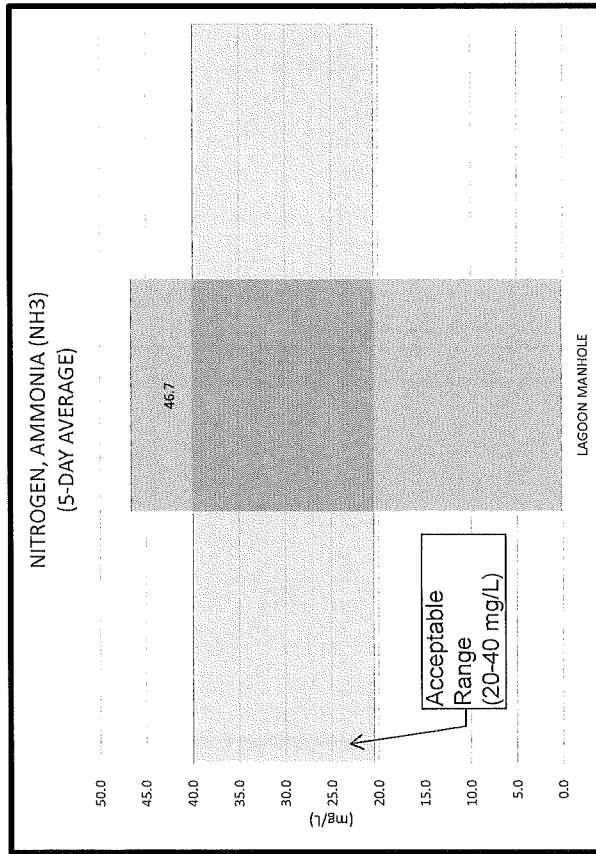
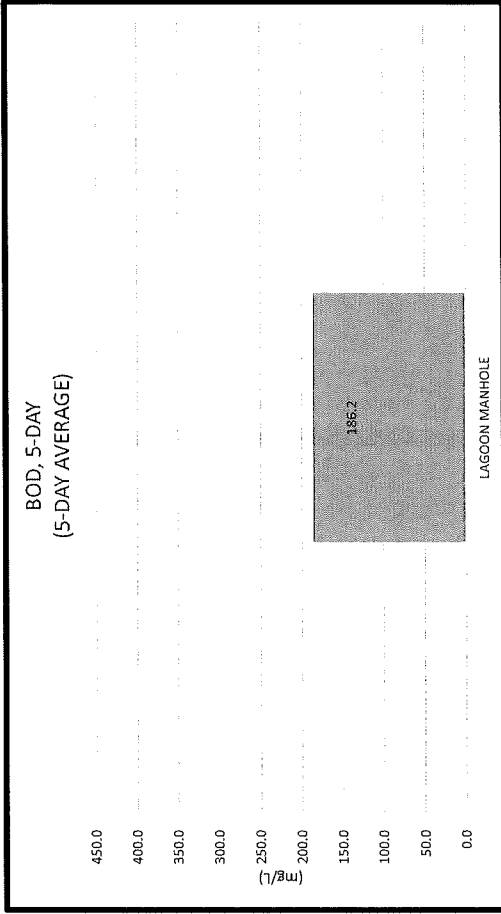
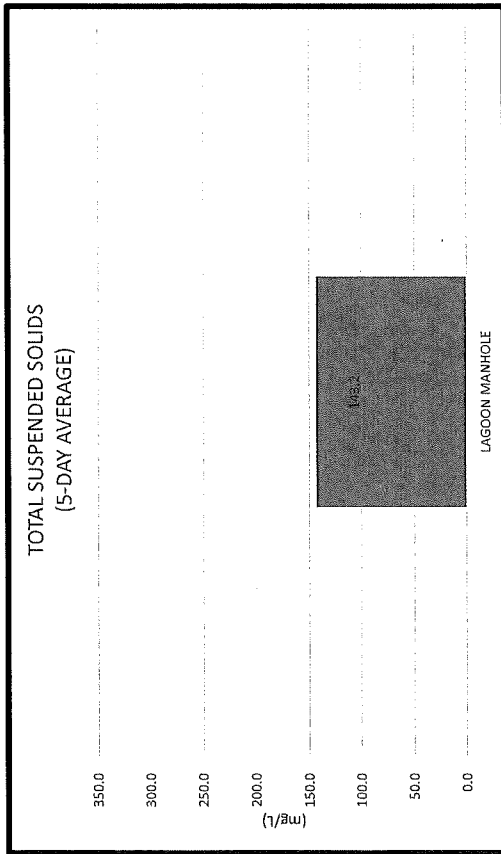


FIGURE 2: WEEKLY AVERAGES FROM MANHOLE TESTING AROUND HERMOSA





**DEPARTMENT of AGRICULTURE  
and NATURAL RESOURCES**

JOE FOSS BUILDING  
523 E CAPITOL AVE  
PIERRE SD 57501-3182  
danr.sd.gov

June 23, 2023

The Honorable Jerald E. Styles  
President, Town of Hermosa  
PO Box 298  
Hermosa, SD 57744

RE: Violation of Settlement Agreement

Dear President Styles:

This letter is to inform you that the town of Hermosa has violated the terms of the Settlement Agreement that was issued July 28, 2022. The town of Hermosa did not meet the deadline of June 1, 2023, for starting construction of the sewer expansion.

Paragraph #3 of the Settlement Agreement states:

*The Town will commence construction of the upgrades to the lagoon system no later than **June 1, 2023**, after receiving approval of the plans and specifications by the Department. Failure to comply with this provision shall result in a \$2,500 penalty payment which is due immediately. An additional penalty of \$100 will be due for each day that construction has not commenced after this deadline.*

**Accordingly, pursuant to the terms of the Settlement Agreement the penalty of \$2,500 is due immediately for failure to start construction as outlined above.**

**Accordingly, pursuant to the terms of the Settlement Agreement and the extension request denial, stipulated penalties have begun to accrue on June 16, 2023.**

If you have any questions or concerns about this letter, feel free to contact me at (605) 773-3351.

Sincerely,

Kyle Doerr  
Engineer III  
Water Quality Program

cc: Ann Mines Bailey, Assistant Attorney General  
SWD File – Pierre

10 c.



**ADA.gov**

U.S. Department of Justice  
Civil Rights Division

# ADA Standards for Accessible Design

The ADA Standards for Accessible Design — along with the [Title II](#) and [Title III](#) regulations — say what is required for a building or facility to be physically accessible to people with disabilities.

## Laws, Regulations, & Standards

Read this document to understand your legal rights or responsibilities under the ADA.

For a beginner-level introduction to a topic, view [Featured Topics](#)

For more detailed information on a topic, view [Guidance & Resource materials](#)

The ADA Standards for Accessible Design (“ADA Standards”) cover:

- Newly constructed buildings and facilities;
- Alterations — such as, renovations and other changes that affect usability — made to buildings and facilities;

- Making architectural changes in existing state and local government buildings to provide “program access”; and
- Removing architectural barriers that are easily accomplishable without much difficulty or expense in existing buildings of businesses.

### **What are *architectural barriers*?**

Architectural barriers are physical elements of a building that prevent movement or access for people with disabilities. For example, if the only way to get to the entrance of a business is by using stairs, those stairs are a barrier for wheelchair users.

### **What does *readily achievable* mean?**

Readily achievable means easy to do without much difficulty or expense. This is based on the Title III business’s size and resources. So, a business with more resources is expected to remove more barriers than a business with fewer resources. The ADA strikes a careful balance between increasing access for people with disabilities and understanding the financial challenges of many small businesses.

### **What does *program access* mean?**

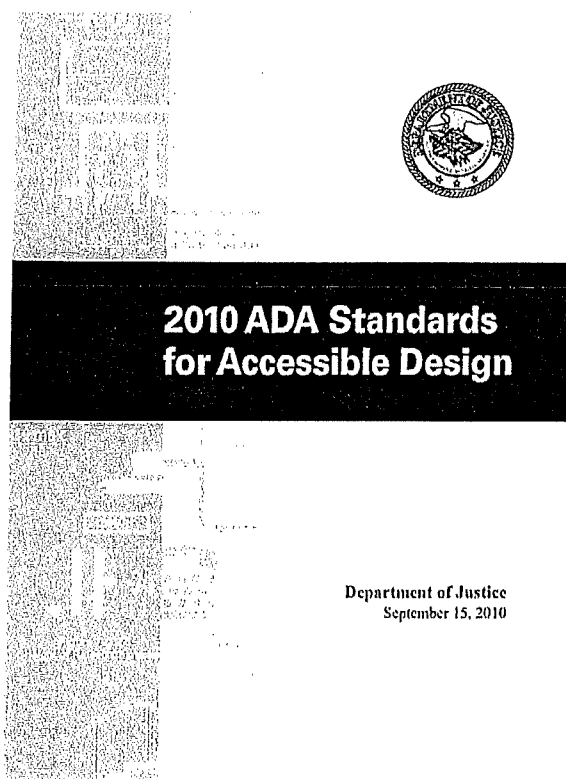
State and local governments are required by Title II to provide . The requirement makes sure that individuals with disabilities are not excluded from any program, service, or activity provided by the state or local government because existing buildings and facilities are inaccessible. State and local governments must look at their programs, services and activities in their entirety or as a whole to ensure that they are accessible to individuals with disabilities.

# Versions of the ADA Standards

---

Knowing when the 1991 or the 2010 ADA Standards apply to buildings and facilities is important in determining if your building or facility complies with the ADA. The [ADA Requirements: Effective Date and Compliance Date guide](#) helps to explain which version of the ADA Standards to use and when.

There are two versions of the ADA Standards:



[2010 ADA Standards for Accessible Design](#)

↓ [Download PDF for 2010 ADA Design Standards \(4.2MB, 279 Pages\)](#)

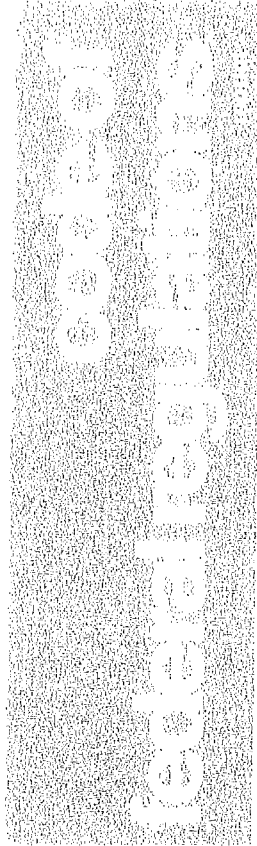


**Guidance on the  
2010 ADA Standards  
for Accessible Design**

Department of Justice  
September 15, 2010

[Guidance on the 2010 ADA Standards for Accessible Design](#)

↓ [Download PDF for Guidance on the 2010 ADA Design Standards \(3.1MB, 166 Pages\)](#)



**Department of Justice**

The 1991 Standards were in effect for new construction and alterations until March 14, 2012. The Department's 2010 ADA Standards for Accessible Design were published September 15, 2010 and became effective on March 15, 2012.

**28 CFR Part 36**

Revised as of July 1, 1994

Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities

Excerpt from 28 CFR Part 36:

**ADA Standards for Accessible Design**



1991 ADA Standards for Accessible Design

↓ [Download PDF for 1991 ADA Design Standards \(5.1MB, 92 Pages\)](#)

**Related Content**

**Guidance**

[ADA Requirements: Accessible Pools Means of Entry and Exit](#)

**Guidance**



**ADA.gov**

U.S. Department of Justice  
Civil Rights Division

# State and Local Governments

The ADA is meant to ensure that people with disabilities can fully participate in all aspects of civic life. Under Title II, all state/local governments must follow the ADA regardless of their size.

If you are part of a state/local government program or a person with a disability, there are many aspects of the ADA that you should be familiar with. The information below is intended to help get you started.

## Featured Topic

Read this to get a basic understanding of this topic.

For more detailed information on a topic, view [Guidance & Resource materials](#)

For information about the legal requirements, visit [Laws, Regulations & Standards](#)

# Title II Applies to State/Local Programs

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Examples of state/local service, programs, or activities that need to comply with the ADA include:

- Public education (schools)
- Public Transportation
- Recreation
- Health care
- Social services
- Courts
- Voting
- Emergency services
- Offices where people go to:
  - Renew licenses
  - Apply for food stamps
  - Pay their taxes
  - Attend town meetings
  - Serve on boards and commissions
  - Conduct other government business

## General Requirement

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Title II of the ADA requires state/local governments to give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities. State/local governments can't deny people with disabilities the chance to participate or make them participate in different programs than available to others.

## Specific Requirements

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The ADA also includes specific requirements for state/local governments. For example, if you are part of a state/local government you must:

- Communicate with people with disabilities as effectively as you communicate with others.
- Make reasonable modifications to policies, practices, and procedures where needed to make sure that a person with a disability can access the state/local government's programs, services, or activities.
- Allow service animals to be with their person even if you have a no pets policy.
- Provide *program access* by ensuring that individuals with disabilities are not excluded from programs because existing buildings or facilities are inaccessible to them.
- Follow specific standards for physical accessibility when building or altering a building or facility.
- Follow specific requirements for ticket sales and testing accommodations.

You can find examples of these requirements and how they look in practice in the tables below.

You can also learn about these and other requirements in the [State and Local Government Primer](#).

## Making Reasonable Modifications


---

State/local governments need to make *reasonable modifications* when necessary to accommodate people with disabilities. Here are some examples of specific scenarios involving a person with a disability that could be resolved with a reasonable modification:

---

| Scenario  | Possible Solution  |
|---|--|
| A public museum does not allow food. A person with diabetes has requested to bring in snacks to manage their blood sugar.                           | The museum allows the person to bring in snacks.   |
| A person with a service dog tries to enter a public library that has a “no pets” rule.  | The city makes an exception to its “no pets” in public libraries and other city buildings to allow people with disabilities to use their service dogs.<br><br>Learn more about <a href="#">service animals</a> . |
| A person with a mobility disability tries to access a state park on his Segway; the park does not normally allow motorized vehicles on park trails. | The state park grants an exemption from its rule and permits the visitor to use his Segway on the park’s walking trails.<br><br>Learn more about requirements related to <a href="#">mobility devices</a> .      |

A state/local government does not need to modify a policy if it would *fundamentally alter* the nature of the program, service, or activity.

 **What does *fundamentally alter* mean?**

A fundamental alteration is something that would change the essential nature of the entity’s programs or services. For example, a local government would not be required to move a beach volleyball tournament to an indoor court.

# Communicating Effectively with People with Disabilities

Communication is an essential part of providing service to the public. The ADA requires state/local governments to communicate as effectively with people with disabilities as with others. Because the nature of communication differs from program to program, the rules allow for flexibility in determining effective solutions. Sometimes the solution will require the state/local government to provide aids or services, like a sign language interpreter. Here are some examples of specific scenarios that could be resolved with a communication aid or service:

| Scenario   | Possible Solution  |
|--|--|
| <p>A person with hearing loss tries to access their county tax office with complex questions about property tax assessments.</p> | <p>The clerk in the county tax office provides a sign language interpreter who can assist with communicating about the property tax assessments.</p> <p>Learn more about other aids or services that can be used to provide <a href="#">effective communication</a>.</p> |
| <p>A person with low vision who uses a screen reader wants to register to vote using the state government’s online form.</p>     | <p>The elections office ensures that their online forms are accessible to people who use screen readers.</p>   |

We provide more examples on our page about [effective communication](#). That page also includes information about when a state/local government may not be required to provide a particular aid or service.

# Access to Programs and Services in Existing Facilities

State/local governments are required to provide *program access*. The program access requirement ensures that individuals with disabilities are not excluded from any program or service because existing buildings and facilities are inaccessible. State/local governments must look at their programs/services in their entirety or as a whole to ensure that they are accessible to individuals with disabilities. They can meet this obligation in a variety of ways. Here are some examples:

| Type of Accessibility Issue  | Possible Solution   |
|--|---|
| <p>A person with a mobility disability wants to borrow books from the town’s public library after reviewing the book catalog online. The library has not been altered since before the ADA was passed and has stairs and narrow doorways that make it inaccessible to her.</p> | <p>Staff provides curbside service to allow the person to check out and return materials.</p> |
| <p>A third-grade student who uses a wheelchair attends a two-story school built before the ADA, and not altered since then; the school does not have an elevator.</p>  | <p>The school locates the third-grade classroom on the first-floor.</p>                       |

There are a few limits to the program access requirements. State/local governments are not required to take any action that would result in undue financial and administrative burden.

## What is an undue burden?

An undue burden means a significant difficulty or expense. Whether something is a significant difficulty or expense will vary from government to

government and may vary from year to year.

If a request or action would cause an undue burden, the state/local government must look for an alternative to ensure that individuals with disabilities receive the benefits or services provided by the state/local government.

Learn more about program access and the limitations on this requirement in the [State and Local Government Primer](#).

# Ticket Sales and Testing Accommodations

---

| Testing Accommodations Scenario   | Possible Solution   |
|---|---|
| An older adult with a learning disability is enrolled in a community college and requests additional time to take the placement test. | The community college grants the applicant extended time to take the exam.<br><br>Learn more about providing <a href="#">testing accommodations</a> . |

| Ticket Sales Scenario   | Possible Solution  |
|---|--|
| A wheelchair user tries to buy accessible seating to a state university college football game and is directed to call the box office because accessible seating is not available for purchase online. | The university makes accessible seating available for purchase online.<br><br>Learn more about requirements for <a href="#">ticket sales</a> . |

# New Construction and Alterations

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When state/local governments build or alter facilities, they must make them accessible to people with disabilities. To make them accessible, state/local governments need to follow the ADA Standards for Accessible Design. The information below is intended to help get you started.

## ADA Standards Basics

### Chapter 1: Application and Administration

Contains important information, including definitions for key terms used in the Standards.

### Chapter 2: Scoping

Explains which elements and how many of them must be accessible. Scoping covers newly built facilities and altered portions of older facilities

### Chapters 3 – 10: Design and Technical Requirements

Provides design and technical requirements for elements, spaces, buildings, and facilities

## Common Topics

### Accessible Route

Section 206 and Chapter 4



Relaxphoto.de

April 1, 2018 | Legal Notes | Jimmie Johnson

# Lessons for Local Governments About ADA Lawsuits

Jimmie Johnson is an attorney with the law firm of Leone & Alberts and can be reached at [jjohnson@leonealberts.com](mailto:jjohnson@leonealberts.com).

---

The Ninth Circuit Court of Appeals issued a decision in 2017 that further clarifies for local governments in California their obligations under the Americans With Disabilities Act (ADA).

In *Kirola v. City and County of San Francisco*<sup>1</sup>, Ivana Kirola — a person with cerebral palsy — filed a class-action lawsuit against San Francisco alleging that the city’s public libraries, pools, recreation and park facilities and pedestrian rights of way were not readily accessible to and usable by individuals with mobility impairment and were thus in violation of Title II of the ADA.<sup>2</sup> The trial court ruled in favor of San Francisco, but the Ninth Circuit reversed in part, permitting Kirola to proceed with some of her claims.

Cities can learn some specific lessons from the Ninth Circuit’s decision. This article highlights some of these lessons.

## **Lesson 1. A Qualified Individual With a Disability Who Encounters an Access Barrier Can File a Class Action Lawsuit.**

Although Kirola’s lawsuit covered all public libraries, pools, recreation and park facilities and pedestrian rights of way throughout the city, she had personally visited only a few of them. Additionally, the barriers she had encountered were limited to:

- Three stretches of sidewalk containing bumps;
- A sidewalk where her wheelchair became stuck in a tree well;
- A street corner that lacked curb ramps;
- A street corner that provided only a single curb ramp;
- Errant step stools at three of the city’s libraries;
- Three inaccessible pools; and
- Steep paths at one park.<sup>3</sup>



The trial court held that Kirola did not have standing to bring the lawsuit because the evidence presented failed to establish that she had been deprived of “meaningful access” to the public facilities in question.<sup>4</sup> However, the Ninth Circuit reversed that decision, holding that a plaintiff bringing a claim under Title II of the ADA can establish standing by providing evidence that he or she encountered an access barrier of any degree and either intends to return to that facility or is deterred from returning due to the barrier.<sup>5</sup> Furthermore, the Ninth Circuit held that after a plaintiff has established standing to bring an ADA accessibility claim, that plaintiff can proceed with a class action lawsuit even against barriers not personally encountered as long as the prerequisites for class certification have been met.<sup>6</sup>

## **Lesson 2. City Facilities Must Meet Certain Standards, Depending on When They Are Built or Altered.**

In addition to identifying the various access and use barriers she encountered, Kirola also argued that the city facilities violated the ADA because they were not fully compliant with certain standards and federal regulations. In addressing this argument, the Ninth Circuit clarified which standards and regulations apply to which government facilities.

***Facilities Unaltered Since Jan. 26, 1992, Must Provide “Meaningful Access.”*** The Ninth Circuit confirmed that in relation to facilities unaltered before or since Jan. 26, 1992, government agencies need only “operate each service, program or activity so that the service, program or activity, *when viewed in its entirety*, is readily accessible to and usable by individuals with disabilities.”<sup>7</sup> This standard does not “[n]ecessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities.”<sup>8</sup> Rather, an ADA violation will be found only if a facility is inaccessible or unusable when viewed in its entirety. For example, the *Kirola* court found no ADA violation based on uneven sidewalks, cracked pavement and potholes.<sup>9</sup> Likewise, the *Kirola* court found no ADA violation based upon 1,358 allegedly inaccessible curb ramps in a city of 7,200 intersections.<sup>10</sup> Nor did the *Kirola* court find ADA violations due to the alleged inaccessibility of some portions of some city parks.<sup>11</sup>

At the same time, however, it is important to note that ADA regulations do require government entities to undertake efforts to make their programs readily accessible to individuals with disabilities where doing so would not fundamentally alter the nature of the program and would not impose an undue financial or administrative burden — such as potentially moving a program from an inaccessible building to an accessible one, assigning aids to assist individuals with disabilities regarding accessibility, etc.<sup>12</sup> In addition, the U.S. Department of Justice (DOJ) has recently encouraged local government agencies to conduct a new self-evaluation of their facilities similar to the one required by federal law in 1991.<sup>13</sup> Because DOJ often encourages today what it will require tomorrow, local government agencies should consider getting ahead of the game and conduct a new self-evaluation consistent with the 1991 federal requirements — by reviewing all current services, policies and practices and providing an opportunity for public comment to identify access barriers and potential remedies.<sup>14</sup> In addition, because government employees sometimes face public or political pressure regarding the results of self-

evaluations, local government agencies may want to consider hiring an independent third party, such as a licensed certified access specialist inspector, to perform the evaluation.

*Facilities Newly Constructed or Altered After Jan. 26, 1992, — Including Parks, Playgrounds and Public Rights of Way — Must Comply With Certain Regulations Designed to Ensure That Each Facility Is “Readily Accessible to and Usable by Individuals With Disabilities.”* While recognizing that a “meaningful access” standard applies to government facilities unaltered before or since Jan. 26, 1992, the Ninth Circuit held that any failure to satisfy the applicable federal ADA regulations at a facility built or altered after Jan. 26, 1992 — even a slight failure that does not meaningfully affect access — constitutes a violation redressable in civil court.<sup>15</sup> The *Kirola* court further held that federal ADA regulations apply to public rights of way, parks and playground facilities even though such government facilities are not expressly governed in the regulations (as are other types of facilities). The Ninth Circuit determined that because those government facilities include “features” such as ramps that are expressly governed in the federal ADA regulations, the government facilities are also governed by the ADA regulations.<sup>16</sup>

## **ADA GUIDELINES FOR BUILDINGS AND FACILITIES**

Regarding which regulations apply to which facilities, the ADA requires the Architectural and Transportation Barriers Compliance Board to issue compliance guidelines, known as the Americans With Disabilities Act Accessibility Guidelines (ADAAG) for buildings and facilities.<sup>17</sup> In turn, DOJ is required to implement federal regulations consistent with the ADAAG.<sup>18</sup> As explained in *Kirola*, the ADAAG are not binding.<sup>19</sup> The DOJ regulations, on the other hand, are binding and must be consistent with the ADAAG — but not necessarily identical to them.<sup>20</sup>

In 1991, the Architectural and Transportation Barriers Compliance Board issued the first ADAAG, and DOJ adopted those guidelines in full as federal ADA regulations.<sup>21</sup> Afterward, the board issued several supplementary guidelines, but DOJ never adopted them and therefore the supplementary guidelines never became binding. In 2004, the board issued more supplementary guidelines. Eventually, in 2010, DOJ adopted the 2004 guidelines with slight revisions.<sup>22</sup>

The 2010 ADA regulations adopted by DOJ established a three-tier system of compliance. Based on this three-tier system, government facilities are subject to different standards depending on when they were built or altered:

- ***Government facilities unaltered since before Sept. 15, 2010.*** At the option of the government agency, these facilities are subject to either the original 1991 ADA standards adopted by DOJ or another set of federal standards called the Uniform Federal Accessibility Standards (UFAS).
- ***Government facilities altered or built between Sept. 15, 2010, and March 15, 2012.*** At the option of the government agency, these facilities are subject to either the original 1991 ADA standards adopted by DOJ, the UFAS or the 2010 ADA standards adopted by DOJ.
- ***Government facilities altered on or after March 15, 2012.*** These facilities are subject to the 2010 standards.<sup>23</sup>

Because these standards vary, it is important that local government agencies expressly elect which sets of standards they are adopting. Without an express election, a court could ultimately

decide which standards apply, and that decision could result in significant liability that otherwise could have been avoided.

## CONCLUSION

As the *Kirola* decision makes clear, even the slightest access barrier in a government facility may serve as the basis for a class action lawsuit against the local government agency. Therefore, it is important for local government agencies to take preventive measures to reduce the possibility of ADA violations. A local government agency can adopt strategies such as conducting a self-evaluation similar to that required in 1991 and expressly electing a set of federal regulation standards for each facility that has remained unaltered since before March 15, 2012. After the local government has identified the applicable standards, it should ensure strict compliance.

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## ABOUT LEGAL NOTES

This column is provided as general information and not as legal advice. The law is constantly evolving, and attorneys can and do disagree about what the law requires. Local agencies interested in determining how the law applies in a particular situation should consult their local agency attorneys.

**From:** Kathy Styles  
**Sent:** Monday, June 26, 2023 11:17 PM  
**To:** Monika Serviss  
**Cc:** Jill Dybvig; Jerry Styles  
**Subject:** Re: American Disability Act

Monika,

Did you get a name of the ADA Coordinator from Mitch. If so, can you give her a call.

After reading the 5 attachments that Mitch sent and doing more reading on my own. It is clear that additional accessibility alterations are only required to the extent that the added accessibility costs do not exceed 20% of the cost of the original alteration. This is true for Federal, State, local, and private buildings.

It is also clear, based on the estimates provided by Nick (over \$30,000) the additional accessibility alterations are greater than 20% of the very minor alterations to his facility. Based on the cost of over \$30,000 for the additional accessibility alterations, ADA would only apply if the alterations to the building were over \$150,000.

I will be requesting a motion at the next BOT meeting to remove the ADA agenda item because ADA does not apply to the alteration made by Nick to his facility.

Thanks

Jerry

**From:** Monika Serviss <[monika@hermosasd.com](mailto:monika@hermosasd.com)>  
**Sent:** Monday, June 26, 2023 3:00 PM  
**To:** Kathy Styles <[kstyles907@msn.com](mailto:kstyles907@msn.com)>  
**Subject:** FW: American Disability Act

*Monika Serviss*  
Finance Officer  
Town of Hermosa  
[605-255-4291](tel:605-255-4291)



230 Main St., PO Box 298

# 2023 Water Consumption Report

|         | MASTER    | MASTER   | MASTER    | SYSTEM ADJ | Holding Tanks   | MASTER/SYS NET | MASTER WELL    | MASTER WELL        |
|---------|-----------|----------|-----------|------------|-----------------|----------------|----------------|--------------------|
| Date    | Prev Read | New Read | PUMPED    | NET SOLD   | Pumped Not Sold | NET LOSS       | Percent % Loss | NOTES:             |
| Jan '23 | 15296592  | 16466167 | 1,169,575 | 918,801    | 7,000           | 243,774        | 21%            | 7,000 Fire Station |
| Feb '23 | 16466167  | 17394372 | 928,205   | 827,170    | 3,200           | 97,835         | 11%            | 3,200 Fire Station |
| Mar '23 | 17394372  | 18559257 | 1,164,885 | 961,545    | 4,000           | 199,340        | 17%            | 4,000 Fire Station |
| Apr '23 | 18559257  | 19425420 | 866,163   | 852,632    | 7,700           | 5,831          | 1%             | 7,700 Fire Station |
| May '23 | 19425420  | 20575043 | 1,149,623 | 985,514    | 3,800           | 160,309        | 14%            | 3,800 Fire Station |
| Jun '23 | 20575043  | 21901197 | 1,326,154 | 1,223,892  | 4,050           | 98,212         | 7%             | 4,050 Fire Station |
| Jul '23 |           |          |           |            |                 |                |                |                    |
| Aug '23 |           |          |           |            |                 |                |                |                    |
| Sep '23 |           |          |           |            |                 |                |                |                    |
| Oct '23 |           |          |           |            |                 |                |                |                    |
| Nov '23 |           |          |           |            |                 |                |                |                    |
| Dec '23 |           |          |           |            |                 |                |                |                    |

| Date    | EAST MASTER |           | EAST MASTER  |       | Van Sambeek |       | Alan Bishop |         | Carper |       | Wieranga |        | East Master Net |          | EAST MASTER    |             |
|---------|-------------|-----------|--------------|-------|-------------|-------|-------------|---------|--------|-------|----------|--------|-----------------|----------|----------------|-------------|
|         | Prev Rding  | New Rding | USAGE/pumped | USAGE | USAGE       | USAGE | USAGE       | PASTURE | USAGE  | USAGE | USAGE    | USAGE  | NET LOSS        | NET LOSS | Percent % Loss | Total Usage |
| Jan '23 | 1095750     | 1108130   | 12,380       | 1,280 | 3,270       | 1900  |             | 1800    | 4,500  | 1,430 | 12%      | 10,950 |                 |          |                |             |
| Feb '23 | 1108130     | 1120170   | 12,040       | 1,150 | 4,510       | 1800  |             | 3000    | 4,200  | 380   | 3%       | 11,660 |                 |          |                |             |
| Mar '23 | 1120170     | 1131230   | 11,060       | 950   | 2,930       | 2597  |             | 4,400   | 3,000  | 1,180 | 11%      | 9,880  |                 |          |                |             |
| Apr '23 | 1131230     | 1143860   | 12,630       | 1,080 | 4,210       | 2044  |             | 4,000   | 4,000  | 343   | 3%       | 12,287 |                 |          |                |             |
| May '23 | 1143860     | 1167030   | 23,170       | 1,070 | 3,550       | 2286  |             | 16,700  | 12,506 | 54%   | 10,664   |        |                 |          |                |             |
| Jun '23 | 1167030     | 1178400   | 11,370       | 1,110 | 2,580       |       |             |         |        |       | -99%     | 22676  |                 |          |                |             |
| Jul '23 |             |           |              |       |             |       |             |         |        |       |          |        |                 |          |                |             |
| Aug '23 |             |           |              |       |             |       |             |         |        |       |          |        |                 |          |                |             |
| Sep '23 |             |           |              |       |             |       |             |         |        |       |          |        |                 |          |                |             |
| Oct '23 |             |           |              |       |             |       |             |         |        |       |          |        |                 |          |                |             |
| Nov '23 |             |           |              |       |             |       |             |         |        |       |          |        |                 |          |                |             |
| Dec '23 |             |           |              |       |             |       |             |         |        |       |          |        |                 |          |                |             |

12 B.

**4.9 Holiday Pay**

Full-time employees shall be eligible for Holiday Pay. The following holidays shall be paid holidays:

| <b>Holiday</b>             | <b>Day Observed*</b>        |
|----------------------------|-----------------------------|
| New Year's Day             | January 1                   |
| Martin Luther King Jr. Day | Third Monday in January     |
| Presidents Day             | Third Monday in February    |
| Memorial Day               | Last Monday in May          |
| Juneteenth                 | June 19                     |
| Independence Day           | July 4                      |
| Labor Day                  | First Monday in September   |
| Veterans Day               | November 11                 |
| Thanksgiving               | Fourth Thursday in November |
| Christmas                  | December 25                 |
| Personal Day (1)           |                             |

When any of the above cited holidays fall on a Saturday, the preceding Friday shall be observed as the holiday and when any of the above cited holidays falls on Sunday the following Monday is considered the holiday.

## Birthday of Martin Luther King, Jr. 2023 - Federal Holidays

January (Third Monday)

**Birthday of Martin Luther King, Jr.** is one of eleven federal holidays recognized nationwide by the United States Government. All non-essential federal government offices are closed on Birthday of Martin Luther King, Jr., and all federal employees are paid even if they receive the day off. Many private-sector employees will also receive paid time off or special holiday pay on Birthday of Martin Luther King, Jr..

Martin Luther King, Jr. Day is celebration of civil rights champion Martin Luther King, Jr. It is celebrated every third Monday of January, and has been a federal holiday since 1983.

## Juneteenth Independence Day 2023 - Federal Holidays

June

19<sup>th</sup>

**Juneteenth Independence Day** is one of eleven federal holidays recognized nationwide by the United States Government. All non-essential federal government offices are closed on Juneteenth Independence Day, and all federal employees are paid even if they receive the day off. Many private-sector employees will also receive paid time off or special holiday pay on Juneteenth Independence Day.

Juneteenth commemorates the day when the last enslaved African Americans in the United States were freed following the conclusion of the Civil War.

While Abraham Lincoln issued the Emancipation Proclamation on January 1<sup>st</sup> 1863, most enslaved people in Confederate territory were not emancipated until the Confederate army surrendered in April 1865, ending the Civil War. Freedom did not reach the last enslaved people until **June 19<sup>th</sup> 1865**, when Union soldiers under Major General Gordon Granger announced the emancipation of slaves in Galveston, Texas.

Juneteenth is also known as *Juneteenth Independence Day*, *Black Independence Day*, *Emancipation Day*, *Freedom Day*, and *Jubilee Day*. Traditionally commemorated by Black Americans for over 100 years, Juneteenth became a Texas state holiday in 1980, and was introduced as the newest Federal holiday by President Biden in 2021.

While all fifty states recognize Juneteenth as a state holiday or observance, as of 2022 only 18 states have enacted laws to observe Juneteenth as a paid state holiday. It is celebrated every June 19th, and has been a federal holiday since 2021.

#### **4.11 Administrative Leave**

Administrative leave separate from holiday, sick, vacation, bereavement, maternity or jury duty, shall be defined as leave granted in the event of unique circumstances. Administrative leave days will be proclaimed by either the Governor of S.D. or the Board of Trustees President. Employees receiving administrative leave will be compensated at a 1:1 amount of their current rate of pay.

12.I



*Auditor's Office*  
420 Mt. Rushmore Rd.  
Custer, SD. 57730  
Phone: 605-673-8173

To: All Taxing Entities

From: Dawn McLaughlin

RE: 2024 Taxes

It is time to start the cycle for 2023 pay 2024. Notification from the Department of Revenue has been received and the CPI that is to be used for taxes payable in 2024 is 3.00%. Based on CPI and preliminary growth numbers, maximum tax amounts have been calculated. Accurate growth numbers will not be available until I have received the growth in utilities in late August so these are not final max tax amounts.

The levy request form attached must be completed and returned every year. This form indicates an *estimated* amount for maximum tax dollars available to your district to levy, any applicable opt out dollars and the tax year the opt out expires. **If the amount is zero, your district will not receive any tax dollars in 2024** unless you follow the proper steps to either impose a new tax levy or opt out.

Your district must return the signed levy request form EVERY YEAR before October 1<sup>st</sup>. This form is the document that authorizes the county to levy taxes. If this form is not received before the deadline, your district will not receive any tax dollars in 2024.

I look forward to working with you through this process. If you have any questions please contact me at (605)673-8173 or via e-mail at [dmclaughlin@custercountysd.com](mailto:dmclaughlin@custercountysd.com)

Dawn McLaughlin  
Custer County Finance Officer

**2024 Tax Levy Request  
Due by 10/1/2023**

**CPI 3.00%  
Growth 6.403%**

City of Hermosa  
P.O. Box 298  
Hermosa, SD 57744

TOWN@HERMOSASD.COM

Daytime Phone # \_\_\_\_\_

Email Address \_\_\_\_\_

Check below to levy maximums available:

\_\_\_\_\_ Estimated max tax dollars available \$73,268

\_\_\_\_\_ Opt out dollars available

Opt out Expires in:

OR

Write in specific dollar amounts below if different than above:

General Fund: \$ \_\_\_\_\_

Other Fund: \$ \_\_\_\_\_

Opt out tax dollars \$ \_\_\_\_\_

Total: \$ \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

12 y.

**INDEPENDENT AUDIT SERVICES, PC**

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

Governing Board  
Monika Serviss, Finance Officer  
Town of Hermosa  
230 Main Street  
P.O. Box 298  
Hermosa, SD 57744

June 27, 2023

Letter of Comments

Greetings,

From my work with your December 31, 2021 financial report, I have the following comments.

Compliance

*Minutes - Salaries and Wages:*

SDCL 6-1-10 and 9-14-28 require a complete list of officer and employee salaries and wages with the proceedings of the first meeting of the year. The Town's 2021 minutes did not list salaries and wages as required. The salaries and wages should be listed individually in the minutes and not just referenced to a resolution.

*Minutes - Newspaper:*

SDCL 9-12-6 requires the Town to designate in the minutes the official newspaper of the Town. The 2021 minutes did not designate the Town's official newspaper.

*Minutes - Depositories:*

SDCL 9-22-6 requires the Town to designate in the minutes the depository or depositories of the Town. The 2021 minutes did not designate Pioneer Bank and Trust, SD.FIT or Edward Jones as official depositories of the Town.

*TIF Debt Service Fund:*

SDCL 9-22-12 requires that interest earned by a debt service fund be credited to that fund. The TIF Debt Service fund does have a cash balance and I believe it should receive some allocation of interest.

*Personal Property Inventory:*

SDCL 5-24-1 and 5-24-3 require a personal property inventory of all department be done and filed with the finance officer by January 10<sup>th</sup> of each year. This was not done in 2021.

*Old Outstanding Checks:*

We note that there were checks outstanding at the end of 2021 that were more than 1 year old. SDCL 43-41B-14 and 43-41B-18 require a proper report, and transmittal of the corresponding monetary amounts, of all of the city's outstanding checks that are not cashed within one year of their issuance date. Uncashed checks should be sent to: Unclaimed Property Division, South Dakota State Treasurer's Office, 500 East Capitol Pierre, South Dakota 57501. If a check is for \$50 or more the name and address of the payee needs to be listed. Checks under \$50 can be aggregated with no names.

Town of Hermosa  
Letter of Comments  
Page Two - June 27, 2023

Internal Controls

*FEMA Fund:*

There has been no activity in the FEMA Fund for 2 years. I understand the \$1,500 in this fund is for relocation assistance. If this assistance is no longer needed the money should be returned and the fund closed.

*Utility Billing of Town Departments:*

To better understand the cost of operating various departments and the revenue generated by the water and sewer funds, the Town should bill itself for its use of water and sewer services.

*Fraud Policy:*

Attached is a copy of the City of Colman's fraud policy for your consideration.

Sincerely,

  
Ben Elliott

cc: Department of Legislative Audit

Resolution 303-11  
City of Colman  
Personnel Policy Manual  
Policy #9  
Fraud Policy  
March 14, 2011

The City Council expects all Council members, employees, volunteers, consultants, vendors, contractors and other parties that maintain a relationship with the City to act with integrity, due diligence, and in accordance with law in their duties involving City resources. The council is entrusted with public funds, and no one connected with the City shall do anything to erode that trust.

Fraud is defined as the intentional, false representation or concealment of a material fact. Actions constituting fraud include misappropriation and other fiscal wrongdoings but are not limited to:

- a. Any dishonest or fraudulent act
- b. Forgery or alteration of a document or account belonging to the City
- c. Forgery or alteration of a check, bank draft, or any other financial transaction
- d. Misappropriation of funds, securities, supplies, or other assets
- e. Impropriety in the handling or reporting of money or financial transactions
- f. Profiteering as a result of insider knowledge of City activities
- g. Disclosing of confidential and proprietary information to outside parties
- h. Accepting or seeking anything of material value from contractors, vendors or persons with the exception of gifts less than \$150.00 in value
- i. Destruction, removal or inappropriate use of records, furniture, fixtures and equipment

To prevent fraud, the City Council directs that a system of internal controls be followed that includes but are not limited to the following:

- a. Segregation of duties – Where possible, more than one (1) person will be involved in phases of financial transactions. No one (1) person shall be responsible for an entire financial transaction.

- b. Payments -- Payments shall be made by check. No cash transactions shall be permitted except for amounts under \$20.00 handled through the City petty cash system.
- c. Bank reconciliation -- Bank statements and cancelled checks shall be reconciled.

Any one who suspects fraud, impropriety, or irregularity shall immediately report his/her suspicion to the mayor and finance officer. The mayor and finance officer have the primary responsibility for conducting an investigation regarding the alleged fraudulent activity. Based on their judgment, the mayor and finance officer shall coordinate the investigation with law enforcement or other resources such as an auditor or attorney. City council shall be kept informed on the matter and consulted with for determination of appropriate disposition of the matter.

The mayor and finance officer shall investigate reports of fraudulent activity in a manner that protects the confidentiality of the individuals and facts. Results of an investigation are not to be disclosed or discussed with anyone other than those individuals with a legitimate right to know, until the results are made public.

If the mayor or finance officer is involved in the complaint, the council president shall have the investigation responsibility of the individual in the complaint.

Individuals found to have altered or destroyed records shall be subject to disciplinary action.

110301 fraud

**INDEPENDENT AUDIT SERVICES, P.C.**

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

Jerry Styles, President  
Hermosa Town Board  
Monika Serviss, Finance Officer  
Town of Hermosa  
P.O. Box 298  
Hermosa, SD 57744

June 28, 2023

Cash Basis  
Audit Engagement Letter  
For the One Year Ending December 31, 2022

Greetings,

This letter will confirm our understanding of the services I am to provide the Town of Hermosa (the Government) as of and for the one year ending December 31, 2022, subject to authorization by the Auditor General.

**Audit Scope and Objectives**

I will audit the cash basis of accounting financial statements of governmental activities, business-type activities and each major fund, including disclosures, which collectively comprise the basic cash basis of accounting financial statements of the Government as of and for the one year ending December 31, 2022.

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

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

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

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

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

- (1) Other schedules (as required)

In connection with my audit of the basic financial statements, I will read the following "other information" and consider whether a material inconsistency exists between the "other information" and the basic financial statements, or the "other information" otherwise appears to be materially misstated. If, based on the work performed I conclude that an uncorrected material misstatement of the "other information" exists, I am required to describe it in my report.

- (1) Other information schedules (as required)

The audit is conducted knowing that I am independent of the Town of Hermosa in both fact and appearance.

The objective of my audit is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and issue an auditor's report that includes my opinions about whether the Government's financial statements are fairly presented, in all material respects, in conformity with a modified cash basis of accounting (Special Purpose Framework) and report on the fairness of the supplementary information referred to above when considered in relation to the financial statements as a whole. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and Government Auditing Standards will always detect a material misstatement when it exists. Misstatements, including omissions, can arise from fraud or error and are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment of a reasonable user made based on the financial statements. The objectives also include reporting on:

- > Internal control over financial reporting and compliance with provision of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with Government Auditing Standards.
  
- > (If required) internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).

### Auditor's Responsibilities for the Audit of the Financial Statements and (if required) Single Audit

My audit will be conducted in accordance with auditing standards generally accepted in the United States of America (GAAS); the standards for financial audits contained in *Government Auditing Standards*, issued by the Controller General of the United States; (if required) the Single Audit Act Amendments of 1996; and the provisions of Uniform Guidance, and will include tests of accounting records, a determination of major programs(s) in accordance with OMB Uniform Guidance (if required), and other procedures I consider necessary to enable me to express such opinions and to render the required reports. As part of an audit in accordance with GAAS and Government Auditing Standards, I will exercise professional judgment and maintain professional skepticism throughout the audit.

I will evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates (if any) made by management. I will also evaluate the overall presentation of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentations. I will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government. Because the determination of waste and abuse is subjective, Government Auditing Standards do not expect auditors to perform specific procedures to detect waste or abuse in financial audits nor do they expect auditors to provide reasonable assurance of detecting waste or abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because I will not perform a detailed examination of all transactions, there is an unavoidable risk that some material misstatements or noncompliance may not be detected by me, even though the audit is properly planned and performed in accordance with GAAS and Government Auditing Standards. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or on major programs. However, I will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to my attention. I will also inform the appropriate level of management of any violations of laws or governmental regulations that come to my attention, unless clearly inconsequential. I will include such matters in the reports required for a Single Audit (if required). My responsibility as an auditor is limited to the period covered by my audit and does not extend to any later periods for which I am not engaged as the auditor.

I will also conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Government's ability to continue as a going concern for a reasonable period of time.

My procedures will include tests of documentary evidence supporting the accounts, tests of the physical existence of inventories, and direct confirmation of receivables and certain assets and liabilities by correspondence with selected individuals, funding sources, and financial institutions. I will also request written representations from your attorneys as part of the engagement.

I have identified the following significant risk(s) of material misstatement as part of my audit planning.

- (1) Listing salaries and wages in the minutes
- (2) Listing official depositories in the minutes
- (3) Listing the official newspaper in the minutes
- (4) Allocation of interest to the TIF debt service fund

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

My audit of your financial statements does not relieve you of your responsibilities.

#### Audit Procedures - Internal Control

I will obtain an understanding of the government and its environment, including internal control relevant to the audit, sufficient to identify and assess the risks of material misstatement of the financial statements, whether due to error or fraud, and to design and perform audit procedures responsive to those risks and obtain evidence that is sufficient and appropriate to provide a basis for our opinions. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentation, or the override of internal control. Tests of controls may be performed to test the effectiveness of certain controls that I consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. My tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to Government Auditing Standards.

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

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. Accordingly, I will express no such opinion. However, during the audit, I will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, Government Auditing Standards, and (if required) the Uniform Guidance.

## Audit Procedures - Compliance

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

The Uniform Guidance (if required) requires that I also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with federal statutes, regulations, and the terms and conditions of federal awards applicable to major programs. My procedures will consist of tests of transactions and other applicable procedures described in the OMB Compliance Supplement for the types of compliance requirements that could have a direct and material effect on each of the Government's major programs. For federal programs that are included in the Compliance Supplement, my compliance and internal control procedures will relate to the compliance requirements that the Compliance Supplement identifies as being subject to audit. The purpose of those procedures will be to express an opinion on the Government's compliance with requirements applicable to each of its major programs in my report on compliance issued pursuant to the Uniform Guidance.

## Other Services

I will also assist in preparing, as applicable, an analytical trial balance from the Government's general ledger, the financial statements, related notes to the financial statements, suggested adjustments to the financial statements, and the schedule of expenditures of federal awards in conformity with the modified cash basis of accounting (Special Purpose Framework) and the Uniform Guidance based on information provided by you. These nonaudit services do not constitute an audit under Government Auditing Standards and such services will not be conducted in accordance with Government Auditing Standards. I will perform the services in accordance with applicable professional standards. The other services are limited to preparing, as applicable, an analytical trial balance from the Government's general ledger, the financial statements, related notes to the financial statements, suggested adjustments to the financial statements, and the schedule of expenditures of federal awards previously defined. I, in my sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

You agree to assume all management responsibilities for the financial statements, schedule of expenditures of federal awards, and related notes, and any other nonaudit services I provide. You will be required to acknowledge in the management representation letter my assistance with preparation of the financial statements, the schedule of expenditures of federal awards, and related notes and that you have reviewed and approved the financial statements, the schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience, (SKE) to evaluate the adequacy and results of those services, and accept responsibility for them.

The individual with sufficient SKE will be the Government's finance officer.

Responsibilities of Management for the Financial Statements and (if applicable) the Single Audit

My audit will be conducted on the basis that you acknowledge and understand your responsibility of (1) designing, implementing, establishing, and maintaining effective internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error including internal controls over federal awards, and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal awards, and all accompanying information in conformity with accounting principles generally accepted in the United States of America; and for compliance with applicable laws and regulation (including federal statutes), rules, and provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

You are responsible for making drafts of financial statements, schedule of expenditures of federal awards, all financial records, and related information available to me and for the accuracy and completeness of that information (including information from outside the general and subsidiary ledgers). You are also responsible for providing me with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, identification of all related parties and all related-party relationships and transaction, and other matters; (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance (if applicable); (3) additional information that I may request for the purpose of the audit; and (4) unrestricted access to persons within the government from whom I determine it necessary to obtain audit evidence. At the conclusion of my audit, I will require certain written representations from you about the financial statements; schedule of expenditures of federal awards (if required); federal award programs; compliance with laws, regulations, contracts, and grant agreements; and related matters.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to me in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements of each opinion unit taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing me about all known or suspected fraud affecting the government involving (1) management, (2) employees who have a significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing me of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employed, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws,

regulations, contracts, agreements, and grants. You are also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements that I report. Additionally, as required by Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan. The summary schedule of prior audit findings should be available for my review by the closing date of this engagement.

You are responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditure of federal awards (including notes and noncash assistance received, and COVID-19 related concepts, such as lost revenues, if applicable) in conformity with the Uniform Guidance. You agree to include my report on the schedule of expenditures of federal awards in any document that contains, and indicates that we have reported on, the schedule of expenditures of federal awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes my report thereon. Your responsibilities include acknowledging to me in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is stated fairly in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to me any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

You are also responsible for preparation of the other supplementary information (if any), which I have been engaged to report on in conformity with the modified cash basis of accounting (Special Purpose Framework). You agree to include my report on the supplementary information in any document that contains, and indicates that I have reported on the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes my report thereon. Your responsibilities include acknowledging to me in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with the modified cash basis of accounting; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with the modified cash basis of accounting; (3) the methods of measurement or presentation have not changed from those use in the prior period (or, if they have changed) the reasons for such changes); and (4) you have disclosed to me any significant assumptions or interpretations underlying the measurement or presentations of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Scope and Objectives section of this letter. This responsibility includes relaying to me corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on my current findings, conclusions, and recommendations, as well as your planned corrective actions for the report, and for the timing and format for providing that information.

## Engagement Administration, Fees, and Other

I understand that your employees will prepare and locate any documents selected by me for testing.

At the conclusion of the engagement, I will complete (if required) the appropriate sections of the Data Collection Form that summarizes my audit findings. It is management's responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditor's reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. I will coordinate with you the electronic submission and certification. The Data Collection form and the reporting package must be submitted within the earlier of 30 calendar days after the receipt of the auditor's reports or nine months after the end of the audit period.

I will provide management a copy of a letter listing the entities that will receive a copy of the audit report and financial statement. However, it is understood that the audit report and financial statement is a public document and is available on-line through the South Dakota Department of Legislative Audit's web site.

The audit documentation for this engagement is the property of Independent Audit Services, PC and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit finding, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Independent Audit Services PC personnel. Furthermore, upon request, I may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

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

Benjamin Elliott is the person responsible for supervising the engagement and signing the reports. I expect to begin my audit in October 2023.

My fee for these services will be a fixed fee of \$5,000 plus \$3,000 if this engagement is subject to Single Audit (Uniform Guidance) requirements. This fee is based on anticipated cooperation from you office and the assumption that unexpected circumstances will not be encountered during the engagement.

There are no separate charges for out-of-pocket travel cost, lodging, telephone or copying. My audit billing will include a summary of professional time spent on this engagement.

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

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

Should unforeseen circumstances arise that would require a significant extension of my auditing procedures, I will discuss with you the specific matters involved before extending my audit scope and incurring additional costs. Any additional cost will be agreed to in advance and will be based on an hourly fee of \$150 per hour or a fixed amount depending on the circumstance.

### Reporting

I will issue written reports upon completion of my engagement. My report will be addressed to the Government and its principal officials. Circumstances may arise in which my report may differ from its expected form and content based on the results of my audit. Depending on the nature of these circumstances, it may be necessary for me to modify my opinions, add a separate section, or add an emphasis-of-matter or other-matter paragraph to my auditor's report, or if necessary, withdraw from this engagement. If my opinions are other than unmodified, I will discuss the reasons with you in advance. If, for any reason, I am unable to complete the audit or am unable to form or have not formed opinions, I may decline to express opinions or issue reports, or I may withdraw from this engagement.

The Government Auditing Standards report on internal control over financial reporting and on compliance and other matters will state that (1) the purpose of the report is solely to describe the scope of testing on internal control and compliance and the result of that testing, and not to provide an opinion on the effectiveness of the Government's internal control or compliance, and (2) the report is an integral part of an audit performed in accordance with Government Auditing Standards in considering the Government's internal control and compliance. The Uniform Guidance report (if required) on internal control over compliance will state that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the result of that testing based on the requirements of Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

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

*Government Auditing Standards* require that I provide you with a copy of my most recent external peer review report and any letter of comments, and any subsequent peer review reports and letter of comment received during the period of the contract. My November 2020 peer review has been sent to you, which included a comment on assessing control risk and sampling methodology, which has been corrected.

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

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

Sincerely,

INDEPENDENT AUDIT SERVICES, P.C.

*Benjamin Elliott*  
Benjamin Elliott, CPA

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

\_\_\_\_\_  
Jerry Styles, President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Monika Serviss, Finance Officer

\_\_\_\_\_  
Date

**TOWN OF HERMOSA, SOUTH DAKOTA  
COUNTY OF CUSTER, SOUTH DAKOTA  
LAW ENFORCEMENT AGREEMENT**

This Law Enforcement Agreement ("Agreement"), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between the Town of Hermosa, South Dakota, hereinafter referred to as "Town", the County of Custer County, South Dakota, hereinafter referred to as "County", and the Sheriff of Custer County, South Dakota, hereinafter referred to as "Sheriff",

**WITNESSETH:**

WHEREAS, the Town, County, and Sheriff are desirous of arranging the terms and conditions for the performance of law enforcement within the jurisdiction of the Town by the Sheriff.

**TERM**

The effective date of this Agreement shall be from JULY 21, 2023 to JULY 21, 2024

**CONSIDERATION**

The Town shall pay to the County for those law enforcement services described herein the sum of Eighty Thousand US Dollars (\$80,000) for the year 2022-2023.

**SCOPE OF SERVICE**

In addition to the Sheriff Office normal duties as prescribed by SDCL, the following services as contracted for will be regularly performed within the boundaries of the Town, in addition to a visibility and presence, shall include but not be limited to traffic enforcement, foot patrols, enforcement of vehicle and traffic related Town Ordinances, Said primary patrol and enforcement duties shall only be performed by regular Custer County Deputies. Further, the Sheriff shall provide such coverage twenty-four (24) hours each day, for the duration of this contract.

The County is, and shall at all times be deemed to be, an independent contractor. Nothing in this Agreement shall be construed as creating the relationship of employer or employee between the Town and the County or any of the County's agents or employees. To the extent, this Agreement creates a principal-agent relationship between the County and the Town, such relationship confers on the County and its employees the authority to act on the Town's behalf only as to matters covered by this Agreement. The County shall retain all authority for rendition of the services covered by this Agreement, including standards of performance, control of personnel (including discipline), and other matters incidental to the performance of the services by the County. Nothing in this Agreement shall make any employee of the Town a County employee or any employee of the County a Town employee for any purpose, including, but not limited to, withholding of taxes, payment of benefits, worker's compensation, or any other rights or privileges accorded County or Town employees by virtue of their employment.

#### **RECORDS AND REPORTS**

The Sheriff will provide an accurate written description tracking and accounting of all calls handled each month. Further, the Sheriff or his designee may attend regular Town Board meeting quarterly, and any other meeting upon request by the Town Board, to provide in-depth and knowledgeable information and input regarding law enforcement matters within the Town, along with the written report of the month's activities.

Correspondence reference, requests, complaints, meetings, and contracts shall be reduced to writing and copied to the Custer County Board of Commissioners.

#### **FACILITIES**

All equipment and maintenance required by the Sheriff shall be the responsibility of the County and the Sheriff.

#### **INSURANCE**

It is hereby agreed that the County shall provide, through its public liability pool, liability insurance for the Sheriff's Office against false arrest and other related law enforcement service claims.

#### **INDEMNIFICATION**

The County hereby agrees to indemnify and hold the Town harmless should the Town be sued as a result of any negligent act or omission by the Sheriff's Office with respect to the Scope of Service of this agreement.

The Town hereby agrees to indemnify and hold the County harmless should the County be sued as a result of any negligent act or omission by the Town with respect to law enforcement issues.

#### **DEFAULT**

Failure of any party to perform as promised under this Agreement shall cause this Agreement to become void upon thirty (30) days written notice to the party deemed to have created the default. In the event that the default is not cured within said 30 day period, all sums paid by the Town during the year the default occurred shall be refunded to the Town on a pro-rata basis.

#### **TERMINATION**

This Agreement shall terminate, without cause, upon the written notice of any party to the other two parties by certified mail. Said notice shall be mailed no less than one hundred twenty (120) days prior to the effective termination date.

For the purpose of this contract, cause is defined as the financial proven inability to provide the resources to fulfill the terms of this contract, and/or to provide the funding for the consideration under this contract.

#### **GOVERNING LAW**

Unless otherwise agreed in writing, this Agreement and the interpretation thereof shall be governed by the laws of the State of South Dakota. The parties to this Agreement agree that the venue for any legal action pursuant to this Agreement shall be in circuit court, Seventh Judicial Circuit, Custer County, South Dakota.

## NOTICE

Notices to be provided under this Agreement shall be given in writing either by hand delivery, or deposited in the United States mail, with sufficient postage, to the following persons:

Custer County Office  
Of the States Attorney  
420 Mt. Rushmore Rd  
Custer, SD 57730

Town Clerk  
Town of Hermosa  
238 Main street  
Hermosa, SD 57744

Custer County Sheriff  
Custer County Sheriff's Office  
420 Mt. Rushmore Rd  
Custer, SD 57730

## MISCELLANEOUS

This Agreement may not be modified, amended, or otherwise altered unless mutually agreed upon in writing by the parties hereto.

In the event any provision of this Agreement is held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement. Failure to strictly enforce any provision of this Agreement shall not be constructed to be a waiver of any provision, right or responsibility contained herein.

Any assignment, transfer or subcontracting of this Agreement is prohibited, unless written consent is obtained from the other party in writing.

This Agreement embodies the entire agreement of the parties to this Agreement and supersedes all previous communications, representations, or agreements, either verbal or written, between the parties of this Agreement.

This Agreement is intended only to govern the rights and interests of the parties named herein. It is not intended, does not any may not be relied upon, to create any rights, substantial or procedural, enforceable by law by any third party in any matters, civil or criminal.

IN WITNESS WHEREOF, the parties have placed their signatures, the Town of Hermosa, South Dakota, on this Agreement to be signed by its Town Board President and attested by its Clerk, and the County of Custer, its Sheriff, and by order of its Board of County Commissioners, has caused these presents to be subscribed by the chairman of the Board and attested by the Auditor of said Board, all of the day and year written below. This Agreement may be executed in counterparts.

**APPROVED and EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.**

**CUSTER COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chairman Date

\_\_\_\_\_  
Custer County Sheriff Date

ATTEST:

\_\_\_\_\_  
Custer County Deputy Auditor Date

**APPROVED and EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.**

**TOWN BOARD OF HERMOSA, SOUTH DAKOTA**

\_\_\_\_\_  
Hermosa Town Board President Date

ATTEST:

\_\_\_\_\_  
Hermosa Town Clerk Date



## § 90.07 LIVESTOCK REGULATIONS

90.07(B)(2) The maintenance of structures or enclosures and the keeping therein of livestock, with the exception of chickens for the purpose of egg production may be kept in accordance with the provisions of subsection (1) and (2) of this ordinance, and or grazing or staking of livestock within 200 feet of any building or structure occupied by, or intended to be occupied by, human beings as a residence within the corporate limits of the town is prohibited and considered to constitute a public nuisance.

(A) Chickens may only be kept on premises licensed by the Town for the keeping of domestic chickens and the following requirements to be followed.

(1) Permit required. No person or household may own or possess chickens within the Town limits without obtaining an annual permit, which will need to be renewed each year by April 1st. An application shall be submitted to finance officer, on the form provided by the Town office.

(2) Application. A person applying for the permit pursuant to the provision of this chapter shall provide all information requested on the permit form. An application fee shall be charged and due upon submission of the permit application to the finance officer. The amount of this fee shall be set by resolution of the Town Board of Trustees.

(3) Notification of Neighbors. In addition to the application requirements, the applicant shall give notice by ordinary mail to all property owners within one hundred (100) feet from the lot that is the subject of the permit application. The notice shall include at a minimum:

(A) the name and contact information of the applicant;

(B) the address of the lot that is the subject of the permit application;

(C) a description of the animals that are the subject of the permit application;

(D) a statement that the applicant wishes to own or possess those animals at lot that is the subject of the permit application; and

(E) the date and time of the meeting at which the City Council will be making its decision regarding whether to issue the permit. Notices shall be postmarked not less than ten (10) days prior to the date of the meeting at which the City Council will be making its decision. The applicant is responsible for meeting all of these requirements and shall provide documentation to the Finance Officer that these public notice requirements have been satisfied at least four (4) days prior to the date of the meeting. If this is not done, the matter will be pulled from the agenda.

(4) Permit decision. The Board of Trustees may permit the possession of chickens if the applicant demonstrates the area the chickens are to be kept is appropriate for such a purpose and the possession of the chickens will not annoy the health, safety, and comfort of neighboring properties. The Town board of Trustees may deny any such request if it determines that issuing such permit would not be in the best interest of the Town of Hermosa.

(5) Revocation. Notwithstanding any other provision of this section, the license granted under this subsection is may be revoked by a majority vote of the Board of Trustees if it determines the either: information supplied by the owner on the permit application was false or misleading, or the permittee has otherwise violated the terms of his or her permit. License is immediately null and void upon the licensee's conviction of any cruelty to animal charge. If licensee violates any of the section (2) criteria, the Town board of Trustees have the right to revoke the license.

(B) Each licensee shall meet the following criteria:

(1) Property. Properties with land size of 0.25 acres (10890 sq ft) can hold up to 8 chickens. For properties sized 1 ac or more up to 15 chickens. Properties under 0.25 acres (10890 sq ft), livestock is prohibited. Only property owners are allowed to apply for livestock permit.

(2) Prohibited. Roosters are prohibited.

(3) Enclosure. Chickens shall be housed in a secure and well-ventilated roofed structure or any attached fenced yard enclosure at all times. The fence around the yard enclosure shall be securely constructed and shall have protective netting to keep the chickens separated from other animals. Chickens will be allowed to roam in the fenced in yard without the overhead netting if wings have been clipped to prevent flight and escaping the yard/enclosure.

(4) Maintenance. Droppings and body excretions must be collected on a weekly basis or more often if necessary and must be properly disposed of, or composted, to maintain the floors and walls of the structure in a sanitary and healthy condition. All chickens must be cared for, and enclosure must be kept neat and orderly.

Ordinance passed 06/06/2023 at the municipal general election



## BACKYARD HEN PERMIT APPLICATION

Town of Hermosa  
230 Main Street,  
PO Box 298  
Hermosa SD 57744

FOR INTERNAL OFFICE USE ONLY

PERMIT # \_\_\_\_\_

Fee: \_\_\_\_\_ Payment: Cash \_\_\_\_\_ Check \_\_\_\_\_

Town of Hermosa residents interested in keeping chickens must complete the following application. The application fee of \$\_\_\_\_\_, must be submitted with the application. A survey with a drawing or diagram depicting the placement of the chicken coop and enclosure must accompany the application. Permits must be renewed annually in the month of March. Permits expire and become invalid on April 1<sup>st</sup> of each year.

### APPLICANT INFORMATION

NAME \_\_\_\_\_ EMAIL \_\_\_\_\_  
ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_  
PHONE # \_\_\_\_\_ CELL # \_\_\_\_\_  OWNER  LEGAL AUTHORIZED AGENT

### PROPERTY INFORMATION

ADDRESS OF PROPERTY WHERE HENS WILL BE KEPT: \_\_\_\_\_

NUMBER OF HENS TO BE KEPT ON PROPERTY: \_\_\_\_\_

This application for:

Initial Permit  Permit Renewal  Permit modification

## BACKYARD HEN PERMIT APPLICATION PACKAGE CHECKLIST

\*Additional information may be required, depending upon circumstances unique to individual applications

Applicants must submit this checklist fully completed with their application. Failure to comply with ALL of the items listed is sufficient reason to deny an application. Failure to maintain a valid permit will result in a violation. Each line must be initialed before submitting a completed application.

- Properties with land size of 0.25 acres (10890 sq ft) can hold up to 8 chickens. For properties sized 1 ac or more up to 15 chickens. Properties under 0.25 acres (10890 sq ft), livestock is prohibited. Only property owners are allowed to apply for livestock permit.
- Chickens will be kept for egg production purposes ONLY
- Tract of land permitted contains only a single family dwelling.

- O Applicants shall not keep roosters on permitted property
- O Applicants shall not slaughter any chickens on permitted property.
  
- O Chickens provided a covered or fenced enclosure. Chickens are not allowed to free range or otherwise be outside of the coop and enclosure areas.
  
- O Chickens permitted solely in an applicant's back yard.
  
- O Applicant provides an enclosure for keeping of chickens which shall be so constructed and repaired as to prevent rats, mice, or other rodents from being harbored underneath, within, or within the walls of, the enclosure. Chickens shall be housed in a secure and well-ventilated roofed structure or any attached fenced yard enclosure at all times. The fence around the yard enclosure shall be securely constructed and shall have protective netting to keep the chickens separated from other animals. Allowed to roam in the fenced in yard without the overhead netting if wings have been clipped to prevent flight and escaping the yard/enclosure
  
- O Applicants protect feed and other items associated with the keeping of chickens that might attract or become infested with or infected by rats, mice, or other rodents from gaining access to or coming into contact with them. All food for immediate consumption shall be placed in a suitable feeding trough or similar container and all other food shall be stored in rat-proof containers at all times. No poultry feed shall be scattered around any premises.
  
- O Notification of Neighbors. In addition to the application requirements, the applicant shall give notice by ordinary mail to all property owners within one hundred (100) feet from the lot that is the subject of the permit application. The notice shall include at a minimum:
  - (1) the name and contact information of the applicant;
  - (2) the address of the lot that is the subject of the permit application;
  - (3) a description of the animals that are the subject of the permit application;
  - (4) a statement that the applicant wishes to own or possess those animals at lot that is the subject of the permit application; and
  - (5) the date and time of the meeting at which the City Council will be making its decision regarding whether to issue the permit. Notices shall be postmarked not less than ten (10) days prior to the date of the meeting at which the City Council will be making its decision.
  
- O Droppings and body excretions must be collected on a weekly basis or more often if necessary and must be properly disposed of, or composted, to maintain the floors and walls of the structure in a sanitary and healthy condition. All chickens must be cared for, and enclosure must be kept neat and orderly.

**Hen license holder acknowledgment statements (For new permit and Annual renewal)**

Read and initial each statement below to acknowledge understanding.

\_\_\_\_\_ I have read and understand the ordinance §90.07 LIVESTOCK REGULATIONS.

\_\_\_\_\_ I am aware that I must receive approval of the Town board of Trustees prior to obtaining hens and housing on the previously provided site address.

\_\_\_\_\_ I will follow all Village ordinance and state laws relating to the care and keeping of animals.

\_\_\_\_\_ I hereby grant the right to the Town of Hermosa staff to enter onto my property to inspect the required coop and pen and/or to properly investigate any complaint received by the Village regarding the keeping of chickens.

\_\_\_\_\_ I am aware that I am responsible for keeping hens within the confines of the required area on my property at all times.

\_\_\_\_\_ I understand that the permit is non-transferrable should my property be sold or occupied by a person different than on this application

\_\_\_\_\_ Understand that the town board of Trustees may suspend or revoke any license issued pursuant to this chapter for:

Failure of the licensee to comply with any provision of this code, any other, the laws of the state, federal laws or other applicable legal requirements; or

Finding that the licensee knowingly furnished false or misleading information or withheld relevant information in any application for a license for the keeping of chickens or for a building permit for any structure for the keeping of chickens.

\_\_\_\_\_ I acknowledge that I live in a single-family detached dwelling as per zoning code.

\_\_\_\_\_ I understand the license is valid for a period of one year from the date of issuance and that renewal of the license annually is required. Failure to renew the license prior to the expiration date will result in the license being terminated, at which time a new application for License and Permit would be required

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant Name (Print)

# Town of Hermosa



PO Box 298 • 230 Main St • Hermosa, SD 57744  
Phone (605) 255-4291 • Fax (605) 255-4094  
E-mail [monika@hermosasd.com](mailto:monika@hermosasd.com)

July 5th, 2023

Dear Custer County Commissioners,

This letter is in regards about ARPA funds the Town of Hermosa received from Custer County. Originally motion was made by Custer County Commissioners to release requested ARPA funds in the amount of \$500 000.00 to be used solely for the purchase of the WRT and for no other purpose or be returned. But the board is exploring different options for the water suppliers and would like to get clarification on the use of the funds.

Would Custer County Commissioners consider allowing the Town of Hermosa to use ARPA funds as matching funds for a grant from SDDANR to fund the Town of Hermosa to go with SBHW as a long-term water provider?

Jerry Styles  
Board of Trustees President  
Town of Hermosa

**MEMORANDUM**

PROJECT: Town of Hermosa  
LOCATION: Hermosa, South Dakota  
DATE: June 16, 2023  
TOPIC: Engineering Services

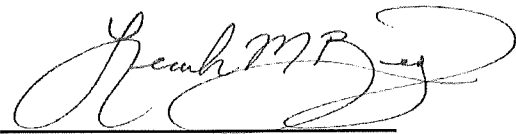
This Memorandum is being provided to the Town of Hermosa to inform the Board of Trustees (BOT) on the status of the projects that ACES is involved in on behalf of the Town.

ACES is currently under contract for the WRT System. The contract includes Design and Engineering, Bidding Services and Construction Administration. Currently the project is about 65% complete and the design has been submitted to SD DANR, Mark McIntire on June 13, 2023. Mr. McIntire will be reviewing the submittal. Once approved by SD DANR the Town can move into the bidding process and then construction. ACES would like to inform the BOT that at this time ACES will not be able to complete the remaining services under contract. The review process through the State typically takes 30 days to complete. This should allow the Town enough time to find another Engineer to finish the project items. The Remaining contract amount is \$18,725.

The Lagoon Expansion project was submitted back to the State – SD DANR on June 6, 2023. ACES is currently not under contract for any additional services related to the Lagoon Expansion project. The contract for this project included design services only. The Town will need to hire a new engineer for bidding services and construction administration.

ACES is not currently working on any other projects or Town items. ACES will continue to provide Staff Reports for permits, as needed, for up to 30 days until a new engineer has been selected.

We appreciated working for the Town of Hermosa and I hope that the BOT will find a new engineer that is a great fit for the Town and the needs of the Town. Invoices No. 536 and 537 include all fees owed to date. If you have any questions, please let us know.



Leah M. Berg, P.E.

**THIS IS A SYNOPSIS OF PROPOSED CONTRACT ACTION. FOLLOW THE INSTRUCTIONS CONTAINED IN THIS NOTICE FOR RESPONDING TO THIS OPPORTUNITY.**

Town of Hermosa South Dakota anticipates the need for one award, indefinite delivery indefinite quantity (IDIQ), firm fixed-price contract for architect-engineering (A/E) services, with a one-year base requirement and up to four option years.

The services will be for the town of Hermosa, SD. Disciplines and services may include, but are not limited to structural, civil, and geotechnical engineering, life safety, fire safety, code-compliance, life safety inspections, investigations, land surveys, flood plan administration, preparation of construction documents, estimates, bidding services, construction administration and/or assistance to Town staff for related work. Services may also include special studies, reports, programming, and other associated work such as but not limited to developing facilities plans, funding request documents to SDDANR and Rural Development, grant writing/request, and annexation plans.

All projects will take place within Town limits, on property owned by the Town outside Town limits, on easements owned by the Town outside Town limits, or in areas the Town Plans to Annex.

Given the close coordination needed between the successful firm and the Town of Hermosa, selection of a firm will be limited geographically to those located within a 60-mile radius of the Town of Hermosa.

The Firm will perform services as required by the issuance of individual task orders. The guaranteed annual minimum amount of this contract is \$10,000.00 and the estimated annual maximum is \$200,000.00. The maximum amount of any individual task order is \$200,000.00. Services will be required for a one-year base period with four one-year option periods for a total of up to sixty months from the date of award.

Firms having the capabilities to perform the services described in this announcement are invited to respond. Submissions should be on standard 8.5" x 11" format.

Selection criteria will be based on the following evaluation factors:

1. Firms Capacity and Capability (20%)
  - a. Site make up of firm and any consultants; available personnel by discipline
  - b. Production and quality control systems and techniques.

## 2. Proposed Project Team and Organization (30%)

- a. Key personnel proposed by the firm and any consultants
- b. Professional qualifications and relevant experience, individually and as a team
- c. The firm's organization and management plan

## 3. Experience and Performance (50%)

- a. Experience by the firm, proposed key personnel and the project team and any consultants, including experience with projects or comparable size and complexity
- b. Knowledge of the general project locality
- c. Experience and performance demonstrated by description to recent projects by the firm, proposed key personnel and the remaining project team consultants
- d. Narrative and visual evidence of the firm's ability with respect to functional and quality of past projects and cost and schedule control
- e. Conciseness, clarity, and completeness of the firm's submittal (experience with submittal of design documents and plans to SDDANR for review and approval on behalf of municipalities is mandatory)

Submit details (maximum of one page per project) of not more than five significant and/or complex design projects completed in the past five years. Identify the lead designer and address the design approach with salient features for each project. Discuss how the client's program, function, image, mission, economic, schedule and operational objectives were satisfied by the overall design/planning solution. Include tangible evidence where possible such as certificates, awards, peer recognition, etc., demonstrating design excellence. Provide a client reference contact for each project, including name, title, address, phone, fax, and email. Submit resumes of key personnel outlining commitment to projects and qualifications and relevant experience as individuals and as a team.

Submit a narrative outline of not more than one page, with examples, describing the firm's project management planning, coordination, scheduling and production facilities, capabilities and techniques for both design and construction inspection, and the firm's commitment to inhouse review prior to submitting the 95% and 100% submittals.

Submit a narrative outline (maximum one page) with examples describing the firm's ability to evaluate/develop accurate preliminary project budgets, ability to control project costs during design process, ability to design within funding limitations, methods used to coordinate construction documents, work of various engineering disciplines, and provide general production quality control in meeting agreed upon deadlines.

Send by registered mail or hand carry to the Town of Hermosa, addressed to the finance officer Monika Serviss at 230 main street Hermosa SD, 57744. All responses must be received no later than July 28, 2023, 5:00 PM MST. Failure to submit all required information could result in rejection.

Based on these submissions, a short list of no more than four firms will be selected for an interview. Firms should be prepared to discuss their submittals and to demonstrate their ability to fulfill the contract requirements. A Firms will be selected for contract award based on submissions and interviews. After review and interview process, the selected firm will be asked to submit a formal proposal and must be prepared to negotiate overhead, profit, and hourly rates for anticipated disciplines for use in negotiating firm-fixed-price contract award as well as firm-fixed-price task orders to be completed under the contract.

This acquisition will be accomplished utilizing full and open competition. Both large and small businesses may respond.

If you have questions, contact Monika Serviss Hermosa Town Finance Officer at 605-255-4291

Or by e-mail: [Monika@hermosasd.com](mailto:Monika@hermosasd.com)

**AN ORDINANCE AMENDING THE TOWN OF HERMOSA CODE OF ORDINANCES BY ADDING A NEW CHAPTER THERETO (i.e. CHAPTER 112A) TO MANDATE LICENSING OF WATER AND SEWER CONTRACTORS.**

**BE IT ORDAINED BY THE BOARD OF TRUSTEES TO ENACT AN ORDINANCE AMENDING THE TOWN OF HERMOSA CODE OF ORDINANCES BY ADDING A NEW CHAPTER THERETO (i.e. CHAPTER 112A) TO MANDATE LICENSING OF WATER AND SEWER CONTRACTORS AS FOLLOWS:**

**112A.010 Definitions.**

The following words, terms and phrases are defined and shall be interpreted as such throughout this chapter. Terms not defined in this section shall have the meaning customarily assigned to them:

1. **CONTRACTOR.** A licensed sewer and water contractor or licensed trenching contractor as defined in this section.
2. **DIRECTOR.** Town of Hermosa Public Works Director.
3. **EMPLOYEE.** A person whose compensation for construction work is reported by the employer on an Internal Revenue Service W-2 form and is also otherwise considered an employee under applicable law.
4. **EXCAVATING.** Any operation in which earth, rock or other material in the ground is moved or otherwise displaced and/or replaced at a depth of 12 inches or greater below the surface by means of tools, equipment or explosives, and includes trenching, digging, ditching, drilling, tunneling and cable or pipe plowing for the purpose of installing cable, conduit or pipe other than water, sanitary sewer or storm sewer pipe. **EXCAVATING** shall not include grading or scraping for street construction or reconstruction, drilling or auguring for installation of utility poles, light poles, sign posts, or mailboxes, or tilling of soil for landscaping purposes to a depth of 12 inches or less.
5. **PLUMBER'S RIDER.** A plumbing contractor licensed and permitted under Chapter 112B of the Hermosa Municipal Code that has secured a trenching contractor's license and paid the applicable fees for such license.
6. **SEWER AND WATER CONTRACTOR.** A person who engages in the trade or business of selling and setting up sewer and water installations.
7. **SEWER AND WATER INSTALLATION.** The new construction, alteration, repair or improvement of water mains and appurtenances, water service lines and appurtenances, water treatment plant piping and equipment; sewer mains and appurtenances, sanitary sewer services, sewer treatment plant piping and equipment; and storm sewers, and the placement of sewer and water pipe into a building sufficient distance to allow connection

to the building plumbing. **SEWER AND WATER INSTALLATION** does not include the minor adjustment of manhole castings, valve boxes and curb boxes to finish grade for street construction.

8. **SEWER AND WATER INSTALLER.** A person other than a contractor, who is engaged as an employee of, or is otherwise working under the direction of, a sewer and water contractor in sewer and water installation, and when present at a job site has direct supervision over work being performed.
9. **STANDARD SPECIFICATIONS.** Town of Hermosa Standard Specifications for Public Works Construction, as adopted by the Town of Hermosa.
10. **STATE LICENSE.** Either a sewer and water contractor's, installer's or plumbing license issued by the State of South Dakota in accordance with the provisions of Administrative Rules of South Dakota Chapter 20:53:06, or, a plumber's license issued by the State of South Dakota in accordance with the provisions of SDCL Chapter 36-25.
11. **STORM SEWERS.** All pipes, culverts, catch basins, inlets, detention pond inlet and outlet piping, and storm sewer appurtenances which will become an integral part of the public storm sewer system, whether located in public right-of-way or drainage easements, except parking lot drainage pipes and appurtenances are not considered **STORM SEWERS** for purposes of this chapter.
12. **TRENCHING CONTRACTOR.** A person who undertakes or offers to undertake excavating in the public right-of-way (streets, alleys, or other public places) for any purpose.
13. **TRENCHING JOURNEYMAN.** A person other than a contractor, who is engaged as an employee of, or is otherwise working under the direction of a trenching contractor in excavating work, and when present at a job site, has direct supervision over work being performed.

**112A.020 License required.**

A. *Sewer and water contractor.* It is unlawful for any person to conduct, carry on or engage in the business of sewer and water main installation, or to act in the capacity of a sewer and water contractor, without having first secured a Town of Hermosa sewer and water contractor's license.

B. *Sewer and water installer.* It is unlawful for any person to act or to give the appearance of acting as a sewer and water installer without having first secured a Town of Hermosa sewer and water installer's license.

C. *Trenching contractor.* It is unlawful for any person to, in any manner, engage in the business of excavating in the public right-of-way (streets, alleys or other public places), or in city infrastructure easements, or act or give the appearance of acting as a trenching contractor without

having first secured a Town of Hermosa trenching contractor's license. A licensed sewer and water contractor may also act as a trenching contractor.

D. *Trenching journeyman.* It is unlawful for any person to act or give the appearance of acting as a trenching journeyman without having first secured a Town of Hermosa trenching journeyman's license. A licensed sewer and water installer may also act as a trenching journeyman.

#### **112A.030 License application.**

A. *Public Works Department to administer provisions.* The Public Works Department shall administer the provisions of this chapter. Before a contractor's, installer's or journeyman's license may be issued, the applicant shall be required to complete an application form.

b. *State license required.* Applicants for both sewer and water contractor and sewer and water installer licenses must possess a current state license of a class at least equal to the class of city license for which they have applied. Applicants for trenching contractor and trenching journeyman licenses are not required to possess a state license.

#### **112A.040 License fees and renewal.**

A. *Fee schedule.* Every person making application for a license shall pay to the Finance Officer all nonrefundable fees as set by resolution of the Hermosa Board of Trustees.

B. *License term and renewal.* All licenses issued under this chapter shall expire February 28 of the next even-numbered year following its issuance. Any license not renewed by the last business day in March in such even-numbered year shall be ineligible for renewal. In order to obtain a license after the grace period, the applicant shall be required to complete the application requirements for a new license. If an applicant applies for an initial license within 4 months of the time for renewals, the license issued shall be issued for a term extending to February 28 of the second even-numbered year following its issuance.

#### **112A.050 Requirements for issuance.**

A. *Sewer and water contractor's license.* License may be issued only to a person who makes application therefor, pays the application fee, meets the requirements stated in this chapter, presenting to the Town of Hermosa Finance Office a valid current state license, and the following additional requirements:

1. *Liability insurance.* Liability insurance shall be required of every contractor. Every applicant for a sewer and water contractor's license shall present to the Town of Hermosa Finance Office for its review, a valid certificate of insurance at the time of application. It shall be the duty of every sewer and water contractor to continually maintain valid liability insurance. The minimum required general aggregate liability shall be \$2,000,000, with \$50,000 fire damage and \$1,000,000 each occurrence;

2. *Worker's compensation insurance.* Proof of worker's compensation insurance shall be provided prior to the issuance of a contractor's license, as applicable;

3. *Proof of excise tax number.* Applicants for a contractor's license shall be required to supply their excise tax number, as applicable.

4. *Previous utility main installation experience.* Applicants for sewer and water contractor's license shall be required to show at least 1 year of previous experience installing utility mains.

B. *Trenching contractor's license.* License may be issued only to a person who makes application therefor, pays the application fee, meets the requirements stated in this chapter, and the following additional requirements:

1. *Liability insurance.* Liability insurance shall be required of every contractor. Every applicant for a trenching contractor's license shall present to the Town of Hermosa Finance Office for their review, a valid certificate of insurance at the time of application. It shall be the duty of every trenching contractor to continually maintain valid liability insurance. The minimum required general aggregate liability shall be \$300,000, with \$50,000 fire damage and \$300,000 each occurrence;

2. *Worker's compensation insurance.* Proof of worker's compensation insurance shall be provided prior to the issuance of a contractor's license, as applicable;

3. *Proof of excise tax number.* Applicants for a contractor's license shall be required to supply their excise tax number, as applicable.

C. *Installer and journeyman license.*

1. *Sewer and water installer.* License may be issued only to the person who meets the requirements in this chapter and presenting to the Trenching Board a valid current state license.

2. *Trenching journeyman.* License may be issued only to the person who meets the requirements in this chapter.

D. *Age at time of application.* Applicants for any license issued under this chapter must have attained at least 18 years of age at the time of making application therefor.

#### **112A060 Limitations on licenses generally.**

A. At the time of issuance of any license, the Board of Trustees may elect to place any licensee on probation for up to 12 months to allow the Town of Hermosa to review the performance of the licensee. During any probationary period, any water and sewer contractor or trenching contractor will be allowed to have only 1 right-to-work permit active at any given time. The probationary status may be extended if the Board of Trustees determines that the licensee has not completed enough work to allow for proper evaluation.

B. Each sole proprietorship, partnership or corporation who performs work as discussed in this chapter shall employ at least 1 contractor licensed to perform the work. If the employment of the licensed contractor is terminated or ends for any reason, the entity shall immediately notify the Town of Hermosa. The entity shall ensure that, within 60 days of the end of employment of the licensed contractor, it employs a licensed contractor in accordance with this chapter. If an entity fails to provide timely notice of a change in employment of a contractor and/or fails to employ a licensed contractor in accordance with this section, the Town of Hermosa may refuse to issue any permits until the entity is in compliance.

C. It is unlawful for any person to perform, or allow to be performed, any work for which they are licensed without having a licensed person present at the job site with direct supervision over all aspects of the work at all times when work is being performed. Permitted persons to exercise such supervision include:

1. The licensed contractor; or
2. A licensed installer or journeyman.

D. No person to whom a license is issued shall allow any other person to operate thereunder.

E. Licenses shall be the property of person to whom the license is issued and shall not be transferable.

F. The following are exceptions:

1. Plumbing contractors licensed and permitted under Chapter 112B of the Town of Hermosa Municipal Code are not governed by this chapter, except when performing excavation in public right-of-way or performing new construction, alteration, repair or improvement of water or sewer mains and appurtenances. A plumbing contractor may excavate in the public right-of-way for the purposes of installing service lines only, provided he or she has secured a trenching contractor's license and paid fee as set by resolution of the Board of Trustees for a trenching contractor (plumbers rider) license.

2. Private utility companies or the city, when excavating in the public right-of-way for the purposes of repairing, altering or maintaining their facilities, are exempt from the licensing requirements of this chapter. This exemption shall not apply to installation of new facilities or replacement of existing facilities.

**112A.070 License—Revocation, suspension or probation.**

A. The Board of Trustees, in its discretion, may revoke, suspend, or place on probation any license for reasons including, but not limited to, the following: performance of work without a permit; performance of consistently substandard work; violation of any applicable federal, state or local statute, ordinance, rule or regulation; violation of any provision of this chapter; or demonstrated inability or unfitness to perform the work for which he or she has been licensed.

1. The Board of Trustees may revoke any license for a period of 1 year from the date the revocation became effective. Once the period of revocation has ended a licensee upon which the penalty of revocation has been imposed may apply for a new license, subject to any probationary period imposed by the Board of Trustees as part of its issuance of the license.

2. The Board of Trustees may suspend any license for a period not to exceed 30 days from the date the suspension became effective. Once the period of suspension has ended, the Board of Trustees may, at its discretion, place the licensee on probation, as set forth below.

3. The Board of Trustees may elect to place any licensee on probation for up to 12 months to allow the Town of Hermosa to review the performance of the licensee. During any probationary period, any water and sewer contractor or trenching contractor will be allowed to have only 1 right-to-work permit active at any given time. If the Board of Trustees determines that the licensee has not completed enough work to allow for proper evaluation, the Board of

Trustee's may extend a licensee's probationary status for up to 6 months without an additional hearing under this section.

4. The Board of Trustee's may elect to impose any combination of suspension, revocation, and/or probation under this section, or it may impose a probationary period upon any license issued after suspension or revocation.

B. License revocation, suspension or probation shall be imposed only after licensee has had notice and an opportunity to be heard.

1. The notice of intent to impose penalty shall be sent by first class mail to the licensee's address of record on file with the Board of Trustees. The Board of Trustees shall mail the notice of intent to impose penalty no later than 14 days prior to the hearing date.

2. The hearing will take place at a regular or special Board of Trustees meeting, at the discretion of the Board of Trustees, provided the notice of intent is mailed no later than 14 days prior to the meeting date. A vote of a majority of Board of Trustees members present shall be required to take any action on the license.

3. The Board of Trustees shall provide written notice of its decision, to be sent by first class mail to the licensee's address of record on file with the Board of Trustees. The effective date of any action shall be 14 days from the date of mailing of the Board of Trustee's written notice of decision, unless the Board of Trustees finds that immediate imposition of any action is necessary to protect the health and safety of the public.

C. Any licensee subject to investigation by the Board of Trustees shall cooperate fully with the Board of Trustees. Failure to cooperate fully with the Board of Trustees is a basis for license probation, revocation or suspension.

**112A.100 Criminal penalty.**

Any person violating this chapter shall be subject to the general penalty provision of § 10.99

BOARD OF TRUSTEES

\_\_\_\_\_  
President

ATTEST:

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

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

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

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

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

**AN ORDINANCE AMENDING THE TOWN OF HERMOSA CODE OF ORDINANCES BY ADDING A NEW CHAPTER THERETO (i.e. CHAPTER 112B) TO MANDATE LICENSING OF VARIOUS COMMERCIAL CONTRACTORS, INCLUDING, BUT NOT LIMITED TO, PLUMBING CONTRACTORS, MECHANICAL CONTRACTORS, ELECTRICAL CONTRACTORS, GAS FITTING CONTRACTORS, ROOFING CONTRACTORS, SIDING CONTRACTORS, SIGN CONTRACTORS AND MOVING CONTRACTORS AND THE REPEAL OF TOWN OF HERMOSA ORDINANCE CHAPTER 112 IN IT ENTIRETY.**

**BE IT ORDAINED BY THE BOARD OF TRUSTEES TO ENACT AN ORDINANCE AMENDING THE TOWN OF HERMOSA CODE OF ORDINANCES BY ADDING A NEW CHAPTER THERETO (i.e. CHAPTER 112B) TO MANDATE LICENSING AND REGULATION OF VARIOUS COMMERCIAL CONTRACTORS, INCLUDING, BUT NOT LIMITED TO, PLUMBING CONTRACTORS, MECHANICAL CONTRACTORS, ELECTRICAL CONTRACTORS, GAS FITTING CONTRACTORS, ROOFING CONTRACTORS, SIDING CONTRACTORS, SIGN CONTRACTORS AND MOVING CONTRACTORS AND THE REPEAL OF TOWN OF HERMOSA ORDINANCE CHAPTER 112 IN ITS ENTIRETY AS FOLLOWS:**

**112B.010 Contractor licenses.**

A. It shall be unlawful for any person to engage in any of the trades, businesses or occupations enumerated below in the Town of Hermosa, or in any construction work pursuant to such trades, businesses or occupations in the Town of Hermosa, without having first obtained a license from the Town of Hermosa for the work authorized by such license.

B. General building contractor licenses are available for the following classes:

1. Class A, for construction of any and all types of structures;
2. Class B, for construction of detached single-family houses, attached single-family houses, and 2-family dwellings, as defined by the U.S. Census Bureau; or
3. Class C, as follows.

C. Class C trade licenses are available for the following classes:

1. Class PC – Plumbing contractor as provided in SECTION 112B.020;
2. Class MC – Mechanical contractor as provided in SECTION 112B.030;
3. Class MI – Mechanical installer as provided in SECTION 112B.030;
4. Class MA – Mechanical apprentice as provided in SECTION 112B.030;
5. Class MAS – Appliance specialist as provided in SECTION 112B.030;
6. Class EC – Electrical contractor as provided in SECTION 112B.040;
7. Class EB – Class B electrician as provided in SECTION 112B.040;
8. Class GC – Gas fitting contractor as provided in SECTION 112B.040;

9. Class GF – Gas fitter as provided in SECTION 112B.050;
10. Class GA – Gas fitting apprentice as provided in SECTION 112B.050;
11. Class R – **ROOFING CONTRACTOR** defined as a proprietorship, partnership, firm or corporation which, for compensation, undertakes or offers to undertake the installation, alteration, repair, improvement, conversion or new construction building roofs and roof gutters;
12. Class P – **PAINTING CONTRACTORS** defined as a proprietorship, partnership, firm or corporation which, for compensation, undertakes or offers to provide either interior and/or exterior painting of structures;
13. Class S – **SIGN CONTRACTOR**, defined as a proprietorship, partnership, firm or corporation which, for compensation, undertakes or offers to undertake the enlargement, alteration, repair, improvement, conversion or new construction of a sign for which a sign permit required;
14. Class M – **MOVING CONTRACTOR**, defined as a proprietorship, partnership, firm or corporation which, for compensation, undertakes or offers to undertake the moving of any building or structure within city limits where a permit is required for the moving of the building or structure.
15. Class SD – **SIDING CONTRACTOR**, defined as a proprietorship, partnership, firm or corporation which, for compensation, undertakes or offers to undertake the installation, alteration, repair, improvement, conversion or new construction for exterior wall coverings when a building permit is required either materials or assembly of materials applied on the exterior side of exterior walls for the purpose of providing a weather-resistive barrier, insulation, or for aesthetics, including but not limited to veneers, siding and exterior insulation and finish systems as defined, architectural trim and embellishments such as cornices, soffits and fascias;
16. Class CM – **CONCRETE AND MASONRY CONTRACTOR** defined as a proprietorship, partnership, firm or corporation which, for compensation, undertakes or offers to undertake the installation, alteration, repair, improvement, conversion or new construction for services involving concrete;
17. Class E – **EXCAVATION CONTRACTORS** defined as a proprietorship, partnership, firm or corporation which, for compensation, undertakes or offers to undertake and provide services relating to excavation;
18. Class LW – **LANDSCAPING AND OUTDOOR WATERING SYSTEMS CONTRACTORS** defined as a proprietorship, partnership, firm or corporation which, for compensation, undertakes or offers to undertake landscaping services and the installation, alteration, repair, improvement, conversion or new construction for outdoor watering and sprinkler systems;
19. CLASS TR – **TREE TRIMMING AND REMOVAL CONTRACTORS** defined as a proprietorship, partnership, firm or corporation which, for compensation, undertakes or offers to undertake trimming of trees and shrubbery and the removal of trees and shrubbery

20. CLASS Z – Any and all other proprietorships, partnerships, firms or corporations which, for compensation, undertake or offer to undertake contracting services that include, but are not limited to, any other forms of construction; plumbing; electrical; excavations; repairs to structures; improvements to structures; heating and cooling; roofing; landscaping; concrete; masonry; carpentry; remodeling; siding; rough framing; all phases of new construction; alterations; additions; repairs; demolition of structures; streets, sidewalk; pavement and the like shall all be required to obtain a license in accordance with this chapter.

D. Each applicant for every license and registration required by this title shall provide to the Town of Hermosa Finance Office the following information:

1. A completed application for the particular license desired available at the Town of Hermosa Finance Office;
2. A copy of the applicant's South Dakota excise tax license, as applicable;
3. The applicant's address and phone number;
4. If available, the name, address, phone number, and email of an agent residing in South Dakota;
5. For firms required to file organizing or incorporating documents with the Secretary of State, proof that it is a validly existing legal entity authorized to transact business in South Dakota;
6. Payment of the application fee as set by resolution of the Hermosa Board of Trustees; and
7. If applicable, a copy of any equivalent state license.

E. Each applicant for a general building contractor license, that is a firm and not a natural person, shall designate on the application at least 1 license holder.

1. If the applicant is a firm, it may designate an officer or employee of the firm as license holder. A **FIRM** under this section is defined as a partnership, limited partnership, limited liability partnership, limited liability limited partnership, limited liability company, corporation or other legal entity.

2. An applicant may designate multiple license holders, all of whom, shall be listed on the license issued to the contractor.

F. The Board of Trustees or the Town of Hermosa Public Works Director, shall have the right to require of an applicant proof of ability to perform satisfactorily in the business, trade or occupation for which the license or registration is applied for. Such proof of ability may be required to be evidenced in a fair and impartial manner by approved tests or by certification.

G. Every applicant for every license shall present to the Board of Trustees for review a valid certificate of insurance at the time of application. It shall be the duty of every licensee to continually maintain valid liability insurance. The minimum required general aggregate liability shall be \$1,000,000 with \$300,000 fire damage and \$1,000,000 each occurrence.

H. The following exceptions do not require a license:

1. Employees of a general building contractor license if they are under the supervision of a license holder.

2. A landlord personally performing work on residential property the landlord owns or manages when the landlord is acting as his or her own contractor, except work which would require a license under this Chapter for electrical, gas fitting, plumbing, and mechanical. A landlord may not build more than 1 single-family dwelling in a 5-year period without obtaining a contractor's license.

3. A homeowner who builds, constructs, alters, adds to or demolishes any building or structure or any portion thereof that constitutes the owner's residence or a building or structure accessory thereto that is intended for the owner's personal use. An owner may not build more than 1 single-family dwelling in a 5-year period without obtaining a contractor's license, provided he or she occupies the dwelling a minimum of 1 year after the certificate of occupancy is issued.

I. In accordance with South Dakota state law, proof of worker's compensation insurance shall be verified prior to the issuance of a license.

J. No licensee or landlord shall allow his or her name to be used by any other person directly or indirectly, either to obtain a building permit or to perform work under this code outside his or her supervision.

K. It shall be the duty of each general building contractor or trade license that is a firm to immediately notify the Board of Trustees in writing upon the designation of a license holder or the termination or separation of a license holder listed on the contractor's license.

1. Upon the termination or separation of a designated license holder, the general building contractor license shall expire 10 business days following such separation or termination unless:

- a. There is another license holder listed on its license;
- b. The contractor immediately designates another qualified license holder; or
- c. The license is extended as provided herein.

2. The contractor may, within 10 business days of any such termination or separation, request in writing from the Board of Trustees an extension of its general building contractor license, and the Building Official shall grant an extension for a period not to exceed 30 days from the date of termination or separation.

3. No contractor may be issued a new permit during the period where no license holder is listed on its general contractor's license.

L. Except as provided below, all Class A, Class B and Class C licenses issued under the provisions of this chapter are valid for 3 years except where state law defines time frame.

1. Licensees failing to renew their applications prior to expiration have a 30-day grace period during which to renew before the license lapses. Licensees who fail to renew their license by the date of expiration or within the 30-day grace period shall be required to reapply for a new license, meeting all requirements of this code and paying all required fees. 2. Upon approval

of the Building Official, partial payment (except for an electrical or plumbing license) may be received by the Finance Office for any of the following reasons:

a. If a permit is expired or going to expire, a licensee may provide partial payment to receive a license for a limited period of time as determined by the Board of Trustees;

b. If a licensee applies to upgrade from one license to another, a license fee for the other license may be reduced as determined by the Board OF Trustees.

For full term license applications, no partial payment is otherwise permitted. The amount of the license fee will be determined by resolution of the Board of Trustees.

M. All plumbing contractor licenses are valid for 1 year. Renewal applications may be filed 60 days prior to expiration of the license. Licensees failing to renew their applications prior to expiration have a 60-day grace period during which to renew before the license lapses. Licensees who fail to renew their license by the date of expiration or within the 60-day grace period shall be required to reapply for a new license, meeting all requirements of this code and paying all required fees. No partial payment shall be received by the Finance Office for any license or registration fee, and the Finance Office is hereby prohibited from receiving any sum less than the amount required by the terms of the provisions pertaining to the particular contractor license applied for. The amount of the license fee will be determined by resolution of the Board of Trustees.

N. All electrical contractor licenses and Class B electrician licenses are valid for 2 years. Licenses will expire on December 31 of even years. Renewal applications may be filed 60 days prior to expiration of the license. Licensees failing to renew their applications prior to expiration have a 60-day grace period during which to renew before the license lapses. Licensees who fail to renew their license by the date of expiration or within the 60-day grace period shall be required to reapply for a new license, meeting all requirements of this code and paying all required fees. No partial payment shall be received by the Finance Office for any license or registration fee, and the Finance Office is hereby prohibited from receiving any sum less than the amount required by the terms of the provisions pertaining to the particular contractor license applied for. The amount of the license fee will be determined by resolution of the Board of Trustees.

O. Upon adoption of this chapter, the Town of Hermosa will honor existing licenses until they expire, at which time the licensee must comply with all requirements of this chapter prior to obtaining a license.

P. Upon receipt of a license approved by the Board of Trustees, the Finance Officer shall issue a license to the applicant.

Q. It shall be the duty of every person receiving a license or registration pursuant to this chapter to exhibit any such license or registration upon request of a law enforcement officer or a duly appointed representative of the Town of Hermosa.

R. All trades listed in § 112B.010(C). must be licensed under this section, unless an exception applies. If a subcontractor is not licensed in violation of this section, the subcontractor and any general contractor are subject to sanctions as provided in this code.

S. It shall be within the discretion of the Board of Trustees to suspend, revoke or refuse to issue or renew the license of any person who has been doing work without a permit.

T. It shall be within the discretion of the Board of Trustees to suspend, revoke, or refuse to issue or approve any general building contractor or trade license if the Board of Trustees finds the following:

1. Suspension, revocation or refusal to renew is in the public interest; and
2. Based upon evidence presented, the applicant or licensee:
  - a. Has filed an application for a license which is incomplete in any material respect or contains 1 or more statements which are false or misleading;
  - b. Has engaged in any fraudulent, deceptive, or dishonest act or practice in the performance of building contracting and/or the trade;
  - c. Has violated any applicable provision of this section, the Town of Hermosa building codes, state regulation or law, or federal law or regulation;
  - d. Fails to maintain the requirements of licensure, including insurance, excise tax license or current phone and address as required by this chapter;
  - e. Fails to provide copies of records in his or her possession related to a matter under review;
  - f. Fails to pay fees in a timely manner;
  - g. Fails to respond to a lawful order or directive of the Town of Hermosa or the Town of Hermosa Public Works Director; or
  - h. Fails to possess a valid state license for the particular trade, if such a license is required by state law.

W. A licensee who is the subject of a review by the Board of Trustees shall cooperate fully with the Board of Trustees. Cooperation includes, but is not limited to:

1. Responding fully and promptly to questions raised by the Board of Trustees;
2. Providing copies of records in the person's possession relative to the matter under review, as requested by the Board of Trustees; and
3. Appearing at conferences or hearings scheduled by the Board of Trustees.

**112B.020 License–Required–Plumbing Contractors.**

- A. It is unlawful for any person to conduct, carry on or engage in the business of plumbing or act in the capacity of a plumbing contractor without first having had issued to him or her a valid plumbing contractor's license by the State of South Dakota. It is also unlawful for any person to labor at the trade of plumbing in the capacity of a plumbing contractor without first having had issued to him or her a valid plumber's license by the Board of Trustees pursuant to Section 112B.010.

B. **PLUMBING CONTRACTOR** means any person qualified and skilled in the planning, superintending and the practical installation of plumbing, and otherwise qualified and registered to contract for plumbing installations and conduct the business of plumbing, and familiar with the laws, rules and regulations governing the same.

#### **112B.030 License–Required Mechanical Contractors.**

A. *Mechanical contractor.* It shall be unlawful for any person or persons representing or operating under the auspices of a proprietorship, partnership, firm, or corporation to conduct, carry on, or engage in the business of mechanical work or act in the capacity of a mechanical contractor, without first being approved by the Board of Trustees, and having had issued to them a valid mechanical contractor’s license pursuant to Section 112B.010.

1. **MECHANICAL CONTRACTOR** means a proprietorship, partnership, firm, or corporation, who for compensation undertakes or offers to undertake mechanical contracting. As a proprietorship, partnership, firm, or corporation, the owner shall be qualified in the mechanical trade as a mechanical contractor, or have employed as a supervisor a person with said qualifications and license. The mechanical contractor’s license shall be issued in the name of an individual, DBA (doing business as) company name. The individual licensed as a contractor under a proprietorship, partnership, firm, or corporation, shall have 6 years verifiable experience, via completion of the work record portion of the mechanical license application, and be qualified in planning, superintending, and the practical installation of mechanical system. A completed 18-24 month mechanical educational program will count as 1 year of experience and a completed 9-12 month mechanical educational program will count as 1/2 year experience.

2. **MECHANICAL CONTRACTING** means the enlargement, alteration, improvement, conversion, or installation of mechanical systems; including the planning, superintending and the practical installation; and being familiar with the laws, rules and regulations governing the same.

3. If the person holding the contractor’s license for a business leaves that business, that existing business will have 30 days to obtain another contractor’s license under another person.

B. *Mechanical installer.* It shall be unlawful for any person to labor at the trade or in the capacity of a mechanical installer without first being approved by the Building Official and having had issued to him or her a valid mechanical installer’s license pursuant to Section 112B.010. It shall also be unlawful for any person to labor at the trade or in the capacity of a mechanical installer if he or she is not engaged as an employee of, or otherwise working under the direction of, a mechanical contractor. In order to be licensed as a mechanical installer, a person must have 4 years verifiable experience, via completion of the work record portion of the mechanical license application, in the installation of mechanical equipment. A completed 18-24 month mechanical educational program will count as 1 year of experience and a completed 9-12 month mechanical educational program will count as 1/2 year experience. A person who is licensed as a mechanical contractor is not required to obtain a mechanical installer’s license in order to labor at the trade or in the capacity of a mechanical installer.

1. **MECHANICAL INSTALLER** means any person who installs, lays out, alters or repairs mechanical or HVAC systems in all buildings and structures.

C. *Mechanical apprentice*. It shall be unlawful for any person to labor at the trade or in the capacity of a mechanical apprentice without first being approved by the Building Official and having had issued to him or her a valid mechanical apprentice license pursuant to Section 112B.010.

1. ***MECHANICAL APPRENTICE*** means any person other than a mechanical installer who is engaged in working as an employee of a mechanical contractor under the immediate and personal supervision of a mechanical installer, learning and assisting in the installation of mechanical systems. No apprentice shall be in charge of any phase of work.

D. *Appliance specialist*. It shall be unlawful for any person to labor at the trade or in the capacity of an appliance specialist without first being approved the Hermosa Board of Trustees and having had issued to him a valid appliance specialist license pursuant to Section 112B.010.

1. ***APPLIANCE SPECIALIST*** means any person other than a mechanical contractor, installer, or apprentice who is engaged only in the installation of listed and labeled gas burning hearth appliances and their venting systems, listed and labeled solid fuel fireplaces and cord wood burning appliances and their venting systems, and listed and labeled wood pellet and biomass burning appliances and their venting systems.

E. Any licensed Rapid City plumbing contractor or their licensed employees can install piping or tubing for a hydronic or refrigeration system.

#### **112B.040 License–Required Electrical Contractors.**

##### A. Definitions.

1. “***CLASS B ELECTRICIAN***” means a person who has the necessary qualifications, which shall include training, experience and technical knowledge to contract, install, lay out, alter or repair installations of electrical wiring in residential dwellings and farmsteads.
2. “***ELECTRICAL CONTRACTOR***” means a person, firm or corporation that engages in the business of or contracts for installing, altering, removing, repairing or maintaining any kind of electrical wiring or equipment. The electrical contractor must employ a qualified RME who has the necessary qualifications, which shall include training, experience and technical knowledge; to plan, lay out, supervise, install, add, alter, and repair installations of wiring or equipment for electrical light, heat or power in an approved manner, without supervision.
3. “***ELECTRICAL WIRING***” means a system of conductors to carry electrical energy and includes conduit when included as part of the system.
4. “***ELECTRICAL WORK***” means installing, altering, repairing or removing electrical wiring.

5. “**HOME WIRING**” means any electrical wiring done by a person, on real property that is owned by the person and a structure that is presently occupied by the person providing the premises is a single-family dwelling or accessory building.
  6. “**RME**” means responsible managing electrician. He or she must be a bona fide employee of the firm. This means that the RME must be regularly employed by the firm and actively involved in the operation of the business at least 32 hours per week or 80 percent of the total business operating hours per week, whichever is less. Each electrical contractor shall designate an RME under whose supervision electrical work shall be done; the Town of Hermosa shall be notified of such designation. The RME shall hold a valid state electrical contractor’s license. The RME shall be responsible for any violations of this Chapter. The RME shall have the necessary qualifications, which shall include training, experience and technical knowledge; to plan, lay out, supervise, install, add, alter, and repair installations of wiring or equipment for electrical light, heat or power in an approved manner, without supervision.
  7. “**SUPERVISION**” of any kind thereof, means to look over, inspect, oversee, coordinate, direct and critically evaluate the work of a journeyman electrician or an apprentice electrician. The electrical inspector may request the presence of the supervising RME on the job site on twenty-four hours’ notice. Notice of such request is considered accomplished if left with the business, or with the RME as listed on the latest license application on record in the City Finance Office.
- B. License Required.** No person shall engage in the business of electrical installation, or perform any electrical work, or offer or agree to perform any electrical work within the city without a current license issued in accordance with SECTION 112B.010.
- C. License Application.** Any person desiring to engage in the business of electrical installation, as an electrical contractor or Class B electrician shall make application for a license pursuant to 112B.010. The electrical contractor and class B electrical contractors shall complete and submit license applications and license renewals for all employees, as applicable, prior to their presence on any job site and shall be responsible to ensure that all employees have the licenses required by the state and the town of Hermosa.
- D. License Type and Qualifications.** Electrical Contractors must have at least 2 years of experience as a journeyman electrician and possess a current state electrical contractor’s license or journeyman electrician’s license before making an application for an electrical contractor’s license.
1. **Class B Electrician.** A person must possess a current State Class B license and must have at least 2 years’ experience as a journeymen wiring, installing and repairing electrical apparatus and equipment under the supervision of a master electrician or class B electrician before making application for a class B electrical license. A minimum of 1 year of that experience shall be in residential or farmstead wiring.

**112B.050 License–Required Gas Fitter Contractors.**

- A. The following words, terms and phrases are defined and shall be interpreted as such throughout this chapter. Terms not defined in this section shall have the meaning customarily assigned to them.
1. **CITY GAS INSPECTOR** or **GAS INSPECTOR**. A qualified person who inspects and approves all gas fitting and to enforce the provisions of this chapter.
  2. **GAS COMPANY** or **COMPANY**. The local natural gas supplier, Montana Dakota Utilities Company, its successors or assigns, and the local propane companies, their successors or assigns.
  3. **GAS FITTER**. Any person, who, by his or her knowledge, training and experience, is qualified to do, and who, as his or her principal occupation is engaged in gas fitting. Any licensed plumber or gas fitting contractor shall be considered a gas fitter under this chapter.
  4. **GAS FITTING**. The act of installing pipes, fittings, fixtures, equipment and apparatus for transporting and using fuel gases, such as natural gas, undiluted liquefied petroleum gases and liquefied petroleum gas air mixtures.
  5. **GAS FITTING APPRENTICE**. Any person other than a gas fitter who is engaged in working as an employee of a gas contractor under the immediate and personal supervision of a gas fitter, learning and assisting in the installation of gas fitting.
  6. **GAS FITTING CONTRACTOR**. A person qualified and skilled in the planning, superintending and the practical installation of gas fitting and gas piping, and who is otherwise qualified and registered to contract for gas fitting and gas piping installations, and who is familiar with the laws, rules and regulations governing the same.
  7. **GAS PIPING**. Any pipe, tubing, or conduit, valves and fittings, conveying or holding field or illuminating gas, in and about any building or buildings, beginning at the outlet of the gas meter.
- B. *Gas fitting contractor*. It is unlawful for any person to conduct, carry on or engage in the business of gas fitting and gas piping, or to act in the capacity of a gas fitting contractor, without having first secured a gas contractor’s license pursuant to SECTION 112B.010. A licensed plumbing contractor shall not be required to be licensed under this section in order to do gas fitting or gas piping.
- C. *Gas fitter*. It is unlawful for any person to act, or to give the appearance of acting as a gas fitter without having first secured a gas fitter’s license pursuant to SECTION 112B.010. A person licensed as a plumber shall not be required to be licensed under this section in

order to do gas fitting. Each gas fitter must work under the control and supervision of a gas fitting or plumbing contractor.

D. *Gas fitting apprentice.* It is unlawful for any person to act or give the appearance of acting as a gas fitting apprentice without having first secured a gas fitting apprentice license pursuant to SECTION 112B.010.

**112B.099 Repeal of Chapter 112.**

Chapter 112 of the Town of Hermosa ordinances is repealed in its entirety.

**112B.100 Criminal penalty.**

Any person violating this chapter shall be subject to the general penalty provision of § 10.99.

BOARD OF TRUSTEES

\_\_\_\_\_  
President

ATTEST:

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

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

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

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

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