



**CITY OF YANKTON**

**2020\_09\_28**

**CITY COMMISSION  
MEETING**



**Mission Statement**  
*To provide exemplary experiences, services & spaces that create opportunities for everyone to learn, engage and thrive.*

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## **YANKTON BOARD OF CITY COMMISSIONERS**

Regular City Commission Meeting beginning at 7:00 P.M.

**Monday, September 28, 2020**

**City of Yankton Community Meeting Room**

Located at the Career Manufacturing Technical Education Academy formerly known as Technical Education Center • **1200 W. 21<sup>st</sup> Street • Room 114**

**Due to the COVID-19 virus, this meeting will be conducted electronically in compliance with SDCL. If you would like to watch the City Commission meeting you can do so by accessing the City of Yankton’s YouTube Live Channel.**

<https://www.youtube.com/channel/UCD1a1hf1dIkiLVSXnmdRQg/live>

**If you would like to participate in the City Commission meeting, limited access will be provided through the west door of the CMTEA building. You will be asked to state what item you would like to participate in and allowed access one person at a time into the meeting room. You will be asked to introduce yourself and make your comments. Alternatively, you can comment or ask questions utilizing the chat function on the YouTube Livestream.**

Rebroadcast Schedule: Tuesday @ 7:30pm, on channels 3 & 45

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### **I. ROUTINE BUSINESS**

- 1. Roll Call**
- 2. Approve Minutes of regular meeting of September 14, 2020** **Attachment I-2**
- 3. Proclamation – Manufacturing Week** **Attachment I-3**
- 4. City Manager’s Report** **Attachment I-4**
- 5. Public Appearances**

*Public appearances is a time for persons to address the City Commission on items not listed on the agenda. No action may be taken on a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action will be taken. Each person has up to three minutes to speak. Comments made during the Public Appearance Comment period of the agenda may be on any subject. There shall be no personal attacks against the Mayor, members of the City Commission, City Staff, or any other individual.*

### **II. CONSENT ITEMS**

*Matters appearing on the Consent Agenda are expected to be non-controversial and will be acted upon by the City Commission at one time, without discussion. Approval constitutes following the recommendation of the City Manager on each item.*

1. **Establishing public hearing for sale of alcoholic beverages**  
Establish October 12, 2020, as the date for the public hearing on the request for a Special Events Malt Beverage (on-sale) Retailers License for one day, October 24, 2020, from Yankton Girls Softball Assn. (Doug Marquardt, Manager) 1805 Whiting Drive, Corn Hole Fundraiser, Yankton, S.D

**Attachment II-1**

2. **Dissolution of Towing Committee**  
Consideration of Memorandum #20-181 recommending dissolution of Towing Committee

**Attachment II-2**

3. **Establishing public hearing for sale of alcoholic beverages**  
Establish October 12, 2020, as the date for the public hearing on the request for a Special Events RETAIL (on-sale) Liquor License for 2 days, November 14, 2020 through November 15, 2020 from Boomer's Inc., (Gary W. Boom, President) d/b/a Boomer's Lounge, Zombie's Realm, 101 E 3<sup>rd</sup> St., Yankton, South Dakota.

**Attachment II-3**

4. **Permission for Open Container for Meridian District Event**  
Consideration of Memorandum #20-185 recommending permission for open container for Meridian District Event, Sip n Shop on October 15, 2020

**Attachment II-4**

5. **Possible Quorum Event**  
October 3, 2020, 1:00 pm, in front of Yankton County Courthouse for Bridge Dedication Ceremony, no official commission action

### **III. OLD BUSINESS**

*Old business includes items that have previously appeared on the City Commission's agenda and require further consideration or action by the board.*

**NONE**

*Adoption of an ordinance is typically a two-meeting process. At the first meeting, an ordinance is introduced, and the first reading is held. During the second meeting, the ordinance is discussed by the commission and the public and then considered for adoption.*

### **IV. NEW BUSINESS**

*New business items are those that have not been discussed by the Commission previously.*

1. **Planning Commission Recommendation – CUP**  
Consideration of Memorandum #20-176 regarding Resolution #20-67, a Conditional Use Permit for a self-storage facility in a B-2 Highway Business District on Outlots 19A, 20 and 20A, Moderegger Outlots in the City of Yankton, South Dakota. Mike Hacecky Rentals, LLC, owner. Address, 803 Ferdig Ave.

**Attachment IV-1**

- 2. Establish Public Hearing - Rezoning**  
Introduction and first reading of Ordinance #1040 and establishing October 12, 2020 as the date for a public hearing to consider rezoning from I-1 Industrial to B-3 Central Business on Block 69, Lower Yankton Addition to the City of Yankton, South Dakota. Mona's, LLC, owner. Address, South side of the 600 Block of E. 4th Street.  
**Attachment IV-2**
- 3. Establish Public Hearing - Rezoning**  
Introduction and first reading of Ordinance #1041 and establishing October 12, 2020 as the date for a public hearing to consider rezoning from B-2 Highway Business to R-3 Two Family Residential, future Blocks 10 and 11, and from B-2 Hwy Business to R-4 Multiple Family, that area lying east of future Colton Avenue, Westbrook Estates. All in that portion of the following property lying south of 25th Street. The East Half of the Southeast Quarter except the East 700' in Section 2, all in Township 93 North, Range 56 West of the 5th Principal Meridian Yankton County, South Dakota. Yankton Development Enterprises, LLC., Kelly Nielson, President, owner. Address, south side of the 1600 Block of W. 25th Street.  
**Attachment IV-3**
- 4. Agreement with SDDOT for purchase of mower for Chan Gurney Airport**  
Consideration of Memorandum #20-177 recommending approval of Resolution #20-70 declaring the identified mower as surplus for trade, the purchase of a new mower and an agreement with the South Dakota Department of Transportation, Division of Air, Rail, and Transit for Project No. AP0062-2020, an \$8,300 allocation from Yankton's fuel tax account held by the State for the purchase of a mower dedicated for use at Chan Gurney Municipal Airport.  
**Attachment IV-4**
- 5. Purchase of mower for Joint Powers Solid Waste through Sourcewell**  
Consideration of Memorandum #20-178 and Resolution #20-68 regarding Lawn Mower Purchased through Sourcewell Contract bid for the City of Yankton Public Works Department, Joint Powers Division  
**Attachment IV-5**
- 6. Approval for Membership / HGACBuy Government Procurement Service**  
Consideration of Memorandum #20-179 for approval of Membership in HGACBuy Government Procurement Service  
**Attachment IV-6**
- 7. Recommendation from Health Insurance Committee for Group Health Insurance, Dental Insurance and Vision Insurance**  
Consideration of Memorandum #20-180 recommending approval of the contract for Group Health Insurance, Dental Insurance and Vision Insurance for City employees  
**Attachment IV-7**
- 8. Recommendation naming Towing Agents**  
Consideration of Memorandum #20-182 and Resolution #20-69 recommending Abandonment of Towing Agreement and assigning Towing Agents  
**Attachment IV-8**

**9. Marne Creek Bank & Trail Restoration**

Consideration of Memorandum #20-184 recommending approval of the Contract between the City of Yankton and Banner Associates for Marne Creek Bank and Trail Restoration

**Attachment IV-9**

**10. Agreement between Bon Homme County and the City of Yankton**

Consideration of Memorandum #20-183 recommending approval of the Agreement between Bon Homme County and the City of Yankton regarding booking and processing arrests made by City of Yankton

**Attachment IV-10**

**V. OTHER BUSINESS**

*Other business is a time for City Commissioners to address the commission regarding matters not on the agenda. These items will be deliberated by the governing body and will not be acted upon at this time. Items mentioned may be added to a future City Commission meeting or work session for deliberation or action.*

**VI. ADJOURN THE MEETING OF SEPTEMBER 28, 2020**

*The City of Yankton Community Meeting Room is accessible to everyone. If you have any additional accommodation requirements, please call 668-5221.*

*Should you have any reason to believe an open meetings law has been violated please contact the Open Meetings Commission at the South Dakota Office of the Attorney General at: 1302 E. Hwy 14, Suite 1, Pierre, SD 57501-8501 or by phone at 605-773-3215.*

**CHAMBER OF THE BOARD OF CITY COMMISSIONERS  
YANKTON, SOUTH DAKOTA  
SEPTEMBER 14<sup>TH</sup>, 2020**

Board of City Commissioners of the City of Yankton was called to order by Mayor Johnson.

**Roll Call:** Present: Commissioners Benson, Brunick, Maibaum, Miner, Moser, Schramm and Webber. City Attorney Den Herder and City Manager Leon were also present. Absent: Commissioner Carda. Quorum present.

Action 20-337

Moved by Commissioner Moser, seconded by Commissioner Brunick, to approve Minutes of regular meeting of August 24, 2020.

**Roll Call:** All members present voting “Aye;” voting “Nay:” None.

Motion adopted.

Action 20-338

Moved by Commissioner Webber, seconded by Commissioner Benson, that the Schedule of Bills be approved and warrants be issued.

1 Office Solution - Office Supplies - \$290.67; Ace Tool - Arbor Tools - \$216.30; Adobe Creative Cloud - Adobe - \$70.27; Adobe Stock - Adobe - \$31.94; Adorama.Com - Evidence Tubes - \$355.37; Amazon - Lightning Cables - \$55.40; Amazon - Books - \$18.98; Amazon - Books - \$202.12; Amazon - Program Supplies - \$161.46; Amazon - Hand Sanitizer - \$116.52; Amazon - Headsets - \$44.98; Amazon - Hand Sanitizer - \$116.52; Amazon - Phone Horn - \$71.94; Amazon - Office Supplies - \$146.34; Amazon - DVD's - \$67.73; Amazon - Hand Sanitizer - \$212.20; Amazon - Book - \$13.12; Amazon - Webcams - \$931.00; Amazon - Disposable Masks - \$13.99; Amazon - Books - \$22.98; Amazon - Disposable Masks - \$6.19; Amazon - Irrigation Supplies - \$119.70; Amazon - Program Supplies - \$123.67; Amazon - Disposable Masks - \$4.71; Amazon - Book - \$12.59; Amazon - Body Mic Ear Pieces - \$21.29; Amazon - Books - \$48.63; Amazon - USB Charger - \$29.97; American Library Association - Programming - \$39.00; American Red Cross – Red Cross Training - \$342.00; A-Ox Welding Supply - Welding Tips - \$13.20; A-Ox Welding Supply Co Inc. - Propane - \$78.33; Associated Supply - Pool Repairs - \$83.50; AT&T - Cell Phone - \$424.51; AT&T - Mobile Data - \$762.31; Auto Value - Paint For Plows - \$990.30; Auto Zone - Spark Plug Coil - \$470.26; Avenu Insights & Analytics LLC - Maint Program Support - \$1,969.83; Avera Sacred Heart - Dot Random Testing - \$298.00; Avera Sacred Heart - Hep B Vaccination - \$43.15; Awwa.Org - AWWA Membership - \$214.00; Axon - 5 Tasers-8 Cart-4ppm - \$5,759.00; B & L Communications - Pagers & Warranty - \$24,035.00; Baker-Taylor - Books - \$1,367.48; Banner Associates Inc. - Meridian Bridge Repairs - \$2,106.50; Battery Exchange - Batteries - \$27.00; Best Buy - Headsets - \$79.84; Bierschbach Equip & Supply - Asphalt Hose - \$604.00; Boller Printing - Bike License Sticker - \$123.50; Bomgaars - Under Bed Tool Box - \$1,129.46; Bound Tree Medical LLC - N95 Masks - \$60.81; Bound Tree Medical LLC - Gloves - \$101.94; Braxton/Jeremiah - Reimburse CDL Testing - \$95.00; Brunick/Justin - Irrigation Repairs - \$297.45; Buhl Cleaners - Towel Service - \$808.49; Butler Machinery Co - Parts - \$629.70; C & B Yankton - Tractor Repair - \$664.18; Cedar Knox Public Power Dist - Elect - \$1,771.72; Centurylink - Phone - \$1,278.21; Chewy.Com - K9 Max Joint Vitamins - \$107.49; Christensen Radiator A - Radiator Repair - \$88.25; CHS - Fuel - \$166.80; City Of Vermillion - Jt Power Cash Trans - \$76,291.58; City Of Yankton-Landfill - Garbage - \$96.50; City Of Yankton-Parks - Landfill Charges - \$636.41; City Of Yankton-Solid Waste - Compacted Garbage - \$16,349.20; City Of Yankton-Street - Rubbish - \$12.00; City Utilities - Water-WW Charges - \$84.95; Clean Sweep

Industries - Part - \$234.00; Concrete Material - Hot Mix - \$94,889.70; Core & Main - Parts - \$6,692.83; Cornhusker Intl Truck Inc. - Filters - \$453.60; Corpsummits - Events Conference - \$199.00; Cowman/Lori - Membership Refund - \$280.58; Cox Auto Supply - Grease - \$117.18; Credit Collection Service Inc. - Ut Collection - \$75.79; Crescent Electric - Bridge Bulbs - \$592.32; Culligan Water - Water Di Filters - \$50.00; Danko Emergency Equipment - Gear Bags - \$116.41; Department Of Environment - State Examination - \$30.00; Design Solutions & Integration - Well House Update - \$16,227.00; Diedrichsen/Jed - Plant Reimbursement - \$166.01; Digital Outlet - Webcams - \$107.85; Double H Paving Inc. - Runway Reconstruction - \$750,360.24; Dunham's - Hand Bilge Pump - \$24.99; Dustrol Inc - Cold Milling - \$15,576.17; Ebay - Toner - \$129.99; Ebay - Headsets - \$91.44; Electrical Engineering & Equip - Generator Repairs - \$1,416.51; Embroidery & Screen Works - Uniform - \$45.00; Environmental Express - Glucose Glutamic Acid - \$77.76; E-Pumps - Pump - \$326.00; Evident Inc. - Evidence Swab Boxes - \$51.11; Fastenal Company - Nuts And Bolts - \$647.60; Fedex - Evidence Postage; SDFL - \$13.39; Ferguson Waterworks - 2-2" Meters - \$1,738.00; Ferguson Waterworks - 1" Meter Spuds - \$311.63; Findaway - Books - \$47.49; Flexible Pipe Tool Company - Freight - \$25.00; Flynn's Flowing Flags - Flag Pole - \$238.00; Frontier Mills - Lawn Mix - \$121.20; Frontier Mills - Lawn Mix - \$121.20; G & R Controls - Boiler Pump Repair - \$1,356.27; Gammon Technical - Decals - \$120.62; Genuine Replacement - Compromised Card Charges - \$112.90; Geotek Eng & Testing Serv Inc. - Testing - \$376.50; Gerstner Oil Co - Fuel - \$13,236.06; GOSMA - Membership Dues - \$150.00; GPS Industries - Cart Rental - \$1,920.00; Grainger - Hip Waders - \$337.65; Great Plains Zoo - Summer Reading Program - \$60.00; Greatland Corporation - Greatland Subscription - \$99.00; Green For Life Environmental - Reclaimed Oil - \$204.66; H & K Oil Inc. - Balance Tires - \$40.00; Hach Company - Reagents - \$388.56; Harn Ro Systems Inc. - Filters - \$15,790.34; Hawkins Inc. - Chemicals - \$23,924.66; HDR Engineering Inc. - Water Plant Construction - \$49,780.02; Hello Lemon - Webcams - \$38.99; Hillcrest Golf & Country Club - Ad - \$100.00; Hochstein/Darin - Irrigation Repairs - \$557.57; Hy-Vee Yankton - Summer Reading - \$202.32; IACP - IACP Membership-Foote - \$190.00; Intl Association Of Fire Chief - Membership - \$240.00; IPY Midwest Alarm - Alarm Maintenance - \$66.00; J & H Care & Cleaning Company - Janitorial Services - \$4,000.00; J2 Metrofax - Fax - \$9.95; Jacks Uniforms & Equipment - Patrol Car-Streamlights - \$499.53; Jayden's Ebay - Webcams - \$37.50; JCL Solutions - Janitorial Supplies - \$1,058.10; Jebro Inc - Asphalt - \$40,375.38; Johnson Controls - Service Agreement - \$4,785.33; Jussel/John - Membership Refund - \$278.64; Kadmas Lee & Jackson Inc. - Runway Reconstruction - \$57,779.08; Kaiser Heating & Cooling - Fan Repairs - \$459.17; Kaiser Heating & Cooling - Camera Cables/Rsbaseball - \$3,721.05; Kaiser Refrigeration - Sertoma Cooler Repair - \$2,259.97; Kellen And Streit - Rock For Boat dock - \$223.34; Kendell Doors & Hardware - New Doors And Locks - \$1,323.05; Kiesler's Police Supply Inc - Ammunition - \$7,655.20; Kleins Tree Service - Tree Removal Program - \$4,850.00; Kopetsky's Ace Hardware - Outdoor Programs - \$643.23; Lacroix/Brittany - Reimbursement - \$30.81; Language Line - Interp Service - \$19.27; Larry's Heating & Cooling - Check Heating System - \$158.05; Larry's Heating And Co - Building Repair - \$444.19; Larson Electronics LLC - Equipment - \$3,736.36; Lawns Unlimited LLC - Irrigation Repairs - \$4,081.64; Lewis & Clark Theatre Co - 1/2 Special Approp - \$1,250.00; Lift Pro Equipment - Toyota Pallet Jack - \$4,299.00; Logmein Gotomeeting - Gotomeeting - \$192.00; Lulus.Com - Compromised Card Charge - \$50.15; Marcor929 Ebay - Webcams - \$40.00; Mark's Machinery Inc. - Bobcat Repairs - \$1,207.04; Mayer Signs - Sign - \$75.00; McMaster Carr - Air Compressor Set Up - \$1,082.08; Mead Cultural Education - Pine Street Bridge - \$30.00; Mead Lumber Yankton - Riverside Shelter Repair - \$1,967.06; Med Vet International - Sharps Containers - \$412.00; Menards - Park Supplies - \$1,727.77; Michael's Fence Co - Gate Repairs - \$487.24; MidAmerican Energy - Fuel - \$941.77; MidAmerican Energy - Fuel - \$751.35; Midwest Alarm Company Inc. - Alarm Monitoring - \$132.00; Midwest Laboratories -

Nutrient Testing - \$181.84; Midwest Tape - Av - \$44.98; Midwest Tire And Muffler - Gator Repair - \$350.35; Midwest Turf & Irrigation - Mower Supplies - \$91.71; Midwest Turf & Irrigation - Mower - \$66,777.00; Millennium Recycling - Single Stream Fee - \$3,036.60; Muth Electric Inc. - Replace Signals - \$2,553.33; Mw Towing & Automotive - Police Tow-Investigation - \$138.70; National Field Archery Assn - Repair Damaged Gate - \$1,600.00; National League Of Cities - Membership Dues - \$1,563.00; New Deal Tire LLC - Scrap Tires - \$9,609.60; Nike.Com - Compromised Card Charge - \$141.24; Northern Tool Equip - Safety Cones - \$407.75; Northern Truck Equipment Corp - 2 Ten Yard Dump Boxes - \$63,376.00; Northtown Automotive - Repairs - \$230.00; Northwestern Energy - Elect - \$111,460.58; NW Chapter FBINAA - Online Conference - \$190.00; Observer - Ads - \$108.00; Olson's Pest Technician - Pest Control - \$90.00; Olson's Pest Technician - Pest Control - \$214.05; One Source - Pre Employment - \$49.00; O'reilly Auto Parts - Rotor And Pads - \$264.02; Outreach Marketing - Hand Sanitizer Dispenser - \$382.52; PayPal - Isopropyl Alcohol - \$117.95; Pc Electronic Eb - Webcams - \$159.96; PFS Health Works - Dot Random Testing - \$252.00; Pieper/Rod - Repairs - \$571.76; Pitney Bowes PBP - Postage - \$200.00; Polydyne Inc - Chemicals - \$4,334.00; Postage ink - Postage Meter Ink - \$155.00; Power Source Electric - Panel Wiring - \$636.11; Powers Port A Pot - Porta Pots - \$750.00; PP HKP - Weapons Parts - \$424.19; Prochem Dynamics LLC - Disinfectant - \$792.58; Provantage - Plotter Supplies - \$609.00; Quill - Cares Technology Grant - \$284.29; Quill Corporation - PPE - \$24.02; Rapid City Journal - Newspaper Subscription - \$374.99; Redi Towing - Police Tow-Investigation - \$177.00; Regional Technical - Plc1 Training - \$3,150.00; Riverside Hydraulics, - Pivot Cylinder For Plow - \$1,186.88; Riverside Technologies - Housing Laptops - \$2,118.00; Royal Sport Shop - Engraving - \$18.32; Sanitation Products Inc. - Sweeper Parts, Belt - \$3,139.20; Sanitation Products Inc. - Parts - \$477.98; SD Redbook - Patches - \$18.00; Sepi Marketing - Pool Advertising - \$359.00; Sherwin Williams - Secondary Digester Paint - \$861.97; Sherwin Williams - Traffic Paint - \$2,333.69; Shopblt.Com - Evidence Labels - \$52.63; Sign Research Foundation - Continuing Education - \$20.00; Slowey Construction Inc. - Green To Bway C-9-20 - \$347,613.50; Smartsign - Signs - \$270.92; South Dakota Magazine - Book - \$14.95; Stern Oil Co Inc - Diesel - \$6,377.19; Stockwell Engineers Inc. - Aquatic Facility Design - \$42,911.40; Streamlight - Flashlight Parts - \$33.17; Sturdevants - Tailgate Handle - \$131.14; Taco Johns - Travel Expense - \$17.81; Task Force Tips - Shims - \$4.60; Tessman Company - Petunia Feed - \$371.78; The Collision Cent - 2015 Chevy Pickup Repair - \$2,403.74; The Corner - Fuel For 3 YPD Vehicles - \$76.78; The Ups Store - Wet Test Shipping - \$425.42; Third Millennium Association Inc. - Utility Bills - \$632.06; Thomson West TCD - Books - \$219.26; Titan Machinery - Gas Locking Springs - \$335.98; Todd, Inc./Michael - Traffic Signs - \$548.84; Tractor Supply Co - Supplies - \$12.99; Transource - Mini Excavator - \$92,784.08; Tre Environmental Strategies - Wet Test - \$950.00; Trittech Software Systems - Software Maintenance - \$21,651.08; TRK Hosting - Web Hosting - \$7.95; Truck Trailer Sales - Thermostat - \$135.17; Trugreen - Lawn Treatment - \$97.33; U.S. Plastic Corp - Biosolids Sludge Bottles - \$154.32; Ubambooks - Books - \$293.06; United Laboratories Inc. - Maintenance Supplies - \$1,744.02; United Way - 1/4 Special Approp - \$9,831.25; Universal Business - Postage Machine Ink - \$0.00; Us Bank Equipment Finance - Copier Lease - \$252.14; Us Bank Spa Lockbox - D Water #6 C462038-06 - \$888,512.69; USPS PO - Evidence To SDHL Postage - \$91.30; Utility Equipment Comp - Pipe Locator - \$8,130.00; Vastbroadband -Vexus - Internet - \$3,518.70; Verizon - Internet Access - \$1,005.12; Vermeer High Plains - Repairs - \$4,671.27; Viddler Inc - Video Hosting - \$41.49; Vistapr Vistaprint.Com - Office Supplies - \$127.44; Vogel Paint Inc. - Traffic Paint - \$511.95; Vogt's - Uniform Alterations - \$16.00; Walmart - Cleaning Stone Supplies - \$189.60; Walmart - Headset - \$291.81; Walmart - Calculator Ribbon - \$25.98; Walmart - Office Supplies - \$273.75; Watchguard Video - Watchguard Supplies - \$211.00; Welfl Construction Corp - Aquatics Center C-17-20 - \$1,216,450.97; Whitmeyers Distilary - Hand Sanitizer - \$102.16; Xerox Financial Services - Copier



Lease - \$1,227.83; Xtreme Car Wash - Police Vehicle Washes - \$339.00; Yankton County Auditor - YC Capital Improve Cost - \$15,740.81; Yankton Medical Clinic - Pre Employment Physicals - \$355.00; Yankton Police Department - Petty Cash - \$142.21; Yankton Rod Center - Publishing - \$62.50; Yankton School District - Sac Shared Exp - \$72,544.38; Yankton Sharp Shooters - Range Use Rent - \$100.00; Yankton Title Co. - Abatement - \$159.75; Yankton Vol Fire Department - Fire Calls - \$6,010.00; Yankton Winnelson Co - Toilet Repair Kit - \$124.21; Yanktonmediainc - Classified Ad - \$370.75; Ykt Janitorial & Dt Sc - Janitorial Supplies - \$338.70; Zoom.Us - Online Meeting Platform - \$15.96

**Roll Call:** All members present voting “Aye;” voting “Nay;” None.

Motion adopted

**August Salaries by Department:**

Administration \$23,405.01; Finance \$15,442.18; Community Development \$12,768.48; Police/Dispatch \$87,512.07; Fire \$6,521.73; Engineering / Sr. Citizens \$22,468.17; Streets \$23,383.26; Traffic Control \$1,923.71; Library \$11,548.24; Parks / Sac \$34,484.27; Marne Creek \$1,883.27; Water \$17,348.51; Wastewater \$22,029.75; Cemetery \$2,390.33; Solid Waste \$8,399.86; Landfill / Recycle \$9,851.87; Central Garage \$3,739.63

**August New Hires:**

Marissa Caballero \$9.50 hr. Rec. Div.; Breanna McDermott \$9.50 hr. Rec. Div.; Cole Brummer \$9.50 hr. Rec. Div.; Julie Fleek \$1,404.69 bi-weekly Dispatch

**August Wage Changes:**

Royce Reisner \$1,370.88 bi-weekly Streets Department

Mayor Nathan Johnson proclaimed September 2020 as Suicide Prevention Month and the week of September 12<sup>th</sup>, 2020 as Welcome Week in Yankton.

City Manager Leon submitted a written report giving an update on community projects and items of interest.

There were no public appearances at that time.

Consent Agenda items were discussed and voted on separately.

Discussion was held on the Consent Agenda Item to remind everyone of the next Work Session of the Yankton City Commissioners as September 28<sup>th</sup>, 2020. No official action was taken.

Action 20-339

Moved by Commissioner Benson, seconded by Commissioner Schramm, to approve the Current Volunteer Firefighter List. (Memorandum 20-166)

**Volunteer Firefighter List**

Auch, Calby  
Binde, Brad  
Binder, Tim  
Blom, Cole  
Buckman, Tyler  
Fitzgerald, Mike  
Frick, Adam  
Frick, Brian  
Frick, Steve  
Frick, Tom  
Gullikson, Mike  
Haberman, Adam  
Harris, Samuel  
Hladky, Richard  
Hofer, Kasey C  
Holmstrom, Tom  
Johnson, Jody  
Kaiser, Ryan  
King, Adam  
Kneifl, Brandon  
Kozak, Gary  
Kraft, John  
Kuchta, Michael  
Kuehler, Dave  
Kuehler, Mark  
Kurtenbach, Thomas R.  
Miller, Chad  
Moore, Pete  
Moser, Brad  
Nickels, Terry  
Nickles, Larry E.  
Nickles, Mark  
Nighbert, Matt  
Nolz, Pat  
Novak, Brennan  
Pieper, Robbie  
Prendable, Daniel  
Taggart, Bill  
Villanueva, Mike  
Wagner, Josh  
Walsh, Dave  
Walsh, Jay  
Webber, Jerry L  
Woehl, Brook  
Woehl, Toby  
Ziegler, William (Bill)

**Roll Call:** All members present voting “Aye;” voting “Nay:” None.  
Motion adopted.

Discussion was held on the Consent Agenda Item to remind everyone of the upcoming September 25<sup>th</sup>, 2020 walk-through at The Huether Family Aquatics Center at 2:00 p.m. No official action was taken.

Action 20-340

Moved by Commissioner Moser, seconded by Commissioner Benson, to approve the Yankton Police Department Police Reserve Program candidate, Courtney Russenberger. (Memorandum 20-173)

**Roll Call:** All members present voting “Aye;” voting “Nay:” None.  
Motion adopted.

Discussion was held on the Consent Agenda Item to remind everyone of the upcoming ribbon cutting for the Ruth Donohoe First Dakota Fieldhouse on the campus of Mount Marty University on September 18<sup>th</sup>, 2020 at 4:00 p.m. No official action was taken.

Action 20-341

This was the time and place for the public hearing and second reading of Ordinance No. 1039, AN ORDINANCE TO REZONE PROPERTY DESCRIBED FROM R-2 SINGLE FAMILY RESIDENTIAL TO B-2 HIGHWAY BUSINESS, THE PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER (NE1/4 NE1/4), SECTION TWO (2), TOWNSHIP NINETY-THREE (93) NORTH, RANGE FIFTY-SIX (56) WEST OF THE 5TH PM, LYING NORTHEAST OF THE PRESENT RIGHT OF WAY OF THE CHICAGO, MILWAUKEE, AND ST. PAUL RAILROAD COMPANY, NOW KNOWN AS CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, CONSISTING OF A TRIANGULAR PARCEL, EXCEPT LOT H-1 AS PLATTED IN BOOK S9, PAGE 56, YANKTON COUNTY, SOUTH DAKOTA, LESS HIGHWAYS AND ROADS. JTG PROPERTIES, LLC, OWNER. ADDRESS, 3007 WEST CITY LIMITS ROAD. (Memorandum 20-170) No one was present to speak for or against the ordinance. Moved by Commissioner Benson, seconded by Commissioner Schramm, to approve Ordinance No. 1039.

**Roll Call:** All members present voting “Aye;” voting “Nay:” None.  
Motion adopted.

Action 20-342

This was the time and place for the public hearing of Ordinance #1038, AN ORDINANCE TO APPROPRIATE MONIES FOR DEFRAYING THE NECESSARY EXPENSES AND LIABILITIES OF THE CITY OF YANKTON, SOUTH DAKOTA, FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2021, AND ENDING DECEMBER 31, 2021, AND PROVIDING FOR THE LEVY OF ANNUAL TAXES FOR ALL FUNDS CREATED BY ORDINANCE WITHIN SAID CITY. No one was present to speak for or against the ordinance. Moved by Commissioner Schramm, seconded by Commissioner Webber, to approve Ordinance No. 1039 and Resolution 20-62.

**RESOLUTION 20-62**

WHEREAS, a proposed annual budget for the fiscal year commencing January 1, 2021, has been prepared by the City Manager; and,

WHEREAS, the City Commission has examined, studied, and reviewed said proposed

annual budget; and,

WHEREAS, the City Commission has after due consideration and deliberation, made such amendments and adjustments in the proposed annual budget as they consider necessary, desirable, or expedient.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of Yankton, South Dakota, that:

1. The proposed annual budget attached hereto and made a part hereof is approved and effective January 1, 2021.
2. The City Manager is authorized to record all inter-fund transfers as contained in said approved annual budget.
3. The City Manager is authorized and directed to implement and to administer, within the budgetary funding limits and within adopted City policy and relevant State and City laws and regulations, said annual budget.

**Roll Call:** All members present voting “Aye;” voting “Nay:” None.  
Motion adopted.

Action 20-243

Moved by Commissioner Benson, seconded by Commissioner Miner, to approve Resolution 20-66. (Memorandum 20-171)

**RESOLUTION 20-66**  
Conditional Use Permit

WHEREAS, JTG Properties, LLC., of property legally described as The part of the Northeast Quarter of the Northeast Quarter (NE1/4 NE1/4), Section Two (2), Township Ninety-three (93) North, Range Fifty-six (56) West of the 5th PM, lying Northeast of the present right of way of the Chicago, Milwaukee, and St. Paul Railroad Company, now known as Chicago, Milwaukee, St. Paul and Pacific Railroad Company, consisting of a triangular parcel, EXCEPT Lot H-1 as platted in Book S9, page 56, Yankton County, South Dakota, less highways and roads, and

WHEREAS, the above described property is zoned B-2 Highway Business which allows conditional uses under the City of Yankton's Zoning Ordinance No. 711 as amended, and

WHEREAS, this Conditional Use Permit request is necessary for the construction and operation of a self-storage facility and the associated plans have been reviewed and recommended for approval by a vote of the City Planning Commission.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the City of Yankton, South Dakota hereby approves a Conditional Use Permit for a self-storage facility as depicted in the associated documentation, on the above described property.

**Roll Call:** All members present voting “Aye;” voting “Nay:” None.  
Motion adopted.

Action 20-344

Moved by Commissioner Brunick, seconded by Commissioner Schramm, to approve Change Order No. 1, accept the completed reconstruction on 12th Street and Pine Street, and authorize payment to D&G Concrete Construction, Inc., in the amount of \$209,411.33. (Memorandum 20-172)

**Roll Call:** All members present voting “Aye;” voting “Nay:” None.

Motion adopted.

Action 20-345

Moved by Commissioner Webber, seconded by Commissioner Miner, to approve Resolution 20-63. (Memorandum 20-167)

**RESOLUTION 20-63**

WHEREAS, Chapter 26, Article IV, of the Code of Ordinances as adopted by Ordinance No. 449 and amended by Ordinance 795 for the City of Yankton, establishes the procedure for determining equitable service charges to be levied on all users which discharge wastewater to the Wastewater System operated by the City; and

WHEREAS, SDCL 9-40-15.1 requires equitable service charges for all wastewater users; and

WHEREAS, it is appropriate to adopt equitable wastewater user rates in order to properly fund the operation of the Municipal Wastewater Treatment System,

NOW, THEREFORE, BE IT RESOLVED by the City Commission of Yankton, South Dakota, that

- I. The following municipal wastewater rates are hereby adopted, effective for bills rendered after November 1, 2020
  1. Class I - Residential
    - a. Shall pay a monthly fixed user charge of \$11.22 per month.
    - b. Shall pay an incremental cost of \$6.80 per 1,000 gallons based on a monthly average derived from water consumption during the winter period of December, January, and February as billed in January, February, and March; or to a maximum of 5000 gallons where there is no winter base period.
  2. Class II - Commercial and Industrial
    - a. Shall pay a monthly fixed user charge of \$11.22 per month.
    - b. Shall pay an incremental cost of \$6.80 per 1,000 gallons as billed for water consumption.
  3. Class III - Industrial
    - a. Shall pay a monthly fixed user charge of \$11.22 per month.
    - b. Shall pay an incremental cost of \$6.80 per 1,000 gallons as billed for water consumption.
    - c. Shall pay an incremental cost of \$1.02/lb. BOD<sub>5</sub> surcharge (over 220 mg/l strength) and \$0.360/lb. TSS surcharge (over 250 mg/l strength). Said surcharge rates shall be determined based on test monitoring results for the month billed.

**Roll Call:** All members present voting “Aye;” voting “Nay:” None.

Motion adopted.

Action 20-346

Moved by Commissioner Webber, seconded by Commissioner Moser, to approve Resolution 20-64. (Memorandum 20-168)

**RESOLUTION 20-64**

WHEREAS, the City of Yankton has determined that it is necessary to adjust the existing solid waste collection rates to reflect a three percent (3.0%) operating rate increase over current levels;

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners:

That the following solid waste collection rates shall be adopted effective with billings after November 1, 2020;

Class I Residential - \$23.61 per month plus tax.

Class II Commercial / Industrial - \$23.61 per month per unit plus tax.

**Roll Call:** All members present voting “Aye;” voting “Nay:” None.  
Motion adopted.

Action 20-347

Moved by Commissioner Webber, seconded by Commissioner Brunick, to approve Resolution 20-65. (Memorandum 20-169)

**RESOLUTION 20-65**

WHEREAS, the City of Yankton has determined that it is necessary to adjust the existing municipal water rates to a level which will maintain the operation of the municipal water system on a self-sustaining user basis, and fund debt service and depreciation costs, and;

WHEREAS, the city of Yankton has conducted a water rate review based on forecasted cost and consumption;

WHEREAS, the City of Yankton determined during the recent budget workshop that a three percent (3%) increase should be applied to the water consumption rate;

NOW, THEREFORE, BE IT RESOLVED by the Board of City Commissioners:

That the following municipal water rates and regulations shall be adopted;

1. Residential, Commercial, Municipal, and Industrial Consumption Rates  
Effective with the billing issued after November 1, 2020, water used or consumption will be charged at a rate of \$6.30 per each thousand gallons consumed.
2. Non-City Residential, Commercial, and Industrial Rates  
All water sold by the City for residential, commercial, or industrial use to any meter location outside the city limits of Yankton shall be at a rate twice that charged for City water users as established by this resolution unless otherwise established by the City Commission.

**Roll Call:** All members present voting “Aye;” voting “Nay:” None.  
Motion adopted.

Action 20-348

Moved by Commissioner Brunick, seconded by Commissioner Benson, to approve Resolution 20-53. (Memorandum 20-149)

**RESOLUTION 20-53**  
RESOLUTION OF GOVERNING BODY

WHEREAS, the United States of America and the State of South Dakota have authorized the making of grants from the Land and Water Conservation Fund (LWCF) to public bodies to aid in financing the acquisition and/or construction of specific public outdoor recreation projects;

NOW, THEREFORE BE IT RESOLVED;

1. That **Amy Leon** is hereby authorized to execute and file an application on behalf of the **City of Yankton** with the National Park Service, U.S. Department of the Interior, through the State of South Dakota, Department of Game, Fish, and Parks, Division of Parks and Recreation, for an LWCF grant to aid in financing the **Westside Park Playground Project** for the **City of Yankton**, South Dakota and its Environs.
2. That **Al Viereck, Finance Officer of the City of Yankton** is hereby authorized and directed to furnish such information as the above mentioned federal and/or state agencies may reasonably request in connection with the application which is hereby authorized to be filed.
3. That the **City of Yankton** shall provide a minimum of 50% of the total cost of the project; and will assume all responsibility in the operation and maintenance of the project upon completion of construction, for the reasonable life expectancy of the facility.
4. That the **City of Yankton** shall dedicate for park and recreation purposes in perpetuity, the real property identified in the authorized application.

**CERTIFICATE OF RECORDING OFFICER**

The undersigned duly qualified and acting as the **Finance Officer** of the **City of Yankton** does hereby certify:

That the attached Resolution is a true and correct copy of the Resolution, authorizing the filing of application with the National Park Service as regularly adopted at a legally convened meeting of the City of Yankton duly held on the 14<sup>th</sup> day of September, 2020 and further that such Resolution has been fully recorded in the journal of proceedings and records in my office.

**Roll Call:** All members present voting "Aye;" voting "Nay;" None.

Motion adopted.

September 14<sup>th</sup>, 2020

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Action 20-349

Moved by Commissioner Schramm, seconded by Commissioner Benson, to adjourn at 7:59 p.m.

**Roll Call:** All members present voting "Aye;" voting "Nay:" None.

Motion adopted.

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Nathan V Johnson  
Mayor

ATTEST:

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Al Viereck  
Finance Officer

Published September 24<sup>th</sup>, 2020



## 2020 Manufacturing Week

WHEREAS, recognizing September 28 - October 2 as Yankton, South Dakota's Manufacturers Week is an effective way to highlight the importance of the manufacturing in our nation's economy and draw attention to the many rewarding, highly skilled manufacturing jobs; as well as celebrating the educational programs here in Yankton that prepare our future workforce for careers in manufacturing; and

WHEREAS, thirty-four businesses in Yankton are classified as manufacturers, manufacturing represents 31.9% of the local workforce; the manufacturing industry is a dynamic segment of Yankton's economy and an integral part of the economic community; and

WHEREAS, Yankton manufacturers produce: food products, canvas and related products, automotive, printing and publishing, asphalt paving, rubber and miscellaneous plastic products, cement, Redi-mix concrete, aluminum, fabrication, sheet metal, mining machinery, special dies, tooling, electronic components, semiconductors, aircraft parts, and so many more.

WHEREAS, Yankton manufacturers contribute \$32,759,543 in gross sales and \$2,291,504 in taxable sales; and

WHEREAS, Yankton Manufacturing touches everyone in the Yankton community.

NOW, THEREFORE, BE IT RESOLVED That I, Nathan Johnson, serving as Mayor of Yankton, South Dakota, do hereby proclaim September 28 - October 2, 2020 as

**“Yankton Manufacturers Week.”**

and recognize the contributions to our City by all of those manufacturing employees, employers and owners.

\_\_\_\_\_  
Mayor Nathan V Johnson

\_\_\_\_\_  
September 28, 2020

\_\_\_\_\_  
Finance Officer Al Viereck

\_\_\_\_\_  
September 28, 2020



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## OFFICE OF THE CITY MANAGER

[www.cityofyankton.org](http://www.cityofyankton.org)

VOL. 55, NUMBER 18

### Commission Information Memorandum

The Yankton City Commission meeting on Monday, September 28, 2020, will begin at 7:00 pm.

#### Non-Agenda Items of Interest

##### 1) Community & Economic Department Update

The annual mobile home park licensing inspection process has begun and will culminate with the City Commission's consideration of 2021 licenses at the December 14th City Commission meeting. This was a year of continued progress in helping ensure that mobile home units and park spaces are safe and properly cared for. We will continue to work closely with mobile home park owners to make sure their properties meet licensing requirements thus providing a viable housing option while maintaining the character of the community. The schedule is as follows:

- September 9th - Mailed notice of upcoming inspections to mobile home park owners.
- September 25th - Mobile home park inspections complete and notification letters sent to owners with non-compliant items.
- Mid October - Finance Department mails license applications to park owners.
- October 19th - Reinspection of non-compliant issues begins. Recommendation for approval based on compliance.
- Mid November - Mobile home park license applications due to Finance Department.
- December 14th - City Commission considers 2021 mobile home park licenses.

##### 2) Police Department Update

Our Sergeants and Patrol Officers are continually evaluating and updating our training program for new recruits.

Police Department personnel, along with the City Manager and City Attorney are reviewing jail booking policies.

Staff is working on a new internal policy to reflect the changes to the City's parking ordinances.

An interview has been scheduled for Officer Neumayer's replacement.

##### 3) Information Services Department Update

City staff is working to procure proposals for upgrading the meeting room and PEG channel equipment. The federal guidelines require solicitation of a minimum of three competitive quotes. The project will include the upgrade / replacement of the audio and video systems, projector and associated appurtenances for the room as well as enhanced conferencing abilities. The new equipment will also

support live streaming to the web and to the PEG channel. The replacement of the PEG slide generator and video switching equipment will also be planned.

#### **4) Parks and Recreation Department Update**

Enclosed in your packet is an update on the various activities in the Parks and Recreation Department.

#### **5) Public Works Department Update**

Street Department crews have been patching asphalt on various streets throughout the city. Crews will also be adjusting manholes and water valve risers on the newly milled and paved streets.

The Household Hazardous waste event will be held at the City of Yankton Transfer Station on October 17<sup>th</sup> from 9:00 am to 1:00 pm. There will be a \$10 per vehicle fee to participate in the event.

#### **The Huether Family Aquatics Center**

Installation of the interior block of the bathhouse continues. The contractor has started installing rafters on the concession building. The concrete walls on the competition pool are done and backfill has begun. Tile in the lazy river is currently being installed and the contractor will grout the tile once complete. The electrical contractor is installing conduit and bases for the light poles.

#### **Riverside Drive from Green Street to Broadway Avenue**

All of the base course has been installed and curb and gutter has been placed. The contractor is very close to being done with sidewalk and driveways. During the week of September 21, they will concentrate on placing the concrete for fillets and then main line paving.

#### **6) Environmental Services Department Update**

Staff opened quotes for the annual biosolids application. Because of new bid laws and Covid-19 concerns, staff opted to take quotes rather than using the bid process. The low quote came in at \$0.0285 per gallon. Last year's low bid was \$0.0325 per gallon. Staff will be working with Rock Farms out of Vermillion to finalize a contract to complete the application. Rock Farms has completed the biosolids application for the City of Yankton several times in the past.

The South Dakota Water and Wastewater Association Annual Conference was cancelled. Annual Association meetings were held remotely last week. Tanner Hanson will continue as President of the South Dakota section of the Water Environment Association for a second year of his 2-year term. Tanner will then have a 2-year term as past president on the section board. Kyle Goodmanson was elected to the South Dakota section of the American Water Works Association as the section liaison. The liaison position includes a position on the South Dakota Water and Wastewater Association board.

#### **7) Finance Department Update**

The City of Yankton has been reimbursed \$1,532,989.58 from the South Dakota Local Government COVID Recovery Fund (CRF) as part of its \$3,320,375 Coronavirus Aid, Relief, and Economic Security (CARES) allocation. So far, over 98% reimbursed has been for first responder payroll expenses; however, claims for equipment and supplies are underway.

Finance has prepared the city levy for property taxes as part of the 2021 budget Ordinance No. 1038 and has submitted it to the Yankton County Auditor's office on September 16<sup>th</sup>. The Yankton Road Tax (YRT) levy per Resolution #20-55 and delinquent Special Assessments was also delivered to the County Auditor on the same date.

Enclosed in your packet is the Monthly Finance Report for August.

## **8) Human Resources & Employee Engagement Department Update**

The Police department is currently accepting applications with two separate opening criteria, certified and non-certified. Certified officer applications can expedite our hiring process as they have already completed some necessary training and testing. The non-certified officers start at the very beginning of their qualifying process. We have one certified applicant coming in for an interview this Friday. We do have other non-certified applications as well.

We have two Sanitation truck operators, James Haas and Dustin Gusso that will start next week.

The Employee Committee has decided, unfortunately, to cancel the annual chili cook-off in October for obvious COVID related reasons. The committee is evaluating the Christmas party also and is looking at some creative ways to make the holiday special without congregating.

The Health Insurance Committee wrapped up its recommendation and it is on this Commission Meetings agenda. This year one provider came in strong and created a lot of discussion for the Committee.

The kickoff meeting for Kronos implementation should be scheduled soon. We have received some information via email, such as account login information. We are reviewing our current payroll codes and practices to possibly simplify them as we move to the new system.

The Library had one resignation, Amanda Raiche. She has accepted a position at the Vermillion Library. We will be advertising for a Youth Librarian soon.

Flu shots and health screenings will be held on Tuesday, October 6<sup>th</sup> from 7am-3pm.

## **9) Library Update**

We plan to begin some Grab & Go hours at the library in October. This will allow patrons to make a quick visit to the library without requiring an appointment. The hours for Grab & Go will be from 9am-12pm Monday-Saturday. Patrons will be able to browse and check out items, use a 30-minute computer session and various other library services. Our chairs, newspapers, magazines and toys have been removed from the main area to encourage quick visits and to reduce the number of high touch items in the library. We will still not be offering meeting room space at this time for the same reason. I believe our mask policy (passed by the Library Board), additional hand sanitizer stations, a plexiglass partition at the front desk and other precautions will allow us to safely offer this Grab & Go option.

Our Youth Services Librarian, Amanda Raiche, has accepted a Youth Services position at the Vermillion Public Library. We appreciate all that she did for the Yankton library and community! We hope to have this position filled by November.

## **10) Monthly reports**

Joint Powers Solid Waste, Salary, and Yankton Police Department monthly reports are included for your review. Park Advisory Board minutes are also included for your review.

Have an enjoyable weekend and do not hesitate to contact us if you have any questions about these or other issues. If you will not be able to attend the Commission meeting on Monday, please inform my office.

Sincerely,

Amy Leon  
City Manager

**SUMMIT ACTIVITIES CENTER and RECREATION PROGRAMS**

The SAC has created an operations plan to coincide with Yankton School District operations. The SAC operation, which is located in a shared facility with the Yankton School District, is working under two goals:

- 1) safety of everyone- staff and patrons.
- 2) Help in the effort to have in-school classes during the entire 2020-2021 school year. We continue to monitor pandemic data in the county, monitor YSD in-school operations, and will adjust plans accordingly. The facility will not be able to go back to what everyone knew as “normal” operations until the Yankton School District is able to sustain in-school classes for the foreseeable future. We hope this can be in the current school year of 2020-2021, but realize this may not happen until future school years.

This operation plan will not only include memberships to the recreation facility, but will also include all city/community activities such as leagues, concerts, meetings, other rentals, etc.

There will be no rentals through December 31, 2020. In October, as the first quarter of school is coming to a close, all plans will be re-evaluated based on case history and other significant health incidents.

- New Fee Structure as of September 1, 2020
  - Every individual patron needs a pass. Only individual passes are available. No couple passes. No family passes.
  - The daily pass fee will be \$6/person.
  - An individual annual pass may be purchased for \$120 + tax.
  - An individual monthly pass or an electronic funds transfers (EFT) pass may be purchased for \$15/month + tax.
  - An individual corporate quarterly pass may be purchased through the local workplace for those that are currently involved in a corporate pass structure. The individual corporate pass may be purchased for \$45/quarterly + tax.
  - The different discounts that were available in the past are discontinued.

SAC staff have started to propose a plan for starting open swims again and swim lessons in the end of October. More details to come once the plan is finalized.

- SAC member attendance for September 1 – 15– 604 visits  
(2019- 1,763 visits, 2018- 1,939 visits, 2017- 2,466 visits, 2016- 1,983 visits)
- New Members Joined– 63  
(2019- 38 people, 2018- 34 new members, 2017- 21 people, 2016- 21 people)
  - Annual passes sold: 34
  - Monthly passes sold: 27
  - EFT passes sold: 2
- Great Life Check-Ins- 193
  - September 1: 20
  - September 2: 7
  - September 3: 24
  - September 4: 10
  - September 5: 10
  - September 6: 11
  - September 7: 0
  - September 8: 20
  - September 9: 7
  - September 10: 16
  - September 11: 14
  - September 12: 11
  - September 13: 9
  - September 14: 22
  - September 15: 12

### **Capital Building Rentals**

- Days Rented – 1 Date

### **Park Shelter Rentals**

- Riverside- 6 Rentals
- Memorial – 0 Rentals
- Westside – 0 Rentals
- Rotary – 0 Rentals
- Sertoma – 0 Rentals
- Tripp – 0 Rentals
- Meridian Bridge – 0 Rentals

### **PARKS**

Concrete trail work has been done in Westside Park as a part of the AARP grant that the City received. This trail will be home to the Born Learning Trail so it will have signs in both English and Spanish (10 total signs in each language) that teach children and their adult parent, grandparent, or guardian to do activities for learning right at the spot along the trail. This is funded by a grant of \$15,000 from AARP and the City is budgeting the remaining funds to complete this project. This trail fits into the master plan for the park that was adopted in 2019. The department submitted a Land, Water,

and Conservation Fund Grant to help with installation of new play equipment and more trails through the park that connect amenities. All of this is also a part of the master plan.

The Parks Department is working with a couple who will donate five or six trees to be planted at the SAC property. The trees are to provide shade for the north softball field spectators. The Department will work with the high school FFA to have the trees planted in the desired location.

The Parks Department worked with the Yankton Youth Soccer Association to have all the items they needed from the City delivered to the complex prior to their tournament on September 19 & 20.

The ball fields at Sertoma Park, Summit Activities Center, and Riverside Park will be dragged and prepared each weekday according to practice and game schedules submitted to the Parks Department by the Yankton High School Softball team. Field reservations:

**Adult Co-Ed Softball:**

A non-city organized league started August 9 and will conclude in October. This league plays games on Sunday afternoons at Sertoma Park. May use up to three fields depending on number of teams.

A one-pitch slow-pitch softball tournament has been scheduled for Saturday, October 24, at Sertoma Park.

## FINANCE MONTHLY REPORT

Activity	AUGUST 2020	AUGUST 2019	AUG 2020 YTD	AUG 2019 YTD
<b>UTILITY BILLING:</b>				
<b>Water</b>				
Water Sold (in gallons per 1,000)	94,146 M	89,355 M	441,495 M	414,150 M
Water Billed	\$817,898.73	\$744,180.18	\$4,540,961.14	\$4,062,479.61
Basic Water Fee/Rate per 1000 gal.	\$27.51/\$6.12	24.61/\$5.83		
Number of Accounts Billed	5,595	5,589	43,514	43,073
Number of Bills Mailed	5,595	5,589	43,514	43,073
Total Meters Read	5,820	5,771	46,655	45,950
Meter Changes/pulled	7	2	40	27
Total Days Meter Reading	1	1	8	8
Misreads found prior to billing	0	0	0	0
Customers requesting Rereads	0	1	0	1
<b>Sewer</b>				
Sewer Billed	\$375,232.27	\$372,384.11	\$2,722,603.92	\$2,544,178.77
Basic Sewer Fee/Rate per 1000 gal.	\$10.69/\$6.48	\$10.18/\$6.17		
<b>Solid Waste</b>				
Solid Waste Billed	\$105,276.13	\$99,200.53	\$833,351.98	\$787,340.19
Basic Solid Waste Fee	\$22.92	\$21.83		
<b>Total Utility Billing:</b>	<b>1,306,249.71</b>	<b>\$1,224,118.97</b>	<b>8,164,657.32</b>	<b>\$7,458,720.61</b>
<b>Adjustment Total:</b>	<b>(\$1,370.00)</b>	<b>(\$5,810.04)</b>	<b>(\$4,243.64)</b>	<b>(\$7,305.05)</b>
Misread Adjustments	\$0.00	-\$5,760.04	\$0.00	-\$5,760.04
Other Adjustments	\$0.00	\$0.00	(\$1,013.64)	(\$785.01)
Penalty Adjustments OFF	(\$1,390.00)	(\$70.00)	(\$3,370.00)	(\$870.00)
Penalty Adjustments ON	\$20.00	\$20.00	\$140.00	\$110.00
New Accounts/Connects	60	116	733	730
Accounts Finaled/Disconnects	61	63	455	493
New Accounts Set up	7	12	36	38
Delinquent Notices	518	389	3,367	3,163
Doorknockers	123	151	1,239	1,214
Delinquent Call List	91	87	836	685
Notice of Termination Letters	19	13	121	123
Shut-off for Non-payment	11	3	57	56
Delinquent Notice Penalties	\$5,180.00	\$3,890.00	\$33,670.00	\$31,630.00
Doorknocker Penalties	\$1,230.00	\$1,510.00	\$12,390.00	\$12,140.00
<b>Other Office Functions:</b>				
Interest Income	\$16,214.48	\$83,459.30	\$381,766.71	\$462,556.77
Interest Rate-Checking Account	0.42%	2.53%		
Interest Rate-CDs	N/A	N/A		
# of Monthly Vendor Checks	104	185		
Payments Issued to Vendors	\$ 2,467,805.58	\$ 3,282,549.83	\$ 23,545,467.75	\$ 25,505,996.94
# of Employees on Payroll	180	255		
Monthly Payroll*	\$ 445,613.32	\$ 472,373.43	\$ 3,313,555.69	\$ 3,812,403.96



Joint Powers Solid Waste Authority  
Financial Report Thru August 31, 2020

Description	Yankton Transfer	Vermillion Landfill	Total Joint	8 Month Budget	Legal 2020 Budget
<b>Joint Power Transfer/Landfill</b>					
<i>Total Revenue</i>	\$980,766.65	\$672,886.84	\$1,653,653.49	\$1,516,800.00	\$2,280,200.00
<i>Expenses:</i>					
Personal Services	170,426.77	241,769.32	412,196.09	494,532.00	741,798.00
Operating Expenses	152,697.33	324,137.51	476,834.84	552,936.00	829,404.00
Depreciation (est)	107,820.32	149,666.72	257,487.04	309,464.00	464,196.00
Trench Depletion	0.00	130,215.63	130,215.63	122,666.67	184,000.00
Closure/Postclosure Resrv	0.00	6,241.28	6,241.28	16,666.67	25,000.00
Amortization of Permit	0.00	817.60	817.60	876.67	1,315.00
<i>Total Operating Expenses</i>	430,944.42	852,848.06	1,283,792.48	1,497,142.00	2,245,713.00
<i>Non Operating Expense-Interest</i>	5,653.13	31,020.12	36,673.25	41,954.67	62,932.00
<i>Landfill Operating Income</i>	544,169.10	(210,981.34)	333,187.76	(22,296.67)	(28,445.00)
<b>Joint Recycling Center</b>					
<i>Total Revenue</i>	0.00	47,689.45	47,689.45	70,066.67	105,100.00
<i>Expenses:</i>					
Personal Services	0.00	122,969.42	122,969.42	151,607.33	227,411.00
Operating Expenses	0.00	55,616.94	55,616.94	79,666.67	119,500.00
Depreciation (est)	0.00	18,347.50	18,347.50	22,666.67	34,000.00
<i>Total Operating Expenses</i>	0.00	196,933.86	196,933.86	253,940.67	380,911.00
<i>Non Operating Expense-Interest</i>	0.00	0.00	0.00	0.00	0.00
<i>Recycling Operating Income</i>	0.00	(149,244.41)	(149,244.41)	(183,874.00)	(275,811.00)
<i>Total Operating Income</i>	\$544,169.10	(\$360,225.75)	\$183,943.35	(\$206,170.67)	(\$304,256.00)
<b>Tonage in Trench:</b>	<b>8/31/2019</b>	<b>8/31/2020</b>			
Asbestos	83.21	76.27	76.27	33.33	50.00
Centerville	165.66	139.22	139.22	733.33	1,100.00
Beresford	956.24	940.96	940.96	933.33	1,400.00
Clay County Garbage	10,133.83	9,940.05	9,940.05	9,666.67	14,500.00
Elk Point	737.36	729.44	729.44	173.33	260.00
Yankton County Garbage	18,016.91	16,543.58	16,543.58	15,933.33	23,900.00
<i>Total Tonage in Trench</i>	30,093.21	28,369.52	28,369.52	27,473.33	41,210.00
Operating Cost per ton			\$45.25	\$56.02	\$56.02

This report is based on the following:

Revenue accrual thru August 31, 2020

Expenses cash thru August 31, 2020 with September's bills

Joint Powers Solid Waste Authority  
Financial Report Thru August 31, 2020

Description	Yankton Transfer	Vermillion Landfill	Total Joint	8 Month Budget	Legal 2020 Budget
<b>Source of Funds</b>					
<i>Beginning Balance</i>	\$144,277.00	\$1,752,208.00	\$1,896,485.00	\$1,896,485.00	\$1,896,485.00
<i>Operating Revenue:</i>					
Net Income	544,169.10	(360,225.75)	183,943.35	(202,837.33)	(304,256.00)
Depreciation	107,820.32	168,014.22	275,834.54	332,130.67	498,196.00
Trench Depletion	0.00	130,215.63	130,215.63	122,666.67	184,000.00
Amortization of Permit	0.00	817.60	817.60	876.67	1,315.00
<i>Non Operating Revenue:</i>					
Grant	0.00	0.00	0.00	166,666.67	250,000.00
Loan Proceeds	0.00	0.00	0.00	0.00	0.00
Contributed Capital	0.00	0.00	0.00	6,666.67	10,000.00
Sale Proceeds	0.00	0.00	0.00	0.00	0.00
Comp. for Loss & Damage	0.00	0.00	0.00	0.00	0.00
Fire Related Expenses	0.00	0.00	0.00	0.00	0.00
Interest	604.13	20,261.90	20,866.03	20,000.00	30,000.00
<i>Cash Flow Transfer:</i>					
Joint Power Transfer/Landfill	(549,744.64)	549,744.64	0.00	1,178,666.67	1,768,000.00
Joint Recycling Center	0.00	0.00	0.00	0.00	0.00
<b>Total Funds Available</b>	<b>247,125.91</b>	<b>2,261,036.24</b>	<b>2,508,162.15</b>	<b>3,521,321.67</b>	<b>4,333,740.00</b>
<b>Application of Funds Available</b>					
<i>Joint Power Transfer/Landfill</i>					
Equipment	94,344.37	0.00	94,344.37	506,666.67	760,000.00
Trench	0.00	0.00	0.00	0.00	0.00
Closure/Postclosure Cash Res.	0.00	6,241.28	6,241.28	16,666.67	25,000.00
<i>Joint Recycling Center</i>					
Equipment	0.00	1,657.50	1,657.50	334,000.00	501,000.00
<i>Payment Principal</i>	30,834.68	76,811.23	107,645.91	118,317.33	177,476.00
<i>Appropriation to Reserve</i>	0.00	0.00	0.00	0.00	0.00
<b>Total Applied</b>	<b>125,179.05</b>	<b>84,710.01</b>	<b>209,889.06</b>	<b>975,650.67</b>	<b>1,463,476.00</b>
<b>Ending Balance</b>	<b>\$121,946.86</b>	<b>\$2,176,326.23</b>	<b>\$2,298,273.09</b>	<b>\$2,545,671.00</b>	<b>\$2,870,264.00</b>

Joint Powers Solid Waste Authority  
Financial Report Thru August 31, 2020

<b>Joint Power Transfer/Landfill Description</b>	<b>Yankton Transfer</b>	<b>Vermillion Landfill</b>	<b>Total Joint</b>	<b>8 Month Budget</b>	<b>Legal 2020 Budget</b>
<i>Revenue: (accrual)</i>					
Asbestos	\$0.00	\$4,957.60	\$4,957.60	\$4,333.33	\$6,500.00
Elk Point	0.00	36,155.31	36,155.31	40,000.00	\$60,000.00
Centerville	0.00	6,884.64	6,884.64	9,000.00	13,500.00
Beresford	0.00	46,635.66	46,635.66	50,000.00	75,000.00
Clay County Garbage	0.00	521,581.64	521,581.64	527,066.67	790,600.00
Compost-Yd Waste-Wood	0.00	6,523.59	6,523.59	6,333.33	9,500.00
Contaminated Soil	0.00	3,509.55	3,509.55	2,666.67	4,000.00
White Goods	0.00	2,955.11	2,955.11	3,333.33	5,000.00
Tires	0.00	4,458.30	4,458.30	2,666.67	4,000.00
Electronics	0.00	1,465.01	1,465.01	3,333.33	5,000.00
Other Revenue	6.23	37,760.43	37,766.66	6,733.33	10,100.00
Less Recycling Tipping Fee	0.00	0.00	0.00	0.00	0.00
Cash long	(74.08)	0.00	(74.08)	0.00	0.00
Yard Waste	0.00	0.00	0.00	0.00	0.00
Rubble	35,987.95	0.00	35,987.95	34,666.67	52,000.00
Transfer Fees	933,365.01	0.00	933,365.01	826,666.67	1,240,000.00
Metal	11,417.68	0.00	11,417.68	0.00	5,000.00
Other Operational - Solid Waste	63.86	0.00	63.86	0.00	0.00
<b>Total Revenue</b>	<b>980,766.65</b>	<b>672,886.84</b>	<b>1,653,653.49</b>	<b>1,516,800.00</b>	<b>2,280,200.00</b>
<i>Expenses: (cash)</i>					
Personal Services	170,426.77	241,769.32	412,196.09	494,532.00	741,798.00
Insurance	19,513.46	6,319.03	25,832.49	17,566.00	26,349.00
Professional Service/Fees	17,492.67	54,356.79	71,849.46	88,000.00	132,000.00
Non Professional Fees	0.00	0.00	0.00	0.00	0.00
Processing- Reduction	0.00	0.00	0.00	0.00	0.00
State Fees	0.00	28,369.52	28,369.52	30,353.33	45,530.00
Professional - Legal/Audit	0.00	0.00	0.00	1,833.33	2,750.00
Publishing & Advertising	761.14	1,919.65	2,680.79	1,533.33	2,300.00
Rental	0.00	0.00	0.00	333.33	500.00
Hauling fee	0.00	0.00	0.00	0.00	0.00
Equipment repair	1,366.44	42,060.79	43,427.23	37,333.33	56,000.00
Motor vehicle repair	902.49	1,701.85	2,604.34	15,666.67	23,500.00
Vehicle fuel & maintenance	60,504.90	26,384.69	86,889.59	135,333.33	203,000.00
Equip, Mat'l & Labor	27,244.33	0.00	27,244.33	30,000.00	45,000.00
Building repair	5,829.16	3,284.91	9,114.07	16,000.00	24,000.00
Facility repair & maintenance	0.00	5,075.29	5,075.29	23,333.33	35,000.00
Postage	351.62	4.08	355.70	566.67	850.00
Office supplies	565.14	1,144.42	1,709.56	2,333.33	3,500.00
Copy supplies	110.33	90.97	201.30	250.00	375.00
Uniforms	83.88	4,282.46	4,366.34	3,466.67	5,200.00
Small Tools & Hardware	0.00	0.00	0.00	166.67	250.00
Travel & Training	0.00	1,182.60	1,182.60	3,000.00	4,500.00
Operating supply	982.97	130,726.85	131,709.82	98,400.00	147,600.00
Electricity	5,284.19	10,199.95	15,484.14	20,666.67	31,000.00
Heating Fuel - Gas	8,937.23	5,002.50	13,939.73	21,333.33	32,000.00
Water	1,338.76	979.60	2,318.36	2,333.33	3,500.00
WW service	544.94	0.00	544.94	866.67	1,300.00
Landfill	160.44	0.00	160.44	200.00	300.00
Telephone	723.24	1,051.56	1,774.80	2,066.67	3,100.00
Depreciation (est)	107,820.32	149,666.72	257,487.04	309,464.00	464,196.00
Trench Depletion		130,215.63	130,215.63	122,666.67	184,000.00
Closure/Postclosure Resrv		6,241.28	6,241.28	16,666.67	25,000.00
Amortization of Permit		817.60	817.60	876.67	1,315.00
<b>Total Op Expenses</b>	<b>430,944.42</b>	<b>852,848.06</b>	<b>1,283,792.48</b>	<b>1,497,142.00</b>	<b>2,245,713.00</b>

Joint Powers Solid Waste Authority  
Financial Report Thru August 31, 2020

Joint Power Transfer/Landfill Description	Yankton Transfer	Vermillion Landfill	Total Joint	8 Month Budget	Legal 2020 Budget
<i>Non Operating Expense-Interest</i>	5,653.13	31,020.12	36,673.25	41,954.67	62,932.00
<i>Operating Income (Loss)</i>	\$544,169.10	(\$210,981.34)	\$333,187.76	(\$22,296.67)	(\$28,445.00)
<i>Capital:</i>					
Capital Outlay	\$94,344.37	\$0.00	\$94,344.37	\$506,666.67	\$760,000.00
Landfill Development	0.00	0.00	0.00	16,666.67	\$25,000.00
Capital Lease	0.00	0.00	0.00	0.00	\$0.00
<i>Total Capital Expenditures</i>	\$94,344.37	\$0.00	\$94,344.37	\$523,333.33	\$785,000.00
<i>Grant Reimbursement</i>	\$0.00	\$0.00	\$0.00	\$166,666.67	\$250,000.00
Equipment Sale Proceeds	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<i>Cash Flow Transfer</i>	(\$549,744.64)	\$549,744.64	\$0.00	\$0.00	\$0.00
<i>Tonage in Trench:</i>					
Asbestos		76.27	76.27	33.33	50.00
Beresford		940.96	940.96	933.33	1,400.00
Centerville Garbage		139.22	139.22	733.33	1,100.00
Clay County Garbage		9,940.05	9,940.05	9,666.67	14,500.00
Elk Point		729.44	729.44	173.33	260.00
Yankton County Garbage		16,543.58	16,543.58	15,933.33	23,900.00
<i>Total Tonage in Trench</i>		28,369.52	28,369.52	27,473.33	41,210.00
Operating Cost per ton			\$45.25	\$56.02	\$56.02

Joint Recycling Center Description	Yankton Transfer	Vermillion Center	Total Joint	8 Month Budget	Legal 2020 Budget
<i>Revenue:</i>					
Tipping Fees	\$0.00	0.00	\$0.00	0.00	0.00
Magazines	0.00	0.00	0.00	0.00	0.00
Metal/Tin	0.00	0.00	0.00	2,733.33	4,100.00
Plastic	0.00	10,376.67	10,376.67	12,666.67	19,000.00
Aluminum	0.00	0.00	0.00	10,666.67	16,000.00
Newsprint	0.00	2,431.40	2,431.40	6,000.00	9,000.00
Cardboard	0.00	32,219.61	32,219.61	26,666.67	40,000.00
High Grade Paper	0.00	0.00	0.00	5,333.33	8,000.00
Other Material	0.00	2,661.77	2,661.77	6,000.00	9,000.00
Contributions/Operating Grants	0.00	0.00	0.00	0.00	0.00
<b>Total Revenue</b>	<b>0.00</b>	<b>47,689.45</b>	<b>47,689.45</b>	<b>70,066.67</b>	<b>105,100.00</b>
<i>Expenses:</i>					
Personal Services	0.00	122,969.42	122,969.42	151,607.33	227,411.00
Insurance	0.00	772.94	772.94	866.67	1,300.00
Professional Service/Fees	0.00	17,518.94	17,518.94	2,000.00	3,000.00
Hazardous Waste Collection	0.00	0.00	0.00	25,333.33	38,000.00
Professional-Legal	0.00	0.00	0.00	0.00	0.00
Publishing & Advertising	0.00	228.58	228.58	666.67	1,000.00
Rental	0.00	0.00	0.00	0.00	0.00
Equipment repair	0.00	5,391.89	5,391.89	6,333.33	9,500.00
Vehicle repair & maintenance	0.00	0.00	0.00	666.67	1,000.00
Vehicle fuel	0.00	2,082.79	2,082.79	3,333.33	5,000.00
Building repair & maintenance	0.00	2,343.28	2,343.28	1,666.67	2,500.00
Postage	0.00	1.03	1.03	100.00	150.00
Freight	0.00	8,710.00	8,710.00	11,666.67	17,500.00
Office supplies	0.00	311.91	311.91	666.67	1,000.00
Uniforms	0.00	159.92	159.92	500.00	750.00
Materials Purchases	0.00	1,791.05	1,791.05	3,000.00	4,500.00
Travel & Training	0.00	1,576.80	1,576.80	1,000.00	1,500.00
Operating Supplies	0.00	2,470.31	2,470.31	6,666.67	10,000.00
Copy Supply	0.00	157.10	157.10	100.00	150.00
Electricity	0.00	3,791.66	3,791.66	4,333.33	6,500.00
Heating Fuel-Gas	0.00	1,907.32	1,907.32	3,166.67	4,750.00
Water	0.00	365.40	365.40	433.33	650.00
WW service	0.00	751.73	751.73	800.00	1,200.00
Telephone	0.00	532.08	532.08	566.67	850.00
Revenue Sharing	0.00	4,752.21	4,752.21	5,800.00	8,700.00
Depreciation (est)	0.00	18,347.50	18,347.50	22,666.67	34,000.00
<b>Total Op Expenses</b>	<b>0.00</b>	<b>196,933.86</b>	<b>196,933.86</b>	<b>253,940.67</b>	<b>380,911.00</b>
<i>Non Operating Expense-Interest</i>	0.00	0.00	0.00	0.00	0.00
<b>Operating Income (Loss)</b>	<b>\$0.00</b>	<b>(\$149,244.41)</b>	<b>(\$149,244.41)</b>	<b>(\$183,874.00)</b>	<b>(\$275,811.00)</b>
Capital Outlay	\$0.00	\$1,657.50	\$1,657.50	\$334,000.00	\$501,000.00
Grant Reimbursement/Donations	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Cash Flow Transfer	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

This report is based on the following:

Revenue accrual thru August 31, 2020

Expenses cash thru August 31, 2020 with September's bills

2020 Joint Powers Total Operations Recap

Month	Yankton Transfer	Vermillion Landfill	Total	Total Tons	\$ per ton	Recycling			Yankton Operations	Vermillion Operations	Total Operations
						Yankton	Vermillion	Total			
January	51,157.35	(10,150.83)	41,006.52	3,027.49	41.65	0.00	(14,558.60)	(14,558.60)	51,157.35	(24,709.43)	26,447.92
February	18,415.53	(23,276.92)	(4,861.39)	2,676.71	56.14	0.00	(16,112.47)	(16,112.47)	18,415.53	(39,389.39)	(20,973.86)
Subtotal	69,572.88	(33,427.75)	36,145.13	5,704.20	48.45	0.00	(30,671.07)	(30,671.07)	69,572.88	(64,098.82)	5,474.06
March	61,688.74	(41,230.06)	20,458.68	3,305.44	48.19	0.00	(22,381.51)	(22,381.51)	61,688.74	(63,611.57)	(1,922.83)
Subtotal	131,261.62	(74,657.81)	56,603.81	9,009.64	48.35	0.00	(53,052.58)	(53,052.58)	131,261.62	(127,710.39)	3,551.23
April	68,896.65	(6,579.70)	62,316.95	3,741.76	41.13	0.00	(9,434.57)	(9,434.57)	68,896.65	(16,014.27)	52,882.38
Subtotal	200,158.27	(81,237.51)	118,920.76	12,751.40	46.23	0.00	(62,487.15)	(62,487.15)	200,158.27	(143,724.66)	56,433.61
May	73,019.77	(27,879.43)	45,140.34	3,481.88	45.87	0.00	(20,571.85)	(20,571.85)	73,019.77	(48,451.28)	24,568.49
Subtotal	273,178.04	(109,116.94)	164,061.10	16,233.28	46.16	0.00	(83,059.00)	(83,059.00)	273,178.04	(192,175.94)	81,002.10
June	93,839.34	(40,289.25)	53,550.09	4,297.65	48.55	0.00	(16,301.77)	(16,301.77)	93,839.34	(56,591.02)	37,248.32
Subtotal	367,017.38	(149,406.19)	217,611.19	20,530.93	46.66	0.00	(99,360.77)	(99,360.77)	367,017.38	(248,766.96)	118,250.42
July	100,313.99	(21,803.96)	78,510.03	4,125.22	41.25	0.00	(15,289.67)	(15,289.67)	100,313.99	(37,093.63)	63,220.36
Subtotal	467,331.37	(171,210.15)	296,121.22	24,656.15	45.75	0.00	(114,650.44)	(114,650.44)	467,331.37	(285,860.59)	181,470.78
August	82,490.86	(8,751.07)	73,739.79	3,713.37	41.92	0.00	(34,593.97)	(34,593.97)	82,490.86	(43,345.04)	39,145.82
Subtotal	549,822.23	(179,961.22)	369,861.01	28,369.52	45.25	0.00	(149,244.41)	(149,244.41)	549,822.23	(329,205.63)	220,616.60

9/2/2020

City of Yankton Transfer Station  
Landfill Tons

Date	City	Licensed Haulers				Sub-Total	All Other	Total Transfer
	Compactors (577)	Janssen (547)	Arts (586)	Loren Fischer (648)	Kortan (673)			
January 2019	236.75	525.77	427.94	79.27	12.10	1,045.08	336.65	1,618.48
February 2019	190.00	471.97	359.65	70.64	16.95	919.21	294.94	1,404.15
March 2019	227.93	571.65	491.34	96.90	24.64	1,184.53	761.73	2,174.19
April 2019	256.85	600.51	598.67	84.66	18.68	1,302.52	828.34	2,387.71
May 2019	283.49	719.23	639.98	93.26	27.15	1,479.62	959.69	2,722.80
June 2019	238.73	674.24	596.15	97.21	23.01	1,390.61	640.63	2,269.97
July 2019	272.66	737.54	678.68	102.49	19.45	1,538.16	661.78	2,472.60
August 2019	271.79	716.67	646.85	96.51	25.81	1,485.84	646.49	2,404.12
September 2019	250.77	706.64	647.37	90.18	19.83	1,464.02	677.10	2,391.89
October 2019	264.44	698.55	602.46	76.29	21.79	1,399.09	746.34	2,409.87
November 2019	222.81	576.31	395.65	90.04	28.40	1,090.40	508.55	1,821.76
December 2019	255.63	594.80	413.36	95.38	21.83	1,125.37	443.85	1,824.85
2019 Total	2,971.85	7,593.88	6,498.10	1,072.83	259.64	15,424.45	7,506.09	25,902.39
January 2020	253.65	560.86	456.43	103.53	25.07	1,145.89	383.30	1,782.84
February 2020	204.40	478.16	362.72	75.64	20.00	936.52	417.36	1,558.28
March 2020	242.27	557.03	457.14	70.29	22.42	1,106.88	483.69	1,832.84
April 2020	281.79	531.81	488.59	70.67	24.67	1,115.74	599.76	1,997.29
May 2020	281.34	635.55	490.00	54.95	28.55	1,209.05	541.69	2,032.08
June 2020	282.67	612.60	440.23	78.61	25.93	1,157.37	895.50	2,335.54
July 2020	300.31	645.12	461.73	90.00	34.49	1,231.34	854.57	2,386.22
August 2020	284.33	592.83	438.87	81.42	27.50	1,140.62	818.92	2,243.87
2020 Total	2,130.76	4,613.96	3,595.71	625.11	208.63	9,043.41	4,994.79	16,168.96





<b><u>Salaries by Department:</u></b> <b><u>September 2020</u></b>	
ADMINISTRATION	\$50,841.31
FINANCE	\$30,990.44
COMMUNITY DEVELOPMENT	\$25,381.96
POLICE/DISPATCH	\$185,171.75
FIRE	\$12,973.46
ENGINEERING / SR. CITIZENS	\$44,876.89
STREETS	\$46,467.14
SNOW & ICE	\$0.00
TRAFFIC CONTROL	\$3,847.42
LIBRARY	\$23,090.88
PARKS / SAC	\$70,568.63
HUETHER FAMILY AQUATICS CENTER	\$0.00
MARNE CREEK	\$3,731.55
WATER	\$35,017.15
WASTEWATER	\$42,115.56
CEMETERY	\$4,494.06
SOLID WASTE	\$16,690.68
LANDFILL / RECYCLE	\$19,601.69
CENTRAL GARAGE	\$7,479.26
	<b>\$623,339.83</b>

**Personnel Changes & New Hires**

**New Hires:**

Melisa Smith \$16.7100 hr. Landfill  
Mikael Pietila \$11.0000 hr. Library  
Karely Schieffer \$11.0000 hr. Library  
Kelly O'Dea \$11.0000 hr. Library

**Wage Changes:**

Patrick Nolz \$28.6231 hr. Police  
Colleen Bailey \$23.2236 hr. City Manager's Office

**Position Changes:**

Les Kirchner \$22.8159 hr. from Utilities Maintenance Worker in Waste Water to Sr. Grounds Maintenance Worker in Parks and Rec

**August 2020**

**YPD**

<b>Calls For Service</b>	
911 HANG UP	6
911 OPEN	3
ALARM	21
ALCOHOL	11
AMBULANCE	33
ANIMAL	51
ASSAULT	18
ASSIST	7
ATTEMPT TO LOCATE	2
BOND VIOLATION	1
BURGLARY BUSINESS	2
BURGLARY RESIDENTIAL	14
CHILD ABUSE	1
CITY SERVICES	1
CIVIL DISPUTE	45
CRIMINAL ENTRY OF MV	9
DISORDERLY CONDUCT	45
DOMESTIC VIOLENCE	18
DRIVING COMPLAINT	32
DRIVING COMPLAINT 911	11
DRUG	14
ESCORT	14
EX PATRL	16
FAMILY OFFENSE	5
FIGHT	9
FIRE	6
FIREWORKS	2
FOREIGN AID	25
FORGERY	1
FRAUD	16
HARASS	31
HAZMAT	1
HIT&RUN	9
INFORMATION	22
INSPECT	1
JUV	27
LITTER	1
LOST & FOUND	14
MENTAL ILLNESS	14
MISC	2
MISSING PERSON	5
MOTOR ASSIST	13
NOISE COMPLAINT	24
OPN DOOR	5
PARKING	27
PAROLE/PROBATION	3
PROPERTY	17
PROTECTION ORDER	16
RUNAWAY	4
SAFETY TALK	2
SEX CRIME	11
SIG 2	18
SIGNAL 1 INJURY	7
SUICIDE	14
SUSPICIOUS PERSON/VEHICLE	114
THEFT	57
TRAFFIC CONTROL	4
TRAFFIC STOP	198
TRESPASS	15
VANDALISM	22
VEHICLE/ROAD COMPLAINT	15
WARRANT	12
WEAPONS	9
WELFARE CHECK	76
<b>Total</b>	<b>1249</b>

<b>Adult Arrest:</b>
<b># Individuals Arrested: 77</b>
<b># Charges: 126</b>

<b>Juvenile Arrest:</b>
<b># Individual Arrested: 8</b>
<b># Charges: 10</b>

<b>Total Citations: 92</b>
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August 2020  
YPD  
Activity Report

	<b>GENERAL SUMMARY</b>			
	THIS MONTH		Year To Date	
	This Year	Last Year	This Year	Last Year
<b>POLICE INCIDENTS</b>	<b>1252</b>	<b>1009</b>	<b>8327</b>	<b>6747</b>
<b>SHERIFF INCIDENTS</b>	<b>218</b>	<b>204</b>	<b>1340</b>	<b>1364</b>
<b>AMBULANCE CALLS (YPD)</b>	<b>33</b>	<b>28</b>	<b>181</b>	<b>206</b>
<b>FIRE / HAZMAT CALLS</b>	<b>7</b>	<b>1</b>	<b>43</b>	<b>23</b>
<b>FOREIGN AID CALLS</b>	<b>21</b>	<b>26</b>	<b>132</b>	<b>171</b>
<b>ALARMS</b>	<b>27</b>	<b>12</b>	<b>182</b>	<b>156</b>
<b>ANIMAL CALLS/COMPLAINTS</b>	<b>51</b>	<b>50</b>	<b>320</b>	<b>425</b>
<b>ANIMALS CLAIMED OR IMPOUNDED (HHS)</b>	<b>11</b>	<b>11</b>	<b>69</b>	<b>80</b>
<b>ANIMALS DISPOSED</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>

	<b>ACCIDENT SUMMARY</b>			
	THIS MONTH		Year To Date	
	This Year	Last Year	This Year	Last Year
<b>STATE REPORTABLE</b>	<b>16</b>	<b>11</b>	<b>86</b>	<b>113</b>
<b>NON REPORTABLE AND HIT &amp; RUN</b>	<b>17</b>	<b>32</b>	<b>178</b>	<b>220</b>
<b>SIGNAL 1 INJURY</b>	<b>7</b>	<b>3</b>	<b>23</b>	<b>21</b>
<b># PERSONS INJURED</b>	<b>5</b>	<b>4</b>	<b>25</b>	<b>22</b>
<b>FATALITIES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>PEDESTRIAN ACCIDENT</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>0</b>

August 2020

YPD

Citations

			THIS MONTH		YEAR TO DATE	
	This Month Juv / Adult		Total This Year	Total Last Year	Total This Year	Total Last Year
<b>SUSPENDED, EXPIRED OR UNLICENSED DRIVER</b>		<b>9</b>	<b>9</b>	<b>17</b>	<b>103</b>	<b>89</b>
<b>CARELESS DRIVING</b>			<b>0</b>	<b>1</b>	<b>11</b>	<b>12</b>
<b>EXHIBITION DRIVING</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>23</b>	<b>7</b>
<b>SPEEDING</b>		<b>5</b>	<b>5</b>	<b>4</b>	<b>107</b>	<b>95</b>
<b>STOP SIGN, RED LIGHT VIOLATION</b>		<b>5</b>	<b>5</b>	<b>5</b>	<b>30</b>	<b>29</b>
<b>ANIMALS AT LARGE</b>			<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>MAINTENANCE OF FINANCIAL RESPONSIBILITY</b>	<b>1</b>	<b>4</b>	<b>5</b>	<b>8</b>	<b>51</b>	<b>52</b>
<b>OPEN CONTAINER</b>	<b>2</b>	<b>3</b>	<b>5</b>	<b>2</b>	<b>15</b>	<b>10</b>
<b>CONSUMPTION UNDERAGE (18-20 yoa)</b>		<b>2</b>	<b>2</b>	<b>0</b>	<b>24</b>	<b>0</b>
<b>LIQUOR VIOLATIONS / FURNISHING ALCOHOL TO A MINOR</b>			<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>MISDEAMEANOR DRUG VIOLATIONS (POSS. OF DRUG PARAPH)</b>	<b>1</b>	<b>22</b>	<b>23</b>	<b>24</b>	<b>97</b>	<b>145</b>
<b>TOBACCO VIOLATIONS</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>4</b>	<b>22</b>	<b>26</b>
<b>PETTY THEFT UNDER \$400</b>		<b>15</b>	<b>15</b>	<b>4</b>	<b>52</b>	<b>43</b>
<b>INTENTIONAL DAMAGE TO PROPERTY</b>		<b>2</b>	<b>2</b>	<b>2</b>	<b>3</b>	<b>6</b>
<b>OTHER VIOLATIONS</b>	<b>7</b>	<b>25</b>	<b>32</b>	<b>22</b>	<b>117</b>	<b>155</b>
<b>TOTAL TRAFFIC CITATIONS</b>	<b>13</b>	<b>94</b>	<b>107</b>	<b>96</b>	<b>655</b>	<b>670</b>

August 2020

YPD

Adult Arrest

	THIS MONTH		YEAR TO DATE	
	This Year	Last Year	This Year	Last Year
MURDER	0	0	0	1
RAPE	1	0	2	0
ROBBERY	0	0	0	0
DUI	12	11	56	71
DRIVING UNDER REVOCATION	9	7	25	42
BURGLARY	2	1	7	4
ASSAULT AGGRAVATED	2	1	14	9
ASSAULT SIMPLE	5	2	17	25
CRIMES AGAINST FAMILY / DOMESTIC VIOLENCE	9	7	56	48
DISORDERLY CONDUCT	0	3	2	10
SEXUAL CONTACT/SEX OFFENSES	0	0	1	3
THEFT PETTY	2	3	17	9
THEFT GRAND	1	3	2	6
THEFT AUTO	0	1	1	4
FORGERY & COUNTERFEITING	0	0	2	2
FRAUD	0	0	0	0
EMBEZZLEMENT	0	0	0	0
INTENTIONAL DAMAGE	0	0	5	2
NARCOTIC DRUG CHARGES	22	35	149	225
LIQUOR ARRESTS	0	3	2	3
WEAPONS VIOLATION	0	0	0	2
WARRANTS	21	24	134	142
PROTECTIVE CUSTODY	0	0	0	0
ALL OTHER OFFENSES	26	61	204	334
TOTAL ARRESTS	112	162	696	942

August 2020  
YPD  
Juvenile Arrests

	THIS MONTH		YEAR TO DATE	
	This Year	Last Year	This Year	Last Year
<b>CURFEW</b>	<b>2</b>	<b>16</b>	<b>27</b>	<b>40</b>
<b>RUNAWAY</b>	<b>2</b>	<b>1</b>	<b>14</b>	<b>18</b>
<b>MIC</b>	<b>3</b>	<b>12</b>	<b>8</b>	<b>34</b>
<b>DUI</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>3</b>
<b>MURDER</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>34</b>
<b>RAPE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>ROBBERY</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>BURGLARY</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>ASSAULT AGGRAVATED</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>ASSAULT SIMPLE</b>	<b>0</b>	<b>1</b>	<b>6</b>	<b>4</b>
<b>CRIMES AGAINST FAMILY/ DOMESTIC VIOLENCE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>DISORDERLY CONDUCT DISTURBANCE OF SCHOOL</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>9</b>
<b>SEXUAL CONTACT / SEX OFFENSES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>THEFT PETTY</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>
<b>THEFT GRAND</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>THEFT AUTO</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>FORGERY &amp; COUNTERFEITING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>FRAUD</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>EMBEZZLEMENT</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>INTENTIONAL DAMAGE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>NARCOTIC DRUG CHARGES</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>15</b>
<b>LIQUOR ARRESTS</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>
<b>WEAPONS VIOLATIONS</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>2</b>
<b>ALL OTHER OFFENSES</b>	<b>1</b>	<b>0</b>	<b>7</b>	<b>10</b>

August 2020  
YPD  
Juvenile Arrests

<b>TOTAL ARRESTS</b>	<b>9</b>	<b>30</b>	<b>84</b>	<b>171</b>
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The MISSION of the City of Yankton is to provide exemplary experiences, services & spaces that create opportunities for everyone to learn, engage, and thrive.

**MINUTES**  
**YANKTON PARK ADVISORY BOARD**  
**Monday, July 20, 2020**  
**Go-To-Meeting with link provided by City – 5:30 PM**

**I. ROUTINE BUSINESS**

Roll Call:

Present: Katelyn Schramm, Dave Spencer, Elizabeth Healy, Jason Tellus, Darcie Briggs and Commissioner Stephanie Moser.

Absent: Bryan Schoenfelder.

Also present City Manager Amy Leon, Director of Parks and Recreation Todd Larson, and Parks Secretary Chasity McHenry.

High School Appearances: None.

Public Appearances: None.

Minutes: January 20, 2020 minutes approved. Spencer motioned. Tellus second. Motion passes 5-0.

**II. OLD BUSINESS**

A. Local disc golf association proposed a new layout of holes for the 18-hole course at Fantle Memorial Park. The Parks Staff moved tee boxes and baskets on the holes that needed to be relocated. There has been positive feedback about the course layout in Fantle Memorial Park.

The local disc golf association is also proposing a 9-hole course at Riverside Park. The Parks maintenance staff is not in favor of a permanent disc golf course in Riverside Park. The community has said they like the serenity of Riverside Park and are encouraging different venues for disc golf. Discussed, if there is a demand for another course, placing more disc golf at the HSC property, Paddlewheel Point area, Mt. Marty campus as a partnership, the SAC property with the school district as a partner, and/or a designated youth course in Westside Park, as ideas.

**III. NEW BUSINESS**

A. 2021 Capital Improvement Budget presented by City Manager Amy Leon. Westside Park has a master plan and will look to grants to help fund these improvements. Marne Creek continues to be a long-term project for flood-repairs and new flood hazard mitigation trail areas. Working with FEMA and it is a slow process. Currently, working on getting a request for proposals from engineering firms to look at design aspects of trail repair and new trail areas. Best case scenario is design in 2021 and construction, maybe, in 2022. Fox Run Golf Course is in the second full summer of a full lease with GreatLIFE. There have been no issues with the lease to this point. The SAC will have a tough year budget wise with COVID shut-downs and changes to operations which has really impacted revenues. Obviously, the facility is a community asset and involves the high school, but what, long-term, does the SAC





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operations look like now that the Mount Marty University field-house is opening in the fall and GreatLIFE has multiple fitness facilities in town. The age of the SAC facilities, the expense of trying to keep all equipment up-to-date with trends and demands, and overall regular maintenance of the building are concerns in future years and budgets. The last highlight for the budget discussion is The Huether Family Aquatics Center. Construction is on schedule and so-far all reports are good. Once construction is complete and all change orders are taken into account, a discussion will take place on what to do with remaining project funds.

- B. Open Ice Skating and the City's future involvement discussion.
- With the current health concerns surrounding the Coronavirus-19 pandemic, the City of Yankton has had to adjust its operations in 2020. These adjustments are due to the health and safety of its employees and customers. There are also adjustments being made due to budget constraints caused by the current health situation.
  - In reviewing programming, the City of Yankton has discussed no longer participating in the public open skates held indoors at the 4H Kiwanis Ice Arena.
  - What would this mean- the Ice Association would need to staff, operate, and provide the appropriate liability insurance for the open skates when they determine that open skates can take place at the facility. Spencer believes that it would be in the community's best interest to keep collaborating with the Ice Association once the COVID pandemic has ended (currently this has been a collaboration for 15 years). As of right now, Spencer stated they are planning on a normal skating season.
- C. Discussion of ideas for The Huether Family Aquatics Center pool pass and daily fee schedule for 2021. City staff has discussed building in yearly increases right from the start to avoid that year when fees have to be adjusted dramatically (2% increase rounded up to the nearest dollar). The board thought this was a sound idea. The board also examined other community comparisons for aquatics fees. Fees at the local movie theater were also brought up. As of now, the discussion was for only individual passes and the fee set at \$60. The board felt this was a reasonable amount. The board also felt not having discounts in year one is a sound idea. Discussion on the price of a day pass for individuals was had also. It was mentioned to examine Norfolk's rates also to add to the comparisons. A lot of discussion was had on the age of a child that can enter the facility at no charge. The board discussed not giving away revenue and also at what age will a child enjoy the facility and want to spend a large amount of time at the facility. Norfolk's facility has a \$5 daily fee and has children under 3 allowed in at no charge. The daily fee was also thought of in regards to Yankton's visitor population. If the business model is to drive locals to the season pass, then maybe the daily fee should be higher to capture tourist dollars. Thinking about the daily fee and dividing that amount into the season pass fee to determine how many times a person needs to visit the aquatics center to make the value of a season pass worth it was also discussed (example: \$9/daily fee divided into the \$60/season pass would mean a person need to visit the facility seven times in a summer to be money ahead). If the facility is open for 2 ½ months, is seven visits easily achieved? It is a twelve-week season.
- D. Pierre Dorian monument area. Request by adjoining property owner to place a picnic table under the trees by the monument to compliment the bench that is there currently. The PAB was neutral to the idea. Todd needed to speak with City staff to determine their stance. He wanted the PAB thoughts before speaking with staff.
- E. KYB proposed plan for bench and landscaping at entrance to Marne Creek West Greenway was reviewed. No issues with the plans presented.



The MISSION of the City of Yankton is to provide exemplary experiences, services & spaces that create opportunities for everyone to learn, engage, and thrive.

- F. Rob Buechler, who is a Yankton Police Officer and the Staff Sergeant for Bravo Battery, has proposed a volunteer project for a local national guard group of 10 soldiers to clean some headstones at the City Cemetery in August. The Parks Department will work with Sergeant Buechler on this project. The board had no issues with this volunteer effort.
- G. A temporary crushed concrete path has been installed through Rotary Nature Area to allow trail users to stay on a trail and gain access to the sidewalk along Highway 50 at the south end of the park. The City Engineers will meet with the trail staff to determine if a temporary connector path can be created to allow trail users access to the trail underneath the Highway 50 bridge at the south end of Rotary Park.
- H. The COVID plan for Summit Activities Center as the City works with the School District for building access was reviewed. July 29 there will be a meeting between the City and School District to discuss building access moving forward from August to the end of the pandemic.
- I. General Discussion. Have heard good things about the Bocce Ball courts at Fantle Memorial Park.

#### **IV. OTHER BUSINESS**

- A. Commission information Memorandums (4 CIM attachments).
- B. Next Meeting: Monday, September 21, 2020.

#### **V. ADJOURN**

Spencer motioned, Briggs second. Motion carried 5-0.

NOTICE OF HEARING UPON APPLICATION  
FOR SALE OF ALCOHOLIC BEVERAGES

NOTICE IS HEREBY GIVEN that an application has been received by the Board of City Commissioners of the City of Yankton, South Dakota, for a Special Events Malt Beverage (on-sale) Retailers License for one day, October 24, 2020, from Yankton Girls Softball Assn. (Doug Marquardt, Manager) 1805 Whiting Drive, Corn Hole Fundraiser, Yankton, S.D.

NOTICE IS FURTHER GIVEN that a Public Hearing upon the application will be held on Monday, October 12, 2020 at 7:00 p.m. in the City of Yankton Community Meeting Room at the Career Manufacturing Technical Education Academy, 1200 West 21<sup>st</sup> Street, Yankton, South Dakota, where any person or persons interested in the approval or rejection of the above application may appear and be heard.

Dated at Yankton, South Dakota  
this 28<sup>th</sup> day of September, 2020.



Al Viereck  
FINANCE OFFICER

**Memorandum No. 20-181**

**TO: Mayor and City Commissioners**  
**FROM: Amy Leon, City Manager**  
**RE: Disband Towing Committee**  
**DATE: September 21, 2020**

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As discussed, the City of Yankton's Towing Agreement is expired and going forward Ross Den Herder, City Attorney and I recommend that we no longer operate under the Towing Agreement, rather that the City of Yankton name towing agents as authorized under SDCL. This will be further discussed and action requested of you under new business for this item.

Therefore, there will no longer be a need for the Towing Committee. Staff is requesting that the Towing Committee disband. Commissioners Maibaum and Miner (currently named as City Commission liaisons on said committee) would be reassigned to another committee if available.

NOTICE OF HEARING UPON APPLICATION  
FOR SALE OF ALCOHOLIC BEVERAGES

NOTICE IS HEREBY GIVEN that an application has been received by the Board of City Commissioners of the City of Yankton, South Dakota, for a Special Events RETAIL (on-sale) Liquor License for 2 days, November 14, 2020 through November 15, 2020 from Boomer's Inc., (Gary W. Boom, President) d/b/a Boomer's Lounge, Zombie's Realm, 101 E 3<sup>rd</sup> St., Yankton, South Dakota.

NOTICE IS FURTHER GIVEN that a Public Hearing upon the application will be held on Monday, October 12, 2020 at 7:00 p.m. in the City of Yankton Community Meeting Room at the Career Manufacturing Technical Education Academy, 1200 West 21<sup>st</sup> Street, Yankton, South Dakota, where any person or persons interested in the approval or rejection of the above application may appear and be heard.

Dated at Yankton, South Dakota,  
this 28<sup>th</sup> day of September, 2020.



Al Viereck  
FINANCE OFFICER

\_\_\_\_ Voice vote

## Memorandum #20-185

**To:** Amy Leon, City Manager  
**From:** Brittany LaCroix, Events and Promotions Coordinator  
**Subject:** Request by Meridian District to allow open container for Sip n Shop Event  
**Date:** September 21, 2020

The Meridian District is asking the City Commission to allow open container for their Sip n Shop event on Thursday, October 15, 2020 in the Meridian District. This request is from 5:30 pm to 9:30pm on October 15, 2020, in the area between Broadway and Pine Street and 4<sup>th</sup> and Levee Street (see attached map). All open containers will be in cans or plastic cups. The committee will also have signage throughout the Meridian District clearly stating where the open container is allowed.

The Sip n Shop is a first-time shopping event for the Meridian District. Most businesses located in the downtown area are participating in order to promote and encourage more traffic into the Meridian District. Restaurants and bars will have food and drink specials for that day and will be the only places to purchase drinks.

There will be no street closures during this event.

**Recommendation: It is recommended that the City Commission approve the request to allow open container for the area of the Meridian District between Broadway and Pine Street and 4<sup>th</sup> and Levee Street for the Sip n Shop event on October 15, 2020 from 5:30 pm to 9:30 pm.**

Respectfully submitted,

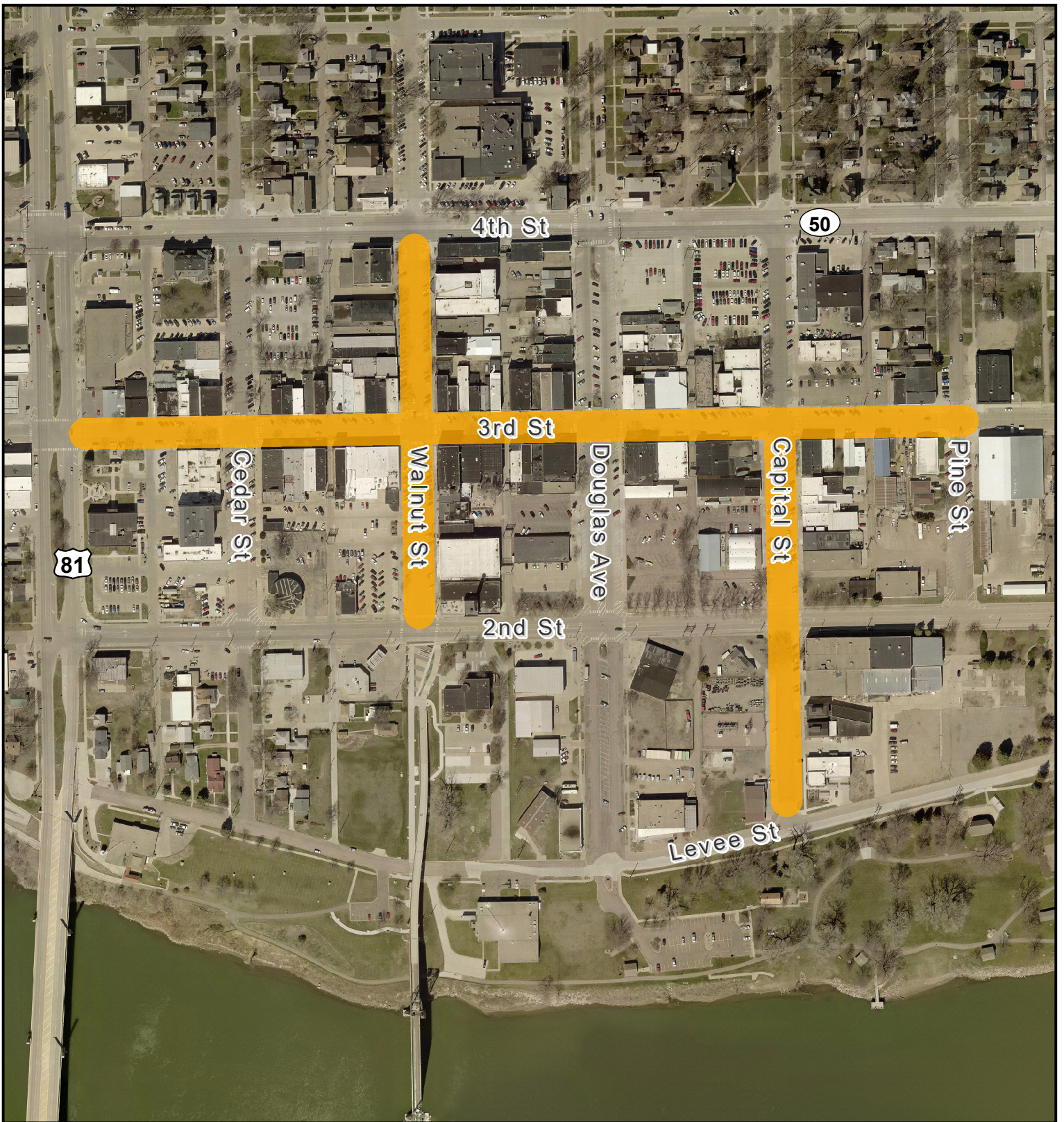


Events & Promotions Coordinator

I concur with the recommendation.  
 I do not concur with the recommendation.

\_\_\_\_\_  
 Amy Leon  
 City Manager

\_\_\_\_ Roll call



# City of Yankton

Sip N Shop Event  
 October 15th, 2020

## Legend

 Open Container Area



## ***Memorandum #20-176***

**To:** Amy Leon, City Manager  
**From:** Dave Mingo, AICP Community and Economic Development Director  
**Subject:** Planning Commission Action #20-53 / Resolution #20-67  
**Date:** September 17, 2020

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### **CONDITIONAL USE REQUEST**

**ACTION NUMBER: 20-53**

**E.T.J. MEMBER ACTION REQUIRED: No**

**APPLICANT / OWNER:** Mike Hacecky Rentals, LLC.

**ADDRESS / LOCATION:** 803 Ferdig Avenue (ref attached site plan and air photo).

**PROPERTY DESCRIPTION:** Outlots 19A, 20 and 20A, Moderegger Outlots in the City of Yankton, South Dakota.

**ZONING DISTRICT:** B-2 Highway Business.

**PREVIOUS ACTION:** None.

**COMMENTS:** The applicant is requesting a Conditional Use Permit for a self-storage facility. Self-storage facilities as defined by the City of Yankton Zoning Ordinance No. 711 are allowed in B-2 Highway Business Districts under certain conditions.

The proposal meets all of the applicable area and setback provisions. Self-storage facilities are required to be configured so that the doors of the building(s) do not face, or are screened, from adjacent residentially zoned property. There is residential property to the west of the site. Based on these conditions, unscreened access doors cannot face to the west. Additionally, any lighting on the site is not permitted to spill onto adjacent residential occupancies. Light placement and possibly the use of shields can accommodate the requirement. The site design must also ensure that storm water drainage does not exceed historic runoff levels unless it is properly detained.

Staff has been contacted by any adjoining property owners subsequent to publishing and mailing the notice of hearing. The comments were substantially about nuisance abatement issues on other neighboring property but they also included discussions about the details of this proposal and its impact on the adjacent residential district.

Staff recommends approval of the request. Although not required by ordinance, we also strongly recommend that the applicant consider a “good neighbor” approach to addressing visibility to the property from the west of the project. Green space or a mutually agreed upon screening would accomplish a great deal in regards to neighborhood aesthetics.



**HEARING SCHEDULE:**

- August 10, 2020: The Planning Commission established September 14, as the date for public hearing on the proposed request.
- September 14, 2020: The Planning Commission conducts a hearing and makes a recommendation to the City Commission.
- September 28, 2020: The City Commission considers a resolution and makes the final decision.

**Planning Commission results:** The Planning Commission recommended approval of the proposed Conditional Use Permit.

**RESOLUTION #20-67**  
Conditional Use Permit

WHEREAS, Mike Hacecky Rentals, LLC. Is the owner of property legally described as Outlots 19A, 20 and 20A, Moderegger Outlots in the City of Yankton, South Dakota, and

WHEREAS, the above described property is zoned B-2 Highway Business which allows conditional uses under the City of Yankton's Zoning Ordinance No. 711 as amended, and

WHEREAS, this Conditional Use Permit request is necessary for the construction and operation of a self-storage facility and the representative plans have been reviewed and recommended for approval by a vote of the City Planning Commission.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the City of Yankton, South Dakota hereby approves a Conditional Use Permit for a self-storage facility in the manner depicted in the associated documentation, on the above described property.

Adopted:

\_\_\_\_\_  
Nathan V. Johnson, Mayor

ATTEST:

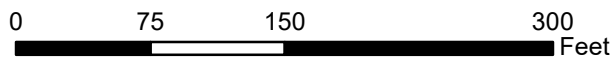
\_\_\_\_\_  
Al Viereck, Finance Officer



# City of Yankton

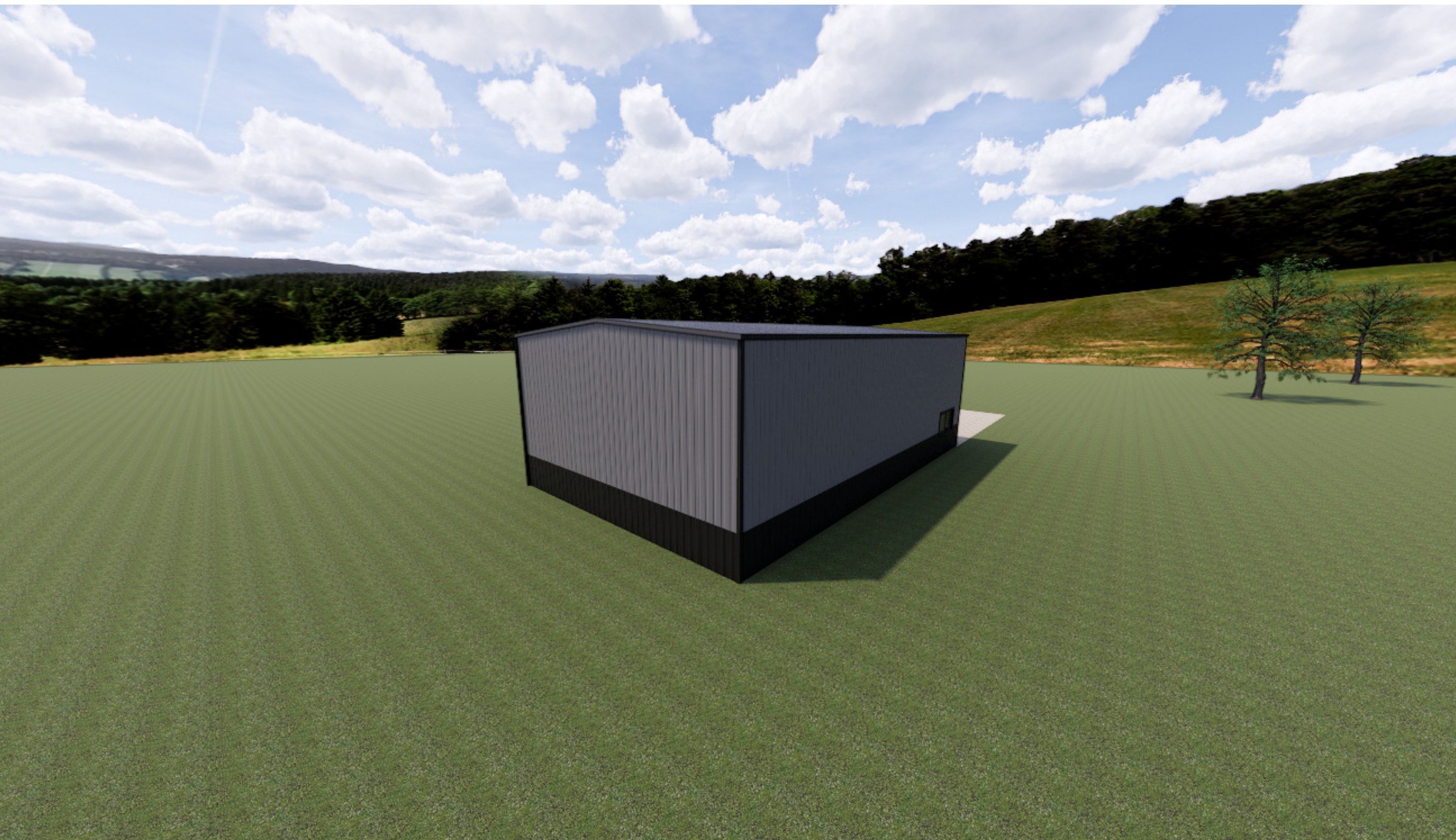
## Conditional Use Permit

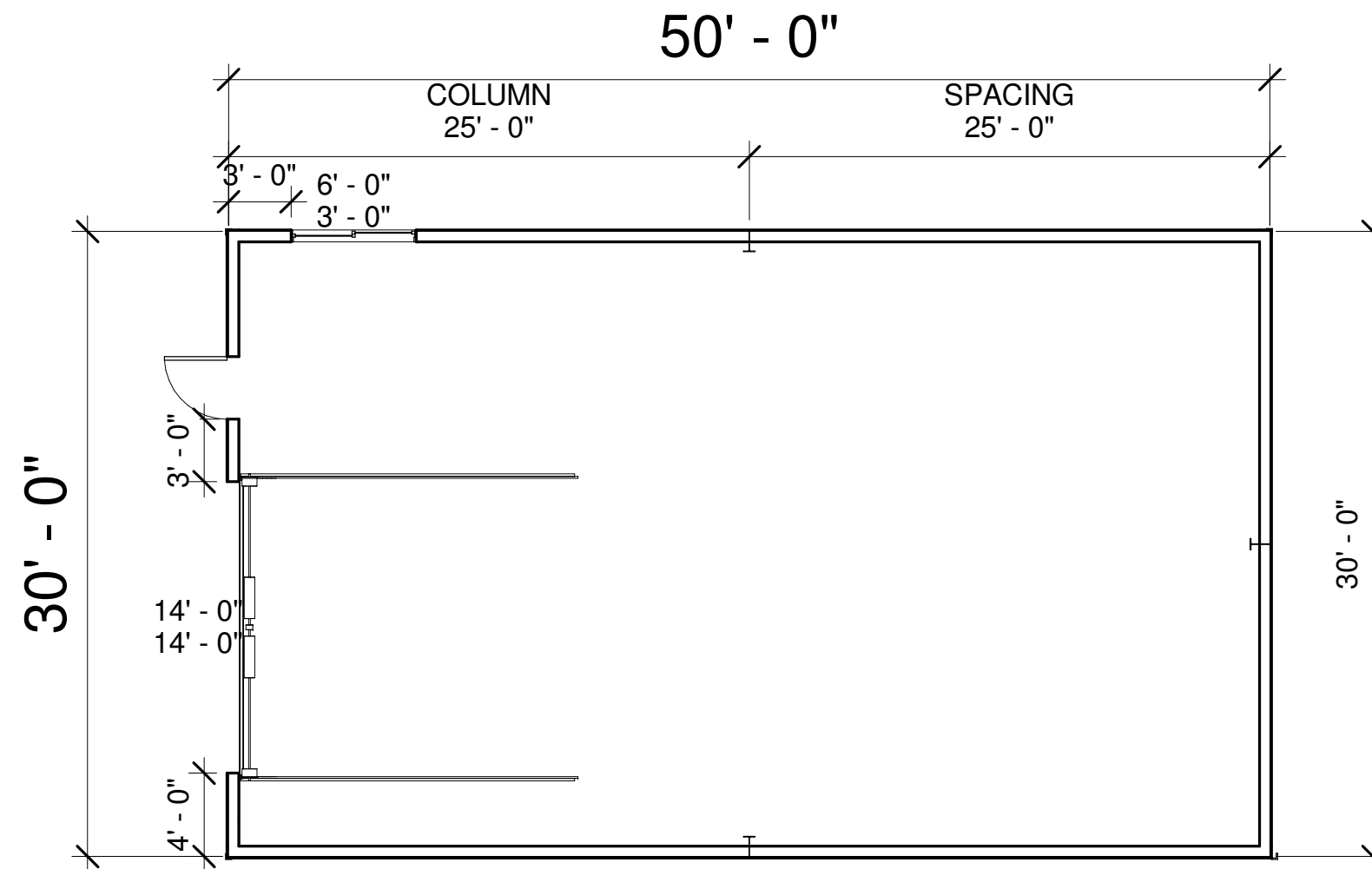
Outlots 19A, 20 and 20A, Moderegger Outlots  
in the City of Yankton, South Dakota.











① TOP OF SLAB  
1/8" = 1'-0"

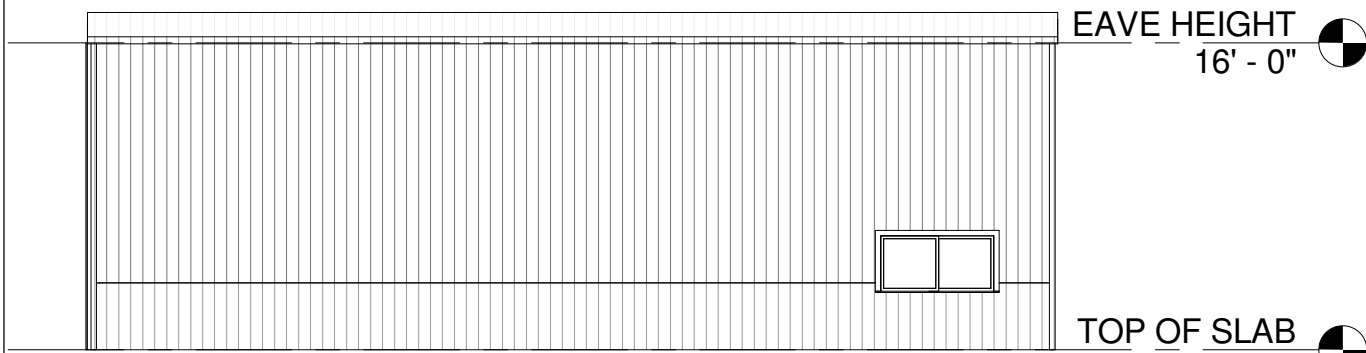


47059 98th St. Suite 1  
Sioux Falls, SD 57108  
O: 605-213-0309

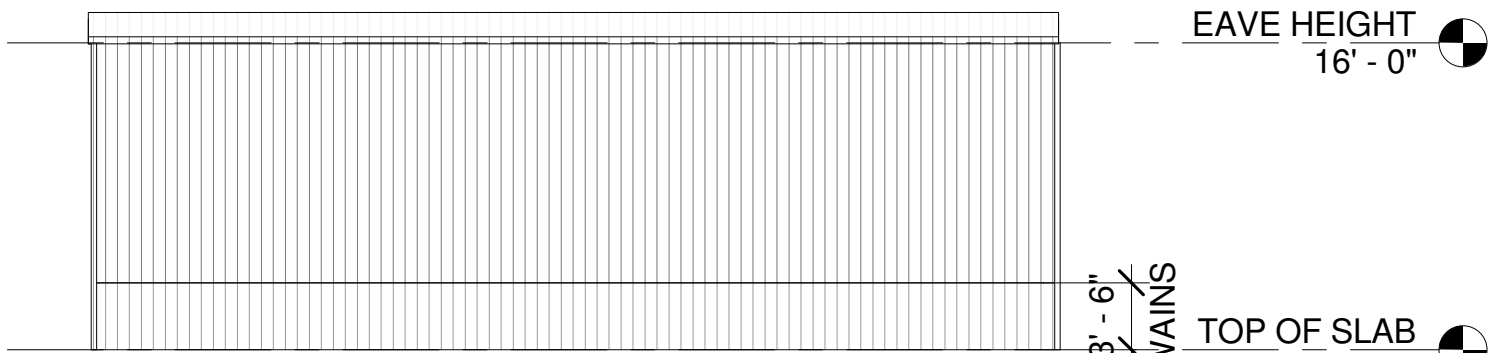
HACECKY

No.	Description	Date

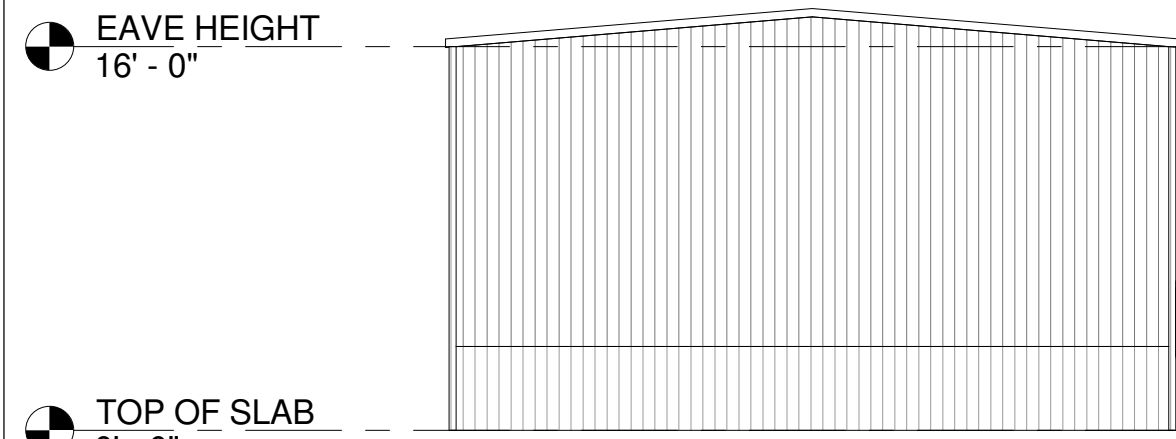
<b>SLAB</b>		<b>A100</b>
Date	1/9/20	
Drawn by	Scott Moffatt	DATE
Owner Approval		
Scale 1/8" = 1'-0"		<b>NTS</b>



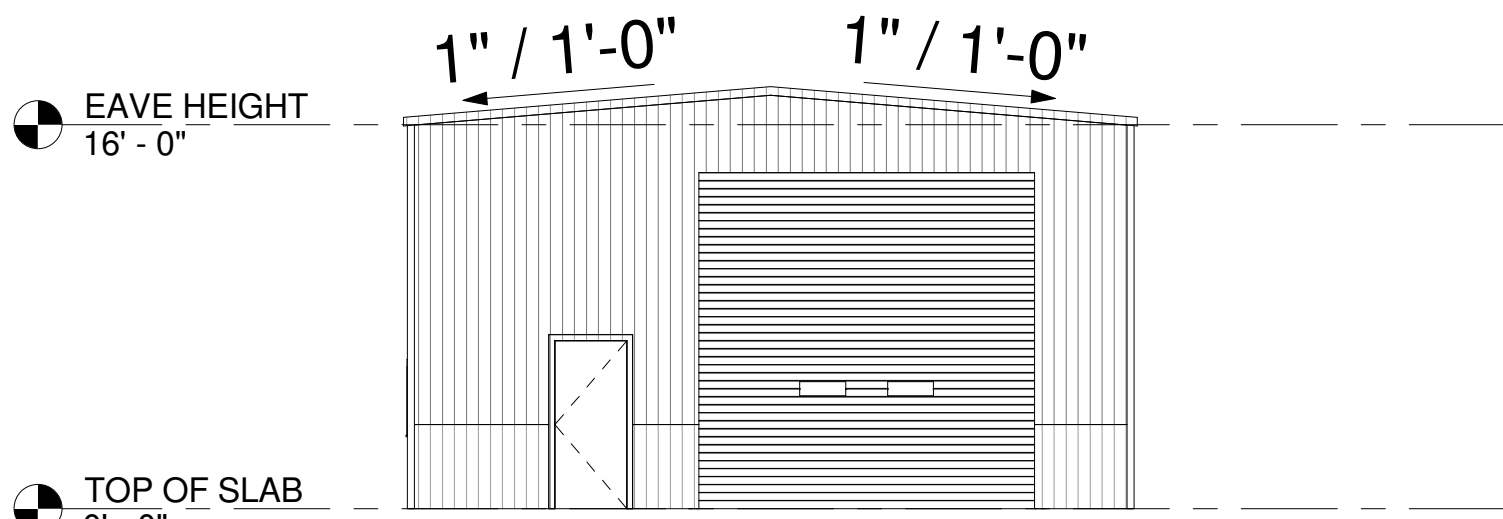
① WEST  
1" = 10'-0"



② EAST  
1" = 10'-0"



④ SOUTH  
1/8" = 1'-0"



③ NORTH  
1/8" = 1'-0"



47059 98th St. Suite 1  
Sioux Falls, SD 57108  
O: 605-213-0309

HACECKY

No.	Description	Date

ELEVATIONS		
Date	1/9/20	A101
Drawn by	Scott Moffatt	
Owner Approval	DATE	Scale As indicated NTS



City of Yankton  
City Planning Commission  
Yankton, SD 57078

**Re: Conditional Use Permit**

Dear Commission Members:

This letter, pursuant to the City of Yankton's Zoning Ordinance, is an application hereby made for a Conditional Use Permit for the property herein described.

**Description of Conditional Use Permit desired:** Constriction and operation of a Self - Storage Facility.

**The address of the property is:** 803 Ferdig Avenue

**Lot Number:** Outlots 19A, 20 and 20A,  
**Addition:** Moderegger Outlots in the City of Yankton, South Dakota.  
**Zoning District:** B-2 Highway Business

Check One  
 of which I own, or  
 of which I rent / lease (application must include consent document from the owner).

I/We, if required, have included a set of drawings or site plan, to scale, showing all conditions as to lot dimensions, building dimensions (proposed and existing), proposed uses of buildings (proposed, existing and future), location of off street parking, dimensions and number of spaces, the location of landscaping and/or screening that is proposed, and any easements that might exist or are proposed if necessary.

I/We have included a receipt for Fifty dollars (\$50.00), from the City Finance Department for processing this request.

I hereby depose and say that all the above statements and statements contained in this application and related attachments are true.

Thank you for your consideration,

Dated this 24<sup>th</sup> day of AUGUST, 20 20

MIKE HACECKY  
printed / typed name and title if applicable

[Signature]  
signature

2509 WALLEY RD  
YANKTON, SD 57078  
address

***Introduction, First Reading and Establish  
the Date for a Public Hearing***

***Memorandum #20-174***

**To:** Amy Leon, City Manager  
**From:** Dave Mingo, AICP Community and Economic Development Director  
**Subject:** Proposed Rezoning, Ordinance #1040  
**Date:** September 17, 2020

---

**PROPOSED REZONING**

**ACTION NUMBER: 20-52**

**E.T.J. MEMBER ACTION REQUIRED: No**

**APPLICANT / OWNER:** Mona's, LLC, owner.

**ADDRESS / LOCATION:** South side of the 600 Block of E. 4th Street.

**REZONING REQUEST & PROPERTY DESCRIPTION:**

From I-1 Industrial to B-3 Central Business, Block 69, Lower Yankton Addition to the City of Yankton, South Dakota.

**PREVIOUS ACTION:** City Commission action on the Comprehensive Plan initiating / supporting a rezoning of the property.

**COMMENTS:** The proposed rezoning constitutes another step in the incremental land use changes in downtown Yankton. In accordance with the provisions set forth in the City's adopted Comprehensive Plan it is prudent to move forward with another rezoning of downtown area land from I-1 Industrial to B-3 Central Business.

The proposed new zoning classification, B-3 Central Business, is the same as what covers a majority of Yankton's downtown area. The B-3 designation allows for the development of downtown commercial and residential mixed use occupancies. It does not permit any continuation of the industrial type of uses that were historically on the property.

Land uses adjacent to the area would be permitted to continue operations as they currently do. This action would not force any changes on nearby property owners even if they are not zoned the same. A long term effort that includes voluntary land use conversion of private property in the area makes sense. As they currently exist, the older industrial uses create a separation, described as a "disconnect" in the Comprehensive Plan, between an improving downtown, riverfront and Auld Brokaw Trail corridor. The Comprehensive Plan clearly indicates that it

would be in the community's best interest to work toward the conversion of zoning to promote compatible land uses in the area. This proposal represents one more step towards the goal of such a conversion of the entire area south of 4th Street.

The appropriate public notice was published and individual notifications have been sent out prior to this public hearing. Staff has received several contacts subsequent to sending out the notifications. Those contacts were all basic questions about what the rezoning means. There were not any contacts that expressed opposition to the proposed change.

In accordance with the provisions set forth in the City's Comprehensive Plan staff is recommending approval of the proposed rezoning of the described downtown area land from I-1 Industrial to B-3 Central Business.

#### **HEARING SCHEDULE:**

August 10, 2020	The Planning Commission established September 14, 2020 as the date for a public hearing.
September 14, 2020	The Planning Commission holds a public hearing to consider the issue. All appropriate notices have been published and mailed.
September 28, 2020	The City Commission establishes October 12, 2020 as the date for a public hearing.
October 12, 2020	The City Commission holds a public hearing to consider the issue. All appropriate notices will have been published and mailed. A super majority (6-3) vote of the City Commission cannot be protested out by the neighborhood. A simple majority (5-4) could be.
October 21, 2020	Estimated publication date of record of City Commission action.
November 10, 2020	Estimated date that the City Commission action is effective.

**Planning Commission results:** The Planning Commission recommended approval of the proposed rezoning.

**ORDINANCE NO. 1040**

**AN ORDINANCE TO REZONE PROPERTY DESCRIBED HEREIN**

**BE IT ORDAINED, BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF YANKTON, SOUTH DAKOTA THAT THE FOLLOWING DESCRIBED PROPERTY HAS BEEN REZONED:**

**Section 1.**

From I-1 Industrial to B-3 Central Business, Block 69, Lower Yankton Addition to the City of Yankton, South Dakota. Mona's, LLC, owner. Address, south side of the 600 Block of E. 4th Street.

As depicted on the associated Rezoning Map.

**Section 2.** Saving Clause.

Should any section, clause, or provision of this ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

**Section 3.** Effective Clause.

This ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

Adopted:

1st Reading:

2nd Reading:

Publication Date:

Effective Date:

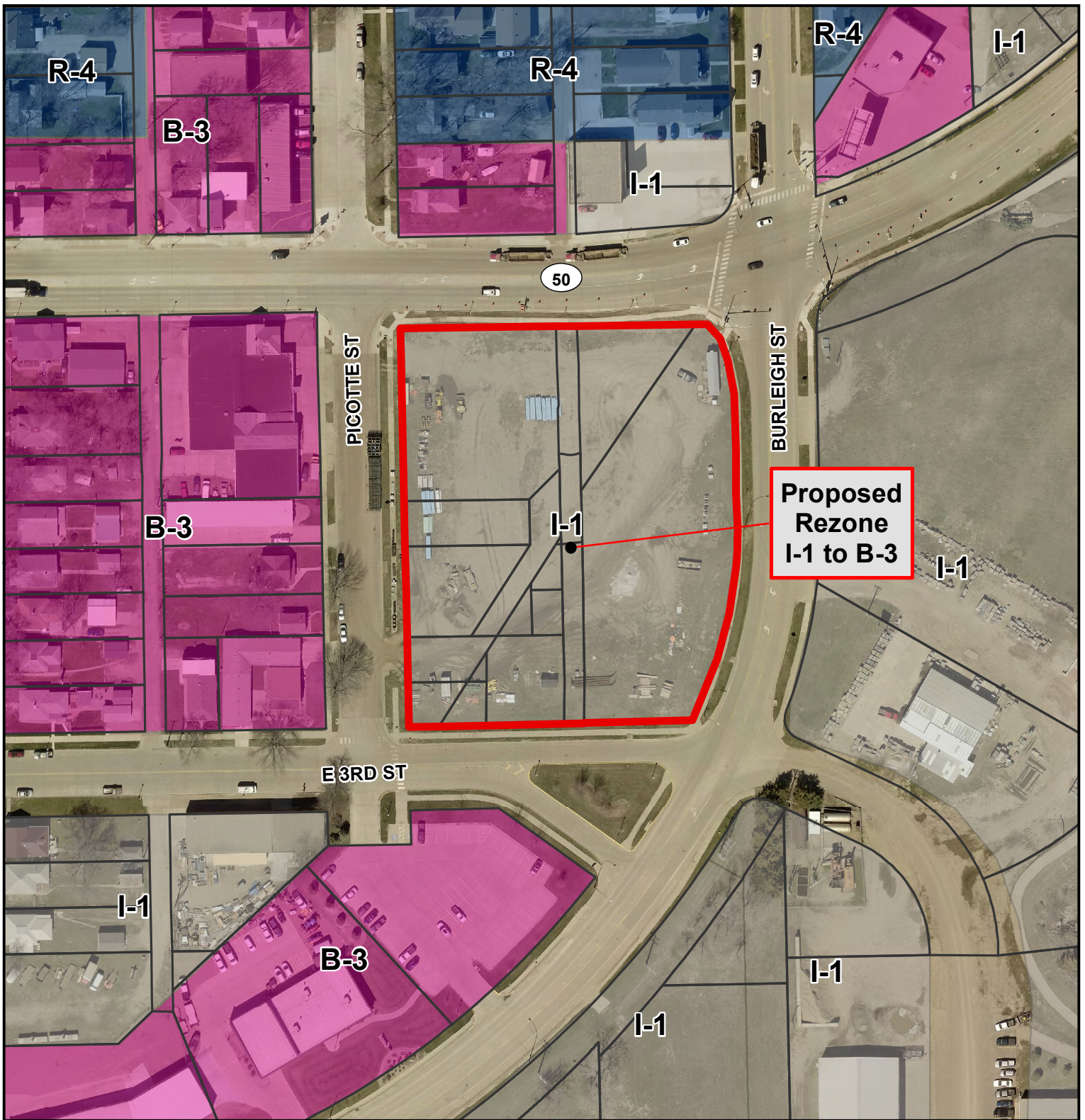
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Nathan V. Johnson, Mayor

ATTEST:

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Al Viereck, Finance Officer



# City of Yankton

Rezone from I-1 Industrial  
to B-3 Central Business

***Introduction, First Reading and Establish  
the Date for a Public Hearing***

***Memorandum #20-175***

**To:** Amy Leon, City Manager  
**From:** Dave Mingo, AICP Community and Economic Development Director  
**Subject:** Proposed Rezoning, Ordinance #1041  
**Date:** September 17, 2020

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**PROPOSED REZONING**

**PLANNING COMMISSION ACTION NUMBER: 20-54**

**E.T.J. MEMBER ACTION REQUIRED: No**

**APPLICANT / OWNER:** Yankton Development Enterprises, LLC, owner.

**ADDRESS / LOCATION:** South side of the 1600 Block of W. 25th Street.

**REZONING REQUEST & PROPERTY DESCRIPTION:**

From B-2 Highway Business to R-3 Two Family Residential, future Blocks 10 and 11, Westbrook Estates.

From B-2 Hwy Business to R-4 Multiple Family, that area lying east of future Colton Avenue.

All in that portion of the following property lying south of 25th Street. The East Half of the Southeast Quarter except the East 700' in Section 2, all in Township 93 North, Range 56 West of the 5th Principal Meridian Yankton County, South Dakota.

**PREVIOUS ACTION:** Ongoing phased development of Westbrook Estates.

**COMMENTS:** Yankton Development Enterprises, LLC, the owner is requesting a rezoning to establish appropriate zoning districts for the southern portion of Phase 2 of Westbrook Estates. The zoning as depicted in the proposal was preliminarily agreed upon by the City and developer as a part of the original Westbrook Estates plan submittal and approvals associated with Phase 1. Zoning change requests for the area south of what is identified by the red outlined area are not included in this request.

Approval of the proposed rezoning is recommended for the following reason:

1. The proposed zoning districts are in general conformance with the residential vision for the area set forth in the City of Yankton's Comprehensive Plan. The existing B-2 Highway Business zoning designation is a remnant of the former extraterritorial zoning jurisdiction in the area.

Staff has received several contacts about the proposal subsequent to sending out the required mailing and publishing the notice for the Planning Commission hearing. Those comments were not specific to the proposed rezoning. They were about other neighborhood topics addressed by non-zoning related ordinances.

Staff recommends approval of the proposed rezoning.

**HEARING SCHEDULE:**

August 10, 2020	The Planning Commission established September 14, 2020 as the date for a public hearing.
September 14, 2020	The Planning Commission holds a public hearing to consider the issue. All appropriate notices have been published and mailed.
September 28, 2020	The City Commission establishes October 12, 2020 as the date for a public hearing.
October 12, 2020	The City Commission holds a public hearing to consider the issue. All appropriate notices will have been published and mailed. A super majority (6-3) vote of the City Commission cannot be protested out by the neighborhood. A simple majority (5-4) could be.
October 21, 2020	Estimated publication date of record of City Commission action.
November 10, 2020	Estimated date that the City Commission action is effective.

**Planning Commission results:** The Planning Commission recommended approval of the proposed rezoning.

**ORDINANCE NO. 1041**

**AN ORDINANCE TO REZONE PROPERTY DESCRIBED HEREIN**

**BE IT ORDAINED, BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF YANKTON, SOUTH DAKOTA THAT THE FOLLOWING DESCRIBED PROPERTY HAS BEEN REZONED:**

**Section 1.**

From B-2 Highway Business to R-3 Two Family Residential, future Blocks 10 and 11 and, From B-2 Hwy Business to R-4 Multiple Family, that area lying east of future Colton Avenue, Westbrook Estates. All in that portion of the following property lying south of 25th Street. The East Half of the Southeast Quarter except the East 700' in Section 2, all in Township 93 North, Range 56 West of the 5th Principal Meridian Yankton County, South Dakota. Yankton Development Enterprises, LLC, owner, owner. Address, south side of the 1600 Block of W. 25th Street.

As depicted on the associated Rezoning Map.

**Section 2.** Saving Clause.

Should any section, clause, or provision of this ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

**Section 3.** Effective Clause.

This ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

Adopted:

1st Reading:

2nd Reading:

Publication Date:

Effective Date:

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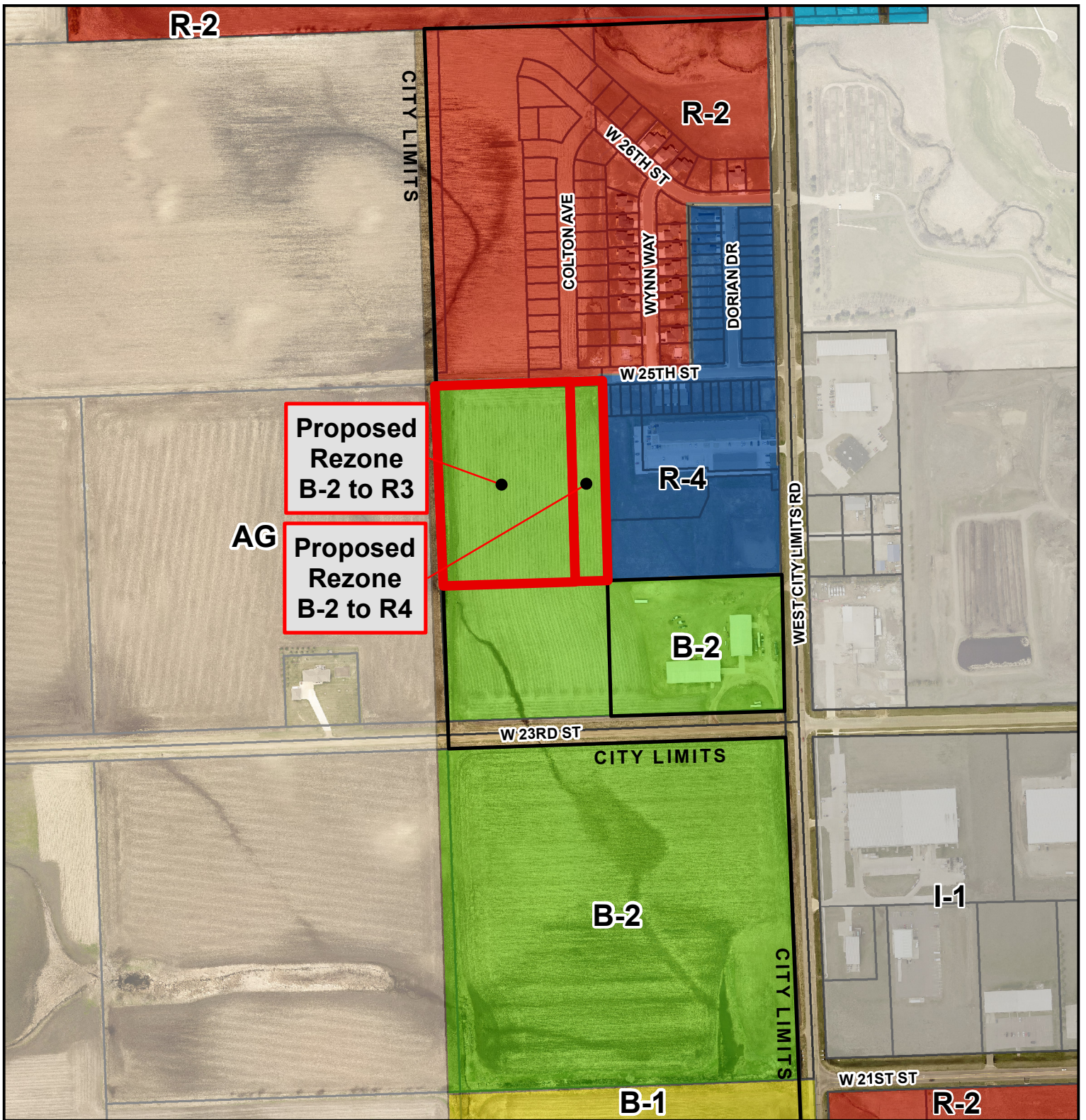
Nathan V. Johnson, Mayor

ATTEST:

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Al Viereck, Finance Officer





# City of Yankton

Rezone B-2 Hwy Business to R-3 Two Family,  
 Future Blocks 10 and 11, Westbrook Estates  
Rezone B-2 Hwy Business to R-4 Multiple Family,  
 that area lying east of future Colton Avenue, South of 25th Street

## *Memorandum #20-177*

To: Amy Leon, City Manager  
 From: Dave Mingo, AICP Community and Economic Development Director  
 Subject: Use of Fuel Tax Reimbursement for Airport Mower Purchase and Surplus Old Mower for Trade  
 Date: September 22, 2020

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The South Dakota Department of Transportation, Division of Air, Rail, and Transit holds a small percentage of aviation related fuel tax from sales at our airport in an account that we can request reimbursement from. The reimbursements are only available for very specific airport only capital expenditures (not operations). For example, the last request we made was in 2006 for \$15,000 for part of a fuel system upgrade project. Since our 2006 request, our account at the state has built up to just over \$9,300.

The City's 2020 Capital Improvement Plan included a \$30,000 line item for a mower purchase dedicated to airport use only. With the help of a trade-in, we were able to purchase a replacement mower from a local dealer with the difference being \$8,300. Following that, we asked the Aeronautics Commission if such an airport specific purchase would be an eligible expenditure for the reimbursement program. They responded with approval of the expenditure pending City Commission concurrence on the attached agreement.

City staff is very pleased that we are able to access this funding source for the purchase. We are also happy that we are able to replace an important piece of airport maintenance equipment without spending any of the planned capital budget.

Respectfully submitted,

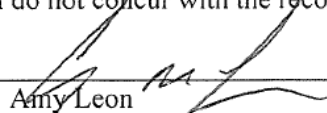


Dave Mingo, AICP  
 Community and Economic Development Director

**Recommendation:** It is recommended that the City Commission approve Resolution #20-70 declaring the identified mower as surplus for trade, the purchase of a new mower and an agreement with the South Dakota Department of Transportation, Division of Air, Rail, and Transit for Project No. AP0062-2020, an \$8,300 allocation from Yankton's fuel tax reimbursement account held by the State for the purchase of a mower dedicated for use at Chan Gurney Municipal Airport. It is further recommended that the City Manager be authorized to sign all administrative documents associated with the project.

I concur with the recommendation.

I do not concur with the recommendation.

  
 \_\_\_\_\_  
 Amy Leon  
 City Manager

\_\_\_\_\_ Roll Call

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF SECRETARIAT  
OFFICE OF AIR, RAIL, AND TRANSIT  
BECKER-HANSEN BUILDING  
PIERRE, SOUTH DAKOTA  
FOR  
PROJECT NO. AP0062-2020**

This Agreement is made and entered into by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "STATE," and the city of Yankton, South Dakota, referred to in this Agreement as the "SPONSOR."

**BACKGROUND:**

- A. The STATE and the SPONSOR have entered into an Agency Agreement for the purpose of establishing, constructing, and maintaining an airport on a portion of Section Six (6), of Township Ninety-three North (93N), and Sections Thirty (30) and Thirty-one (31), of Township Ninety-four North (94N), of Range Fifty-five West (55W), Yankton County, South Dakota, referred to in this Agreement as the "Airport."
- B. The SPONSOR requested financial assistance from the STATE for the development of the Airport.
- C. The SPONSOR acquired satisfactory title to the property on which the Airport will be located and indicated the SPONSOR'S desire to use the same for an Airport.
- D. The SPONSOR proposes the development of the Airport will consist of the following described items, referred to in this Agreement as the "Project":

**Purchase Mower**

- E. The total estimated cost of the Project is shown on the Engineer's Estimate, entitled "Summary of Project Costs," attached to this Agreement as Exhibit A.

NOW, THEREFORE, in consideration of these facts and the mutual covenants contained in this Agreement, the Parties agree as follows:

**Section 1. Payment**

Pursuant to and for the purposes of carrying out the provisions of SDCL 50-7-15, the STATE will share in the cost of the Project in the amount of **one hundred percent (100%) of the total eligible Project costs, but in no event will the STATE'S TOTAL SHARE exceed the amount of Eight Thousand, Three Hundred Dollars and No Cents (\$8,300.00)**. The STATE will pay the STATE'S share of the eligible Project costs from the SPONSOR'S allocated fuel tax account.

**Section 2. Termination**

1. For Convenience. The STATE may, with the concurrence of the SPONSOR, terminate and cancel this Agreement if both parties agree in writing that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds.
2. For Cause. The STATE may, by written notice to the SPONSOR, terminate the Project and cancel this Agreement for any of the following reasons:
  - (a) The SPONSOR takes any action pertaining to this Agreement without the STATE'S approval when, under the terms of this Agreement, the STATE'S approval is required.

- (b) The commencement, prosecution, or timely completion of the Project by the SPONSOR is, for any reason, rendered improbable, impossible, or illegal.
- (c) The SPONSOR is in default under any provision of this Agreement.

### **Section 3. SPONSOR Assurances**

1. The SPONSOR will operate the Airport as such for the use and benefit of the public. The SPONSOR will operate and maintain the Airport as a public use facility for a minimum of twenty (20) years from the date of this Agreement.
2. The SPONSOR will not exercise, grant, or permit any exclusive right for the use of the Airport. This provision will not be construed to prohibit the granting or exercising of an exclusive right for the furnishing of non-aviation products and supplies or any services of a non-aeronautical nature.
3. The SPONSOR will suitably operate and maintain the Airport and all facilities on or connected with which are necessary for airport purposes. The SPONSOR will not allow facilities on Airport property which would interfere with the SPONSOR'S use for aeronautical purposes in a safe manner. Essential facilities, including night lighting systems, when installed, will be operated in such a manner as to assure their availability to all users of the Airport.
4. Insofar as is within the SPONSOR'S powers, the SPONSOR will prevent the use of any land either within or outside the boundaries of Airport in any manner, including construction, which would create a hazard to the landing, taking-off, or maneuvering of aircraft at the Airport, or otherwise limit the usefulness of the Airport. The SPONSOR will notify the STATE as soon as any information is known which may cause or create such hazards to the Airport.
5. The SPONSOR will not enter into any transaction which would operate to deprive the SPONSOR of any of the rights and powers necessary to perform any or all of the covenants made in this Agreement, unless by such transaction the obligation to perform all such covenants is assumed by another public agency. If an arrangement is made for management or operation of Airport by an agency or person other than the SPONSOR or an employee of the SPONSOR, the SPONSOR will reserve sufficient powers and authority to insure that the Airport will be operated and maintained in accordance with these covenants.

### **Section 4. Special Conditions**

1. The SPONSOR will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the STATE, and to provide insurance coverage for the benefit of the STATE in a manner consistent with this Agreement. The SPONSOR will cause its subcontractors, agents, and employees to comply with applicable federal, state, and local laws, regulations, ordinances, guidelines, permits, and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. Failure to comply with federal requirements related to right-of-way, environmental clearances, utilities, contract provisions, and the bid letting process could jeopardize future federal funding.
2. The SPONSOR will pay subcontractors or suppliers within fifteen (15) days of receiving payment for work that is submitted for progress payment by the STATE. If the SPONSOR withholds payment beyond this time period, the SPONSOR will submit written justification to the STATE, upon request. If it is determined that a subcontractor or supplier has not received payment due without just cause, the STATE may withhold future estimated payments or may direct the SPONSOR to make such payment to the subcontractor or supplier.
3. The SPONSOR must submit any proposed change affecting the Project to the STATE in writing for the STATE'S approval prior to any change.

4. This Agreement may not be amended, except in writing, which writing will be expressly identified as a part of this Agreement, and be signed by an authorized representative of each of the parties to this Agreement.
5. The SPONSOR will maintain an accurate cost accounting system for all costs incurred under this Agreement with costs clearly identified with activities performed under this Agreement. All Project charges will be subject to audit in accordance with the STATE'S current procedures and 2 CFR Part 200.
6. Upon reasonable notice, the SPONSOR will allow the STATE or U.S. Department of Transportation representatives to examine all records of the SPONSOR related to this Agreement during the SPONSOR'S normal business hours. The SPONSOR will keep all such records for a period of three (3) years after the date of final payment by the STATE under this Agreement and all other pending matters are closed.
7. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, the Agreement may be terminated by the STATE. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.
8. The SPONSOR will provide services in compliance with the American with Disabilities Act of 1990, and any amendments.
9. The SPONSOR certifies, by signing this Agreement, that neither the SPONSOR nor the SPONSOR'S principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any federal department or agency.
10. The SPONSOR will indemnify the STATE, its officers, agents, and employees against any and all actions, suits, damages, liability, or other proceeding which may arise as a result of the SPONSOR performing services under this Agreement. This section does not require the SPONSOR to be responsible for or defend against claims or damages arising solely from acts or omissions of the STATE, its officer, agents, or employees.
11. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the SPONSOR is encouraged to:
  - A. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while driving when performing any work for or on behalf of the federal government, including work relating to a grant or subgrant.
  - B. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
    - i. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
    - ii. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
12. The SPONSOR has designated its City Manager as the SPONSOR'S authorized representative and has empowered the City Manager with the authority to sign this Agreement on behalf of the SPONSOR. A copy of the SPONSOR'S Commission minutes or resolution authorizing the execution of this Agreement by the City Manager as the SPONSOR'S authorized representative is attached to this Agreement as **Exhibit B**.
13. The effective date of this Agreement is **August 20, 2020**.

This Agreement has been executed by the STATE and the SPONSOR, acting by and through their duly authorized representatives.

**City of Yankton, South Dakota**

**State of South Dakota  
Department of Transportation**

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

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

Its: City Manager

Its: Program Manager  
Office of Air, Rail, and Transit

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

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

Attest:

\_\_\_\_\_  
City Auditor/Clerk

(City Seal)

SUMMARY OF PROJECT COSTS		Project Number <b>AP0062-2020</b>
Sponsors Name and Address <b>CITY OF YANKTON</b>		Description <b>Mower</b>
Official Name and Location of Airport <b>YANKTON MUNICIPAL AIRPORT PO BOX 175 YANKTON, SD 57078</b>		Aero Comm Approved <b>08/20/2020</b>
		Max Fuel Tax Funds <b>\$8,300.00</b>
DESCRIPTION	LATEST REVISED TOTAL ESTIMATED COST	ACTUAL COST INCURRED TO DATE
I. EQUIPMENT:		
A. Mower	\$8,300.00	\$0.00
II. CONSTRUCTION: N/A		
III. ENGINEERING: N/A		
IV. ADMINISTRATION		
TOTAL PROJECT COST	\$8,300.00	\$0.00
FUEL TAX SHARE-100% w/MAX <b>\$8,300.00</b>	\$8,300.00	\$0.00
LOCAL SHARE	\$0.00	\$0.00
CERTIFICATION:		
DATE:	PREPARED BY:	
<b>SCOPE: Purchase a mower.</b>		

**RESOLUTION #20-70**

**WHEREAS**, SDCL 6-13-1 states that a municipality owning personal property which is no longer necessary, useable or suitable for municipal purposes shall, by resolution, declare it surplus and may, by resolution, order for sale, destruction or other disposal of said personal property.

**NOW, THEREFORE, BE IT RESOLVED** that the following personal property be declared no longer necessary or suitable for municipal purposes and said property shall be disposed of in accordance with SDCL 6-13-1, et sequential:

]

PROPERTY TO BE DECLARED SURPLUS  
2007 Land Pride Cutter model RCM5515 Serial Number 659620  
2007 Land Pride Rear Blade Mower model RBT55120

Adopted:

\_\_\_\_\_  
Nathan V. Johnson, Mayor

ATTEST:

\_\_\_\_\_  
Al Viereck, Finance Officer



**Memorandum #20-178**

**To:** Amy Leon, City Manager  
**From:** Corey Potts, Public Works Manager  
**Subject:** Lawn Mower Purchase through Sourcewell Contract bid for the City of Yankton, Public Works Department, Joint Powers Division.  
**Date:** September 21, 2020

---

The adopted 2020 City of Yankton budget provides funding for a new lawn mower for the Department of Public Works, Joint Powers Division. The lawn mower that is to be replaced is unit #266, a 2007 New Holland Mower. The lawn mower is 13 years old. The 2007 New Holland Mower will be traded in.

A bid contract through the Sourcewell contract, allows the City to purchase a new lawn mower through Mark's Machinery, Yankton South Dakota. The lawn mower to be purchased is a new 2020 Kubota F2690E 72 inch deck, for the amount of \$17,964.12. The trade-in value for the 2007 New Holland lawn mower is \$4,500, which is credited towards the purchase of the 2020 Kubota Mower. The final price for the 2020 Kubota Mower will be \$13,464.12. There is \$18,000 budgeted for this lawn mower purchase.

City Staff recommends the purchase of a new 2020 Kubota F2690E lawn mower for \$13,464.12 with trade in from Mark's Machinery, Yankton South Dakota, based on the Sourcewell contract.

Respectfully submitted,

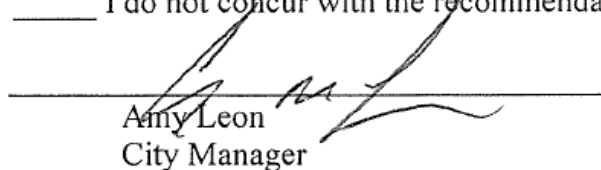


Corey Potts  
Public Works Manager

**Recommendation: It is recommended the City Commission approve Memorandum #20-178 for the purchase of a new 2020 Kubota lawn mower for the amount of \$13,464.12, with trade in, for the Department of Public Works, Joint Powers Division from Mark's Machinery, of Yankton, South Dakota, based on the Sourcewell contract and approve Resolution #20-68 to trade-in the 2007 New Holland lawn mower.**

I concur with the recommendation.

I do not concur with the recommendation.



Amy Leon  
City Manager

\_\_\_\_ Roll call

## **RESOLUTION #20-68**

**WHEREAS**, SDCL 6-13-1 requires a municipality owning personal property which is no longer necessary, useable or suitable for municipal purposes shall, by resolution, declare it surplus and may, by resolution, order for sale, destruction or other disposal of said personal property.

**NOW, THEREFORE, BE IT RESOLVED** that the following personal property be declared no longer necessary or suitable for municipal purposes and said property shall be disposed of in accordance with SDCL 6-13-1, et sequential:

### PROPERTY TO BE SURPLUS

2007 New Holland MC22 Lawn Mower VIN. #TD 20068

Dated this 28<sup>th</sup> day of September, 2020

\_\_\_\_\_  
Nathan V Johnson  
Mayor

ATTEST:

\_\_\_\_\_  
Al Viereck  
Finance Officer

## Memorandum #20-179

**To:** Amy Leon, City Manager  
**From:** Lisa Yardley, Deputy Finance Officer  
**Subject:** Approve Membership in HGACBuy Government Procurement Service  
**Date:** September 17, 2020

---

HGACBuy is a government procurement service operated by the Houston-Galveston Area Council (a council of local governments in Texas). It is similar to other cooperative purchasing agencies that the City has utilized for purchasing equipment and supplies. Their process does comply with South Dakota bid law requirements. Membership is free and the City is under no obligation to purchase through the HGACBuy service.

The Information Services Department is interested in purchasing furniture for dispatch employees that would address COVID-19 related concerns. Other South Dakota cities such as Pierre and Aberdeen are also using this multi-state bid alliance for their CARES funding purchases. Gaining membership would also allow other City Departments to purchase equipment and supplies through HGACBuy.

Attached is a copy of the HGACBuy Interlocal Contract for Cooperative Purchasing.

Respectfully submitted,

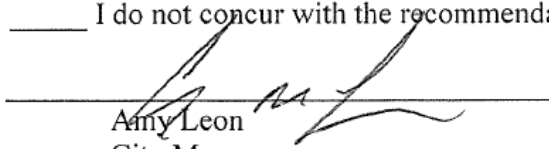


Lisa Yardley  
Deputy Finance Officer

**Recommendation: It is recommended that the City Commission approve the membership for HGACBuy and authorize the City Manager and Finance Officer to execute any and all documents regarding our membership and purchase with HGACBuy.**

I concur with the recommendation.

I do not concur with the recommendation.

  
\_\_\_\_\_  
Amy Leon  
City Manager

\_\_\_\_ Roll call



**INTERLOCAL CONTRACT FOR  
COOPERATIVE PURCHASING**

ILC No.:  
**ILC20-10787**  
Permanent Number assigned  
by H-GAC

THIS INTERLOCAL CONTRACT (“Contract”), made and entered into pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code (the “Act”), by and between the Houston-Galveston Area Council, hereinafter referred to as “H-GAC,” having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, and **City of Yankton**, a local government, a state agency, or a non-profit corporation created and operated to provide one or more governmental functions and services, hereinafter referred to as “End User,” having its principal place of business at **PO Box 176 Yankton, SD 57078**.

**WITNESSETH**

**WHEREAS**, H-GAC is a regional planning commission and political subdivision of the State of Texas operating under Chapter 391, Texas Local Government Code; and

**WHEREAS**, pursuant to the Act, H-GAC is authorized to contract with eligible entities to perform governmental functions and services, including the purchase of goods and services; and

**WHEREAS**, in reliance on such authority, H-GAC has instituted a cooperative purchasing program under which it contracts with eligible entities under the Act; and

**WHEREAS**, End User has represented that it is an eligible entity under the Act, that its governing body has authorized this Contract on **09/28/2020** (Date), and that it desires to contract with H-GAC on the terms set forth below;

**NOW, THEREFORE**, H-GAC and the End User do hereby agree as follows:

**ARTICLE 1: LEGAL AUTHORITY**

The End User represents and warrants to H-GAC that (1) it is eligible to contract with H-GAC under the Act because it is one of the following: a local government, as defined in the Act (a county, a municipality, a special district, or other political subdivision of the State of Texas or any other state), or a combination of two or more of those entities, a state agency (an agency of the State of Texas as defined in Section 771.002 of the Texas Government Code, or a similar agency of another state), or a non-profit corporation created and operated to provide one or more governmental functions and services, and (2) it possesses adequate legal authority to enter into this Contract.

**ARTICLE 2: APPLICABLE LAWS**

H-GAC and the End User agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, and ordinances and laws in effect or promulgated during the term of this Contract.

**ARTICLE 3: WHOLE AGREEMENT**

This Contract and any attachments, as provided herein, constitute the complete contract between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein.

**ARTICLE 4: PERFORMANCE PERIOD**

The period of this Contract shall be for the balance of the fiscal year of the End User, which began **01/01/2020** and ends **12/31/2020**. This Contract shall thereafter automatically be renewed annually for each succeeding fiscal year, provided that such renewal shall not have the effect of extending the period in which the End User may make any payment due an H- GAC contractor beyond the fiscal year in which such obligation was incurred under this Contract.

**ARTICLE 5: SCOPE OF SERVICES**

The End User appoints H-GAC its true and lawful purchasing agent for the purchase of certain products and services through the H- GAC Cooperative Purchasing Program. End User will access the Program through HGACBuy.com and by submission of any duly executed purchase order, in the form prescribed by H-GAC to a contractor having a valid contract with H-GAC. All purchases hereunder shall be in accordance with specifications and contract terms and pricing established by H-GAC. Ownership (title) to products purchased through H-GAC shall transfer directly from the contractor to the End User.

**ARTICLE 6: PAYMENTS**

H-GAC will confirm each order and issue notice to contractor to proceed. Upon delivery of goods or services purchased, and presentation of a properly documented invoice, the End User shall promptly, and in any case within thirty (30) days, pay H-GAC’s contractor the full amount of the invoice. All payments for goods or services will be made from current revenues available to the paying party. In no event shall H-GAC have any financial liability to the End User for any goods or services End User procures from an H- GAC contractor.

**ARTICLE 7: CHANGES AND AMENDMENTS**

This Contract may be amended only by a written amendment executed by both parties, except that any alterations, additions, or deletions to the terms of this Contract which are required by changes in Federal and State law or regulations are automatically incorporated into this Contract without written amendment hereto and shall become effective on the date designated by such law or regulation.

H-GAC reserves the right to make changes in the scope of products and services offered through the H-GAC Cooperative Purchasing Program to be performed hereunder.

**ARTICLE 8: TERMINATION PROCEDURES**

H-GAC or the End User may cancel this Contract at any time upon thirty (30) days written notice by certified mail to the other party to this Contract. The obligations of the End User, including its obligation to pay H-GAC’s contractor for all costs incurred under this Contract prior to such notice shall survive such cancellation, as well as any other obligation incurred under this Contract, until performed or discharged by the End User.

**ARTICLE 9: SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

**ARTICLE 10: FORCE MAJEURE**

To the extent that either party to this Contract shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed; provided, however, force majeure shall not excuse an obligation solely to pay funds. Determination of force majeure shall rest solely with H-GAC.

**ARTICLE 11: VENUE**

Disputes between procuring party and Vendor are to be resolved in accord with the law and venue rules of the State of purchase.

**THIS INSTRUMENT HAS BEEN EXECUTED BY THE PARTIES HERETO AS FOLLOWS:**

**City of Yankton**  
\_\_\_\_\_  
Name of End User (local government, agency, or non-profit corporation)

***Houston-Galveston Area Council***  
3555 Timmons Lane, Suite 120, Houston, TX  
77027

**PO Box 176**  
\_\_\_\_\_  
Mailing Address

By: \_\_\_\_\_  
Executive Director

**Yankton, SD 57078**  
\_\_\_\_\_  
City, State ZIP Code

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

\_\_\_\_\_  
Signature of chief elected or appointed official | **Date**

**Amy Leon, City Manager**  
\_\_\_\_\_  
Typed Name & Title of Signatory



**END USER DATA**

Please sign and return the Interlocal Contract, along with this completed form, to H-GAC by emailing it to [cpcontractfax@h-gac.com](mailto:cpcontractfax@h-gac.com) or by faxing it to 713-993-2424. The contract may also be mailed to:

**H-GAC Cooperative Purchasing Program**  
**P.O. Box 22777, Houston, TX 77227-2777**

Name of End User Agency: **City of Yankton** County Name: **Yankton**

Mailing Address: **PO Box 176 Yankton, SD 57078**

Main Telephone Number: **(605) 668-5244** FAX Number: **(605) 668-5265**

Physical Address: **416 Walnut St Yankton, SD 57078**

Web Site Address:

**Official Contact: Lisa Yardley**

Mailing Address: **PO Box 176  
Yankton, SD 57078**

Title: **Deputy Finance Officer**

Ph No.: **(605) 668-5244**

FX No.: **(605) 668-5265**

E-Mail Address: **lyardley@cityofyankton.org**

**Authorized Official: Amy Leon**

Mailing Address: **PO Box 176  
Yankton, SD 57078**

Title: **City Manager**

Ph No.: **(605) 668-5273**

FX No.: **(605) 668-5265**

E-Mail Address: **aleon@cityofyankton.org**

**Official Contact: Duane Johnson**

Mailing Address: **PO Box 176  
Yankton, SD 57078**

Title: **Information & Technology Services  
Director**

Ph No.: **(605) 668-5249**

FX No.: **(605) 668-5265**

E-Mail Address: **djohnson@cityofyankton.org**

**Official Contact: Al Viereck**

Mailing Address: **PO Box 176  
Yankton, SD 57078**

Title: **Finance Officer**

Ph No.: **(605) 668-5240**

FX No.: **(605) 668-5265**

E-Mail Address: **aviereck@cityofyankton.org**

**Official Contact: Corey Potts**

Mailing Address: **PO Box 176  
Yankton, SD 57078**

Title: **Public Works Manager**

Ph No.: **(605) 668-5211**

FX No.:

E-Mail Address: **cpotts@cityofyankton.org**

## **COMPLETING AND EXECUTING THE ILC PROCESS**

### **Step 1 (complete)**

Thank you for completing this step. A PDF copy of the ILC document will be delivered to the email address entered.

### **Step 2**

Secure a signature by the individual identified as the Authorized Official to contractually bind your entity.

### **Step 3**

Scan and email a copy of the contract to H-GAC at [cpcontractfax@h-gac.com](mailto:cpcontractfax@h-gac.com), or fax it to 713-993-2424.

The contract may also be mailed to:

#### **H-GAC Cooperative Purchasing Program**

PO Box 22777

Houston, TX 77227-2777

If you require an original signed contract, please print, sign, and mail two (2) sets of the ILC documents.

### **Step 4**

H-GAC will execute the contract and return a copy to you electronically.

## *Memorandum #20-180*

To: Amy Leon, City Manager  
 From: Corey Pospisil, Director of Human Resources and Employee Engagement  
 Date: September 24, 2020  
 Subject: Recommendation from Health Insurance Committee for Group Health Insurance, Dental Insurance, Vision Insurance, and EAP coverage.

---

A Health Insurance Committee is established to review health insurance proposals and renewal options for our group coverage. The members serving on this committee are: non-voting co-chairs Corey Pospisil and Todd Larson; voting members Duane Johnson, Brad Bies, Brooke Jackson, Mary Robb, Amanda Stucky, and Dwayne Schantz.

The Health Insurance Committee also reviews other fringe benefits provided by the City of Yankton. The Health Insurance Committee is recommending for 2021, that the City of Yankton continue to pay 100% of the premium for the single dental insurance plan for the employee. The Health Insurance Committee is also recommending the City of Yankton continue to pay 100% of the premium for the \$15,000 life insurance policy provided to the employee. These minor adjustments by the City has improved the employees' benefits package and it has eliminated additional paperwork and staff time when sharing in the premium costs.

Below is the Employee Health Insurance Committee's recommendation for the City of Yankton's 2021 Health Insurance Renewal:

### HEALTH INSURANCE

On August 10, the Employee Health Insurance Committee received the quotes for health insurance for 2021 from Avera Health Plans, Wellmark, and Health Partners.

Comparing our current plan and rates, Health Partners came with a blended 4.06% increase, Avera's quote came with a blended 6%, and Wellmark came with a blended 14.05% increase.

**Health Partners:** Health Partner's traditional plan is mostly the same to the current Avera plan. Additional benefits include the office visit/copay is all inclusive and the drug card does not have a deductible. With the telemedicine, each member receives 3 free Virtuwel visits, after those 3 Virtuwel visits, the member would be billed at the regular cost of copay for the office call on the \$1000 plan. Virtuwel on the HSA plan is \$59 until you reach your deductible then it's covered at 100%.

The in-network list of medical providers is larger because Sanford Health, Avera and Mayo Clinic are included as "in-network" providers.

The increase to monthly premiums for the traditional plan for 2021 would be .61%:

81 (Employee only) -	\$561.36 current	2021 - \$ 565.06	City pays premium 100%
7 (employee + 1) -	\$1009.49 current	2021 - \$1014.71	City pays 50% of premium
6 (family) -	\$1569.26 current	2021 - \$1576.39	City pays 50% of premium



The Committee thought it was important to note the increase for 2020 from Avera was 10.10%.

The City also offers a high deductible Health Savings Account (HSA) eligible plan. The quote for the HSA plan would be the exact same plan as what is currently in place. The increase in premiums for the High Deductible High Premium (HDHP) in 2021 would be 13.15%.

39 (Employee only) - \$409.18	current	2021 - \$462.19	City pays premium 100%
1 (Employee + 1) - \$732.06	current	2021 - \$829.98	City pays 50% of premium
6 (Family) - \$1135.39	current	2021 - \$1289.41	City pays 50% of premium

The increase for 2020 from Avera was 8.05%

Please be reminded that the City does contribute into the HSA account for those employees on the HSA plans. The savings (difference between traditional plan premium and HSA premium) from the City of Yankton’s portion of the lower HSA premium is placed into the Health Savings Account of the employee as an employer contribution.

The 2021 increase when factoring in both plans is a blended 4.06%. The 2021 City budget had allocated for a 10% increase in health insurance premiums. Health Partners agrees to cap the next renewal at 15% or less.

**Avera:** Quoted the existing 2020 plan design. Avera originally quoted a blended 9.07% increase, however, after requesting them to re-examine the quote due to the Health Partner’s aggressiveness, Avera returned with at 6% blended quote. Avera agrees to cap the next renewal at 15% or less.

**Wellmark:** Quoted the exact Avera plan. The in-network list of medical providers is larger because Sanford Health is included as an “in-network” provider. The blended premium increase would be 14.05%. One notable point is the HDHP deductible is only met when the entire family deductible is met as opposed to per person and family.

Therefore, the Health Committee’s recommendation is to move to Health Partners with the quoted coverage plan for the traditional and HSA coverage as the City of Yankton’s health care provider.

VISION INSURANCE

On August 10, the Committee received quotes for vision insurance for 2021 from Sun Life and The Standard. They both have a Buy Up Plan.

Employee only - \$1.68	2021 - \$2.00	City pays premium 100%
Employee +1 - \$3.93	2021 - \$4.50	City pays 50% of premium
Family - \$5.01	2021 - \$5.99	City pays 50% of premium

The Standards has a slight increase in cost to what the current Sun Life plan is. However, the plan design is stronger on the buy up plan as well. One thing to point out is The Standard has a higher copay than Sun Life, \$25 versus \$10. However, other significant improvements are (core plan):

<u>The Standard</u>	<u>Sun Life</u>
Lenses - \$25 copay	20% off
Frames - \$105 allowance, then 20% off	20% off
Contacts - \$25 copay	15% off

\_\_\_\_\_ Roll call

The Buy Up plan is considerable better by a blended average of 37.95%. Using the current enrollment numbers, the overall cost would be lower than 2020.

The Standard will lock-in this plan for 2 years.

Therefore, the Health Insurance Committee’s recommendation is to move to The Standard as the City of Yankton’s Vision care provider.

DENTAL INSURANCE

On August 10, the Committee received quotes for dental insurance for 2021 from Delta, The Standard, Principal, MetLife and Health Partners.

All plans are identical in their plan coverage including an annual maximum of \$1500, except Delta, which is a \$1000 annual maximum.

Principal is the most price competitive for all tiers. Overall, Principal is a blended 20.87% lower than our current provider (Delta). See the monthly premiums:

Employee only - \$ 42.26 current	2021 - \$ 30.46	City pays premium 100%
Employee + 1 - \$ 85.70 current	2021 - \$ 59.09	City pays employee premium cost
Employee + 2+ - \$120.30 current	2021 - \$106.89	City pays employee premium cost

Therefore, the Health Insurance Committee’s recommendation is to move to Principal as the City of Yankton’s dental provider.

EMPLOYEE ASSISTANCE PROGRAM (EAP)

The 2020 EAP with five free sessions was provided by Avera. The 2021 Avera EAP would have a rate decrease of \$.10 per employee based on the current number of 186 covered individuals.

Current Rate: \$2.70/employee	2021 Rate: \$2.60/employee
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Therefore, the Health Committee’s recommendation is to renew the EAP contract with Avera.

FLEX SPENDING ACCOUNTS (FSA)

Health Partners provides these services. The recommendation is to align it with the medical policy being recommended.

SUPPLEMENTAL INSURANCE

AFLAC is the provider the City of Yankton uses for supplemental insurances that employees may or may not choose to purchase (Accident Insurance, Critical Illness Insurance, Hospital Indemnity Insurance) at 100% of the employee cost. There is no recommendation to change to another provider.

EFFECTIVE DATES

All rates and plans would be effective January 1, 2021.

**Recommendation:** The Employee Health Committee with input from City of Yankton employees, recommends the City Commission approve the Employee Health Committee's recommendation to move to Health Partners offering the (traditional) Low deductible plan along with the High Deductible Health Plan (HDHP) and Health Savings Account (HSA) for 2021 at an approximate increase of a blended 4.07%. The Health Committee also recommends the City Commission approve moving to The Standard vision insurance plan, the Principal dental insurance plan with a 20.87% decrease, and the Avera EAP plan with a 3.7% decrease, for 2021. The Employee Health Committee recommends that the City Commission approve remaining with AFLAC for supplemental insurance.

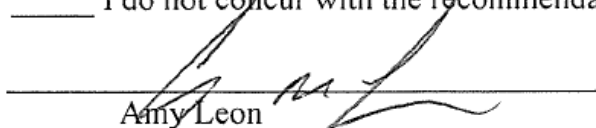
Respectfully submitted,



Corey Pospisil  
Director of Human Resources and Employee Engagement

I concur with the recommendation.

I do not concur with the recommendation.

  
\_\_\_\_\_  
Amy Leon  
City Manager

\_\_\_\_ Roll call

## MEMORANDUM #20-182

To: Yankton City Commission  
From: City Attorney Ross Den Herder  
Date: September 15, 2020  
Re: Resolution #20-69 regarding Abandoning Towing Agreement and assigning  
Removal Agencies

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Under state statute and city ordinance, there are many instances in which vehicles may need to be towed at the direction of city employees (i.e. vehicles rendered inoperable and blocking traffic, vehicles illegally parked, vehicles constituting public nuisances as defined by law, etc.). These vehicles may be towed by organizations designated by the City Commission as “removal agencies.” Previously, removal agencies were designated by the City Commission through adoption of a written towing agreement to which all interested organizations would sign. Unfortunately, the most recent towing agreement has expired.

Staff explored the prospect of renewing the towing agreement with the local towing companies. However, for various reasons, no towing organizations are presently interested in entering into a new towing agreement with the City of Yankton. Indeed, the YPD has had trouble getting towing companies to respond to tow calls due to the terms within the towing agreement. The terms of the agreement are perceived by staff to be non-essential and secondary to the need to get a towing company to timely respond. The towing fees are usually paid by the vehicle owners.

This resolution will abandon the towing agreement in favor of designating all companies shown to be capable of towing at the City’s request. The YPD will call each of these local companies on a simple rotation. The Vermillion company will be used as a final backup. This approach is most likely to get a towing company to respond to a call and to do so in a timely manner. By policy, when a vehicle owner is present and able to choose a towing company (i.e. inoperable vehicle following an auto accident, etc.) the YPD will still call the towing company of the owner’s choice if he or she has a preference.

Respectfully submitted

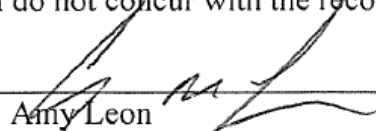


Ross K. Den Herder  
City Attorney

**Recommendation: It is recommended that the Board of Commissioners adopt Resolution #20-69 designating “removal agencies” for the City of Yankton and abandoning the Towing Agreement.**

I concur with the recommendation.

I do not concur with the recommendation.

  
\_\_\_\_\_  
Amy Leon  
City Manager

\_\_\_\_ Roll call

**RESOLUTION #20-69**

**A RESOLUTION TO ESTABLISH REMOVAL AGENCIES**

**WHEREAS** SDCL Chap. 32-36 and numerous local Ordinances allow vehicles to be towed by designated “removal agencies” when they constitute public nuisances, or when they are otherwise parked in a manner which violates the law; and

**WHEREAS** the Yankton Board of City Commissioner may, by resolution, designate certain towing companies to serve as “removal agencies” as defined by SDCL 32-36-2(5) and Section 15-19 of the Yankton Code of Municipal Ordinances to tow vehicles at the request of the City of Yankton or its various Departments;

**NOW, THEREFORE, BE IT RESOLVED** by the Yankton Board of City Commissioners that in accordance with SDCL 32-36-2(5) and Section 15-19 of the Yankton Code of Municipal Ordinances the following towing companies are hereby designated as “removal agencies” within the jurisdictional limits of the City of Yankton:

**M & W Towing**  
30653 SD Hwy 81  
Yankton, SD 57078  
(605) 260-6869

**Gary’s Repair & Wrecker Service**  
2100 SD Hwy 314  
Yankton, SD 57078  
(605) 665-4351

**Pro Auto**  
2511 E Hwy 50  
Yankton, SD 57078  
(605) 665-4142

**Redi Towing**  
1016 W Cherry St.  
Vermillion, SD 57069  
(605) 624-2424

Dated this 28<sup>th</sup> day of September, 2020.

CITY OF YANKTON

BY: \_\_\_\_\_  
Nathan V Johnson  
Mayor

ATTEST:

\_\_\_\_\_  
Al Viereck  
Finance Officer

***Memorandum #20-184***

**To:** Amy Leon, City Manager  
**From:** Adam Haberman, Public Works Director  
**Subject:** Contract between City of Yankton and Banner Associates for Marne Creek Bank Restoration and Maintenance Trail Reconstruction  
**Date:** September 22, 2020

---

The City of Yankton experienced severe flooding in March 2019, which eroded the banks and damaged trail segments along Marne Creek. City staff have been working with the Federal Emergency Management Agency (FEMA) since the flooding occurred in March of 2019 to obtain funding to repair the damages Marne Creek received. FEMA has obligated \$278,269.00 for engineering and design services for the repairs to the creek banks and trail. Once engineering and design work has taken place, the City will work with FEMA to obtain more funding for project construction.

The City of Yankton Engineering Department advertised for and received Request for Qualifications (RFQ) for engineering services. RFQ submittals were received from three engineering firms. The submitted RFQ's were evaluated by a selection committee. Banner Associates, Inc. was the selected engineer.

Attached is a Professional Services Agreement for engineering services with Banner Associates, Inc. for the Marne Creek Bank Restoration and Maintenance Trail Reconstruction. The scope of this professional services agreement is to provide field surveying, design services, and construction administration needed to reconstruct and repair the March 2019 flood damages to Marne Creek. The professional services agreement is being presented at this time so that fieldwork can be accomplished this fall and design/construction documents can be completed by late winter/early spring of 2021 for an anticipated 2021-bid letting.

The attached contract identifies the work to be completed by the engineering firm, which includes survey, design, bidding, and construction administration services for the project. The contract totals \$633,919.00. The contract amount is significantly higher than the obligated amount from FEMA. Staff will continue to work with FEMA in an effort to obtain more funding for the engineering and design services.

**Recommendation: It is recommended that the City Commission approve the Contract between the City of Yankton and Banner Associates, Inc. for Marne Creek Bank Restoration and Maintenance Trail Reconstruction and authorize the City Manager to sign all documents regarding this project.**

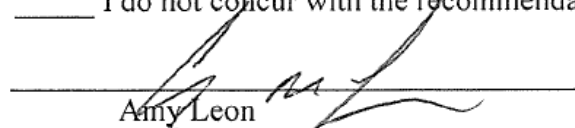
Respectfully submitted,



Adam Haberman, PE  
Public Works Director

I concur with the recommendation.

I do not concur with the recommendation.

  
\_\_\_\_\_  
Amy Leon  
City Manager

\_\_\_\_ Roll call



This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

EJCDC® E-500, Agreement between Owner and Engineer for Professional Services, is published in two parts: (1) this part, the E-500 Agreement form, and (2) the Exhibits to Agreement between Engineer and Subconsultant for Professional Services. This first part contains a Guidelines for Use section that pertains to both the Agreement form and the Exhibits.

## **AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES**

Prepared by



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# AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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## **AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES**

This is an Agreement between City of Yankton (Owner) and Banner Associates, Inc. (Engineer). Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as Auld/Brokaw Maintenance Trail and Marne Creek Bank Restoration (Project). Other terms used in this Agreement are defined in Article 7. Engineer's services under this Agreement are generally identified as surveying, design, environmental studies, permitting, public outreach, bidding, construction administration, and resident project representation.

Owner and Engineer further agree as follows:

### **ARTICLE 1—SERVICES OF ENGINEER**

#### 1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.
- B. All phases of service will include Management of Engineering Services as shown in Exhibit A.

### **ARTICLE 2—OWNER'S RESPONSIBILITIES**

#### 2.01 Project Information

- A. To the extent Owner has not already provided the following, or has new, additional, or revised information from that previously provided, Owner shall provide Engineer with information and data needed by Engineer in the performance of Basic and Additional Services, including Owner's:
  - 1. design objectives and constraints;
  - 2. space, capacity, and performance requirements;
  - 3. flexibility and expandability needs;
  - 4. design and construction standards;
  - 5. budgetary limitations; and
  - 6. any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- B. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, Owner shall obtain, furnish, or otherwise make available (if necessary through retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services; or, with consent of Engineer, Owner may authorize the Engineer to obtain or provide all or part of such additional information as Additional Services. Such additional information or data may include the following:
  - 1. Property descriptions.
  - 2. Zoning, deed, and other land use restrictions.
  - 3. Surveys, topographic mapping, and utility documentation.

4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; appropriate professional interpretation of such information or data.
  6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
  7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- C. Owner shall examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
  - D. Owner shall furnish to Engineer data as to Owner's anticipated costs for services to be provided to Owner by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) so that Engineer may assist Owner in collating the various cost categories that comprise Total Project Costs.
  - E. Owner shall advise Engineer if any invention, design, process, product, or device that Owner has requested, required, or recommended for inclusion in the Drawings or Specifications will be subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights.
  - F. Owner shall inform Engineer as to whether Engineer's assistance is requested with respect to Owner's evaluation of the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
  - G. Owner shall inform Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- 2.02 Owner's Instructions Regarding Bidding/Proposal and Front-End Construction Contract Documents
- A. Owner shall give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable) and Owner's construction contract practices and requirements, and furnish to Engineer (or give specific directions requesting Engineer to use copies already in Engineer's possession) the following:
    1. Owner's standard contract forms, general conditions (if other than the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract), supplementary conditions, text, and related documents and content for Engineer to include in the draft Bidding/Proposal Documents, and in draft Front-End Construction Contract Documents;

2. insurance and bonding requirements;
  3. protocols for electronic transmittals during bidding and construction;
  4. Owner's safety and security programs applicable to Contractor and other Constructors;
  5. diversity and other social responsibility requirements;
  6. bidding and contract requirements of funding, financing, or regulatory entities;
  7. other specific conditions applicable to the procurement of construction or contract documents;
  8. any other information necessary for Engineer to assist Owner in preparing its Bidding/Proposal Documents and Front-End Construction Contract Documents.
- B. Owner shall have responsibility for the final content of (1) such Bidding/Proposal Documents, and (2) such Front-End Construction Contract Documents, other than content furnished by Engineer concerning the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters.
1. Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. If there will be an advertisement soliciting bids for construction, Owner shall place and pay for such advertisement.

### 2.03 Owner-Furnished Services

- A. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, Owner shall obtain, as required for the Project:
1. Accounting, bond and financial advisory services (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  2. Legal services, including attorney review of proposed Construction Contract Documents, legal services required by Owner, legal services needed as a result of issues raised by Contractor, and Project-related legal services reasonably requested by Engineer.
  3. Auditing services, including those needed by Owner to ascertain how or for what purpose Contractor has used money paid to it.
- B. Owner shall acquire or arrange for acquisition of the Site(s) and any temporary or permanent rights of access, easements, or property rights needed for the Project.
- C. With respect to the portions or phases of the Project designed or specified by Engineer, Owner shall provide, obtain, or arrange for:
1. all required reviews, approvals, consents, and permits from governmental authorities having jurisdiction, and
  2. such reviews, approvals, and consents from others as may be necessary for completion of each portion or phase of the Project.

- D. Owner may delegate to Contractor or others the responsibilities set forth in Paragraphs 2.03.C and D.

#### 2.04 Owner's General Responsibilities

- A. Owner shall inform Engineer of the policies, procedures, and requirements of Owner that are applicable to Engineer's performance of services under this Agreement.
- B. Owner shall provide Engineer with Owner's budget for the Project, including type and source of funding to be used, and will promptly inform Engineer if the budget or funding sources change.
- C. Owner shall inform Engineer in writing of any safety or security programs that are applicable to the personnel of Engineer, its Subconsultants, and Engineer's Subcontractors, as they visit the Site or otherwise perform services under this Agreement.
- D. Owner shall arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under this Agreement.
- E. Owner shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance of its services.
- F. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- G. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
  - 1. any development that affects the scope or time of performance of Engineer's services;
  - 2. the presence at the Site of any Constituent of Concern; or
  - 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.
- H. Owner shall advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- I. If Owner designates a construction manager, site representative, or any individual or entity other than, or in addition to, Engineer to represent Owner at the Site, Owner shall define and set forth as an exhibit to this Agreement the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- J. Owner shall:

1. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
2. Primarily communicate with Engineer’s Subcontractors and Subconsultants through the Engineer.
  - a. Promptly inform Engineer of the substance of any communications between Owner and Engineer’s Subcontractors or Subconsultants.
  - b. Refrain from directing the services of Engineer’s Subcontractors or Subconsultants.
3. Authorize Engineer to provide Additional Services as set forth in Article 2 of Exhibit A of the Agreement, as required.

2.05 Payment

- A. Owner shall pay Engineer as set forth in Article 4 and Exhibit J.
- B. Engineer’s compensation is summarized as follows; if there is a conflict between the following summary and the contents of Exhibit J, then Exhibit J will prevail.

Description of Service		Amount	Basis of Compensation
1.	Basic Services (Article 1 of Exhibit A)	\$551,919	Lump Sum
2.	Resident Project Representative Services	\$82,000	Lump Sum
3.	Additional Services (Article 2 of Exhibit A)		Standard Hourly Rates plus Reimbursable Expenses

Based on a five-month continuous construction period.

1. Compensation items and totals based in whole or in part on Hourly Rates, Direct Labor, or Percentage of Construction Cost are estimates only.
2. Lump sum amounts incorporate Engineer’s labor, overhead, profit, and Engineer’s Subcontractor and Subconsultants’ charges.

**ARTICLE 3—SCHEDULE FOR RENDERING SERVICES**

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Appendix A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s services is impaired, or Engineer’s services are delayed



or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.

- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.
- D. If Engineer fails, for reasons within control of Engineer, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages to the extent, if any, resulting from such failure by Engineer.

#### **ARTICLE 4—INVOICES AND PAYMENTS**

##### **4.01 Invoices**

- A. Preparation and Submittal of Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices, the progress reporting and special invoicing requirements (if any) in Exhibit A Paragraph 1.01.A, and the terms of Exhibit J. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

##### **4.02 Payments**

- A. Application to Interest and Principal: Payment will be credited first to any interest owed to Engineer and then to principal.
- B. Disputed Invoices: If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so; may withhold only that portion so disputed; and must pay the undisputed portion, subject to the terms of Paragraph 4.01. After a disputed item has been resolved, Engineer shall include the agreed-upon amount on a new invoice.
- C. Failure to Pay: If Owner fails to make any undisputed payment due Engineer within 30 days after receipt of Engineer's invoice, then:
  - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and
  - 2. Engineer may, after giving 7 days' written notice to Owner, suspend services under this Agreement until Owner has paid in full amounts due. Owner waives any and all claims against Engineer for any such suspension.
- D. Sales or Use Taxes: If after the Effective Date any governmental entity takes an action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement will be in addition to the compensation to which Engineer is entitled under the terms of Exhibit J.

## **ARTICLE 5—OPINIONS OF COST**

### **5.01 Opinions of Probable Construction Cost**

- A. Engineer's opinions of probable Construction Cost (if any) are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

### **5.02 Opinions of Total Project Costs**

- A. The services, if any, of Engineer with respect to Total Project Costs will be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## **ARTICLE 6—GENERAL CONSIDERATIONS**

### **6.01 Standards of Performance**

- A. **Standard of Care:** The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. **Technical Accuracy:** Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. **Engineer's Subcontractors and Subconsultants:** Engineer may retain such Engineer's Subcontractors and Subconsultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. **Reliance on Others:** Subject to the standard of care set forth in Paragraph 6.01.A, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. **Compliance with Laws and Regulations, and Policies and Procedures**
  - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
  - 2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in

Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
  - a. changes after the Effective Date to Laws and Regulations,
  - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures, and
  - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. General Conditions of Construction Contract: The general conditions for any Construction Contract Documents prepared hereunder are to be the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract, prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise.
- G. Copies of Drawings and Specifications: If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one complete electronic copy of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations, and one complete printed copy, duly signed and sealed.
- H. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant conditions whose existence Engineer cannot ascertain within the authorized scope of Engineer's services. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to Engineer in any way contingent upon Engineer signing any such document.
- I. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- J. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- K. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer.
- L. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- M. Engineer's services do not include providing legal advice or representation.
- N. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and

Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

- O. While at the Site, Engineer, its Subconsultants, and Engineer's Subcontractors, and their employees and representatives will comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 Ownership and Use of Documents

- A. All Documents are instruments of service, and Engineer owns the Documents, including all associated copyrights and the right of reuse at the discretion of the Engineer. Engineer shall continue to own the Documents and all associated rights whether or not the Project is completed.
  - 1. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project.
  - 2. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations:
    - a. Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
    - b. any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Subconsultants;
    - c. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and
    - d. such limited license to Owner shall not create any rights in third parties.
- B. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.
- C. Engineer shall inform Owner if Engineer is aware of any invention, design, process, product, or device specified in the Drawings, Specifications, or other Documents that is subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights. If Engineer's good-faith inclusion in the Drawings, Specifications, or other Documents of new, innovative, or non-standard technologies, for the benefit of Owner and the Project, results in third-party claims of infringement or violation of

intellectual property rights, then Owner and Engineer shall share equally the costs of defending against, settling, or paying such claims.

- D. Engineer will obtain Owner's consent, which will not be unreasonably withheld, prior to releasing any publicity, including news and press releases, promotional publications, award and prize competition submittals, and other advertising regarding the subject matter of this Agreement. Nothing herein will limit the Engineer's right to include information in statements of qualifications and proposals to others accurately describing its participation and participation of employees in the Project.

#### 6.03 Electronic Transmittals

- A. To the fullest extent practical, Owner and Engineer agree to transmit, and accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with Exhibit F, Electronic Documents Protocol (EDP).
  - 1. Compliance with the EDP by Engineer shall be considered a Basic Service and no direct or separate compensation will be paid to Engineer for such compliance, unless provisions for separate compensation are expressly set forth in the EDP.
  - 2. Engineer's costs directly attributable to changes in Engineer's Electronic Documents obligations, after the effective date of this Agreement, necessitated by revisions to Exhibit F, delayed adoption of Exhibit F, or implementation of other Electronic Documents protocols, will be compensated as Additional Services.
- B. If this Agreement does not include Exhibit F or otherwise does not establish or include protocols for transmittal of Electronic Documents by Electronic Means, then Owner and Engineer may operate without specific protocols or may jointly develop such protocols at a later date.
- C. Except as stated otherwise in Exhibit F (if included in this Agreement), when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents, or from those established in applicable protocols.
- D. This Agreement (including the EDP) is not intended to create obligations for Owner or Engineer with respect to transmittals to or from third parties, except as expressly stated in the EDP.

#### 6.04 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G.
- B. Additional Insureds: The Engineer's commercial general liability, automobile liability, and umbrella or excess liability policies, must:
  - 1. include and list as additional insureds Owner, and any individuals or entities identified as additional insureds in Exhibit G;
  - 2. include coverage for the respective officers, directors, members, partners, and employees of all such additional insureds;

3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations); and
  4. not seek contribution from insurance maintained by the additional insured.
- C. Owner shall procure and maintain insurance as set forth in Exhibit G.
  - D. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer, its Subconsultants, and Engineer's Subcontractors to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project. Owner shall give Engineer access to any certificates of insurance and copies of endorsements and policies obtained by Owner from Contractor.
  - E. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates must be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
    1. Upon request by Owner or any other insured, Engineer shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subconsultants and Engineer's Subcontractors. In any documentation furnished under this provision, Engineer may redact (a) any confidential premium or pricing information and (b) any wording specific to projects or jurisdictions other than those applicable to this Agreement.
  - F. All construction contracts entered into by Owner with respect to the Project must require builder's risk or similar property insurance.
  - G. All policies of property insurance relating to the Project, including but not limited to any builder's risk or similar policy, must allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer, its Subconsultants, or Engineer's Subcontractors. Owner and Engineer waive all rights against each other, Contractor, Engineer's Subcontractors and Subconsultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any such builder's risk or similar policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
  - H. All policies of insurance must contain a provision or endorsement that the coverage afforded will not be canceled, and that renewal will not be refused, until at least 10 days' prior written notice has been given to the primary insured. Upon receipt of such notice, the primary insured must promptly forward a copy of the notice to the other party to this Agreement and replace the coverage being cancelled or reduced to conform to the requirements of this Agreement.

- I. At any time, Owner may request that Engineer, or Engineer's Subcontractors or Subconsultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require Engineer's Subcontractors or Subconsultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

## 6.05 Suspension and Termination

### A. Suspension

1. By Owner: Owner may suspend Engineer's services for up to 90 days upon 7 days' written notice to Engineer.
2. By Engineer: Engineer may, after giving 7 days' written notice to Owner, suspend services under this Agreement:
  - a. if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraphs 4.02.B and 4.02.C;
  - b. in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.09.D; or
  - c. if persistent circumstances beyond the control of Engineer have prevented it from performing its obligations under this Agreement.

### B. Termination for Cause

1. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.
  - a. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1 if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. In addition to its termination rights in Paragraph 6.05.B.1, Engineer may terminate this Agreement for cause upon 7 days' written notice:
  - a. if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional;
  - b. if Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control; or
  - c. as the result of the presence at or adjacent to the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.09.E.

3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.
- C. Termination for Convenience: Owner may terminate this Agreement for convenience, effective upon Engineer's receipt of notice from Owner.
  - D. Extension of Effective Date of Termination: If Owner terminates the Agreement for cause or convenience, Owner may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Engineer shall be entitled to compensation for such tasks.
  - E. Payments Upon Termination: In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination. Upon making such payment, Owner will have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.02.A.
    1. If Owner has terminated the Agreement for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the Documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.
    2. If Owner has terminated the Agreement for convenience, or if Engineer has terminated the Agreement for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Subcontractors or Subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit J.

#### 6.06 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.06.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:



1. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
2. Nothing in this Agreement will be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
3. Owner agrees that the substance of the provisions of this Paragraph 6.06.C will appear in the Construction Contract Documents.

#### 6.07 Dispute Resolution

- A. Owner and Engineer shall resolve all disputes in the following manner:
  1. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice, prior to invoking mediation.
  2. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process will be conducted on a confidential basis, and must be completed within 120 days.
  3. If the parties fail to resolve a Dispute through negotiations under Paragraph 6.07.A.1 or mediation under Paragraph 6.07.A.2, then then the parties may exercise their rights at law.

#### 6.08 Controlling Law; Venue

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.
- B. Venue for any exercise of rights at law will be the state court having jurisdiction at the location of the Project; or at the choice of either party, and if federal jurisdictional requirements can be met, in federal court in the district in which the Project is located.

#### 6.09 Environmental Condition of Site

- A. Owner represents to Engineer that, as of the Effective Date, to the best of Owner’s knowledge, no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. Undisclosed Constituents of Concern: For purposes of this Paragraph 6.09, the presence at or adjacent to the Site of Constituents of Concern that were not disclosed to Engineer pursuant to Paragraph 6.09.A, in such quantities or circumstances that such Constituents of Concern may present a danger to persons or property exposed to them, will be referred to as “undisclosed” Constituents of Concern.
  1. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of this Agreement or the Construction Contract, are not undisclosed Constituents of Concern.
  2. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under this Agreement are not undisclosed Constituents of Concern.

3. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under another professional services contract for Owner, or as part of the work under a construction or remediation contract, are not undisclosed Constituents of Concern if Engineer has been informed of the general scope of such contract.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate authorities having jurisdiction if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
  - D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, or if encountered, uncovered, or revealed Constituents of Concern are present in substantially greater quantities or substantially different locations than disclosed or anticipated, or if investigative or remedial action, or other professional services, are necessary or required by applicable Laws and Regulations with respect to such Constituents of Concern, then Engineer may, at its option and without liability for direct, consequential, or any other damages, suspend performance of services on the portion of the Project adversely affected thereby until such portion of the Project is no longer so affected; and Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
  - E. If the presence at the Site of undisclosed Constituents of Concern, or of Constituents of Concern in substantially greater quantities or in substantially different locations than disclosed or anticipated, adversely affects the performance of Engineer's services under this Agreement, then:
    1. if the adverse effects do not preclude Engineer from completing its Project services in general accordance with this Agreement on unaffected or marginally affected portions of the Project, Engineer may accept an equitable adjustment in its compensation or in the time of completion, or both; and the Agreement will be amended to reflect changes necessitated by the presence of such Constituents of Concern; or
    2. if the adverse effects are of such materiality to the overall performance of Engineer that it cannot complete its services without significant changes to the scope of services, time of completion, and compensation, then Engineer may terminate this Agreement for cause on 7 days' written notice.
  - F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and will not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.10 Indemnification and Mutual Waiver

- A. Indemnification by Engineer: To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or

actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, Subconsultants, or Engineer's Subcontractors.

- B. Environmental Indemnification: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer, its Subconsultants, Engineer's Subcontractors, and their officers, directors, members, partners, agents, employees, and subconsultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that:
  - 1. any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and
  - 2. nothing in this paragraph obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- C. No Defense Obligation: The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- D. Percentage Share of Negligence: To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, will not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. Mutual Waiver: To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's officers, directors, members, partners, agents, employees, subconsultants, and insurers, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes. Such excluded damages include but are not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and cost of capital.

#### 6.11 Records Retention

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, or such other period as required by Laws and Regulations, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

#### 6.12 Miscellaneous Provisions

- A. Notices: Any notice required under this Agreement will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the

recipient, with the words “Formal Notice” or similar in the e-mail’s subject line. All such notices are effective upon the date of receipt.

- B. Survival: Subject to applicable Laws and Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Engineer.
- D. No Waiver: A party’s non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.
- E. Accrual of Claims: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer’s services do not include Construction Phase services, or the Project is not completed, then no later than the date of Owner’s last payment to Engineer.

## **ARTICLE 7—DEFINITIONS**

### **7.01 Defined Terms**

- A. Wherever used in this Agreement (including the exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
  - 1. Addenda—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
  - 2. Additional Services—The services to be performed for or furnished to Owner by Engineer in accordance with Article 2 of Exhibit A of this Agreement.
  - 3. Agreement—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  - 4. Application for Payment—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
  - 5. Basic Services—The services to be performed for or furnished to Owner by Engineer in accordance with Article 1 of Exhibit A of this Agreement.
  - 6. Bidding/Proposal Documents—Documents related to the selection of the Contractor, including advertisements or invitations to bid; requests for proposals; instructions to bidders or proposers, including any attachments such as lists of available Site-related documents; bid forms; bids; proposal forms; proposals; bidding requirements; and qualifications documents.

7. Change Order—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
8. Change Proposal—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
9. Constituents of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
10. Construction Contract—The entire and integrated written contract between Owner and Contractor concerning the Work.
11. Construction Contract Documents—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract. See also definition of “Front-End Construction Contract Documents” below.
12. Construction Contract Price—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
13. Construction Contract Times—The number of days or the dates by which Contractor must: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
14. Construction Cost—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
15. Constructor—Any person or entity (not including the Engineer, its employees, agents, representatives, or Subconsultants, or Engineer’s Subcontractors), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, design-builders, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

16. Contractor—The entity or individual with which Owner enters into a Construction Contract.
17. Documents—All documents expressly identified as deliverables in this Agreement, whether in printed or Electronic Document form, required by this Agreement to be provided or furnished by Engineer to Owner. Such specifically required deliverables may include, by way of example, Drawings, Specifications, data, reports, building information models, and civil integrated management models.
18. Drawings—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. Effective Date—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. Electronic Document—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. Electronic Means—Electronic mail (e-mail), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Agreement. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
22. Engineer—The individual or entity named as such in this Agreement.
23. Engineer's Subcontractor—An individual, firm, vendor, or other entity having a contract with Engineer to furnish general services, equipment, or materials with respect to the Project as an independent contractor.
24. Field Order—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
25. Front-End Construction Contract Documents—Those Construction Contract Documents whose primary purpose is to establish legal and contractual terms and conditions, typically including the Owner-Contractor agreement, bonds, general conditions, and supplementary conditions. The term excludes the Drawings and Specifications, and any Construction Contract Documents delivered or issued after the effective date of the Construction Contract.
26. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
27. Owner—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same

individual or entity that will enter into any Construction Contracts concerning the Project.

28. Project—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
29. Record Drawings—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
30. Resident Project Representative—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of the RPR.
31. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
32. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
33. Site—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
34. Specifications—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
35. Subconsultant—An individual, design firm, consultant, or other entity having a contract with Engineer to furnish professional services with respect to the Project as an independent contractor.
36. Subcontractor—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
37. Submittal—A written or graphic document, prepared by or for Contractor, which the Construction Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools;

operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Construction Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Construction Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

38. Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
39. Supplier—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
40. Total Project Costs—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties and private utilities (including relocation if not part of Construction Cost), Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
41. Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
42. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
43. Work Change Directive—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## B. Terminology



1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

## **ARTICLE 8—EXHIBITS AND SPECIAL PROVISIONS**

### **8.01 Exhibits to Agreement**

The following exhibits are incorporated by reference and included as part of this Agreement:

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Not Used
- C. Exhibit C, Not used
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Not Used
- F. Exhibit F, Not Used
- G. Exhibit G, Insurance.
- H. Exhibit H, Not Used
- I. Exhibit I, Not Used
- J. Exhibit J, Payments to Engineer for Services and Reimbursable Expenses.

### **8.02 Total Agreement**

- A. This Agreement (which includes the exhibits listed above) constitutes the entire contractual agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit C to be included when needed.

### **8.03 Designated Representatives**

- A. With the execution of this Agreement, Engineer and Owner shall each designate a specific individual to act as representative under this Agreement. Such an individual must have authority to transmit instructions, receive information, and render decisions with respect to this Agreement on behalf of the party that the individual represents.

### **8.04 Engineer's Certifications**

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

#### 8.05 Conflict of Interest

- A. Nothing in this Agreement will be construed to create or impose any duty on the part of Engineer that would be in conflict with Engineer's paramount obligations to the public health, safety, and welfare under the professional practice requirements governing Engineer, its Subconsultants, and all licensed professionals employed by Engineer or its Subconsultants.
- B. If during the term of this Agreement a potential or actual conflict of interest arises or is identified:
  1. Engineer and Owner together will make reasonable, good faith efforts to avoid or eliminate the conflict of interest; to mitigate any adverse consequences of the conflict of interest; and, if necessary and feasible, to modify this Agreement to address the conflict of interest and its consequences, such that progress under the Agreement may continue.
  2. Such efforts will be governed by applicable Laws and Regulations and by any pertinent Owner's policies, procedures, and requirements (including any conflict of interest resolution methodologies) provided to Engineer under Paragraph 2.04.A of this Agreement.

This Agreement's Effective Date is September 28, 2020.

Owner:

\_\_\_\_\_  
(name of organization)

By: \_\_\_\_\_  
(individual's signature)

Date: \_\_\_\_\_  
(date signed)

Name: \_\_\_\_\_  
(typed or printed)

Title: \_\_\_\_\_  
(typed or printed)

Attach evidence of authority to sign.

Attest: \_\_\_\_\_  
(individual's signature)

Title: \_\_\_\_\_  
(typed or printed)

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_  
(typed or printed)

Title: \_\_\_\_\_  
(typed or printed)

Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Engineer:

Banner Associates, Inc.  
\_\_\_\_\_  
(name of organization)

By: Pat Carey  
\_\_\_\_\_  
(individual's signature)

Date: 9/17/2020  
\_\_\_\_\_  
(date signed)

Name: Pat Carey  
\_\_\_\_\_  
(typed or printed)

Title: Sr Vice President  
\_\_\_\_\_  
(typed or printed)

Attach evidence of authority to sign.

Attest: \_\_\_\_\_  
(individual's signature)

Title: \_\_\_\_\_  
(typed or printed)

Address for giving notices:

409 22<sup>nd</sup> Ave S  
\_\_\_\_\_  
Brookings, SD 57006  
\_\_\_\_\_

Designated Representative:

Name: Rich Uckert  
\_\_\_\_\_  
(typed or printed)

Title: Project Manager  
\_\_\_\_\_  
(typed or printed)

Address:

409 22nd Ave S  
\_\_\_\_\_  
Brookings, SD 57006  
\_\_\_\_\_

Phone: (605) 692-6342

Email: richu@bannerassociates.com

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

EJCDC® E-500, Agreement between Owner and Engineer for Professional Services, is published in two parts: (1) the E-500 Agreement form, and (2) this Exhibits document, consisting of the standard exhibits used with E-500. The first of the two parts contains a Guidelines for Use section that pertains to both the Agreement form and the Exhibits.

## EXHIBITS TO AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared By



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# EXHIBITS TO AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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## EXHIBIT A—ENGINEER’S SERVICES

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Article 1 of the Agreement, Services of Engineer, is supplemented to include the following provisions:

Baseline Information: Owner has furnished the following Project information to Engineer as of the Effective Date. Engineer’s scope of services has been developed based on this information. As the Project moves forward, some of the information may change or be refined, and additional information will become known, resulting in the possible need to change, refine, or supplement the scope of services.

Project Title:

Type and Size of Facility: Auld/Brokaw Maintenance Trail and Marne Creek Bank Restoration  
Description of Improvements: Bank stabilization improvements and recreational trail improvements  
Expected Construction Start: Spring 2021  
Prior Studies, Reports, Plans: FEMA/City Damage Inspection  
Facility Location(s): Lower Reach starting at the confluence of Marne Creek and the Missouri River to Burleigh Street bridge near East 8<sup>th</sup> Street/Upper Reach from Burleigh Street bridge near East 8<sup>th</sup> Street to 31<sup>st</sup> Street west of City Limits Road  
Funding Sources: FEMA (Federal and State)/City  
Known Project Limitations: See attached Project Limits Map  
Project Assumptions: See attached Appendix A – Scope of Work

Engineer shall provide Basic and Additional Services as set forth below.

### ARTICLE 1—BASIC SERVICES

#### 1.01 Management of Engineering Services

- A. All phases of Engineer’s services will include management of Engineer’s Project-specific responsibilities, including but not limited to the following management tasks, whether separately tracked and itemized or included as being incidental to other phase and scope task items.
  1. Develop and submit an Engineering Services Schedule. The Engineering Services Schedule will:
    - a. be consistent with and serve as a supplement to the Schedule of Deliverables set forth in Exhibit A.
    - b. be updated on a regular basis, and as required to reflect any programmatic decisions by Owner.
    - c. include, but not be limited to, an anticipated sequence of tasks; estimates of task duration; interrelationships among tasks; milestone meetings and submittals; anticipated schedule of construction; and other pertinent Project events.
  2. Develop and submit detailed work plans from Exhibit A tasks.
  3. Coordinate services within Engineer’s internal team, and with Subconsultants and Engineer’s Subcontractors.

4. Prepare for and participate in meetings with consultants and contractors working on other parts of the Project that may affect, or be affected by, Engineer's services or resulting construction.
5. Prepare and submit monthly engineering services progress reports to the Owner.
6. Conduct ongoing management tasks, including:
  - a. Maintaining communications records and files pertaining to or arising from Engineer's services;
  - b. With respect to Engineer's services and other directly relevant parts of the Project, prepare for and participate in periodic progress meetings with Owner to discuss progress, schedule, budget, issues, potential problems and their resolution; and
  - c. Preparing agendas prior to and minutes following all Engineer-led meetings.
- B. In all phases of Engineer's services, Engineer shall prepare draft and final Drawings in accordance with Engineer's CAD standards using 2020 AutoCAD Civil 3D software.
- C. The source documents for the draft and final Specifications in all phases of Engineer's services will be Engineer's standard specifications unless otherwise mutually agreed upon by the parties.

#### 1.02 Preliminary Design Phase

- A. Refer to Appendix A - Scope of Work Auld/Brokaw Maintenance Trail and Marne Creek Bank Restoration - September 2020
- B. Upon authorization from Owner, Engineer shall:
  1. Review and assess all available Project information and data, including any pertinent reports or studies (whether prepared by Engineer or others) and any related instructions from Owner.
  2. Based on the threshold review and assessment of available information and data, advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer any additional information and data.
  3. If at any point in the Preliminary Design Phase it becomes apparent to Engineer that additional reports, data, information, or services of the types described in Article 2 are necessary, then so advise Owner, and assist Owner in obtaining such reports, data, information, or services.
  4. Surveys, Topographic Mapping, and Utility Documentation
    - a. Coordinate with Owner's utility engineer, utility consultant, or land surveyor for the necessary field surveys, topographic mapping, and utility documentation required for Engineer's design purposes, or by the Underground Facilities Procedure.
    - b. If no scope of work and procedure for utility documentation has been established, selected, or authorized, then at a minimum Engineer will contact utility owners and obtain available information. Except as otherwise provided in this Agreement, Owner acknowledges that the information gathered from utility owners may be incorrect, incomplete, outdated, or otherwise flawed, and as to Engineer, bidders,

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Exhibit A—Engineer's Services.

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and Contractor, the Owner accepts all associated risks. Owner reserves all associated rights as to recourse against the sources of such flawed information and against third parties.

5. Obtain Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's Bidding/Proposal Documents and Front-End Construction Contract Documents.
  - a. Also obtain copies of Owner's standard Bidding/Proposal Documents and Front-End Construction Contract Documents (if other than the EJCDC 2018 Construction Series documents), and any other related documents or content for Engineer to include in drafts of the Project-specific Bidding/Proposal Documents and Front-End Construction Contract Documents, when applicable.
  - b. Review Owner's instructions regarding procurement, bidding and contracting of construction services with respect to effects on the Project design, schedule and construction and address as needed in the Preliminary Design Phase deliverables.

#### 1.03 Final Design Phase

- A. After acceptance by Owner of the Preliminary Design Phase deliverables; issuance by Owner of any instructions for specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner; and any necessary changes, refinements, and supplementation of the Baseline Information set forth at the beginning of this Exhibit A, Engineer and Owner shall discuss, resolve, and document any necessary revisions to Engineer's scope of services, compensation (through application of the provisions regarding Additional Services, or otherwise), and the time for completion of Engineer's services, resulting from specific modifications to the Project, or changes, refinements, or supplementation of the Baseline Information.
  1. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one (1). If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.
  2. If more than one prime construction contract is to be awarded for the Work designed or specified by Engineer, then Owner shall define and set forth (in an exhibit to this Agreement, or in a subsequent document) the duties, responsibilities, and limitations of authority of a person or entity that will have authority and responsibility for coordinating the activities among the various prime Contractors, and any resulting changes in the duties, responsibilities, and authority of Engineer.
  3. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime construction contract, or if Engineer's services are to be separately sequenced with the work of one or more separate design professional consultants or prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design,

Bidding/Proposal, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable under such separate prime construction contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such construction contracts is to proceed concurrently.

- B. Upon authorization from Owner, Engineer shall prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor, in accordance with the Preliminary Design Phase deliverables. As part of the preparation of the Drawings and Specifications, Engineer shall prepare interim drafts and final Drawings and Specifications as follows, pursuant to the Deliverables Schedule in Appendix A:
  - 1. First Final Design Phase draft of all Drawings and Specifications.
  - 2. Second Final Design Phase draft of all Drawings and Specifications, addressing Owner comments and including appropriate design advancement.
  - 3. Final Drawings and Specifications that address Owner comments; complete the design; are suitable for estimating and pricing by prospective Contractors; and are complete and ready for construction.
- C. In preparing the Specifications (and any bidding, contract, or other documents that are part of Engineer's scope of services), Engineer shall obtain from Owner or Owner's legal counsel any relevant constraints such as requirements for use of domestic steel and iron, other domestic purchasing requirements, statutory restrictions on utilizing proprietary specifying methods, and the like, and comply with or account for such constraints in drafting Specifications, Bidding/Proposal Documents, and other Project documents.
- D. Engineer shall prepare or assemble draft Bidding/Proposal Documents and Front-End Construction Contract Documents as follows:
  - 1. Such documents will be based on the 2018 EJCDC Construction Documents, and on the specific bidding or Contractor selection-related instructions and forms, contract forms, text, or other content received from Owner.
  - 2. When Engineer is required to use other than the 2018 EJCDC Construction Documents, then as required in the Preliminary Design Phase Owner will furnish to Engineer a copy of the required documents to be used for the Project's Bidding/Proposal Documents and Front-End Construction Contract Documents. Prior to the first Final Design Phase submittal, Engineer will review the bidding and contracting documents furnished by Owner and provide comments to Owner. Engineer will meet with Owner to discuss Engineer's comments. Owner will consider Engineer's recommendations to revise Owner's documents for the Project.
  - 3. Engineer will furnish to Owner, for review by Owner's legal counsel, the draft Bidding/Proposal Documents and Front-End Construction Contract Documents. Owner and Owner's legal counsel must transmit to Engineer, in a timely manner, one coordinated set of comments and revisions to the draft documents.
- E. Engineer shall perform or furnish the following other Final Design Phase services:
  - 1. Visit the Site as needed to assist in preparing the final Drawings and Specifications.

2. Assist with or prepare applications for permits and approvals, as follows:
  - a. Prepare the following applications for Owner's submittal to authorities having jurisdiction over the construction or operation of the Project:
    - 1) See attached Appendix A.
  - b. Confer with Owner regarding revisions, if any, to the application(s), and make appropriate revisions to the application(s) for Owner's resubmittal to the authority having jurisdiction.
  - c. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of the authorities having jurisdiction listed above, including applications for review or approval of the final design.
  - d. Identify and indicate in the Construction Contract Documents the permits and approvals for which Contractor will be responsible, including work permits, building permits, and other permits and approvals that will be Contractor's responsibility; and, in addition, indicate those permits initially obtained by Owner for which Contractor will be a co-permittee, together with associated requirements.
  - e. Engineer does not guarantee issuance of any required permit or approval.
  - f. Fees charged by authorities having jurisdiction for such permits or approvals are the responsibility of Owner.
3. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost. Furnish to Owner an updated opinion of probable Construction Cost with the interim and final deliverables of the Drawings and Specifications.
4. After consultation with Owner, include in the Front-End Construction Contract Documents any Electronic Document Protocol addressing specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website.
5. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
6. Review the preliminary schedule for the Construction Phase and advise Owner when initial understanding of the Construction Contract Times must or should be revised, and furnish Owner with recommendations on revisions to the proposed Construction Contract Times.
7. Engineer's project manager and other appropriate staff will participate in the following meetings and conference calls:
  - a. See attached Appendix A.
  - b. Engineer will prepare and distribute minutes of each such meeting and conference call, indicating attendees, topics discussed, decisions made, and action items for follow-up.

8. Perform or provide the following other Final Design Phase activities or deliverables:
  - a. See attached Appendix A.
- F. Engineer shall complete the Final Design Phase as follows:
  1. Pursuant to the requirements of the Deliverables Schedule in Appendix A, furnish for review by Owner, its legal counsel, and other advisors, the final Drawings and Specifications (as set forth in Exhibit A Paragraph 1.03.B.3 above); assembled drafts of other Construction Contract Documents including the draft Front-End Construction Contract Documents; the draft Bidding/Proposal Documents; the most recent opinion of probable Construction Cost; and any other Final Design Phase deliverables, and review the deliverables with Owner.
  2. Revise the final Design Phase deliverables in response to Owner's comments, as appropriate, and submit revised deliverables pursuant to the Deliverables Schedule.
  3. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications; assembled drafts of the Front-End Construction Contract Documents; the draft Bidding/Proposal Documents; and any other Final Design Phase deliverables, as revised.

#### 1.04 Bidding/Proposal Phase

- A. After acceptance by Owner of the final Drawings and Specifications; assembled drafts of other Construction Contract Documents, including the draft Front-End Construction Contract Documents; the draft Bidding/Proposal Documents; the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and any other Final Design Phase deliverables, and upon written authorization by Owner to proceed, Engineer shall:
  1. Assist Owner in advertising for and obtaining bids or proposals for the Work; assist Owner in issuing assembled Bidding/Proposal Documents and proposed Construction Contract Documents to prospective contractors; if applicable, maintain a record of prospective contractors to which documents have been issued; attend pre-bid conferences, if any; and receive and process contractor deposits or charges, if any, for the issued documents.
    - a. Bidding documents will be distributed through commercial plan room and the Banner Associates bidding site.
  2. Prepare and issue addenda as appropriate to clarify, correct, or change the issued documents.
  3. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Exhibit A Paragraph 2.01.A.2.
  4. Attend the bid opening; prepare bid tabulation sheets; and assist Owner in evaluating bids or proposals, assembling final Construction Contracts for the Work for execution

by Owner and Contractor, and in preparing notices of award to be issued by Owner for such contracts.

5. Provide information or assistance needed by Owner in the course of any review of bids, proposals, or negotiations with prospective contractors.
6. Consult with Owner as to the qualifications of prospective contractors.
7. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
9. The Bidding/Proposal Phase will be considered complete upon award of Construction Contracts for the Work and commencement of the Construction Phase, or upon cessation of negotiations with prospective contractors.

#### 1.05 Construction Phase

- A. After completion of the Final Design Phase and concurrent with the Bidding/Proposal Phase, and after issuance by Owner of any instructions for specific modifications or changes in the scope, extent, character, design, schedule, number of prime construction contracts, and other construction requirements of the Project during the Construction Phase desired by Owner, the Engineer and Owner shall discuss, resolve, and document any necessary revisions to Engineer's scope of services or compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from specific modifications to the Project.
  1. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A Paragraph 1.06, as duly modified. With the exception of such expressly required services, Engineer shall have no design, or other obligations during construction, and Owner assumes all responsibility for providing or arranging for all other necessary Construction Phase administrative, engineering, and professional services.
  2. Owner waives all claims against Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants, and Engineer's Subcontractors, that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A. Notwithstanding the foregoing waiver, Engineer shall be responsible for any professional opinions and interpretations provided by Engineer to Owner during the Construction Phase or Post-Construction Phase, including interpretations or clarifications of the Construction Contract Documents.
- B. Upon successful completion of the Bidding/Proposal Phase, and upon authorization from Owner, Engineer shall provide the following services:
  1. General Administration of Construction Contract: Consult with Owner and act as Owner's representative as provided in this Agreement and the Construction Contract. Unless otherwise set forth in the scope of Basic Services (as duly modified), the extent and limitations of the duties, responsibilities, and authority of Engineer shall be as

assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2018) or other construction general conditions specified in this Agreement. Except as otherwise provided in the Construction Contract, Owner's communications to Contractor will be issued through Engineer.

- a. If the responsibilities of Engineer as set forth in the Construction Contract are greater than those Construction Phase services expressly required of Engineer in Exhibit A Paragraph 1.06, as duly modified, then Owner shall either (1) expand the scope of the Construction Phase services to match those of the Construction Contract, and compensate Engineer for any related increases in the cost to provide Construction Phase services, pursuant to the provisions for compensating Additional Services, or (2) identify a qualified individual or entity (other than Engineer) responsible for the additional responsibilities in the Construction Contract.
  - b. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, or if Owner requires Engineer's services for construction that extends longer than the anticipated Construction Contract Times, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services, pursuant to the provisions for compensating Additional Services.
  - c. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional.
2. Resident Project Representative (RPR): Provide the services of an RPR at the Site to assist Engineer and to provide more extensive observation of Contractor's Work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
  3. Pre-Construction Conference: Participate in a pre-construction conference prior to commencement of Work at the Site; prepare and distribute agenda for the conference and prepare and distribute minutes of such conference.
  4. Electronic Transmittal Protocols: If the Construction Contract does not establish protocols for transmittal of Electronic Documents by Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
  5. Original Documents: If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
  6. Schedules: Receive, review, and, subject to the criteria of the Construction Contract, determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the progress schedule, schedule of submittals, and

schedule of values. Advise Contractor in writing of Engineer's comments or acceptance of schedules.

- a. Schedules will be acceptable to Engineer as to form and substance:
  - 1) Progress Schedule: if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  - 2) Contractor's Schedule of Submittals: if it provides a workable arrangement for reviewing and processing the required Submittals.
  - 3) Contractor's Schedule of Values: if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
7. Baselines and Benchmarks: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
8. Permits: Provide Owner with copies of technical information and supporting data previously obtained or developed by Engineer for Owner's use, or for Owner to provide to Contractor, in obtaining required permits and licenses delegated to Contractor by Owner.
9. Visits to Site and Observation of Construction: In connection with observations of Contractor's Work while it is in progress:
  - a. Make monthly visits to the Site at intervals appropriate to the various stages of the Work, as Engineer deems necessary, to observe as an experienced and qualified design professional, the progress of Contractor's executed Work. Such visits and observations by Engineer, including its RPR, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by its RPR, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work. Engineer will make a report of Engineer's visit, summarizing Engineer's general observations and any significant findings.
  - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to by this Agreement and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has

implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer will not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor will Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

10. Defective Work: If, on the basis of Engineer's observations or as indicated in documentation available to Engineer, Engineer believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, Engineer will promptly issue written notice to Contractor (with copy to Owner) of such defective Work. Such notice will communicate the scope, extent (to Engineer's understanding) of defect, and associated provisions of the Construction Contract Documents.
  - a. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting the defective Work in accordance with the provisions of the Construction Contract Documents. Engineer shall give notice to Contractor regarding whether the defective Work should be repaired, replaced, or will be accepted by Owner.
  - b. However, Engineer's authority to provide this information to Owner or Engineer's decision to exercise or not exercise such authority will not give rise to a duty or responsibility of the Engineer to Contractors, Subcontractors, material and equipment suppliers, their agents or employees, or any other person(s) or entities performing any of the Work, including but not limited to any duty or responsibility for Contractors' or Subcontractors' safety precautions and programs incident to the Work.
11. Compatibility with Design Concept: If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. Clarifications and Interpretations: Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.



13. Non-reviewable Matters: If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (a) the performance or acceptability of the Work under the Construction Contract Documents, (b) the design (as set forth in the Drawings, Specifications, or otherwise), or (c) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. Field Orders: Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. Change Orders and Work Change Directives: Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. Change Proposals and Claims
  - a. Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal.
  - b. Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
17. Differing Site Conditions: Respond to any notice from Contractor of differing site conditions, including conditions relating to Underground Facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use subject to limitations of Engineer's obligations under this Agreement.
18. Contractor's Submittals: Review and approve or take other appropriate action with respect to required Contractor Submittals, but only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Construction Contract Documents, and for compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's Submittal schedule that Engineer has accepted.
19. Substitutes and "Or-equals": Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Exhibit A Paragraph 2.01.A.2.
20. Inspections and Tests

- a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining whether the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
  - b. Reply to Contractor requests for written concurrence that specific portions of the Work that are to be inspected, tested, or approved may be covered.
  - c. Issue written requests to Contractor that specific portions of the Work remain uncovered.
  - d. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
  - e. Pursuant to the terms of the Construction Contract, require additional inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
21. Contractor's Applications for Payment: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
- a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set offs) based on the provisions for set offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, within the limits of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
  - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to

supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

22. Contractor's Completion Documents: Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Exhibit A Paragraph 1.06.B.20. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents will be to check that Contractor has submitted a complete set of those documents that Contractor is required to submit.
23. Substantial Completion: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, visit the Site in company with Owner and Contractor to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
24. Other Tasks: Perform or provide the following other Construction Phase tasks or deliverables:
  - a. See attached Appendix A.
25. Completion and Acceptability of the Work: After notice from Contractor that the Work is complete:
  - a. visit the Site with Owner and Contractor to determine if the Work is in fact complete and acceptable;
  - b. notify Contractor of any part of the Work that is found during the visit to be incomplete or defective, and subsequently confirm that Contractor has corrected any such deficiencies;
  - c. follow the procedures in the Construction Contract regarding review and response to Contractor's application for final payment and accompanying documentation; and
  - d. if Engineer is satisfied that the Work is complete and acceptable, provide a notice to Owner and Contractor using EJCDC® C-626, Notice of Acceptability of Work

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Exhibit A—Engineer's Services.

Exhibits to EJCDC® E-500, Agreement between Owner and Engineer for Professional Services.  
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stating that the Work is acceptable (subject to the provisions of the Notice and this Exhibit A) within the limits of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.

26. Standards for Certain Construction-Phase Decisions: Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- C. Duration of Construction Phase: The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractor. If the Project involves more than one prime contract as indicated in Exhibit A Paragraph 1.04.A.1, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

#### 1.06 Post-Construction Phase

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
  2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate 12 months after the commencement of the Construction Contract's correction period.

### ARTICLE 2—ADDITIONAL SERVICES

#### 2.01 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease

from Owner. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit J.

1. Substantive design and other technical services in connection with Work Change Directives, Change Proposals, and Change Orders to reflect changes requested by Owner.
2. Services essential to the orderly progress of the Bidding/Proposal and Construction Phases and not wholly quantifiable prior to those Phases or otherwise dependent on the actions of prospective individual bidders or contractors and including:
  - a. making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items;
  - b. services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project;
  - c. evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract; and
  - d. providing to the Contractor or Owner additional or new information not previously prepared or developed by the Engineer for their use in applying for or obtaining required permits and licenses, in responding to agency comments on such applications, or in the administration of any such permits or licenses.
3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Implement coordination of Engineer's services with other parts of the Project that are not planned or designed by Engineer or its Subconsultants, unless Owner furnished to Engineer substantive information about such other parts of the Project prior to the parties' entry into this Agreement, in the Baseline Information section of this Exhibit A, or otherwise in Exhibit A; if such substantive information has been so provided, coordination of Engineer's services will be part of Basic Services.
6. Implement the specific parts of an Underground Facilities Procedure that are assigned to Engineer, or above-ground utilities tasks that are assigned to Engineer as the Project progresses (but not including the design-related services already assigned to Engineer as a Basic Service).
7. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.

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Exhibit A—Engineer's Services.

Exhibits to EJCDC® E-500, Agreement between Owner and Engineer for Professional Services.  
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8. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
9. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
10. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.
11. To the extent the Project is subject to Laws and Regulations governing public or government records disclosure or non-disclosure, Engineer will comply with provisions applicable to Engineer, and Owner will compensate Engineer as Additional Services for Engineer's costs to comply with any disclosure or non-disclosure obligations beyond those identified in the Basic Services.
12. Services directly attributable to changes in Engineer's Electronic Documents obligations after the effective date of the Agreement.

#### 2.02 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit J.
  1. Obtain or provide specified additional Project-related information and data to enable Engineer to complete its Basic and Additional Services.
  2. Preparation of special and customized reporting, invoicing, and related support documentation in addition to that identified to be provided under Basic Services.
  3. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
  4. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
  5. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.

6. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Exhibit A Paragraph 1.02.A.1.
7. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
8. Providing renderings or models for Owner's use, including development, management, and other services in support of building information modeling or civil integrated management.
9. Undertaking investigations and studies including, but not limited to:
  - a. All-hazards risk assessments and other studies to evaluate the feasibility of enhancing the resiliency of the design;
  - b. detailed consideration of operations, maintenance, and overhead expenses;
  - c. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
  - d. preparation of appraisals;
  - e. with respect to proprietary systems or processes requiring licensing, providing services necessary to assist Owner in obtaining such licensing.
  - f. detailed quantity surveys of materials, equipment, and labor; and
  - g. audits or inventories required in connection with construction performed or furnished by Owner.
10. Furnishing services of Subconsultants or Engineer's Subcontractors for other than Basic Services.
11. Providing data or services of the types described in Article 2, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
12. Providing the following services:
  - a. Services attributable to more prime construction contracts than specified in Exhibit A Paragraph 1.04.A.1.
  - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
13. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Article 1 of Exhibit A).
14. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies,

reports, Drawings, Specifications, or other documents as a result of such review processes.

15. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents); preparing pre-qualification procedures and documents, and participating in pre-qualifying prospective Bidders; and preparing Construction Contract Documents for alternate bids.
16. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
17. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all addenda and any amendments negotiated by Owner and Contractor.
18. Services to assist Owner in developing or modifying protocols for transmittal of Electronic Documents by Electronic Means after the effective date of this Agreement, either by revising or adapting Exhibit F to the Project or implementing other Electronic Documents protocols among Project participants.
19. Any services by Engineer in connection with Owner or Engineer providing a Document to a Requesting Party under Exhibit F Paragraph 1.01.D (see Exhibit F, Electronic Documents Protocol), or any other distribution of a Document to a third party. Such services may include but are not limited to preparing the data contained in the requested Document in a manner deemed appropriate by Engineer; creating or otherwise preparing and distributing the Document in a format necessary to respond to Owner's direction or decision to provide the Document to a requesting party, including Contractor, in a format other than that required for deliverables from Engineer to Owner; and services in connection with obtaining required releases from the third parties to which the Documents will be distributed. Compensation for these Additional Services is not contingent upon Owner's reimbursement from the requesting party.
20. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
21. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
22. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
23. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
24. Preparation of operation, maintenance, and staffing manuals.
25. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
26. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.

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Exhibit A—Engineer's Services.

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27. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
28. Preparing to serve or serving as a consultant or witness for, or producing documents for or on behalf of, Owner in any litigation, arbitration, mediation, lien or bond claim, or other legal or administrative proceeding involving the Project (but not including disputes between Owner and Engineer).
29. Overtime work requiring higher than regular rates.
30. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Exhibit A Paragraph 1.06.B.9; any type of property surveys or related engineering services needed for the transfer of interests in real property; providing construction and property surveys to replace reference points or property monuments lost or destroyed during construction; and providing other special field surveys.
31. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
32. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
33. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

## **EXHIBIT D—DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF AUTHORITY OF RESIDENT PROJECT REPRESENTATIVE**

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### **ARTICLE 1—RESIDENT PROJECT REPRESENTATIVE SERVICES**

Article 1 of the Agreement, Services of Engineer, and Exhibit A, Engineer's Services, are supplemented to include Exhibit D Paragraphs 1.01, 1.02, and 1.03, as follows:

#### **1.01 Resident Project Representative**

- A. Engineer shall furnish a Resident Project Representative ("RPR") to observe progress and quality of the Work. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
- B. The RPR will provide part-time representation.
- C. Subject to the scope of RPR's observations of the Work, which may include field checks of materials and installed equipment, Engineer shall endeavor to identify defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, inspect, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A Paragraph 1.06 are applicable.

#### **1.02 Duties and Responsibilities of RPR**

- A. The duties and responsibilities of the RPR are as follows:
  1. General: RPR's dealings in matters pertaining to the Work in general will be with Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
  2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
  3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
  4. Safety Compliance: Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

5. Liaison
  - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
  - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. Clarifications and Interpretations: Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.
7. Shop Drawings, Samples, and other Submittals
  - a. Receive Samples that are furnished at the Site by Contractor.
  - b. Receive Contractor-approved Shop Drawings.
  - c. Receive other Submittals from Contractor.
  - d. Record date of receipt of Samples, Contractor-approved Shop Drawings, and other Submittals.
  - e. Notify Engineer of availability of Samples for examination, and forward Contractor-approved Shop Drawings and other Submittals to Engineer. When appropriate recommend distribution of Submittal to specified Subconsultants.
  - f. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. Proposed Modifications: Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. Review of Work; Defective Work
  - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.

- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work.
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. Inspections, Tests, and System Start-ups

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.
- f. Nothing in this Agreement will be construed to require RPR to conduct inspections.

11. Records

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Proposals, Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Proposals, Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
- d. Record and maintain accurate, up-to-date lists of the company names and points of contact for Contractors, Subcontractors, and major Suppliers of materials and equipment.

- e. Maintain records for use in preparing Project documentation.
- f. Upon completion of the Work, furnish original set of all RPR Project documentation to designated recipients.

12. Reports

- a. Furnish periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft responses to or make recommends on Change Proposals, Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately inform appropriate parties of the occurrence of any Site accidents, emergencies, natural catastrophes endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

13. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. Completion

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work document.

1.03 Limitations of Authority

A. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

## EXHIBIT G—INSURANCE

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### ARTICLE 1—INSURANCE

Paragraph 6.04 of the Agreement, Insurance, is supplemented to include the following Exhibit G Paragraphs 1.01 and 1.02:

#### 1.01 Insurance Policies and Limits

- A. In accordance with Paragraph 6.04.A of the Agreement, the insurance that Engineer must procure and maintain, and the policy limits of such insurance, are as follows:

Coverage	Policy limits of not less than:
<b>Workers' Compensation</b>	
State	Statutory
<b>Employer's Liability</b>	
Each accident	\$ 500,000
Each employee	\$ 500,000
Policy limit	\$ 500,000
<b>Commercial General Liability</b>	
General Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000
<b>Automobile Liability</b>	
Bodily Injury	
Each Person	\$
Each Accident	\$
Property Damage	
Each Accident	\$
Or	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000
<b>Excess or Umbrella Liability</b>	
Each Occurrence	\$5,000,000
General Aggregate	\$5,000,000
<b>Professional Liability</b>	
Each Claim	\$3,000,000
Annual Aggregate	\$5,000,000
<b>Unmanned Aerial Vehicle Liability Insurance</b>	
Each Claim	\$
General Aggregate	\$
<b>Other Insurance [Specify]</b>	
Each Claim	\$
General Aggregate	\$

1.02 Additional Insureds

- A. Owner shall cause Engineer, its Subconsultants, and its Engineer's Subcontractors to be listed as additional insureds on any of Owner's general liability policies that are applicable to the Project. The following individuals or entities are to be listed on Owner's general liability policies of insurance (and on Contractor's policies required under Paragraph 6.04.D of the Agreement) as additional insureds:

<b>Name of Additional Insured</b>	<b>Address</b>
<b>Banner Associates, Inc.</b>	<b>409 22<sup>nd</sup> Ave S Brookings, SD 57006</b>
<b>RESPEC Company, LLC</b>	<b>3824 Jet Drive Rapid City, SD 57703</b>
<b>GeoTek Engineering &amp; Testing</b>	<b>909 E 50<sup>th</sup> St N Sioux Falls, SD 57104</b>
<b>Kogel Archeological Consulting Services</b>	<b>2101 South Lincoln Avenue Sioux Falls, SD 57105</b>

- B. During the term of this Agreement the Engineer shall notify Owner of any other Subconsultant or Engineer's Subcontractor to be listed as an additional insured on Owner's and applicable Contractor's general liability policies of insurance.
- C. The Owner must be listed on Engineer's general liability policy as provided in Paragraph 6.04.B.
- D. For applicable Contractor's general liability policies of insurance, the additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
- E. For applicable Contractor's general liability policies of insurance, Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for Engineer, Subconsultants, and other design professional additional insureds.



**EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES**

**COMPENSATION PACKET BC-1: BASIC SERVICES—LUMP SUM**

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**ARTICLE 1—COMPENSATION PACKET BC-1: BASIC SERVICES—LUMP SUM**

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraph 1.01:

**1.01 Compensation for Basic Services (other than Resident Project Representative)—Lump Sum Method of Payment**

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A (except for Resident Project Representative services, if any) as follows:

1. A Lump Sum amount of \$551,919 based on the following estimated distribution of compensation:

b. Preliminary Design Phase	\$272,945
c. Final Design Phase	\$119,574
d. Bidding and Negotiating Phase	\$ 5,500
e. Construction Phase	\$151,900
f. Post-Construction Phase	\$ 2,000

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but compensation will not exceed the total Lump Sum amount unless approved in writing by the Owner.

3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Subcontractors and Subconsultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, and expenses (other than any expressly allowed Reimbursable Expenses).

4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges): None

5. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.

B. Period of Service: The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 15 months. If such period of service is extended, the compensation amount for Engineer's services will be appropriately adjusted.

**EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES**  
**COMPENSATION PACKET RPR-1: RESIDENT PROJECT REPRESENTATIVE—LUMP SUM**

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**ARTICLE 2—COMPENSATION PACKET RPR-1: RESIDENT PROJECT REPRESENTATIVE—LUMP SUM**

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraph 2.01:

2.01 Compensation for Resident Project Representative Services—Lump Sum Method of Payment

A. Owner shall pay Engineer for Resident Project Representative Services as follows:

1. Resident Project Representative Services: For services of Engineer's Resident Project Representative (RPR), if any, under Exhibits A and D, the Lump Sum amount of \$82,000. The Lump Sum includes compensation for Resident Project Representative services, including any RPR-related services performed by Engineer's Subcontractors and Subconsultants. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, and expenses (other than any expressly allowed Reimbursable Expenses, as set forth immediately below) related to the Resident Project Representative services.
2. Reimbursable Expenses: In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following RPR-related Reimbursable Expenses (see Appendix 1 for rates or charges); all other expenses are accounted for in the Lump Sum: None
3. Resident Project Representative Schedule: The Lump Sum amount set forth in Exhibit J Paragraph 2.01.A.1 above is based on part-time RPR services on an eight-hour workday two days per week over a 20-week construction schedule. Modifications to the construction schedule will entitle Engineer to an equitable adjustment of compensation for RPR services.

**EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES**  
**COMPENSATION PACKET AS-1: ADDITIONAL SERVICES—STANDARD HOURLY RATES**

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**ARTICLE 3—COMPENSATION PACKET AS-1: ADDITIONAL SERVICES—STANDARD HOURLY RATES**

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraph 3.01:

**3.01 Compensation for Additional Services—Standard Hourly Rates Method of Payment**

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. For services of Engineer's personnel engaged directly on the Project pursuant to Exhibit A Paragraph 2.01 or 2.02, except for services as a consultant or witness under Exhibit A Paragraph 2.02.A.28 (which if needed will be separately negotiated based on the nature of the required consultation or testimony), an amount equal to the cumulative hours charged by each class of Engineer's personnel providing such Additional Services times Standard Hourly Rates for each applicable billing class, plus Additional Services-related Reimbursable Expenses and Additional Services-related Engineer's Subcontractors' and Subconsultants' charges, if any.
- B. Compensation for Reimbursable Expenses
1. For those Reimbursable Expenses that are directly related to the provision of Additional Services, and are not already accounted for in the compensation for Basic Services or RPR-related services, Owner shall reimburse Engineer, using the rates set forth in Appendix 1 to this Exhibit J when applicable.
  2. Such Reimbursable Expenses include, to the extent Additional Services-related, the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
  3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.0.
- C. Other Provisions Concerning Payment for Additional Services
1. Whenever Engineer is entitled to compensation for the charges of Engineer's Subcontractors and Subconsultants, such compensation will be the amounts billed by Engineer's Subcontractors and Subconsultants to Engineer times a factor of 1.10.
  2. Factors: The external Reimbursable Expenses and Engineer's Subcontractors' and Subconsultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

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Exhibit J—Payments to Engineer for Services and Reimbursable Expenses.

Appendix 2: Standard Hourly Rates Schedule.

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3. The Standard Hourly Rates and the Reimbursable Expenses Schedule will be adjusted annually (as of January 2020) to reflect equitable changes in the compensation payable to Engineer for Additional Services-related services and expenses.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

# Appendix A - Scope of Work Auld/Brokaw Maintenance Trail and Marne Creek Bank Restoration

September 2020

## Tasks

For tasks that will include subconsultants to Banner, clarification of their role was included to clarify roles and avoid overlap of work.

### 1.0 Project Management and Coordination

#### 1.1 Kick Off Meeting

A Kickoff Meeting via Zoom will be held inviting FEMA representatives, City of Yankton staff, Banner and RESPEC. The purpose of the meeting will be to discuss the scope of the project and project schedule, defining roles and responsibilities from each entity.

*Assumptions:*

- *Banner will coordinate and facilitate the meeting. Banner will provide meeting minutes.*
- *Two personnel from RESPEC will attend the meeting.*

#### 1.2 Coordination Meetings

Monthly coordination meetings will be held to discuss progress and any issues that need to be addressed for the project. Assumes staff from FEMA, City of Yankton, Banner, and RESPEC will join the calls. Assumes seven meetings.

*Assumptions:*

- *Three personnel from Banner will attend meetings. Banner will coordinate and facilitate meetings. Banner will provide meeting minutes.*
- *Two personnel from RESPEC will attend meetings.*
- *Meetings will be held via Zoom.*

#### 1.3 Internal Project Team Meetings

Monthly project team meetings will be held between Banner and RESPEC to discuss project progress and address any issues.

*Assumptions:*

- *Three personnel from Banner will attend meetings. Banner will coordinate and facilitate meetings. Banner will provide meeting minutes.*
- *Two personnel from RESPEC will attend meetings.*
- *Meetings will be held via Zoom.*

#### 1.4 Project Set Up and Monitoring

Banner will set up the project and provide monthly progress reports to the City of Yankton. Banner will also manage subconsultants Geotek, Kogel, and Respec under this task.

## 2.0 Data Gathering

### 2.1 Topographic Survey

Banner will complete topographic survey of the project area as shown in the location map provided by the City during the RFP process. Tasks include:

- South Dakota One call utility locate request
  - Hold one call utility locate meeting with utility companies.
- Removal items, such as concrete trail locations, gabion baskets, trees, etc.
- Storm sewer features
- Hydraulic survey in FEMA study reach areas:
  - Banks and channel flowline
  - FEMA Flood Insurance Study cross sections generally in the channel area between the existing access and rec trails
  - Bridge and culvert openings and limited road crossing information.
- Establish project control for topographic survey that can also be used for future construction
- Staking of soil boring locations provided by geotechnical engineer. Banner assumes staking of 33 bore locations will be necessary per Geotek proposal.
- Drone mission of the project area for plan preparation, sidewalk removal quantity measurement, and to serve as a design aid during planning and design.

### 2.2 Hydraulic Analysis and Modeling Set Up

A request will be submitted to obtain the effective hydraulic model from FEMA. There may be costs associated with FEMA searching and sending the effective floodplain model. A base fee of \$393 plus \$40 per hour for requests that require more than four hours to complete is likely to be charged for the Flood Insurance Study files which would include the hydraulic model. The model will be updated to include updated survey information for the study areas noted by the FEMA location document. If the effective hydraulic model is either unavailable or in an unusable format, a 1D hydraulic model will be constructed using survey and LIDAR data at locations where FEMA cross sections are located based on DFIRM data.

The model will focus on areas that were damaged in the 2019 Marne Creek flooding event. Since Marne Creek is in a FEMA floodway, the proposed option(s) will need to show that a “No-Rise Condition” exist or proceed with the map revision process. The map revision process would include a Conditional Letter of Map Revision (CLOMR) prior to the actual construction of the project and then follow-up with a Letter of Map Revision (LOMR) within six months of project completion. The FEMA map revision process is subject to additional FEMA review fees and will delay this project as it would likely require over one-year to be completed. **A map revision is not included in this scope of work. We are assuming a “No-Rise Condition” will be obtained and Banner will submit a “No-Rise Certificate” to the Floodplain Administrator prior to construction.** See Section 2.4 for further information below.

The hydraulic model will be used to assess shear stresses in the stream network and determine the most stable stream bank restoration technique. It will also be used to document the impacts to water surface elevation while the output will be submitted as back-up information for the No-Rise Certificate. Although the hydrology from the effective model will be used in the Encroachment Analysis (No-Rise), new hydrology will be developed and be used in the shear stress evaluations.

The hydraulic modelers and design team will visit the site in Fall 2020 under this task to observe conditions, take notes, discuss alternatives, and collect photographs.

### 2.3 Hydrology (Update)

The FEMA effective hydrology was developed from flow records in the region through water year 1971. Substantial peak flow record has been collected since that time and an update to the hydrology will better reflect current climatic

conditions. Since no stream gages are known to have ever existed on Marne Creek, hydrology will be developed under a regional regression approach. The United States Geologic Survey (USGS) Water Resource Investigation Report 98-4055 will be used as a guide. The basin characteristics regression relationships in that report will be updated to reflect additional peak flow record collected since that report was developed.

## 2.4 Encroachment Analysis

Banner will complete an encroachment analysis using the hydraulic model developed in Section 2.1 and the alternative has been selected from Section 3.2. The analysis will be used in documenting the No-Rise conditions for work completed with this project.

### Assumptions:

- *At least one alternative for each site will be analyzed in the encroachment analysis. If the selected alternative does not meet a "No-Rise" condition, one additional alternative will be included in this analysis. We assume a "No-Rise" condition will be accomplished within two alternatives.*

## 2.5 Environmental Studies

### 2.5.1 Wetland Delineation and Habitat Assessment

Banner will complete a wetland delineation for each reach of Marne Creek that is proposed for bank stabilization. The delineation will be completed following the USACE 1987 Manual and the relevant Regional Supplement. Assumes delineation will be completed for a corridor approximately 150 feet wide, from the center of stream outward 150 feet, and in any areas that could be utilized for staging or affected by construction. The fieldwork will be completed within the growing season, which is time sensitive and will likely end for the 2020 growing season by the first week of October.

After the completion of the fieldwork, Banner will complete a draft wetland delineation report for review by the City of Yankton and FEMA. The report will be finalized, and a jurisdictional determination will be requested from the USACE SD Regulatory Office. A wetland impact calculation will be completed for the Categorical Exclusion, the impact will be conservatively calculated and recalculated during the Section 404 permit application preparation. Assumes that no mitigation will be required since the work will restore and stabilize the damage to Marne Creek. If mitigation is needed, this can be completed as an amendment.

During the wetland delineation, a review of potential habitat for the northern long-eared bat will be completed. Habitat forms will be filled out and any potential trees that the species could utilize to roost in will be identified.

### 2.5.2 Level III Cultural Resources Survey

Banner will coordinate the completion of a Level III Cultural Resources Survey by Kogel Archeology. Banner will review the document and coordinate with FEMA to submit the effect determination into South Dakota Historic Preservation Office (SHPO) for their concurrence. The completion of the Level III field survey is weather dependent, no snow cover can be present to complete the fieldwork.

### 2.5.3 Agency Coordination

Banner will draft agency coordination letters and coordinate the agency responses for SD Game Fish and Parks (SDGFP) and SD Department of Environment and Natural Resources (SDDENR). A letter for coordination with US Fish and Wildlife Service (USFWS) will be drafted and coordinated for FEMA approval before sending.

## 3.0 Design

### 3.1 Range of Alternatives Memo

A memo will be prepared that notes the conceptual alternatives available to address the bank stabilization for each reach of Marne Creek noted by the FEMA location document. The alternatives will be suggested by Banner and RESPEC and will include traditional and bioengineering options for bank stabilization.

Reach A and Reach B are located in open space areas downstream of the dense urban corridor. The abundance of open space provides an opportunity to enhance natural resources and recreation opportunities, while incorporating flood mitigation features. Mitigation efforts downstream of the urban corridor may impose a lowering of tailwater flooding for the urban reaches upstream.

Reach A and Reach B will include development of a conceptual level alternatives. The alternatives will range from a “stabilization in-place” alternative to increasing magnitudes of natural resource enhancement and flood mitigation effectiveness.

### 3.2 FEMA Inspection Meeting- Select Recommended Alternative

A meeting will be held on-site to determine the recommended alternative per reach of Marne Creek. The meeting will be between FEMA, City, Banner and RESPEC. If an on-site meeting is not possible due to COVID, this meeting will be held via Zoom. The selection of the recommended alternative will allow the categorical exclusion to be completed and final design to continue.

### 3.3 FEMA Categorical Exclusion Information

A memo will be prepared that identifies the resources within the Study Area for the project and identifies the potential impacts due to the recommended alternatives. The memo can be utilized by FEMA to complete the Categorical Exclusion. Assumes the project will not require an Environmental Assessment.

*Assumptions:*

- *Conceptual-level alternatives only for memo; minimal design at this point.*
- *FEMA inspection meeting will be held on-site.*

## 4.0 Stakeholder and Public Outreach

### 4.1 Meet with City of Yankton’s Parks and Recreation

To create an open communication dialog with the City of Yankton’s Parks and Recreation, Banner will coordinate and facilitate three meetings at key milestones for the projects. The milestones include kick off, Range of Alternatives Memo and selection of the recommended alternative for each reach.

### 4.2 Meet with stakeholder group

Coordination will occur with the City of Yankton’s Parks and Recreation group, if a stakeholder group is identified such as a bike or recreation club, Banner will coordinate and facilitate a meeting.

### 4.3 Project Information Sheets

Three project information sheets will be prepared for the kickoff of the project (requesting public input), range of alternatives for the reaches, and recommended alternatives.

## 5.0 Final Design

### 5.1 Design

5.1.1 The bulk of design will take place under this task, including grading and hydraulic analysis for preferred alternatives. Banner will prepare construction documents including



construction plans and specifications. Banner standards will be followed for plan preparation. Plan milestones will include Schematic Design (30%), Design Development (60%), Final Design (90%), and Construction Documents (100%). Coordination meetings will be held at each milestone with opportunity for the City to review these submittals. Banner will prepare the following plan sections:

- Title Sheet
- Construction Notes and Typical Sections
- Removal Plan
- Erosion Control Plan and Storm Water Pollution Prevention Plan
- Sequence of Operations/Traffic Control Plan (where necessary)
- Stream Bank Grading Plan (plan and profile) with Temporary Easements Shown
- Utility Plan (where necessary)
- ADA Pedestrian Facility (ramp and recreational trail) Plan
- Construction Details
- Cross Sections

5.1.2 Banner will prepare a project manual that will consist of front end EJCDC documents and the technical specifications will be MasterSpec format.

5.1.3 Banner will prepare cost estimates at 30%, 90% and 100% project milestones.

5.1.4 Banner will send preliminary plans to utility companies for coordination so utility companies can plan utility relocations if necessary.

5.1.5 Banner will complete internal QA/QC review of the 100% CD submittal.

*Assumptions:*

- *No permanent right-of-way acquisition will be needed for the project.*
- *We assume temporary easements will be needed for construction access and activities. Banner assumes City will secure any temporary easements necessary.*
- *A formal utility coordination meeting will not be held.*
- *No Benefit-Cost Analysis required.*
- *Meetings will be held virtually.*

## 5.2 Section 404 Permit Application

Banner will complete a Section 404 permit application, incorporating the final design for the project and noting the impacts to any jurisdictional waters of the US.

## 6.0 Bidding

### 6.1 Bidding

Banner will bid the project on behalf of the City of Yankton. Tasks to be completed include:

- Prepare Advertisement
- Assist in soliciting bids
- Prepare addenda if necessary
- Answer bidder questions
- Attend bid opening, evaluate bids, and analyze bids.

*Assumptions:*

- *Banner will plot hard copies of construction plans and project manuals for distribution to bidders.*

## 7.0 Construction

### 7.1 Construction Staking

Banner will provide construction staking for the various improvements designed as part of the project. Tasks to be completed include:

- Prepare necessary staking files for utility relocations as proposed
- Prepare necessary staking files for recreation trail and grading operations
- Construction staking - Utilities
  - Storm drainage –Provide 1 set of offset stakes for all storm drainage structures sufficient for construction.
- Construction staking – Site layout
  - Silt Fence, construction limits, and easement staking to be provided
  - Recreation Trail – One set of stakes will be provided for layout of design sidewalk locations and elevations Edge of sidewalk elevations staked per the plan sheets.
  - Bank Stabilization – Slope stakes will be provided as well as stakes for bioengineering applications and structures.

### 7.2 Construction Administration

Construction Administration tasks will include:

- Prepare construction contracts between Owner and Contractor
- Organization and administration of pre-construction meeting,
- Coordinate with the contractor on Requests for Information,
- Coordination with Resident Project Representative (RPR)
- Coordination with Prime Contractor,
- Review shop drawings,
- Review and approve applications for payment,
- Prepare construction change orders as necessary,
- Complete a substantial completion walk-through with the Owner, prepare a punch list, and issue a Certificate of Substantial Completion once the contractor provides notice to the Owner,
- Complete a final walk-through and issue final payment to the Contractor,
- Prepare Construction Plans of Record as provided by the Contractor, and
- Conduct a bioengineering school with the Contractor and Owner to help understand and construct the bioengineering applications of the design

### 7.3 Resident Project Engineering

Banner will provide a Resident Project Representative (RPR) during construction of the project. Tasks that will be completed by the RPR include:

- Completion of daily field reports,
- Testing coordination,
- Regular correspondence with the Owner and Contractor,
- Observation of work completed to verify if completed within general conformance of the drawings and specifications.

*Assumptions:*

- *A 20-week construction schedule.*
- *Plan for 2 – 8 hour days per week on-site.*
- *A bioengineering construction techniques training period will be conducted by RESPEC.*

# Schedule

<b>Task Item</b>	<b>Deadline</b>
<b>Kick Off Meeting</b>	September 30, 2020
<b>Data Gathering Completed</b> <ul style="list-style-type: none"><li>- Topographic Survey</li><li>- Wetland Delineation</li><li>- Level III Cultural Resources Survey</li></ul>	October 30, 2020
<b>Draft Range of Alternatives Memo</b>	November 20, 2020
<b>Range of Alternatives Meeting with City</b>	November 30, 2020
<b>Range of Alternatives Meeting with City and FEMA</b>	December 11, 2020
<b>Draft Plan for Review</b>	January 15, 2021
<b>Final Plan</b>	March 15, 2021

*Assumption:*

- *Schedule and fee assume project will be constructed in 2021.*

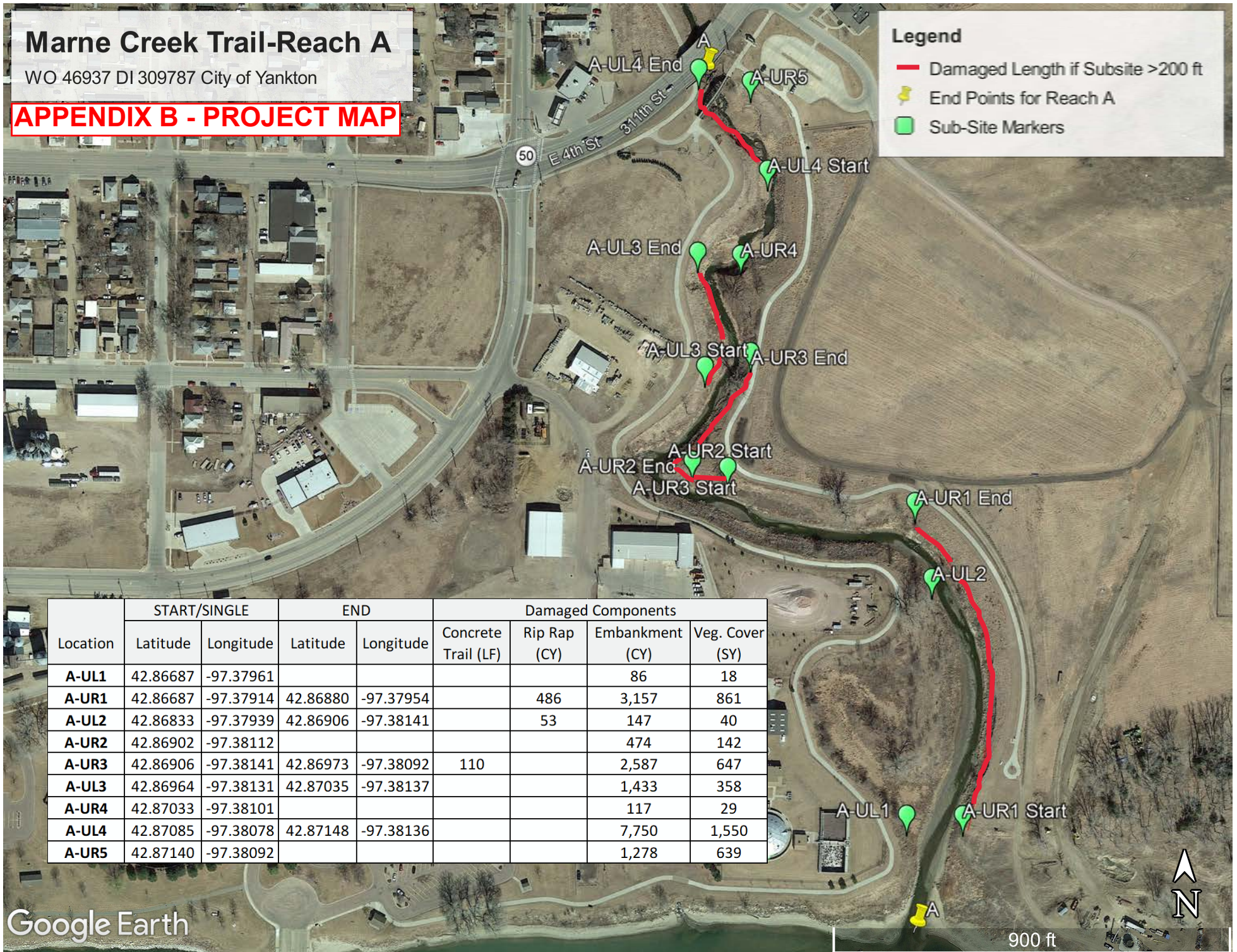
# Marne Creek Trail-Reach A

WO 46937 DI 309787 City of Yankton

## APPENDIX B - PROJECT MAP

### Legend

- Damaged Length if Subsite >200 ft
- 📍 End Points for Reach A
- 📍 Sub-Site Markers



Location	START/SINGLE		END		Damaged Components			
	Latitude	Longitude	Latitude	Longitude	Concrete Trail (LF)	Rip Rap (CY)	Embankment (CY)	Veg. Cover (SY)
A-UL1	42.86687	-97.37961					86	18
A-UR1	42.86687	-97.37914	42.86880	-97.37954		486	3,157	861
A-UL2	42.86833	-97.37939	42.86906	-97.38141		53	147	40
A-UR2	42.86902	-97.38112					474	142
A-UR3	42.86906	-97.38141	42.86973	-97.38092	110		2,587	647
A-UL3	42.86964	-97.38131	42.87035	-97.38137			1,433	358
A-UR4	42.87033	-97.38101					117	29
A-UL4	42.87085	-97.38078	42.87148	-97.38136			7,750	1,550
A-UR5	42.87140	-97.38092					1,278	639



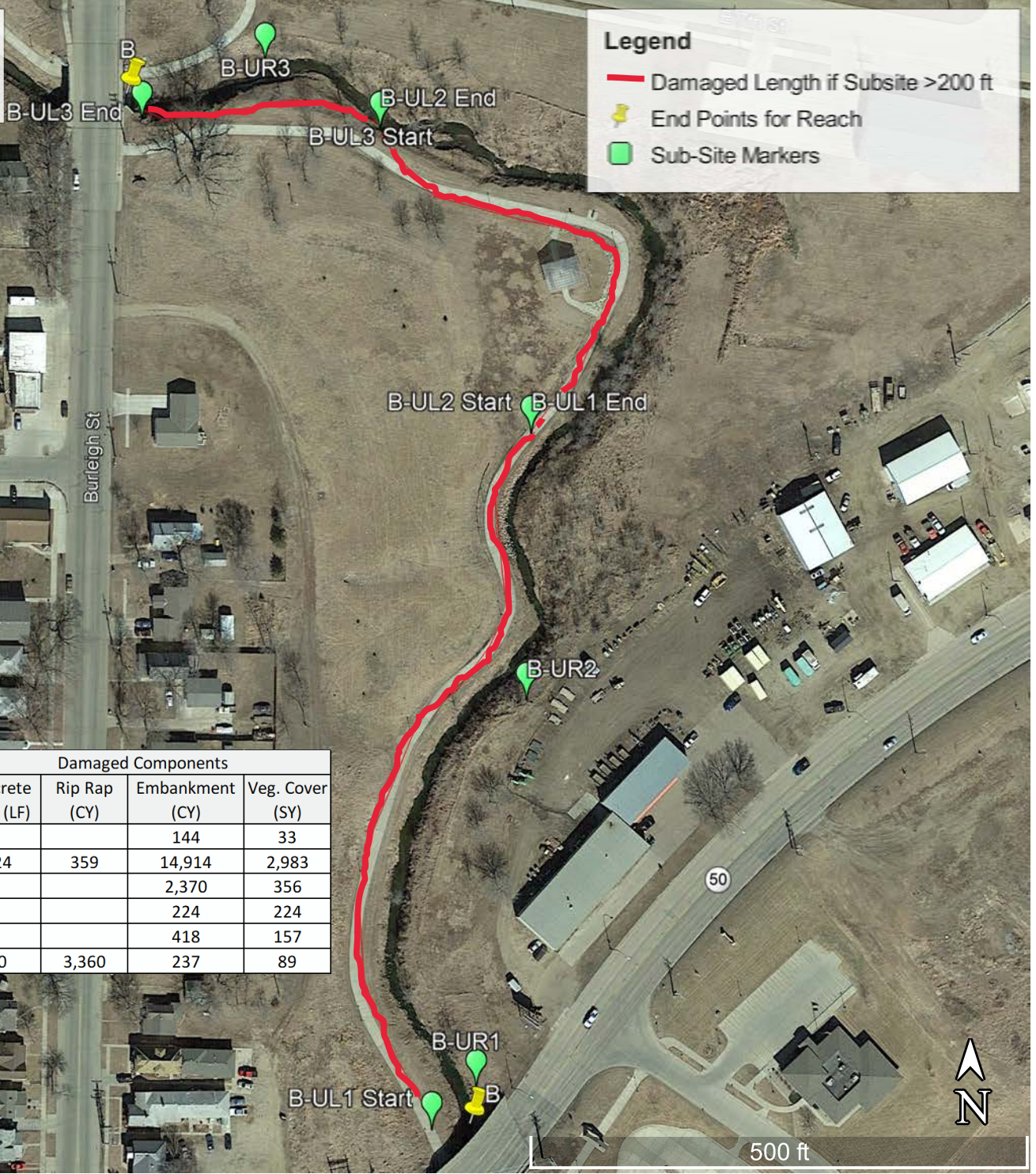
# Marne Creek Trail-Reach B

WO 46937 DI 309787 City of Yankton

## APPENDIX B - PROJECT MAP

### Legend

- Damaged Length if Subsite >200 ft
- 📍 End Points for Reach
- 📍 Sub-Site Markers



Location	START/SINGLE		END		Damaged Components			
	Latitude	Longitude	Latitude	Longitude	Concrete Trail (LF)	Rip Rap (CY)	Embankment (CY)	Veg. Cover (SY)
B-UR1	42.87192	-97.38136					144	33
B-UL1	42.87181	-97.38153	42.87372	-97.38116	624	359	14,914	2,983
B-UR2	42.87298	-97.38117					2,370	356
B-UL2	42.87372	-97.38116	42.87455	-97.38172			224	224
B-UL3	42.87455	-97.38172	42.87458	-97.38261			418	157
B-UR3	42.87474	-97.38215			50	3,360	237	89

Google Earth



500 ft

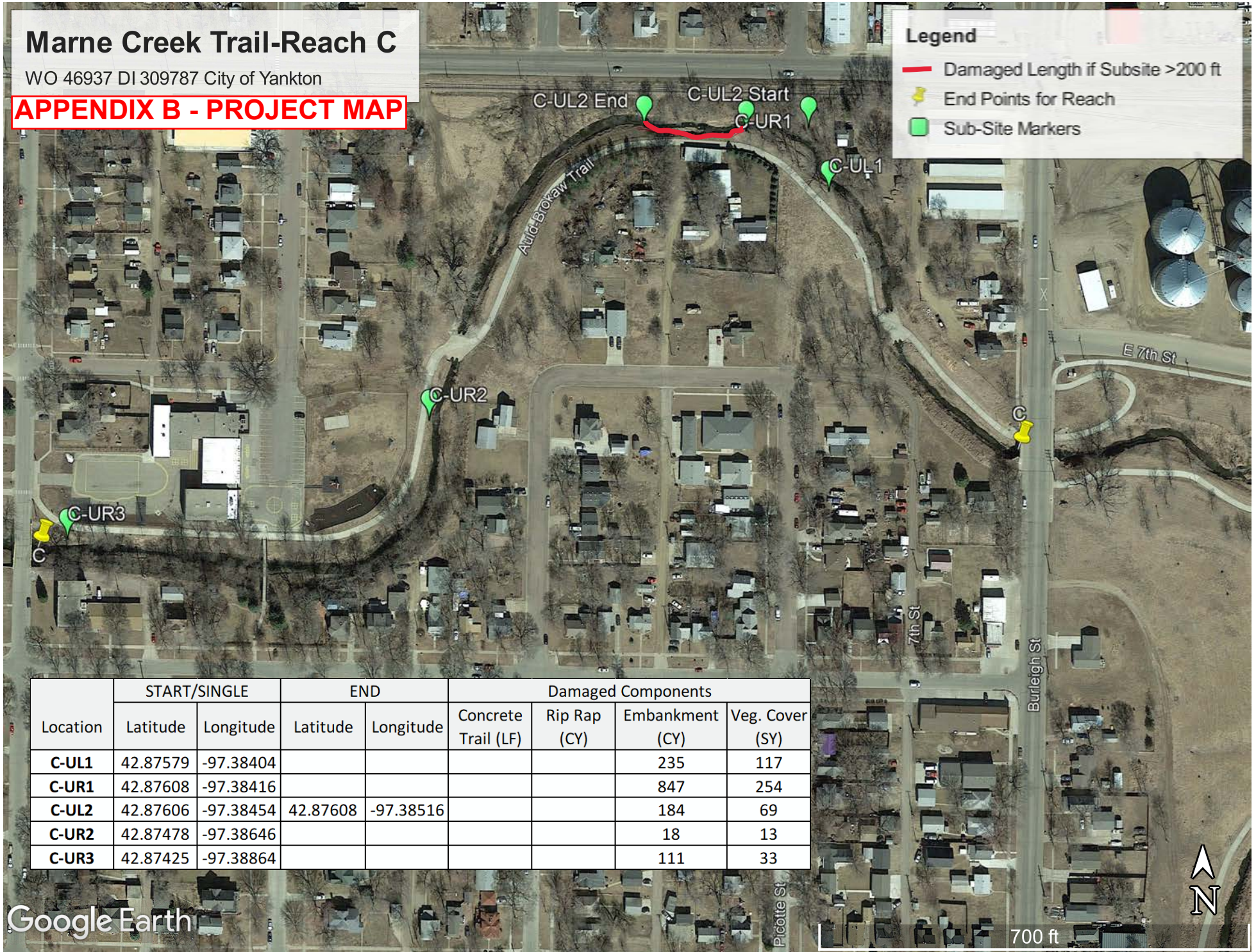
# Marne Creek Trail-Reach C

WO 46937 DI 309787 City of Yankton

## APPENDIX B - PROJECT MAP

### Legend

- Damaged Length if Subsite >200 ft
- 📍 End Points for Reach
- 📍 Sub-Site Markers



Location	START/SINGLE		END		Damaged Components			
	Latitude	Longitude	Latitude	Longitude	Concrete Trail (LF)	Rip Rap (CY)	Embankment (CY)	Veg. Cover (SY)
C-UL1	42.87579	-97.38404					235	117
C-UR1	42.87608	-97.38416					847	254
C-UL2	42.87606	-97.38454	42.87608	-97.38516			184	69
C-UR2	42.87478	-97.38646					18	13
C-UR3	42.87425	-97.38864					111	33





# Marne Creek Trail-Reach D

WO 46937 DI 309787 City of Yankton

## APPENDIX B - PROJECT MAP

### Legend

-  End Points for Reach
-  Sub-Site Markers

(42.874279, -97.389018)  
Broken Black Metal  
Safety Fence. 60 ft

D-UR1

D

Google Earth

E 6th St

300 ft



# Marne Creek Trail-Reach G

WO 46937 DI 309787 City of Yankton

## APPENDIX B - PROJECT MAP

### Legend

- End Points for Reach
- Sub-Site Markers

G-UL4 (42.88042,-97.44011)  
1344 CY Embankment, 288 SY Cover  
4 rows of 3' x 4' Gabion Baskets Fallen  
over 144 LF.

G-UL3 (42.880347,-97.400942)  
80 CY Embankment, 48 SY Cover  
4 rows of 3' x 4' Gabion Baskets  
compromised over 36 LF.

G-UL2(42.880121,-97.400368)  
1,060 CY Embankment, 265 SY Cover

G-UL1 (42.879551,-97.399815)  
90 CY Embankment, 54 SY Cover  
Black GeoMesh Erosion Blkt (122'x10')

G-UR1 (42.879769,-97.400122)  
17 CY Embankment, 17SY Cover  
2CY Unclassified Fill & 1 CY Concrete







# Marne Creek Trail-Reach J

WO 46937 DI 309787 City of Yankton

## APPENDIX B - PROJECT MAP

### Legend

-  End Points for Reach
-  Sub-Site Markers

J-UR1 (42.894159, -97.399253)  
21 CY Embankment, 21 SY Cover  
2 CY Unclassified Fill & 1 CY Concrete

J-JL1 (42.894099, -97.399797)  
78 CY Embankment, 58 SY Cover





Banner Associates, Inc.  
 409 22nd Ave So, Box 298  
 Brookings, SD 57006  
 Tel 605.692.6342  
 Toll Free 855.323.6342  
[www.bannerassociates.com](http://www.bannerassociates.com)

## APPENDIX 1 SCHEDULE OF LABOR RATES AND EXPENSES

January, 2020

Administrative .....	\$55.00 to \$145.00/Hour
Surveying/Geomatics .....	\$75.00 to \$130.00/Hour
Engineering Technician.....	\$65.00 to \$105.00/Hour
Engineering Intern.....	\$65.00 to \$105.00/Hour
Project Engineer .....	\$105.00 to \$145.00/Hour
Project Manager .....	\$130.00 to \$210.00/Hour

1. Meals at State Rates.
2. Lodging at actual cost.
3. Reimbursables:
 

Mileage.....	\$0.55/Mile
Photocopy .....	0.08/Copy
Black & White 11x17 Laser Prints.....	0.15/Sheet
4. All other direct project expenses at actual cost of materials.

Rates are subject to change annually.

## MEMORANDUM #20-183

To: Yankton City Commission

From: City Attorney Ross Den Herder

Date: September 22, 2020

Re: Overflow Jail Agreement with Bon Homme County

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**The Problem:** The Yankton County jail is owned by the County and managed by the Sheriff. When COVID appeared in early March, the Sheriff's office instituted a number of restrictions that have impacted the way the YPD may utilize the county's jail for its local law enforcement needs. In an effort to prevent COVID from getting into the YC jail, the jail reduced the maximum capacity at the jail from a maximum of over 100 inmates down to a current cap of approximately half that number. Initially based upon a stated need to conserve PPE materials, the jail also indicated that the ability to "book" arrestees at the jail was limited. "Booking" is the procedure at the jail following an arrest in which information about the arrested person and crime is entered into the Court system.

As a result, presiding Circuit Judge Cheryle Gering entered a standing order for Yankton County that arrestees will be held with a cash bond set by the Court only for those arrested for violent crimes or Class 3 or worse felonies. That means people arrested for those specific crimes get booked and jailed until they post a cash bond set by the Court. All other felonies (class 4, 5, or 6) are released with an "unsecured" cash bond (except with special permission from the Judge). These folks are booked on the felony and simply released with a court date and without actual payment of the cash bond. You can think of this as "catch and release." I have attached a copy of that order.

Given the county's asserted limited supply of PPE, the judge has asked that our officers simply ticket all other misdemeanor crimes with instructions that the offender be given the next available court date, at which time each offender would check in at the jail to be booked right before or after his or her scheduled hearing. That allowed a jail employee to wear one full set of PPE on Wednesdays to handle each week's worth of crime bookings all at once, rather than burning through a new set of PPE each time someone is arrested and brought to the jail for booking throughout the week. In a perfect world where bad guys do what they're told, the result would be a workable solution where all those who offend simply show up for court as directed, and those with tickets also walk themselves to the jail for booking. It goes without saying that this has not played out well.

This "catch and release" policy has resulted in situations where criminals are arrested for different and subsequent "lesser" felonies on the very same day. Further, many people are given tickets when our officers have good reason to arrest them under ordinary circumstances. Our officers also cannot complete "protective holds" when a situation would otherwise warrant it (i.e. heavily intoxicated individuals passed out in public, etc.). Criminals have discovered there is little consequence for failure to show up for court or for refusing to submit themselves for

\_\_\_\_ Roll call

booking. In addition, in situations where the Court's standing order would have permitted booking and detention of arrestees, the jail has turned certain arrestees away on the basis that the jail was "full" based upon the revised COVID maximum capacity. This is an untenable situation for our police department. It is adversely affecting officer morale. Our cops feel like they cannot do their job by "putting criminals away." The community has taken note and are beginning to blame the YPD for releasing criminals that normally would have been held in jail. After all, the YPD is the face of local law enforcement. The public doesn't directly understand the problem or the YPD's lack of control over the jail.

**Summary of Applicable Law:** State law requires the county to provide a jail. SDCL 24-11-2. The Sheriff has "charge" of the jail. SDCL 24-11-13. However, the County Commission adopts the written jail policies and procedures. SDCL 24-11-23. The Judge may visit, inspect, and supervise jails in her circuit, and all officers must comply with the orders of the Court relating to the jails or the inmates. SDCL 24-11-27. This is statutory authority for issuing the attached order. If the jail is crowded or "unsafe," then the judge may order a prisoner to be delivered to an adjoining county jail "pursuant to a written agreement that addresses certain terms." SDCL 24-11-3. By resolution of the City Commission, the City is authorized to enter into an agreement with another county to operate a jail and house prisoners for Yankton. SDCL 24-11-4. The cost of housing prisoners in another county (in accordance with the City's written agreement with another county and the Court's order) is paid by Yankton County. SDCL 24-11-3.

**Possible Solutions:** A simple initial solution involves the Sheriff or the County Commission changing the policy to begin accepting all bookings of criminals delivered to the jail by the YPD. In this situation, our officers may still be selective by only arresting those that truly need to be removed from a situation and ticketing the rest. Having the ability to arrest when necessary will bring a sense of "law and order" back to the department and the community. This should not adversely impact the jail because Yankton County Emergency Management now has sufficient PPE for jail staff to handle bookings whenever they may occur. Even though this does nothing for those situations when the jail won't book criminals because they are "full," this would still be an ideal start.

At this time, we do not reasonably believe this change will be made. Although "booking" policy is not included within the Court's order, the County's COVID numbers are increasing to rates Yankton County has never seen before. The prisoner population is vulnerable because they cannot escape the jail, and a COVID death sentence is not a fitting punishment for their crimes. The Sheriff and his jail administrator are trying to keep COVID out of the jail for the protection of the inmates. As a result, I do not expect them to change course anytime soon.

The fact remains that South Dakota law gives the City no control over Yankton County Jail policy. The only thing we have some measure of control over is entering into an agreement with a more accommodating county jail. To that end, Bon Homme County Sheriff Mark Maggs worked with me to draft the Overflow Jail Agreement between the City of Yankton and Bon Homme County. If the agreement is adopted by the City of Yankton, the Bon Homme Commission, then Judge Gering may order that any prisoner refused by Yankton County (but

acceptable to Bon Homme County) may be delivered to the Bon Homme County Jail in Tyndall for booking and/or imprisonment in accordance with the agreement.

Pursuant to statute, the costs of housing a prisoner in another county must be paid by the County from where the prisoner came from. As such, the Agreement makes it clear that the parties anticipate Yankton County will be paying the tab when the Yankton County Jail refuses to accept a YPD prisoner for booking. The City only pays if the Circuit Court rules that the City is liable for the costs. That being said, this is the inherent risk associated with the Agreement. There is no case law that proves our interpretation of the applicable statutes are correct. We are confident that the County will be responsible for these costs, but we currently need to expect that Yankton County will challenge their obligation to pay prisoner expenses under this agreement. The matter may result in litigation, and no result is 100% certain. However, we believe the Agreement remains the best option directly within our power to address our most pressing jail problems. I recommend that the Commission adopt the Overflow Jail Agreement with Bon Homme County.

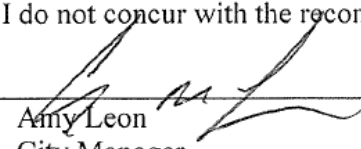
Respectfully submitted



Ross DenHerder  
City Attorney

**Recommendation: It is recommended that the Board of Commissioners approve the Overflow Jail Agreement between the City of Yankton and Bon Homme County.**

I concur with the recommendation.  
 I do not concur with the recommendation.

  
\_\_\_\_\_  
Amy Leon  
City Manager

\_\_\_\_ Roll call

## OVERFLOW JAIL AGREEMENT

THIS AGREEMENT made and entered into by and between the **COUNTY OF BON HOMME**, State of South Dakota, hereinafter referred to as Bon Homme County, and the **CITY OF YANKTON**, a South Dakota municipal corporation, hereinafter referred to as the Contracting City.

WHEREAS, the Bon Homme County Sheriff's Office operates the Bon Homme County Jail in the City of Tyndall, South Dakota, a facility capable of housing and maintaining prisoners in accordance with Federal and State laws and accepted jail standards; and

WHEREAS, on occasion, the Yankton County Jail, operated by Yankton County, will refuse to accept prisoners for booking or housing, requiring the Contracting City to contract with a neighboring county to book or house prisoners in accordance with SDCL §§ 24-11-3 and 24-11-4.

WHEREAS, Bon Homme County and the Contracting City both desire to enter into a contract whereby the Contracting City's prisoners refused by the Yankton County Jail are booked and/or housed and maintained at the Bon Homme County Jail pursuant to SDCL §§ 24-11-3 and 24-11-4.

**NOW THEREFORE**, Bon Homme County and the Contracting City by and through adopting resolution passed by affirmative vote of each party's respective governing Commissioners, in consideration of the mutual covenant and stipulations set forth herein, agree as follows:

- I. That Bon Homme County agrees to receive, house and maintain those prisoners of the Contracting City refused by the Yankton County Jail, subject to cell/bed availability and applicable policy of the Bon Homme County Jail.
- II. In consideration therefore, Bon Homme County shall be paid the sum of **Seventy Dollars (\$70.00)** per prisoner-day, or any part thereof, for each prisoner-day that Bon Homme County houses and maintains a prisoner for the Contracting City. The parties agree this fee represents a reasonable estimate of the expenses associated with keeping and maintaining the prisoner in the jail, including the cost of building depreciation, administration, and a reasonable charge for obsolescence of the facility and all other tangible and intangible costs. Responsibility for payment shall be governed by Section III below.

- III. The parties agree and anticipate that pursuant to SDCL 24-11-3, Yankton County shall be responsible for all expenses of keeping and maintaining each of the Contracting City's prisoners in the jail Bon Homme County's booking and housing of prisoners in accordance with said statute. However, if the Circuit Court in and for Yankton County enters judgment ruling that Yankton County is not liable for any portion of such expenses, the Contracting City agrees to pay to Bon Homme County the unpaid portion of such expenses.
- IV. The Bon Homme County Sheriff shall prepare and submit a voucher to Yankton County with a courtesy copy to the Contracting City setting forth the booking and prisoner-day costs, as well as other expenses, regarding the housing and maintaining of prisoners originating from Yankton County for or at the request of the Contracting City under this Agreement.

The Contracting City shall provide any and all reasonable assistance to Bon Homme County to obtain payment and collection of the sum due from Yankton County.

- V. In accordance with its then-current jail policies applicable to all prisoners, Bon Homme County and the Bon Homme County Sheriff's Office reserves the right to refuse to house and maintain any prisoner from the Contracting City, or after acceptance of the prisoner, to refuse to continue to house and maintain said prisoner.
- VI. Bon Homme County agrees to release the Contracting City's prisoners within two days (48 hours) of receiving a request as required by statute.
- VII. This contract does not bind the Contracting City in any way to house all or any of the Contracting City's prisoners with Bon Homme County.
- VIII. The cost incurred by the Bon Homme County Jail for transporting Contracting City's prisoners to local medical facilities will be billed and collected in accordance with applicable law and Paragraph III above.
- IX. The Bon Homme County Sheriff's Office may transport Contracting City's prisoners, to other facilities, as requested, at the discretion of the Bon Homme County Sheriff's Office. Bon Homme County shall be paid the sum of

**Twenty Five Dollars (\$25.00)** per hour, per guard required for transportation, which will be billed and collected in accordance with applicable law and Paragraph III above.

- X. All prisoners of the Contracting City will be housed and kept at the Bon Homme County Jail in accordance with the Bon Homme County Jail rules. A copy of the jail rules will be available for inspection at the Bon Homme County Jail. Jail Rules are posted at the Bon Homme County Jail, a copy of which is hereby acknowledged to have been received by the Chief of the Contracting City.
  
- XI. The Contracting City agrees that a signed copy of an arrest warrant will be filed with the Bon Homme County Jail when a prisoner is brought to the jail after being arrested under such warrant.
  
- XII. The Contracting City agrees that a signed and notarized copy of an “Affidavit of Warrantless Arrest” and a signed and notarized copy of the arrest complaint will be filed with the Bon Homme County Jail when a prisoner is brought to the jail after being arrested without a warrant, or alternatively, will provide written information confirming that the prisoner has been arraigned by the court, within 48 hours of a warrantless arrest.
  
- XIII. This contract shall operate until it is terminated by either party. This Contract may be terminated by either party upon thirty (30) days written notice tendered to the Sheriff of Bon Homme County (if terminated by the Contracting City), or to the Chief of Police of the Contracting City (if terminated by Bon Homme County).

**[Remainder of Page Intentionally Left Blank – Signatures on Following Page.]**



Dated this \_\_\_\_ day of September, 2020.

Dated this \_\_\_\_ day of September, 2020.

**COUNTY OF BON HOMME  
STATE OF SOUTH DAKOTA**

**CITY OF YANKTON**

\_\_\_\_\_  
Chairman, Bon Homme County  
Board of Commissioners

\_\_\_\_\_  
Nathan V Johnson, Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
Bon Homme County Auditor

\_\_\_\_\_  
Al Viereck, City Finance Officer

\_\_\_\_\_  
Mark Maggs, Bon Homme Co. Sheriff

\_\_\_\_\_  
John Harris, Yankton Police Chief

**FILED**

JUL -2 2020

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF YANKTON

*Cheryle Gering*  
Yankton County Clerk of Courts  
1st Judicial Circuit Court of South Dakota

FIRST JUDICIAL CIRCUIT

In the Matter of the Administration of the First Judicial Circuit	)	66CIV20-01
	)	
	)	STANDING ORDER AS TO BOND FOR
	)	CLASS 4, 5, 6 FELONY CRIMINAL OFFENSES
	)	IN YANKTON COUNTY

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Comes now Judge Cheryle Gering, Circuit Court Judge of the First Judicial Circuit, State of South Dakota in the matter of bonds for Class 4, 5, and 6 felony criminal offenses in Yankton County criminal cases:

WHEREAS, on March 13, 2020, the South Dakota Supreme Court entered an Order Declaring Judicial Emergency due to the COVID-19 disease;

WHEREAS, on June 10, 2020, First Judicial Circuit Presiding Judge Cheryle Gering entered Administrative Order #5 RE: COVID-19 Pandemic Response which superseded all prior First Circuit COVID-19 Orders (#1 through #4), and provided that the First Circuit Arrest & Bond Procedures and the Fine and Bond Schedule could be amended by the circuit judge assigned to the criminal docket in a particular county with input from the assigned magistrate judge;

WHEREAS, with COVID19 precautions being utilized, the Yankton County Jail has limited space available to separate incoming inmates from inmates that have been housed in the jail for longer periods of time;

**IT IS HEREBY ORDERED** that pursuant to SDCL 23A-43-2 and effective immediately upon the filing of this order, all defendants arrested in Yankton County and booked at the Yankton County jail for any Class 4, 5 and 6 felonies shall be released on bond in the amount of \$5,000 unsecured with the following conditions: obey all laws; obey all conditions of probation/parole (if applicable); shall have no contact with the victim (if applicable); shall not use or possess any

alcohol or illegal drugs; is subject to random drug/alcohol testing at the request of any law enforcement officer (forced catheterization is specifically excluded); must make all court appearances; must participate in the 24/7 program (drug patch) if arrested for a drug-related felony offense; must participate in the 24/7 program (SCRAM) if arrested for a felony DUI.


**IT IS FURTHER ORDERED** that as to the 24/7 program requirements set forth above, if it is not possible to immediately apply a drug patch or begin SCRAM, the Yankton County jail shall give the Defendant a date and time for the Defendant to come to the Yankton County 24/7 office to apply a drug patch or begin SCRAM, with that date to be as soon as possible, but no longer than, seven (7) calendar days from the date of arrest.

**IT IS FURTHER ORDERED** that a law enforcement officer may contact Judge Sorensen to set a bond on terms other than those specified above for a Class 4, 5, or 6 felony offense if there are any exceptional circumstances which the officer feels should be considered in determining the amount or conditions of a bond to be set, such as indications of flight risk or danger to others or the community. If Judge Sorensen is not available, the law enforcement officer may contact Judge Cheryle Gering.

**IT IS FURTHER ORDERED** that all domestic violence bonds, including violation of protection order bonds, and all bonds for Class A, B, C, 1, 2, 3 felony offenses must be set by the magistrate judge or circuit judge.

Dated the 2<sup>nd</sup> day of July, 2020.

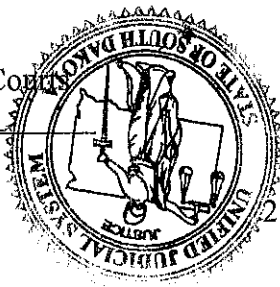
BY THE COURT:

  
\_\_\_\_\_  
Hon. Cheryle Gering  
Presiding Circuit Court Judge

ATTEST:

Jody Johnson  
Yankton County Clerk of Courts

By 



## OVERFLOW JAIL AGREEMENT

THIS AGREEMENT made and entered into by and between the **COUNTY OF BON HOMME**, State of South Dakota, hereinafter referred to as Bon Homme County, and the **CITY OF YANKTON**, a South Dakota municipal corporation, hereinafter referred to as the Contracting City.

WHEREAS, the Bon Homme County Sheriff's Office operates the Bon Homme County Jail in the City of Tyndall, South Dakota, a facility capable of housing and maintaining prisoners in accordance with Federal and State laws and accepted jail standards; and

WHEREAS, on occasion, the Yankton County Jail, operated by Yankton County, will refuse to accept prisoners for booking or housing, requiring the Contracting City to contract with a neighboring county to book or house prisoners in accordance with SDCL §§ 24-11-3 and 24-11-4.

WHEREAS, Bon Homme County and the Contracting City both desire to enter into a contract whereby the Contracting City's prisoners refused by the Yankton County Jail are booked and/or housed and maintained at the Bon Homme County Jail pursuant to SDCL §§ 24-11-3 and 24-11-4.

**NOW THEREFORE**, Bon Homme County and the Contracting City by and through adopting resolution passed by affirmative vote of each party's respective governing Commissioners, in consideration of the mutual covenant and stipulations set forth herein, agree as follows:

- I. That Bon Homme County agrees to receive, house and maintain those prisoners of the Contracting City refused by the Yankton County Jail, subject to cell/bed availability and applicable policy of the Bon Homme County Jail.
- II. In consideration therefore, Bon Homme County shall be paid the sum of **Seventy Dollars (\$70.00)** per prisoner-day, or any part thereof, for each prisoner-day that Bon Homme County houses and maintains a prisoner for the Contracting City. The parties agree this fee represents a reasonable estimate of the expenses associated with keeping and maintaining the prisoner in the jail, including the cost of building depreciation, administration, and a reasonable charge for obsolescence of the facility and all other tangible and intangible costs. Responsibility for payment shall be governed by Section III below.

- III. The parties agree and anticipate that pursuant to SDCL 24-11-3, Yankton County shall be responsible for all expenses of keeping and maintaining each of the Contracting City's prisoners in the jail Bon Homme County's booking and housing of prisoners in accordance with said statute. However, if the Circuit Court in and for Yankton County enters judgment ruling that Yankton County is not liable for any portion of such expenses, the Contracting City agrees to pay to Bon Homme County the unpaid portion of such expenses.
- IV. The Bon Homme County Sheriff shall prepare and submit a voucher to Yankton County with a courtesy copy to the Contracting City setting forth the booking and prisoner-day costs, as well as other expenses, regarding the housing and maintaining of prisoners originating from Yankton County for or at the request of the Contracting City under this Agreement.

The Contracting City shall provide any and all reasonable assistance to Bon Homme County to obtain payment and collection of the sum due from Yankton County.

- V. In accordance with its then-current jail policies applicable to all prisoners, Bon Homme County and the Bon Homme County Sheriff's Office reserves the right to refuse to house and maintain any prisoner from the Contracting City, or after acceptance of the prisoner, to refuse to continue to house and maintain said prisoner.

- VI. The Contracting City and Bon Homme County staff agree to immediately provide certain documents and information to the Yankton County Clerk of Courts regarding prisoners to be booked and held under this Agreement and to immediately update such information and documents in accordance with the following procedures:

(a) The officer delivering a prisoner from or on behalf of the Contracting City shall completely fill out and provide the Bon Homme County Jail staff with a *booking intake form*:

(b) The Bon Homme County Jail staff shall complete a *booking sheet* containing at least the following information regarding the prisoner being booked:

- i. Full legal name;
- ii. Current address;
- iii. Social security number;
- iv. Date of birth;
- v. PCN Number (fingerprint number);
- vi. Date and time of arrest;
- vii. Description of the charge(s) and/or warrant(s) resulting in arrest/booking; and
- viii. The date and time of release if the Defendant has been released, or a clear statement that the prisoner remains in custody.

(c) With respect to bond, the Bon Homme County Jail staff shall complete *bond form(s)* signed by the prisoner and also signed by any person posting a cash bond if other than the prisoner, which form(s) shall indicate the terms of bond and what is to be done with the bond funds by the Yankton County Clerk of Courts if the bond is released;

(d) The following forms shall be immediately emailed to the Yankton County Clerk of Courts at [yanktoncoclerk@ujs.state.sd.us](mailto:yanktoncoclerk@ujs.state.sd.us) upon completion of booking any prisoner for the Contracting City and supplemented each time an update to the foregoing information or associated forms is made:

- i. The *booking intake form* completed in accordance with paragraph IV(a) above;
- ii. The *booking sheet* completed in accordance with paragraph IV(b) above; and
- iii. Each *bond form(s)* completed in accordance with paragraph IV(c) above.

(e) While a prisoner remains in the custody of the Bon Homme County Jail, the Contracting City and the Bon Homme County Jail shall instruct prisoners posting a cash bond (or those posting bond on behalf of a prisoner) to tender cash bond payments directly to the Bon Homme County Jail. The Bon Homme County Jail staff shall immediately notify the Yankton County Clerk of Courts of such payment by email sent to [yanktoncoclerk@ujs.state.sd.us](mailto:yanktoncoclerk@ujs.state.sd.us) and immediately tender such bond funds to the Yankton County Clerk of Courts by any means deemed

mutually acceptable to Bon Homme County and the Yankton County Clerk of Courts.

(f) With respect to prisoners held and not released under this Agreement, the Bon Homme County Jail staff shall expeditiously work with the Yankton County Clerk of Courts to schedule and coordinate initial appearances and/or bond hearings with the Court via IPTV or other convenient means as soon as reasonably possible.

(a)(g) If a prisoner is released for any reason, the Bon Homme County Jail staff shall immediately notify the Yankton County Clerk of Courts of the date, time, and reason for release via email sent to [yanktoncoclerk@ujs.state.sd.us](mailto:yanktoncoclerk@ujs.state.sd.us)

- VII. Bon Homme County agrees to release ~~the any of the~~ Contracting City's prisoners to the custody of Yankton County within two days (48 hours) of receiving a request from Yankton County as required by ~~statute~~SDCL 24-11-3.
- VIII. This contract does not bind the Contracting City in any way to house all or any of the Contracting City's prisoners with Bon Homme County.
- IX. The cost incurred by the Bon Homme County Jail for transporting Contracting City's prisoners to local medical facilities will be billed and collected in accordance with applicable law and Paragraph III above.
- X. The Bon Homme County Sheriff's Office may transport Contracting City's prisoners, to other facilities, as requested, at the discretion of the Bon Homme County Sheriff's Office. Bon Homme County shall be paid the sum of **Twenty Five Dollars (\$25.00)** per hour, per guard required for transportation, which will be billed and collected in accordance with applicable law and Paragraph III above.
- XI. All prisoners of the Contracting City will be housed and kept at the Bon Homme County Jail in accordance with the Bon Homme County Jail rules. A copy of the jail rules will be available for inspection at the Bon Homme County Jail. Jail Rules are posted at the Bon Homme County Jail, a copy of which is hereby acknowledged to have been received by the Chief of the Contracting City.

- XII. The Contracting City agrees that a signed copy of an arrest warrant will be filed with the Bon Homme County Jail when a prisoner is brought to the jail after being arrested under such warrant. Bon Homme County Jail staff agree to coordinate with the officer of the Contracting City to serve the warrant upon the prisoner in accordance with applicable law.
- XIII. The Contracting City agrees that a signed and notarized copy of an “Affidavit of Warrantless Arrest” and a signed and notarized copy of the arrest complaint will be filed with the Bon Homme County Jail when a prisoner is brought to the jail after being arrested without a warrant, or alternatively, will provide written information confirming that the prisoner has been arraigned by the court, within 48 hours of a warrantless arrest.
- XIV. This contract shall operate until it is terminated by either party. This Contract may be terminated by either party upon thirty (30) days written notice tendered to the Sheriff of Bon Homme County (if terminated by the Contracting City), or to the Chief of Police of the Contracting City (if terminated by Bon Homme County).

**[Remainder of Page Intentionally Left Blank – Signatures on Following Page.]**



Dated this \_\_\_\_\_ day of September, 2020.

Dated this \_\_\_\_\_ day of September, 2020.

**COUNTY OF BON HOMME  
STATE OF SOUTH DAKOTA**

**CITY OF YANKTON**

\_\_\_\_\_  
Chairman, Bon Homme County  
Board of Commissioners;

\_\_\_\_\_  
Nathan Johnson, Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
Bon Homme County Auditor

\_\_\_\_\_  
Al Viereck, City Finance Officer

\_\_\_\_\_  
Mark Maggs, Bon Homme Co. Sheriff

\_\_\_\_\_  
John Harris, Yankton Police Chief