



**2023\_10\_09**

**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, October 9, 2023**

**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**

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/c/cityofyankton/live>

TV Schedule: Mondays at 7:03 p.m. and Tuesday following meeting at 1:00 p.m. on Midco Channel 3 and Bluepeak Channel 98.

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### **I. ROUTINE BUSINESS**

1. **Roll Call**

2. **Approve Minutes of Work Session Meeting of September 25, 2023 and Regular Meeting of September 25, 2023**

**Attachment I-2**

3. **Schedule of Bills**

**Attachment I-3**

4. **City Manager's Report**

**Attachment I-4**

5. **Public Appearances**

- Sheriff Preston Crissey

*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. **Work Session**

Setting date of October 23, 2023 at 5:30 PM in Room #114 of the Career Manufacturing Technical Education Academy for the next work session of the Yankton City Commission.

**2. Establish Public Hearing for Sale of Alcoholic Beverages**

Establish October 23, 2023 as the date for the public hearing on the request for a Special Events Malt Beverage (on-sale) Retailers License and a Special Events (on-sale) Wine Retailers License for 1 day, October 28, 2023, from The Center (Kriss Thury, Executive Director), 900 Whiting Drive, Yankton, South Dakota.

**Attachment II-2**

**3. Establish Public Hearing for Sale of Alcoholic Beverages**

Establish October 23, 2023 as the date for the public hearing on the request for a Special Events Malt Beverage (on-sale) Retailers License and a Special Events (on-sale) Wine Retailers License for 1 day, November 11, 2023, from The Center (Kriss Thury, Executive Director), 900 Whiting Drive, Yankton, South Dakota.

**Attachment II-3**

**4. Meeting Date Change**

Discussion to establish the date and time for the second City Commission meeting in December.

**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.*

**1. Public Hearing for Location Transfer of Alcoholic Beverages License**

Consideration of Memorandum #23-200 regarding the request for the transfer of location of a Retail (on-off sale) Malt Beverage & SD Farm Wine License for July 1, 2023 to June 30, 2024 from DBC, LLC d/b/a Bro Brgr Bar (Lauren Soukup, Owner), 304 W 3rd Street, Yankton, South Dakota to DBC, LLC d/b/a Bro Brgr Bar (Lauren Soukup, Owner), 2101 Broadway Avenue, Suite 40, Yankton, South Dakota.

**Attachment III-1**

**IV. NEW BUSINESS**

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

**1. Construction Manager at Risk Contract**

Consideration of Memorandum #23-193 recommending authorization of the City Manager to execute the Construction Manager at Risk (CMAR) contract.

**Attachment IV-1**

**2. Grant Agreement**

Consideration of Memorandum #23-191 regarding Resolution #23-60, a grant agreement for the receipt of funds from the South Dakota Department of Transportation for the Industrial Park Road Grant for Gehl Drive Improvements.

**Attachment IV-2**

**3. Bid Award for Meridian Bridge Concrete Pier Repairs Project**

Consideration of Memorandum #23-194 recommending the Meridian Bridge concrete pier repair project be awarded to JMN Construction, LLC in the amount of \$433,035.00.

**Attachment IV-3**

4. **Change Order to Marne Creek Bank Stabilization**  
Consideration of Memorandum #23-195 recommending the approval of Change Order No. 4, accepting the completed Marne Creek Bank Stabilization Project, and authorizing the Finance Officer to issue a manual check to Fenton Construction, Inc. in the amount of \$153,143.86.  

**Attachment IV-4**
5. **12th Package Off-Sale Liquor License Holder**  
Consideration of Memorandum #23-197 recommending the proposed selection procedure of the 12th package off-sale liquor license holder.  

**Attachment IV-5**
6. **Cemetery Platting**  
Consideration of Memorandum #23-198 requesting guidance from the Commission in proceeding with the area of cemetery ground not yet formally platted.  

**Attachment IV-6**
7. **Solid Waste Collection Rates**  
Consideration of Memorandum #23-192 recommending approval of Resolution #23-61 setting new solid waste collection rates effective November 1, 2023.  

**Attachment IV-7**
8. **Equipment Purchase for Public Works Department**  
Consideration of Memorandum #23-196 recommending the purchase of a new articulating loader from Sourcewell Contract for the Department of Public Works.  

**Attachment IV-8**
9. **Water Revenues to Water Surcharge Fund**  
Consideration of Memorandum #23-199 recommending the adoption of Resolution #23-49 approving the pledging of water revenues to the water surcharge fund.  

**Attachment IV-9**

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 OCTOBER 9, 2023**

*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  
CITY COMMISSION WORK SESSION, 6:00 P.M.  
SEPTEMBER 25<sup>TH</sup>, 2023**

Work Session of the Board of City Commissioners of the City of Yankton was called to order by Mayor Moser.

**Roll Call:** Present: Commissioners Benson, Brunick, Johnson, Miner, Schramm, and Webber. City Manager Leon, City Attorney Den Herder and Interim Finance Officer Lisa Yardley were also present. Absent: Commissioner Hunhoff and Commissioner Villanueva. Quorum present.

Commissioner Hunhoff arrived at 6:01 p.m. Commissioner Villanueva arrived at 6:10 p.m.

There were no public appearances at this time.

City Attorney Ross Den Herder explained his memo and the history of the State codes on video lottery, as well as the City codes and the “lottery cap” previously adopted by the City Commission. Interim Finance Officer Lisa Yardley gave statistics she found reviewing other cities in South Dakota. Citizens speaking to the issue included Matt Evans, Nancy Wenande, and Charlie Gross. The consensus of the Commission was to have a future discussion at a city commission meeting. No official Commission action was taken at this meeting.

Action 23-243

Moved by Commissioner Villanueva, seconded by Commissioner Johnson, to adjourn at 6:55 p.m.

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

Motion adopted.

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Stephanie Moser  
Mayor

ATTEST:

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Al Viereck  
Finance Officer

Published on October 5, 2023

**CHAMBER OF THE BOARD OF CITY COMMISSIONERS  
YANKTON, SOUTH DAKOTA  
SEPTEMBER 25TH, 2023**

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

**Roll Call:** Present: Commissioners Benson, Brunick, Hunhoff, Johnson, Miner, Schramm, Villanueva, and Webber. City Attorney Den Herder, City Manager Leon and Interim Finance Officer Lisa Yardley were also present. Quorum present.

Action 23-244

Moved by Mayor Moser, seconded by Commissioner Brunick, to approve the Minutes of the regular City Commission meeting of September 11<sup>th</sup>, 2023.

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

Motion adopted.

Action 23-245

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

A-Ox Welding – Propane - \$159.85; Beckman/Leah – Books - \$28.00; Boller Printing – Printing - \$137.50; Cedar Knox Public Power – Electricity - \$1,416.37; Centurylink - Phone - \$1,165.74; CHS - Bulk Def - \$230.00; City Of Yankton-Central Garage - Solid Waste - \$32.50; City Of Yankton-Parks - Solid Waste - \$353.36; City Of Yankton-Solid Waste - Solid Waste - \$20,815.49; City Of Yankton-Water – Solid Waste - \$81.76; Dakota Pump - Pump Repair - \$551.02; DANR - Fiscal Office - Surface Water Fee - \$600.00; Den Herder Law - Legal Services - \$4,198.10; Fejfar Plumbing - Sprinklers-Westside Park - \$3,478.58; General Traffic Controls - School Crossing Flasher - \$10,025.00; Gerstner Oil - Jet Fuel - \$66,062.24; Hancock Concrete - Storm Sewer Covers - \$18,509.94; Hanson Briggs - Envelopes - \$265.95; Hawkins - Chemicals - \$13,653.71; Hillcrest Pro-Am – Advertisement - 200.00; Jack's Uniforms - Duty Weapon - \$429.00; Jebro - Asphalt - \$24,384.81; K-Scale - Service Scale - \$677.40; Merkel Electric - 15th & Bdwy Street Light - \$5,170.60; Midwest Alarm - Alarm Testing - \$171.00; Morman/Jolene - Refund Serv Charge - \$30.00; Motorola - Body Camera Cords - \$80.00; Music Services - Summer Reading Program - \$100.00; Observer – Advertisements - \$48.00; One Office – Supplies - \$10.38; Power Source Electric - Service Repair - \$3,500.00; Powerphone - training - \$329.00; Press & Dakotan – Legal Publication - \$681.05; Pro Track And Tennis - Tennis Court Project - \$40,800.00; Ron's Auto Glass - Windshield Replacement - \$550.00; Sign Solutions – Signs - \$156.86; Sweeney Controls - Lift Station Repairs - \$1,041.00; Traffic Control - Signs - \$6,589.00; United States Postal Service – Postage - \$669.28; Yankton Janitor Supply - Cleaning Supplies - 48.00; Yankton Police Department - Petty Cash - \$98.18; Yankton Vol Fire Department - State Fire Premium - \$67,838.10

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

Motion adopted.

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

Mayor Moser read a proclamation recognizing the GFWC Women's Club, and presented said proclamation to its President Liz Lynch.

Citizen Clint Brockmoller, manager of Unclaimed Freight Furniture in Yankton, was present and explained his concerns about the City of Yankton's Code of Ordinance restricting signs (specifically Code 27-77 - Media Prohibitions). He would like the Commission to discuss this at a future work session or regular city commission meeting.

Action 23-246

Moved by Commissioner Benson, seconded by Commissioner Villanueva, to approve the following consent agenda items:

**1. Establishing Public Hearing for Location Transfer of Alcoholic Beverages License**

Establish October 9, 2023 as the date for the public hearing on the request for the transfer of location of a Retail (on-off sale) Malt Beverage & SD Farm Wine License for July 1, 2023 to June 30, 2024 from DBC, LLC d/b/a Bro Brgr Bar (Lauren Soukup, Owner), 304 W 3<sup>rd</sup> Street, Yankton, South Dakota to DBC, LLC d/b/a Bro Brgr Bar (Lauren Soukup, Owner), 2101 Broadway Avenue, Suite 40, Yankton, South Dakota

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

Action 23-247

This was the time and place for the public hearing on the application for Special Events Malt Beverage (on-sale) Retailers License for 1 day, October 20, 2023 from Yankton Area Arts, (Rose Hauger, Executive Director), 508 Douglas Avenue, Yankton, SD at The Meridian Venue, 101 E 3<sup>rd</sup> Street, Yankton, SD.

The above applicant is in compliance with the City Code of Ordinances, as checked by the Department of Finance. A police check on the applicant revealed no felony convictions or wants. The applicant is in compliance with all building and fire codes. No one was present to speak for or against the application.

Moved by Commissioner Johnson, seconded by Commissioner Villanueva, to approve the license.

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

Action 23-248

This was the time and place for the public hearing on the application for Special Events Retail (on-sale) Liquor License for 1 day, November 4, 2023 from Stripes, Inc. d/b/a Mojo's (Jeff Dayhuff, President), 106 E. 3<sup>rd</sup> Street, Yankton, SD at the Meridian Venue, 101 E 3<sup>rd</sup> Street, Yankton, SD.

The above applicant is in compliance with the City Code of Ordinances, as checked by the Department of Finance. A police check on the applicant revealed no felony convictions or wants. The applicant is in compliance with all building and fire codes. No one was present to speak for or against the application.

Moved by Commissioner Benson, seconded by Commissioner Miner, to approve the license.

**Roll Call:** Members present voting “Aye;”: Commissioners Benson, Brunick, Johnson, Miner, Schramm, Villanueva, Webber and Mayor Moser; voting “Nay:”: Commissioner Hunhoff.  
Motion adopted.

Action 23-249

This was the time and place for the public hearing on the application for Special Events Retail (on-sale) Liquor License for 1 day, December 1, 2023 from Stripes, Inc. d/b/a Mojo’s (Jeff Dayhuff, President), 106 E 3rd Street, Yankton, SD at The Meridian Venue, 101 E 3rd Street, Yankton, SD.

The above applicant is in compliance with the City Code of Ordinances, as checked by the Department of Finance. A police check on the applicant revealed no felony convictions or wants. The applicant is in compliance with all building and fire codes. No one was present to speak for or against the application.

Moved by Commissioner Miner, seconded by Commissioner Benson to approve the license.

**Roll Call:** Members present voting “Aye;”: Commissioners Benson, Brunick, Johnson, Miner, Schramm, Villanueva, Webber and Mayor Moser; voting “Nay:”: Commissioner Hunhoff.  
Motion adopted.

Action 23-250

This was the time and place for the public hearing on the application for Special Events Malt Beverage (on-sale) Retailers License and a Special Events (on-sale) Wine Retailers License for 1 day, October 6, 2023 from The Center (Kriss Thury, Executive Director), 900 Whiting Drive, Yankton, South Dakota.

The above applicant is in compliance with the City Code of Ordinances, as checked by the Department of Finance. A police check on the applicant revealed no felony convictions or wants. The applicant is in compliance with all building and fire codes. No one was present to speak for or against the application. No one was present to speak for or against the application.

Moved by Commissioner Villanueva, seconded by Commissioner Johnson to approve the license.

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

Action 23-251

This was the time and place for the public hearing on the application for Special Events Malt Beverage (on-sale) Retailers License and a Special (on-sale) Wine Retailers License for 1 day, December 31, 2023 from The Center (Kriss Thury, Executive Director), 900 Whiting Drive, Yankton, South Dakota.



The above applicant is in compliance with the City Code of Ordinances, as checked by the Department of Finance. A police check on the applicant revealed no felony convictions or wants. The applicant is in compliance with all building and fire codes. No one was present to speak for or against the application.

Moved by Commissioner Villanueva, seconded by Commissioner Brunick to approve the license.

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

Mayor Moser stated that IV. New Business, Item No. 7 was pulled by the Applicant and; therefore, IV. New Business, Item No. 7 was removed from the agenda.

Action 23-252

Moved by Commissioner Benson, seconded by Commissioner Miner, to approve The Health Insurance Committee’s, with input from the City of Yankton employees, recommendation, which includes the following:

- Renew with the same health insurance carrier, Avera Health Plans, with a blended decrease of 6.72%. Avera will offer the same Low Deductible Health Plan traditional coverage plan and two High Deductible Health Plans Health Savings Account plan for 2024.
- Renew The Standard vision insurance plan with a 6.91% increase.
- Switch carriers to The Standard for a dental insurance plan with a slight decrease.
- Continue the Avera EAP plan with no cost change for 2024.
- Continue with the City paying 100% of the single dental insurance plan, 100% of the single employee health insurance plan, as well as 100% of the premium for the \$15,000 life insurance policy for each employee.
- Offer a complimentary 2024 seasonal pass to the Huether Family Aquatics Center for full time employees.
- Extend the contract with Well365 for another year through February 2025.
- Allocate \$5,000 to the Wellness Program for prizes.

**Roll Call:** Members present voting “Aye”: Commissioner Benson, Brunick, Hunhoff, Miner, Schramm, Villanueva, and Webber; Voting “Nay”: None; “Abstain”: Commissioner Johnson and Mayor Moser  
Motion adopted.

Action 23-253

City Manager Leon explained Memorandum #23-184 from Brittany Orr, Director of Human Resource and Employee Engagement, as well as the Tuition Reimbursement Policy attachment and AFSCME

letter attachment. Commissioner Hunhoff commented on his concerns about the lack of transparency with the policy. Commissioner Hunhoff then moved that the following sentence be added to our Tuition Reimbursement Policy. “Any City employee receiving tuition reimbursement will be informed of the second sentence in Subdivision 7 SDCL 1-27-1.5 and sign a release form of understanding that their name and the amount received will be published with other City Commission claims in the City Commission minutes”.

Motion failed for Lack of a Second.

Commissioner Hunhoff then moved that City departments with employees receiving tuition reimbursement will be published with other claims in the city commission minutes. Commissioner Brunick seconded the motion. After more Commission input and discussion, roll call was taken.

**Roll Call:** Member present voting “Aye”: Commissioner Brunick and Commissioner Hunhoff: Voting “Nay”: Commissioners Benson, Johnson, Miner, Schramm, Villanueva, Webber, and Mayor Moser. Motion failed.

Action 23-254

Moved by Commissioner Benson, seconded by Commissioner Johnson to approve Resolution #23-46. (Memorandum #23-186)

Resolution #23-46

A Resolution Establishing Base Salary Adjustments at 4.0%, and a one-step increase on the pay plan for Non-Union Represented Eligible City Employees of the City of Yankton, South Dakota

**WHEREAS**, adequate monies have been provided for in the adopted 2024 budget for the remuneration of services rendered by City of Yankton employees; and

**WHEREAS**, the City Commission wishes to provide a base adjustment for all Non-Union represented eligible City employees of 4.0% and a one-step increase on the pay plan;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of City Commissioners that starting with hours worked on January 1, 2024, the City Manager shall implement a base adjustment of 4.0% for all Non-Union regular full-time employees who are at or below the maximum of their respective pay range, and a one-step increase on the pay plan for all Non-Union regular full-time employees who are eligible and are below the maximum of their respective pay range.

**Roll Call:** voting “Aye;” Commissioners Benson, Brunick, Hunhoff, Johnson, Miner, Schramm, Villanueva and Webber. voting “Nay:” None. Abstain: Mayor Moser. Motion adopted.

Action 23-255

Moved by Commissioner Benson, seconded by Commissioner Miner, to approve Resolution #23-55. (Memorandum #23-177)

**RESOLUTION #23-55**

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

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

SURPLUS PROPERTY TO BE SOLD, TRADED, OR DONATED

Central Garage

- 1) Lincoln bumper jack
- 2) Castair I110212HC2-S air compressor SN# 1001072207
- 3) Coats 950S tire balancer SN# 3303816
- 4) Coats 5065EX tire machine SN# 4104780
- 5) RMI semi tire lift

Parks:

- 1) 2011 Chevrolet Tahoe VIN# 1GNSK2E08BR307848
- 2) 2008 Ford F150 VIN# 1FTRF12W78KD60766
- 3) Nebraska State flags (Qty 15)

Police Department:

- 1) 4- CF-53 Gamber -Johnson docking stations for mobile computers
- 2) 4-Sound Off Signal Lightbar switch
- 3) Whelen Light bar switch
- 4) 2-Sound Off Signal ghost recess lights
- 5) 2011 Chevy Silverado center console mount
- 6) 2015 Ford Explorer Center Console mount
- 7) Code 3 Arrow Stick switch
- 8) 4- LED light bars

Solid Waste:

- 1) Homemade trailer with water tank
- 2) 2002 Cor-tech recycle trailer VIN# 1C9RG35272L050162
- 3) 2002 Chevrolet 3500 flat bed pickup with cage VIN# 1GBJK34172F134141
- 4) 1996 Cor-tech recycle trailer VIN# 1C9RB32222TL050106

Streets:

- 1) Sweeper brooms – Qty 7

SURPLUS PROPERTY TO BE DESTROYED

Central Garage:

- 1) 2000 Gas Boy fuel system software and hardware

Public Works:

- 1) Handheld Motorola radios

Model	Serial Number
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AAH01JDC9JC2AN	7521YU0067
AAH01JDC9JC2AN	7521SW3889
AAH50KDC9AA1AN	D18TMLV604
AAH01JDC9JC2AN	7521SW3900
AAH84KDJ8AA1AN	0278KV7566
AAH84KDJ8AA1AN	0278GW0732
AAH50KDC9AA1AN	D18TPUW930
P93YQT210G2AA	777FZLL652
P93ZRC90A2AA	475FZYF463
P43QLC20E2AA	188FSQ3684
P93ZRC90A2AA	475FZY9755
P93ZRC90A2AA	475FZWA513
AAH01JDC9JC2AN	752IRU1718
AAH50KDC9AA1AN	018TMLV608
AAH01JDC9JC2AN	752IRU1713
AAH01JDC9JC2AN	752IRY5245
AAH01JDC9JC2AN	752ISW3899
AAH01JDC9JC2AN	752ISW3887
AAH01JDC9JC2AN	752IRY5259
AAH50KDC9AA1AN	018TPAA966
P43QLC20E2AA	475FZYF461
P43QLC20E2AA	475FZY9766
P93ZRC90A2AA	475FZY9754
P43QLC20E2AA	188FSS1624
P93ZED90C2AA	475FZY1171

## 2) Mobile Motorola Radios

Model	Serial Number
P93ZRC90A2AA	475FZY9750
AAM01JQC9JC1AN	751IRE1988
M33DGC90E2AA	869FBG7192
AAM01JQC9JC1AN	751ISQ1009
AAM01JQC9JC1AN	751ITU1001
AAM01JQC9JC1AN	751ITU1002

AAM01JQC9JC1AN	922TNN5946
D43MJA7DA5CK	428ARW0471
M33DGC90E2AA	869YDY2933
AAM01JQC9JC1AN	751ISQ1004
AAM01JQC9JC1AN	751IRE1986
M21KSM9PW1AN	518CKB0036
AAM01JQC9JC1AN	751ISQ1006
AAM01JQC9JC1AN	751RE1950
M33DGC90E2AA	869FZG0386
AAM01JQC9JC1AN	751ITU1007
AAM01JQC9JC1AN	922TMG1430
AAM01JQC9JC1AN	751IRE1987
AAM01JQC9JC1AN	922THS5976
AAH50KDC9AA2AN	018TFWR233

Streets:

- 1) Miscellaneous plow attachments
- 2) Motorola radio chargers and microphones
- 3) HHW battery recycle

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

Action 23-256

Moved by Commissioner Johnson, seconded by Commissioner Brunick, to approve Change Order No. 1, accept the completed construction project along 15<sup>th</sup> Street, and authorize the Finance Officer to issue a manual check to D&G Concrete Construction, Inc. in the amount of \$6,010.00. (Memorandum #23-187).

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

Action 23-257

Moved by Commissioner Brunick, seconded by Commissioner Benson, to approve Resolution #23-57 (Memorandum #23-188)

RESOLUTION #23-57

Permanent and Temporary Utility Easements  
for  
The Gehl Drive Utility Project

WHEREAS, the City of Yankton Gehl Drive Utility Project is a critical trunk line infrastructure improvement project that will serve a large area in the eastern portion of the community, and

WHEREAS, said utility project requires the dedication and acceptance of easements for the utility corridor, and

WHEREAS, with the approval of this resolution, the Yankton Board of City Commissioners authorizes the City Manager to execute the easements as described in the associated easement documents known as “E1 – E14.”

NOW THEREFORE BE IT RESOLVED, that the described Gehl Drive Utility Project easements “E1 – E14” are hereby dedicated and accepted on the property as legally described in the associated easement documents, and

BE IT FURTHER RESOLVED, the City Manager is hereby authorized to execute all documents associated with the easements.

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

Action 23-258

Moved by Commissioner Villanueva, seconded by Commissioner Johnson, to adjourn into Executive Session at 8:15 p.m. to discuss **contractual, litigation and personnel matters** under SDCL 1-25-2.

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

Regular meeting of the Board of City Commissioners of the City of Yankton was reconvened by Mayor Moser.

**Roll Call:** Present: Commissioners Benson, Brunick, Hunhoff, Johnson, Miner, Schramm, Villanueva, and Webber. Quorum present.

Action 23-259

Moved by Commissioner Johnson, seconded by Commissioner Villanueva, to adjourn at 9:06 p.m.

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

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Stephanie Moser  
Mayor

ATTEST:

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Al Viereck  
Finance Officer

September 25th, 2023

Page 10

Published on October 7, 2023

Schedule of Bills

VENDOR NAME DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
BANNER ASSOCIATES INC ENGINEERING MARNE CREEK	4,100.00	FEMA 2019	204.204.323		40627	020857	P 477 00002
BOMGAARS INC CONCRETE MIX	26.94	ROAD MATERIALS	101.123.239		2591346	024066	P 477 00001
CGS FORTE PAYMENTS INC CREDIT CARD READERS	1,111.54	EQUIPMENT	203.203.350		1582192	081010	P 477 00095
CITY OF SAINT PAUL TRAINING	1,500.00	LEARNING	101.111.264		IN55432	231554	P 477 00006
CITY OF VERMILLION JOINT POWERS TRANSFER	77,674.70	COST OF SERVICE PROVIDED	637.637.206		SEPTEMBER 2023	003067	P 477 00113
CITY OF YANKTON-CENTRAL SOLID WASTE	45.00	LANDFILL	801.801.276		10.2.23	005523	P 477 00114
CITY OF YANKTON-SOLID WA SOLID WASTE	17,934.09	LANDFILL TIPPING FEE	631.631.219		10.2.2023	005524	P 477 00115
CITY OF YANKTON-WATER FILTER DISPOSAL	56.21	LANDFILL	601.601.276		395521	230183	P 477 00003
SOLID WASTE	61.32	LANDFILL	601.601.276		397255	230199	P 477 00004
SOLID WASTE	33.58	LANDFILL	601.601.276		397265	230199	P 477 00005
	151.11	*VENDOR TOTAL					
CLEAN SWEEP INDUSTRIES GLOVES	250.00	MEDICAL & SAFETY SUPPLIE	101.123.243		6658	024052	P 477 00011
CREDIT COLLECTION SERVIC COLLECTION WATER	55.69	PROFESSIONAL SERVICES	601.601.202		AUG 2023	001858	P 477 00007
COLLECTION SEWER	15.64	PROFESSIONAL SERVICES	611.611.202		AUG 2023	001858	P 477 00008
COLLECTION SOLID WASTE	21.79	PROFESSIONAL SERVICES	631.631.202		AUG 2023	001858	P 477 00009
	93.12	*VENDOR TOTAL					
CREDIT COLLECTIONS BUREA GARNISHMENT	50.00	MISC. EMP. DED.	711.2079		SEPT 2023	202374	P 477 00010
DALSIN COMPANY/MJ REPLACE LIBRARY ROOF	111,240.00	CAPITAL REPAIR & MAINTEN	101.142.301		13482	070920	P 477 00012
DANKO EMERGENCY EQUIPMEN OUTLET REPAIR	392.10	REP. & MAINT. - VEHICLES	101.114.222		131417	235589	P 477 00013
PUMP TEST ENGINE 1	1,080.00	REP. & MAINT. - VEHICLES	101.114.222		131753	235588	P 477 00014
PUMP TEST ENGINE 2	150.00	REP & MAINT - RURAL APP	101.114.226		131753	235588	P 477 00015
	1,622.10	*VENDOR TOTAL					
DEPT OF HEALTH LAB TESTING	1,019.00	PROFESSIONAL SERVICES	601.601.202		10611852	230200	P 477 00017



Schedule of Bills

VENDOR NAME DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
DESIGN SOLUTIONS & INTEG SCADA WORK	1,160.00	REP. & MAINT. - PLANT	601.601.221		61463	230202	P 477 00097
DOUBLE H PAVING INC AIRPORT TAXIWAY PAVING	163,183.72	DESIGN/CONST NORTH TAXIWI	502.511.390		C-7-23	233017	P 477 00016
FEIMER CONSTRUCTION INC VALVE BOX WESTSIDE PARK	5,148.52	WESTSIDE PARK IMPROVEMEN	503.545.320		7002	081003	P 477 00019
SEWER REPAIR RIVERSD PK	2,545.47	REP. & MAINT. - BUILDING	201.201.223		7022	081004	P 477 00021
	7,693.99	*VENDOR TOTAL					
FELD FIRE COMPRESSOR FILTER	230.63	REP. & MAINT. - EQUIPMEN	101.114.221		0428216IN	235590	P 477 00018
FLEXIBLE PIPE TOOL COMPA SEWER CAMERA VAN	60,000.00	EQUIPMENT	611.611.350		29126	230196	P 477 00020
GEOTEK ENG & TESTING SER TESTING MEAD PROPERTY	2,318.50	PROFESSIONAL SERVICES	516.588.202		63825	233014	P 477 00022
GERSTNER OIL CO HYDRAULIC FLUID	554.40	GARAGE GASOLINE & LUBRIC	801.801.238		53571	080040	P 477 00024
GRAYMONT WI LLC LIME	7,741.96	CHEMICALS & GASES	601.601.240		14184515RI	230191	P 477 00023
HANSEN LOCKSMITHING LOCKSMITH SERVICE	140.00	PROFESSIONAL SERVICES	101.111.202		66913	231555	P 477 00029
DUPLICATE KEYS	30.00	REP. & MAINT. - BUILDING	101.127.223		66948	023250	P 477 00096
	170.00	*VENDOR TOTAL					
HARN RO SYSTEMS INC CARTRIDGE FILTER	11,567.24	REP. & MAINT. - PLANT	601.601.221		IN2894	230198	P 477 00027
FREIGHT	532.23	REP. & MAINT. - PLANT	601.601.221		IN2895	230198	P 477 00028
	12,099.47	*VENDOR TOTAL					
HAWKINS INC CHEMICALS	15,219.87	CHEMICALS & GASES	601.601.240		6585281/7219	230201	P 477 00098
POOL CHEMICALS	628.60	CHEMICALS & GASES	203.203.240		6585283	080984	P 477 00025
	15,848.47	*VENDOR TOTAL					
HEIMAN FIRE EQUIPMENT IN FIRE BOOTS	437.90	EQUIPMENT	101.114.350		0924952IN	235591	P 477 00026
J & H CARE & CLEANING CO JANITORIAL SERVICES	3,000.00	CONTRACTED SERVICES	203.203.204		3182047	081009	P 477 00030
JANITORIAL SERVICES	1,200.00	CONTRACTED SERVICES	101.142.204		3182048	023958	P 477 00032
	4,200.00	*VENDOR TOTAL					

Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P	ID	LINE
JEO CONSULTING GROUP INC	ENGINEERING MERIDIAN BRG	6,865.00	PROFESSIONAL SERVICES	207.221.202		144286	233010	P	477	00031
KAISER HEATING & COOLING	STATION THERMOSTAT	124.00	REP. & MAINT. - BUILDING	101.114.223		10586	235586	P	477	00044
	SERVICE CALL	2,828.68	REP. & MAINT. - PLANT	601.601.221		10588 10589	230193	P	477	00038
		2,952.68	*VENDOR TOTAL							
KATZER CONCRETE, INC.	ELM STREET CONSTRUCTION	104,109.00	DOUGLAS AVE, LEVEE TO 2N	602.602.336		C-10-23	233023	P	477	00039
	ELM STREET CONSTRUCTION	69,318.30	ELM ST, 20TH TO 21ST	506.572.372		C-10-23	233023	P	477	00040
		173,427.30	*VENDOR TOTAL							
KLJ ENGINEERING LLC	ENGINEERING AIRPORT	26,372.20	DESIGN/CONST NORTH TAXIW	502.511.390		10191534	024054	P	477	00041
	AIRPORT LAYOUT SERVICES	273.07	DESIGN/CONST NORTH TAXIW	502.511.390		10196236	024067	P	477	00042
	AIRPORT LAYOUT SERVICES	38,314.76	DESIGN/CONST NORTH TAXIW	502.511.390		10196237	024068	P	477	00043
		64,960.03	*VENDOR TOTAL							
KNIFE RIVER - SOUTH DAKO	CONCRETE	58.50	REP. & MAINT. - BUILDING	201.201.223		423241	023997	P	477	00033
	ASPHALT	135.02	OPEN ASPHALT	506.572.376		424562	024063	P	477	00036
	ASPHALT	17,777.92	OPEN ASPHALT	506.572.376		424563	024062	P	477	00037
	ASPHALT	369.80	OPEN ASPHALT	506.572.376		426559	023998	P	477	00034
	ASPHALT	7,543.06	OPEN ASPHALT	506.572.376		426560	023999	P	477	00035
		25,884.30	*VENDOR TOTAL							
LARRY'S HEATING & COOLIN	AC UNIT DIAGNOSTICS	85.00	REP. & MAINT. - BUILDING	101.125.223		64057	023248	P	477	00045
MASONRY COMPONENTS INC	CONSTRUCTION 3RD ST	171,327.12	3RD ST, GREEN-MAPLE/GREEN	506.572.377		C-11-23	233020	P	477	00048
	CONSTRUCTION 3RD ST	60,184.51	3RD ST SPRUCE-GREEN, 3RD-	611.611.369		C-11-23	233020	P	477	00049
		231,511.63	*VENDOR TOTAL							
MAYER SIGNS	COMMISSION CHAMBER SIGN	1,275.51	EQUIPMENT	101.102.350		232565	023249	P	477	00051
MERKEL ELECTRIC	TRAFFIC SIGNAL REPAIR	280.16	REP. & MAINT. - EQUIPMEN	101.126.221		10611	024059	P	477	00046
MIDAMERICAN ENERGY	FUEL	1,733.32	FUEL-HEATING	611.611.273		9.26.23	002904	P	477	00047
MILLENIUUM RECYCLING	SINGLE STREAM FEE	2,263.80	CONTRACTED SERVICE-MILLE	631.631.204		480966	024051	P	477	00050
NEBRASKA AIRFILTER INC	AIR FILTERS	365.44	REP. & MAINT. - PLANT	601.601.221		0414194IN	230195	P	477	00052

Schedule of Bills

VENDOR NAME DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
NORTHERN LIGHTS DISPLAY XMAS DECOR PARK & DWTN	7,027.00	BANNERS & DECORATIONS	503.549.361		230058	023187	P 477 00053
POWER SOURCE ELECTRIC PUMP MOTOR	455.00	REP. & MAINT. - BUILDING	202.202.223		568260	081008	P 477 00054
RACOM CORPORATION BEON ACCESS	35.80	PROFESSIONAL SERVICES	101.111.202		RI230436	210004	P 477 00056
RON'S AUTO GLASS REPAIR PARTS	60.00	GARAGE PARTS	801.801.249		104484	024065	P 477 00055
SHUR-CO PARTS	1,474.46	GARAGE PARTS	801.801.249		1194664	024061	P 477 00057
SMITH INSURANCE INC/MT & FIREMAN ACCIDENT POLICY	1,826.00	INSURANCE	101.114.201		881	024077	P 477 00062
SOUTH DAKOTA ONE CALL 81 ONE CALL	300.30	LOCATES	601.601.208		SD23-1473	230179	P 477 00061
ONE CALL	355.95	LOCATES	601.601.208		02021 02292	230192	P 477 00060
	656.25	*VENDOR TOTAL					
STATE HYGIENIC LABORATOR LAB TESTING	791.50	PROFESSIONAL SERVICES	601.601.202		263667	230194	P 477 00059
STOCKWELL ENGINEERS INC ENGINEERING MEAD PROP	8,160.00	PROFESSIONAL SERVICES	516.588.202		15626	223005	P 477 00058
THIRD MILLENNIUM ASSO IN UTILITY BILLING	331.48	PROFESSIONAL SERVICES	601.601.202		30460	003880	P 477 00070
UTILITY BILLING	316.75	PROFESSIONAL SERVICES	611.611.202		30460	003880	P 477 00071
UTILITY BILLING	88.39	PROFESSIONAL SERVICES	631.631.202		30460	003880	P 477 00072
TREE TRIMMING INSERTS	1,814.47	ABATEMENT	101.106.204		30460	003880	P 477 00073
	2,551.09	*VENDOR TOTAL					
THOMPSON ELECTRIC COMPAN PLC UPS	2,895.85	REP. & MAINT. - PLANT	611.611.221		39668	231003	P 477 00064
TRANSOURCE PARTS	152.39	GARAGE PARTS	801.801.249		41P38606	024064	P 477 00069
PARTS	278.57	GARAGE PARTS	801.801.249		41P38663	023996	P 477 00067
FREIGHT	11.88	GARAGE PARTS	801.801.249		41P38904	024106	P 477 00063
THROTTLE REPLACEMENT	1,740.36	GARAGE PARTS	801.801.249		41W10956	024103	P 477 00066
SUPPORT BEARING	2,534.89	GARAGE PARTS	801.801.249		41W11043	024104	P 477 00065
	4,718.09	*VENDOR TOTAL					
TRUCK TRAILER SALES INC PARTS	4,376.50	GARAGE PARTS	801.801.249		3328-224	024060	P 477 00068

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P	ID	LINE
TWO WAY SOLUTIONS INC										
	RADIO PROGRAMMING	1,350.00	PROFESSIONAL SERVICES	101.111.202		126852	231556	P	477	00074
	RADIO PROGRAMMING	1,226.73	PROFESSIONAL SERVICES	208.208.202		128221	230016	P	477	00075
		2,576.73	*VENDOR TOTAL							
UNITED STATES POSTAL SER										
	POSTAGE	46.71	POSTAGE	101.122.231		10.02.23	002989	P	477	00099
	POSTAGE	135.99	POSTAGE	101.104.231		10.02.23	002989	P	477	00100
	POSTAGE	8.19	POSTAGE	101.111.231		10.02.23	002989	P	477	00101
	POSTAGE	5.04	POSTAGE	201.201.231		10.02.23	002989	P	477	00102
	POSTAGE	0.63	POSTAGE	101.122.231		10.02.23	002989	P	477	00103
	POSTAGE	94.50	POSTAGE	637.637.231		10.02.23	002989	P	477	00104
	POSTAGE	13.23	POSTAGE	101.102.231		10.02.23	002989	P	477	00105
	POSTAGE	28.14	POSTAGE	101.106.231		10.02.23	002989	P	477	00106
	POSTAGE	3.63	POSTAGE	101.107.231		10.02.23	002989	P	477	00107
	POSTAGE	28.35	POSTAGE	203.203.231		10.02.23	002989	P	477	00108
	POSTAGE	6.76	POSTAGE	601.601.231		10.02.23	002989	P	477	00109
	POSTAGE	109.71	POSTAGE	601.601.231		10.02.23	002989	P	477	00110
	POSTAGE	104.84	POSTAGE	611.611.231		10.02.23	002989	P	477	00111
	POSTAGE	29.26	POSTAGE	631.631.231		10.02.23	002989	P	477	00112
		614.98	*VENDOR TOTAL							
WELL365, LLC										
	WELLNESS LINK	810.00	PROFESSIONAL SERVICES	101.107.202		2488	202375	P	477	00076
	WELLNESS LINK	100.00	PROFESSIONAL SERVICES	601.601.202		2488	202375	P	477	00077
	WELLNESS LINK	30.00	PROFESSIONAL SERVICES	611.611.202		2488	202375	P	477	00078
	WELLNESS LINK	30.00	PROFESSIONAL SERVICES	631.631.202		2488	202375	P	477	00079
	WELLNESS LINK	30.00	PROFESSIONAL SERVICES &	637.637.202		2488	202375	P	477	00080
		1,000.00	*VENDOR TOTAL							
WVGOSCH ASSOCIATES INC										
	POOL PUMP REPAIRS	2,171.00	REP. & MAINT. - BUILDING	202.202.223		9.12.23	081006	P	477	00081
	POOL PUMP REPAIRS	4,278.00	REP. & MAINT. - BUILDING	202.202.223		9.12.23	081007	P	477	00082
		6,449.00	*VENDOR TOTAL							
XEROX FINANCIAL SERVICES										
	LEASE & COPIES	410.99	COPIES	101.105.234		4770117	021748	P	477	00087
	LEASE & COPIES	365.54	COPIES	101.105.234		4770117	021748	P	477	00088
	LEASE & COPIES	141.94	CONTRACTED SERVICES	203.203.204		4770117	021748	P	477	00089
	LEASE & COPIES	53.26	COPIES	203.203.234		4770117	021748	P	477	00090
	LEASE & COPIES	141.94	COPIES	101.111.234		4770117	021748	P	477	00091
	LEASE & COPIES	32.38	COPIES	101.111.234		4770117	021748	P	477	00092
	LEASE & COPIES	141.94	COPIES	101.104.234		4770117	021748	P	477	00093
	LEASE & COPIES	81.52	COPIES	101.104.234		4770117	021748	P	477	00094
		1,369.51	*VENDOR TOTAL							
YANKTON COUNTY TREASURER										
	TAXES	181.48	PROFESSIONAL SERVICES	101.101.202		9.27.23	023177	P	477	00084
	TAXES	372.68	PROFESSIONAL SERVICES	101.101.202		9.27.23	023178	P	477	00085
		554.16	*VENDOR TOTAL							

Schedule of Bills

VENDOR NAME DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
YANKTON JANITOR SUPPLY I STATION CLEANING	48.00	REP. & MAINT. - BUILDING	101.114.223		9.27.23	235587	P 477 00083
YANKTON MEDICAL CLINIC FIREFIGHTER PHYSICAL	206.00	EXAMINATIONS	101.114.205		25426	235585	P 477 00086

Schedule of Bills

VENDOR NAME	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
DESCRIPTION							
REPORT TOTALS:	1,051,906.73						

RECORDS PRINTED - 000115

FUND RECAP :

FUND	DESCRIPTION	DISBURSEMENTS
101	GENERAL FUND	126,497.50
201	PARKS AND RECREATION	2,609.01
202	HUETHER FAMILY AQUATICS CTR	6,904.00
203	SUMMIT ACTIVITY CENTER	4,963.69
204	MARNE CREEK	4,100.00
207	BRIDGE AND STREET	6,865.00
208	911/DISPATCH	1,226.73
502	AIRPORT CAPITAL	228,143.75
503	PARK CAPITAL	12,175.52
506	SPECIAL CAPITAL IMPROV	266,471.22
516	MEAD PROPERTY DEVELOPMENT	10,478.50
601	WATER OPERATION	42,636.92
602	WATER RENEWAL/REPLACEMENT	104,109.00
611	WASTE WATER OPERATION	125,280.91
631	SOLID WASTE	20,367.33
637	JOINT POWER	77,799.20
711	EMPLOYEE BENEFIT	50.00
801	CENTRAL GARAGE	11,228.45
TOTAL ALL FUNDS		1,051,906.73

BANK RECAP :

BANK	NAME	DISBURSEMENTS
1DAK	FIRST DAKOTA NAT'L BANK CORP	1,051,906.73
TOTAL ALL BANKS		1,051,906.73

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

DATE ..... APPROVED BY .....  
 .....  
 .....

CLAIM NUMBER	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	INVOICE	PO#	F/P	ID	LINE
AFSCME COUNCIL 65		06454							
	EMPLOYEE DEDUCTIONS	511.72	MISC. EMP. DED.	711.2079	09.01.23			454	00073
	EMPLOYEE DEDUCTIONS	511.72	MISC. EMP. DED.	711.2079	09.15.23			454	00090
	EMPLOYEE DEDUCTIONS	511.72	MISC. EMP. DED.	711.2079	9.29.23			454	00108
		1,535.16	*TOTAL						
AMERICAN FAMILY LIFE COR		00025							
	EMPLOYEE DEDUCTIONS	5,607.34	CANCER & ICU SUPPLEMENTA	711.2075	9.25.23	001234	P	454	00099
AVERA HEALTH PLANS		05140							
	HEALTH INS PREMIUMS	85,390.53	HEALTH INSURANCE	711.2068	09.05.23	005122	P	454	00061
	RETIREE PREMIUMS	587.65	HEALTH INSURANCE	711.2068	09.05.23	005122	P	454	00062
		85,978.18	*TOTAL						
CITY UTILITIES		00109							
	WATER	662.13	WATER SERVICE	101.114.274	8.28.23	002642	P	454	00041
	WASTEWATER	48.66	SEWER SERVICE	101.114.275	8.28.23	002642	P	454	00042
	WATER	192.31	WATER SERVICE	101.125.274	8.28.23	002642	P	454	00036
	WASTEWATER	105.93	SEWER SERVICE	101.125.275	8.28.23	002642	P	454	00037
	WATER	524.50	WATER SERVICE	101.127.274	8.28.23	002642	P	454	00033
	WASTEWATER	482.05	WASTEWATER SERVICE	101.127.275	8.28.23	002642	P	454	00034
	SOLID WASTE	47.22	LANDFILL	101.127.276	8.28.23	002642	P	454	00035
	WATER	217.51	WATER SERVICE	101.141.274	8.28.23	002642	P	454	00056
	WASTEWATER	133.13	SEWER SERVICE	101.141.275	8.28.23	002642	P	454	00057
	WATER	537.47	WATER SERVICE	101.142.274	8.28.23	002642	P	454	00058
	WASTEWATER	51.53	SEWER SERVICE	101.142.275	8.28.23	002642	P	454	00059
	WATER	33,573.58	WATER SERVICE	201.201.274	8.28.23	002642	P	454	00048
	WASTEWATER	765.09	SEWER SERVICE	201.201.275	8.28.23	002642	P	454	00049
	WATER	7,313.63	WATER SERVICE	202.202.274	8.28.23	002642	P	454	00050
	WASTEWATER	3,387.46	SEWER SERVICE	202.202.275	8.28.23	002642	P	454	00051
	WATER	560.91	WATER SERVICE	203.203.274	8.28.23	002642	P	454	00052
	WASTEWATER	146.73	SEWER SERVICE	203.203.275	8.28.23	002642	P	454	00053
	WATER	6,738.06	WATER SERVICE	601.601.274	8.28.23	002642	P	454	00054
	WATER	826.61	WATER SERVICE	611.611.274	8.28.23	002642	P	454	00055
	WATER	49.06	WATER SERVICE	631.631.274	8.28.23	002642	P	454	00046
	WASTEWATER	17.53	SEWER SERVICE	631.631.275	8.28.23	002642	P	454	00047
	WATER	623.02	WATER	637.637.274	8.28.23	002642	P	454	00038
	WASTEWATER	558.66	WW SERVICE	637.637.275	8.28.23	002642	P	454	00039
	SOLID WASTE	23.61	LANDFILL	637.637.276	8.28.23	002642	P	454	00040
	WATER	92.82	WATER PURCHASED	801.801.274	8.28.23	002642	P	454	00043
	WASTEWATER	75.86	SEWER SERVICE	801.801.275	8.28.23	002642	P	454	00044
	SOLID WASTE	23.61	LANDFILL	801.801.276	8.28.23	002642	P	454	00045
		57,778.68	*TOTAL						
DEPT OF SOCIAL SERVICES		01681							
	CHILD SUPPORT	1,135.46	MISC. EMP. DED.	711.2079	09.01.23			454	00068
	CHILD SUPPORT	1,135.46	MISC. EMP. DED.	711.2079	09.15.23			454	00085
	CHILD SUPPORT	582.62	MISC. EMP. DED.	711.2079	9.29.23			454	00105
		2,853.54	*TOTAL						
FIRST DAKOTA NAT'L BANK		07493							
	HSA CONTRIBUTIONS	3,607.81	HSA EMPLOYER CONTRIBUTIO	711.2052	09.01.23			454	00066



CLAIM NUMBER	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	INVOICE	PO#	F/P	ID	LINE
FIRST DAKOTA NAT'L BANK		07493							
	HSA CONTRIBUTIONS	2,208.89	HSA EMPLOYEE CONTRIBUTIO	711.2053	09.01.23			454	00067
	HSA CONTRIBUTIONS	3,607.81	HSA EMPLOYER CONTRIBUTIO	711.2052	09.15.23			454	00083
	HSA CONTRIBUTIONS	2,208.89	HSA EMPLOYEE CONTRIBUTIO	711.2053	09.15.23			454	00084
		11,633.40	*TOTAL						
FIRST NATIONAL BANK FSA		07494							
	CAFETERIA PLAN	598.33	FLEX DAYCARE	711.2054	09.01.23			454	00071
	CAFETERIA PLAN	281.25	FLEX MEDICAL	711.2055	09.01.23			454	00072
	CAFETERIA PLAN	598.33	FLEX DAYCARE	711.2054	09.15.23			454	00088
	CAFETERIA PLAN	281.25	FLEX MEDICAL	711.2055	09.15.23			454	00089
		1,759.16	*TOTAL						
ICMA RETIREMENT TRUST -		00287							
	ICMA CONTRIBUTIONS	1,657.26	ICMA DEFERRED COMPENSATI	711.2067	09.01.23			454	00065
	ICMA CONTRIBUTIONS	1,657.26	ICMA DEFERRED COMPENSATI	711.2067	09.15.23			454	00082
	ICMA CONTRIBUTIONS	1,657.26	ICMA DEFERRED COMPENSATI	711.2067	9.29.23			454	00104
		4,971.78	*TOTAL						
LUMEN		07496							
	FIBER INTERNET	347.33	INTERNET ACCESS	101.105.270	652648534	023065	P	454	00060
MIDAMERICAN ENERGY		00303							
	GAS	84.55	FUEL-HEATING	101.114.273	8.8.23			454	00020
	GAS	21.48	FUEL-GENERATOR	101.115.273	8.8.23			454	00019
	GAS	910.17	ROAD MATERIALS	101.123.239	8.8.23			454	00026
	GAS	57.50	FUEL-HEATING	101.125.273	8.8.23			454	00021
	GAS	49.30	FUEL-HEATING	101.127.273	8.8.23			454	00017
	GAS	134.23	FUEL-HEATING	101.141.273	8.8.23			454	00025
	GAS	15.52	FUEL-HEATING	101.142.273	8.8.23			454	00023
	GAS	76.54	FUEL-HEATING	201.201.273	8.8.23			454	00024
	GAS	3,094.85	FUEL-HEATING	202.202.273	8.8.23			454	00022
	GAS	154.03	FUEL-HEATING	601.601.273	8.8.23			454	00028
	GAS	64.00	HEATING FUEL - GAS	637.637.273	8.8.23			454	00027
	GAS	64.31	FUEL-HEATING	801.801.273	8.8.23			454	00018
		4,726.48	*TOTAL						
MINNESOTA LIFE INSURANCE		06544							
	LIFE INSURANCE PREMIUMS	645.13	LIFE INSURANCE	711.2069	9.25.23	005179	P	454	00098
MONEY MOVERS INC		07676							
	SAC MAINTENANCE FEE	10.75	PROFESSIONAL SERVICES	203.203.202	160700	023072	P	454	00093
MORROW/JOSEPH C.		03823							
	DESIGN WORK	1,860.00	PROFESSIONAL SERVICES	101.125.202	163	203537	P	454	00092
NORTHWESTERN ENERGY		00455							
	ELECTRICITY	745.94	ELECTRICITY	101.114.272	09.08.23			454	00008
	ELECTRICITY	75.03	ELECTRICITY	101.115.272	09.08.23			454	00007
	ELECTRICITY	731.67	ELECTRICITY	101.123.272	09.08.23			454	00012
	ELECTRICITY	2,484.35	ELECTRICITY	101.125.272	09.08.23			454	00006
	ELECTRICITY	26,502.30	ELECTRICITY-STREET LIGHT	101.126.272	09.08.23			454	00001
	ELECTRICITY	1,227.14	ELECTRICITY	101.127.272	09.08.23			454	00003
	ELECTRICITY	2,022.31	ELECTRICITY	101.141.272	09.08.23			454	00011
	ELECTRICITY	1,600.82	ELECTRICITY	101.142.272	09.08.23			454	00016

CLAIM NUMBER	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	INVOICE	PO#	F/P	ID	LINE
	NORTHWESTERN ENERGY	00455							
	ELECTRICITY	5,642.70	ELECTRICITY	201.201.272	09.08.23			454	00002
	ELECTRICITY	8,968.83	ELECTRICITY	202.202.272	09.08.23			454	00010
	ELECTRICITY	34,413.93	ELECTRICITY	601.601.272	09.08.23			454	00014
	ELECTRICITY	9,213.22	ELECTRICITY	611.611.272	09.08.23			454	00015
	ELECTRICITY	41.07	ELECTRICITY	621.621.272	09.08.23			454	00004
	ELECTRICITY	233.61	ELECTRICITY	637.637.272	09.08.23			454	00009
	ELECTRICITY	398.14	ELECTRICITY	637.637.272	09.08.23			454	00013
	ELECTRICITY	810.83	ELECTRICITY	801.801.272	09.08.23			454	00005
		95,111.89	*TOTAL						
	PAYMENT SERVICES NETWORK	07677							
	MERCHANT FEES	29.20	PROFESSIONAL SERVICES	601.601.202	282084	023066	P	454	00029
	MERCHANT FEES	27.91	PROFESSIONAL SERVICES	611.611.202	282084	023066	P	454	00030
	MERCHANT FEES	7.79	PROFESSIONAL SERVICES	631.631.202	282084	023066	P	454	00031
	MERCHANT FEES	4.95	PROFESSIONAL SERVICES &	637.637.202	282271	023066	P	454	00032
		69.85	*TOTAL						
	PRINCIPAL LIFE INSURANCE	07491							
	DENTAL INS PREMIUMS	6,744.92	DENTAL INSURANCE	711.2059	9.25.2023	003190	P	454	00097
	RETIREMENT, SD	00519							
	SDRS CONTRIBUTIONS	137,567.03	SD RETIREMENT SYSTEM	711.2066	9.1.2023	002809	P	454	00101
	SDSRP	04992							
	RETIREMENT CONTRIBUTIONS	4,417.00	ROTH 457 SDRS-SRP	711.2056	09.01.23			454	00070
	RETIREMENT CONTRIBUTIONS	5,007.88	SDRS SUPPLEMENTAL RETIRE	711.2058	09.01.23			454	00069
	RETIREMENT CONTRIBUTIONS	4,417.00	ROTH 457 SDRS-SRP	711.2056	09.15.23			454	00087
	RETIREMENT CONTRIBUTIONS	5,007.88	SDRS SUPPLEMENTAL RETIRE	711.2058	09.15.23			454	00086
	RETIREMENT CONTRIBUTIONS	4,367.00	ROTH 457 SDRS-SRP	711.2056	9.29.23			454	00107
	RETIREMENT CONTRIBUTIONS	4,932.88	SDRS SUPPLEMENTAL RETIRE	711.2058	9.29.23			454	00106
		28,149.64	*TOTAL						
	STANDARD INSURANCE COMPA	05508							
	VISION INSURANCE PREMIUM	667.96	VISION INSURANCE	711.2078	9.26.23	005313	P	454	00100
	U.S. POST OFFICE-UTIL	00642							
	UTILITY BILLING POSTAGE	1,183.36	PROFESSIONAL SERVICES	601.601.202	35979	001855	P	454	00094
	UTILITY BILLING POSTAGE	1,130.78	PROFESSIONAL SERVICES	611.611.202	35979	001855	P	454	00095
	UTILITY BILLING POSTAGE	315.57	PROFESSIONAL SERVICES	631.631.202	35979	001855	P	454	00096
		2,629.71	*TOTAL						
	UKG WORKFORCE READY	07490							
	PAYROLL SOFTWARE	2,494.80	PROFESSIONAL SERVICES	101.107.202	12130099	203533	P	454	00075
	PAYROLL SOFTWARE	308.00	PROFESSIONAL SERVICES	601.601.202	12130099	203533	P	454	00076
	PAYROLL SOFTWARE	92.40	PROFESSIONAL SERVICES	611.611.202	12130099	203533	P	454	00077
	PAYROLL SOFTWARE	92.40	PROFESSIONAL SERVICES	631.631.202	12130099	203533	P	454	00078
	PAYROLL SOFTWARE	92.40	PROFESSIONAL SERVICES &	637.637.202	12130099	203533	P	454	00079
		3,080.00	*TOTAL						
	UNITED STATES TREASURY	07526							
	FEDERAL WITHHOLDING	38,521.73	WITHHOLDING	711.2064	09.01.23			454	00063
	FEDERAL WITHHOLDING	63,664.42	OASI	711.2065	09.01.23			454	00064
	FEDERAL WITHHOLDING	34,149.87	WITHHOLDING	711.2064	09.15.23			454	00080
	FEDERAL WITHHOLDING	56,897.02	OASI	711.2065	09.15.23			454	00081

ACH Payment Register

CLAIM NUMBER	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	INVOICE	PO#	F/P ID LINE
	UNITED STATES TREASURY	07526					
	FEDERAL WITHHOLDING	32,972.10	WITHHOLDING	711.2064	9.29.23		P 454 00102
	FEDERAL WITHHOLDING	55,647.84	OASI	711.2065	9.29.23		P 454 00103
	EMPLOYEE GARNISHMENT	296.79	MISC. EMP. DED.	711.2079	9.29.23		454 00110
		282,149.77	*TOTAL				
	UNITED WAY	00918					
	EMPLOYEE CONTRIBUTIONS	86.00	UNITED FUND	711.2070	09.01.23		454 00074
	EMPLOYEE CONTRIBUTIONS	86.00	UNITED FUND	711.2070	09.15.23		454 00091
	EMPLOYEE CONTRIBUTIONS	86.00	UNITED FUND	711.2070	9.29.23		454 00109
		258.00	*TOTAL				
		736,135.70	**CLAIMS TOTAL				

ACH Payment Register

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CLAIM NUMBER	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	INVOICE	PO#	F/P ID LINE
REPORT TOTALS:		736,135.70					

RECORDS PRINTED - 000110

FUND RECAP:

FUND	DESCRIPTION	DISBURSEMENTS
101	GENERAL FUND	44,366.88
201	PARKS AND RECREATION	40,057.91
202	HUETHER FAMILY AQUATICS CTR	22,764.77
203	SUMMIT ACTIVITY CENTER	718.39
601	WATER OPERATION	42,826.58
611	WASTE WATER OPERATION	11,290.92
621	CEMETERY OPERATION	41.07
631	SOLID WASTE	482.35
637	JOINT POWER	1,998.39
711	EMPLOYEE BENEFIT	570,521.01
801	CENTRAL GARAGE	1,067.43
TOTAL ALL FUNDS		736,135.70

BANK RECAP:

BANK	NAME	DISBURSEMENTS
1DAK	FIRST DAKOTA NAT'L BANK CORP	736,135.70
TOTAL ALL BANKS		736,135.70

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

DATE ..... APPROVED BY .....

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Manual Check Register

CLAIM NUMBER	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	INVOICE	PO#	F/P	ID	LINE
	BOYER TRUCKS SIOUX FALLS	04492							
	2023 FORD F550	59,780.00	EQUIPMENT	201.201.350	DE13135	023823	P	453	00005
	D & G CONCRETE CONST.	01073							
	15TH ST CONSTR FINAL	6,010.00	15TH, BILL BAGGS TO ALUM	506.574.361	C-2-23	233006	P	453	00007
	EMPLOYEE CONFIDENTIAL	.19688							
	TUITION REIMBURSEMENT	5,250.00	LEARNING	101.111.264	8.29.23	023073	P	453	00003
	MOTOR VEHICLE DEPT, SD	00424							
	TITLE AND LICENSE	26.70	EQUIPMENT	201.201.350	DE13135	023823	P	453	00009
	TITLE AND LICENSE	26.70	EQUIPMENT	101.123.350	2022-038	023549	P	453	00008
		53.40	*TOTAL						
	RETIREMENT, SD SYSTEM	05577							
	EMPLOYEE SPECIAL PAY	45.00	PROFESSIONAL SERVICES	201.201.202	8.31.23	023074	P	453	00002
	EMPLOYEE SPECIAL PAY	6,640.77	SDRS SPECIAL PAY PLAN	711.2080	8.31.23	023074	P	453	00001
		6,685.77	*TOTAL						
	US BANK SPA LOCKBOX CM96	07145							
	CLEAN WATER #5	6,045.06	INTEREST	615.615.411	C461038.05	021720	P	453	00006
	WEGNER AUTO CO INC	04954							
	2023 DODGE RAM PICKUP	40,469.00	EQUIPMENT	101.123.350	MEM022-192	023549	P	453	00004
		124,293.23	**CLAIMS TOTAL						

Manual Check Register  
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CLAIM NUMBER	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	INVOICE	PO#	F/P ID LINE
REPORT TOTALS:		124,293.23					

RECORDS PRINTED - 000009

FUND RECAP:

FUND	DESCRIPTION	DISBURSEMENTS
101	GENERAL FUND	45,745.70
201	PARKS AND RECREATION	59,851.70
506	SPECIAL CAPITAL IMPROV	6,010.00
615	STATE REVOLVING LOAN 5-6	6,045.06
711	EMPLOYEE BENEFIT	6,640.77
TOTAL ALL FUNDS		124,293.23

BANK RECAP:

BANK	NAME	DISBURSEMENTS
1DAK	FIRST DAKOTA NAT'L BANK CORP	124,293.23
TOTAL ALL BANKS		124,293.23

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

DATE ..... APPROVED BY .....  
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Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
ADOBE ACROPRO SUBS	ADOBE	19.99	SUBSCRIPTIONS & PUBLICAT	101.106.235		Bies		491 00307
ADOBE CREATIVE CLOUD	COMPUTER PROGRAM	58.40	CONTRACTED SERVICES - OP	201.201.204		McHenry		491 00319
AMAZON.COM TL39K6H00 A	OFFICE SUPPLIES	55.46	OFFICE SUPPLIES	101.104.232		Yardley		491 00315
AMAZON.COM TX3MJ8IK0	HEAD PHONES FOR PATROL	85.89	REP. & MAINT. - EQUIPMEN	101.111.221		Rothenberger		491 00077
AMAZON.COM T31TT9UR0 A	TENNIS NETS	518.82	RECREATION SUPPLIES	203.203.242		McHenry		491 00374
AMERICAN RED CROSS	LIFEGUARD CERTIFICATION	41.00	RECREATION SUPPLIES	203.203.242		Wattier		491 00105
	LIFEGUARD CERTIFICATION	41.00	RECREATION SUPPLIES	203.203.242		Wattier		491 00451
		82.00	*VENDOR TOTAL					
AMZN MKTP US TL0M96KU0	RECHARGEABLE BATTERIES	23.93	REP. & MAINT. - PLANT	601.601.221		Chytka		491 00294
AMZN MKTP US TL1B915G1	DUAL RADIO CHEST HARNESS	36.94	UNIFORMS & DRY GOODS	101.114.244		Linke		491 00300
AMZN MKTP US TL1UW0MQ1	CHEMICAL FEED TUBING	349.99	REP. & MAINT. - PLANT	601.601.221		Chytka		491 00301
AMZN MKTP US TL2R19UQ0	PART FOR GLOCK	106.37	REP. & MAINT. - EQUIPMEN	101.111.221		Foote		491 00291
AMZN MKTP US TL24F9WU2	OFFICE SUPPLIES	19.99	OFFICE SUPPLIES	101.142.232		Dobrovolny		491 00303
AMZN MKTP US TR00P19N2	FLAG FOOTBALL SUPPLIES	59.56	RECREATION SUPPLIES	203.203.242		Wattier		491 00216
AMZN MKTP US TR3KS2JO1	OFFICE SUPPLIES	25.97	OFFICE SUPPLIES	201.201.232		McHenry		491 00217
	MAINTENANCE	29.17	REP. & MAINT. - BUILDING	202.202.223		McHenry		491 00218
		55.14	*VENDOR TOTAL					
AMZN MKTP US TR4NS9PX1	ID CARDS	59.97	RECREATION SUPPLIES	203.203.242		McHenry		491 00193
AMZN MKTP US TR4VS74X0	STRAP FOR HOLSTER	18.49	REP. & MAINT. - EQUIPMEN	101.111.221		Rothenberger		491 00254

Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
AMZN MKTP US TR6JG9MY2	DVD	19.96	AV - CAPITAL	101.142.342		Dobrovolny		491 00255
AMZN MKTP US TR6MF1WD1	OFFICE SUPPLIES	95.96	OFFICE SUPPLIES	101.107.232		Bailey		491 00153
AMZN MKTP US TX1FU62W2	FOLDERS, PAPER	66.21	OFFICE SUPPLIES	101.104.232		Yardley		491 00128
AMZN MKTP US TX2S48II2	DVD	12.96	AV - CAPITAL	101.142.342		Dobrovolny		491 00120
AMZN MKTP US TX31G3JH1	OFFICE SUPPLIES	32.97	OFFICE SUPPLIES	101.142.232		Dobrovolny		491 00108
	JANITORIAL SUPPLIES	133.06	JANITORIAL SUPPLIES	101.142.236		Dobrovolny		491 00109
	PROGRAM SUPPLIES	18.88	PROGRAM SUPPLIES	101.142.242		Dobrovolny		491 00110
	BOOKS	31.98	BOOKS	101.142.340		Dobrovolny		491 00111
		216.89	*VENDOR TOTAL					
AMZN MKTP US TX4O22FS1	PARADE SUPPLIES	74.57	RECREATION SUPPLIES	203.203.242		Wattier		491 00122
AMZN MKTP US TX5QF5TB1	MONITOR SWIVEL	16.98	OFFICE SUPPLIES	101.106.232		Kuenzli		491 00113
AMZN MKTP US TX87A28E1	EMPLOYEE APPRECIATION	52.96	EMPLOYEE COMMITTEE	101.107.141		Bailey		491 00038
AMZN MKTP US TX9F43WJ0	DVD	19.96	AV - CAPITAL	101.142.342		Dobrovolny		491 00061
AMZN MKTP US TX9I443G2	OFFICE SUPPLIES	64.87	OFFICE SUPPLIES	101.142.232		Dobrovolny		491 00168
	PROGRAM SUPPLIES	6.65	PROGRAM SUPPLIES	101.142.242		Dobrovolny		491 00169
	BOOKS	125.59	BOOKS	101.142.340		Dobrovolny		491 00170
	DVDS	226.19	AV - CAPITAL	101.142.342		Dobrovolny		491 00171
		423.30	*VENDOR TOTAL					
AMZN MKTP US TX9NA6FV0	JANITORIAL SUPPLIES	71.00	JANITORIAL SUPPLIES	101.142.236		Dobrovolny		491 00164
AMZN MKTP US TX9TF2YJ1	DVD	17.96	AV - CAPITAL	101.142.342		Dobrovolny		491 00018
AMZN MKTP US TX9YM2WU2	FLASH DRIVES	297.00	DIGITAL LITERACY GRANT	701.701.319		Dobrovolny		491 00119
AMZN MKTP US TX94482B2	BOOKS	31.98	BOOKS	101.142.340		Dobrovolny		491 00125

Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
AMZN MKTP US T14XG43R2	AEROBIC CLASS SUPPLIES	38.37	RECREATION SUPPLIES	203.203.242		Wattier		491 00069
AMZN MKTP US T19D04P00	DVD	22.49	AV - CAPITAL	101.142.342		Dobrovolny		491 00025
AMZN MKTP US T318X05P2	TESTERS	21.99	CHEMICALS & GASES	202.202.240		McHenry		491 00434
	REC SUPPLIES	79.17	RECREATION SUPPLIES	203.203.242		McHenry		491 00435
		101.16	*VENDOR TOTAL					
AMZN MKTP US T35IH5H60	PRINTER TONER	219.99	OFFICE SUPPLIES	101.114.232		Peters		491 00433
AMZN MKTP US T36A86AP1	RADIO ATTACHMENTS	56.95	REP. & MAINT. - EQUIPMEN	101.111.221		Rothenberger		491 00425
AMZN MKTP US T38HS1G01	OFFICE SUPPLIES	48.56	OFFICE SUPPLIES	101.142.232		Dobrovolny		491 00415
	PROGRAM SUPPLIES	19.23	PROGRAM SUPPLIES	101.142.242		Dobrovolny		491 00416
	BOOKS	14.95	BOOKS	101.142.340		Dobrovolny		491 00417
	DVD'S	23.98	AV - CAPITAL	101.142.342		Dobrovolny		491 00418
	LAPTOP GRANT	74.90	ALA LAPTOP GRANT	701.701.301		Dobrovolny		491 00419
		181.62	*VENDOR TOTAL					
ARBYS 8261	TRAVEL EXPENSE	10.27	TRAVEL EXPENSE	101.111.263		Yankton Police		491 00335
ATT BILL PAYMENT	CELL PHONE	62.88	TELEPHONE	201.201.271		Bailey		491 00257
	CELL PHONE	27.77	TELEPHONE	601.601.271		Bailey		491 00258
	MOBILE DATA	95.61	PROFESSIONAL SERVICES -	101.127.202		Peters		491 00240
	MOBILE DATA	45.28	PROFESSIONAL SERVICES	101.123.202		Peters		491 00241
	MOBILE DATA	45.28	PROFESSIONAL SERVICES	601.601.202		Peters		491 00242
	MOBILE DATA	40.04	PROFESSIONAL SERVICES	101.122.202		Peters		491 00243
	MOBILE DATA	913.57	PROFESSIONAL SERVICES	101.111.202		Peters		491 00244
		1,230.43	*VENDOR TOTAL					
AUTOZONE #3795	TRUCK FILTERS	37.37	REP. & MAINT. -VEHICLES	201.201.222		Jensen		491 00248
	WINDSHIELD WASHING FLUID	71.76	GARAGE PARTS	801.801.249		Kulhavy		491 00390
	BATTERY	371.80	GARAGE PARTS	801.801.249		Kulhavy		491 00395
	BATTERY	172.03	GARAGE PARTS	801.801.249		Nowak		491 00268
		652.96	*VENDOR TOTAL					
AXVOICE INC	DIALER SERVICE	21.44	PROFESSIONAL SERVICES	601.601.202		Chytka		491 00325
BAKER-TAYLOR	POSTAGE	132.86	POSTAGE	101.142.231		Schmidt		491 00375
	MEMORIAL BOOKS-PELISSERO	34.18	BOOKS	701.701.340		Schmidt		491 00376

Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
BAKER-TAYLOR								
	BOOKS-MASTER GARDENERS	94.88	BOOKS	701.701.340		Schmidt		491 00377
	BOOKS-BOOK CLUB DONATION	124.30	BOOKS	701.701.340		Schmidt		491 00378
	BOOKS	6,845.70	BOOKS	101.142.340		Schmidt		491 00379
		7,231.92	*VENDOR TOTAL					
BEST WESTERN YANKTON								
	MUSIC AT MERIDIAN	393.47	SPECIAL EVENTS - ACTIVIT	211.231.575		McHenry		491 00227
BLAZE PIZZA RAPID CITY								
	TRAVEL EXPENSE	11.96	TRAVEL EXPENSE	101.111.263		O'Farrell		491 00214
BLP BUSINESS WEEK								
	MAGAZINE SUBSCRIPTION	159.30	SUBSCRIPTIONS & PUBLICAT	101.142.235		Schmidt		491 00245
BLT INTL E-Z UP								
	POP UP SHELTER	599.00	O'MALLEY DONATION	101.111.210		Foote		491 00133
BLUEPEAK								
	PHONE	276.52	TELEPHONE	601.601.271		Yardley		491 00023
	PHONE	155.28	TELEPHONE	101.127.271		Yardley		491 00126
	PHONE	38.83	TELEPHONE	101.123.271		Yardley		491 00127
	INTERNET	238.49	TELEPHONE	202.202.271		Yardley		491 00269
	PHONE	72.65	TELEPHONE	101.102.271		Yardley		491 00337
	PHONE	245.01	TELEPHONE	101.104.271		Yardley		491 00338
	PHONE	137.66	TELEPHONE	101.105.271		Yardley		491 00339
	PHONE	191.09	TELEPHONE	101.106.271		Yardley		491 00340
	PHONE	72.65	TELEPHONE	101.107.271		Yardley		491 00341
	PHONE	145.31	TELEPHONE	101.122.271		Yardley		491 00342
	PHONE	30.77	TELEPHONE	101.111.271		Yardley		491 00348
	PHONE	40.86	TELEPHONE	101.114.271		Yardley		491 00349
	PHONE	74.38	TELEPHONE	101.123.271		Yardley		491 00350
	PHONE	152.29	TELEPHONE	101.142.271		Yardley		491 00351
	PHONE	87.88	TELEPHONE	203.203.271		Yardley		491 00352
	PHONE	92.71	TELEPHONE	601.601.271		Yardley		491 00353
	PHONE	42.91	TELEPHONE	611.611.271		Yardley		491 00354
	PHONE	31.06	TELEPHONE	637.637.271		Yardley		491 00355
	INTERNET	701.99	INTERNET ACCESS	101.105.270		Yardley		491 00358
	PHONE	226.94	TELEPHONE	101.105.271		Yardley		491 00359
	PHONE	19.57	TELEPHONE	101.111.271		Yardley		491 00360
	PHONE	54.38	TELEPHONE	101.114.271		Yardley		491 00361
	PHONE	298.35	TELEPHONE	201.201.271		Yardley		491 00362
	PHONE	42.98	TELEPHONE	202.202.271		Yardley		491 00363
	PHONE	306.57	TELEPHONE	203.203.271		Yardley		491 00364
	PHONE	19.57	TELEPHONE	601.601.271		Yardley		491 00365
	PHONE	274.83	TELEPHONE	601.601.271		Yardley		491 00442
		4,071.53	*VENDOR TOTAL					
BOMGAARS #2 YANKTON								
	TREE KILLER	37.98	AGRICULTURAL SUPPLIES	621.621.241		Bornitz		491 00027
	SHOP SUPPLIES	52.97	REP. & MAINT. - BUILDING	621.621.223		Bornitz		491 00071

Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
BOMGAARS #2 YANKTON								
	SMALL TOOLS	23.98	SMALL TOOLS & HARDWARE	203.203.247		Groves		491 00145
	SOCKET ADAPTER	9.57	REP. & MAINT. - BUILDING	202.202.223		Groves		491 00330
	BUILDING MAINTENANCE	11.99	REP. & MAINT. - BUILDING	202.202.223		Groves		491 00400
	CABLE	3.99	REP. & MAINT. - BUILDING	202.202.223		Groves		491 00432
	SHOP SUPPLIES	5.99	REP. & MAINT. - BUILDING	201.201.223		Knutson		491 00142
	PLANT SUPPLIES	18.49	AGRICULTURAL SUPPLIES	201.201.241		Kortan		491 00006
	FALL PLANTS	44.95	AGRICULTURAL SUPPLIES	201.201.241		Kortan		491 00166
	FALL PLANTS	99.88	AGRICULTURAL SUPPLIES	201.201.241		Kortan		491 00280
	BOLTS	3.35	REP. & MAINT. - COLLECTI	611.611.226		Kuehler		491 00265
	GRASS SEED	115.00	AGRICULTURAL SUPPLIES	204.204.241		Lehman		491 00117
	ROUNDUP	54.98	REP. & MAINT. - BUILDING	101.125.223		Mastalir		491 00288
	GENERATOR BATTERY	49.99	REP. & MAINT. - EQUIPMEN	101.114.221		Nickles		491 00200
	FASTENERS	41.86	GARAGE PARTS	801.801.249		Nowak		491 00031
	PUMP	59.99	SMALL TOOLS & HARDWARE	801.801.247		Nowak		491 00130
	TIRE TUBE	12.74	GARAGE PARTS	801.801.249		Nowak		491 00263
	TORCH TIP/KIT	152.97	SMALL TOOLS & HARDWARE	801.801.247		Nowak		491 00278
	PADDLEWHEEL PT SIGNS	11.12	REP. & MAINT. - BUILDING	201.201.223		Pavel		491 00067
	BATHROOM REPAIRS	12.32	REP. & MAINT. - BUILDING	201.201.223		Pavel		491 00314
	FLY SPRAY	142.41	BUILDING REPAIR & MAINT.	637.637.223		Potts		491 00285
	SHOVELS	119.97	SMALL TOOLS & HARDWARE	101.123.247		Potts		491 00328
	GRASS & WEED KILLER	59.98	AGRICULTURAL SUPPLIES	611.611.241		Robinson		491 00158
	LIFTING CLEVISES	77.44	REP. & MAINT. - DISTRIBU	601.601.226		Robinson		491 00236
	ADAPTER	7.99	REP. & MAINT. - PLANT	601.601.221		Rothermel		491 00058
	WEED KILLER/GREASE	226.88	AGRICULTURAL SUPPLIES	101.127.241		Ryken		491 00106
	FOUNTAIN REPAIRS	13.48	REP. & MAINT. - BUILDING	201.201.223		Thompson		491 00292
	CONCRETE ANCHORS	35.77	BUILDING REPAIR & MAINT.	637.637.223		Ulmer		491 00276
	CONCRETE ANCHORS	3.89	BUILDING REPAIR & MAINT.	637.637.223		Ulmer		491 00289
	TRASH CANS	55.98	REP. & MAINT. - TRAIL	204.204.223		Walsh		491 00393
	HARDWARE	16.96	SMALL TOOLS & HARDWARE	204.204.247		Walsh		491 00405
		1,584.86	*VENDOR TOTAL					
BROADWAY CHRYSLER DODG								
	SEAT COVER	899.00	GARAGE PARTS	801.801.249		Kulhavy		491 00146
BROWNELLS INC								
	PATROL RIFLE PARTS	13.99	REP. & MAINT. - EQUIPMEN	101.111.221		Rothenberger		491 00062
BUFFALO WILD WINGS 350								
	TRAVEL EXPENSE	9.10	TRAVEL EXPENSE	101.111.263		O'Farrell		491 00162
C & B YANKTON								
	MOWER BAG	55.46	AGRICULTURAL SUPPLIES	601.601.241		Bush		491 00320
	TRACTOR REPAIRS	8.94	REP. & MAINT. - EQUIPMEN	201.201.221		Jensen		491 00005
		64.40	*VENDOR TOTAL					
CASEYS #3855								
	POLICE APPRECIATION	91.07	O'MALLEY DONATION	101.111.210		Yankton Police		491 00009

Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
CBR NITRO PDF	NITRO PRO	89.99	SUBSCRIPTIONS & PUBLICAT	101.106.235		Bies		491 00060
CENEX DUSTERHO09886649	FUEL FOR 911 CONFERENCE	64.00	CONFERENCE & MEETINGS	208.208.265		Hussein		491 00100
CKE BRO BRGR BAR YANKT	EMPLOYEE APPRECIATION	130.21	RECREATION SUPPLIES	701.701.242		Dobrovolny		491 00336
CLARKS RENTALS	GRASS PLANTING	44.00	AGRICULTURAL SUPPLIES	204.204.241		Walsh		491 00107
COWBOY STORE #6	FUEL	48.50	TRAVEL EXPENSE	101.111.263		Yankton Police		491 00421
CRESCENT ELECTRIC 029	LIGHTING BRACKET	74.18	REP. & MAINT. - BUILDING	611.611.223		Hanson		491 00334
	ELECTRICAL SUPPLIES	61.92	REP. & MAINT. - EQUIPMEN	101.126.221		Ryken		491 00042
	ELECTRICAL PARTS	40.04	REP. & MAINT. - EQUIPMEN	101.126.221		Ryken		491 00134
	ELECTRICAL PARTS	102.28	REP. & MAINT. - EQUIPMEN	101.126.221		Ryken		491 00250
	ELECTRICAL SUPPLIES	112.02	REP. & MAINT. - EQUIPMEN	101.126.221		Ryken		491 00401
		390.44	*VENDOR TOTAL					
DOMINOS 1821	EMPLOYEE APPRECIATION	52.23	EMPLOYEE COMMITTEE	101.107.141		Bailey		491 00090
ECHO ELECTRIC SUPPLY	SPLASH PAD REPAIRS	90.65	REP. & MAINT. - BUILDING	201.201.223		Bornitz		491 00345
	SPLASH PAD REPAIRS	12.95	REP. & MAINT. - BUILDING	201.201.223		Bornitz		491 00413
	LIGHTING BALLASTS	574.56	REP. & MAINT. - PLANT	601.601.221		Chytka		491 00115
	TOWER GENERATOR	4,705.59	METER TECHNOLOGY UPGRADE	602.602.351		Chytka		491 00165
	DRILL	126.50	SMALL TOOLS & HARDWARE	201.201.247		Kortan		491 00275
	LED PANEL	570.00	REP. & MAINT. - BUILDING	101.142.223		Mastalir		491 00326
	LED PANEL	95.00	REP. & MAINT. - BUILDING	101.125.223		Mastalir		491 00443
	LIGHTS FOR ABORETUM	58.50	REP. & MAINT. - BUILDING	203.203.223		Pavel		491 00132
	ELECTRICAL SUPPLIES	739.99	REP. & MAINT. - EQUIPMEN	101.126.221		Ryken		491 00183
	FISHTAPE	89.50	SMALL TOOLS & HARDWARE	101.126.247		Ryken		491 00189
	LIGHT	91.01	REP. & MAINT. - BUILDING	101.127.223		Ryken		491 00190
	ELECTRICAL SUPPLIES	99.55	REP. & MAINT. - EQUIPMEN	101.126.221		Ryken		491 00382
		7,253.80	*VENDOR TOTAL					
EHRESMANN ENGINEERING	STEEL SHEET	170.66	GARAGE PARTS	801.801.249		Nowak		491 00313
ELDT.COM	CDL TRAINING	25.00	PROFESSIONAL SERVICES	631.631.202		Potts		491 00344
	CDL TRAINING	25.00	PROFESSIONAL SERVICES	631.631.202		Potts		491 00346
		50.00	*VENDOR TOTAL					

Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
FASTENAL COMPANY 01SDY								
	DISPOSABLE GLOVES	316.40	JANITORIAL SUPPLIES	601.601.236		Chytka		491 00050
	FILTERS	254.90	REP. & MAINT. - PLANT	601.601.221		Chytka		491 00251
	WIRE	571.90	GARAGE PARTS	801.801.249		Potts		491 00384
	WIRE	704.10	GARAGE PARTS	801.801.249		Potts		491 00391
	ENTRY RUG	133.57	BUILDING REPAIR & MAINT.	637.637.223		Potts		491 00397
		1,980.87	*VENDOR TOTAL					
FEDEX81009064								
	EVIDENCE SHIPPING	18.14	POSTAGE	101.111.231		Foote		491 00207
GDP HARD DRIVE OUTLET								
	PRINTER RENTALS	86.73	PROFESSIONAL SERVICES	101.111.202		Rothenberger		491 00017
GERSTNER OIL								
	OIL	229.40	REP. & MAINT. - EQUIPMEN	201.201.221		Jensen		491 00366
GLOCK INC								
	GLOCK MOS PARTS	29.68	REP. & MAINT. - EQUIPMEN	101.111.221		Foote		491 00235
GRAHAM TIRE #19 YANKTO								
	MOWER TIRES	212.30	AGRICULTURAL SUPPLIES	601.601.241		Rothermel		491 00223
GRAINGER								
	TUBING	101.39	REP. & MAINT. - PLANT	601.601.221		Chytka		491 00180
	PVC BALL VALVES	396.12	REP. & MAINT. - PLANT	601.601.221		Chytka		491 00310
		497.51	*VENDOR TOTAL					
HACH COMPANY								
	CHLORINE SENSORS	2,215.40	REP. & MAINT. - PLANT	601.601.221		Chytka		491 00016
	TUBING	133.00	REP. & MAINT. - PLANT	601.601.221		Chytka		491 00021
	CHLORINE SENSORS	2,265.40	REP. & MAINT. - PLANT	601.601.221		Chytka		491 00037
	REAGENTS	1,101.45	CHEMICALS & GASES	601.601.240		Chytka		491 00043
	REAGENTS	97.65	CHEMICALS & GASES	601.601.240		Chytka		491 00306
	LAB TESTING SUPPLIES	300.00	MEDICAL,SAFETY, & LAB. S	611.611.243		Hoilien		491 00273
	PH PROBE	1,527.62	MEDICAL,SAFETY, & LAB. S	611.611.243		Hoilien		491 00296
		7,640.52	*VENDOR TOTAL					
HILTON GARDEN INN GDFK								
	DAKOTA 911 CONFERENCE	264.60	CONFERENCE & MEETINGS	208.208.265		Hussein		491 00045
	DAKOTA 911 CONFERENCE	264.60	CONFERENCE & MEETINGS	208.208.265		Hussein		491 00046
		529.20	*VENDOR TOTAL					
HOLIDAY INN HOTEL & CO								
	TRAVEL EXPENSE	348.36	TRAVEL EXPENSE	601.601.263		Goodmanson		491 00149
	TRAVEL EXPENSE	348.36	TRAVEL EXPENSE	611.611.263		Goodmanson		491 00151
	TRAVEL EXPENSE	348.36	TRAVEL EXPENSE	611.611.263		Goodmanson		491 00154
	TRAVEL EXPENSE	348.36	TRAVEL EXPENSE	601.601.263		Goodmanson		491 00198
		1,393.44	*VENDOR TOTAL					

Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
HOLIDAY STATIONS 0449	FUEL	67.00	TRAVEL EXPENSE	101.111.263		O'Farrell		491 00148
HOLIDAY 504 DBA CIRCLE	FUEL FOR 911 CONFERENCE	73.00	CONFERENCE & MEETINGS	208.208.265		Hussein		491 00057
HY-VEE YANKTON 1899	EMPLOYEE APPRECIATION	24.95	EMPLOYEE COMMITTEE	101.107.141		Bailey		491 00020
	EMPLOYEE BREAKFAST	14.80	EMPLOYEE COMMITTEE	101.107.141		Bailey		491 00271
	SUN DIAL DEDICATION	68.70	RECREATION SUPPLIES - O	201.201.242		McHenry		491 00201
	MEETING SUPPLIES	22.97	CONFERENCE & MEETINGS	101.111.265		Rothenberger		491 00414
	SUN DIAL DEDICATION	29.98	RECREATION SUPPLIES - O	201.201.242		Wattier		491 00191
		161.40	*VENDOR TOTAL					
IN BOOK PAGE	MAGAZINE SUBSCRIPTION	402.00	SUBSCRIPTIONS & PUBLICAT	101.142.235		Schmidt		491 00161
IN C & H PRECISION WE	GLOCK HANDGUN PARTS	98.18	REP. & MAINT. - EQUIPMEN	101.111.221		Foote		491 00123
IN POWERS PORT A POT	PORTA POTTS	405.00	CONTRACTED SERVICES - OP	201.201.204		McHenry		491 00159
JACKS UNIFORMS & EQUI	UNIFORM PANTS	188.89	UNIFORMS	101.111.244		Rothenberger		491 00047
JCL SOLUTIONS-SIOUX FA	CLEANING SUPPLIES	590.87	JANITORIAL SUPPLIES	201.201.236		Kirchner		491 00059
	CLEANING SUPPLIES	513.63	JANITORIAL SUPPLIES	201.201.236		Kirchner		491 00380
	CLEANING SUPPLIES	226.18	JANITORIAL SUPPLIES	203.203.236		McHenry		491 00076
	CLEANING SUPPLIES	391.87	JANITORIAL SUPPLIES	203.203.236		McHenry		491 00387
		1,722.55	*VENDOR TOTAL					
JUMP START 7	TRAVEL EXPENSE	51.06	TRAVEL EXPENSE	101.142.263		Dobrovolny		491 00040
J2 METROFAX	FAX SERVICE	11.95	PROFESSIONAL SERVICES	601.601.202		Chytka		491 00327
KAISER REFRIGERATION I	EQUIPMENT REPAIRS	56.49	REP. & MAINT. - EQUIPMEN	201.201.221		Jensen		491 00073
	LEAF BLOWER REPAIRS	93.98	REP. & MAINT. - EQUIPMEN	201.201.221		Jensen		491 00430
	WEDEATER STRING	49.98	REP. & MAINT. - EQUIPMEN	204.204.221		Lehman		491 00331
	WEED EATER COIL	94.50	REP. & MAINT. - EQUIPMEN	101.127.221		Ryken		491 00114
	EQUIPMENT REPAIRS	19.50	REP. & MAINT. - EQUIPMEN	204.204.221		Walsh		491 00051
	EQUIPMENT REPAIRS	81.97	REP. & MAINT. - EQUIPMEN	204.204.221		Walsh		491 00064
	EQUIPMENT REPAIRS	74.98	REP. & MAINT. - EQUIPMEN	204.204.221		Walsh		491 00302
		471.40	*VENDOR TOTAL					



Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
KOLETZKY IMPLEMENT INC	BATTERY	395.61	GARAGE PARTS	801.801.249		Kulhavy		491 00135
KOPETSKYS ACE HDWE	POOL SUPPLIES	28.80	REP. & MAINT. - BUILDING	203.203.223		Groves		491 00184
	KEY	5.98	REP. & MAINT. - BUILDING	101.142.223		Homstad		491 00372
	OFFICE SUPPLIES	24.98	OFFICE SUPPLIES	201.201.232		Kortan		491 00396
	WASP SPRAY	9.98	REP. & MAINT. - BUILDING	101.125.223		Mastalir		491 00408
	SMALL TOOL	13.99	SMALL TOOLS & HARDWARE	201.201.247		Pavel		491 00092
	FOUNTAIN REPAIR	8.98	REP. & MAINT. - BUILDING	201.201.223		Pavel		491 00274
	WINDSHIELD WASH	4.99	REP. & MAINT. -VEHICLES	101.127.222		Roinstad		491 00424
	EXIT LIGHT	44.93	REP. & MAINT. - BUILDING	801.801.223		Ulmer		491 00232
		142.63	*VENDOR TOTAL					
LA QUINTA INN WICHITA	TRAVEL EXPENSE	426.65	TRAVEL EXPENSE	701.701.263		Dobrovolny		491 00039
	TRAVEL EXPENSE	426.65	TRAVEL EXPENSE	101.142.263		Dobrovolny		491 00054
		853.30	*VENDOR TOTAL					
LANGUAGE LINE	TRANSLATION SERVICES	362.06	PROFESSIONAL SERVICES	101.111.202		Foote		491 00234
LEWIS AND CLARK FORD L	SALES TAX REFUND	6.14CR	GARAGE PARTS	801.801.249		Kulhavy		491 00052
	MULTI-POINT INSPECTION	107.14	GARAGE PARTS	801.801.249		Kulhavy		491 00080
	CAMERA REPAIR	364.07	GARAGE PARTS	801.801.249		Kulhavy		491 00152
	SWITCH	16.80	REP. & MAINT. - EQUIPMEN	101.114.221		Nickles		491 00238
		481.87	*VENDOR TOTAL					
LOCATORS & SUPPLIES IN	SAFETY APPAREL	55.05	UNIFORMS & DRY GOODS	101.123.244		Bailey		491 00124
	SAFETY APPAREL	94.96	UNIFORMS & DRY GOODS	801.801.244		Bailey		491 00178
	SAFETY APPAREL	39.99	UNIFORMS & DRY GOODS	101.127.244		Bailey		491 00179
	PAINT FOR LOCATING	457.85	REP. & MAINT. - COLLECTI	611.611.226		Robinson		491 00131
		647.85	*VENDOR TOTAL					
LOVES #602	TRAVEL EXPENSE	73.37	TRAVEL EXPENSE	601.601.263		Goodmanson		491 00209
MCMASTER-CARR	HOSE CONNECTORS	36.32	REP. & MAINT. - PLANT	611.611.221		Hanson		491 00002
MEAD LUMBER YANKTON	STAKING LUMBER	309.80	ROAD MATERIALS	101.123.239		Haberman		491 00231
	SAC SOFTBALL BATHROOMS	29.72	REP. & MAINT. - BUILDING	201.201.223		Pavel		491 00237
		339.52	*VENDOR TOTAL					
MENARDS YANKTON SD	AGRICIULTURAL SUPPLIES	37.46	AGRICULTURAL SUPPLIES	621.621.241		Bornitz		491 00001

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
MENARDS YANKTON SD								
	CAM LOCK FITTINGS	19.98	REP. & MAINT. - PLANT	601.601.221		Chytka		491 00252
	BUG SPRAY, BATTERIES	31.96	AGRICULTURAL SUPPLIES	601.601.241		Chytka		491 00304
	FAST CONCRETE	465.08	ROAD MATERIALS	101.123.239		Gobel		491 00321
	BLUE CHALK/BOLTS	13.46	ROAD MATERIALS	101.123.239		Gobel		491 00420
	DUAL SURFACE BRUSH	40.76	REP. & MAINT. - BUILDING	203.203.223		Groves		491 00212
	POOL FITTINGS	7.08	REP. & MAINT. - BUILDING	202.202.223		Groves		491 00287
	ANTIFREEZE/WINTERIZING	987.00	REP. & MAINT. - BUILDING	202.202.223		Groves		491 00324
	OFFICE SUPPLIES	59.02	OFFICE SUPPLIES	611.611.232		Hanson		491 00440
	WIPES	4.47	JANITORIAL SUPPLIES	101.125.236		Homstad		491 00075
	BANDSAW BLADE	19.99	REP. & MAINT. - BUILDING	101.125.223		Homstad		491 00103
	DISINFECT WIPES	8.37	JANITORIAL SUPPLIES	101.125.236		Homstad		491 00267
	SOFTBALL FIELD SUPPLIES	16.29	REP. & MAINT. - BUILDING	201.201.223		Knutson		491 00048
	FALL FLOWERS	60.05	AGRICULTURAL SUPPLIES	201.201.241		Kortan		491 00323
	HOSE	158.03	REP. & MAINT. - BUILDING	201.201.223		Kortan		491 00449
	TEXTURE	63.18	REP. & MAINT. - BUILDING	101.141.223		Mastalir		491 00004
	PADLOCK	20.98	REP. & MAINT. - BUILDING	101.125.223		Mastalir		491 00028
	GLOVES	27.20	REP. & MAINT. - BUILDING	101.125.223		Mastalir		491 00138
	WINDOW KIT	43.86	REP. & MAINT. - BUILDING	101.125.223		Mastalir		491 00173
	DRILL BIT, DRIVER SET	22.97	REP. & MAINT. - BUILDING	101.125.223		Mastalir		491 00286
	OUTLET COVERS	4.51	REP. & MAINT. - BUILDING	101.125.223		Mastalir		491 00370
	ELECTRICAL COVERS	24.29	REP. & MAINT. - BUILDING	101.125.223		Mastalir		491 00445
	HOSE/FLOOR JACK	262.60	SMALL TOOLS & HARDWARE	801.801.247		Nowak		491 00437
	IRRIGATION	10.86	AGRICULTURAL SUPPLIES	201.201.241		Pavel		491 00078
	IRRIGATION	35.94	AGRICULTURAL SUPPLIES	201.201.241		Pavel		491 00186
	SAC SOFTBALL BATHROOMS	17.08	REP. & MAINT. - BUILDING	201.201.223		Pavel		491 00219
	FOUNTAIN REPAIRS	3.89	SMALL TOOLS & HARDWARE	201.201.247		Pavel		491 00249
	FOUNTAIN REPAIRS	9.44	REP. & MAINT. - BUILDING	201.201.223		Pavel		491 00253
	FOUNTAIN REPAIRS	24.48	REP. & MAINT. - BUILDING	201.201.223		Pavel		491 00256
	FOUNTAIN REPAIRS	24.61	REP. & MAINT. - BUILDING	201.201.223		Pavel		491 00266
	HARDWARE	3.08	SMALL TOOLS & HARDWARE	201.201.247		Pavel		491 00298
	IRRIGATION	11.99	AGRICULTURAL SUPPLIES	201.201.241		Pavel		491 00398
	JANITORIAL SUPPLIES	39.02	JANITORIAL SUPPLIES	601.601.236		Peterson		491 00333
	SHOP TOWELS, ANTIFREEZE	246.82	GARAGE PARTS	801.801.249		Potts		491 00053
	MURIATIC ACID	71.92	JANITORIAL SUPPLIES	601.601.236		Rothermel		491 00139
	MURIATIC ACID	53.94	JANITORIAL SUPPLIES	601.601.236		Rothermel		491 00155
	BUSHING	2.49	REP. & MAINT. - PLANT	601.601.221		Rothermel		491 00318
	CAM LOCK	6.99	REP. & MAINT. - PLANT	601.601.221		Rothermel		491 00439
	BUSHING	3.43	REP. & MAINT. - EQUIPMEN	101.127.221		Ryken		491 00259
	CHAIN LUBE	25.98	REP. & MAINT. - EQUIPMEN	101.127.221		Ryken		491 00317
	CAPITAL BUILDING REPAIRS	15.98	REP. & MAINT. - BUILDING	201.201.223		Thompson		491 00299
	IRRIGATION	4.15	AGRICULTURAL SUPPLIES	201.201.241		Thompson		491 00447
	SHOP VACS	237.17	JANITORIAL SUPPLIES	203.203.236		Wattier		491 00194
	ADULT CRAFT	12.99	RECREATION SUPPLIES	701.701.242		Yankton Librar		491 00332
		3,260.84	*VENDOR TOTAL					
MIDWEST LABORATORIES I								
	BIOSOLIDS TESTING SUPPLY	123.95	PROFESSIONAL SERVICES	611.611.202		Hanson		491 00290

Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
MIDWEST TURF & IRRIGAT	TRUCK REPAIRS	77.39	REP. & MAINT. -VEHICLES	201.201.222		Jensen		491 00308
	IRRIGATION	2,270.24	AGRICULTURAL SUPPLIES	201.201.241		Kirchner		491 00167
		2,347.63	*VENDOR TOTAL					
NAPA AUTO PARTS	MOWER REPAIRS	51.46	REP. & MAINT. - EQUIPMEN	204.204.221		Jensen		491 00174
	MOWER REPAIRS	39.81	REP. & MAINT. - EQUIPMEN	201.201.221		Jensen		491 00383
	CUSHMAN REPAIRS	142.00	REP. & MAINT. - EQUIPMEN	201.201.221		Jensen		491 00402
	SWITCH	17.41	GARAGE PARTS	801.801.249		Nowak		491 00026
	HOSE AND FITTING	13.94	GARAGE PARTS	801.801.249		Nowak		491 00085
	AIR FILTER	178.72	GARAGE PARTS	801.801.249		Nowak		491 00205
	COUPLER AND LOVEJOY	278.74	GARAGE PARTS	801.801.249		Nowak		491 00411
	INSULATED SCREWDRIVER	64.99	SMALL TOOLS & HARDWARE	601.601.247		Robinson		491 00187
	GREASE	86.60	REP. & MAINT. - PLANT	601.601.221		Rothermel		491 00035
		873.67	*VENDOR TOTAL					
NORTHTOWN AUTOMOTIVE	CONTROL PANEL FOR #510	565.10	GARAGE PARTS	801.801.249		Kulhavy		491 00014
	RADIATOR	3,116.48	GARAGE PARTS	801.801.249		Kulhavy		491 00371
		3,681.58	*VENDOR TOTAL					
NSPE 888-285-6773	NSPE MEMBERSHIP	299.00	MEMBERSHIP DUES	101.122.261		Haberman		491 00093
OLSONS PEST TECHNICIAN	PEST CONTROL	185.00	PROFESSIONAL SERVICES	202.202.202		McHenry		491 00206
	PEST CONTROL	93.00	PROFESSIONAL SERVICES	101.142.202		Schmidt		491 00262
		278.00	*VENDOR TOTAL					
OREILLY AUTO PARTS 32	CONNECTOR	96.69	GARAGE PARTS	801.801.249		Kulhavy		491 00185
	SPOTLIGHT	18.80	GARAGE PARTS	801.801.249		Kulhavy		491 00204
	ROCKER SWITCH	11.99	GARAGE PARTS	801.801.249		Kulhavy		491 00224
	BRAKE ROTORS	559.94	GARAGE PARTS	801.801.249		Kulhavy		491 00329
	SHOP GLOVES	1,025.64	JANITORIAL SUPPLIES	801.801.236		Kulhavy		491 00368
	OIL FILTER	44.00	GARAGE PARTS	801.801.249		Kulhavy		491 00404
	ADHESIVE REMOVER	58.73	GARAGE PARTS	801.801.249		Potts		491 00270
		1,815.79	*VENDOR TOTAL					
OREILLY 3232	WIPER BLADES	16.78	GARAGE PARTS	801.801.249		Kulhavy		491 00011
	VENT VISOR	66.99	GARAGE PARTS	801.801.249		Kulhavy		491 00044
	OIL FILTER	5.29	GARAGE PARTS	801.801.249		Kulhavy		491 00055
	WASHER PUMP	33.59	GARAGE PARTS	801.801.249		Kulhavy		491 00087
		122.65	*VENDOR TOTAL					
OTC BRANDS INC	PARADE SUPPLIES	148.60	RECREATION SUPPLIES	203.203.242		Wattier		491 00143

Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
OVERDRIVE DIST	E-BOOKS	71.94	E-BOOKS	101.142.209		Schmidt		491 00072
	E-BOOKS	2,499.51	E-BOOKS	101.142.209		Schmidt		491 00239
	E-BOOKS	787.80	E-BOOKS	101.142.209		Schmidt		491 00450
		3,359.25	*VENDOR TOTAL					
PANCHEROS MEXICAN GRI	TRAVEL EXPENSE	10.45	TRAVEL EXPENSE	101.111.263		O'Farrell		491 00199
PERKINS RESTAURANT 383	TRAVEL EXPENSE	104.75	TRAVEL EXPENSE	601.601.263		Goodmanson		491 00157
PFEIFER IMPLEMENT CO.	EQUIPMENT REPAIR	21.07	REP. & MAINT. - EQUIPMEN	201.201.221		McHenry		491 00140
PFS HEALTHWORKS	CDL TESTING	35.18	PROFESSIONAL SERVICES	101.123.202		Bailey		491 00221
	CDL TESTING	35.18	PROFESSIONAL SERVICES	101.123.202		Bailey		491 00388
	CDL TESTING	35.18	PROFESSIONAL SERVICES	631.631.202		Bailey		491 00389
		105.54	*VENDOR TOTAL					
PHILLIPS 66 - WEST FOR	FUEL	73.13	TRAVEL EXPENSE	101.111.263		Yankton Police		491 00356
PICASSOS PIZZERIA	TRAVEL EXPENSE	27.37	TRAVEL EXPENSE	101.142.263		Dobrovolny		491 00036
PITNEY BOWES	POSTAGE	200.00	POSTAGE	101.142.231		Schmidt		491 00229
PITNEY BOWES PI	POSTAGE	80.97	POSTAGE	101.142.231		Schmidt		491 00030
PIZZA RANCH - YANKTON	CONCESSIONS	2,467.00	MISCELLANEOUS CONCESSION	202.202.728		Wattier		491 00429
PLAYAWAY PRODUCTS LLC	WONDERBOOKS	760.80	AV - CAPITAL	101.142.342		Schmidt		491 00222
	WONDERBOOKS	61.74	AV - CAPITAL	101.142.342		Schmidt		491 00436
		822.54	*VENDOR TOTAL					
PRO AUTO INC	TOWS	416.00	PROFESSIONAL SERVICES	101.111.202		Rothenberger		491 00412
PROVANTAGE	ANTIVIRUS	2,225.00	PROFESSIONAL SERVICES	101.105.202		Peters		491 00202
PUMP & PANTRY #46	TRAVEL EXPENSE	36.68	TRAVEL EXPENSE	101.142.263		Dobrovolny		491 00049

Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
RAYALLEN.COM ! JJDOG.C	REPLACEMENT DOG SENSOR	76.98	REP. & MAINT. - EQUIPMEN	101.111.221		Rothenberger		491 00373
RIVERSIDE HYDRAULICS I	CAPS	22.08	GARAGE PARTS	801.801.249		Kulhavy		491 00144
	HOSE	72.94	GARAGE PARTS	801.801.249		Kulhavy		491 00147
	CAPS,PLUG	15.40	GARAGE PARTS	801.801.249		Kulhavy		491 00156
	SNAP RING	18.15	GARAGE PARTS	801.801.249		Nowak		491 00068
	HOSE	52.04	GARAGE PARTS	801.801.249		Nowak		491 00247
	HYDRAULIC HOSE	444.36	GARAGE PARTS	801.801.249		Nowak		491 00297
	ADAPTER	9.44	GARAGE PARTS	801.801.249		Nowak		491 00367
	HOSE AND HYDRAULIC END	88.74	GARAGE PARTS	801.801.249		Nowak		491 00427
		723.15	*VENDOR TOTAL					
ROGUE	BENCH PRESS	1,064.25	EQUIPMENT	203.203.350		McHenry		491 00163
	SPIN BIKE/BENCHES	3,415.48	EQUIPMENT	203.203.350		McHenry		491 00347
		4,479.73	*VENDOR TOTAL					
RUSS BASSETT CORP	MONITOR MOUNT	651.50	EQUIPMENT	208.208.350		Johnson		491 00074
SANFORD LEARN CYBERSOU	TRAINING	50.00	LEARNING	101.111.264		Osborne		491 00121
SAPP BROS CENTER	TRAVEL EXPENSE	38.41	TRAVEL EXPENSE	101.142.263		Dobrovolny		491 00063
SD LIBRARY ASSOCIATION	SDLA MEMBERSHIP	81.00	MEMBERSHIP DUES	101.142.261		Yankton Librar		491 00182
SHERWIN WILLIAMS 70301	PAINT FOOTBALL FIELD	124.76	REP. & MAINT. - BUILDING	201.201.223		Gobel		491 00281
	ROAD PAINT	200.00	ROAD MATERIALS	101.123.239		Gobel		491 00312
		324.76	*VENDOR TOTAL					
SP A KIDS BOOK ABOUT	BOOKS	201.69	BOOKS	101.142.340		Yankton Librar		491 00083
	POSTAGE	29.99	POSTAGE	101.142.231		Yankton Librar		491 00084
		231.68	*VENDOR TOTAL					
SP SLEEVE SUPPLY	REFUND	1,011.49CR	SPECIAL EVENTS - ACTIVIT	211.231.575		McHenry		491 00448
SQ MAZING ACRES PUMPK	LIBRARY PROGRAM	62.00	RECREATION SUPPLIES	701.701.242		Schmidt		491 00008
SQ NATIONAL TACTICAL	NTOA DUES	35.00	MEMBERSHIP DUES	101.111.261		Rothenberger		491 00091

Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
STAN HOUSTON EQUIPMENT	GAS DETECTOR	505.00	REP. & MAINT. - PLANT	611.611.221		Hanson		491 00118
STAX YANKTON RADIO	ADVERTISEMENTS	488.00	ADVERTISING	203.203.211		Youmans		491 00015
STURDEVANTS-YANKTON #1	WEEDEATER REPAIRS	57.87	REP. & MAINT. - EQUIPMEN	201.201.221		Jensen		491 00181
	MOWER REPAIRS	5.11	REP. & MAINT. - EQUIPMEN	201.201.221		Jensen		491 00305
	MOWER REPAIRS	32.47	REP. & MAINT. - EQUIPMEN	201.201.221		Jensen		491 00385
	AIR FILTER	15.75	GARAGE PARTS	801.801.249		Nowak		491 00215
	FILTER	107.23	GARAGE PARTS	801.801.249		Nowak		491 00220
	FILTER	40.20	GARAGE PARTS	801.801.249		Nowak		491 00279
	FILTER	15.65	GARAGE PARTS	801.801.249		Nowak		491 00284
	FILTERS	69.52	GARAGE PARTS	801.801.249		Potts		491 00225
	FILTER	15.65	GARAGE PARTS	801.801.249		Potts		491 00226
	FILTERS	186.87	GARAGE PARTS	801.801.249		Potts		491 00228
	FILTER	64.32	GARAGE PARTS	801.801.249		Potts		491 00386
	FILTERS	257.53	GARAGE PARTS	801.801.249		Potts		491 00403
		868.17	*VENDOR TOTAL					
SUBWAY 49100	TRAVEL EXPENSE	17.89	TRAVEL EXPENSE	101.111.263		Yankton Police		491 00438
SUPPLYHOUSE.COM	MAU CONTROLLER	778.51	REP. & MAINT. - PLANT	611.611.221		Hanson		491 00022
TESSMAN COMPANY SIOUX	CHEMICALS	4,500.00	CHEMICALS & GASES	201.201.240		Kirchner		491 00197
	CHEMICALS	66.00	CHEMICALS & GASES	201.201.240		Kirchner		491 00426
		4,566.00	*VENDOR TOTAL					
TFS THERMOASHEVILLE	COLIFORM BATH CONTROLLER	387.94	REP. & MAINT. - PLANT	611.611.221		Hanson		491 00177
THE ATLANTIC	MAGAZINE SUBSCRIPTION	84.99	SUBSCRIPTIONS & PUBLICAT	101.142.235		Schmidt		491 00441
THE KITCHEN	TRAVEL EXPENSE	26.88	TRAVEL EXPENSE	701.701.263		Dobrovolny		491 00099
THE RUSHMORE HOTEL & S	LODGING	300.00	TRAVEL EXPENSE	101.111.263		O'Farrell		491 00137
THE STAR TRIBUNE CIRCU	NEWSPAPER SUBSCRIPTION	619.22	SUBSCRIPTIONS & PUBLICAT	101.142.235		Schmidt		491 00160
TITAN MACHINERY-YANKTO	CAB FILTER	138.84	REP. & MAINT. - EQUIPMEN	101.127.221		Ryken		491 00277

Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
TMA YANKTON								
	KUBOTA REPAIRS	278.00	REP. & MAINT. - EQUIPMEN	201.201.221		Jensen		491 00082
	KUBOTA REPAIRS	104.00	REP. & MAINT. - EQUIPMEN	204.204.221		Jensen		491 00407
	TIRES	120.00	REP. & MAINT. - EQUIPMEN	201.201.221		Jensen		491 00431
	ALIGNMENT	83.15	GARAGE PARTS	801.801.249		Kulhavy		491 00032
	FIRESTONE TIRES	577.32	GARAGE PARTS	801.801.249		Kulhavy		491 00041
	ALIGNMENT	83.15	GARAGE PARTS	801.801.249		Kulhavy		491 00101
	ALIGNMENT	83.15	GARAGE PARTS	801.801.249		Kulhavy		491 00116
	TIRES	638.08	GARAGE PARTS	801.801.249		Kulhavy		491 00136
	TIRES	900.12	GARAGE PARTS	801.801.249		Kulhavy		491 00176
	ALIGNMENT	83.15	GARAGE PARTS	801.801.249		Kulhavy		491 00343
	FIREHAWK TIRES	529.84	GARAGE PARTS	801.801.249		Kulhavy		491 00381
	ALIGNMENT	83.15	GARAGE PARTS	801.801.249		Kulhavy		491 00406
	TIRE	227.00	GARAGE PARTS	801.801.249		Nowak		491 00309
		3,790.11	*VENDOR TOTAL					
TRK HOSTING								
	INTERNET ACCESS	7.95	INTERNET ACCESS	101.105.270		Johnson		491 00246
TRUCK TRAILER SALES & MOTOR AND CONTROL		841.75	GARAGE PARTS	801.801.249		Nowak		491 00010
CORDS		390.75	GARAGE PARTS	801.801.249		Nowak		491 00034
BRACKET, GROMMET, LIGHTS		592.25	GARAGE PARTS	801.801.249		Nowak		491 00112
PLUG		20.34	GARAGE PARTS	801.801.249		Nowak		491 00211
HARDWARE FOR COOLER KIT		979.25	GARAGE PARTS	801.801.249		Nowak		491 00399
		2,824.34	*VENDOR TOTAL					
TST BIONIC BURGER - 6								
	TRAVEL EXPENSE	9.97	TRAVEL EXPENSE	101.142.263		Dobrovolny		491 00086
TST BLARNEYS SPORTS B								
	TRAVEL EXPENSE	78.24	TRAVEL EXPENSE	611.611.263		Goodmanson		491 00150
TST LOTUS LEAF CAFE								
	TRAVEL EXPENSE	52.01	TRAVEL EXPENSE	101.142.263		Dobrovolny		491 00056
TST PAULYS PIZZERIA &								
	TRAVEL EXPENSE	9.84	TRAVEL EXPENSE	101.111.263		O'Farrell		491 00230
USPS PO 4698100078								
	POSTAGE	3.27	POSTAGE	101.106.231		Homstad		491 00410
	POSTAGE	44.75	POSTAGE	101.111.231		O'Farrell		491 00029
	POSTAGE	37.70	POSTAGE	101.111.231		O'Farrell		491 00394
	POSTAGE	37.70	POSTAGE	101.111.231		Osborne		491 00261
	EVIDENCE SHIPPING	20.10	POSTAGE	101.111.231		Osborne		491 00446
	POSTAGE	52.80	POSTAGE	101.142.231		Schmidt		491 00392
		196.32	*VENDOR TOTAL					
VIDDLER INC								
	VIDEO HOSTING	41.49	PROFESSIONAL SERVICES	101.101.202		Johnson		491 00260

Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
VITALITY MEDMED STORE	SHARP CONTAINERS	968.65	PROFESSIONAL SERVICES &	637.637.202		Potts		491 00175
VWR INTERNATIONAL INC	LAB SUPPLIES	39.06	MEDICAL,SAFETY, & LAB. S	611.611.243		Hoilien		491 00295
VZWRLSS MY VZ VB P	INTERNET ACCESS	1,067.00	INTERNET ACCESS	101.105.270		Johnson		491 00079
	INTERNET ACCESS	80.02	TELEPHONE	101.114.271		Johnson		491 00081
	INTERNET ACCESS	80.02	INTERNET ACCESS	101.105.270		Johnson		491 00088
	INTERNET ACCESS	57.30	INTERNET ACCESS	101.105.270		Johnson		491 00102
		1,284.34	*VENDOR TOTAL					
WAL-MART #1483	OFFICE SUPPLIES	20.59	OFFICE SUPPLIES	201.201.232		Kortan		491 00070
	SMOKE DETECTORS	223.61	PREVENTION	101.114.268		Linke		491 00019
	PRINTER	59.00	OFFICE SUPPLIES	101.127.232		Morrow		491 00428
	FRUIT FRIDAY, SUPPLIES	104.74	RECREATION SUPPLIES	203.203.242		Wattier		491 00172
		407.94	*VENDOR TOTAL					
WALMART.COM	PROGRAM SUPPLIES	73.55	PROGRAM SUPPLIES	101.142.242		Schmidt		491 00208
	OFFICE SUPPLY	44.44	OFFICE SUPPLIES	101.104.232		Yardley		491 00213
		117.99	*VENDOR TOTAL					
WALMART.COM 8009666546	LICENSE PAPER	25.29	OFFICE SUPPLIES	101.104.232		Yardley		491 00272
WEF MAIN	WEF MEMBERSHIP	82.50	MEMBERSHIP DUES	611.611.261		Hanson		491 00357
WM SUPERCENTER #1483	EMPLOYEE APPRECIATION	82.60	EMPLOYEE COMMITTEE	101.107.141		Bailey		491 00024
	EMPLOYEE APPRECIATION	115.56	EMPLOYEE COMMITTEE	101.107.141		Bailey		491 00033
	OFFICE SUPPLIES	9.86	OFFICE SUPPLIES	101.107.232		Bailey		491 00195
	EMPLOYEE BREAKFAST	41.36	EMPLOYEE COMMITTEE	101.107.141		Bailey		491 00196
	BATTERIES, OFFICE SUPPLY	46.90	OFFICE SUPPLIES	208.208.232		Hussein		491 00141
	POWER ADAPTER	16.76	OFFICE SUPPLIES	208.208.232		Johnson		491 00210
	FALL PLANTS	33.85	AGRICULTURAL SUPPLIES	201.201.241		Kortan		491 00293
	DISTILLED WATER	2.68	MEDICAL,SAFETY, & LAB. S	601.601.243		Miles		491 00188
	EVIDENCE BAGS	16.16	OFFICE SUPPLIES	101.111.232		O'Farrell		491 00423
	CLEANING WIPES	19.94	OFFICE SUPPLIES	101.111.232		Rothenberger		491 00066
	LEGAL PADS, ENVELOPES	72.12	OFFICE SUPPLIES	101.111.232		Rothenberger		491 00422
	AIR FRESHENER	10.96	JANITORIAL SUPPLIES	601.601.236		Rothermel		491 00129
	FRUIT FRIDAY	67.74	RECREATION SUPPLIES	203.203.242		Wattier		491 00065
	FRUIT	49.64	RECREATION SUPPLIES	203.203.242		Wattier		491 00282
	CLEANER	67.85	JANITORIAL SUPPLIES	203.203.236		Wattier		491 00283
	FRUIT FRIDAYS	129.23	RECREATION SUPPLIES	203.203.242		Wattier		491 00369
	DVD	19.96	AV - CAPITAL	101.142.342		Yankton Librar		491 00012
	OFFICE SUPPLIES	65.88	OFFICE SUPPLIES	101.142.232		Yankton Librar		491 00013
	PROGRAM SUPPLIES	51.71	PROGRAM SUPPLIES	101.142.242		Yankton Librar		491 00192



Credit Card Schedule of Bills

VENDOR NAME	DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P ID LINE
WM SUPERCENTER #1483		920.76	*VENDOR TOTAL					
WWW.BROWNELLSINC.COM	BUFFER SPRINGS FOR RIFLE	22.98	REP. & MAINT. - EQUIPMEN	101.111.221		Rothenberger		491 00203
WYNDHAM GARDEN WICHITA	TRAVEL EXPENSE	111.60	TRAVEL EXPENSE	101.142.263		Dobrovolny		491 00089
YANKTON JANITORIAL	CAN LINERS,FLOOR CLEANER	137.50	JANITORIAL SUPPLIES	101.141.236		Mastalir		491 00007
	JANITORIAL SUPPLIES	294.85	JANITORIAL SUPPLIES	101.125.236		Mastalir		491 00264
		432.35	*VENDOR TOTAL					
YANKTON MEDICAL CLINIC	RANDOM TESTING	157.00	PROFESSIONAL SERVICES	201.201.202		Bailey		491 00094
	RANDOM TESTING	60.00	PROFESSIONAL SERVICES	611.611.202		Bailey		491 00095
	RANDOM TESTING	114.00	PROFESSIONAL SERVICES	101.111.202		Bailey		491 00096
	RANDOM TESTING	38.00	PROFESSIONAL SERVICES	101.102.202		Bailey		491 00097
	RANDOM TESTING	120.00	PROFESSIONAL SERVICES -	101.104.202		Bailey		491 00098
		489.00	*VENDOR TOTAL					
YANKTON NURSERIES LLC	MEMORIAL TREE	129.00	AGRICULTURAL SUPPLIES	201.201.241		Kortan		491 00003
YANKTON THRIVE	LEADERSHIP CLASS	199.00	LEARNING	101.114.264		Linke		491 00233
YANKTON WINNELSON CO	BATHROOM REPAIRS	205.00	REP. & MAINT. - BUILDING	201.201.223		Pavel		491 00311
YANKTONMEDIAINC	FINANCIAL EXHIBITS	295.10	PUBLISHING	101.101.211		Lockwood		491 00444
1 OFFICE SOLUTION	CHAIR MAT	138.70	BUILDING REPAIR & MAINT.	637.637.223		Potts		491 00316
	POS PAPER/ENVELOPES	42.05	OFFICE SUPPLIES	101.127.232		Roinstad		491 00104
		180.75	*VENDOR TOTAL					

Credit Card Schedule of Bills

VENDOR NAME								
DESCRIPTION	AMOUNT	ACCOUNT NAME	FUND & ACCOUNT	CLAIM	INVOICE	PO#	F/P	ID LINE
REPORT TOTALS:	98,877.69							

RECORDS PRINTED - 000449

FUND RECAP:

FUND	DESCRIPTION	DISBURSEMENTS
101	GENERAL FUND	32,330.43
201	PARKS AND RECREATION	11,669.99
202	HUETHER FAMILY AQUATICS CTR	4,004.26
203	SUMMIT ACTIVITY CENTER	7,849.70
204	MARNE CREEK	613.83
208	911/DISPATCH	1,381.36
211	LODGING SALES TAX	618.02 CR
601	WATER OPERATION	10,219.82
602	WATER RENEWAL/REPLACEMENT	4,705.59
611	WASTE WATER OPERATION	5,313.15
621	CEMETERY OPERATION	128.41
631	SOLID WASTE	85.18
637	JOINT POWER	1,454.05
701	LIBRARY TRUST	1,283.99
801	CENTRAL GARAGE	18,455.95
TOTAL ALL FUNDS		98,877.69

BANK RECAP:

BANK	NAME	DISBURSEMENTS
1DAK	FIRST DAKOTA NAT'L BANK CORP	98,877.69
TOTAL ALL BANKS		98,877.69

THE PRECEDING LIST OF BILLS PAYABLE WAS REVIEWED AND APPROVED FOR PAYMENT.

DATE ..... APPROVED BY .....

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## OFFICE OF THE CITY MANAGER

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

VOL. 58 NUMBER 19

### Commission Information Memorandum

The Yankton City Commission meeting on Monday, October 9, 2023 will begin at 7:00 pm.

#### Non-Agenda Items of Interest

##### 1) Finance Department Update

The Finance Office is currently working with local businesses on their annual liquor and video licenses which renew on January 1, 2024. Many other licenses such as plumber, electrician, and movie theatre licenses expire at the end of the year and will be assisted with their renewals for January 1st as well. The exception to these licensing renewals are for malt beverage and restaurants which renew on July 1st each year.

The Finance Office will not be assisting the Yankton County Auditor's office for November 7th election day due to there being no election this year.

The City of Yankton is having a surplus vehicle and equipment online auction on [www.purplewave.com](http://www.purplewave.com) which concludes at 10:00 a.m. CST on Tuesday October 31, 2023. Several items include a 2011 Chevrolet Tahoe, 2008 Ford F150, 2022 Cor-tech recycle trailer, 2002 Chevrolet 3500 flatbed pickup, 1996 Cor-tech recycle trailer, homemade trailer with a water tank, tire balancer, tire machine, semi tire lift, bumper jack, air compressor, sweeper brooms, and miscellaneous police vehicle equipment.

##### 2) Parks and Recreation Department Update

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

##### 3) Human Resources & Employee Engagement Department Update

We are accepting applications for full time Police Officers. This position will remain open until filled. Interested applicants can visit [cityofyankton.org](http://cityofyankton.org) and click on the Employment tab for information, or directly contact the Human Resource Department.

We continue to accept applications for Deputy Finance Officer. The position is open until filled. The Finance Generalist position closed September 20. Six interviews were conducted from a pool of nine applicants. A recommendation for hire will be forthcoming.

The City of Yankton's October's presentation by Well 365 out of Sioux Falls will focus on Finance Matter: Budget, Saving & More. During this session there will be tips and tricks for financial management for an individual or a family to include budgeting and saving. The presentation will be distributed to staff during the third week of the month.

We continue to accept applications for Part Time Lifeguard and Water Safety Instructors for the Summit Activities Center/Parks and Recreation Department.

The Employee Committee hosted an appreciation breakfast for all employees on Wednesday, September 27. Hy-Vee provided some great food and the comradery among employees was a fun time.

Flu shots have been scheduled for employees on Wednesday, October 11, and Wednesday, October 18. Flu shots will be provided by Yankton Medical Clinic this year.

The City of Yankton Annual Halloween Door Decorating Contest is underway. The contest will run for the month of October with judging being held October 30.

#### 4) Library Update

The Friends of the Yankton Community Library will be hosting their final sale of 2023 from Thursday, October 12, through Monday, October 16. The first day of the sale (Thursday from 4pm-6pm) is reserved for members only shopping. This has been a popular “perk” for those with a Friends membership. On Friday you can find hardcovers for \$1 and paperbacks for \$.50, along with puzzles and board games for \$3.00. On Monday from 9am-12pm, the Friends are hosting an appreciation event for all of their members and supporters. All remaining books will be free in an effort to clear space for new donations. Coffee and cookies will be served during this time.

The national Friends of the Library appreciation week is the third week of October. The Friends sponsored all eight of our summer performers along with other additions to the library which are not in our regular budget. Some of these items include the ever popular fish tank, the new bench on the south side of the building, and toys that are used for our Stay & Play events. We are truly grateful to our Friends group and all the work they put into their successful book sales and supporting our library.

#### 5) Public Works Department Update

Street Department crews have been patching asphalt on various streets throughout the city. Crews have also been street sweeping as leaves have started to drop from the trees. As the schools complete their artwork on the snowplows for the annual Paint the Plow Program, the plows will be returned to the Street Department location and prepped to be placed into service.

**3rd Street & Green Street Reconstruction:** The contractor has the base in place and the project is ready for concrete installation. Masonry Components is planning on mobilizing to the site the week of October 2nd and has estimated it will take about two weeks to complete all the concrete work.

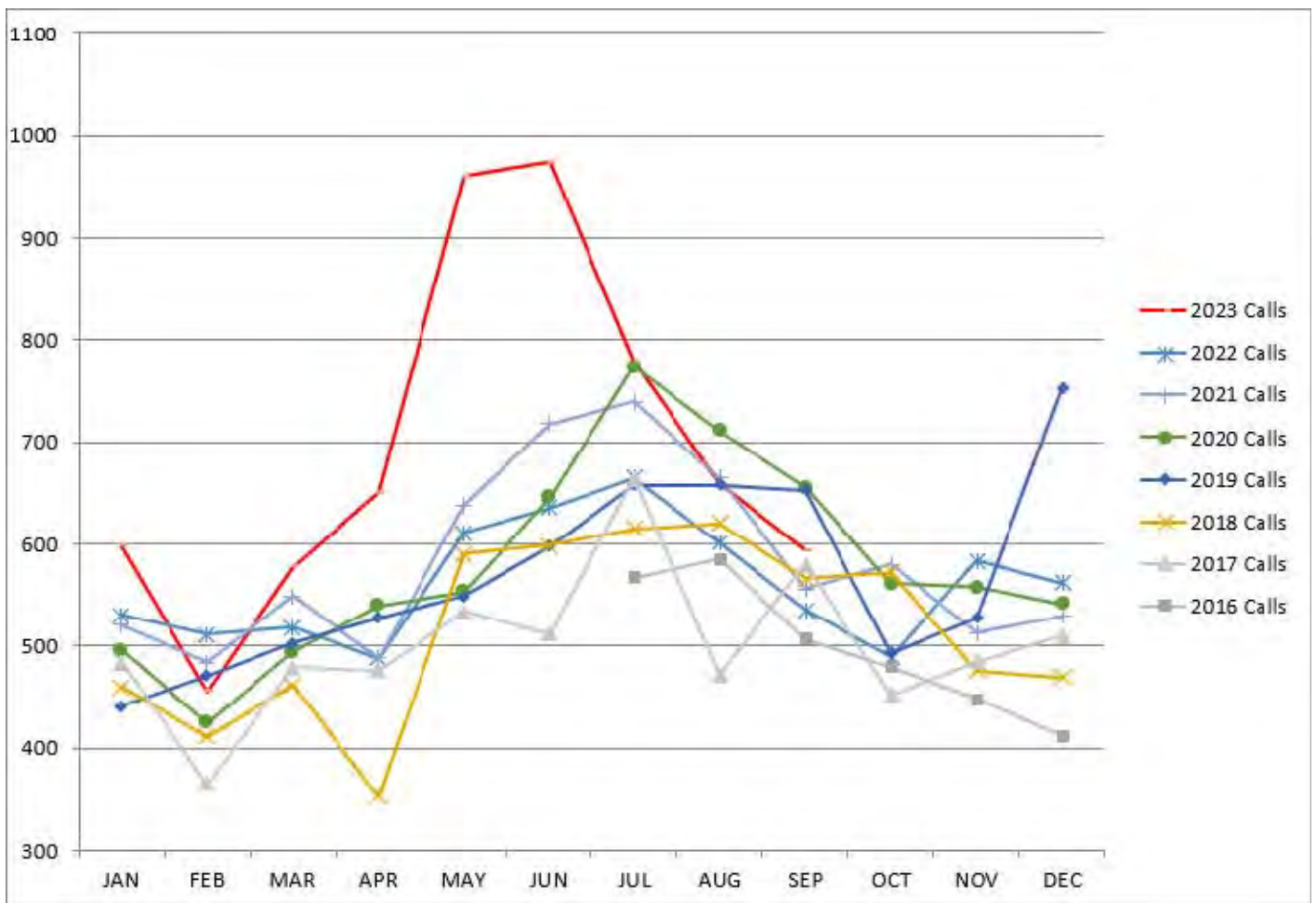
**Elm Street from 20th Street to 21st Street:** Zacharias Construction is just about finished with the base installation and it is expected Katzer Concrete will move in and begin placing concrete. Similar to the 3rd Street project, the contractor expects this work to be complete within a couple of weeks.

**Mead Development:** Masonry Components wasn’t able to complete as much street paving work as they had planned the week of September 24th as their concrete supplier was out of cement. The contractor anticipates the remaining concrete work should be complete the week of October 2nd. Finished grading should be complete the week of October 2nd as well.

## 6) Information & Technology Services Update

IT staff has been assisting the library with setup of the new patron circulation laptops. The laptops will be secured utilizing a variety of software and hardware solutions to maintain a consistent and stable operating system. After each use, the laptop returns to its default configuration. The laptops and cellular internet hot spots will be available to be checked out through the library in the coming months.

911 calls for the month of September (594) were still above last year's numbers (535) but more in line with normal historic call volumes. 911 calls for the year are up 22.6%. Two of our dispatchers attended the regional Dakota 911 conference in Grand Forks, North Dakota which was held September 18-21. A wide variety of topics were covered as well as an opportunity to network with vendors. Two of Yankton's dispatcher's will be traveling to Pierre the first week of October to assist with the state 911 dispatcher training program.



## 7) Community & Economic Department Update

In addition to some larger planned facility maintenance and improvement projects, it's the time of year when we pay some special attention to our facilities to make sure things are ready for the winter. Recent and upcoming activities include:

- The Library roofing project is completed and looks good. The installation of the new membrane presented an opportunity to eliminate several rooftop penetrations which should serve us well and reduce ongoing maintenance demands that the older system needed.

- The City Hall wiring project continues to work its way through the phased replacement of a significant portion of the core electrical equipment in the building, some of which dates back to the 1950's. The next substantial project will begin within a couple months. It's also time to exercise the boilers to make sure the heating system is ready to roll. We are getting the surrounding landscaping in shape for winter.
- We were fortunate to get through this cooling season at The Center without any major rooftop unit issues. We have some older units up there and plan a phased replacement schedule beginning in 2025. We also have a flooring (carpet) replacement project scheduled for this fall. The grounds look good and are ready for winter.
- We will be taking a final look at the downtown parking lots before the snow comes. There always seems to be some landscaping and vegetation touch ups needed before the onset of winter.

### **8) Environmental Services Department Update**

Wastewater staff received only one quote for biosolids application. The quote was \$0.04 per gallon. This is about \$0.01 higher than past years. This will cost approximately \$20,000.00 more than the budgeted amount of \$60,000.00. Staff will be taking down a digester for inspection ahead of the next phase of design. This will result in slightly higher volume of biosolids than average years.

Biosolids are captured in the primary and secondary clarification treatment process and fed to three anaerobic digestors. The digestors utilize anaerobic bacteria to treat and reduce the solids. The methane byproduct produced is captured and used to fuel heat exchangers. The biosolids are maintained at 95 degrees F for over 60 days within the digestors to insure proper treatment and solids reduction. After digestion, the sludge is pumped to a lagoon system. The biosolids are reduced further and broken down to a safe pathogen free product. The water is removed, and the final product is land applied in the fall as fertilizer.

A copy of the Department of Environment and Natural Resources approved Biosolids Management Plan for the City of Yankton can be found on the website.

<http://www.cityofyankton.org/departments-services/wastewater/biosolids-recycling-process>

Please remember to visit [sdwaterpipes.com](http://sdwaterpipes.com) and complete your lead pipe survey.

### **9) Police Department Update**

Commander Rothenberger and Chief Foote attended a Peer Support Conference in Des Moines. This conference was beneficial to see what the impact of being a first responder has on your mental health and wellbeing, even into retirement. We took away several ideas that we will be bringing forward to help our department continue to grow as we take care of all of our first responders.

The City of Yankton Police Department School Resource Officers participated in Spirit Week for Yankton's homecoming celebration. Check out the Yankton Police Department's Facebook page to see some great photos of Officer Jeremy Olson and Officer Skyler Russenberger participating and showing their school spirit.

On October 1, the Mount Marty University softball team held a first responder appreciation event at Sertoma Fields. A home run derby was held and Officer Cameron Voigt took home first place honors. This event was attended by the Yankton County Sheriff's Office, Yankton Police

Department, and Yankton Fire Department. We really appreciate the support we get from Mounty Marty University, especially their softball team!

In participation of Faith and Blue Weekend, members of the Police Department and their families served hamburgers, hotdogs and chips for a free will donation at the Yankton High School football game on October 6. All money raised goes to the Yankton School District Sack Pack Program that sends weekend meals home for kids in the district.

The Yankton Police Department has been approved as a partner with the Department of Defense SkillBridge Program. As a partner, we can hire military members up to 180 days before they are set to transition out of the military and into civilian life. The U.S. Department of Defense continues to pay the service member's salary and benefits while they participate in SkillBridge. This opportunity may last up to the final 180 days of service. Thanks to the hard work of our Human Resources Department, we have our first hire starting in October. The Yankton Police Department is the only agency in South Dakota participating in this program for police officers.

During the month of October, City of Yankton Police Officers will be wearing pink and purple Yankton Police Department patches. This is in support of Domestic Violence Awareness and Prevention Month, and Breast Cancer Awareness and Prevention Month.

**10) Fire Department Update**

The volunteers hosted an annual retiree dinner on October 2. This annual event recognizes members who served and retired as a volunteer. There are always a lot of great stories and traditions to pass on during these festivities.

Fire Prevention week is October 8-14. Chief Linke recorded fire prevention messages for KYNT which will air periodically during the week. A contingent of members will be providing fire station tours and presentations at the local elementary schools. The open house will be on Wednesday, October 11, from 5:30 PM to 7:00 PM at Station 2. Members of the community will have an opportunity to tour Station 2 and get their hands on some fire trucks.

Yankton Fire has responded to a total of 321 incidents this year as of this writing.

**11) Monthly reports**

The Building, Salary and Yankton Police Department monthly reports are 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



PARKS AND RECREATION DEPARTMENT

**SUMMIT ACTIVITIES CENTER and RECREATION PROGRAMS**

**Summit Activities Center Membership Information:**

	Current	Last	Change
○ Active & Fit/Renew Active/Silver Sneakers	139	135	4
○ Adult Annual	168	81	87
○ Adult plus 3	3	0	3
○ Adult EFT	38	49	-11
○ Adult EFT plus 1	14	0	14
○ Adult EFT plus 3	4	0	4
○ Adult EFT plus 4	5	0	5
○ Adult Monthly	133	99	34
○ Adult Monthly plus 1	1	0	1
○ City of Yankton Single	62	61	1
○ Firefighter Single	19	19	0
○ 10 Use Punch card	29	57	-28
○ Individual Annual		91	-91
○ Individual Monthly		1	-1
○ Radio	41	41	0
○ Youth Annual	53	41	12
○ Youth EFT	2	12	-10
○ Youth Monthly	94	51	43
<b>Total # of Active Members</b>	<b>805</b>	<b>738</b>	<b>67</b>

- Mid-February 2023- total memberships peaked at 861.
  - Last year at the end of September, we had 636 active memberships.
  - In September of 2019 (pre-pandemic), we had 1,041 memberships on the books.
- Attendance – 1,625 (1,625 SAC, **No GL stats at the time of this report**) compared to 1,253 (SAC only) in second-half of September 2022.
- Total Cash Revenue at the SAC 9/16-30/23 – \$18,625.49 compared to \$11,839.07 in second-half of September 2022.
- Great Life Reimbursement Payment:
  - August 2023: \$2,184.00 (\$1,653.00 – August 2022)

**Saturday, September 16, 2023**

- SAC Pool re-opened after completed Cleaning and Maintenance

**Monday, September 18, 2023**

- Start of new software at the SAC. Switched from Active Net to Civic Rec.

**Sunday, September 24, 2023**

- **SAC Utility Day Passes Used**
  - 1 Coupon (2 Adult)

**Wednesday, September 27, 2023**

- **SAC Library Day Passes Used**
  - 1 Coupon (2 Adult, 3 children)

**Additional SAC Information for first half of Sept.:**

- **Aqua Zumba**
  - Participation – 41 Participants (69 for the Month)
- **Power Abs**
  - Participation – 30 Participants (55 for the Month)
- **Power Yoga**
  - Participation – 25 Participants (50 for the Month)
- **Prime Time Senior Class**
  - Participation – 35 Participants (68 for the Month)
- **Strength & Flexibility**
  - Participation – 26 Participants (69 for the Month)
- **Tabata**
  - Participation – 31 Participants (56 for the Month)
- **Trim & Tone**
  - Participation – 20 Participants (34 for the Month)
- **Turbo Kick**
  - Participation – 4 Participants (9 for the Month)
- **Wake UP**
  - Participation – 12 Participants (28 for the Month)
- **Water Aerobics Classes**
  - Participation – 93 Participants (154 for the Month)
- **Work Out Express Class**
  - Participation – 4 Participants (7 for the Month)
- **Yoga**
  - Participation – 10 Participants (29 for the Month)

- **Zumba**
  - Participation – 23 Participants (48 for the Month)
- **Zumba Gold**
  - Participation – 58 Participants (101 for the Month)
- **Birthday Party Rentals**
  - Participation – 3 Birthday Parties (3 for the Month)
- **Private Pool Party Rentals**
  - Hours Rented – 2 Hours (2 for the Month)
- **Auxiliary/Main Gym Rentals**
  - Hours Rented – 0 Hours ( for the Month)
- **Theater Rentals**
  - Hours Rented – 13 Hours (13 for the Month)
- **Meeting Rooms**
  - Hours Rented – 0 Hours ( for the Month)
- **City Hall Rentals**
  - Hours Rented – 0 Hours ( for the Month)
- **Capital Building Rentals**
  - Days Rented – 4 (6 for the Month)
- **Park Shelters**
  - Riverside - 5 Rentals
  - Memorial – 1 Rentals
  - Westside – 0 Rental
  - Meridian Bridge – 0 Rental

## **PARKS**

The City has not received final notification on the status of the Land, Water, Conservation Fund grant for resurfacing the courts in Westside Park and converting them into pickleball courts. The proposal has been approved by the State of SD and now needs approval from the National Parks Service. The amount of the award will be \$34,000 should it be approved.

Luke is working with outside organizations and their special event applications and events for this fall.

Luke has started to plan for the 2023 Holiday Festival of Lights. The theme is “A Frosty Evening.”

The Parks Staff are utilizing the new Field Leveler/Groomer and are leveling the infield on the northwest field in the south complex at Sertoma Park. Once the infield is complete, the staff will work on the southwest field’s infield. This could be a fall project or it may need to be finished up in the spring if weather does not allow for completion in the fall/early winter.

There are 46 lights in the Walnut Street corridor between 4<sup>th</sup> Street and 2<sup>nd</sup> Street that are up-lights for the trees. We were able to work with the technology and were able to get all but one light to work properly. The lights are controlled by Bluetooth on a handheld device when standing right next to the light and the light colors can be changed using the handheld device. We will order a new light to replace the one malfunctioning light.

The ball fields at Sertoma Park, Summit Activities Center, and Riverside Park are being dragged and prepared each weekday according to practice and game schedules submitted to the Parks Department.

The Parks staff has and will move bleachers, benches, trash cans, and other items for the events which will be taking place in Yankton on weekends in the fall.

The Parks Department worked with the Yankton Youth Soccer Association to have the new soccer complex fertilized this fall. The staff are also aerating the soccer fields at the new complex.

Les Kirchner has started the process of turning off water to certain parks facilities. The goal is to have all the water shut off in the parks system by October 30. That date can be earlier as the department monitors nighttime temperatures to avoid damage caused by freezing.

Lisa Kortan has been working with some private individuals for our Memorial Tree Sponsorship Program. Three plantings and memorial stones are being placed this fall. We also have had a couple of benches donated.

# City of Yankton Building Report

Permits Issued in the month of September, 2023

Issue Date	Permit #	Owner Name & Address	Use	Valuation	Contractor Name & Address	Fees
09/01/2023	BLDG-23-0184	HAASE, HARRISON 3717 Peninah St.	ETJ - Single Family Home - New	\$250,000.00	HAASE, HARRISON 2514 COLTON AVE YANKTON, SD 57078	\$45.00
09/05/2023	BLDG-23-0185	HORSESHOE BEND LLC 105 DONOHOE BLVD	Single Family Home - New	\$167,228.00	HORSESHOE BEND LLC 179 SHERWOOD DR YANKTON, SD 57078	\$439.00
09/06/2023	BLDG-23-0186	NYQUIST, CHARLES A REV TRUST 1003 SUMMIT ST	Single Family Home - Alteration/Repair - Deck	\$18,000.00	Greg Andersh Construction P.O. Box 131 Wagner, SD 57380	\$96.50
09/07/2023	BLDG-23-0187	DTMW LLC 215 MULBERRY ST	Commercial - Alteration/Repair-Wall Addition	\$20,000.00	DTMW LLC 1501 Summit Street YANKTON, SD 57078	\$104.50
09/13/2023	BLDG-23-0188	AANNING, H LARS REV TRUST 803 WEST 8 ST	Exterior-Siding	\$30,000.00	Greg Andersh Construction P.O. Box 131 Wagner, SD 57380	\$20.00
09/13/2023	BLDG-23-0189	MARQUARDT, JOHN R 2809 WEST CITY LIMITS RD	Single Family Home - Accessory Structure-Garage	\$15,000.00	CHARETTE, GENE 410 DOUGLAS AVE YANKTON, SD 57078	\$84.50
09/13/2023	BLDG-23-0190	UNDERBERG, KATIE 300 NORTHERN AVE	Exterior-Windows	\$25,000.00	CNE Construction LLC 403 TULIP LANE YANKTON, SD 57078	\$20.00
09/13/2023	BLDG-23-0191	BRINKERHOFF, MICHAEL L 501 SAWGRASS ST	Single Family Home - Alteration/Repair-Deck	\$2,240.00	CNE Construction LLC 403 TULIP LANE YANKTON, SD 57078	\$36.50
09/14/2023	BLDG-23-0192	HANSEN, AARON M 1105 PASQUE CT	Exterior- Roofing	\$9,300.00	Williams Brothers Construction 2901 Adkins Dr. Yankton, SD 57078	\$20.00
09/14/2023	BLDG-23-0193	LARSON, GUY W 709 RIVERSIDE DR	Exterior-Siding, Windows	\$60,000.00	LARSON, GUY W 30370 438 AVE YANKTON, SD 57078	\$20.00
09/15/2023	BLDG-23-0194	CITY OF YANKTON 515 WALNUT ST	Commercial - Alteration/Repair-Roofing	\$201,179.00	MJ Dalsin Roofing 1008 W. Delaware St. SIOUX FALLS, SD 57104	\$0.00
09/15/2023	BLDG-23-0195	Voided				
09/15/2023	BLDG-23-0196	KOPETSKY, CAROL A REV TRUST 103 WEST 3 ST	Commercial - Alteration/Repair-Windows	\$35,000.00	L & L ENTERPRISES, LLC 600 EAST 18TH Yankton, SD 57078	\$159.50

09/18/2023	BLDG-23-0197	KOTALIK, STACY K 1112 CEDAR ST	Exterior-Windows	\$3,700.00	Your Home Improvement 614 2nd Street South WAITE PARK, MN 56387	\$20.00
09/20/2023	BLDG-23-0198	BOE, DAVID L 106 EAST 17 ST	Exterior-Roofing	\$4,685.00	A+ IMPROVEMENTS INC PO BOX 111 YANKTON, SD 57078	\$20.00
09/20/2023	BLDG-23-0199	JW TRAMP CONSTRUCTION INC 1905 KELLEN GROSS DR	Multi Family Home - New- 6 plex	\$673,716.00	JW TRAMP CONSTRUCTION INC 2400 BURLEIGH ST YANKTON, SD 57078	\$1,198.00
09/20/2023	BLDG-23-0200	YANKTON RENTAL PROPERTIES LL 617 BROADWAY AVE	Single Family Home - Alteration/Repair- Deck	\$2,500.00	YANKTON RENTAL PROPERTIES LL 12156 Lake Rd. BROWNS VALLEY, MN 56219	\$36.50
09/22/2023	BLDG-23-0201	LABUFF, NANCY 101 WEST 31 ST	Single Family Home - Addition-Deck	\$10,000.00	K CONSTRUCTION LLC PO BOX 519 YANKTON, SD 57078	\$64.50
09/22/2023	BLDG-23-0202	POSPISIL, DANIEL D 1517 DOUGLAS AVE	Exterior- Roofing	\$450.00	POSPISIL, DANIEL D 144 SCENIC DR YANKTON, SD 57078	\$20.00
09/22/2023	BLDG-23-0203	KRIENERT, BLAKE P 2517 DORIAN DR	Single Family Home - Accessory Structure- Pergola	\$7,500.00	KRIENERT, BLAKE P 2517 DORIAN DR YANKTON, SD 57078	\$56.50
09/25/2023	BLDG-23-0204	LINDSAY WATER CONDITIONING 207 Pine St.	Commercial - New	\$167,000.00	SV Construction 710 Prairieside Trail Harrisburg, SD 57032	\$437.50
09/28/2023	BLDG-23-0205	See October Report				
09/29/2023	BLDG-23-0206	DAISY, JERROD 816 MAPLE ST	Single Family Home - Addition-Deck	\$69,000.00	QUALITY HOME IMPROVEMENTS LLC. 2200 DOUGLAS #57 YANKTON, SD 57078	\$259.50

**(September 2023) Total Valuation: \$1,771,498.00**

**Total Fees: \$3,158.00**

**(September 2022) Total Valuation: \$684,074.73**

**(2023) to Date Valuation: \$76,401,100.55**

**(2022) to Date Valuation: \$26,865,470.74**

**Salaries by Department: September 2023**

ADMINISTRATION	\$84,161.13
FINANCE	\$56,336.17
COMMUNITY	
DEVELOPMENT	\$45,194.22
POLICE/DISPATCH	\$310,666.04
FIRE	\$22,574.19
ENGINEERING / SR.	
CITIZENS	\$74,558.66
STREETS	\$85,906.41
TRAFFIC CONTROL	\$7,055.01
LIBRARY	\$56,204.20
PARKS / SAC	\$128,003.72
HUETHER AQUATICS	\$56,423.30
MARNE CREEK	\$13,750.28
WATER	\$70,530.69
WASTEWATER	\$68,803.69
CEMETERY	\$10,059.06
SOLID WASTE	\$42,696.67
LANDFILL / RECYCLE	\$35,988.18
CENTRAL GARAGE	\$13,478.26
	\$1,182,389.88

**Personnel Changes**

New Hires

Parks, Recreation and City Events Department: Austin Steinberg, Grounds Maintenance, \$1,556.08 biweekly; Library: Allison Moon, Library Assistant, \$14.00/hr.

Wage Changes

None

Position Changes

None

September 2023	
YPD	
Calls For Service	
911 HANG UP/OPEN	12
ALARM	8
ALCOHOL	11
AMBULANCE	24
ANIMAL	64
ASSAULT	9
ASSIST	4
ATTEMPT TO LOCATE	2
BANK ALARM	2
BURGLARY RESIDENTIAL	5
CHILD ABUSE	5
CHILD CUSTODY	4
CITY SERVICES	4
CIVIL DISPUTE	30
CRIMINAL ENTRY OF MV	7
DEATH	3
DISORDERLY CONDUCT	31
DOMESTIC VIOLENCE	11
DRIVING COMPLAINT/911	33
DRUG	13
ELDER ABUSE	2
ESCORT	5
EVENT STANDBY	5
EX PATRL	7
FAMILY OFFENSE	4
FIGHT	9
FIRE ALL CALL	1
FIRE ON CALL	1
FIRE/WEATHER DRILL	4
FIREWORKS	1
FOOT PURSUIT	1
FOREIGN AID	23
FRAUD	9
GAS DRIVE OFF	1
HARASS	20
HAZMAT	1
HIT&RUN	6
INFORMATION	38
INSPECT	2
JAIL ISSUES	4
JUV	31
K9 SNIFF	1
LEWDNESS	1
LITTER	3
LOCK DOWN DRILL	3
LOST & FOUND	14
MENTAL ILLNESS	18
MISC	1
MISSING PERSON	5
MOTOR ASSIST	15
NOISE COMPLAINT	7
OPN DOOR	1
PARKING	25
PAROLE/PROBATION	11
PRIVATE PROPERTY COLLISION	14
PROPERTY	10
PROTECTION ORDER	10
PURSUIT	2
REQUEST	2
RUNAWAY	1
SAFETY TALK	12
SEX CRIME	1
SEX OFFENDER VIOLATION	1
SIG 2	21
SIGNAL 1 INJURY	3
SUICIDE	4
SUSP ACTIVITY	19
SUSPICIOUS PERSON/VEHICLE	69
THEFT	39
THREAT	15
TRAFFIC CONTROL	3
TRAFFIC HAZARD	1
TRAFFIC STOP	280
TRESPASS	18
TRUANCY	5
VANDALISM	14
VEHICLE/ROAD COMPLAINT	11
WARRANT	7
WEAPONS	9
WELFARE CHECK	60
Total	1193

Adult Arrests:
# Individuals Arrested: 85
# Of Charges: 135

Juvenile Arrests:
# Individuals Arrested: 16
# Of charges: 19

Citations: 145
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September 2023

YPD

Activity Report

	<b>GENERAL SUMMARY</b>			
	<b>THIS MONTH</b>		<b>Year To Date</b>	
	<b>This Year</b>	<b>Last Year</b>	<b>This Year</b>	<b>Last Year</b>
<b>POLICE INCIDENTS</b>	<b>1193</b>	<b>1128</b>	<b>10405</b>	<b>8767</b>
<b>SHERIFF INCIDENTS</b>	<b>347</b>	<b>273</b>	<b>2690</b>	<b>1888</b>
<b>AMBULANCE CALLS (YPD)</b>	<b>24</b>	<b>27</b>	<b>236</b>	<b>237</b>
<b>FIRE / HAZMAT CALLS</b>	<b>7</b>	<b>8</b>	<b>46</b>	<b>64</b>
<b>FOREIGN AID CALLS</b>	<b>23</b>	<b>21</b>	<b>161</b>	<b>122</b>
<b>ALARMS</b>	<b>8</b>	<b>18</b>	<b>122</b>	<b>132</b>
<b>ANIMAL CALLS / COMPLAINTS</b>	<b>64</b>	<b>60</b>	<b>547</b>	<b>502</b>
<b>ANIMALS CLAIMED OR IMPOUNDED (HHS)</b>	<b>20</b>	<b>15</b>	<b>134</b>	<b>133</b>
<b>ANIMALS DISPOSED</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>

	<b>ACCIDENT SUMMARY</b>			
	<b>THIS MONTH</b>		<b>Year To Date</b>	
	<b>This Year</b>	<b>Last Year</b>	<b>This Year</b>	<b>Last Year</b>
<b>STATE REPORTABLE</b>	<b>19</b>	<b>13</b>	<b>154</b>	<b>160</b>
<b>NON REPORTABLE AND HIT &amp; RUN</b>	<b>12</b>	<b>24</b>	<b>162</b>	<b>209</b>
<b>SIGNAL 1 INJURY</b>	<b>3</b>	<b>8</b>	<b>32</b>	<b>43</b>
<b># PERSONS INJURED</b>	<b>4</b>	<b>5</b>	<b>35</b>	<b>35</b>
<b>FATALITIES</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>PEDESTRIAN ACCIDENT</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>3</b>

September 2023

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>	2	32	34	21	260	203
<b>CARELESS DRIVING</b>		3	3	2	26	9
<b>EXHIBITION DRIVING</b>			0	2	4	11
<b>SPEEDING</b>	2	35	37	60	480	265
<b>STOP SIGN, RED LIGHT VIOLATION</b>	1	5	6	14	58	59
<b>ANIMALS AT LARGE</b>			0	0	0	1
<b>MAINTENANCE OF FINANCIAL RESPONSIBILITY</b>		8	8	17	84	94
<b>OPEN CONTAINER</b>		2	2	2	18	26
<b>CONSUMPTION UNDERAGE (18-20 yoa)</b>		1	1	3	3	19
<b>LIQUOR VIOLATIONS / FURNISHING ALCOHOL TO A MINOR</b>			0	0	6	5
<b>MISDEAMEANOR DRUG VIOLATIONS (POSS. OF DRUG PARAPH)</b>	3	18	21	16	129	158
<b>TOBACCO VIOLATIONS</b>	8	1	9	3	45	45
<b>PETTY THEFT UNDER \$400</b>			0	9	10	52
<b>INTENTIONAL DAMAGE TO PROPERTY</b>			0	0	0	2
<b>OTHER VIOLATIONS</b>	7	17	24	71	234	263
<b>TOTAL TRAFFIC CITATIONS</b>	23	122	145	220	1357	1212

September 2023

YPD

Adult Arrest

	THIS MONTH		YEAR TO DATE	
	This Year	Last Year	This Year	Last Year
HOMICIDE/MURDER	1	0	2	0
RAPE	0	0	0	0
ROBBERY	0	0	0	0
DUI	14	7	129	124
DRIVING UNDER REVOCATION	5	3	36	33
BURGLARY	0	0	2	5
ASSAULT AGGRAVATED	1	0	4	9
ASSAULT SIMPLE	5	4	26	23
CRIMES AGAINST FAMILY / DOMESTIC VIOLENCE	8	0	53	46
DISORDERLY CONDUCT	1	0	3	4
SEXUAL CONTACT/SEX OFFENSES	1	0	5	0
THEFT PETTY	3	0	7	8
THEFT GRAND	0	0	6	5
THEFT AUTO	0	0	2	4
FORGERY & COUNTERFEITING	0	0	6	4
FRAUD	0	0	0	0
EMBEZZLEMENT	0	0	0	0
INTENTIONAL DAMAGE	0	1	3	8
NARCOTIC DRUG CHARGES	36	8	193	121
LIQUOR ARRESTS	0	0	3	9
WEAPONS VIOLATION	1	0	9	7
WARRANTS	21	0	218	166
PROTECTIVE CUSTODY	0	0	0	0
ALL OTHER OFFENSES	38	11	358	295
TOTAL ADULT ARRESTS	135	34	1065	871

September 2023

YPD

Juvenile Arrests

	THIS MONTH		YEAR TO DATE	
	This Year	Last Year	This Year	Last Year
<b>CURFEW</b>	2	1	15	11
<b>RUNAWAY</b>	0	3	16	14
<b>MIC</b>	3	3	21	26
<b>DUI</b>	1	0	3	1
<b>LIQUOR ARRESTS</b>	0	0	0	0
<b>MURDER</b>	0	0	0	0
<b>RAPE</b>	0	0	0	0
<b>ROBBERY</b>	0	0	0	0
<b>BURGLARY</b>	0	4	0	5
<b>ASSAULT AGGRAVATED</b>	0	0	0	2
<b>ASSAULT SIMPLE</b>	1	4	8	27
<b>CRIMES AGAINST FAMILY/ DOMESTIC VIOLENCE</b>	0	0	0	0
<b>DISORDERLY CONDUCT DISTURBANCE OF SCHOOL</b>	5	0	25	0
<b>SEXUAL CONTACT / SEX OFFENSES</b>	0	0	0	2
<b>THEFT PETTY</b>	0	0	2	0
<b>THEFT GRAND</b>	1	0	1	0
<b>THEFT AUTO</b>	1	0	1	0
<b>FORGERY &amp; COUNTERFEITING</b>	0	0	0	0
<b>FRAUD</b>	0	0	0	1
<b>EMBEZZLEMENT</b>	0	0	0	10
<b>INTENTIONAL DAMAGE</b>	0	1	0	0
<b>NARCOTIC DRUG CHARGES</b>	1	0	8	0
<b>WEAPONS VIOLATIONS</b>	0	0	0	0
<b>ALL OTHER OFFENSES</b>	4	0	18	16
<b>TOTAL JUVENILE ARRESTS</b>	19	16	118	115



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 17, 2023, 5:30PM, in the Community Room**  
**CMTEA Building, 1200 W. 21<sup>st</sup> Street**

**I. ROUTINE BUSINESS**

Roll Call:

Present: Jason Tellus, Elizabeth Healy, Brian Bertsch, Nick Severson, Jeannine Economy, and Commissioner Brian Hunhoff.

Absent: Tom Bixler.

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

Public Appearances: None.

Minutes: May 15, 2023 minutes approved. Tellus motioned. Economy second. Motion passed 5-0.

**II. OLD BUSINESS**

A. Elect new board president. Healy nominates Severson. Economy seconds. Bertsch moves to close nominations. All in favor 5-0. Severson is new board president.

B. 2023 Capital projects update.

Three new sets of bleachers have been erected and replaced three sets of old bleachers at Riverside Baseball Stadium. There is a new drinking fountain with a water bottle filler at the stadium also.

New play equipment has been installed in Westside Park along with the fall material surfacing. Sidewalks connecting the two play areas to the other sidewalks in the park were also installed. The City has received the \$90,000 LWCF Grant money for this project.

The Yankton Territorial Museum moved the caboose and the old blacksmith building will be moved in the coming months. The areas that have been cleaned up have been seeded in with grass.

The Westside improvements project has some items completed and others ongoing. The meditative garden, sundial, and labyrinth project have been completed. The majority of the work on adding additional clay liner to the pond has been completed but the height of the clay liner around the island was not verified by Stockwell Engineers prior to the water being added to fill the pond. After checking the elevations on July 5, the clay liner around the island was not at the correct elevation in relationship to the outfall. More work was done to correct the issue and raise the elevation of the clay liner around the island wall. The water level is being monitored daily to determine if more work needs to be done to address leaking. After the pond was filled to the overflow height, it was discovered that there are



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several areas where the pond must be losing water. Stockwell Engineers has been contacted. As of now they are unsure which path to take to correct the pond. Options include, pumping down the pond, use the clay material as planned but get it from a different company or replace the new liner with a different type. Since the City is aware of the issue with the pond it will not be making a final payment until the pond is fixed to the City's satisfaction. No work will happen in the pond until the water level stays at the same height for multiple days in a row. There shouldn't be more than a ¼" drop in a twenty-four hour period.

The Marne Creek trail project to repair flood damage from 2019 and to replace sections of the trail that were damaged in 2019, through FEMA, is on-going. This project should be finished by fall.

- C. There is a Special Events Task Force that has been meeting and working through the handbook and application the City currently utilizes. The documents have been updated as well as some of the fees adjusted for the 2024 season.

### III. NEW BUSINESS

- A. 2024 Capital Improvement Plan (CIP) proposed budget presentation by City Manager Amy Leon.  
There may be some adjustments made to the proposed CIP budget for 2023 and 2024. An irrigation system for Westside Park may be added into the CIP. It may be a phased in project over a couple of budget years. Along with irrigation at Westside Park, there may be funds appropriated to update the lighting through the middle section of the Park to light the park by the play areas and basketball court.  
Sertoma Park may receive funding to upgrade the power panel and breakers in the concession stand.  
The final adjustment may be for pickle ball courts in Westside Park. If the grant funding and fund-raising by the pickle ball group does not come in as high as planned, the City may budget to complete the project without the grant funding and with the lower amount of donated funds. It was noted that the pickle ball playing group was not understanding of why tennis court resurfacing was budgeted for and actually increased based on the bids and no ask was made of the tennis players to do any fund-raising. Normally, groups are asked to fund-raise at the initial construction of new amenities and then on-going maintenance and repair are assumed to be 100% the City's responsibility. Therefore, the pickle ball group was asked to provide some private funds to help with the pickle ball conversion project and tennis was not asked to help fund the resurfacing of the tennis courts at either the SAC or Fantle Memorial Park. Todd did inform the group that pickle ball lines will be painted on to the four tennis courts at Fantle Memorial Park as it was a request from the pickle ball group.
- B. The Huether Family Aquatics Center data and update.

May-June attendance data comparisons for 2021, 2022, and 2023.

Library passes and utility customer passes data. 461 admissions. At \$11 per admission = \$5,071 in value.

There are a couple of operational changes that have been implemented for the summer of 2023. An evening day pass rate starting at 5:00pm that is \$6 versus the all-day pass rate of \$11. This is an effort to help with the feedback we have heard about the facility not being



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affordable for all in the community. Evenings are typically less attended than other hours in the day so this is a marketing effort to try and increase evening attendance as well. Also, on Tuesday, Thursday, and Sunday evenings, after the last scheduled break at 5:50 – 6:00pm, the lazy river is being utilized for water walking for adults and youth. We had a lot of requests to have water walking in the evenings over the past two summers.

The facility has been hosting “family nights” on Wednesday evenings and also hosted one “teen night” also.

There have been community requests for adult night hours. The Department will examine the idea to see if something could be planned for 2024.

- C. A citizen task force for the Summit Activities Center operations brought some recommendations to the City Commission and the plan for the SAC operations is attached. An SAC mission statement was created: Provide everyone with an affordable, indoor, family-friendly fitness and recreation facility.

It was mentioned that affordability of the facility is very important.

The SAC is a quality of life amenity for the community and it is worth subsidizing.

If a 3<sup>rd</sup> party vendor was to be brought in to operate the facility instead of the City, it would take negotiating with the school district to plan how the shared use of the spaces could work for both parties. The school district has some events that move do to weather cancellations and the school activities would have to have priority. That makes it hard for a 3<sup>rd</sup> party vendor to have confidence in planning programming.

Maybe a senior rate should be considered for the SAC as the rates are increased in January of 2024. The facility could examine what percentage of users are seniors to determine a financial impact. The group discussed how supplemental insurance can sometimes pay for fitness facility memberships for seniors 65 and over.

Remind, the SAC facility data can be found in the Commission Information Memorandums (CIM) that are presented to the City Commission, every two weeks, as a part of their Commission Meeting packet and they are also a part of the PAB agenda packets.

- D. A citizens committee is being formed to help plan for the Meridian Bridge’s 100<sup>th</sup> birthday in 2024. It will have its first meeting July 18, 2023. The official birthday would occur in October of 2024.

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

- A. General discussion items.

- Commission information Memorandums (4 CIMs). The items were sent out after the meeting as they were not attached to the agenda packet.
  - Other completed work projects for the department are noted in the CIMs.
- Next Meeting: Monday, September 18, 2023.

#### **V. ADJOURN**

Bertsch motioned, Healy 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 and a Special (on-sale) Wine Retailers License for 1 day, October 28, 2023, from The Center (Kriss Thury, Executive Director), 900 Whiting Drive, Yankton, South Dakota.

NOTICE IS FURTHER GIVEN that a Public Hearing upon the application will be held on Monday, October 23, 2023 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 9<sup>th</sup> Day of October, 2023.



Al Viereck  
FINANCE OFFICER



NOTICE OF HEARING UPON APPLICATION  
FOR SALE OF ALCOHOLIC BEVERAGES

NOTICE IS HEREBY GIVEN that a Special Events Alcoholic Beverage License 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 and a Special Events Retail (on-sale) Wine Retailers License for 1 day, November 11, 2023, from The Center (Kriss Thury, Executive Director), 900 Whiting Drive, Yankton, South Dakota.

NOTICE IS FURTHER GIVEN that a public hearing on the application will be held on Monday, October 23, 2023 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 9<sup>th</sup> day of October, 2023.



Al Viereck  
FINANCE OFFICER

***Memorandum #23-200***

*To: City Manager*  
*From: Finance Department*  
*Date: October 9, 2023*  
*Subject: Transfer of Location of Retail (on-off sale) Malt Bev. & SD Farm Wine –  
Bro Brgr Bar*

We have received an application for a transfer of location of a Retail (on-off sale) Malt Beverage & SD Farm Wine License for July 1, 2023 to June 30, 2024 from DBC, LLC d/b/a Bro Brgr Bar (Lauren Soukup, Owner), 304 W. 3<sup>rd</sup> Street, Yankton, South Dakota to DBC, LLC d/b/a Bro Brgr Bar (Lauren Soukup, Owner), 2101 Broadway Ave., Suite 40, Yankton, South Dakota.

The above applicant is in compliance with the City Code of Ordinances, as checked by the Department of Finance. A police check on the applicant revealed no felony convictions or wants. The applicant is in compliance with all building and fire codes.



Al Viereck  
Finance Officer

**Memorandum #23-193**

**To:** Amy Leon, City Manager  
**From:** Kyle Goodmanson, Environmental Services Director  
Ross Den Herder, City Attorney  
**Subject:** CMAR Contract  
**Date:** October 2, 2023

---

City staff, along with City Attorney Ross Den Herder, continue to move forward with the Construction Manager at Risk (CMAR) delivery method to be utilized on the next phase of improvements at the wastewater treatment facility. CMAR will allow for better project cost management and budgeting. The CMAR process will also allow staff to secure a contractor. CMAR will also allow the project to procure equipment and material early to maintain schedules. The staff feels the addition of a construction expert to the collaborative design team will allow for project cost savings.

Proposals from four CMAR contractors were received. All four CMAR contractors were interviewed. John T. Jones was selected as the most qualified CMAR contractor based on the scoring criteria. John T. Jones recently completed the water treatment plant project for the City of Yankton and was also the contractor for the larger construction phase of the wastewater plant project in 2000. John T. Jones has a greater knowledge of our facilities and a proven relationship with the City of Yankton.

It is recommended that the City Commission authorize the City Manager to execute the attached CMAR contract. The CMAR contract will be for the pre-construction phases and early procurement. The contract will be amended if the parties agree to a guaranteed maximum price. The pre-construction fee is \$440,000.00. This contract also allows the project to move forward with early bid packages. The individual bid packages will not require commission approval.

Respectfully submitted,

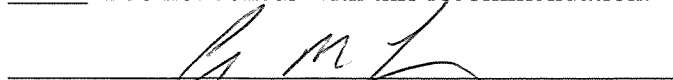


Kyle Goodmanson  
Environmental Services Director

**Recommendation:** It is recommended that the City Commission authorize the City Manager to execute the attached CMAR contract.

I concur with this recommendation.

I do not concur with this recommendation.

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

\_\_\_\_ Roll Call

**AGREEMENT BETWEEN THE  
City of Yankton  
AND CONTRACTOR**

**DATED:** \_\_\_\_\_

**AGREEMENT BETWEEN THE  
City of Yankton  
AND CONTRACTOR**

**TABLE OF CONTENTS**

<b>ARTICLE 1 – GENERAL PROVISIONS.....</b>	<b>1</b>
1.1 CONTRACT DOCUMENTS.....	1
1.2 EXCLUDED DOCUMENTS.....	2
1.3 REFERENCE DOCUMENTS.....	2
1.4 RELATIONSHIP OF THE PARTIES.....	2
1.5 CONSTRUCTION MANAGER AT RISK (“CMAR”) DELIVERY.....	2
<b>ARTICLE 2 – THE WORK.....</b>	<b>2</b>
2.1 THE WORK.....	2
2.2 THE PROJECT.....	3
2.3 THE DESIGNER.....	3
<b>ARTICLE 3 – AUTHORIZED REPRESENTATIVES, KEY STAFF AND SUBCONTRACTORS.....</b>	<b>3</b>
3.1 AUTHORIZED REPRESENTATIVE.....	3
3.2 EXECUTIVE REPRESENTATIVE.....	3
3.3 SUBSTITUTION OF REPRESENTATIVES.....	3
3.4 KEY STAFF.....	3
3.5 KEY SUBCONTRACTORS.....	4
3.6 REPLACING KEY STAFF OR KEY SUBCONTRACTORS.....	4
<b>ARTICLE 4 – CONTRACTOR’S RESPONSIBILITIES.....</b>	<b>4</b>
4.1 PRECONSTRUCTION PHASE.....	4
4.2 GUARANTEED MAXIMUM PRICE.....	6
<b>ARTICLE 5 – CONSTRUCTION PHASE.....</b>	<b>8</b>
5.1 GENERAL.....	8
5.2 ADMINISTRATION.....	9
<b>ARTICLE 6 – CONTRACT TIME.....</b>	<b>10</b>
6.1 TIME IS OF THE ESSENCE.....	10
6.2 CONTRACT TIME.....	10
6.3 LIQUIDATED DAMAGES.....	10
<b>ARTICLE 7 – TERMS OF PAYMENT.....</b>	<b>11</b>
7.1 CONTRACT SUM.....	11
7.2 COMPENSATION FOR PRECONSTRUCTION PHASE SERVICES.....	12
7.3 COMPENSATION FOR CONSTRUCTION PHASE WORK.....	12
7.4 COST OF THE WORK.....	12
7.5 APPROPRIATED SUM.....	15
7.6 COMPENSATION MODIFICATION.....	15
7.7 TAX EXEMPTION.....	ERROR! BOOKMARK NOT DEFINED.
7.8 OPEN BOOK ACCOUNTING.....	15
<b>ARTICLE 8 – PAYMENT PROCEDURES.....</b>	<b>15</b>
8.1 SUBMITTAL AND PROCESSING OF PAYMENTS.....	15
8.2 PROGRESS PAYMENTS; RETAINAGE.....	15

<b>ARTICLE 9 – CONTRACTOR’S REPRESENTATIONS</b> .....	<b>16</b>
9.1 CONTRACTOR’S REPRESENTATIONS.....	16
<b>ARTICLE 10 – INDEPENDENT CONTRACTOR</b> .....	<b>17</b>
10.1 INDEPENDENT CONTRACTOR.....	17
<b>ARTICLE 11 – MISCELLANEOUS</b> .....	<b>17</b>
11.1 TERMS.....	17
11.2 ASSIGNMENT OF CONTRACT.....	17
11.3 SUCCESSORS AND ASSIGNS.....	17
11.4 SEVERABILITY.....	17
11.5 OPEN RECORDS.....	18
11.6 GOVERNMENTAL IMMUNITY.....	18
11.7 CONSTRUCTION DEFECT CLAIMS.....	18
11.8 DEFECTIVE WORK.....	18
11.9 COMPLIANCE WITH APPLICABLE PERMITS AND AGREEMENTS.....	18
11.10 CONTRACTOR’S CERTIFICATIONS.....	18
11.11 INTEREST.....	18
11.12 PARTNERING.....	18
11.13 ESCROW OF PROPOSAL DOCUMENTS.....	19
11.14 MERGER.....	19

**AGREEMENT BETWEEN OWNER AND CONTRACTOR**  
**where the basis of payment is Cost of the Work, plus Fee, subject to a Guaranteed**  
**Maximum Price**  
(Construction Manager at Risk)

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”), by and between the City of Yankton, South Dakota (“Owner”), whose address is 416 Walnut Street, Yankton, South Dakota, and John T. Jones Construction Co (“Contractor”) a \_\_\_\_\_ Corporation, whose address is 2213 7<sup>th</sup> Avenue North, Fargo North Dakota 58102, for preconstruction services and the construction of the Yankton WWTF Expansion and Improvements (the “Project”), located in Yankton County, South Dakota.

Owner and Contractor agree as set forth below.

**ARTICLE 1 – GENERAL PROVISIONS**

1.1 *Contract Documents.* The contract between Owner and Contractor (the “Contract”) is comprised of the documents which are incorporated herein by this reference (collectively, the “Contract Documents”) as follows:

1.1.1 This Agreement, including all Exhibits to this Agreement as follows:

Exhibit A - Stipulated Rates and Compensation for Preconstruction

Exhibit A-2 Labor

Exhibit A-1 Equipment

Exhibit A-3 Miscellaneous Agreed Rates

Exhibit A-4 Compensation for Preconstruction Phase Services

Exhibit B - Key Staff and Key Subcontractors

Exhibit C - Insurance Requirements

Exhibit D - Applicable Permits

Exhibit E - Utility and Third-Party Agreements

Exhibit F – Not Used

Exhibit G - Payment and Performance Bonds

Exhibit H - Progress and Final Payment Claim Waiver Forms

Exhibit I - Preconstruction Scope of Work

Exhibit J - General Conditions Costs

Exhibit K – Technical Reports and Data

Exhibit L – Equal Employment Opportunity and Illegal Alien Provisions

1.1.2 General Conditions of the Contract between Owner and Contractor dated August 2023 (the “General Conditions”);

1.1.3 Not used;

- 1.1.4 State Revolving Fund (SRF) General Conditions;
- 1.1.5 Supplemental Conditions, Specifications, Drawings; and
- 1.1.6 Modifications issued after execution of the Contract.

1.2 *Excluded Documents.* Only the documents referenced in Paragraph 1.1 above are Contract Documents. The Contract Documents do not include the Request for Qualifications, Request for Proposals, Contractor's Proposal, or any other documents which are not expressly described in Paragraph 1.1.

1.3 *Reference Documents.* Owner has provided or may provide Reference Documents to Contractor. The Reference Documents are not Contract Documents. The Reference Documents are for information only, and are not mandatory or binding on Contractor, except to the extent information in the Reference Documents is expressly referenced within and made a contractual requirement as part of the Specifications or other Contract Documents. Prior to the execution of this Agreement, Contractor has conducted its own due diligence as to the accuracy, completeness and relevance of the information contained in the Reference Documents. Owner provides no representations or warranties with respect to the information contained in the Reference Documents. Contractor is not entitled to rely on the Reference Documents as accurately describing existing conditions, presenting design or engineering solutions or directions, or defining means or methods for complying with the requirements of the Contract Documents. However, the information contained in the Reference Documents shall be evidence of whether a risk, condition, matter or other information was known or knowable with reasonable due diligence.

1.4 *Relationship of the Parties.* Contractor accepts the relationship of trust and confidence established by this Contract and covenants with Owner to exercise Contractor's skill and best professional judgement in furthering the interests of Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with Owner's best interests.

1.5 *Construction Manager At-Risk ("CMAR") Delivery.* Owner has retained Contractor to serve as construction manager at-risk for the Project and perform preconstruction services during the design of the Project before the start of construction (the "Preconstruction Phase"). The term "Construction Manager" or "CMAR" as used in the Contract Documents shall mean the Contractor. Once the Preconstruction Phase is complete, or at such time as the parties agree, Owner and Contractor intend to negotiate and agree upon a Guaranteed Maximum Price ("GMP") for the construction of the Project, which shall be incorporated into the Contract by written amendment (the "GMP Amendment"). Construction of the Work shall commence upon issuance by Owner of a Notice to Proceed for construction and shall continue through Final Completion of the Work as further described in the Contract Documents (the "Construction Phase"). If the Parties execute a GMP Amendment, Contractor shall serve as general contractor for the construction of the Work during the Construction Phase. The Construction Phase may commence for portions of the Work while the Preconstruction Phase is ongoing as set forth in the Contract Documents.

## **ARTICLE 2 – THE WORK**

2.1 *The Work.* Contractor shall execute the entirety of the Work described in and reasonably inferable from the Contract Documents, except to the extent specifically indicated in the Contract



Documents to be the responsibility of others. The Work generally includes all preconstruction services, construction management services and all construction work necessary for the Project and related appurtenances and improvements as required by the Contract Documents.

2.2 *The Project.* The Project, of which the Work under the Contract Documents is a part, is generally described as follows: expansion of the existing wastewater treatment plant including improvements to existing facilities to meet projected flows and anticipated future regulations such as electrical upgrades, replacement of influent screening and equipment replacement, replace process aeration pumps with dry pit submersible pumps, plant bypass gate removal and replacement, splitter/secondary influent piping replacement, new influent piping, and piping replacement for installation of proposed utilities.

2.3 *The Designer.* Owner has retained HDR Engineering, Inc. as the Engineer of Record for the Work (the “Designer”), to prepare the Drawings and Specifications for the Work as well as certain other Contract Documents. The Designer is to assume all duties and responsibilities as set forth in the General Conditions of the Contract and as otherwise described by Owner in writing to Contractor. The Designer may also be referred to in the Contract Documents as the Architect or Engineer, as applicable.

**ARTICLE 3 – AUTHORIZED REPRESENTATIVES, KEY STAFF AND SUBCONTRACTORS**

3.1 *Authorized Representative.* The Authorized Representative designated by Owner and Contractor below shall have the authority to make all necessary decisions with reference to the Contract Documents, transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party. All correspondence between the parties, including requests for interpretations, changes, and other clarifications or instructions regarding the Contract Documents, shall be directed to the parties’ Authorized Representatives.

3.2 *Executive Representative.* The Executive Representative designated by Owner and Contractor below shall be responsible for the overall success of the Project on behalf of each respective party. The Executive Representatives shall be kept apprised of the status of the Project and shall meet at such regular intervals as the parties may agree.

	<b>Contractor</b>	<b>Owner</b>
<b>Authorized Representative</b>	_____ <b>Project Manager</b>	_____ <b>Project Manager</b>
<b>Executive Representative</b>	_____ <b>Project Executive</b>	_____ <b>General Manager</b>

3.3 *Substitution of Representatives.* The Authorized Representative and Executive Representative of each party may only be substituted by written notice to the Authorized Representative and Executive Representative of the other party. Contractor shall not substitute its Authorized Representative or Executive Representative without the prior written consent of Owner, which consent shall not be unreasonably withheld or delayed.

3.4 *Key Staff.* Contractor acknowledges that the key personnel of Contractor identified in Exhibit B to this Agreement or which are added to Exhibit B by amendment to this Agreement

("Key Staff") are considered by Owner as critical to the performance of the Work and integral to its decision to award the Project to Contractor. Contractor agrees that its Key Staff are committed to the Project and changes may not be accepted, unless they no longer work for the firm or Owner otherwise agrees that a change is appropriate. Contractor shall use all commercially reasonable efforts to ensure that the Key Staff remain involved in the Work in the capacity specified by their associated title and/or position and at the level of involvement as represented to Owner. Contractor shall not, for the duration of the Work, assign Key Staff to any other project, if doing so would reduce the involvement of the Key Staff in the Project.

3.5 *Key Subcontractors.* Contractor acknowledges that the key subcontractors of Contractor identified in Exhibit B to this Agreement or as added to Exhibit B by amendment to this Agreement ("Key Subcontractors") are considered by Owner as critical to the performance of the Work and integral to its decision to award the Project or applicable Work package to Contractor. Contractor shall use all commercially reasonable efforts to ensure that the Key Subcontractors remain involved in the Work in the capacity and for the scope of work specified in Exhibit B.

3.6 *Replacing Key Staff or Key Subcontractors.* If it becomes necessary to replace any of the Key Staff or Key Subcontractors, Contractor shall nominate a competent, suitably qualified and experienced permanent replacement as soon as practicable and consult with Owner before the appointment of such replacement. Contractor shall not replace any Key Staff or Key Subcontractor without the prior written consent of Owner, which consent shall not be unreasonably withheld or delayed provided the proposed replacement is suitably qualified and experienced. If Owner determines that replacement of Key Staff may cause Owner to incur additional cost or impair the successful completion of the Work, the Contract Price may be equitably adjusted downward to compensate Owner for any resultant delay, loss, or damage.

## **ARTICLE 4 – CONTRACTOR’S RESPONSIBILITIES**

Contractor’s Preconstruction Phase responsibilities are set forth in Article 4. Contractor’s Construction Phase responsibilities are set forth in Article 5. Owner and Contractor may agree, in consultation with the Designer, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently.

4.1 *Preconstruction Phase.* The Contractor shall perform all preconstruction work and services as described in the Contract Documents, including, without limitation this Paragraph 4.1 and Exhibit I.

4.1.1 *Consultation.* Contractor shall schedule and conduct meetings with the Designer and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. Contractor shall advise Owner and the Designer on proposed site use and improvements, selection of materials, and building systems and equipment. Contractor shall also provide recommendations consistent with the Project requirements to Owner and Designer on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

4.1.2 *Project Schedule.* Within ten (10) business days after execution of the Contract, and at such intervals as requested by Owner, Contractor shall furnish the updated Project Schedule in a critical path format for Owner and Designer’s review and Owner’s acceptance. Contractor shall obtain the Designer’s concurrence for the

portion of the Project Schedule relating to the performance of the Designer's services. The Project Schedule shall coordinate and integrate the Preconstruction Phase and Construction Phase services of Contractor, the Designer's services, other Owner consultants' services, and Owner's responsibilities as well as identify major milestone items that could affect the Project's timely completion. The Project Schedule shall include, but not be limited to the following: milestone budget updates; the Guaranteed Maximum Price proposal; Submittal Schedule; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of Owner.

4.1.3 Phased Construction. Contractor shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, bid packages and/or phased construction. Contractor shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

4.1.4 Project Cost Model.

4.1.4.1 Based on the preliminary design and other design criteria prepared by the Designer, Contractor shall prepare and maintain as required by the Contract Documents, a Project Cost Model as a preliminary estimate of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Designer's review and Owner's approval. If the Designer or Contractor suggests alternative materials and systems, Contractor shall provide cost evaluations of those alternative materials and systems.

4.1.4.2 As the Designer progresses with the preparation of the Schematic Design, Design Development and Construction Documents as appropriate, Contractor shall prepare and update, at intervals specified in writing by Owner, the Project Cost Model increasing detail and refinement and allowing for the further development of the design, including multiple cost studies on alternate systems and materials, until such time as Owner and Contractor agree on a GMP for the Work. Contractor shall also provide a preliminary Schedule of Values for review in conjunction with such estimates. Such estimates shall be provided for the Designer's review and Owner's approval using estimating systems and procedures which are acceptable to Owner. Contractor shall inform Owner and Designer when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action. Owner, Designer and Contractor shall determine the corrective action to be taken and shall incorporate the results of these corrective actions into the Guaranteed Maximum Price for the Work.

4.1.5 Site Investigation. Contractor shall perform services related to investigation, appraisal, and/or evaluation of existing conditions, facilities, or equipment or determination of the accuracy of existing drawings or other information furnished by Owner as set forth in the Contract Documents.

4.1.6 Subcontractors. Contractor shall develop bidders' interest in the Project. Contractor shall furnish to Owner and Designer for review and approval, a list of

proposed Subcontractors from whom bids will be requested for each principal portion of the Work. Owner or Designer will promptly reply in writing to Contractor if Owner or Designer knows of any objection to such Subcontractor. The receipt of such list shall not require Owner or Designer to investigate the qualifications of proposed Subcontractors, nor shall it waive the right of Owner or Designer later to object to or reject any proposed Subcontractor.

4.1.7 Self-Performance of Work. Contractor may self-perform work subject to the competitive bid requirements of SDCL Chap. 5-18 with respect to those portions of the Work and the Self-Performance limitations, if any, set forth in the Supplemental Conditions.

4.1.8 Notices and Compliance with Laws. Contractor shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

## 4.2 *Construction Price Proposal/Guaranteed Maximum Price*

4.2.1 Construction Price Proposal. At a time to be mutually agreed upon by Owner and Contractor and in consultation with the Designer, Contractor shall prepare one or more Guaranteed Maximum Price Proposal(s) (each a "GMP Proposal") for Owner's review and acceptance, which, if accepted by Owner, shall then be incorporated into this Contract by GMP Amendment.

4.2.2 Further Development of Drawings and Specifications. To the extent that the Drawings and Specifications are anticipated to require further development by the Designer, Contractor shall provide in the GMP Proposal for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

4.2.3 Basis of GMP Proposal. Each GMP Proposal shall be developed on an open-book Cost of the Work basis, as determined by Section 7.4 and in the form and format as directed by Owner. The Parties may agree to convert such GMP to Unit Price and Lump Sum pay items and/or actual Cost of the Work plus Contractor's Fee (or some combination thereof), as applicable, in each GMP Amendment. Contractor shall include with a GMP Proposal a written statement of its basis, which shall include the following, in a format approved by Owner:

4.2.3.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

4.2.3.2 A list of the clarifications and assumptions made by Contractor in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Paragraph 4.2.2 to supplement the information provided by Owner and contained in the Drawings and Specifications;

4.2.3.3 An updated Project Schedule;

4.2.3.4 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by work breakdown structure, trade categories or systems, General Conditions, Allowances, Contractor's Contingency, Cost Basis Memorandum, Cost Model, updated risk register/risk pool, and Contractor's Fee;

4.2.3.5 A statement of Unit Price and Lump Sum items;

4.2.3.6 The date of Substantial Completion, Final Completion, and any required Milestone dates, upon which the proposed Guaranteed Maximum Price is based; and

4.2.3.7 A date by which Owner must accept the Guaranteed Maximum Price.

4.2.4 Contractor's Contingency. In preparing Contractor's GMP Proposal, Contractor may include a Contractor's Contingency for Contractor's exclusive use to cover costs arising under Paragraph 4.2.2 and any unanticipated costs which are properly considered reimbursable as a Cost of the Work but do not form the basis for a Change Order.

4.2.4.1 Contractor shall report and reconcile Contractor's Contingency to Owner on a monthly basis. All Contractor Contingencies shall include Direct Cost of Work, including labor, materials, equipment, delivery to the site, insurance, bonds and permits as required, and include Contractor's Fee as defined in Paragraph 7.1.1. The allocation and/or use of the contingency shall not increase the Guaranteed Maximum Price.

4.2.4.2 Use of Contractor's Contingency requires Owner's prior written approval. Owner shall not unreasonably withhold approval of the use of Contractor's Contingency so long as (i) the contingency amount accessed does not cause the Guaranteed Maximum Price to be exceeded (ii) Contractor utilizes Contractor's Contingency for items required for the Work that are otherwise recoverable as Costs of the Work under the Contract Documents.

4.2.4.3 Contractor's Contingency is not available for use by Contractor for mistakes that result from self-performed work, mistakes of Subcontractors, or any warranty work.

4.2.4.4 Contractor's Contingency is not available for use by Owner to pay for items of Work for which Contractor is entitled to a Change Order.

4.2.4.5 At Final Completion of the Project, the difference between the final Contract Sum and the final adjusted Guaranteed Maximum Price shall be considered "Savings." All Savings, including any unused portion of Contractor's Contingency, remaining in the Guaranteed Maximum Price will accrue and be returned 100% to Owner.

4.2.5 Review and Adjustment to GMP Proposal. Within 21 days of submission of a GMP Proposal, Contractor shall meet with Owner and Designer to review such GMP proposal and the written statement of its basis. If Owner or Designer discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify Contractor, who shall make appropriate adjustments to the GMP Proposal, its basis, or both.

4.2.6 Acceptance of the GMP Proposal. If Owner accepts a GMP Proposal, the GMP and its basis shall be set forth in a GMP Amendment. Owner shall authorize and cause the Designer to revise the Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in such GMP Amendment. Such revised Plans and Specifications shall be furnished to Contractor in accordance with the schedules agreed to by Owner, Designer, and Contractor. Contractor shall promptly notify the Designer and Owner if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

4.2.7 Rejection of the GMP Proposal. If Owner rejects a GMP Proposal or fails to notify Contractor in writing on or before the date specified in such GMP Proposal that it accepts such GMP Proposal, such GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Contractor shall meet and confer as to how the Project will proceed, with Owner having the following options:

4.2.7.1 Owner may suggest modifications to the GMP Proposal, whereupon Contractor shall submit a revised GMP proposal based upon the modifications and the approval process will recommence; or

4.2.7.2 Owner may terminate this Contract for convenience in accordance with Paragraph 14.3 of the General Conditions. Contractor agrees that Owner shall not be liable for any damages whether actual, consequential, or otherwise for termination of the Contract under this provision.

4.2.8 GMP Amendment. Following Owner's acceptance of the GMP, Owner and Contractor shall execute a GMP Amendment.

## **ARTICLE 5 – CONSTRUCTION PHASE**

5.1 *General.* The general scope of services anticipated for the Construction Phase includes: (i) secure necessary permits; (ii) procure equipment, materials, and subcontractors; (iii) construct the Project; (iv) develop sequencing strategies that comply with Owner's operations and allowable shutdowns; (v) manage the Project Schedule; (vi) mitigate Project risks; (vii) conduct startup, commissioning, and performance testing; and (viii) provide warranty coverage.

5.1.1 Authorization to Proceed. Execution of this Contract is not authorization to proceed with construction. The commencement of construction requires a separate Notice to Proceed. Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work prior to receipt of written Notice to Proceed from Owner, unless Owner provides prior written authorization for such costs.

5.1.2 Notice to Proceed. The Construction Phase shall commence upon Owner's issuance of a Notice to Proceed.

5.1.3 Bonds. As a condition precedent to issuance of NTP, Contractor shall furnish performance and labor and material payment bonds, each in the amount of one-hundred percent (100%) of each GMP Amendment or expenditure amount authorized by Notice to Proceed, whichever is greater, on forms supplied by Owner, with a surety company licensed to do business in South Dakota and acceptable to Owner.

5.1.4 Insurance. Prior to commencing the Work, Contractor shall purchase and maintain, at its own expense, insurance coverage as required by the Contract Documents.

## 5.2 Administration

5.2.1 Subcontracts. Work that Contractor is not going to self-perform shall be performed under a subcontract. Owner may designate specific persons from whom, or entities from which, Contractor shall obtain bids, but Contractor may obtain bids from additional subcontractors. Contractor shall obtain bids from Subcontractors and shall deliver such bids to Owner and Designer. Owner shall then determine, with the advice of Contractor and the Designer, which bids will be accepted. Contractor shall not be required to contract with anyone to whom Contractor has reasonable objection. Owner's determination shall not relieve Contractor of its obligation under the Contract Documents.

5.2.2 Owner Approval of Bidders. If a Guaranteed Maximum Price has been established and when a specific bidder (i) is recommended to Owner by Contractor, (ii) is qualified to perform that portion of the Work, and (iii) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but Owner requires that another bid be accepted, then Contractor may request that a Change Order be issued to adjust the Contract Time and/or the Guaranteed Maximum Price, as applicable, by the difference between the bid of the person or entity recommended to Owner by Contractor and the amount and time requirement of the subcontract or other Contract actually signed with the person or entity designated by Owner.

5.2.3 Subcontracts to be Lump Sum. Subcontracts and purchase orders shall conform to the applicable payment provisions of this Contract and shall not be awarded without a stipulated lump sum price unless approved in writing by Owner. In all subcontracts and purchase orders, Contractor shall provide in the subcontract or purchase order for Owner to receive the same audit rights with regard to the subcontractor or purchase order as Owner receives with regard to Contractor in Paragraph 7.8 below.

5.2.4 Progress Meetings. Contractor shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. Contractor shall prepare and promptly distribute minutes to Owner and Designer.

5.2.5 Progress Reports. Contractor shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by Owner, Contractor shall submit written progress reports to Owner and Designer, showing percentages of completion and other information required by Owner. Contractor shall also keep, and make available to Owner and Designer, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by Owner.

5.2.6 Cost Control. Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. Contractor shall identify variances between actual and estimated costs and report the variances to Owner and Designer and shall provide this information in its monthly progress reports to Owner and Designer.

## ARTICLE 6 – CONTRACT TIME

6.1 *Time is of the Essence.* All time limits for the Work, including Substantial Completion, Final Completion and any other Milestones, stated in the Contract Documents are of essence of the Contract.

6.2 *Contract Time.* The Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work. When the timeframe for achieving Substantial Completion is stated as a number of days, rather than a date, then such number of days are calendar days and are calculated from the date stated in the Notice to Proceed through and including the date required for Substantial Completion of the Work.

6.2.1 *Commencement of Work.* Contractor shall commence the Work upon receipt of Owner’s notice to proceed (“Notice to Proceed” or “NTP”), or on such later date stipulated in such notice (the “NTP Date”). One or more limited Notice(s) to Proceed (each a “Limited Notice to Proceed” or “LNTP”) may be used to authorize commencement of such portion(s) of the Work as may be set forth in the LNTP.

6.2.2 *Milestone Completion Dates.* Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion, Final Completion and Interim Milestones within the following timeframes for same (each a “Milestone” and, collectively “Milestones”):

6.2.2.1 Contractor shall achieve completion of the Preconstruction Phase services in accordance with the agreed upon Schedule as may be updated by written agreement of the Contractor and the Owner, but no later than June 30, 2024 after the Effective Date of this Agreement;

6.2.2.2 The required dates for Substantial Completion of the Work (the “Substantial Completion Milestone Date”), Final Completion of the Work (the “Final Completion Milestone Date”), and additional interim Milestones (“Interim Milestone Date(s)”) shall be established by GMP Amendment or other Modification.

6.3 *Liquidated Damages.* Contractor and Owner recognize that Owner will suffer financial and other losses if the Work is not completed and Substantial Completion, Final Completion and any specified Milestones are not achieved within the times specified in Paragraph 6.2 above, plus any extensions thereof allowed in accordance with the Contract Documents. The parties also recognize the delays, expense, and difficulties involved in calculating the actual loss suffered by Owner if the Work is not completed on time. Contractor and Owner agree the liquidated damage amounts stated herein are a reasonable and appropriate estimate of the harm and loss Owner will suffer if the Work required is not completed within the specified timeframe.

6.3.1 Accordingly, Owner and Contractor agree the following as liquidated damages for delay (but not as a penalty):

6.3.1.1 Contractor shall pay Owner \$2,500 for each calendar day that expires after the time (as duly adjusted pursuant to the Contract Documents) specified in Paragraph 6.2 above for Substantial Completion until the Contractor achieves Substantial Completion of the Work.

6.3.1.2 Contractor shall pay Owner \$2,500 for each calendar day that expires after the time (as duly adjusted pursuant to the Contract Documents) specified in Paragraph 6.2 above for each Interim Milestone Date until the



Contractor achieves completion of the Work of such Interim Milestone as applicable.

6.3.1.3 Contractor shall pay Owner \$1,500 for each calendar day that expires after the time (as duly adjusted pursuant to the Contract Documents) specified in Paragraph 6.2 above for Final Completion until the Contractor achieves Final Completion of the Work.

6.3.2 Contractor's payment of such liquidated damages shall be Owner's sole and exclusive remedy for Owner's delay damages to the extent caused by the Contractor's unexcused failure to complete the Work required for a Milestone within the specified timeframe and/or an Outage caused by Contractor, as applicable; provided, however, that (a) Contractor acknowledges and agrees the liquidated damages are intended to compensate Owner only for its delay damages resulting from Contractor's failure to complete the Work required for a Milestone within the specified timeframe and/or an Outage, and (i) shall not limit Owner's ability to exercise any other rights and remedies under the Contract and (ii) shall not excuse Contractor from liability for, nor limit Owner's right to recover damages resulting from any other breach of the Contract requirements, including any failure of the Work to conform to applicable requirements, and (b) if such liquidated damages are determined to be unenforceable, then Owner shall be entitled to recover its actual damages, including all direct, indirect and consequential damages, against Contractor, resulting from Contractor's failure to complete the Work required for a Milestone within the specified timeframe and/or an Outage, without limitation.

6.3.3 The Owner reserves the right to modify the liquidated damages amounts during the Preconstruction Phase, which shall be reflected in a GMP Amendment or other Modification to the Contract Documents.

## ARTICLE 7 – TERMS OF PAYMENT

7.1 *Contract Sum.* The Contract Sum shall be the compensation Owner shall pay Contractor for the performance of the Work in accordance with the Contract Documents. The Contract Sum is equal to the Cost of the Work plus Contractor's Fee, subject to Paragraph 7.1.1 (the "Contract Sum").

7.1.1 Contractor's Fee. The Contractor's Fee is compensation for Contractor's overhead, profit and any other amounts not included in the Cost of the Work. Contractor's Fee shall not be applied to the following items of Cost of Work: (a) Performance and Payment Bonds, (b) Builders Risk Insurance, (c) Preconstruction Phase Lump Sum, (d) Subcontractors in Preconstruction Phase.

7.1.1.1 The "Contractor's Fee" shall be calculated as [an amount not to exceed seven percent (7%)] of the Cost of the Work.

7.1.1.2 For Changes in the Work, the Contractor's Fee shall be adjusted as follows: The Contractor's Fee shall be adjusted upward or downward as applicable based on the net increase or decrease in the Cost of the Work incurred as a result of a Change in the Work.

7.1.1.3 For Changes in the Work performed by Subcontractors on a time and material or other cost-reimbursable basis (not on a lump sum or unit price basis) the allowed markup for overhead and profit shall be limited to [five

percent (5%)] of the actual cost of self-performed work and [five percent (5%)] of the actual cost of work performed by a sub-subcontractor (of any tier).

7.1.2 Limit on Contract Sum. The Contract Sum shall not exceed any applicable Not-to-Exceed (“NTE”) amount or Guaranteed Maximum Price set forth in the Contract Documents. Any costs incurred by Contractor in excess of a NTE amount or Guaranteed Maximum Price shall be at Contractor’s sole risk and expense, without right of reimbursement from Owner.

7.2 *Compensation for Preconstruction Phase Services.* Contractor’s Preconstruction Phase services shall be compensated on a lump sum basis. The Preconstruction Phase lump sum amount shall be \$440,000 (“Preconstruction Phase Lump Sum”). The Preconstruction Phase Lump Sum amount shall be paid to Contractor on equal payments based on the anticipated duration of the Preconstruction Phase services. The Preconstruction Phase Lump Sum amount shall be included within the GMP as a separate line item within the Schedule of Values included in the GMP.

7.3 *Compensation for Construction Phase Work.* For Contractor’s performance of Work during the Construction Phase, Owner shall pay Contractor the Contract Sum, subject to the Guaranteed Maximum Price.

7.3.1 Limitation on General Conditions Costs. All general conditions items required for the performance of the Work (“General Conditions Work”) as identified in Exhibit J shall be furnished by the Contractor on the basis of the Cost of the Work unless the parties agree to a different basis for payment of the General Conditions Work in such GMP Amendment.

#### 7.4 *Cost of the Work*

7.4.1 Purposes for Determination of Cost of the Work. The term “Cost of the Work” means the sum of all costs necessary for the proper performance of the Work, as further defined below. It is the expectation of the Parties that the basis of payment for the majority of the Work will be Unit Price or Lump Sum pay items. Unit Price and Lump Sum pay items shall be fully inclusive of all amounts necessary to perform such Work, including, without limitation all Cost of the Work, Fee and any other amounts necessary to perform the Work covered by such items. The Work not covered by a Unit Price or Lump Sum pay item shall be reimbursed based on an actual cost basis pursuant to the Cost of the Work as defined in Paragraphs 7.4.2 and 7.4.3. There shall be no duplication in payment for the Work. Paragraph 7.4.2 below only applies to (1) a GMP Amendment that has, in whole or in part, been agreed to on an actual Cost of the Work basis, or (2) Work performed pursuant to a Construction Change Directive where the Changed Work is not covered by a Lump Sum or Unit Price pay item or the parties have not otherwise agreed on the method of adjustment to the Contract Sum.

7.4.2 Costs Included. Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be determined on the basis of actual costs in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs described in Paragraph 7.4.3 and shall include only the following items:

7.4.2.1 Costs for employees in the direct employ of Contractor in the performance of the Work, and stationed at the site of the Work, under schedules of job classifications and at rates agreed upon by Owner and

Contractor, as set forth in Exhibit A. Costs for employees not employed full time on the Work and/or located off-site shall be charged on the basis of their time spent on the Work as approved in writing by Owner. Costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The cost for employees paid on a salaried basis shall be capped at forty (40) hours per week, regardless of the actual number of hours worked. Overtime for nonexempt employees will not be reimbursed by Owner except to the extent approved in advance in writing by Owner.

7.4.2.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Subcontractors' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

7.4.2.3 Payments made by Contractor to Subcontractors for Work performed in accordance with the requirements of subcontracts approved in advance by Owner.

7.4.2.4 Costs of special consultants (including but not limited to Designers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work and as approved in advance by Owner.

7.4.2.5 Intentionally omitted.

7.4.2.6 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

7.4.2.7 Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental Contracts or rates approved by Owner with the advice of Designer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental Contracts or rate schedule. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

7.4.2.8 Sales, consumer, use, and other similar taxes, except those subject to Owner's tax exemption, related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

7.4.2.9 Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by

Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.3 of the General Conditions), provided such losses and damages have resulted from causes other than the negligence of Contractor. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's Fee.

7.4.2.10 The cost of utilities, fuel, and sanitary facilities at the Site.

7.4.2.11 The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain, and at rates agreed by Owner.

7.4.2.12 Costs for communications services, electronic equipment, and software directly related to the Work, with Owner's prior approval.

7.4.3 Costs Excluded. The Cost of the Work shall not include any of the following items:

7.4.3.1 Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, Designers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 7.4.2.1 or specifically covered by Paragraph 7.4.2.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by Contractor's fee.

7.4.3.2 Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

7.4.3.3 Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

7.4.3.4 Costs due to the negligence or breach of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

7.4.3.5 Costs, other than costs included in Change Orders approved by Owner, that would cause the GMP to be exceeded.

7.4.3.6 Other overhead or general expense costs of any kind and any other costs not specifically and expressly included in Paragraph 7.4.2.

7.4.4 Documentation. Whenever the Cost of the Work for any purpose is to be determined pursuant to the Contract Documents, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit

in a form acceptable to Owner an itemized cost breakdown together with supporting data.

7.4.5 Charging Rates. Except and only to the extent Owner has audited and agreed to stipulated rates for labor, equipment and materials, prior to the commencement of Work, all rates charged by Contractor (even if paid by Owner) shall be for the purpose of billing convenience only and shall be subject to audit for the confirmation of actual costs.

7.4.6 Unit Price and Lump Sum Pay Items. If any portion of the Work is to be performed on a unit price or lump sum basis, then the cost for such Work shall be the applicable Unit Price or Lump Sum set forth in the Contract Documents and may only be adjusted pursuant to the provisions of the Contract Documents applicable to Changes in the Work. All costs of such Work performed on a unit price or lump sum basis are deemed to be included in the applicable Unit Price or Lump Sum pay items, notwithstanding the separate description or inclusion of such cost items in Paragraph 7.4.2.

7.5 *Funds Appropriation.* If funds are not budgeted or appropriated for any fiscal year for the Work under the terms of this Agreement, this Agreement will impose no obligation on the Owner for Payment. This Agreement is null and void except as to annual payments herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage may accrue to the benefit of the Contractor, its successors, or assignees, for any further payment.

7.6 Intentionally omitted.

7.8 *Intentionally omitted. Open Book Accounting.* Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Contractor's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Contractor shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Contractor's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Owner and Contractor as part of this Contract are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Contract, with the composition of such multiplier or markup not being subject to audit. The form of such cost reports shall be agreeable by Owner and Designer.

## **ARTICLE 8 – PAYMENT PROCEDURES**

8.1 *Submittal and Processing of Payments.* Applications for Payment will be processed by Owner as provided in the General Conditions.

8.2 *Progress Payments; Retainage*

8.2.1 Monthly Progress Payments, Minus Retainage. Based upon Applications for Payment submitted to Owner by Contractor, Owner shall make progress payments to Contractor for Work actually and satisfactorily completed during the period covered by the Application for Payment, less ten (10%) percent retainage, applicable only to Work performed during the Construction Phase, in accordance with the requirements

of the Contract Documents. The period covered by each Application for Payment shall be the one (1) month period ending on the last day of each month for which payment is requested.

8.2.2 Final Payment. Owner will pay at least ninety percent (90%) of the calculated value of completed Work. The withheld percentage of the Contract Sum of any contracted Work, improvement, or construction will be retained until the Work is completed satisfactorily and finally accepted by Owner. Owner will make final payment for each the Preconstruction and Construction Phase in accordance with this Contract and Article 13 of the General Conditions, within forty-five (45) days after the Contract is completed satisfactorily and finally accepted by Owner.

8.2.3 Intentionally Omitted.

8.2.4 Funding Sources. Any and all obligations of Owner under this Contract, whether financial or otherwise, shall be payable solely from the revenues, income, rents, and receipts earned by Owner. Nothing herein shall be deemed to prevent Owner from making any payments from any other legally available source.

## **ARTICLE 9 – CONTRACTOR’S REPRESENTATIONS**

9.1 *Contractor’s Representations.* In order to induce Owner to enter into this Contract, Contractor makes the following representations:

9.1.1 Contractor is familiar with and accepts the physical requirements of the Work.

9.1.2 Contractor has evaluated all of the constraints affecting or that may affect the Work and believes the Work can be completed within such constraints.

9.1.3 Contractor has obtained for itself all necessary information regarding the risks, contingencies and other circumstances which may influence or affect its ability to perform its obligations under the Contract and any other factors which would affect its decision to enter into the Contract or the terms on which it would do so.

9.1.4 Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

9.1.5 Contractor has the expertise, qualifications, experience, competence, skills, know-how and resources to fully perform its obligations under the Contract.

9.1.6 Contractor’s entry into this Contract constitutes an incontrovertible representation by Contractor that the Contract Sum represents a sufficient sum to complete all Work required by the Contract Documents within the time limits required by the Contract.

9.1.7 Contractor is a business organization duly organized, validly existing and in good standing under the laws of the State of South Dakota having full power and authority to engage in the business it presently conducts and contemplates conducting and is and throughout the Work will be duly licensed or qualified and in good standing under the laws of said jurisdiction, including maintaining a valid general contractor’s license.

9.1.8 Contractor's execution, delivery and performance of the Contract will not conflict with any applicable laws or with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected.

9.1.9 Contractor is not in breach of any Law or Regulation that would have a material adverse effect on its ability to perform the Contract.

## **ARTICLE 10 – INDEPENDENT CONTRACTOR**

10.1 *Independent Contractor.* Nothing herein shall be construed to make Contractor an agent or employee of Owner for any purpose. Contractor shall in all respects be an independent contractor of Owner in its performance of the Work, and Contractor and its employees and Subcontractors shall in no way represent themselves to third parties as agents or employees of Owner in performance of the Work for any purpose.

10.1.1 CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS AS A RESULT OF PERFORMANCE OF THE WORK FOR ENTERPRISE UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY CONTRACTOR OR SOME OTHER ENTITY.

10.1.2 CONTRACTOR IS AND SHALL BE SOLELY LIABLE AND RESPONSIBLE FOR ANY FEDERAL AND STATE INCOME AND WITHHOLDING TAXES, UNEMPLOYMENT TAXES, FICA TAXES, AND WORKERS' COMPENSATION PAYMENTS AND PREMIUMS APPLICABLE TO THIS CONTRACT OR ANY SERVICES PROVIDED HEREUNDER. CONTRACTOR SHALL INDEMNIFY OWNER FOR ANY LIABILITY RESULTING FROM NONPAYMENT OF SUCH TAXES AND SUMS.

## **ARTICLE 11 – MISCELLANEOUS**

11.1 *Terms.* Capitalized terms not specifically defined herein, shall have the meanings stated herein and in the General Conditions.

11.2 *Assignment of Contract.* Unless expressly agreed to elsewhere in the Contract Documents, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract Documents.

11.3 *Successors and Assigns.* Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, Contracts, and obligations contained in the Contract Documents.

11.4 *Severability.* Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

11.5 *Open Records.* To the extent Owner is subject to the provisions of the any open records laws Contractor agrees it will fully cooperate with Owner in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Contractor asserts is confidential and exempt from disclosure. Any other provision of this Contract notwithstanding, including the Contract Documents, exhibits, attachments, and other documents incorporated into this Contract by reference, and all materials, records, and information provided by Contractor to Owner shall be considered confidential by Owner only to the extent provided under open records laws , and Contractor agrees that any disclosure of information by Owner consistent with the provisions of any open records laws shall result in no liability of Owner. To the extent not prohibited by federal law, this Contract is subject to public release through any open records laws.

11.6 *Governmental Immunity.* Nothing in this Agreement shall constitute a waiver, in whole or in part, of the governmental immunities, rights, or protections provided to Owner under applicable law.

11.7 *Not Used.* .

11.8 *Defective Work.* The period of time for correction of Defective Work, as defined in the Paragraph 12.3.3 of the General Conditions, shall be four (4) years after the final date of completion and acceptance of the Work.

11.9 *Compliance with Applicable Permits and Agreements.* Contractor shall comply with (1) the requirements set forth in all Applicable Permits, attached hereto as Exhibit D, and (2) the applicable requirements set forth in all Utility and Third-Party Agreements, attached hereto as Exhibit E. Contractor shall be solely responsible for any and all costs, delays, or disruptions, to the extent caused by Contractor's failure to comply with any such requirements.

11.10 *Contractor's Certifications.* Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 11.10:

11.10.1 "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;

11.10.2 "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish a Contract Sum or other prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

11.10.3 "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish a Contract Sum or other prices at artificial, non-competitive levels; and

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

11.11 *Interest.* Late payments under the Contract Documents shall bear interest at the Prime Rate, as published in the Wall Street Journal, plus two percent (2%), and such interest shall be compounded annually.

11.12 *Partnering.* Owner and Contractor shall engage in a partnering process as set forth in the Contract Documents.



11.13 Intentionally omitted.

11.14 *Merger.* This Agreement between Owner and Contractor supersedes any prior negotiations, representations or agreements. The parties agree that all commitments, agreements, or understandings concerning the subject matter of this Agreement are contained in the Contract Documents. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

(SIGNATURE PAGES TO FOLLOW)

**IN WITNESS WHEREOF**, Owner and Contractor have executed this Agreement as of the date first set out above.

OWNER:

CONTRACTOR:

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

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

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

**GENERAL CONDITIONS OF THE  
CONTRACT BETWEEN OWNER AND CONTRACTOR  
August 2023**

**TABLE OF CONTENTS**

ARTICLE 1 – DEFINITIONS AND INTERPRETATION .....	1
1.1 <i>The Contract</i> .....	1
1.2 <i>The Work</i> .....	1
1.3 <i>The Drawings</i> .....	1
1.4 <i>The Specifications</i> .....	1
1.5 <i>Capitalization</i> .....	1
1.6 <i>Interpretation</i> .....	1
ARTICLE 2 – DOCUMENTS.....	1
2.1 <i>Correlation and Intent</i> .....	1
2.2 <i>Order of Precedence</i> .....	2
2.3 <i>Reference Standards</i> .....	2
2.4 <i>Review of Contract Documents by Contractor</i> .....	2
2.5 <i>Requests for Information</i> .....	3
ARTICLE 3 – COMMENCEMENT, PROGRESS AND COMPLETION OF THE WORK .....	3
3.1 <i>Construction Schedules</i> .....	3
3.2 <i>Review and Acceptance of Schedules</i> .....	3
3.3 <i>Adherence to Progress Schedule and Updates</i> .....	4
3.5 <i>Schedule Delays</i> .....	4
ARTICLE 4 – SITE, SUBSURFACE AND PHYSICAL CONDITIONS.....	6
4.1 <i>The Site of the Work</i> .....	6
4.2 <i>Information Regarding the Site</i> .....	6
4.3 <i>Examination of the Site</i> .....	6
4.4 <i>Use of the Site and Other Areas</i> .....	7
4.5 <i>Subsurface and Physical Conditions</i> .....	8
4.6 <i>Differing Site Conditions</i> .....	8
4.7 <i>Hazardous Substances at Site</i> .....	9
4.8 <i>Other Environmental Conditions</i> .....	10
ARTICLE 5 – BONDS AND INSURANCE.....	10
5.1 <i>Payment and Performance Bonds</i> .....	10

5.2	<i>Contractor’s Insurance</i> .....	11
5.3	<i>Certificates of Insurance</i> .....	11
5.4	<i>Failure by Contractor to Purchase or Maintain Insurance</i> .....	12
5.5	<i>Deductible and Self-Insured Retentions</i> .....	12
5.6	<i>Owner’s Liability Insurance</i> .....	12
ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES .....		12
6.1	<i>Supervision and Personnel</i> .....	12
6.2	<i>Contractor’s General Warranty and Guarantee</i> .....	13
6.3	<i>Services, Materials, and Equipment</i> .....	13
6.4	<i>Shop Drawings, Samples, and Other Submittals</i> .....	13
6.5	<i>Substitutions</i> .....	15
6.6	<i>Subcontractors, Suppliers, and Other</i> .....	17
6.7	<i>Contingent Assignment of Subcontracts</i> .....	19
6.8	<i>Intellectual Property</i> .....	19
6.9	<i>Permits</i> .....	19
6.10	<i>Taxes</i> .....	19
6.11	<i>Compliance with Laws and Regulations</i> .....	19
6.12	<i>As-Built Documents</i> .....	20
6.13	<i>Safety and Protection</i> .....	20
6.14	<i>Emergencies</i> .....	21
6.15	<i>Contractor’s Indemnity Obligations</i> .....	21
6.16	<i>Professional Design Services</i> .....	22
ARTICLE 7 – OWNER RESPONSIBILITIES AND WORK BY OWNER.....		23
7.1	<i>Owner Responsibilities</i> .....	23
7.2	<i>Limitations on Owner’s Responsibilities</i> .....	23
7.3	<i>Designer</i> .....	23
7.4	<i>Decisions on Requirements of Contract Documents and Acceptability of Work</i> .....	23
7.5	<i>Performance of Work by Owner</i> .....	23
7.6	<i>Delays, Disruption or Interference by Contractor</i> .....	24
ARTICLE 8 – SUBSTANTIAL COMPLETION AND FINAL COMPLETION .....		24
8.1	<i>Substantial Completion</i> .....	24
8.2	<i>Partial Use or Occupancy</i> .....	25
8.3	<i>Final Inspection</i> .....	25
8.4	<i>Final Completion</i> .....	26

ARTICLE 9 – CHANGES IN THE WORK.....	26
9.1 <i>Changes</i> .....	26
9.2 <i>Change Orders</i> .....	26
9.3 <i>Construction Change Directives</i> .....	26
9.4 <i>Minor Changes in the Work</i> .....	28
9.5 <i>Unauthorized Changes in the Work</i> .....	28
9.6 <i>Change Notice and Proposal</i> .....	28
9.7 <i>Significant Change in Quantity or Character of a Major Item of Work</i> .....	29
9.8 <i>Notice to Surety Not Required</i> .....	29
ARTICLE 10 – CLAIMS AND DISPUTES .....	29
10.1 <i>Definition of Claim</i> .....	29
10.2 <i>Time Limits on Claims</i> .....	29
10.3 <i>Continuing Contract Performance</i> .....	29
10.4 <i>Resolution of Disputes</i> .....	29
10.5 <i>Dispute Review Board</i> .....	30
10.6 <i>Litigation to Resolve Claims</i> .....	30
10.7 <i>Attorneys’ Fees</i> .....	30
ARTICLE 11 – ALLOWANCES AND UNIT PRICE WORK .....	30
11.1 <i>Allowances</i> .....	30
11.2 <i>Unit Price Work</i> .....	30
ARTICLE 12 – TESTS AND INSPECTIONS; DEFECTIVE WORK.....	31
12.1 <i>Access to Work</i> .....	31
12.2 <i>Tests, Inspections, and Approvals</i> .....	31
12.3 <i>Defective Work</i> .....	32
12.4 <i>Acceptance of Defective Work</i> .....	33
12.5 <i>Uncovering Work</i> .....	33
12.6 <i>Owner May Stop the Work</i> .....	34
12.7 <i>Owner May Correct Defective Work</i> .....	34
ARTICLE 13 – PAYMENTS TO CONTRACTOR.....	35
13.1 <i>Progress Payments</i> .....	35
13.2 <i>Contractor’s Warranty of Title</i> .....	36
13.3 <i>Owner Right to Withhold Payment</i> .....	36
13.4 <i>Final Payment</i> .....	37
13.5 <i>Payment Does Not Impose Responsibility on Owner</i> .....	37

13.6	<i>Waiver of Claims Upon Final Payment</i> .....	37
13.7	<i>Audit</i> .....	38
13.8	<i>Reimbursement of Owner</i> .....	38
ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION.....		39
14.1	<i>Suspension of Work</i> .....	39
14.2	<i>Termination for Cause</i> .....	39
14.3	<i>Owner May Terminate for Convenience</i> .....	40
14.4	<i>Reservation of Owner’s Rights</i> .....	41
14.5	<i>Termination of Orders and Subcontracts</i> .....	41
ARTICLE 15 – MISCELLANEOUS .....		41
15.1	<i>Written Notice</i> .....	41
15.2	<i>Rights and Remedies</i> .....	41
15.3	<i>Limitation of Damages</i> .....	<b>Error! Bookmark not defined.</b>
15.3.1	<i>Owner</i> .....	<b>Error! Bookmark not defined.</b>
15.3.2	<i>Contractor</i> .....	<b>Error! Bookmark not defined.</b>
15.4	<i>Intellectual Property</i> .....	41
15.5	<i>No Waiver</i> .....	41
15.6	<i>Survival of Obligations</i> .....	41
15.7	<i>Governing Law</i> .....	41
15.8	<i>Headings</i> .....	42
15.9	<i>Successors and Assigns</i> .....	42

**GENERAL CONDITIONS OF THE  
CONTRACT BETWEEN OWNER AND CONTRACTOR  
August 2023**

**ARTICLE 1 – DEFINITIONS AND INTERPRETATION**

1.1 *The Contract.* The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. A Modification is (i) a written amendment to the Contract signed by both parties, (ii) a Change Order, (iii) a Construction Change Directive, or (iv) a written order for a minor change in the Work issued by Owner. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and a Subcontractor or Supplier to Contractor, of any tier, or between any persons or entities other than Owner and Contractor.

1.2 *The Work.* The term “Work” includes all labor, supervision, materials, equipment, services and other items required by the Contract Documents, including Modifications thereto, whether completed or partially completed, and also includes all incidental labor, supervision, materials, equipment, services and other items usually performed under customary practices in connection with the Work and by the trades to be furnished by Contractor.

1.3 *The Drawings.* The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location, and dimensions of the Work generally including plans, elevations, sections, details, schedules, and diagrams.

1.4 *The Specifications.* The Specifications are that portion of the Contract Documents consisting of the written requirements for the Work, including the materials, equipment, construction systems, standards, and workmanship for the Work and performance of related services.

1.5 *Capitalization.* Terms capitalized in these General Conditions include those which are (i) specifically defined and (ii) the titles of numbered articles and identified references to Paragraphs, Subparagraphs, and Clauses in the document.

1.6 *Interpretation.* In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from the one statement and appears in another is not intended. The word “day” shall mean calendar day unless otherwise specifically defined.

**ARTICLE 2 – DOCUMENTS**

2.1 *Correlation and Intent.*

2.1.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor and to describe a functionally complete and operational Project. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

2.1.2 Unless otherwise stated in the Contract Documents, words, which have well-known technical or construction industry meanings, are used in the Contract Documents in accordance with such recognized meanings.

## 2.2 *Order of Precedence.*

2.2.1 The Contract Documents shall be interpreted in a harmonious manner, whenever possible. In the case of a conflict or discrepancy in the Contract Documents, the more stringent requirement, the requirement providing the greater quantity and/or higher quality to Owner, shall prevail.

2.2.2 With reference to the Drawings, the order of precedence shall be as follows (listed in order of highest to lowest precedence):

- a. Written numbers over figures, unless patently incorrect;
- b. Figured dimensions over scaled dimensions;
- c. Large-scale drawings over small-scale drawings;
- d. Schedules on Drawings or in Specifications over conflicting information on other portions of Drawings;
- e. Detail drawings over general drawings;
- f. Drawings with highest revision number prevails.

2.2.3 With reference to the documents that comprise the Contract, conflicts or inconsistencies shall be resolved by applying the order of precedence as follows (listed in order of highest to lowest precedence):

- a. Modifications issued after execution of the Contract, with the latest of such taking precedence;
- b. Addenda;
- c. Agreement;
- d. these General Conditions;
- e. Supplementary Conditions;
- f. Specifications, including but not limited to the [Insert reference]; and
- g. the Drawings.

2.3 *Reference Standards.* No provision of any standard specification, manual, reference standard, or code, or any instruction, shall be effective to change the duties or responsibilities of Owner, Contractor, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or any of its officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents.

2.4 *Review of Contract Documents by Contractor.* Contractor represents (i) it has carefully studied and compared the Contract Documents and (ii) any and all errors, ambiguities, omissions, inconsistencies, or discrepancies within or between the Contract Documents that Contractor recognized have previously been clarified and/or corrected. Contractor shall promptly report to Owner any conflict, error, ambiguity, omission, inconsistency, or discrepancy within or between Contract Documents that Contractor recognizes or has actual knowledge of. Contractor shall not be liable to Owner for damage resulting from conflicts, errors, ambiguities, omissions, inconsistencies, or discrepancies in the Contract Documents unless Contractor recognized or

should have recognized such conflict, error, ambiguity, omission, inconsistency, or discrepancy and failed to report it to Owner. If Contractor performs any Work which involves a conflict, error, ambiguity, omission, inconsistency, or discrepancy in the Contract Documents that Contractor recognized or should have recognized, without resolution by a clarification or interpretation by Designer, or by an amendment or supplement to the Contract Documents, Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

2.5 *Requests for Information.* During the performance of the Work and until final payment, Contractor shall submit to Owner all matters in question concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents in the form of a request for information (“RFI”), within seven (7) days after such matters arise. Owner will, within the time frame mutually agreed with Contractor or with reasonable promptness, obtain a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Such written clarification, interpretation, or decision will be final and binding on Contractor, without adjustment of the Contract Sum or Contract Time, subject to Contractor’s right to submit a Change Notice and Change Proposal.

### **ARTICLE 3 – COMMENCEMENT, PROGRESS AND COMPLETION OF THE WORK**

3.1 *Construction Schedules.* Within ten (10) business days after execution of the Contract, Contractor shall submit the following schedules to Owner for review:

3.1.1 A progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract, and the dates by which Substantial Completion and Final Completion will be achieved, in such form and content as acceptable to Owner (the “Progress Schedule”). In addition, the Progress Schedule shall include days for delays in each month (“Adverse Weather Day”) which Contractor believes will be caused by weather conditions that are reasonably anticipated to have an adverse effect on the critical path (“Adverse Weather”) based upon recorded conditions in the same area as the Project site during the same time period over the duration of the past ten (10) years. Such Progress Schedule shall not exceed the time limits set out in the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.1.2 A preliminary schedule of submittals (“Submittal Schedule”) which is coordinated with the Progress Schedule and allows Owner reasonable time to review Submittals; and

3.1.3 A preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Sum and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work (“Schedule of Values”). Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

3.2 *Review and Acceptance of Schedules.* Prior to Contractor’s commencement of the Work and not less than ten (10) days before submission of the first Application for Payment, Contractor shall meet with Owner to review the schedules submitted by Contractor in accordance with Paragraph 3.1. Contractor shall have an additional ten (10) days to make corrections and



adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until Owner has accepted such schedules.

3.3 *Adherence to Progress Schedule and Updates.* Contractor shall carry on the Work and adhere to the Progress Schedule, as accepted by Owner, at all times throughout the Project. Contractor shall provide monthly updates to the Progress Schedule in such form and content as acceptable to Owner, which shall, at a minimum, accurately indicate (i) as-built data for Work completed in the prior period, (ii) Contractor's plan for completing the Work, and (iii) the forecasted dates for achieving Substantial Completion, Final Completion and other Milestone dates. Contractor shall also provide a schedule narrative to accompany the monthly Progress Schedule update, in such form and content as acceptable to Owner, describing, at a minimum, the critical path of the Project as well as any variations from the prior monthly Progress Schedule.

3.4 *Schedule Float.* Float is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float is not for the exclusive use or benefit of either Owner or Contractor.

3.5 *Schedule Delays.*

3.5.1 If Contractor's performance of the Work is delayed, disrupted, or interfered with by (i) Owner or anyone for whom Owner is responsible, (ii) a differing site condition as described in Paragraph 4.6, or (iii) a change in Law and Regulation as described in Paragraph 6.11.2, then Contractor may be entitled to an equitable adjustment in the Contract Time and Contract Sum, but only to the extent the delay is to the critical path of the Progress Schedule as demonstrated by a time impact analysis of the then current Progress Schedule and provided Contractor has strictly complied with the Contract Documents and notice requirements of Paragraph 3.5.5. If and to the extent the period of time affected by such delay, disruption or interference is concurrently affected by a delay, disruption, or interference covered by Paragraph 3.5.2, then Contractor shall only be entitled to an adjustment of the Contract Time and shall not be entitled to an adjustment of the Contract Sum.

3.5.2 If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and anyone for whom they are responsible, then Contractor may be entitled to an equitable adjustment in Contract Time, but only to the extent the delay is to the critical path of the Progress Schedule as demonstrated by a time impact analysis of the then current Progress Schedule and provided Contractor has strictly complied with the Contract Documents and notice requirements of Paragraph 3.5.5. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Contractor shall not be entitled to an adjustment of the Contract Time for Adverse Weather Days until the number of days of delay, disruption, or interference caused by such Adverse Weather exceeds the total number of Adverse Weather Days required to be included in Contractor's schedule for weather conditions.

3.5.3 Contractor shall not be entitled to an adjustment in Contract Sum or Contract Time for delay, disruption, or interference to the extent caused, in whole or part, by (i) an event or occurrence within the control or responsibility of Contractor or anyone for whom Contractor is responsible or (ii) Contractor's failure to strictly comply with the requirements of the Contract Documents. Upon the occurrence of such delay, disruption or interference, Contractor shall provide notice as required by Paragraph 3.5.5 and shall promptly submit to Owner a plan for recovering the schedule and for mitigating the impacts

caused by such delay, disruption, or interference. Contractor shall implement such recovery and mitigation plan, as well as any actions required by Owner in response to such delay, disruption or interference, at no cost to Owner.

3.5.4 Contractor shall not be entitled to an adjustment in Contract Sum or Contract Time for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control or responsibility of Contractor.

3.5.5 Upon recognizing any delay, disruption, or interference to the Work, Contractor shall immediately contact and inform Owner's on-site representatives. In addition, Contractor shall provide Owner with written notice within seven (7) days of the commencement of such delay, disruption, or interference. Contractor shall include with such notice a description of (i) the cause of the delay, disruption, or interference and (ii) the steps Contractor is taking or proposes to take to mitigate the impacts of the delay, disruption, or interference. Contractor shall also include a statement regarding whether Contractor intends to seek an adjustment of the Contract Time or Contract Sum because of such delay, disruption, or interference. Contractor shall update this notice as and when Contractor obtains information that is in addition to or different from the information provided in Contractor's prior notice and Contractor shall promptly respond to requests for additional information from Owner.

3.5.6 Contractor must submit any Change Proposal seeking an adjustment in Contract Sum or Contract Time under this paragraph within fifteen (15) days of the commencement of the delaying, disrupting, or interfering event in accordance with Paragraph 9.6.

3.5.7 If Contractor fails to timely provide the notice required by Paragraph 3.5.5 or to submit any Change Proposal under Paragraph 3.5.6, then Contractor shall not be entitled to an adjustment of the Contract Time or Contract Sum and waives its right to seek any such adjustment.

3.5.8 In the event has fallen more than 15 days behind the Progress Schedule of the Work as demonstrated by the most recent approved Progress Schedule, Owner shall have the right to order Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (referred to collectively as "Recovery Measures"). Such Recovery Measures shall continue until the progress of the Work complies with the stage of completion required by the Progress Schedule. Owner's right to require Recovery Measures is solely for the purpose of ensuring Contractor's compliance with the Progress Schedule. Recovery Measures, if made necessary by the acts, omissions, or failure to comply with the requirements of the Contract Documents of Contractor or anyone for whom Contractor is responsible, shall be undertaken at Contractor's sole expense, and Contractor shall not be entitled to an adjustment in the Contract Sum or the Contract Time. .

3.5.9 Even if the performance of the Work is progressing in accordance with the Progress Schedule, Owner may, at any time pursuant to a Constructive Change Directive, direct Contractor to accelerate the Work by, among other things, establishing additional shifts, paying or authorizing overtime or providing additional material. Contractor shall provide Owner with an estimate of the costs to be incurred as a result of any directed acceleration. Such costs may include any shift differential, premium, or overtime payments to workers or field supervisors and other employees of Contractor dedicated to the Work on a full-time basis, actually incurred over and above Contractor's normal rates, overtime

charges for material, and other costs agreed upon by Contractor and Owner in writing. Any adjustment to the Contract Sum resulting from Owner's directive to accelerate the Work shall be authorized by Change Order.

3.5.10 Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with Owner's operations. Any postponement or rescheduling of the Work under this paragraph may be grounds for an extension of Contract Time, including the Substantial Completion Date, and an adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by Contractor in compliance with the requirements of the Contract Documents, (ii) such rescheduling or postponement is required solely for the convenience of Owner, and (iii) such rescheduling or postponement in fact has an impact on the Contract Sum and/or the Contract Time.

#### **ARTICLE 4 – SITE, SUBSURFACE AND PHYSICAL CONDITIONS**

4.1 *The Site of the Work.* Owner shall furnish access to the Project site where the Work is to be performed as set forth in the Contract Documents (the "Site"). Contractor shall provide, at its own cost and expense, for all additional lands and access thereto that may be required for temporary construction facilities, storage of materials and equipment or as Contractor deems necessary for the performance of the Work.

4.2 *Information Regarding the Site.* Prior to execution of the Contract, Owner furnished Contractor with information in its possession regarding the site, both included within the Contract Documents and Reference Documents. In addition, if not already provided prior to execution of the Contract, Owner shall furnish surveys describing physical characteristics and legal limitations for the site of the Work, and a legal description of the Site, if reasonably requested by Contractor and necessary for completion of the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.3 *Examination of the Site.* Contractor represents and covenants that prior to executing the Contract, it carefully examined Contract Documents, Reference Documents, and available information regarding the Site, and it has visited the Site and became familiar with the Site, the conditions at each such Site, and the conditions and difficulties under which the Work is to be performed, including but not limited to: (a) conditions bearing upon transportation, disposal, handling, and storage of materials; (b) the availability of labor, materials, equipment, services, water, electric power, and roads; (c) the uncertainties of weather or similar physical conditions at the site and compared Contractor's observations with the requirements of the Contract Documents and contents of the Reference Documents.

4.3.1 Contractor represents that it has not relied and covenants that it will not rely upon any representations of Owner with respect to the Site, except to the extent of information regarding the Site expressly contained in the Contract Documents. Contractor shall not be entitled to any adjustment of the Contract Sum or Contract Time for any cost or expense, delay, disruption, or interference resulting from (i) the failure of Contractor or any of its Subcontractors to perform the Site visits, evaluations, and correlations set forth in the Contract Documents and as required by Paragraph 4.3, or (ii) Contractor's

performance of Work affected by a conflict, inconsistency, error, or omission in the Contract Documents and/or Reference Documents of which Contractor was aware or should have been aware in the exercise of reasonable diligence.

4.3.2 If, before or during the performance of the Work, Contractor discovers a conflict, error, ambiguity, omission, inconsistency, or discrepancy between the Contract Documents and (a) any applicable Law and Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, (d) any instruction of any Supplier, I permit, or (f) any Reference Document, then Contractor shall promptly report it to Owner in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.14) until the conflict, error, ambiguity, omission, inconsistency, or discrepancy is resolved, by a clarification or interpretation, by an amendment or supplement to the Contract Documents, or by direction of Owner.

#### 4.4 *Use of the Site and Other Areas.*

4.4.1 Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (i) damage to the Site; (ii) damage to any such other adjacent areas used for Contractor's operations; (iii) damage to any other adjacent land or areas; and (iv) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of Contractor or those for which Contractor is responsible.

4.4.2 If a damage or injury claim is made by the owner or occupant of any adjacent areas because of the performance of the Work, or because of other actions or conduct of Contractor or those for which Contractor is responsible, Contractor shall (i) take immediate corrective or remedial action as required by Paragraph 6.13, or otherwise; (ii) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (iii) provide indemnity as set forth in Paragraph 6.15.5.

4.4.3 Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris during the progress of the Work. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

4.4.4 Contractor shall clean the Site and the Work and make it ready for utilization by Owner prior to Substantial Completion of the Work. Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials at the completion of the Work, and shall restore to original condition all property not designated for alteration by the Contract Documents.

4.4.5 Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

#### 4.5 *Subsurface and Physical Conditions.*

4.5.1 Contractor acknowledges Reference Documents are not Contract Documents and the Contractor may not rely on the information contained in the Reference Documents as accurate or complete. Contractor shall conduct its own evaluation and validation of the information contained in the Reference Documents and shall, at its sole risk, make its own interpretations and conclusions from such information. Owner does not warrant or guarantee any of the information contained in the Reference Documents.

4.5.2 Contractor may rely upon the accuracy of the Contract Documents, including the Technical Reports and Data and other information expressly included within the Contract Documents. Except for such reliance on the Contract Documents, Contractor may not rely upon or make any claim against Owner or any of its officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

- a. the use of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
- b. any other data, interpretations, opinions, and information not expressly included within the Contract Documents; or
- c. any Contractor interpretation of or conclusion drawn from any Contract Document or any such other data, interpretations, opinions, or information.

#### 4.6 *Differing Site Conditions.*

4.6.1 If Contractor encounters any unknown subsurface or latent physical condition at the Site that either: (i) differs materially from the conditions indicated in the Contract Documents; or (ii) is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.14), notify Owner in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

4.6.2 After receipt of written notice as required by the preceding paragraph, Owner will promptly review the subsurface or physical condition in question, determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition, conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 4.6.1 above, obtain any pertinent cost or schedule information from Contractor, and issue a written statement to Contractor regarding the condition in question. The written statement shall address the resumption of Work in connection with such condition and indicate whether any change in the Drawings or Specifications will be made.

4.6.3 Contractor shall be entitled to an equitable adjustment in Contract Sum or Contract Time, or both, to the extent that the existence of a differing subsurface or latent physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work, subject to the following:

- a. such condition must fall within any one or more of the categories described in Paragraph 4.6.1;
- b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Sum will be subject to the provisions of Paragraph 11.2; and,
- c. Contractor strictly complies with the notice and submission requirements of Paragraphs 3.4 and 9.6.

4.6.4 Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time with respect to a subsurface or latent physical condition if:

- a. Contractor knew of the existence of such condition at the time the submission of the GMP; or
- b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Contract Documents to be conducted by or for Contractor prior to Contractor's making a commitment to the Contract Price and Contract Time;
- c. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, or study of the Contract Documents and/or Reference Documents prior to execution of the Contract; or
- d. Contractor failed to give the written notice as required by Paragraph 4.6.1.

4.6.5 Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Sum or Contract Time, or both, no later than fifteen (15) days after Owner's issuance of its written statement to Contractor regarding the subsurface or physical condition in question.

4.6.6 If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Sum or Contract Time, or both, then any such adjustment shall be set forth in a Change Order pursuant to Article 9.

#### 4.7 *Hazardous Substances at Site.*

4.7.1 Hazardous Substances include asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material in such quantities or circumstances that may present a danger to persons or property exposed thereto.

4.7.2 Contractor shall not be responsible for removing or remediating any Hazardous Substances pre-existing at the Site that are encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

4.7.3 Contractor shall be responsible for controlling, containing, and duly removing all Hazardous Substances brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Substances.

4.7.4 If Contractor encounters, uncovers, or reveals a Hazardous Substance whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible releases a Hazardous Substance, then Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.14); and (iii) notify Owner (and promptly thereafter confirm such notice in writing). Owner shall, if necessary, retain a qualified expert to evaluate such condition or take corrective action, if any. Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.7.5. In addition to and without limiting Owner's rights under the Contract or at law, if Contractor or anyone for whom Contractor is responsible for the release or exacerbation of the condition of the Hazardous Substance in question, then Owner may take such action as Owner deems necessary in response to such Hazardous Substance and set-off against payments to account for the associated costs and expenses incurred by Owner.

4.7.5 Contractor shall not resume Work in connection with such Hazardous Substance or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely.

4.7.6 Owner may, in its sole discretion, order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 9. Owner may have such deleted portion of the Work performed by its own forces or others in accordance with Article 7.

4.8 *Other Environmental Conditions.* If, in the course of the Work, Contractor encounters human remains or recognizes the existence of environmental conditions unrelated to Hazardous Substances, including burial markers, archaeological sites, endangered species, wetlands, or other conditions of the Site regulated by applicable laws and not indicated in the Contract Documents, Contractor shall immediately suspend any operations that would affect them and shall notify Owner. Upon receipt of such notice, Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. Contractor shall continue to suspend such operations until otherwise instructed by Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features shall be made strictly in compliance with the notice and submission requirements of Paragraphs 3.4 and 9.6.

## **ARTICLE 5 – BONDS AND INSURANCE**

### **5.1 *Payment and Performance Bonds.***

5.1.1 Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Sum, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of

the correction period specified in Paragraph 12.3, whichever is later, except as provided otherwise by Laws and Regulations or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Contract.

5.1.2 All bonds shall be in the form supplied by Owner and shall be executed by such sureties who are licensed in the State of South Dakota and are named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

5.1.3 If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and shall, within twenty (20) days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.

5.1.4 If Contractor has failed to obtain a required bond, Owner may exclude Contractor from the Site and exercise Owner’s termination rights under Article 14.

5.1.5 Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

5.2 *Contractor’s Insurance.* Prior to commencing the Work, Contractor shall purchase and maintain, at its own expense, insurance coverage as required herein by the Contract Documents. The types of insurance and minimum policy limits specified shall be maintained in a form and from insurers acceptable to Owner. All insurers shall have at least an A- (Excellent) rating by A.M. Best and be qualified to do business in the State of South Dakota. In the event that any insurer issuing a policy required by this Contract denies coverage to Owner, Contractor will, upon demand by Owner, defend and indemnify Owner and pursue such coverage at Contractor’s own expense. Except as otherwise specified in this Contract, the insurance required herein shall commence prior to the commencement of the Work by Contractor. Liability insurance shall be maintained for the duration of the Contract, and through the longer of eight (8) years following completion of the Work or the applicable statutes of limitation and repose. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor’s liability under the Contract or under Laws and Regulations. Owner does not represent that the insurance coverage and limits required in this Contract will be adequate to protect Contractor or Contractor’s interests. Contractor shall waive claims against Owner to the extent covered by a policy of insurance which Contractor is required to purchase and maintain pursuant to the Contract Documents. Such policies shall provide waivers of any and all rights of subrogation against Owner by endorsement or otherwise.

5.3 *Certificates of Insurance.* Prior to commencement of the Work, Contractor shall provide Certificates of Insurance to Owner showing that the required coverages are in effect, contain required additional insured endorsements and other required endorsements, and are otherwise acceptable to Owner. These Certificates and the insurance policies required by this Article 5 shall contain a provision the coverages afforded under the policies will not be canceled, altered, or



allowed to expire until at least ten (10) days' prior written notice has been given to Owner in the case of cancellation due to nonpayment of premium, or until at least thirty (30) days' prior written notice has been given to Owner for all other bases of cancellation, alteration, or expiration. Information concerning reduction of coverage shall be furnished by Contractor with reasonable promptness in accordance with Contractor's information and belief.

5.3.1 Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles.

5.3.2 Failure of Owner to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of Contractor's obligation to obtain and maintain such insurance.

5.4 *Failure by Contractor to Purchase or Maintain Insurance.* If Contractor does not purchase or maintain all of the insurance required of it by the Contract, Contractor shall notify Owner in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. If Contractor has failed to obtain and maintain required insurance, Owner may exclude Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 14. Without prejudice to any other right or remedy, if Contractor has failed to obtain required insurance, Owner may elect to obtain equivalent insurance to protect its interests at the expense of Contractor, and the Contract Sum shall be adjusted accordingly.

5.5 *Deductible and Self-Insured Retentions.* Upon Owner's request, any deductibles or self-insured retentions must be declared to and reasonably approved by Owner. Contractor is solely responsible for all deductibles and/or self-insured retentions, without reimbursement or contribution from Owner, unless otherwise provided herein. At the option of Owner, Contractor shall provide a financial guarantee satisfactory to Owner guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

5.6 *Owner's Liability Insurance.* Owner may purchase and maintain Owner's usual liability insurance. Optionally, Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under the Contract. It is the intent of the Parties that any insurance obtained by Owner is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by Contractor or any of its respective consultants, officers, agents, subcontractors, sub-subcontractors, employees or anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable.

## **ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES**

6.1 *Supervision and Personnel.* Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying its best skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the acts and omissions of Contractor, its Subcontractors, Suppliers, sub-subcontractors and suppliers of any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall employ competent superintendents who will be present at all times during the progress of the Work. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all

times maintain good discipline and order at the Site. Owner may request the removal of individual employees for any reason at any time, in its sole discretion, and Contractor agrees to comply and to promptly provide acceptable replacement personnel. All actions by Contractor regarding removal and replacement of personnel shall be at Contractor's sole expense.

## 6.2 *Contractor's General Warranty and Guarantee.*

6.2.1 Contractor warrants and guarantees to Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Owner and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

6.2.2 All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If requested by Owner, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

6.2.3 Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents: (i) observations by Owner or any of its employees, representatives, agents or consultants; (ii) payment by Owner of any progress or final payment; (iii) the issuance of a certificate of Substantial Completion by Owner or any payment related thereto by Owner; (iv) use or occupancy of the Work or any part thereof by Owner; any review and approval of a Submittal; (v) the issuance of a notice of acceptability by Owner; (vi) any inspection, test, or approval by others; (vii) or any correction of defective Work by Owner.

## 6.3 *Services, Materials, and Equipment.*

6.3.1 Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

6.3.2 All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

## 6.4 *Shop Drawings, Samples, and Other Submittals.*

6.4.1 Contractor shall timely provide all technical information, shop drawings, samples and other submittals required to be provided to Owner as described in the Contract Documents ("Submittal"). Before submitting a Submittal, Contractor shall have: (i) reviewed and coordinated the Submittal with other Submittals and with the requirements of the Work and the Contract Documents; (ii) determined and verified all field measurements, quantities, dimensions, specified performance and design criteria,

installation requirements, materials, catalog numbers, and similar information with respect thereto; (iii) determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and (iv) determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

6.4.2 Each Submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the submittal.

6.4.3 Contractor shall submit Submittals to Designer, with copy to Owner, for review and approval in accordance with the accepted Schedule of Submittals. If Contractor fails to provide required technical information or submittals within the time(s) specified in this Contract, or any authorized extension, such failure shall be considered to demonstrate unsatisfactory progress. Each Submittal will be identified as Designer may require. Contractor shall submit the number of copies of Submittals required in the Contract Documents.

6.4.4 Data and information contained in any Submittal shall be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Designer the services, materials, and equipment Contractor proposes to provide and to enable Designer to review the information for the limited purposes described herein. Contractor shall give Designer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents with each submittal. This notice shall be set forth in a written communication separate from the Submittal, and in the case of shop drawings, by a specific and highlighted notation made on each shop drawing submitted to Designer for review and approval of each such variation.

6.4.5 Where a Submittal is required by the Contract Documents or the Schedule of Submittals, Contractor shall be solely responsible for all costs and expenses incurred as a result of performance of Work related to such Submittal prior to Designer's review and approval of same.

6.4.6 Designer will provide review of Submittals in accordance with the Schedule of Submittals acceptable to Designer. Designer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

6.4.6.1 Designer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.

6.4.6.2 Designer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

6.4.6.3 Designer's review and approval of a Submittal shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.5 and Designer has given written approval of each such variation by specific written notation thereof

incorporated in or accompanying the Submittal. Designer will document any such approved variation from the requirements of the Contract Documents in a written order for a minor change in the Work.

6.4.6.4 Designer's review and approval of a Submittal shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.4.1 and .2.

6.4.6.5 Designer's review and approval of a Submittal, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Time or Contract Sum, unless such changes are included in a Change Order.

6.4.6.6 Neither Designer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

6.4.6.7 Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Submittals, subject to the provisions of Paragraph 6.4.6.3.

6.4.7 Contractor shall make corrections required by Designer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Designer on previous submittals.

6.4.7.1 Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Designer will record its time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Designer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.

6.4.7.2 If Contractor requests a change of a previously approved Submittal item, Contractor shall be responsible for Designer's charges to Owner for their review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

6.5 *Substitutions.* Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Designer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made within such time as specified by Owner, and in any event, before commencement of related construction at the Site.

6.5.1 Contractor shall submit sufficient information as provided below to allow Designer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Designer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.

6.5.2 The requirements for review by Designer will be as set forth in this Paragraph, as supplemented by the Contract Documents, and as Designer may decide is appropriate under the circumstances.

6.5.2.1 Contractor shall make written application to Designer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application shall certify that the proposed substitute item will: (i) perform adequately the functions and achieve the results called for by the general design, (ii) be similar in substance to that specified, and (iii) be suited to the same use as that specified.

6.5.2.2 The application shall also state: (i) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Time, (ii) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and (iii) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.

6.5.2.3 The application will identify: (i) all variations of the proposed substitute item from that specified, and (ii) available Engineering, sales, maintenance, repair, and replacement services.

6.5.2.4 The application shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Sum, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

6.5.3 Designer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Designer may require Contractor to furnish additional data about the proposed substitute item. Designer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Designer's review is complete and Designer determines that the proposed item is an acceptable substitute. Designer will advise Contractor in writing of its determination.

6.5.4 Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

6.5.5 Designer will record Designer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Designer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Designer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Designer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

6.5.6 Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

6.5.7 If Designer approves the substitution request, Contractor and Owner shall execute an appropriate Change Order and proceed with the substitution. The Designer's denial of a substitution request shall be final and binding and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 6.5.5, by timely submittal of a Change Proposal.

## 6.6 *Subcontractors, Suppliers, and Others.*

6.6.1 A Subcontractor is a person or entity who has a direct contract with Contractor to perform a portion of the Work or supply materials or supplies for the Work. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a separate contractor hired by Owner or subcontractor of a separate contractor.

6.6.2 A Sub-Subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work or supply materials or supplies for the Work. The term “Sub-subcontractor” is referred throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

6.6.3 A Supplier is 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.

6.6.4 Unless otherwise stated in the Contract Documents or the bidding requirements, Contractor, shall furnish in writing to Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work within ten (10) days after award of the Contract. Owner will promptly reply to Contractor in writing stating whether or not Owner, after due investigation, has reasonable objection to any such proposed person or entity. Failure of Owner to reply promptly shall constitute notice of no reasonable objection. Contractor shall notify Owner of any proposed change thereto and shall not change a Subcontractor, person, or entity previously identified by Contractor if Owner makes reasonable objection to such change.

6.6.5 Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so, or if the Subcontractor or Supplier was identified and approved by Owner during the bidding process. Contractor had the opportunity to conduct its own due diligence regarding such Subcontractors and Suppliers prior to entering into the Contract and accepts sole responsibility for the performance of such Subcontractors and Suppliers. Owner does not warrant or guarantee the performance of any such Subcontractor or Supplier and bears no responsibility for same.

6.6.6 Contractor shall not contract with a proposed person or entity to whom Owner has made reasonable and timely objection. Contractor shall not be required to contract with anyone to whom Contractor has made reasonable and timely objection. If Owner has reasonable objection to a person or entity proposed by Contractor, Contractor shall propose another to whom Owner has no reasonable objection. The Contract Sum shall be increased or decreased by the difference in cost occasioned by such change, and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless Contractor has acted promptly and responsively in submitting names as required, or if the Subcontractor or Supplier was identified and approved by Owner during the bidding process.

6.6.7 Contractor shall be fully responsible to Owner for all acts and omissions of all of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work, regardless of whether the Subcontractors or Suppliers participated in the

bidding process, just as Contractor is responsible for Contractor's own acts and omissions. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.

6.6.8 Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.

6.6.9 By appropriate written agreement Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor, by these Documents, assumes toward Owner. Each subcontract agreement shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against Contractor that Contractor, by the Contract Documents, has against Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Additionally, each subcontract will: (i) waive all rights of subrogation that the Subcontractor may have against Owner, (ii) require the Subcontractor to carry and maintain minimum liability insurance in accordance with this Contract and other insurance, all of which is addressed in detail in Exhibit C, including, without limitation, naming the Owner and its directors, officers, agents and employees as additional insureds and corresponding primary and non-contributory stipulations; and (iii) require the Subcontractor to furnish such certificates of insurance and waivers of subrogation as the Owner may reasonably request. If limits on liability coverage are lower than those required as specified in the Contract, the Contractor is responsible for the risks associated with reduced limits as well as the monitoring of certificates of insurance and for compliance with all other contract terms and conditions. The Owner reserves the right to review the subcontract agreements to confirm their conformity with this Contract both prior to and after the execution thereof by the Contractor; provided that this right shall not give rise to a duty or obligation by or on behalf of the Owner to do so. Contractor is fully responsible for enforcing the inclusion of all Contract provisions including insurance.

6.6.10 Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier. Nothing in the Contract Documents shall create any obligation on the part of Owner to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

6.6.11 Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner and any such Subcontractor, Supplier, or other individual or entity.

6.7 *Contingent Assignment of Subcontracts.* Each subcontract agreement for a portion of the Work is assigned by Contractor to Owner provided that:

6.7.1 The assignment is effective only after termination of the Contract by Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which Owner accepts by notifying the Subcontractor in writing; and

6.7.2 The assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

6.8 *Intellectual Property.* Contractor shall pay all royalties and license fees and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. Contractor shall make all necessary arrangements and agreements, at its own expense, to comply with and not to infringe on any patents, trademarks, or copyrights in the performance of the Work.

6.9 *Permits.* Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for any and all permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work. Contractor shall comply with the requirements for all permits applicable to the Project and/or the Work, regardless of whether it obtained or paid for such permits. Contractor shall provide indemnity as set forth in Paragraph 6.15.

6.10 *Taxes.* Owner is exempt from payment of South Dakota state sales taxes and certain other taxes. Contractor shall comply with applicable statutes and procedures necessary to obtain the benefit of Owner's tax exemptions. Contractor shall pay all other sales, consumer, use, and similar taxes applicable to the Work or portions thereof.

6.11 *Compliance with Laws and Regulations.*

6.11.1 The term "Laws and Regulations" as used in the Contract Documents means any and all applicable laws, statutes, rules, regulations, ordinances, codes, permits and orders of any and all governmental bodies, agencies, authorities, and courts having authority or jurisdiction over the Contractor, the Site, and/or the performance of the Work.

6.11.2 Contractor shall comply with all Laws and Regulations, including, without limitation relating to labor, services and materials to be furnished as part of the Subcontract Work, health and safety, environmental compliance and regulation, removal and remediation of regulated substances, discrimination, immigration, fair employment, equal opportunity and worker's compensation. Contractor shall give any and all notices required by Laws and Regulations bearing on performance of the Work. Neither Owner nor Designer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

6.11.3 If Contractor's cost or time of performance of the Work are increased as a result of Laws and Regulations enacted after the date of execution of the Agreement, directly affecting Contractor's means and methods of performing the Work, then Contractor shall



be entitled to an equitable adjustment of the Contract Sum and/or Contract Time, as applicable.

6.12 *As-Built Documents.* Contractor shall maintain at a location acceptable to Owner one as-built set of the Drawings, Specifications, Addenda, Change Orders and other Modifications, approved Submittals, and written interpretations and clarifications, in good order and marked to record accurately the Work as actually constructed. Contractor shall keep such record documents in good order and annotate them to show changes made during construction, actual measurements and dimensions, locations of utilities and other facilities, and conditions encountered. These record documents, together with all approved samples, will be available to Designer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Owner.

6.13 *Safety and Protection.*

6.13.1 Contractor shall submit in writing a proposed safety program for performance of the Work, which shall, at a minimum, meet the form and requirements prescribed in the Contract Documents. Contractor's safety program shall be specific to the Work and Site.

6.13.2 Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to: (i) all persons on the Site or who may be affected by the Work; (ii) all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and (iii) other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.

6.13.3 Contractor shall give notice as required by, and comply with, all Laws and Regulations and policies adopted or enforced by Owner relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss, and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify: (i) Owner, (ii) the owners of adjacent property, underground facilities, and other utilities; and (iii) other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress. Contractor shall inform Owner of the specific requirements of Contractor's safety program with which personnel must comply while at the Site.

6.13.4 Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed. Contractor shall solely bear all risk of loss to the Work and for any personal property, materials, equipment and facilities utilized by Contractor in connection with the Work. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

6.13.5 Contractor shall fully comply with health and safety standards and requirements of the U.S. Bureau of Reclamation and U.S. Department of Labor, including the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA), as applicable.

6.13.6 Contractor shall designate a qualified and experienced safety representative who shall be at the Site full time and whose sole duties and responsibilities shall be the

prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.13.7 Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws and Regulations.

6.13.8 If either party to the Contract becomes aware of injury or damage to person or property at the Site or in connection with the Work, such party shall provide written notice of such injury or damage, whether or not insured, to the other party as soon as possible, but in any event, not later than seven days, after such occurrence. The notice shall provide sufficient detail to enable the other party to investigate the matter. Contractor is required to maintain accurate records, and report to Owner all cases incurred in the performance of this Contract of (i) death, occupational illness, personal injuries to employees or public, and (ii) property damage in excess of \$500.00. Contractor is subject to and shall facilitate site visits by federal, state and local authorities having jurisdiction over the Work.

6.14 *Emergencies.* In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Owner prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Owner determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Construction Change Directive or Change Order will be issued.

6.15 *Contractor's Indemnity Obligations.*

6.15.1 To the fullest extent permitted by law, and in addition to any other obligations of Contractor under the Contract or Laws and Regulations, Contractor shall defend, indemnify and hold harmless Owner, the Designer and their shareholders, directors, officers, members, partners, employees, consultants, agents and representatives (the "Indemnified Parties") from and against all liability, claims, actions, costs, expenses, losses, and damages (including but not limited to all fees and charges of Designers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, but only to the extent caused by (i) any negligent or wrongful acts or omissions of Contractor, a Subcontractor or Sub-subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, and attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property damages (other than the Work itself), or (ii) Contractor's breach of its obligations under the Contract. Contractor's obligations under this Paragraph shall be enforced regardless of whether or not such liability, claim, action, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 6.15.

6.15.2 In claims against any person or entity identified in Paragraph 6.15 by an employee of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.15

shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

6.15.3 The indemnification obligations of Contractor under Paragraph 6.15.1 shall not extend to the liability of Designer or its officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

- a. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
- b. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.15.4 Pursuant to C.R.S. § 13-50.5-102(8)(c), to the extent Contractor, any Subcontractor, or Sub-Subcontractor provides architectural, Engineering, survey, or other design services, the extent of Contractor's, Subcontractor's, or Sub-subcontractor's obligation to defend, indemnify, or hold harmless Owner and its affiliated entities and their directors, officers, employees, and agents will be determined only after Contractor's, Subcontractor's, or Sub-subcontractor's liability or fault has been determined by adjudication, alternative dispute resolution, or otherwise resolved by mutual agreement between Contractor, Subcontractor, or Sub-subcontractor and Owner.

#### 6.16 *Professional Design Services.*

6.16.1 Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.

6.16.2 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Designer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Designer.

6.16.3 Owner and Designer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner or Designer have specified to Contractor all performance and design criteria that such services must satisfy.

6.16.4 Designer's review and approval of design calculations and design drawings provided by Contractor will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Designer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.4.6.

## **ARTICLE 7 – OWNER RESPONSIBILITIES AND WORK BY OWNER**

7.1 *Owner Responsibilities.* Owner shall only be required to perform such obligations as are expressly described in the Contract Documents as being the responsibility of Owner. In addition, Owner shall furnish information or services expressly required of Owner by the Contract Documents. If requested in writing by Contractor, Owner may, in its reasonable discretion and subject to CORA, furnish other information or services under Owner's control and relevant to the Contractor's performance of the Work, which are not expressly required to be furnished by Owner under the Contract Documents, subject to Owner's right to charge Contractor any costs and expenses incurred by Owner in furnishing such other information or services.

7.2 *Limitations on Owner's Responsibilities.* Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

7.3 *Designer.* Owner may delegate to Designer, or others, any of its duties, rights, or obligations under this Contract. Owner may at its discretion appoint a Designer or construction manager to replace Designer. The replacement Designer's or construction manager's status under the Contract Documents shall be that of the former Designer.

7.4 *Decisions on Requirements of Contract Documents and Acceptability of Work.* Designer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Designer 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.

7.5 *Performance of Work by Owner.* In addition to and apart from the Work under the Contract Documents, Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

7.5.1 Owner shall provide for coordination of the activities of Owner's own forces and of each separate contractor or others with the Work of Contractor, who shall cooperate with them. Contractor shall participate with other separate contractors and Owner in reviewing their operation and construction schedules when directed to do so. Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The operation and construction schedules shall then constitute the schedules to be used by Contractor, separate contractors, and Owner until subsequently revised.

7.5.2 Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work at the Site.

7.5.3 Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work, and otherwise shall connect and coordinate Contractor's construction and operations with the work of others or if required by the Contract Documents. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Owner and the others whose work will be affected.

7.5.4 If part of Contractor's Work depends for proper execution or results upon construction or operations by Owner or a separate contractor or others, Contractor shall, prior to proceeding with that portion of the Work, promptly report to Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Contractor to so report shall constitute an acknowledgement that Owner's or separate contractors' or others' completed or partially completed construction is fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.

7.5.5 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.

7.5.6 Contractor shall promptly remedy damage wrongfully caused by Contractor to completed or partially completed construction or to property of Owner or separate contractors or others.

7.6 *Delays, Disruption or Interference by Contractor.* Contractor shall avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. Contractor shall be liable to Owner for damage to such other work, and for the delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

## **ARTICLE 8 – SUBSTANTIAL COMPLETION AND FINAL COMPLETION**

8.1 *Substantial Completion.* Substantial Completion is the time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Designer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended and all approvals, certificates and authorizations required by applicable permits or authorities having jurisdiction have been received. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

8.1.1 When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner in writing that the entire Work is substantially complete and request that Owner issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner an initial draft of punch list items to be completed or corrected before final payment.

8.1.2 Promptly after Contractor's notification, Owner shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Contractor in writing giving the reasons therefor.

8.1.3 If Owner considers the Work substantially complete, Owner will deliver a certificate of Substantial Completion which shall fix the date of Substantial Completion. Owner shall attach to the certificate a punch list of items to be completed or corrected before final payment.

8.1.4 At the time of receipt of the certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

8.1.5 After Substantial Completion Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases, Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

8.1.6 Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

8.2 *Partial Use or Occupancy.* Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

8.2.1 At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor and Owner will follow the procedures of Paragraph 8.1 for that part of the Work.

8.2.2 At any time, Contractor may notify Owner in writing that Contractor considers any such part of the Work substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.

8.2.3 Within a reasonable time after either such request, Owner and Contractor shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Contractor in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 3.5 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

8.2.4 No use or occupancy or separate operation of part of the Work may occur prior to compliance with the reasonable requirements of builder's risk or other applicable property insurance.

8.3 *Final Inspection.* Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Owner will promptly make a final inspection with Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or

agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

8.4 *Final Completion.* The Work is finally complete (subject to surviving obligations) when it is ready for final payment as established by Owner's satisfaction that the Work has been completed based on the final inspection, all of the documents to be delivered by Contractor at or prior to final payment have been so delivered, and all of Contractor's obligations under the Contract have been fulfilled.

## **ARTICLE 9 – CHANGES IN THE WORK**

9.1 *Changes.* Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in this Article 9 and elsewhere in the Contract Documents.

9.1.1 A Change Order shall be based upon agreement between Owner and Contractor. A Construction Change Directive may be issued by Owner and may or may not be agreed to by Contractor. An order for a minor change in the Work may be issued by Owner alone.

9.1.2 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Contractor shall proceed promptly with Changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

9.2 *Change Orders.* A Change Order is a written instrument prepared by Owner and signed by Owner and Contractor stating their agreement upon all of the following: (i) a change in the Work; (ii) the amount of the adjustment in the Contract Sum, if any; and (iii) the extent of the adjustment in the Contract Time, if any.

9.3 *Construction Change Directives.* A Construction Change Directive is a written order prepared and signed by Owner directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

9.3.1 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

9.3.2 If the Construction Change Directive provides for an adjustment in the Contract Sum, the adjustment shall be based on one of the following methods:

- a. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- b. unit prices stated in the Contract Documents or subsequently agreed upon;
- c. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- d. as provided in Paragraph 9.3.5.

9.3.3 Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the change in the Work involved and advise Owner of Contractor's agreement

or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

9.3.4 A Construction Change Directive signed by Contractor indicates the agreement of Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

9.3.5 If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined (i) by reference to applicable Unit Prices, for additions or reductions to the quantities of major items of Work, or (ii) if Unit Prices are not applicable, then by Owner on the basis of the reasonable net costs and savings of performing the Work caused by the change, plus, in case of any increase of the Contract Sum not determined by Unit Prices, amounts for overhead and profit as set forth below in this subparagraph. In such case, Contractor shall keep and present, in such form as Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs, overhead, and profit for the purpose of this Paragraph 9.3.5 shall be limited to the following:

- a. costs of direct labor as supported by certified time sheets for each laborer, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;
- b. costs of materials, supplies, and equipment, including cost of transportation, incorporated into or fully consumed in the Work, supported by itemized invoices;
- c. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved, subject to Paragraph 11.2;
- d. costs of machinery and equipment, not incorporated into or fully consumed in the Work, exclusive of hand tools, whether rented from Contractor or others at 75% of the applicable rental rate published in the most current edition of the *Rental Rate Blue Book*, published by Equipment Watch, plus operating costs; for a delay in the Work pursuant to Paragraph 3.4, equipment standby costs, shall be calculated at 50% of the applicable rental rate published in the most current edition of the *Rental Rate Blue Book*, published by Equipment Watch and shall be limited to 8 hours per day, forty (40) hours per week, and shall not include operating costs;
- e. additional costs or premiums for all bonds and insurance, permit fees, sales, use or similar taxes related to the Work, if actually paid by Contractor and supported by itemized invoices;
- f. additional costs of site supervision and field office personnel directly attributable to the change, but only to the extent (i) the change involves a delay in the Work pursuant to Paragraph 3.5 or (ii) Contractor can demonstrate the supervisor or field office personnel is directly supervising or supporting the changed Work itself;
- g. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Designer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the



basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 9.3.5.

h. costs of special consultants (including but not limited to Designers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work;

i. a reasonable amount for overhead and profit, not to exceed Contractor's Fee specified in the Agreement, calculated on the total costs (items 9.3.5.a through 9.3.5.h above).

9.3.6 Pending final determination of cost to Owner, amounts not in dispute may be included in the Application for Payment. The amount of credit to be allowed by Contractor to Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by Owner. When both additions and credits covering related Work or substitutions are involved in a change, the corresponding adjustment for overhead and profit shall be figured on the basis of net increase or decrease, as applicable, with respect to that change.

9.4 *Minor Changes in the Work.* Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Owner and Contractor. Contractor shall carry out such written orders promptly.

9.5 *Unauthorized Changes in the Work.* Contractor shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 6.14 or in the case of uncovering Work as provided in Paragraph 12.5.

9.6 *Change Notice and Proposal.* If Contractor receives written direction from Owner, which Contractor considers to be a change in the Contract or Work, then Contractor shall notify Owner in writing of the change (a "Change Notice"), including whether an adjustment in the Contract Sum or Contract Time may be necessitated thereby, prior to performing work affected by such change or within seven (7) days of receipt of such direction from Owner, whichever shall occur first. Owner shall have no liability to Contractor for changes in the Work where such Work was undertaken without written authorization from Owner. Failure to provide timely Change Notice as required herein shall constitute waiver by Contractor of any right to adjustment of the Contract Sum and Contract Time.

9.6.1 Contractor shall submit a detailed Change Proposal along with supporting data, including the proposed change in Contract Sum or Contract Time (if any), to Owner within fifteen (15) days after the submittal of the Change Notice. The Change Proposal shall reference any governing or applicable provisions of the Contract Documents. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

9.6.2 Owner will review each Change Proposal and, within thirty (30) days after receipt of 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. If Owners agrees there has been a change to the Work on account of Owner's direction, then Owner and Contractor shall

proceed in accordance with this Article 9. If Owner disagrees there has been a change, then Owner shall notify Contractor of its determination. If Owner does not take action on the Change Proposal within thirty (30) days, the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 10. If Contractor disagrees with Owner's determination, Contractor shall have the right to make a claim pursuant to Article 10. In any event, Contractor shall proceed in accordance with Owner's direction without delay.

9.7 *Significant Change in Quantity or Character of a Major Item of Work.* If the character or quantity of a major item of work, covered by a Unit Price, is significantly changed, then either Contractor or Owner may request an equitable adjustment to such Unit Price. If such change is requested by Contractor, then Contractor shall comply with the Change Proposal provisions in Paragraph 9.6. The change in Unit Price must be requested prior to the commencement of the Work affected thereby. For the purpose of this paragraph, a significant change is (i) when the character of the Work as altered differs materially in kind or nature from that involved or included in the original proposed construction or (ii) the quantity of such Work is increased or decreased by twenty-five percent (25%) relative to the original quantity indicated in the Contract Documents.

9.8 *Notice to Surety Not Required.* Changes in the Work shall be binding upon Contractor's Surety without notice.

## **ARTICLE 10 – CLAIMS AND DISPUTES**

10.1 *Definition of Claim.* A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment, or interpretation of contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between Owner and Contractor arising out of or relating to the Contract. Claims must be made in writing with supporting documentation. The responsibility to substantiate Claims shall rest with the party making the Claim. For actual or alleged changes in the Work covered by Paragraph 9.6, Contractor shall comply with such provisions of Paragraph 9.6 before submitting a Claim in connection with such change in the Work.

10.2 *Time Limits on Claims.* Contractor must provide Owner with a Notice of Intent to Submit Claim within twenty-one (21) days after occurrence of the event and/or Owner determination giving rise to such Claim. Contractor must submit its Claim with all supporting documentation relied up on by Contractor within twenty-one (21) days following such Notice of Intent to Claim. Failure of Contractor to provide timely notice and/or submit a timely, properly documented Claim shall constitute a waiver of any Claim arising out of such event. After Contractor submits a Claim, Contractor shall promptly (a) notify Owner if at any time it becomes aware of further material information relating to the Claim, to the extent such information is new or renders information previously submitted materially inaccurate or misleading, and (b) following Owner's reasonable request, submit to Owner additional information related to the Claim.

10.3 *Continuing Contract Performance.* No Work shall be delayed or postponed pending resolution of any Claims, disputes or disagreements, or during any dispute resolution or appeal process. Pending final resolution of a Claim, Contractor shall proceed diligently with performance of the Contract and Owner shall continue to make undisputed payments, subject to permitted withholdings, in accordance with the Contract Documents.

10.4 *Resolution of Disputes.* The parties shall endeavor to resolve Claims first at the Project level and, if not resolved, then by a meeting of Executives. If a Claim is not resolved by the

meeting of Executives, then either party may (at any time prior to Final Payment) request a hearing before and decision of the Dispute Review Board.

10.5 *Dispute Review Board.* The parties have signed a separate agreement establishing the Dispute Review Board (the “DRB Agreement”). The Dispute Review Board will conduct a hearing and render a decision regarding any Claim referred to it by written request of either party in accordance with the rules and procedures set forth in the DRB Agreement. Such decision shall not be binding on the parties but shall be admissible as evidence in any subsequent litigation proceeding. Receipt of a decision of the Dispute Review Board is a condition precedent to the commencement of litigation in connection with any Claim under the Contract. Applicable statutes of limitation and repose shall be tolled for the period of time between the date a party makes a written request for a decision of the Dispute Review Board and (i) the date that is thirty (30) days following the date a decision is received from the Dispute Review Board or (ii) the date that is one hundred and eighty (180) days following the date a party made a written request for a decision of the Dispute Review Board, whichever shall occur first.

10.6 *Litigation to Resolve Claims.* If the Dispute Review Board fails to conduct a hearing or render a decision in accordance with the DRB Agreement or a Claim is not resolved by fully executed Change Order within thirty (30) days after the receipt of a decision of the Dispute Review Board, then either party may institute litigation in the District Court for the First Judicial District, located in Yankton County, South Dakota which shall be the exclusive venue for resolving disputes under the Contract.

10.7 *Attorneys’ Fees.* In the event of litigation between the parties regarding the interpretation of the terms and conditions of the Contract Documents, claims by either party or any other matter relating to or arising under the Contract, the prevailing party shall have the right to recover reasonable attorneys’ fees and litigation costs from the other party.

## **ARTICLE 11 – ALLOWANCES AND UNIT PRICE WORK**

11.1 *Allowances.* It is understood that Contractor has included in the Contract Sum all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner.

11.1.1 Contractor agrees that cash allowances include: (i) the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and (ii) Contractor’s costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Sum and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

11.1.2 Prior to final payment, an appropriate Change Order will be issued as to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Sum shall be correspondingly adjusted.

11.2 *Unit Price Work.*

11.2.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Sum will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

11.2.2 The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Sum. Payments to Contractor for Unit Price Work will be based on actual quantities.

11.2.3 Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

11.2.4 Owner will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Owners will review with Contractor Owner's preliminary determinations on such matters before rendering a written decision thereon. Owner's written decision thereon will be final and binding upon Contractor, subject to Contractor's right to assert a Claim pursuant to Article 10.

## **ARTICLE 12 – TESTS AND INSPECTIONS; DEFECTIVE WORK**

12.1 *Access to Work.* Contractor shall provide Owner and its consultants and other representatives, and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work, wherever located, including but not limited to manufacturing facilities owned, operated, or used by Contractor, at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access.

12.2 *Tests, Inspections, and Approvals.*

12.2.1 Tests, inspections, and approvals of portions of the Work by the Contract Documents or by Laws and Regulations, or orders of public authorities having jurisdiction shall be made at an appropriate time and place. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all costs and expenses thereof as well as responsibility for scheduling and coordinating same. Contractor shall give Owner timely notice of when and where tests and inspections are to be made so Owner may observe such procedures. If Owner is to observe tests, inspections, or approvals required by the Contract Documents, Owner will do so promptly and, where practicable, at the normal place of testing.

12.2.2 Contractor shall be responsible for arranging, obtaining, and paying for inspections and tests, including but not limited to those required:

- a. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
- b. to attain Owner's acceptance of materials or equipment to be incorporated in the Work;
- c. by manufacturers of equipment furnished under the Contract Documents;
- d. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
- e. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner.

12.2.3 Tests and Inspections by Owner.

12.2.3.1 Contractor shall give Owner timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests by Owner and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

12.2.3.2 Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 12.5.

12.2.4 If Laws and Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner the required certificates of inspection or approval.

12.2.5 If such procedures for testing, inspection, or approval under Subparagraphs 12.2.1 through 12.2.4 herein reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, Contractor shall bear all costs made necessary by such failure.

12.2.6 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by Contractor and promptly delivered to Owner.

12.2.7 If the Contract Documents require the Work (or part thereof) to be approved by a designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

### 12.3 *Defective Work.*

12.3.1 Promptly after receipt of written notice of Work failing to conform to the requirements of the Contract Documents (“Defective Work”), Contractor shall correct all such Defective Work, whether or not fabricated, installed, or completed, or, if Owner has rejected the defective Work, remove it from the Project and replace it with Work that is not defective. Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections, and the cost of repairing or replacing items of equipment which were damaged by the rejected Work.

12.3.2 If, after the Work and related equipment have been installed, it is discovered that the Work or any part thereof may require correction, Owner shall nevertheless have the right to use such equipment until such time as it is convenient to Owner that the equipment be removed from service for correction. The equipment will not be used so as to further damage the equipment.

12.3.3 If, within the period for correction of the Work specified in the Contract Documents, the Work is found to be Defective Work, Contractor shall correct such work promptly after receipt of written notice from Owner to do so unless Owner has previously given Contractor a written acceptance of such condition. This obligation under this Paragraph 12.3.3 shall survive acceptance of the Work under the Contract and termination of the Contract. Owner shall give such notice promptly after discovery of the condition.

12.3.4 If Contractor fails to correct nonconforming Work within a reasonable time, Owner may correct it in accordance with Paragraph 12.7. Contractor shall bear the cost of

correcting destroyed or damaged equipment or construction, whether completed or partially completed, of Owner or separate contractors caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.3.5 Nothing contained in Paragraph 12.3 shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents. Establishment of the time period for correction described in Paragraph 12.3.3 relates only to the specific obligation of Contractor to correct the Work, and has no relationship as to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

12.3.6 When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

12.3.7 In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 13.

12.4 *Acceptance of Defective Work.* If, instead of requiring correction or removal and replacement of Defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Designer's confirmation that such acceptance is in general accord with the design intent and applicable Engineering principles and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Sum, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 13. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

12.5 *Uncovering Work.*

12.5.1 If a portion of the Work is covered (i) contrary to Owner's request, (ii) prior to inspection, testing, or approval or (iii) contrary to requirements specifically expressed in the Contract Documents, it must, if required in writing by Owner, be uncovered for observation, inspection, testing and/or approval, as applicable, and be replaced at Contractor's expense without change in the Contract Time.

12.5.2 If a portion of the Work has been covered which Owner has not specifically requested to observe prior to its being covered, Owner may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to Owner. If such Work is not in accordance with the Contract Documents,

Contractor shall pay such costs unless the condition was caused by Owner or a separate contractor, in which event Owner shall be responsible for payment of such costs. Owner has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed. If any Work is covered contrary to the written request of Owner, then Contractor shall, if requested by Owner, uncover such Work for Owner's observation, and then replace the covering, all at Contractor's expense.

12.5.3 If Owner considers it necessary or advisable that covered Work be observed by Owner or inspected or tested by others, then at Owner's request and in accordance with Contractor's directions, Contractor shall uncover, expose, or otherwise make available for observation, inspection, or testing the portion of the Work in question, and provide all necessary labor, material, and equipment.

12.5.3.1 If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility Owner shall be entitled to impose a reasonable set-off against payments due under Article 13.

12.5.3.2 If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within thirty (30) days of the determination that the Work is not defective.

12.6 *Owner May Stop the Work.* If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them. Such stoppage of work shall be considered a suspension for cause which shall not entitle Contractor to an adjustment of the Contract Sum or Contract Time.

12.7 *Owner May Correct Defective Work.* If Contractor fails within a reasonable time after written notice from Owner to correct defective Work, or to remove and replace rejected Work as required by Owner, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven (7) days written notice to Contractor, correct or remedy any such deficiency.

12.7.1 In exercising the rights and remedies under this Paragraph 12.7, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents,

employees, and consultants access to the site to enable Owner to exercise the rights and remedies under this paragraph.

12.7.2 All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 12.7 will be charged against Contractor as set-offs against payments due under Article 13. Such claims, costs, losses, and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

12.7.3 Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 12.7.

## **ARTICLE 13 – PAYMENTS TO CONTRACTOR**

13.1 *Progress Payments.* By the fifth (5th) of a month, Contractor shall submit to the Enterprise a draft Application for Payment for Work performed through the previous month. Provided that a final Application for Payment which is acceptable to the Enterprise and otherwise meets the requirements of the Contract Documents is received by Enterprise not later than the nineteenth (19th) of a month, Enterprise shall make payment to the Contractor not later than the fifteenth (15th) of the following month subject to Enterprise's rights of set off and withholding as set forth in the Article 13..

13.1.1 The Schedule of Values will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Owner. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period.

13.1.2 Contractor shall submit to Owner monthly itemized Applications for Payment for Work, including all authorized changes in accordance with the Agreement. Each Application shall be supported by such data substantiating Contractor's right to payment as required by the Contract Documents and as Owner may require, reflecting retainage, if any, as provided elsewhere in the Contract Documents.

13.1.2.1. The Contractor acknowledges the Work is to proceed as a no-lien Project in accordance with the laws of the state of South Dakota regarding public project. No party, therefore, will have the right to assert a mechanics or other lien as against the real estate or the Project. The Contractor for itself and for all who claim through Contractor, acknowledge and agree the Project is a public project and that no lien may be asserted or attach to the real estate on which the Project is to be performed or to any improvement ow existing or to be construction thereon. The Contractor must provide written notice to an to any other persons with whom the Contractor contract with respect to Work provided or Work completed pursuant to this Agreement, that this a public project against which liens cannot be filed, except as against Project proceeds remaining with the Owner. The Contractor must indemnify and hold harmless the Owner for all costs, expenses, and attorneys' fees, should an attempt to assert a lien against the real property or Project by made on Contractor's behalf or behalf of or any other person for who the Contractor is responsible.

13.1.3 Contractor warrants that upon submittal of the Application for Payment all Work shall be free and clear of liens, claims, security interests, or encumbrances in favor



of Contractor, Subcontractors, materials suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

13.1.3.1 Beginning with the second Application for Payment, each Application shall include an affidavit on a form acceptable to Owner stating that all previous progress payments received by Contractor on account of the Work have been paid to Subcontractors and Suppliers to discharge Contractor's legitimate obligations associated with prior Applications for Payment and releasing all claims for payment and similar rights of Contractor.

13.1.3.2 Contractor shall promptly pay each Subcontractor and Supplier upon receipt of payment from Owner. Contractor shall pay, out of the amount paid to Contractor on account of such Subcontractor's or Supplier's work or materials furnished, the amount to which said Subcontractor or Supplier is entitled. The payment amount may reflect the percentage actually retained, if any, from payments to Contractor on account of such Subcontractor's or Supplier's work or materials furnished. Contractor shall, by an appropriate agreement with each Subcontractor or Supplier, require each Subcontractor or Supplier to make payments to their sub-subcontractors or suppliers in similar manner.

13.1.4 Owner will, on request, furnish to a Subcontractor, if practicable, information regarding amounts applied for by Contractor and action taken thereon by Owner on account of portions of the Work done by such Subcontractor.

13.1.5 Owner shall have no obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

13.1.6 Payment to Contractor, or partial or entire use or occupancy of the Work by Owner, shall not constitute acceptance of Work not in accordance with the Contract Documents.

13.2 *Contractor's Warranty of Title.* Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (i) all liens and other title defects, and (ii) all patent, licensing, copyright, or royalty obligations, no later than seven (7) days after the time of payment by Owner.

13.3 *Owner Right to Withhold Payment.* Owner may reduce, set-off and withhold payment to Contractor as necessary in Owner's opinion to protect Owner from loss, damage, cost or expense on account of: (i) defects in the Work; (ii) reduction of the Contract Sum by Change Order; (iii) failure of Contractor to coordinate its Work with the work of the Owner or separate contractors; (iv) existence of Hazardous Substances for which Contractor is responsible; (v) third-party claims filed or reasonable evidence indicating probable filing of such claims against which Contractor owes Owner a duty of indemnity; (vi) failure of Contractor to make payments properly to Subcontractors or Suppliers for labor, materials, equipment, or services furnished to the Project; (vii) failure of Contractor to perform the Work in accordance with the Progress Schedule; (viii) overpayment to Contractor in a prior progress payment; (ix) amounts owed to Owner by Contractor under the terms of the Contract; or (x) breach or anticipatory breach of the Contract by Contractor. The Owner may withhold up to two times the value of the Work that is not completed as allowed by SDCL 9-42-13. If Owner exercises its right to withhold payment, Owner shall inform

Contractor of the reasons for such withholding. When the reasons for withholding payment are cured, Owner will make payment of amounts previously withheld.

13.4 *Final Payment.* After Contractor has, in the opinion of Owner, satisfactorily completed all corrections identified during the final inspection as required by Paragraph 8.3, Contractor may make application for final payment of remaining amounts properly owing under the Contract.

13.4.1 The final Application for Payment shall be accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents;
- b. consent of the surety, if any, to final payment;
- c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any payment claims or other title defects or will so pass upon final payment.
- d. a list of all disputes that Contractor believes are unsettled;
- e. complete and legally effective releases or waivers (satisfactory to Owner) of all payment claim rights arising out of the Work, and of liens of payment claims filed in connection with the Work;
- f. maintenance and operating instructions, schedules, and/or guarantees;
- g. bonds, certificates or other evidence of insurance;
- h. certificates of inspection; and
- i. annotated record documents (as provided in Paragraph 6.12).

13.4.2 In accordance with SDCL 5-18B-18, all Contractors performing work for public improvement projects shall furnish to the Owner prior to final payment, certification from the Dakota Department of Labor confirmation that the Contractor has paid all unemployment compensation contributions and interest due thereon in the performance of the contract.

13.4.3 Should a Subcontractor or Supplier file a statement claiming unpaid amounts due for the Project Owner will withhold from all payments to Contractor sufficient funds to ensure the payment of said claims until the same have been paid or such claims as filed have been withdrawn.

13.5 *Payment Does Not Impose Responsibility on Owner.* Owners' making of payment, including final payment, shall not impose responsibility on Owner (i) to supervise, direct, or control the Work, (ii) for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, (iii) for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, (iv) to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Sum, or (v) to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

13.6 *Waiver of Claims Upon Final Payment.*

13.6.1 The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled payment claims, from defective Work appearing after final inspection, from Contractor's failure to comply with the Contract Documents or the terms of any special

guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.

13.6.2 Acceptance of final payment by Contractor shall constitute a waiver of claims by Contractor. Such waiver shall be in addition to all other waivers required herein. This clause shall be included in all contracts with Suppliers and Subcontractors.

13.7 *Audit.* Owner shall have the right to examine, copy and audit all documents (whether paper, electronic, or other media) and electronically stored information, including, but not limited to, any and all books; estimates, records, contracts, escrow bid documents, bid cost data, schedules, subcontracts, job cost reports, and other data, including computations and projections, of Contractor, Subcontractors, Sub-Subcontractors and Suppliers to confirm compliance by Contractor with the terms of the Contract and/or Claims asserted by Contractor. In the event that Contractor is a joint venture, said right to examine, copy and audit shall apply collaterally and to the same extent to the records of the joint venture sponsor, and those of each individual joint venture member.

13.7.1 Upon written notice by Owner, Contractor immediately shall make available at its office at all reasonable times the materials noted in Paragraph 13.7 for examination, audit, or reproduction. Notice shall be in writing, delivered by hand or by certified mail, and shall provide not fewer than five (5) days' notice of the examination and/or audit. Owner may take possession of such records and materials by reproducing documents for off-site review or audit. When requested in Owner's written notice of examination and/or audit, Contractor shall provide Owner with copies of electronic documents and electronically stored information in a reasonably usable format that allows Owner to access and analyze all such documents and information. For documents and information that require proprietary software to access and analyze, Contractor shall provide Owner with two (2) licenses with maintenance agreements authorizing Owner to access and analyze all such documents and information.

13.7.2 Owner has sole discretion as to the selection of an examiner or auditor and the scope of the examination or audit.

13.7.3 Owner may examine, audit, or reproduce the materials and records under this Paragraph from the date of award until three (3) years after final payment under this Contract.

13.7.4 Failure by Contractor to make available any of the records or materials noted in herein or refusal to cooperate with a notice of audit shall be deemed a material breach of the Contract and grounds for Termination for Cause.

13.7.5 Contractor shall insert a Clause containing all the provisions of this Paragraph 13.7 in all subcontracts of Subcontractors.

13.8 *Reimbursement of Owner.* In the event (i) Contractor owes payment to Owner, (ii) Owner has the right to set-off, reduce or withhold payment from Contractor, or (iii) Owner is otherwise entitled to recover its costs, expenses or damages from Contractor, then Owner shall charge such amount against any remaining unpaid balance of the Contract Sum. If the remaining balance of

the Contract Sum is insufficient to fully reimburse Owner, then Contractor shall pay the difference to Owner.

## **ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION**

14.1 *Suspension of Work.* At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) consecutive days by written notice to Contractor. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Sum or an extension of the Contract Time, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than thirty (30) days after the date fixed for resumption of Work.

14.2 *Default and Termination for Cause.* The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause or, at Owner's option, cancellation of that part of the Contract affected by Contractor's failure to so perform:

- a. failure to perform the Work in accordance with the Contract Documents, including, but not limited to, failure to supply sufficiently skilled workers or suitable materials or equipment, failure to adhere to the Progress Schedule, failure to prosecute the Work with due diligence, or failure to properly pay Subcontractors or Suppliers;
- b. failure to meet performance requirements;
- c. failure of Contractor to comply with the Contract Documents;
- d. Contractor's disregard of Laws and Regulations of any public authority having jurisdiction; or
- e. Contractor's repeated disregard of the authority of Owner.

14.2.1 If one or more of the events identified in Paragraph 14.2 occurs, then after giving Contractor (and any surety) not less than ten (10) days' written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to declare Contractor to be in default and to give Contractor (and any surety) notice pursuant to Paragraph 14.2.2 that the Contract is terminated, and enforce the rights available to Owner under any applicable performance bond.

14.2.2 Contractor will be notified seven (7) days in advance of any such termination or cancellation. Contractor will not be entitled to reimbursement of his expenses resulting from cancellation or termination under the provisions of this Paragraph 14.2, whether cancellation affects the whole or a part of this Contract, except for the reasonable value of materials furnished by Contractor and accepted by Owner prior to any such cancellation, which amounts shall not exceed the Contract Sum.

14.2.3 Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

14.2.4 If Owner proceeds as provided in Paragraph 14.2.2, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Sum exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of Designers,

architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Owner as to their reasonableness and, when so approved by Owner, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

14.2.5 Where Contractor's services have been terminated for cause by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

14.2.6 If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.1.1, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 14.2.2 and 14.2.4.

14.2.7 In addition to Owner's rights under this Section 14.2, Applicable Law and the Contract Documents, if the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents or fails to carry out Work in accordance with the Contract Documents, the Owner may, without prejudice to other remedies the Owner may have, (i) issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity and/or (ii) correct such default or neglect. The Owner may also withhold or nullify an Application for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost incurred on account thereof, including Owner's expenses and compensation made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

14.3 *Owner May Terminate for Convenience.* Owner shall have the right at any time to cancel this Contract for its convenience and without cause. Upon seven (7) days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

- a. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work and based upon the Schedule of Values;
- b. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses and based upon the Schedule of Values; and
- c. reasonable and necessary expenses directly attributable to the termination resulting therefrom which are substantiated by detailed invoices. The allowable amount of such reimbursement expenses shall be based upon the nature and extent of work and the materials used or spoiled.

14.3.1 Payment for overhead and profit under this provision will be limited to Contractor's Fee on the allowable amount of reimbursable expenses.

14.3.2 Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

14.4 *Reservation of Owner's Rights.* Owner further reserves any and all rights it may have against Contractor as a result of Contractor's failure to perform.

14.5 *Termination of Orders and Subcontracts.* In the event of cancellation or termination by Owner, Contractor shall terminate all orders and subcontracts to which Owner does not take assignment, to the extent that they relate to the performance of work terminated by the Notice of Termination.

## **ARTICLE 15 – MISCELLANEOUS**

15.1 *Written Notice.* Written notice shall be deemed to have been duly served when delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or when sent by registered, certified mail, or express mail with proof of receipt to the last business address known to the party giving notice.

15.2 *Rights and Remedies.* The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws and Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply. No action or failure to act by Owner shall constitute a waiver of a right or duty afforded to Owner under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

15.3 *Not Used.*

15.3.1 .

15.4 *Intellectual Property.* Contractor and its Subcontractors and Suppliers shall not: (i) have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) for or on behalf of Owner or its consultants, including electronic media editions or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner; or, (ii) have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents. The prohibitions of this Paragraph 15.4 will survive final payment, or termination of the Contract.

15.5 *No Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

15.6 *Survival of Obligations.* All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

15.7 *Governing Law.* This Contract is to be governed by the law of the state of South Dakota.

15.8 *Headings.* Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

15.9 *Successors and Assigns.* Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of the other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

## Exhibit A

### Standard Hourly Rates

#### 2023 John T. Jones Construction Standard Hourly Rates

<u>Labor Category</u>	<u>Standard Hourly Rate (\$/hour)</u>
Project Executive/Director	\$200.00
Project Manager	\$135.00
Assistant Project Manager	\$100.00
Estimator	\$135.00
Superintendent	\$161.00
Assistant Superintendent	\$139.00
Field Engineer/Project Engineer	\$108.00
Project/Estimating Assistant	\$60.00
Safety Manager	\$105.00

<u>Construction Phase</u>	<u>Standard Hourly Rate (\$/hour)</u>
Crane Operator	\$73.00
Heavy Equipment Operator	\$65.00
Process Millwright	\$71.00
Carpenter	\$57.00
Laborer	\$46.00

<u>Equipment Category</u>	<u>Standard Hourly Rate (\$/hour)</u>
Lattice Crawler Crane (up to 100T)	\$375.00
Lattice Crawler Crane (101-200T)	\$450.00
RT Crane (Up to 50T)	\$235.00
RT Crane (51T-100T)	\$275.00
Mini Excavator	\$80.00
PC300-360 Excavator	\$185.00
PC400-490 Excavator	\$225.00
WA320 Loader	\$135.00
Trench Roller Compactor	\$30.00
Sheepsfoot Riding Compactor	\$65.00



Dozer	\$175.00
6" Diesel Trash Pump	\$10.00
Compact Track Loader	\$75.00
Off Road Telehandler Forklift	\$85.00
Spyder Crane	\$60.00

<b><u>Misc Agreed Upon Charges</u></b>	<b><u>Standard Rate</u></b>
1/2 Ton Pickup	\$0.66 / Mile
3/4 - 1Ton Pickup	\$1.00/Mile
Lodging	\$150/Night
Meals (per trip)	\$100/Trip
Printing	\$0.09/Sheet

\*Labor, Equipment, and Misc rates are effective through March 31, 2024, after which time a revised rate schedule will be prepared.

## Exhibit B

### Key Staff and Subcontractors

#### **Preconstruction:**

Project Director/Manager – Tim Vanderzanden

Assistant Project Manager – Nick Hollaar

Senior Estimator – Tim Boland

Senior Estimator – Scott Nath

Project/Estimating Assistant – Aly Dick

Superintendent – Curt Guida

#### **Construction:**

Project Director/Manager – Tim Vanderzanden

Assistant Project Manager – Nick Hollaar

Sequencing and Startup Assistant – Tim Boland

Project/Estimating Assistant – Aly Dick

Lead Superintendent – Curt Guida

Assistant Superintendent – TBD

Field Engineer – TBD

#### **Subcontractors:**

[Subcontractors to be determined by qualifications, bid results, and project team selection and modified via contract addendum prior to submittal of the GMP.]

## Exhibit C

### Insurance Requirements

[Insurance requirements to be determined by contract addendum prior to submittal of GMP.]

Exhibit D  
Applicable Permits

[Applicable permits to be determined by contract addendum prior to submittal of GMP.]

## Exhibit E

### Utility and Third Party Agreements

[Utility and Third Party Agreements to be determined by contract addendum prior to submittal of GMP.]

Exhibit F

Not Used

## Exhibit G

### Payment and Performance bonds

EJCDC C-610

#### PERFORMANCE BOND

<p><b>Contractor</b></p> <p>Name: _____</p> <p>Address (<i>principal place of business</i>): _____</p>	<p><b>Surety</b></p> <p>Name: _____</p> <p>Address (<i>principal place of business</i>): _____</p>
<p><b>Owner</b></p> <p>Name: _____</p> <p>Mailing Address (<i>principal place of business</i>): _____</p>	<p><b>Contract</b></p> <p>Description (<i>name and location</i>): _____</p> <p>Contract Price: _____</p> <p>Effective Date of Contract: _____</p>
<p><b>Bond</b></p> <p>Bond Amount: _____</p> <p>Date of Bond: _____</p> <p><i>(Date of Bond cannot be earlier than Effective Date of Contract)</i></p> <p>Modifications to this Bond form:</p> <p><input type="checkbox"/> None   <input type="checkbox"/> See Paragraph 16</p>	
<p>Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.</p>	
<p>Contractor as Principal</p> <p>_____</p> <p style="text-align: center;"><i>(Full formal name of Contractor)</i></p> <p>By: _____</p> <p style="text-align: center;"><i>(Signature)</i></p> <p>Name: _____</p> <p style="text-align: center;"><i>(Printed or typed)</i></p> <p>Title: _____</p> <p>Attest: _____</p> <p style="text-align: center;"><i>(Signature)</i></p> <p>Name: _____</p> <p style="text-align: center;"><i>(Printed or typed)</i></p> <p>Title: _____</p>	<p>Surety</p> <p>_____</p> <p style="text-align: center;"><i>(Full formal name of Surety) (corporate seal)</i></p> <p>By: _____</p> <p style="text-align: center;"><i>(Signature)(Attach Power of Attorney)</i></p> <p>Name: _____</p> <p style="text-align: center;"><i>(Printed or typed)</i></p> <p>Title: _____</p> <p>Attest: _____</p> <p style="text-align: center;"><i>(Signature)</i></p> <p>Name: _____</p> <p style="text-align: center;"><i>(Printed or typed)</i></p> <p>Title: _____</p>
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i></p>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after.
  - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
  - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
  - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
  - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
  - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
  - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
    - 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or



5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
  - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
  - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
14. Definitions
  - 14.1. *Balance of the Contract Price*— The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for

the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

- 14.2. *Construction Contract*— The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
  - 14.3. *Contractor Default*— Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
  - 14.4. *Owner Default*— Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
  - 14.5. *Contract Documents*— All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
  16. Modifications to this Bond are as follows: None

## Payment Bond

<p><b>Contractor</b>  Name:  Address (<i>principal place of business</i>):</p>	<p><b>Surety</b>  Name:  Address (<i>principal place of business</i>):</p>
<p><b>Owner</b>  Name:  Mailing Address (<i>principal place of business</i>):</p>	<p><b>Contract</b>  Description (<i>name and location</i>):   Contract Price:  Effective Date of Contract:</p>
<p><b>Bond</b>  Bond Amount:  Date of Bond:  <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i>  Modifications to this Bond form:  <input type="checkbox"/> None   <input type="checkbox"/> See Paragraph 18</p>	
<p>Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.</p>	
<p>Contractor as Principal</p> <p>_____</p> <p style="text-align: center;"><i>(Full formal name of Contractor)</i></p> <p>By: _____</p> <p style="text-align: center;"><i>(Signature)</i></p> <p>Name: _____</p> <p style="text-align: center;"><i>(Printed or typed)</i></p> <p>Title: _____</p> <p>Attest: _____</p> <p style="text-align: center;"><i>(Signature)</i></p> <p>Name: _____</p> <p style="text-align: center;"><i>(Printed or typed)</i></p> <p>Title: _____</p>	<p>Surety</p> <p>_____</p> <p style="text-align: center;"><i>(Full formal name of Surety) (corporate seal)</i></p> <p>By: _____</p> <p style="text-align: center;"><i>(Signature)(Attach Power of Attorney)</i></p> <p>Name: _____</p> <p style="text-align: center;"><i>(Printed or typed)</i></p> <p>Title: _____</p> <p>Attest: _____</p> <p style="text-align: center;"><i>(Signature)</i></p> <p>Name: _____</p> <p style="text-align: center;"><i>(Printed or typed)</i></p> <p>Title: _____</p>
<p><i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i></p>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
  - 5.1. Claimants who do not have a direct contract with the Contractor
    - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
  - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's Obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2. Pay or arrange for payment of any undisputed amounts.
  - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions
  - 16.1. *Claim*— A written statement by the Claimant including at a minimum:
    - 16.1.1. The name of the Claimant;
    - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
    - 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
    - 16.1.4. A brief description of the labor, materials, or equipment furnished;

- 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
  - 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
  - 16.1.7. The total amount of previous payments received by the Claimant; and
  - 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2. *Claimant*— An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of “labor, materials, or equipment” that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
  - 16.3. *Construction Contract*— The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
  - 16.4. *Owner Default*— Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
  - 16.5. *Contract Documents*— All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
  18. Modifications to this Bond are as follows: None

## Exhibit H

### Progress and Final Payment Claim Waiver Forms

See next page.



JOHN T. JONES CONSTRUCTION CO.  
 2213 7th Ave. N.  
 Fargo, ND 58102

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## CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

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### Identifying Information

---

Name of Claimant \_\_\_\_\_  
 Name of Customer \_\_\_\_\_  
 Job Location \_\_\_\_\_  
 Owner \_\_\_\_\_  
 Through Date \_\_\_\_\_  
 Customer's Job # \_\_\_\_\_  
 Trade / Service: \_\_\_\_\_

---

### Conditional Waiver and Release

---

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and services provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check \_\_\_\_\_  
 Amount of Check \_\_\_\_\_  
 Check Payable to \_\_\_\_\_  
 Check Number \_\_\_\_\_

---

### Exceptions

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This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release: \_\_\_\_\_

Amount(s) of unpaid progress payment(s): \_\_\_\_\_

- (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.
- 

### Signature

---

The undersigned further certifies that he/she is authorized to sign this waiver and that this document is being executed and signed completely free of duress or harassment.

Company Name \_\_\_\_\_  
 Claimant's Signature \_\_\_\_\_  
 Claimant's Representative Name \_\_\_\_\_  
 Claimant's Representative Title \_\_\_\_\_  
 Date of Signature \_\_\_\_\_

---

**NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

PLEASE RETURN TO: [ACCOUNTING@JTJCONST.COM](mailto:ACCOUNTING@JTJCONST.COM)





JOHN T. JONES CONSTRUCTION CO.  
2213 7th Ave. N.  
Fargo, ND 58102

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## CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

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### Identifying Information

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Name of Claimant  
Name of Customer  
Job Location  
Owner  
Through Date  
Customer's Job #  
Trade / Service:

---

### Conditional Waiver and Release

---

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and services provided, and equipment and material delivered, to the customer on this job Rights based on labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check id drawn:

Maker of Check  
Amount of Check  
Check Payable to  
Check Number

---

### Exceptions

---

This document does not affect any of the following: \_\_\_\_\_

Disputed claims for extras in the amount of: \_\_\_\_\_

---

### Signature

---

The undersigned further certifies that he/she is authorized to sign this waiver and that this document is being executed and signed completely free of duress or harassment.

Company Name \_\_\_\_\_  
Claimant's Signature \_\_\_\_\_  
Claimant's Representative Name \_\_\_\_\_  
Claimant's Representative Title \_\_\_\_\_  
Date of Signature \_\_\_\_\_

---

**NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

PLEASE RETURN TO: [ACCOUNTING@JTJCONST.COM](mailto:ACCOUNTING@JTJCONST.COM)

Exhibit I

Preconstruction Scope of Work

## Exhibit J

### General Conditions Cost

[General Conditions Costs to be added by contract addendum prior to submittal of GMP.]

## Exhibit K

### Technical Reports and Data

[Technical Reports and Data to be added by contract addendum prior to submittal of GMP.]

Exhibit L

Equal Employment Opportunity and Illegal Alien Provisions

SD eForm – 2130LD V3

**STATE REVOLVING FUND (SRF)**

**GENERAL CONDITIONS**

with

**DAVIS-BACON**

**&**

**American Iron and Steel Provisions**

South Dakota  
Department of Agriculture  
and Natural Resources

These provisions must be included in the specifications for all Clean Water SRF  
and Drinking Water SRF projects.

July 2021

## Table of Contents

Guidance for Utilization of Disadvantaged Business Enterprises	DBE – 1
DBE Subcontractor Solicitation Information Form	DBE – 6
DBE Subcontractor Participation Form (Form 6100-2)	DBE – 7
DBE Subcontractor Performance Form (Form 6100-3)	DBE – 8
DBE Subcontractor Utilization Form (Form 6100-4)	DBE – 9
Equal Employment Opportunity and Affirmative Action Requirements	EEO – 1
DOL Notification Form	EEO – 7
Certification Regarding Debarment, Suspension and Other Responsibility Matters	Debar – 1
Prohibition Against Listed Violated Facilities	PALVF – 1
Williams-Steiger Occupational Safety and Health Act of 1970	OSHA – 1
Discovery of Archaeological and Other Historical Items	Archaeol – 1
Davis-Bacon and Related Acts	DB - 1
American Iron and Steel	AIS-1
Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment	PCTVSE - 1

**GUIDANCE FOR UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS OF 40 CFR §33.**

**A. REQUIREMENTS**

1. The recipient and prime contractor will exercise good faith efforts to attract and utilize small, minority, and women's business enterprises primarily through outreach, recruitment, and race/gender neutral activities; at a minimum, fulfillment of the six affirmative steps set forth below:
  - a. Including disadvantaged businesses on solicitation lists;
  - b. Assuring that disadvantaged businesses are solicited whenever they are potential sources;
  - c. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by disadvantaged businesses;
  - d. Establishing delivery schedules, when the requirements of the work permit, which will encourage participation by disadvantaged businesses;
  - e. Using the services of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, as appropriate; and
  - f. Require a. through e. to be taken if subcontracts are awarded.

**B. FAIR SHARE OBJECTIVE**

1. The fair share objective for this project is 1.2 % MBE's and 6.9 % WBE's.

**C. DEFINITIONS**

1. Disadvantaged Business Enterprise (DBE) is a business concern which meets the qualifications of a Minority Business Enterprise (MBE), Women's Business Enterprise (WBE), Small Business (SBE), or Small Business in a Rural Area (SBRA).
2. Minority Business Enterprise (MBE) is a business concern which is:
  - a. Certified as socially and economically disadvantaged by the Small Business Administration;
    - (1) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.
    - (2) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities, the Small Business Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individuals. Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans), are to be considered socially and economically disadvantaged. Economically and socially disadvantaged individuals are deemed to include women.
  - b. Certified as a minority business enterprise by a State or Federal agency; and
  - c. An independent business concern which is at least 51 percent owned and controlled by minority group

member(s).

- (1) A minority group member is an individual who is a citizen of the United States and one of the following:
  - (a) Black American;
  - (b) Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America)
  - (c) Native American (American Indian, Eskimo, Aleut, native Hawaiian); or
  - (d) Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian subcontinent).
- (2) In order to satisfy this third criteria of the MBE definition, the minority ownership's interest must be real, substantial and continuing. Such interest is characterized by:
  - (a) Risk of loss/share of profit commensurate with the proportional ownership; and
  - (b) Receipt of the customary incidents of ownership, such as compensation (i.e., salary and other personnel compensation).
- (3) A minority owner must have and exercise control of the business decisions. Characteristics of control include, but are not limited to:
  - (a) Authority to sign bids and contracts;
  - (b) Decisions in price negotiations;
  - (c) Incurring liabilities for the firm;
  - (d) Final staffing decisions;
  - (e) Policy-making; and
  - (f) General company management decisions.
- (4) Only those firms performing a useful business function according to custom and practice in the industry, are qualified as MBEs. Acting merely as a passive conduit of funds to some other firm where such activity is unnecessary to accomplish the project does not constitute a "useful business function according to custom and practice in the industry." The purpose of this approach is to discourage the use of MBE "fronts" and limit the creation of an artificial supplier and broker marketplace.

3. Women's Business Enterprise (WBE) is a business which is certified as such by a State or Federal agency, or which meets the following definition:

"A women's business enterprise is an independent business concern which is at least 51 percent owned by a woman or women, who also control and operate it. Determination of whether a business is at least 51 percent owned by a woman or otherwise qualified WBE which is 51 percent owned by a married woman in a community property State will not be disqualified because her husband has a 50 percent interest in her share. Similarly, a business which is 51 percent owned by a married man and 49 percent owned by an unmarried woman will not become a qualified WBE by virtue of his wife's 50 percent interest in his share of the business."



As in the case of a MBE, only United States citizens will be deemed to be WBEs. Similar to the MBE criteria, WBE should meet the criteria cited in subparagraphs B.1.c.(2), (3), and (4).

4. Fair Share or Fair Share Objective A fair share or a fair share objective is an amount of funds reasonably commensurate with the total project funding and the availability of qualified MBEs and WBEs, taking into account experience on EPA-funded projects and other comparable projects in the area. A fair share objective does not constitute an absolute requirement, but a commitment on the part of the bidder to exercise good faith efforts as defined in this section to use MBEs and WBEs to achieve the fair share objective.
5. Small Business (SBE) Any business entity, including its affiliates, that is independently owned and operated, and not dominant in its field of operations in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards set forth in 13 CFR Part 121.
6. Small Business in a Rural Area A small business in a rural area (SBRA) is a business entity meeting the definition of a small business, and is located and conducts its principal operations in a geographical area (county) listed in the Small Business Administration's Listing of Non-Metropolitan Counties by State.
7. Recipient A party receiving SRF financial assistance.
8. Project The scope of work for which an SRF loan is awarded.
9. Bidder A party seeking to obtain a contract with a recipient through a competitive, advertised, sealed bid process.
10. Offeror A party seeking to obtain a contract with a recipient through a negotiative procurement process.
11. Prime Contractor A party that has obtained a contract with a recipient through a competitive, advertised, sealed bid process.
12. Good Faith Efforts Good faith efforts by a recipient, prime contractor, and/or bidder/offeror means efforts to attract and utilize DBEs primarily through outreach, recruitment, and race/gender neutral activities. The following are examples of activities to assist recipients, prime contractors and/or bidders/offerors to comply with good faith efforts.
  - a. Include qualified DBEs on solicitation lists.
    - (1) Maintain and update a listing of qualified DBEs that can be solicited for supplies, construction and/or services.
    - (2) Provide listings to all interested parties who requested copies of the bidding or proposing documents.
    - (3) Contact appropriate sources within your geographic area and State to identify qualified DBEs for placement on your minority and women's business listings.
    - (4) Utilize other DBE listings such as those of the State's Minority Business Office, the Small Business Administration, Minority Business Development Agency, US EPA- Office of Small Business Programs and the Department of Transportation.
    - (5) Have the State environmental agency personnel review this solicitation list.
  - b. Assure that DBEs are solicited.
    - (1) Conduct meetings, conferences, and follow-ups with DBEs, small, minority and/or women's business associations, minority media, etc., to inform these groups of opportunities to provide supplies, services, and construction.
    - (2) MBE Utilization is facilitated if the recipient or prime contractor advertises through the minority media. Such advertisements may include, but are not limited to, contracting and subcontracting

opportunities, hiring and employment, or any other matter related to the project.

- (3) Conduct pre-bid, pre-solicitation, and post-award conferences to ensure that consultants, suppliers, and builders solicit DBEs.
  - (4) Provide bidders and offerors with listings of qualified DBEs and establish that a fair share of contracts/procurements should be awarded to these groups.
  - (5) Advertise in general circulation, trade publications, State agency publications of identified source, disadvantaged business focused media, etc., concerning contracting opportunities on your projects. Maintain a list of disadvantaged business-focused publications that may be utilized to solicit MBEs or WBEs.
  - (6) Provide interested DBEs with adequate information about plans, specifications, timing and other requirements of the proposed projects.
  - (7) Provide DBE trade organizations with succinct summaries of solicitations.
  - (8) Notify DBEs of future procurement opportunities so that they may establish bidding solicitations and procurement plans.
- c. Divide total requirements when economically feasible, into small tasks or quantities to permit maximum participation of DBEs.
- (1) Perform an analysis to identify portions of work that can be divided and performed by qualified DBEs.
  - (2) Scrutinize the elements of the total project to develop economically feasible units of work that are within the bonding range of DBEs.
  - (3) Analyze bid packages for compliance with the good faith efforts to afford DBEs maximum participation.
- d. Establish delivery schedules, where requirements of the work permit, which will encourage participation by DBEs.
- (1) Consider lead times and scheduling requirements often needed by DBE participation.
  - (2) Develop realistic delivery schedules which may provide for greater DBE participation.
- e. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the US Department of Commerce, as appropriate.
- (1) Use the services of outreach programs sponsored by the Minority Business Development Agency and/or the Small Business Administration to recruit bona fide firms for placement on DBEs' bidders lists to assist these firms in the development of bid packaging.
  - (2) Seek out Minority Business Development Centers (MBDCs) to assist recipients and prime contractors in identifying MBEs for potential work opportunities on this project.

#### **D. ADDITIONAL CONTRACT PROVISIONS**

1. The prime contractor must pay its subcontractors for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the owner.
2. The prime contractor must notify the owner in writing prior to any termination of a DBE subcontractor for convenience.

3. If a DBE subcontractor fails to complete work under the subcontract for any reason, the prime contractor must employ the good faith efforts if soliciting a replacement subcontractor, even if the fair share objectives have already been achieved.
4. Each procurement contract signed by an EPA financial recipient, including those for an identified loan under an EPA financial assistance agreement capitalizing a revolving loan fund, must include the following term and condition:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

E. **REPORTING**

1. Bidders/offerors shall demonstrate compliance with good faith efforts in order to be deemed responsible. To demonstrate compliance, the "DBE Subcontractor Solicitation Sheet" (pg. DBE - 6) shall be submitted as part of its bid or proposal package. Information shall be included for each DBE subcontractor contacted by the bidder/offeror, not just those used to meet the fair share objective.
2. The prime contractor must distribute DBE Program Subcontractor Participation Form (Form 6100-2) to all of its DBE subcontractors. The subcontractors can submit completed forms to the South Dakota Department of Agriculture and Natural Resources, Water Resources Assistance Program.
3. The prime contractor must have its DBE subcontractors complete DBE Program Subcontractor Performance Form (Form 6100-3) and should include completed forms in its bid or proposal package.
4. The prime contractor must complete DBE Program Subcontractor Utilization Form (Form 6100-4) which should be submitted as part of its bid or proposal package.
5. Form 6100-3 and Form 6100-4 must be submitted by the apparent low-bidder within ten calendar days of the bid opening. Failure to submit this information will be viewed as a non-responsive bid.

**DBE SUBCONTRACTOR SOLICITATION INFORMATION**

**PROJECT NAME:**

Subcontractor Name and Telephone Number	MBE or WBE	Description of Work Offered	Date of Phone Follow-up & Person Contacted	Amount of Bid or Reason for not Quoting	Bid Accepted or Rejected? Include Reason for Rejection

This information is true and correct to the best of my knowledge

\_\_\_\_\_  
Contractor Name, Address and Telephone Number

**This form shall be submitted as part of the contractor's bid.**

\_\_\_\_\_  
Signature Title Date

Disadvantaged Business Enterprise  
Program DBE Subcontractor  
Participation Form

<b>NAME OF SUBCONTRACTOR<sup>1</sup></b>	<b>PROJECT NAME</b>
<b>ADDRESS</b>	<b>CONTRACTOR NO.</b>
<b>TELEPHONE NO.</b>	<b>EMAIL ADDRESS</b>
<b>PRIME CONTRACTOR NAME</b>	

Please use the space below to report any concerns regarding the above SRF-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

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<b>CONTRACT ITEM NO.</b>	<b>ITEM OF WORK DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR</b>	<b>AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR</b>
Subcontractor Signature <span style="float: right;">Title/Date</span>		

<sup>1</sup>Subcontractor is defined as a company, firm, Joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an SRF award of financial assistance.

**Disadvantaged Business Enterprise Program  
DBE Subcontractor Utilization Form**

<b>NAME OF SUBCONTRACTOR<sup>1</sup></b>		<b>PROJECT NAME</b>	
<b>ADDRESS</b>		<b>BID/PROPOSAL NO.</b>	
<b>TELEPHONE NO.</b>		<b>EMAIL ADDRESS</b>	
<b>PRIME CONTRACTOR NAME</b>			
<b>CONTRACT ITEM NO.</b>	<b>ITEM OF WORK OR DESCRIPTION OF SERVICES BID TO PRIME</b>	<b>PRICE OF WORK SUBMITTED TO PRIME CONTRACTOR</b>	
<b>Currently certified as an MBE or WBE under EPA's DBE Program?</b> <input type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>			
_____ Signature of Prime Contractor		_____ Date	
_____ Print Name		_____ Title	
_____ Signature of Subcontractor		_____ Date	
_____ Print Name		_____ Title	

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<sup>1</sup>Subcontractor is defined as a company firm, joint venture, or individual who enters into an agreement with a contractor to provide service, pursuant to an SRF award of financial assistance.

**Disadvantage Business Enterprise Program  
DBE Subcontractor Utilization Form**

<b>BID/PROPOSAL NO.</b>	<b>PROJECT NAME</b>
<b>NAME OF PRIME BIDDER/PROPOSER</b>	<b>E-MAIL ADDRESS</b>
<b>ADDRESS</b>	
<b>TELEPHONE NO.</b>	<b>FAX NO.</b>

The following subcontractors will be used on this project :			
<b>COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS</b>	<b>TYPE OF WORK TO BE PERFORMED</b>	<b>ESTIMATED DOLLAR AMOUNT</b>	<b>TYPE OF FIRM? (Print MBE, WBE or None below)</b>
I certify under penalty of perjury that the forgoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c)			
_____ Signature of Prime Contractor		_____ Date	
_____ Print Name		_____ Title	

**\*Subcontractor is defined as a company firm, joint venture, or individual who enters into an agreement with a contractor to provide service, pursuant to an SRF award of financial assistance.**

**EQUAL EMPLOYMENT OPPORTUNITY and AFFIRMATIVE ACTION REQUIREMENTS  
on FEDERALLY ASSISTED CONSTRUCTION CONTRACTS**

**Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity  
(Executive Order 11246)**

1. The Offer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area as follows:

Goals for minority participation in each trade - 1.2%  
(See Appendix A for goals by county)

Goals for female participation in each trade - 6.9%

These goals are applicable to all the contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

**3. The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation.** The notification shall list the name, address and telephone number for the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates



of the subcontract; and the geographical area in which the contract is to be performed. A form is provided on page EEO - 7 that the contractor may use for this purpose.

This notice shall be included in, and shall be a part of, all solicitations for offers and bids on all federal and federally assisted construction contracts or subcontracts.

## EQUAL OPPORTUNITY CLAUSES

The Equal Opportunity Clause published at 41 CFR Part 60-1.4(b) is required to be included in, and is part of, all nonexempt federally assisted construction contracts and subcontracts. The Equal Opportunity Clause shall be considered to be a part of every contract and subcontract required by the regulations in this part to include such a clause, whether or not it is physically incorporated in such contracts.

In addition to the clauses described above, all federal contracting officers, all applicants, and all non-construction contractors, as applicable, shall include the specifications set forth in this section in all federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to §60-4.6 of this part and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of non-construction Federal contracts and subcontracts covered under the Executive Order.

## STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

### 1. As used in these specifications:

- a. "Covered Area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal Social Security number used on the employer's quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- d. "Minority" includes:
  - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
  - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
  - (iv) American Indian or Alaskan Native (all persons having origins in any of

the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area, (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The contractor shall implement the specific affirmative action standards provided in paragraphs (7)(a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be

based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under (7)(b) above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for

hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and

performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7)(a) through (p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (7)(a) through (p) of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive order if a specific minority group of women is under-utilized).

10. The contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (7) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union

affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

APPENDIX A

GOALS FOR MINORITY PARTICIPATION ON EACH  
TRADE

Counties	Goal
Aurora, Beadle, Brookings, Brule, Charles Mix, Davison, Douglas, Gregory, Hand, Hanson, Hutchinson, Jerauld, Kingsbury, Lake, Lincoln (excluding Sioux Falls), McCook, Miner, Moody, Sanborn, Turner	0.8
Bon Homme, Clay, Minnehaha (including all of Sioux Falls), Union, Yankton	1.2
Brown, Clark, Codington, Day, Deuel, Edmunds, Faulk, Grant, Hamlin, McPherson, Marshall, Roberts, Spink	1.3
Meade, Pennington	3.4
Bennett, Buffalo, Butte, Campbell, Corson, Custer, Dewey, Fall River, Haakon, Harding, Hughes, Hyde, Jackson, Jones, Lawrence, Lyman, Mellette, Perkins, Potter, Shannon, Stanley, Sully, Todd, Tripp, Walworth, Ziebach	7.9



CONTRACTOR'S NAME, ADDRESS & TELEPHONE  
NUMBER

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Return to:

Joan Ford, Regional  
Director US Department  
of Labor Federal  
Building, Room 840 525  
South Griffin St.  
Dallas, TX 75202

Contractor Employer ID Number: \_\_\_\_\_

**CONTRACT INFORMATION**

PROJECT AND LOCATION:				
Dollar Amount of Contract	Estimated Start Date	Estimated Completion Date	Contract No.	Geographical Area (County, State)

**NOTIFICATION OF SUBCONTRACTS AWARDED (>\$10,000)**

Subcontractor's Name Address, and Phone Number	Employer ID Number of Subcontractor	Estimated \$ Amount of Subcontract	Estimated Start Date	Estimated Completion Date

## CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

### A. INSTRUCTIONS

Under Executive Order 12549, an individual or organization debarred or excluded from participation in Federal assistance or benefit programs may not receive any assistance award under a Federal program, or a sub-agreement thereunder for \$25,000 or more. The status of prospective individuals or organizations can be checked at:

<http://epls.arnet.gov/>

Accordingly, each prospective recipient of an EPA grant, loan, or cooperative agreement and any contract or sub-agreement participant thereunder must complete the attached certification or provide an explanation why they cannot complete the certification. For further details, see 40 CFR 32.510, Participants Responsibilities.

### B. WHERE TO SUBMIT

A prospective prime contractor must submit a completed certification or explanation to the project owner for the project. Each prospective subcontractor must submit a completed certification or explanation to the prime contractor for the project.

### C. HOW TO OBTAIN FORMS

This form may be reproduced as necessary. If needed, additional forms may be obtained from the Department of Agriculture and Natural Resources.

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SRF Project Number

United States Environmental Protection Agency  
Washington, DC 20460

**Certification Regarding  
Debarment, Suspension, and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

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Typed Name & Title of Authorized Representative

---

Signature of Authorized Representative

Date

\_\_\_\_\_ I am unable to certify to the above statements. My explanation is attached.

## *Memorandum #23-191*

**To:** Amy Leon, City Manager  
**From:** Dave Mingo, AICP Community and Economic Development Director  
**Subject:** Industrial Park Grant Agreement – Gehl Drive Project  
**Date:** September 28, 2023

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As you know, the City of Yankton received a \$500,000 Industrial Park Grant to assist with the construction of Gehl Drive from its current termination, north to Whiting Drive. The Manitou expansion project assisted in making the City eligible for the grant funding.

The process has moved forward to the point where it is now time to formalize the grant agreement between the South Dakota Department of Transportation and the City. The attached resolution and associated agreement define the requirements associated with the City's receipt of funds and designate the City representatives that will have signature authority on grant related documents. We are hopeful that the project can get started this year and be substantially completed by the end of next year's construction season.

Respectfully submitted,

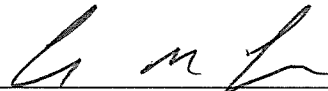


Dave Mingo, AICP  
Community and Economic Development Director

**Recommendation: It is recommended that the City Commission approve Resolution #23-60 authorizing the Mayor to sign the Industrial Park Grant Agreement for Gehl Drive improvements and further authorizing the City Manager to sign subsequent grant related administrative documents.**

I concur with this recommendation.

I do not concur with this recommendation.



---

Amy Leon, City Manager

Roll Call

**RESOLUTION #23-60**

**INDUSTRIAL PARK GRANT AGREEMENT  
GEHL DRIVE**

RESOLUTION OF THE YANKTON BOARD OF CITY COMMISSIONERS  
YANKTON, SOUTH DAKOTA APPROVING THE GRANT AGREEMENT FOR THE  
INDUSTRIAL PARK ROAD PROJECT (GEHL DRIVE) AND DESIGNATING OFFICERS  
TO EXECUTE DOCUMENTS AND TO ACT ON THE CITY'S BEHALF

WHEREAS, the City of Yankton made an application to the South Dakota Department of Transportation for assistance from the Industrial Park Grant Program to help fund the construction of Gehl Drive, and

WHEREAS, the Department of Transportation approved a grant award of \$500,000 for said project, and

WHEREAS, the Industrial Park Grant Agreement includes the requirements associated with the City of Yankton receiving the grant funding, and

WHEREAS, the Board of City Commissioners has reviewed the proposed Grant Agreement and has authorized its acceptance.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor of the City of Yankton is hereby authorized to execute the associated Grant Agreement, and

BE IT FURTHER RESOLVED, that the City Manager is authorized to execute subsequent administrative documents associated with the grant pursuant to the provisions set forth in the Grant Agreement.

Dated this 9th day of October 2023

(SEAL)

\_\_\_\_\_  
Stephanie Moser, Mayor

ATTEST:

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

**INDUSTRIAL PARK GRANT AGREEMENT  
BETWEEN  
SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION  
AND  
YANKTON**

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 "CITY."

**1. BACKGROUND:**

- A. The STATE and the CITY want to construct/reconstruct a public highway described as follows:
  - i. Project Number: IP 023A PCN 09C6.
  - ii. An Industrial Park Road, referred to in this Agreement as the "PROJECT," is located on Gehl Drive in Yankton, SD.
  - iii. The work will involve extension of the roadway to include base course, concrete surfacing, curb & gutter, sidewalks, storm sewer and water & sewer.
  - iv. The total cost of the PROJECT is estimated to be \$1,224,479.
- B. The parties authorize funds and obligations under this Agreement by official action of their respective commissions or officers.

**THE STATE AND THE CITY MUTUALLY AGREE AS FOLLOWS:**

**2. TERM**

This Agreement will become effective on the date it is fully signed. The work contemplated by this Agreement must be completed no later than January 15, 2026.

**3. PROJECT PLANNING AND CONSTRUCTION**

- A. The CITY will provide any necessary public right-of-way for the PROJECT at the CITY'S sole expense. Right-of-way costs will not be eligible for funding disbursements under this Agreement.
- B. The CITY will obtain any required environmental clearances for the PROJECT at the CITY'S sole expense. Environmental costs will not be eligible for funding disbursements under this Agreement.
- C. The CITY will dedicate to public use the PROJECT'S roadway and right-of-way.
- D. The CITY will at all times maintain the PROJECT as a public street.
- E. The CITY will, at the CITY'S sole expense, obtain construction plans, specifications, and estimates for the PROJECT. The CITY will submit the plans, specifications and estimates to the STATE for the STATE'S review and comment prior to advertising the PROJECT for bids. The CITY will not proceed with advertising the PROJECT bid-letting until the CITY has received written notification from the STATE that all the STATE'S comments have been addressed to the STATE'S satisfaction.
- F. The CITY will manage and supervise the bid letting and construction of the PROJECT.

- G. The CITY will, at the CITY'S sole expense, advertise and conduct the bid-letting for the construction contract for the PROJECT. The CITY will not award the construction contract unless the STATE has concurred in writing to the award of the contract.
- H. Construction costs will be ineligible for funding disbursements if the costs are the result of a construction change order that exceeds the scope of work in the contract as originally awarded or if the costs are determined by the STATE to be unnecessary, unreasonable, or inconsistent with the requirements of the construction contract.

#### **4. FINANCING THE PROJECT**

- A. The CITY will pay all costs associated with the PROJECT directly to any consultants and to the construction contractor.
- B. The STATE may deny funding for any PROJECT construction costs incurred in violation of any terms or conditions of this Agreement.
- C. The parties will share costs for eligible PROJECT construction costs as follows. STATE will be responsible for eighty percent (80%) of eligible PROJECT construction costs, but not more than Five Hundred Thousand Dollars (\$500,000), referred to as the "STATE'S SHARE." The CITY will be responsible for the remaining twenty percent (20%) of eligible PROJECT construction costs and one hundred percent (100%) responsible for all ineligible PROJECT construction costs and all PROJECT construction costs exceeding Six Hundred Twenty-Five Thousand Dollars (\$625,000.00 ), referred to in this Agreement as the "CITY'S SHARE."
- D. **FUNDING DISBURSEMENTS FOR CONSTRUCTION AND CONSTRUCTION ENGINEERING.** Upon receipt of copies of the signed construction contract between the CITY and the contractor, the STATE will issue payment to the CITY for seventy-five percent (75%) of the STATE'S SHARE of the eligible costs of construction for the PROJECT. Upon completion of construction of the PROJECT, the CITY will provide the STATE with all construction change orders, pay estimates, and final close out documentation, including a certification by a registered professional engineer that the PROJECT is complete and in conformance with the requirements of the contract. Upon receipt of all such documentation, the STATE will issue payment to the CITY for any remaining portion of the STATE'S SHARE of eligible PROJECT construction costs. If the STATE'S SHARE of eligible PROJECT construction costs is less than the funding advance made by the STATE, then the CITY will reimburse the STATE for the difference between the funding advance and the STATE'S SHARE of eligible PROJECT construction costs.

#### **5. SUBCONTRACTOR PROVISION**

The CITY will include provisions in the CITY'S subcontracts requiring the CITY'S 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, all in a manner consistent with this Agreement. The CITY will cause the CITY'S 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.

#### **6. INDEMNIFICATION**

The CITY will indemnify the STATE, its officers, agents, and employees against any and all actions, suites, damages, liability, or other proceedings that may arise as the result of performing services under this Agreement. This section does not require the CITY to be responsible for or defend against claims or damages arising solely from errors or omissions of the STATE, its officers, agents, or employees.

## **7. AUDIT**

All PROJECT charges will be subject to audit in accordance with the STATE'S current procedures. The CITY and the CITY'S subcontractors will keep accounting records clearly identified with this Agreement. All PROJECT charges will be supported by documents which evidence, in detail, the nature and propriety of those charges.

## **8. EXAMINATION OF RECORDS**

Upon reasonable notice, the CITY and the CITY'S subcontractors will allow the STATE, through any authorized representative, to have access to and the right to examine and copy all records, books, papers, or documents related to services rendered under this Agreement. The CITY will keep these records clearly identified and readily accessible for a period of three (3) years after the date final payment under this Agreement is made and all other pending matters are closed.

## **9. NON-DISCRIMINATION**

The CITY will abide by the requirements of Title VI of the Civil Rights Act of 2016, incorporated in and attached to this Agreement as Exhibit 1.

## **10. AMERICANS WITH DISABILITIES ACT**

The CITY will provide services in compliance with the Americans with Disabilities Act of 2016 and any amendments.

## **11. INSURANCE**

If the CITY will be performing any construction activities, the CITY will furnish to the STATE the following certificates of insurance, before any construction activities begin, and assure that the insurance is in effect for the life of this Agreement:

### **A. Commercial General Liability Insurance:**

The CITY will maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it will apply separately to this Agreement or be no less than \$2,000,000.00.

### **B. Business Automobile Liability Insurance:**

The CITY will maintain business automobile liability insurance or equivalent form with a limit of not less than \$500,000.00 for each accident. Such insurance will include coverage for owned, hired, and non-owned vehicles.

### **C. Workers' Compensation Insurance:**

The CITY will procure and maintain workers' compensation coverage as required by South Dakota law.

## **12. AMENDMENT**

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.



### **13. FUNDING AVAILABILITY**

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 STATE may terminate this Agreement. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.

### **14. TERMINATION**

Either party may terminate this Agreement by giving thirty (30) days' written notice to the other.

### **15. COMPLIANCE PROVISION**

The CITY must comply with all federal, state, and local laws, together with all ordinances and regulations applicable to the work and will be solely responsible for obtaining current information on such requirements. The CITY must procure all licenses, permits, or other right necessary for the fulfillment of its obligations under this Agreement.

### **16. CONTROLLING LAW**

This Agreement will be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement will be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

### **17. SEVERABILITY**

If any court of competent jurisdiction holds any provision of this Agreement unenforceable or invalid, such holding will not invalidate or render unenforceable any other provision of this Agreement.

### **18. SUPERCESSION**

All other prior discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and, except as specifically provided in this Agreement, this Agreement constitutes the entire agreement with respect to its subject matter.

### **19. CERTIFICATION OF NO PROHIBITED STATE LEGISLATOR INTEREST**

The CITY (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, the CITY hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

### **20. SIGNATURE AUTHORITY**

The CITY has designated its Mayor as the CITY'S authorized representative and has empowered the Mayor with the authority to sign this Agreement on behalf of the CITY. A copy of the CITY'S Commission or Council minutes or resolution authorizing the execution of this Agreement by the Mayor as the CITY'S authorized representative is attached to this Agreement as **Exhibit 2**.

This Agreement is binding upon the signatories not as individuals but solely in their capacities as officials of their respective organizations and acknowledges proper action of the STATE and the CITY to enter into the same.

City of Yankton, South Dakota

State of South Dakota  
Department of Transportation

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: Mayor

Its: Program Manager,  
Office of Administration

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

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

Attest:

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

Printed Name: \_\_\_\_\_

City Auditor/Clerk

(CITY SEAL)

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION  
STANDARD TITLE VI / NONDISCRIMINATION ASSURANCES  
APPENDIX A & E  
MARCH 1, 2016**

During the performance of this contract, the CITY, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

During the performance of this contract, the CITY, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin), and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 *et seq.*) (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability), and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC Ch. 471, § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. Ch. 471, § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

\*\*\*\*\*

**Memorandum #23-194**

**To:** Amy Leon, City Manager  
**From:** Bradley Moser, Civil Engineer  
**Subject:** Bid Award for Yankton Meridian Bridge Concrete Pier Repairs Project  
**Date:** October 2, 2023

Bids for the Meridian Bridge pier repair project were opened on September 28, 2023. The scope of the project includes removing deteriorated existing material, preparing surfaces, placing galvanic anodes and installing new concrete material. There are four different pier locations at which this work will be performed. Some of the locations may require shoring during the repairs as well as a temporary closure of the top deck.

The bids received are listed below:

- |  |                |
|--|----------------|
| 1. JMN Construction, LLC, Prior Lake, MN | \$433,035.00   |
| 2. PCiRoads, LLC, St. Michael, MN        | \$597,525.00   |
| 3. SFC Civil, Sioux Falls, SD            | \$1,236,500.00 |

The low bidder meets the specifications but is \$118,035.00 higher than the engineer's opinion of probable cost which was \$315,000.00.

The attached letter provided by Steve Arens (JEO Consulting Group) discusses the experience that JMN Construction has on projects of this nature. It also touches on the volatility of the cost of doing construction as well as the availability of contractors. There is no indication that either of these two situations will change for the better in the near future.

With the goal of continuing to allow pedestrian traffic to utilize the Meridian Bridge well into the future, maintenance projects such as this will need to be completed. The first step to achieving this goal is to accept the bid from JMN Construction, LLC.

Respectfully submitted,

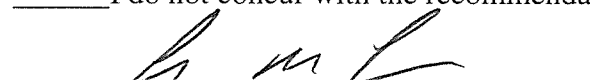


Bradley Moser  
Civil Engineer

**Recommendation:** It is recommended that the City Commission award the contract to JMN Construction, LLC in the amount of \$433,035.00 as explained in Memorandum #23-194.

I concur with the recommendation.

I do not concur with the recommendation.



Amy Leon, City Manager

cc: Adam Haberman

\_\_\_\_ Roll Call



September 29, 2023

Adam Haberman  
Public Works Director  
City of Yankton  
416 Walnut Street  
PO Box 176  
Yankton, SD 57078

RE: Yankton Meridian Bridge – Concrete Pier Repairs  
Yankton, South Dakota  
JEO Project No. 221702.00

Mr. Haberman:

The bid letting for the above referenced project was held on September 28, 2023 at 3:00 PM. Three bids were received, ranging from \$433,035.00 to \$1,236,500.00. The low bid of \$433,035.00 was submitted by JMN Construction LLC of Valley, NE. The proposed start date for the work is late October (weather permitting). Enclosed is a copy of the complete bid tab.

The low bid is above the engineer's opinion of probable cost of \$315,000.00. However, this price is reasonable for this project with the current bidding climate with limited contractor availability and increases in material costs.

JMN Construction, LLC has successfully completed projects of similar scope and size to the above referenced project for other JEO clients. Based on our review of the bids, JEO hereby recommends the City of Yankton award the project to JMN Construction, LLC in the amount of \$433,035.00.

If you have any questions regarding the information included in this letter or the enclosed documents, please contact me at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Arens".

Steve Arens, PE, SE  
Project Manager

Enclosure – Bid Tab

CC: Brad Moser, City of Yankton  
Jesse Sire, JEO Consulting Group  
Sandy Walker, JEO Consulting Group



# Bid Tab

**PROJECT** | Yankton Meridian Bridge - Concrete Pier Repairs

**JEO PROJECT NO.** | 221702.00

**LOCATION** | Yankton, SD

**LETTING** | September 28, 2023 @ 3:00 PM

**OPINION OF PROBABLE COST** | \$315,000.00

Bidder	Total Group A	Start Date
JMN Construction LLC Valley, NE	\$433,035.00	late October weather permitting
PCiRoads, LLC St. Michael, MN	\$597,525.00	April 8, 2024
SFC Civil Construction Sioux Falls, SD	\$1,236,500.00	December 1, 2023



# Tab Sheet

**PROJECT** | Yankton Meridian Bridge - Concrete Pier Repairs

**JEO PROJECT NO.** | 221702.00

**LOCATION** | Yankton, SD

						JMN Construction LLC	PCiRoads, LLC	SFC Civil Construction	
<b>GROUP A</b>									
Item	Description	Qty.	Unit	Unit Price	Total	Unit Price	Total	Unit Price	Total
1	Mobilization	1	LS		\$42,500.00		\$45,000.00		\$150,000.00
2	Preparation of Bridge	1	EA	\$140,000.00	\$140,000.00	\$340,000.00	\$340,000.00	\$832,000.00	\$832,000.00
3	Class 47B-3000 Concrete for Bridge	10.8	CY	\$5,325.00	\$57,510.00	\$4,200.00	\$45,360.00	\$5,500.00	\$59,400.00
4	Reinforcing Steel for Bridge	1,890	LB	\$12.50	\$23,625.00	\$6.00	\$11,340.00	\$15.00	\$28,350.00
5	Concrete Patching	345	SF	\$320.00	\$110,400.00	\$285.00	\$98,325.00	\$250.00	\$86,250.00
6	Galvanic Anode	700	EA	\$70.00	\$49,000.00	\$75.00	\$52,500.00	\$65.00	\$45,500.00
7	Traffic / Pedestrian Control	1	LS		\$10,000.00		\$5,000.00		\$35,000.00
<b>TOTAL GROUP A</b>					\$433,035.00		\$597,525.00		\$1,236,500.00



**Memorandum #23-195**

**To:** Amy Leon, City Manager  
**From:** Bradley Moser, Civil Engineer  
**Subject:** Change Order Number 4, Final Project Acceptance and Final Payment for the Marne Creek Bank Stabilization Project  
**Date:** October 3, 2023

---

The long task of replacing the Marne Creek corridor back to a utilizable space has come to an end. The Marne Creek Bank Stabilization project is complete and ready for acceptance.

The main priority of the project was to construct a drainage way not to just replace what had been there, but to improve the ability to withstand the destructive forces of future flooding. This was done by incorporating multiple components which included various plantings, appropriately sized riprap, soil lifts and other elements.

As part of the project, we were able to reconstruct the trail which will provide access to City staff so they can continue maintenance operations along the creek.

Attached is the Change Order No. 4 which primarily represents the final adjusted quantities. The changes resulted in a net decrease of \$521,642.84 on this change order. The biggest factor that lead to this decrease was that the consulting engineer Banner & Associates utilized a very conservative multiplication factor when originally figuring the quantities for rip rap. If Change Order #4 is approved, the final construction cost of the project would be \$3,686,815.27. This is \$372,839.66 less than the original cost of \$4,059,654.93.

This project is a cost share of 75% federal, 10% state and 15% local funds. It is our understanding that all the various elements incorporated into the project are eligible for reimbursement. Therefore, the City's responsibility should be \$553,022.29.

City staff has reviewed the project, the change order and the final pay request. We recommend that Change Order No. 4 be approved, that the project be accepted, and that the City Finance Officer be authorized to issue a manual check in the amount of \$153,143.86 to Fenton Construction, Inc. based on the attached final pay request.

Respectfully submitted,




Bradley Moser  
Civil Engineer

**Recommendation: It is recommended that the City Commission approve Change Order No. 4, accept the completed Marne Creek Bank Stabilization Project, and authorize the Finance Officer to issue a manual check to Fenton Construction, Inc. in the amount of \$153,143.86 as detailed in Memorandum #23-195.**

I concur with this recommendation.

I do not concur with this recommendation.

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

cc: Adam Haberman (electronic)  
file

\_\_\_\_ Roll Call

**CHANGE ORDER NO. 4**

Owner:	City of Yankton	Owner's Project No.:	2020-014
Engineer:	Banner Associates, inc.	Engineer's Project No.:	23371.00
Contractor:		Contractor's Project No.:	
Project:	Marne Creek Bank Stabilization		
Contract Name:			
Date Issued:		Effective Date of Change Order:	

The Contract is modified as follows upon execution of this Change Order:

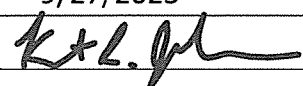
**Description:**

Liquidated Damages, RFI #2 (ECB Substitution), Landfill Charges for Reach C, and Adjustment of Final Quantities.

**Attachments:**

Unit Price Items, Liquidated Damages Tabulation, RFI #2 with Cost Breakdown, and Landfill charges.

Change in Contract Price	Change in Contract Times [State Contract Times as either a specific date or a number of days]
Original Contract Price: \$ <u>4,059,654.93</u>	Original Contract Times: Substantial Completion: <u>June 30, 2023</u> Ready for final payment: <u>July 28, 2023</u>
<del>[Increase]</del> <del>[Decrease]</del> from previously approved Change Orders No. 1 to No. <u>3</u> : \$ <u>148,803.18</u>	<del>[Increase]</del> <del>[Decrease]</del> from previously approved Change Orders No.1 to No. <u>3</u> : Substantial Completion: <u>July 13, 2023</u> Ready for final payment: <u>July 28, 2023</u>
Contract Price prior to this Change Order: \$ <u>4,208,458.11</u>	Contract Times prior to this Change Order: Substantial Completion: <u>July 13, 2023</u> Ready for final payment: <u>July 28, 2023</u>
<del>[Increase]</del> <del>[Decrease]</del> this Change Order: \$ <u>521,642.84</u>	<del>[Increase]</del> <del>[Decrease]</del> this Change Order: Substantial Completion: _____ Ready for final payment: _____
Contract Price incorporating this Change Order: \$ <u>3,686,815.27</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>July 15, 2023</u> Ready for final payment: <u>July 28, 2023</u>

Recommended by Engineer (if required)	Authorized by Owner
By: <u>Kent R. Johnson, PE</u>	_____
Title: <u>Project Manager</u>	_____
Date: <u>9/27/2023</u>	_____
	_____
By: _____	_____
Title: _____	_____
Date: _____	_____



**Contractor's Application for Payment No. 8 (Final)**

Application Period: 07/15/2023 - 07/30/2023		Application Date: 9/27/2023	
To (Owner): City of Yankton, SD	From (Contractor): Fenton Construction	Via (Engineer): Banner Associates, Inc.	
Project: Yankton Marne Creek Bank Stabilization	Contract: Unit Price		
Owner's Contract No.: #2020-014	Contractor's Project No.:	Engineer's Project No.: 23371-00	

**Application For Payment  
Change Order Summary**

Approved Change Orders		
Number	Additions	Deductions
ONE (1)		
TWO (2)	\$114,758.09	
THREE (3)	\$34,045.09	
FOUR (4)	\$51,457.70	
FOUR(4) FINAL ADJ QTY		\$573,100.54
TOTALS	\$200,260.88	\$573,100.54
NET CHANGE BY CHANGE ORDERS	-5372,839.66	

1. ORIGINAL CONTRACT PRICE.....	\$ 4,059,654.93
2. Net change by Change Orders.....	\$ -5372,839.66
3. Current Contract Price (Line 1 + 2).....	\$ 3,686,815.27
4. TOTAL COMPLETED AND STORED TO DATE (Column F total on Progress Estimates).....	\$ 3,686,815.27
5. RETAINAGE:	
a. X \$3,686,815.27 Work Completed.....	\$
b. X Stored Material.....	\$
c. Total Retainage (Line 5.a + Line 5.b).....	\$
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c).....	\$ 3,686,815.27
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application).....	\$ 3,533,671.41
8. AMOUNT DUE THIS APPLICATION.....	\$ 153,143.86
9. BALANCE TO FINISH PLUS RETAINAGE (Column G total on Progress Estimates + Line 5.c above).....	\$ 3,686,815.27

**Contractor's Certification**

The undersigned Contractor certifies, to the best of its knowledge, the following:

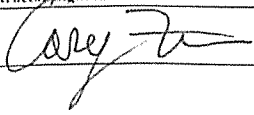
(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;

(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Lien, security interest, or encumbrances); and


(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

---

Contractor Signature

By:  Date: 9-28-23

Payment of: \$ 153,143.86  
(Line 8 or other - attach explanation of the other amount)

is recommended by:  10/02/2023  
(Engineer) (Date)

Payment of: \$ \_\_\_\_\_  
(Line 8 or other - attach explanation of the other amount)

is approved by: \_\_\_\_\_  
(Owner) (Date)

Approved by: \_\_\_\_\_  
Funding or Financing Entity (if applicable) (Date)

**Progress Estimate - Unit Price Work**

**Contractor's Application**

For (Contract): Yankton Marne Creek Bank Stabilization							Application Number: 8 (Final)				
Application Period: 07/15/2023 - 07/30/2023							Application Date: 9/27/2023				
A					B	C	D	E	F	G	
Item		Contract Information				Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F / B)	Balance to Finish (B - F)
Bid Item No.	Description	Item Quantity	Units	Unit Price	Total Value of Item (\$)						
1	Mobilization	1	LS	\$250,000.00	\$250,000.00	1.00	\$ 250,000.00	\$ 250,000.00	100%		
2	Clear and Grub Stump	5	Ea	\$1,000.00	\$5,000.00	5	\$ 5,000.00	\$ 5,000.00	100%		
3	Clear and Grub Tree 6" to 12"	153	Ea	\$200.00	\$30,600.00	153	\$ 30,600.00	\$ 30,600.00	100%		
4	Clear and Grub Tree 13" to 24"	64	Ea	\$100.00	\$6,400.00	64	\$ 6,400.00	\$ 6,400.00	100%		
5	Clear and Grub Tree 25" to 36"	23	Ea	\$200.00	\$4,600.00	23	\$ 4,600.00	\$ 4,600.00	100%		
6	Clear and Grub Tree 37" to 48"	16	Ea	\$300.00	\$4,800.00	16	\$ 4,800.00	\$ 4,800.00	100%		
7	Clearing	5.83	Ac	\$3,000.00	\$17,490.00	5.83	\$ 17,490.00	\$ 17,490.00	100%		
8	Remove Concrete Sidewalk	3256	SqYd	\$3.00	\$9,768.00	3256	\$ 9,768.00	\$ 9,768.00	100%		
9	Remove Silt Fence	520	Ft	\$2.00	\$1,040.00	520	\$ 1,040.00	\$ 1,040.00	100%		
10	Salvage Riprap	2842	Ton	\$17.00	\$48,314.00	600	\$ 10,200.00	\$ 10,200.00	21%	\$38,114.00	
11	Incidental Work, Grading	1	LS	\$75,000.00	\$75,000.00	1.00	\$ 75,000.00	\$ 75,000.00	100%		
12	Subbase	1282.2	Ton	\$40.00	\$51,288.00	1233.5	\$ 49,340.00	\$ 49,340.00	96%	\$1,948.00	
13	Traffic Control Signs	131	SqFt	\$5.00	\$655.00	131	\$ 655.00	\$ 655.00	100%		
14	Traffic Control, Miscellaneous	1	LS	\$5,000.00	\$5,000.00	1	\$ 5,000.00	\$ 5,000.00	100%		
15	Type 3 Barricade	19	Ea	\$150.00	\$2,850.00	19	\$ 2,850.00	\$ 2,850.00	100%		
16	6" Reinforced Concrete Sidewalk	33448	SqFt	\$15.00	\$501,720.00	33448	\$ 501,720.00	\$ 501,720.00	100%		
17	Class B Riprap	2720.1	Ton	\$55.00	\$149,605.50	2216.0	\$ 121,880.00	\$ 121,880.00	81%	\$27,725.50	
18	Class C Riprap	8893.1	Ton	\$55.00	\$489,120.50	8249.1	\$ 453,700.50	\$ 453,700.50	93%	\$35,420.00	
19	Class D Riprap	4892.2	Ton	\$55.00	\$269,071.00	3020.7	\$ 166,138.50	\$ 166,138.50	62%	\$102,932.50	
20	Special Riprap - Class B	320	Ton	\$87.00	\$27,840.00		\$ -	\$ -		\$27,840.00	
21	Special Riprap - Class C	2300	Ton	\$87.00	\$200,100.00	839.7	\$ 73,053.90	\$ 73,053.90	37%	\$127,046.10	
22	Special Riprap - Class D	802	Ton	\$87.00	\$69,774.00	377.9	\$ 32,877.30	\$ 32,877.30	47%	\$36,896.70	
23	Place Riprap	2842	Ton	\$17.00	\$48,314.00	600.0	\$ 10,200.00	\$ 10,200.00	21%	\$38,114.00	
24	Bank and Channel Protection Gabions	222	CuYd	\$500.00	\$111,000.00	72.0	\$ 36,000.00	\$ 36,000.00	32%	\$75,000.00	
25	Special Permanent Seed Mixture 1	35.1	Lb	\$275.00	\$9,652.50	35.1	\$ 9,652.50	\$ 9,652.50	100%		
26	Special Permanent Seed Mixture 2	1442	Lb	\$15.00	\$21,630.00	1442	\$ 21,630.00	\$ 21,630.00	100%		
27	Hydroseeding	18917	SqYd	\$2.50	\$47,292.50	18917	\$ 47,292.50	\$ 47,292.50	100%		
28	Fertilizing	4676.3	Lb	\$3.00	\$14,028.90	4676	\$ 14,028.90	\$ 14,028.90	100%		
29	Type 1 Erosion Control Blanket	18509	SqYd	\$1.86	\$34,426.74	300	\$ 558.00	\$ 558.00	2%	\$33,868.74	

**Progress Estimate - Unit Price Work**

**Contractor's Application**

For (Contract): Yankton Marne Creek Bank Stabilization						Application Number: 8 (Final)					
Application Period: 07/15/2023 - 07/30/2023						Application Date: 9/27/2023					
A					B	C	D	E	F		G
Item		Contract Information				Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F / B)	Balance to Finish (B - F)
Bid Item No.	Description	Item Quantity	Units	Unit Price	Total Value of Item (\$)						
30	Type 2 Turf Reinforcement Mat	250	SqYd	\$8.00	\$2,000.00	250	\$ 2,000.00		\$ 2,000.00	100%	
31	12" Diameter Erosion Control Wattle	5728	Ft	\$6.00	\$34,368.00	5728	\$ 34,368.00		\$ 34,368.00	100%	
32	High Flow Silt Fence	270	Ft	\$11.50	\$3,105.00		\$ -		\$ -		\$3,105.00
33	Mucking Silt Fence	40	CuYd	\$57.50	\$2,300.00		\$ -		\$ -		\$2,300.00
34	Repair Silt Fence	100	Ft	\$23.00	\$2,300.00		\$ -		\$ -		\$2,300.00
35	Sediment Control at Inlet with Frame and G	3	Ea	\$400.00	\$1,200.00		\$ -		\$ -		\$1,200.00
36	Sweeping	10	Hour	\$400.00	\$4,000.00	10	\$ 4,000.00		\$ 4,000.00	100%	
37	Type B Drainage Fabric	13441	SqYd	\$4.00	\$53,764.00	13441	\$ 53,764.00		\$ 53,764.00	100%	
38	Orange Plastic Safety Fence	480	Ft	\$3.00	\$1,440.00	50	\$ 150.00		\$ 150.00	10%	\$1,290.00
39	Concrete Washout Facility	5	Ea	\$2,000.00	\$10,000.00	2	\$ 4,000.00		\$ 4,000.00	40%	\$6,000.00
40	Construction Entrance	6	Ea	\$4,000.00	\$24,000.00	3	\$ 12,000.00		\$ 12,000.00	50%	\$12,000.00
41	Unclassified Excavation	32633	CuYd	\$18.50	\$603,710.50	32633	\$ 603,710.50		\$ 603,710.50	100%	
42	Scarify and Recompact	533	CuYd	\$17.00	\$9,061.00	533	\$ 9,061.00		\$ 9,061.00	100%	
43	Imported Topsoil	4151	CuYd	\$60.00	\$249,060.00	4151	\$ 249,060.00		\$ 249,060.00	100%	
44	Strip and Stopckpipe Topsoil	2873	CuYd	\$16.71	\$48,007.83	2873	\$ 48,007.83		\$ 48,007.83	100%	
45	Topsoil Placement	6926	CuYd	\$16.71	\$115,733.46	6926	\$ 115,733.46		\$ 115,733.46	100%	
46	Riparian Pole Planting	17496	Ea	\$16.50	\$288,684.00	17496	\$ 288,684.00		\$ 288,684.00	100%	
47	Containerized Upland Plantings	4457	Ea	\$16.50	\$73,540.50	4457	\$ 73,540.50		\$ 73,540.50	100%	
48	Fiber Encapsulated Soil Lifts - One Vertical	900	LF	\$30.00	\$27,000.00	900	\$ 27,000.00		\$ 27,000.00	100%	
<b>Original Contract Totals</b>					<b>\$4,059,654.93</b>		<b>\$3,486,554.39</b>		<b>\$3,486,554.39</b>	<b>85.9%</b>	<b>\$573,100.54</b>

Change Orders										
<b>CCO#1</b>	<b>Time extension - no cost</b>									
							\$ -		\$ -	
<b>CCO#2</b>	<b>Reach A - added concrete trail, RFI#3</b>									
	<b>Total CCO#2</b>									
										<b>\$114,758.09</b>
8	Remove Concrete Sidewalk	792.81	SqYd	\$3.00	\$2,378.43	792.81	\$ 2,378.43		\$ 2,378.43	100%
16 (adj \$)	6" Non-Reinf. Concrete Sidewalk (67% Cit	7133	SqFt	\$13.49	\$96,224.17	7133	\$ 96,224.17		\$ 96,224.17	100%

**Progress Estimate - Unit Price Work**

**Contractor's Application**

For (Contract): Yankton Marne Creek Bank Stabilization						Application Number: 8 (Final)					
Application Period: 07/15/2023 - 07/30/2023						Application Date: 9/27/2023					
A				B		C	D	E	F		G
Item		Contract Information				Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F / B)	Balance to Finish (B - F)
Bid Item No.	Description	Item Quantity	Units	Unit Price	Total Value of Item (\$)						
49 (new)	Reinforcing Steel (100% City)	10699	SqFt	\$1.51	\$16,155.49	10699	\$ 16,155.49		\$ 16,155.49	100%	
<b>CCO#3</b>		<b>Reach C - added concrete trail, RFI#4</b>							<b>Total CCO#3</b>		<b>\$34,045.09</b>
8	Remove Concrete Sidewalk	240	SqYd	\$3.00	\$720.00	240	\$ 720.00		\$ 720.00	100%	
16	6" Reinforced Concrete Sidewalk	2160	SqFt	\$15.00	\$32,400.00	2160	\$ 32,400.00		\$ 32,400.00	100%	
41	Unclassified Excavation	50	CuYd	\$18.50	\$925.00	50	\$ 925.00		\$ 925.00	100%	
N/A	math error - approved CCO#3 \$34,045.09	1	N/A	\$0.09	\$0.09	1	\$ 0.09		\$ 0.09	100%	
<b>CCO#4</b>		<b>Final Adjustment of Quantities, Liquidated Damages, and Erosion Control Blanket Substitution with Fiber Bonded Matrix, RFI#2, Landfill/Debris cost</b>							<b>Total CCO#4</b>		<b>\$51,457.70</b>
N/A	Liquidated Damages	9	Days	-\$1,500.00	-\$13,500.00	9	\$ (13,500.00)		\$ (13,500.00)	100%	
50 (new)	Bonded Fiber Matrix - add to hydroseed	18917	SqYd	\$0.99	\$18,727.83	18917	\$ 18,727.83		\$ 18,727.83	100%	
26	Special Permanent Seed Mixture 2	1442	Lb	\$15.00	\$21,630.00	1442	\$ 21,630.00		\$ 21,630.00	100%	
51 (new)	Water for Vegetation	1	LS	\$20,000.00	\$20,000.00	1	\$ 20,000.00		\$ 20,000.00	100%	
52 (new)	Landfill/Debris removal Reach C sidewalk	1	LS	\$4,599.87	\$4,599.87	1	\$ 4,599.87		\$ 4,599.87	100%	
N/A	Adjustment of Final Quantities	1	N/A	-\$573,100.54	-\$573,100.54	1			\$ -		
<b>Change Order Totals</b>					<b>-\$372,839.66</b>		<b>\$200,260.88</b>		<b>\$200,260.88</b>	<b>-53.7%</b>	<b>\$200,260.88</b>
<b>Original Contract and Change Orders</b>											
<b>Project Totals</b>					<b>\$3,686,815.27</b>		<b>\$3,686,815.27</b>		<b>\$3,686,815.27</b>		<b>\$ -</b>

## NOTICE OF ACCEPTABILITY OF WORK


Owner: City of Yankton  
Engineer: Banner Associates, Inc.  
Contractor: Fenton Construction, Inc.  
Project: Marne Creek Bank Stabilization  
Contract Name: Unit Price  
Notice Date: 10/02/2023      Effective Date of the Construction Contract: 11/22/2022

Owner's Project No.: 2020-014  
Engineer's Project No.: 23371.00  
Contractor's Project No.:

The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract is acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents ("Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated **September 29, 2020** ("Owner-Engineer Agreement"). This Notice of Acceptability of Work (Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree:

1. This Notice has been prepared with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice has been prepared to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's Work) under the Owner-Engineer Agreement, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Owner-Engineer Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to otherwise comply with the Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract and is subject to Owner's reservations of rights with respect to completion and final payment.

Engineer

By (signature):   
Name (printed): Kent R. Johnson, PE  
Title: PM, Banner Associates, Inc.



## Memorandum #23-197

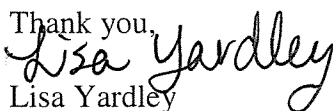
To: City Commission  
 From: Interim Finance Officer  
 Date: September 21, 2023  
 Subject: Proposed selection procedure of 12th Package Off-Sale Liquor license holder

On August 28, 2023, the City of Yankton Commission adopted Resolution 23-52 authorizing an additional new alcohol license become available. The resolution states “that an additional 12<sup>th</sup> Package Off-Sale Liquor license be issued in the municipality in calendar year 2024 at a fee no less than \$300 but issuance based on sealed bid by an eligible bidder.”

Please view the proposed timeline below:

<b>October 9<sup>th</sup></b>	Receive Commissioner approval to proceed
<b>October 10<sup>th</sup></b>	Publish legal notices for two consecutive weeks
<b>November 9<sup>th</sup></b>	Public Bid Opening – 3pm at City Hall Meeting Room B
<b>November 10<sup>th</sup></b>	Send conditional award notification to highest bidder Complete required checks and alcohol forms
<b>November 27<sup>th</sup></b>	Commission Meeting – Bid Award & Set Date for Public Hearing
<b>December 11<sup>th</sup></b>	Commission Meeting – Public Hearing for Application for Sale of Alcoholic Beverages – Off Sale Liquor License
<b>December 12<sup>th</sup></b>	Submit paperwork to the State of South Dakota

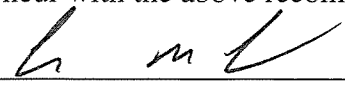
A draft sample of the public notice and bid packet proposal is attached. Note the minimum bid is \$50,000 plus there is a non-refundable application fee of \$100. All revenues received will be deposited into the general fund. Once the bid is awarded by the City Commission, the normal alcohol licensing procedures will be followed. The annual renewal fee for this license is \$500.

Thank you,  
  
 Lisa Yardley  
 Interim Finance Officer

**Recommendation: It is recommended that the City Commission make any desired changes to the Notice of Public Sale for the off-sale liquor license and authorize staff to proceed with the time line set in Memorandum #23-197.**

I concur with the above recommendation.

I do not concur with the above recommendation.

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

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

**NOTICE OF PUBLIC SALE  
OFF-SALE LIQUOR LICENSE**

NOTICE IS HEREBY GIVEN BY the undersigned, Finance Officer, of the City of Yankton, South Dakota, that the one (1) Off-Sale Liquor License hereinafter described, held by the City of Yankton, will be conditionally awarded under sealed bids to the highest suitable bidder.

All sealed bids shall be made on a form available from the City. All sealed bids shall be conspicuously marked "SEALED BID—OFF-SALE LIQUOR LICENSE, BIDDER NAME, PROPOSED ADDRESS FOR LICENSE" and submitted in person to the City Finance Office or designee during normal business hours Monday through Friday, 8 a.m. to 5 p.m., by Thursday, November 9, 2023, at 3 p.m. The \$100 nonrefundable bid application fee payable to City of Yankton shall be outside of the sealed envelope.

Sealed bids will be opened at 3 p.m. on Thursday, November 9, 2023, in the City Hall Meeting Room B, 416 Walnut Street, Yankton, SD. The public is welcome to attend.

The license type referred to and to be conditionally awarded is described as follows: One (1) Off Sale Liquor License. This license allows the holders to sell any alcoholic beverage for consumption off the premise where sold. The minimum bid for the license shall be \$50,000.

The bidder providing the highest bid, based on the number of available off-sale dealer liquor licenses as prescribed in SDCL 35-4-10 and Resolution 23-52, shall be notified in writing of their conditional award. The names and amounts of bids for those conditionally awarded will be published online within five (5) business days of the date on the written notice of the conditional award. The highest bidder will also be subject to the appropriate police, fire, and community development checks. Each officer/owner must successfully pass a background check.

The issuance of the license shall be conditioned upon the eligibility of the person or firm to hold the license, suitability of the proposed premises upon which the alcoholic beverages will be sold, active use of the license within 90 days of issuance, and compliance with all other state law and City ordinance requirements, including but not limited to applicable zoning, building, and property maintenance codes. The City Commission reserves the right to stipulate such other and further conditions for issuance of the license(s) as may be necessary and proper. If the highest bidder does not meet all conditions of South Dakota Codified Law Chapter 35, the next highest bid may be conditionally accepted in the same manner as the highest bid.

Bid forms are available from the City Finance Office at City Hall, or available online at [www.cityofyankton.org](http://www.cityofyankton.org).

The City reserves the right to reject any or all bids and has the right to waive any technicalities except those required by ordinance.

Lisa Yardley  
Interim Finance Officer



## OFF-SALE LIQUOR LICENSE BIDDER'S PROPOSAL

Company Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

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

Bidder agrees to purchase an off-sale liquor license from the City of Yankton at the following location and price:

Proposed Address for license: \_\_\_\_\_

Price (Bid): \$ \_\_\_\_\_ (minimum bid \$50,000)

The within proposal is based upon the conditions, stipulations, and specifications named in the notice inviting bids for said off-sale liquor license, which notice and detailed specifications are made a part of this proposal as if written herein at length. If bidder receives notice of conditional award, the bid amount shall be submitted to the City Finance office, along with the uniform alcoholic beverage application, within ten business days of the date of the written notice of their conditional award. Signing this also hereby authorizes a comprehensive background check of all listed individuals on the bid's attachment.

Print Name and Title \_\_\_\_\_

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

Bidder must complete all information required above.

**Bidder must provide an attachment listing all individuals that have a controlling interest of said company, including birthdates.**

When complete, place in envelope, seal, and write the following:

SEALED BID—OFF-SALE LIQUOR LICENSE  
BIDDER NAME  
PROPOSED ADDRESS FOR LICENSE

Bid application fee (\$100) payable to City of Yankton shall be on the outside of the envelope.

## *Memorandum #23-198*

**To:** Amy Leon, City Manager  
**From:** Todd Larson, Director of Parks, Recreation, & City Events  
**Subject:** Cemetery ground not yet platted  
**Date:** October 3, 2023

A citizen has approached the cemetery staff in regards to purchasing plots in the cemetery that are not currently available as the area has not been formally platted. Please refer to the attached map of the cemetery. The circular area of the cemetery in the middle that does not have yellow lots overlaid on the aerial is the ground of interest. This area is on a hill and offers a nice view and setting for cemetery use.

South Dakota codified law applies to the cemetery:

**47-29-13. Surveying and platting of cemetery grounds--Recordation--Lot numbering.**

A cemetery corporation shall cause its land, or such portion thereof as may from time to time become necessary for that purpose, to be surveyed into lots, avenues, and walks, and platted, and the plat of ground as surveyed shall be acknowledged and recorded in the office of the register of deeds of the county. Each lot shall be regularly numbered by the surveyor and such number shall be marked on the plat and recorded.

**Source:** SDC 1939, § 11.1906; SL 1949, ch 24; SL 1955, ch 16.

- Does the City Commission want to have this area in the cemetery platted and made available for sale?
- Does the City Commission want this area to be used for full and cremains burials or should it be limited to only cremains burials?
- Should these spaces be sold at the same cost as all other spaces in the cemetery or should they be sold at a higher cost?
- Should any covenants be placed on marker type, height or material?

At the time of this memo, the cemetery staff was waiting to receive a quote for surveying and platting the circular area of ground. There is nothing budgeted for the surveying costs.

There may be remnants of water tower footings in this area and in the future there would be a cost to have that material removed if this area of ground is to be opened up for burials. We do not have an estimate for what this clean-up would cost, nor is clean up budgeted. To determine the extent of the cleanup, a geotechnical consultant would need to be hired.

Respectfully submitted,

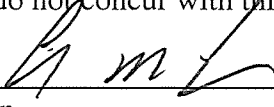


Todd R Larson  
 Director of Parks, Recreation, & City Events

**Recommendation: Please give the Cemetery Staff guidance on how the Commission would like to proceed with this identified area of the cemetery.**

I concur with this recommendation.

I do not concur with this recommendation.

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

\_\_\_\_ Roll Call



## Memorandum #23-192

**To:** City Commission  
**From:** Finance Officer  
**Date:** 10/3/2023  
**Subject:** Memorandum Supporting Resolution #23-61 Proposing New Solid Waste Collection (Garbage) Rates Effective November 1, 2023

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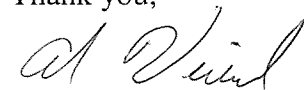
Attached to this memorandum is Resolution #23-61 proposing new Solid Waste Collection (garbage) rates for the City of Yankton. The proposed rate increase (\$2.39 per month) if enacted, would be a 10% increase over current rates. These rates would be effective November 1, 2023. The current rate is \$23.61 monthly and would increase to \$26.00.

This fund was identified during the budget processes as not having any rate increase since a 3% increase adopted back in November of 2020. While three years of inflation on our expenses have shifted the annual operations into a loss, it has also been impacted by larger rising capital costs to obtain new equipment. The five-year Solid Waste Collection CIP plan has an average annual expense \$240,763.00 of which \$82,537.00 is funded by current depreciation leaving an annual deficit of \$158,226.00 that would have to be funded by annual operating revenues or loans. While loans would reduce the annual capital expenditures, it will also increase the annual debt service expenses (operating expense).

*Note: The Water Utility will have no increased rate in either consumption charges or surcharges this year and the Wastewater or Sewer Utility will also have no increase in the consumption rate this year. The Wastewater or Sewer Utility will have a monthly surcharge increase of \$6.31 as previously adopted in 2022 with Resolution #22-22. These will represent a total monthly rate utility rate increase of \$8.70 for the average user if this Resolution #23-61 is adopted by the City Commission.*

**It is recommended that the City Commission adopt Resolution #23-61 approving new rates for Solid Waste Collection effective with utility bills mailed after November 1, 2023.**

Thank you,



Al Viereck  
Finance Officer

I concur with the above recommendation.

I do not concur with the above recommendation.

  
 Amy Leon, City Manager

\_\_\_\_ Roll Call

## ***RESOLUTION #23-61***

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**WHEREAS**, the City of Yankton has determined that it is necessary to adjust the existing solid waste collection rates to reflect a ten percent (10.0%) 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, 2023;

Class I Residential - \$26.00 per month plus tax.

Class II Commercial / Industrial - \$26.00 per month per unit plus tax.

Adopted:

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Stephanie Moser  
Mayor

ATTEST

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Al Viereck  
Finance Officer



**Memorandum 23-196**

**To:** Amy Leon, City Manager  
**From:** Corey Potts, Public Works Manager  
**Subject:** Equipment Purchase from Sourcewell Contract for a New Articulating Loader for the Department of Public Works, City of Yankton  
**Date:** October 3, 2023

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The 2023 adopted budget provides funding for the purchase of a replacement loader for the Department of Public Works, Street Division. The equipment that is scheduled to be replaced is Unit #42, a 2008 Volvo L90F Loader. This existing loader is 15 years old and has been used extensively around the City of Yankton for construction and snow removal activities.

A bid contract through the Sourcewell Contract allows the City to purchase a new loader through Trans Source Truck and Equipment. The new loader to be purchased is a new 2024 Volvo L90H2 loader in the amount of \$229,381.00 with delivery estimated February 30, 2024. There is \$225,000.00 budgeted for this loader purchase. The 2008 Unit #42 will be surplusd at a future auction.

City staff recommends the purchase of a new 2024 Volvo L90H2 Loader for \$229,381.00 from Trans Source Truck and Equipment of Sioux Falls, South Dakota based on the Sourcewell Contract. This is over the budgeted amount; however, the difference will be made up with other 2023 equipment purchases.

Respectfully submitted,



Corey Potts  
 Public Works Manager

**Recommendation: It is recommended the City Commission approve Memorandum #23-196 for the purchase of a new 2024 Volvo L90H2 Loader in the amount of \$229,381.00 for the Department of Public Works, Street Division from Trans Source Truck and Equipment of Sioux Falls, South Dakota based on the Sourcewell Contract.**

  X   I concur with this recommendation.

           I do not concur with this recommendation.



Amy Leon  
 City Manager

## **Memorandum #23-199**

**To:** City Commission  
**From:** Finance Officer  
**Date:** 10/3/2023  
**Subject:** Memorandum Supporting Resolution #23-49 Pledging Water Revenues to Water Surcharge Fund

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Attached to this memorandum is Resolution #23-49. For information, the City Commission passed Resolution #22-20 back on May 9, 2022 authorizing a Drinking Water state revolving loan (SRF) of \$8.202 million for numerous construction and equipment projects in the City's Water fund. To date, the City has not yet closed on the loan as we have not had any authorized expenditures to draw funds down. With the beginning of the new water meters project, we will begin our first drawdown of new SRF funds. In discussions with the state, one of the requirements that we have not yet accomplished is passing a resolution that dedicates funds to Surcharge Water Fund (607).

One of the discussions during the 2023 budget process was to pay off Drinking Water SRF loans 1-4 early (we accomplished this in October of 2022) and use current water consumption revenues to pay for the new SRF water loan. Since the new loan was authorized as a surcharge funded loan, we still need to pledge funds to the Surcharge fund. Our goal is to assess the Surcharge Rate and the Water Consumption Rate at the end of the authorized projects and to adjust both rates again to meet the State's requirements.

**It is recommended that the City Commission adopt Resolution #23-49 approving the dedication of funds to the Surcharge fund.**


Thank you,



Al Viereck  
Finance Officer

I concur with the above recommendation.

I do not concur with the above recommendation.

  
 Amy Leon, City Manager

Roll Call

## ***RESOLUTION #23-49***

**WHEREAS**, the City of Yankton has been approved for a \$8.202M SRF Drinking Water Loan #7 as adopted by Resolution #22-20 and Memorandum #22-87 on May 9, 2022, and;

**WHEREAS**, the City of Yankton has adopted Water Surcharges, Water Consumption rates, and a separate Water Surcharge fund (607), and;

**WHEREAS**, the State of South Dakota requires 110% annual debt service funds be deposited to this fund,

**NOW, THEREFORE, BE IT RESOLVED** by the Board of City Commissioners that the City pledges to deposit annually in the surcharge fund 110% of the debt service requirements using surcharge funds and water consumption revenues and will further assess and adjust the Surcharge rate as the State Revolving Funds (SRF) requires at the conclusion of the draws for this loan.

Adopted:

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Stephanie Moser, Mayor

ATTEST:

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Al Viereck, Finance Officer