

**CITY OF CUSTER CITY  
COUNCIL PROCEEDINGS- REGULAR SESSION  
November 21<sup>st</sup>, 2016**

Mayor Jared Carson called to order the second meeting of the Common Council for the month of November, 2016 at 5:30 p.m. Present at roll call were Councilpersons Maciejewski, Heinrich, Nielsen, Fischer, Blom and Schleining. City Attorney Chris Beesley was also present. The Pledge of Allegiance was stated.

**AGENDA**

Councilperson Fischer moved, with a second by Councilperson Heinrich, to approve the agenda. The motion unanimously carried.

**MINUTES**

Councilperson Maciejewski moved, with a second by Councilperson Blom, to approve the minutes from the November 7<sup>th</sup> regular council meeting. The motion unanimously carried.

**CONFLICTS OF INTEREST**

Mayor Carson and Councilperson Maciejewski stated they both had a conflict of interest with the Liquor & Wine License Renewal. No other conflicts of interest were stated.

**DEPARTMENT HEAD DISCUSSION**

There was no department head discussion that this meeting.

**PUBLIC HEARING & FIRST READING – ORDINANCE #783 – SAXTON SUBDIVISION ZONING**

No public comments were received regarding the Saxton Subdivision zoning. Councilperson Fischer moved to approve the first reading of Ordinance #783, Saxton Subdivision Zoning. Seconded by Councilperson Nielsen, the motion unanimously carried.

**PUBLIC HEARING – RESOLUTION #11-21-16A – VACATION OF RIGHT-OF-WAY – TRACT FREEWAY**

No public comments were received regarding the Vacation of Right-of-Way for Tract Freeway. Councilperson Maciejewski moved to adopt Resolution #11-21-16A, Vacation of Right-of-Way . Tract Freeway. Seconded by Councilperson Schleining, the motion unanimously carried.

RESOLUTION NO 11-21-16A

WHEREAS, the verified Petition and application of the owners of all real property adjoining the hereinafter described portion of a certain public Right-Of-Way in the City of Custer City, Custer County, South Dakota, praying that said tract be vacated as it serves no useful purpose as part of the streets and alleys in the City of Custer City, the same not being necessary for the use and location of public streets and alleys thereon, has been heretofore filed, and

WHEREAS, the Common Council of the City of Custer City, Custer County, South Dakota, has heretofore caused notice of the time and place of hearing said Petition to be published once a week for two (2) consecutive weeks, to-wit: on the 2<sup>nd</sup> day of November, 2016, and on the 9<sup>th</sup> day of November, 2016, in the Custer County Chronicle, a legal newspaper published in Custer City, Custer County, South Dakota, setting forth the 21<sup>st</sup> day of November, 2016, for the hearing thereon.

NOW THEREFORE BE IT RESOLVED that the public Right-Of-Way described as follows:

Tract Free Way of Tracts Morris and Free Way which are portions of Tract Bowden which is a portion of Tract ~~9A~~ located in the SE ¼ of Section 27; T 3 S; R 4 E of the B. H. M. in Custer County, South Dakota, as recorded in Plat Book 1 at Page 139 of the Register of Deeds of Custer County, South Dakota;

be, and the same is, forever vacated, however all rights to maintain or establish utilities or subsequent easements shall be retained

Dated at Custer City, Custer County, South Dakota, this 21st day of November, 2016.

CITY OF CUSTER CITY

S/Jared Carson, Mayor

ATTEST: Laurie Woodward, Finance Officer

Mayor Carson and Councilperson Maciejewski left the meeting at 5:32 pm. The Council President presided over the meeting while the Mayor was absent.

**PUBLIC HEARING – LIQUOR LICENSE RENEWAL - VFW**

Councilperson Nielsen moved to approve the liquor license renewal for the Kenneth Kuper VFW Post 3442. Seconded by Councilperson Heinrich, the motion unanimously carried.

Mayor Carson and Councilperson Maciejewski rejoined the meeting at 5:33 pm.

**SECOND READING – ORDINANCE #778 – WATER RATES**

Councilperson Schleining moved to adopt Ordinance #778, Water Rates. Seconded by Councilperson Heinrich, the motion carried with Councilperson Maciejewski, Heinrich, Nielsen, Fischer, Blom and Schleining voting yes.

**FIRST READING – ORDINANCE #782 – CEMETERY**

Councilperson Heinrich moved to approve the first reading of Ordinance #782, Cemetery. Seconded by Councilperson Nielsen, the motion unanimously carried.

**RESOLUTION #11-21-16B – WRITE-OFF'S**

Councilperson Maciejewski moved to adopt Resolution #11-21-16B, Write-Off's. Seconded by Councilperson Fischer, the motion unanimously carried.

RESOLUTION NO. 11/21/16B

WHEREAS, Book 3, Supplemental, Chapter 9-22-4 of the South Dakota Codified Law states every municipality may assign for collection any or all delinquent accounts receivable. After reasonable collection efforts, the governing body may determine that an account is non-collectible, and by formal action direct that the non-collectible amount be removed from the records and disclosed on that year's financial report. Evidence of the debt removed from the records by the formal action of the governing body shall be retained by the municipality to support possible subsequent collection of that debt.+

WHEREAS, efforts have been made to collect these past due accounts receivable, and

WHEREAS, adequate time has elapsed to consider these accounts receivable delinquent and past due,

NOW THEREFORE BE IT RESOLVED that the following accounts be deemed non-collectible and removed from the records and disclosed on the 2016 Financial Report.

NAME:	ACCOUNT #:	AMOUNT:
Lionel Ahrendt	400831-07	\$ 121.04
Valarie Crowley	401380-02	\$ 254.90
Lynn Duff	500410-01	\$ 135.78
Brandi Kimbrough	650110-04	\$ 27.36
Steve Monnier	500420-10	\$ 24.91
	TOTAL	<u>\$ 563.99</u>

Signed this 21<sup>st</sup> day of November, 2016.

CITY OF CUSTER

S/Jared Carson, Mayor

Attest: Laurie Woodward, Finance Officer

**RESOLUTION #11-21-16C – EAST CUSTER SEWER DISTRICT AGREEMENT**

Councilperson Fischer moved to adopt Resolution #11-21-16C, adopting the terms of the East Custer Sewer District Agreement. Seconded by Councilperson Blom, the motion unanimously carried.

RESOLUTION #11-21-16C

SEWAGE TREATMENT AGREEMENT

This Agreement for the treatment of non-industrial sewage only, is entered into as of the 21th day of November, 2016, by and between the City of Custer City, South Dakota, hereinafter referred to as the City+and the East Custer Sanitary Sewer and Water District, Custer, South Dakota, hereinafter referred to as the District.+

This agreement shall specifically supersede and replace that one certain sewage treatment contract originally entered into between the parties hereto, signed March 17, 1975, consisting of three pages, and any and all amendments and addendums executed thereafter.

Witnessed:

Whereas the District is organized and established under the provisions of SDCL 34A-5 and Acts amendatory thereof, for the purpose of operating, maintaining and repairing sewage collection system serving sewer users within the District, as indicated on exhibit %A+attached hereto, establishing the exterior boundaries of said district.

Whereas, the City now owns and operates a sewage treatment plant with a capacity currently capable of serving the present customers of the City's system and the estimated number of sewer users to possibly be served by the said District.

Whereas, treatment of sewage for the District in accordance with the terms set forth herein is approved, and the execution of this contract is duly authorized by Resolution hereinafter set forth, and

Whereas, by Resolution of the Board of Trustees hereinafter set forth, treatment of the District's sewage by the City is hereby approved and the execution of this contract is duly authorized;

Now therefore, in consideration of the foregoing and the mutual agreements hereinafter set forth,

A. The City Agrees:

1. (Quality and Quantity) To adequately treat the non-industrial sewage of the District, during the term of this Agreement or any renewal or extension thereof, according to the standards established by the South Dakota Department of Environmental Protection in such quantity as may be required by the District; however, not to exceed the design capacity of the City Sewage Treatment Plant.
2. (Billing Procedure) The District certifies that they are authorized by their bylaws and regulations to enter into this Agreement on behalf of their members. The District shall be responsible to charge for, bill and collect for all sewer fees or charges, or debt therefore, directly to the District's members, and to pay the appropriate amount owed by the District to the City on or before the 20<sup>th</sup> day of each month for the preceding month. The City shall apply late fees as stated in section 13.20.090 of the Custer Municipal Code. A Service reduction for those members who do not occupy their place for a period thirty days or greater, will be applied in accordance with section 13.24.060 of the Custer Municipal Code.

In the event any member becomes significantly in default on payments to the District, thereby causing the District to fall in arrears to the City on that member's portion thereof, any penalties shall accrue thereon; the City, however agrees that said arrears shall not constitute default such that the City shall declare the entire contract in default. This section shall only apply in such a situation as herein stated, and shall only apply so long as the District documents to the City that diligent and active efforts are being conducted by the District to collect such arrears from the member.

3. (Rates) The City shall charge each member of the District on a monthly basis at a rate of 1.15 times the rate as stated in section 13.20.130 of the Custer Municipal Code in accordance with section 13.20.140 of the Custer Municipal Code, as the same may be amended. In addition, the District shall pay thirty percent of the City Sewer Bond Redemption Fee times 1.15 for each member of the District on a monthly basis, for the assessment on aerator upgrades at the Wastewater Treatment Plant. **Each residential member shall be charged a standard 4,000 gallons' usage per month.**

B. The District Agrees:

1. (Board of Trustees) The District shall maintain their Board of Trustees who shall be responsible for and govern all activities of the District, and the Board shall be the point of contact for the City. The Board shall provide annually by December 31<sup>st</sup> each year a list of current members, board members, and contact information, including current mailing addresses for all members and the District, and appear at the First Council meeting the following year with an annual update to Council for the preceding year. In addition, the Board of Trustees shall provide yearly the name and contact information for their certified operator.
2. (Maintenance) District hereby agrees to be responsible for and provide all costs, repairs, maintenance and replacement of the system, including but not limited to meters, pipes, manholes, lift stations, etc to the point of entry to the City's Sewer Main, as displayed in Exhibit B+(whether that portion of the system is located on District or City land), attached hereto and incorporated herein by this reference as though set forth in full.

**All commercial member's properties must be metered.** The District shall be responsible for reading and reporting all meters within the District on a monthly basis, and ensuring that said meters are working accurately. The parties agree, however, that the City retains the right to independently monitor and verify such meter readings, and that City's employees may enter onto District's property to conduct independent readings of any meters to verify that the same are working accurately, at City's discretion.

- 3.(Outstanding Bills and Debt) The District shall be responsible for all outstanding bills or debt accruing to or from the District prior to execution of this agreement, and paying for or collection

of such. The District shall be responsible for all debt repayment and any reporting requirements in accordance with such debt.

C. It is Further Mutually Agreed Between the City and District:

1. (Term of Agreement) That this Agreement shall extend for a term of five years from the date of execution of this Agreement/Resolution. This Agreement may be extended for an additional five-year period upon agreement of the parties. Written notice of intent to renew shall be provided at least 90 days prior to termination of this Agreement to the other party by certified mail, return receipt requested.
2. (Treatment of Sewage) That the City will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to treat the District's sewage. Temporary or partial failure to treat sewage shall be remedied with all possible dispatch.
3. (Type of Sewage) That the District will discharge only domestic sewage and will allow no storm water, ground water, or grease or oil to enter its collection system. This Agreement does not allow for any treatment of industrial waste. If any industrial waste is intended to be discharged by the District, a separate agreement will be made to provide for its monitoring and treatment, prior to any such discharge.
4. (Modification of Agreement) The provisions of this Agreement may be modified or altered only by mutual written agreement executed by both parties. The parties further agree that this Sewage Treatment Agreement contains the entire agreement of the Parties, and there are no other terms or conditions, oral or written, not contained herein.
5. (Regulatory Agencies) That this Agreement is subject to such rules, regulations, or laws as may be applicable to similar agreements in this state, and the City and District will collaborate in obtaining such permits, certifications, or the like, as may be required to comply therewith.
6. (Miscellaneous) That the construction/operation of the sewage collection system by the District is being financed by a loan made or insured by, and/or grant from, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture, and the provisions hereof pertaining to the undertaking of the District are conditioned upon the approval, in writing, of the State Director of the Farmers Home Administration.
7. (Priority of City's Use) That the City shall have first priority in the use of the said treatment plant.
8. (Annexation) That annexation of District by the City shall nullify this Agreement, unless only a portion of District shall be so annexed. In that case, the portion so annexed shall be excluded from this Agreement.
9. (Municipal Code Reference) The parties agree that any reference to the Custer Municipal Code herein shall incorporate all terms of the referred to code section as though set forth in full, and shall apply to any future amendments thereof.
10. (Unenforceability) In the event any portion of this Agreement is determined invalid, illegal, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.
11. (Successor to the District) That in the event of any occurrence rendering the District incapable of performing under this Agreement, any successor of the District, whether through result of legal process, assignment, or otherwise shall succeed to the rights of the District hereunder.
12. (Default) Failure by either Party to comply with any term or condition contained in this Agreement shall constitute default; in such an event, the non defaulting Party shall provide written notice to the other Party, advising them they have thirty days to correct such default, and that in the event such default is not satisfactorily resolved within said thirty-day period, the Party claiming default may proceed in accordance with any remedies available to them pursuant to South Dakota law.
13. (Indemnification and Liability Insurance) (a) District shall indemnify, hold harmless and defend City from and against any and all costs, expenses (including reasonable attorney's fees), liabilities, losses, damages, suits, actions, fines, penalties, claims or demands of any kind asserted by or on behalf of any person, entity or governmental authority, arising out of or in any way connected with operation of the District, and City shall not be liable to District on account of, (i) any failure by District to perform any of the terms, covenants or conditions of

this Agreement required to be performed by District, (ii) any failure by District to comply with any statutes, ordinances, regulations or orders of any governmental authority, or (iii) any accident, death or personal injury, or damage to or loss or theft of property, which shall occur in or about the District's premises except as the same may be caused by the gross negligence of City, its employees or agents.

(b) During the term of this Agreement or any renewal thereof, District shall maintain and promptly pay all premiums for general public liability insurance against claims for personal injury, death or property damage occurring upon, in or about the District, such insurance to afford protection in an amount of not less than \$1,000,000 with respect to injury or death to a single person and an amount of not less than \$2,000,000 with respect to any one occurrence, and for damage to property in an amount of not less than \$1,000,000 made by, or on behalf of, any person or entity, firm or corporation arising from, related to or connected with the District's premises, arising from any one occurrence, with such insurance company or companies as shall be satisfactory to City from time to time, and all such policies and renewals thereof shall name the City and the District as insured. On or before the commencement date of the term of this Agreement and thereafter not less than thirty (30) days prior to the expiration dates of said policy or policies, District shall provide copies of policies or certificates of insurance evidencing coverage required by this Agreement; these policies shall name the City as additional named insured party.

14. (Notice) Any notice required or permitted under this Agreement shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to City to: City of Custer  
622 Crook Street  
Custer, SD 57730

If to District to: ECSD  
PO Box 6046  
Custer, SD 57730

In Witness Whereof the acting Mayor of the City of Custer City, South Dakota, and the President of the Board of Trustees of the East Custer Sanitary Sewer and Water District, have hereunto subscribed their names on the date and year hereinbefore mentioned.

Be It Resolved that the Agreement herein written is duly authorized and the terms and conditions thereof are hereby approved.

City of Custer  
S/Jared Carson, Mayor

ATTEST: Laurie Woodward, Finance Officer

#### **CHRISTMAS PARADE ROUTE EXTENSION – CHAMBER OF COMMERCE**

Councilperson Maciejewski moved to approve the Chamber of Commerce request to extend the Christmas Parade route on December 3<sup>rd</sup>, extending end of the parade route from Fourth Street to Second Street. Seconded by Councilperson Heinrich, the motion unanimously carried.

#### **FOURTH OF JULY CELEBRATION REQUEST – CHAMBER OF COMMERCE**

Councilperson Schleining moved to approve the Chamber of Commerce request for the Old Time Country Fourth of July Celebration with the 2017 dates of July 2<sup>nd</sup>-4<sup>th</sup> which included: use of way park for July 3<sup>rd</sup>-4<sup>th</sup>, use of the Showmobile for July 3<sup>rd</sup>-4<sup>th</sup> with it being placed on Fourth Street next to Way Park, parade to be held July 4<sup>th</sup> with it starting at Eighth Street and proceeding west down Mt Rushmore Road until Second Street with the line to be on Washington Street, holding a flag-lowering (July 3<sup>rd</sup>) and flag-raising (July 4<sup>th</sup>) ceremony at the Veterans' Memorial site flag pole and use of the City's 3 large tents, trash cans, picnic tables, traffic barriers and water key. Seconded by Councilperson Heinrich, the motion unanimously carried.

#### **CUSTER CRUISIN COMMITTEE APPOINTMENT**

Councilperson Maciejewski moved to approve the appointment of Roxanne Horkey to the Custer Cruisin Committee. Seconded by Councilperson Blom, the motion unanimously carried.

#### **CLAIMS**

Councilperson Schleining moved, with a second by Councilperson Nielsen, to approve the following claims. The motion unanimously carried.

Ace Recycling, Supplies, \$24.32  
Boggs, Adam, Trees, \$606.12  
AE2S, Professional Fees, \$1,960.00  
Beesley Law Office, Professional Fees, \$3,047.50  
Ben Meadows, Trees, \$146.94  
Black Hills Energy, Utilities, \$6,928.42  
BPRO Inc, Advertising, \$32.50  
Culligan, Repair & Maintenance, \$18.50  
Chamber of Commerce, Sales Tax Subsidy, \$20,673.08  
Custer True Value, Supplies, Repair & Maintenance, \$926.25  
Fastenal, Supplies, \$131.57  
Garland Goff, Professional Fees, \$1,281.25  
G & R Controls, Repair & Maintenance, \$222.19  
Golden West Technologies, Professional Fees, \$620.50  
HD Supply, Supplies, \$2,077.53  
Huber Technology, Supplies, \$365.00  
Jenner Equipment, Supplies, Repair & Maintenance, \$174.25  
Hewitt, Jeri, Safety Equipment, \$104.99  
Kimball Midwest, Supplies, \$86.26  
KLJ, Professional Fees, \$13,800.76  
Lynn's Dakotamart, Supplies, \$121.48  
McClellan, Bill, Reimbursement, \$75.73  
Michael Todd & Company, Safety, \$393.11  
Midcontinent Testing Lab, Professional Fees, \$554.00  
Nelson's Oil, Supplies, \$862.69  
Petty Cash, Travel, \$102.00  
Rebel Enterprises, Advertising, \$400.00  
S & B Motors, Supplies, \$75.41  
Sander Sanitation, Garbage Collection Contract, \$13,136.63  
SD Dept of Revenue, License, \$75.00  
SD Dept of Transportation, Supplies, \$5,214.00  
SD DCI, License, \$43.75  
SD Executive Management Finance, Utilities, \$18.91  
USDA Loan Payment, \$8,910.00  
US Department of Treasury, Deductions, \$142.55  
Walker, Gaile, Safety, \$124.70  
Wesdak Welding, Repair & Maintenance, \$1,523.46  
Wright Express, Supplies, \$861.00  
YMCA, Membership, \$38.00  
Anderson, Tracy, Utility Deposit Refund, \$32.72  
Mork, Kathy, Utility Deposit Refund, \$9.42  
Total Claims \$85,942.49

#### **COMMITTEE REPORTS**

Various committee reports were given.

#### **EXECUTIVE SESSION**

Councilperson Fischer moved to go into and out of executive session for personnel, proposed litigation and contract negotiations per SDCL 1-25-2(1-4) at 6:05 pm, with the Attorney and Finance Officer present. Seconded by Councilperson Schleining, the motion unanimously carried. Council came out of executive session at 6:51 pm, with no action taken.

#### **ADJOURNMENT**

With no further business, Councilperson Blom moved to adjourn the meeting at 6:52 p.m. Seconded by Councilperson Maciejewski, the motion carried unanimously.

ATTEST:

CITY OF CUSTER CITY

Laurie Woodward  
Finance Officer

Jared Carson  
Mayor