

City of Lennox

Subdivision Regulations

Adopted: March 16, 2020

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Article 1: General Provisions

1.1 Title

- 1.1.1 These regulations shall be referred to as the “The City of Lennox Subdivision Regulations” and herein as “these regulations”.

1.2 Purpose

- 1.2.1 It is the purpose of these regulations to govern the subdivision of land within the City’s jurisdiction so as to provide for the harmonious development of the municipality and its environs; for the coordination of streets within subdivisions with other existing or planned streets or with other features of the Comprehensive Plan of the City; for water and sanitation facilities, drainage and flood control; for adequate open spaces for traffic, recreation, light, and air; and for a distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, or prosperity.

1.3 Authority

- 1.3.1 In accordance with SDCL 11-6 and any other authority provided by law or as those statutes may be amended, the City does hereby exercise the power and authority to review and approve or disapprove Plats for the subdivision of land within the City and for land outside its corporate limits as allowed by SDCL 11-6-26.

1.4 Jurisdiction

- 1.4.1 These regulations shall govern all subdivisions of land, as defined herein, located within the City and its jurisdictional limits as referenced by the Major Street Plan portion of the City’s Comprehensive Plan.

1.5 Interpretation, Abrogation, and Severability

- 1.5.1 In interpreting and applying the provisions of this Article, the provisions of these regulations shall be deemed the minimum requirements for the promotion of public safety, health and general welfare. If deemed necessary by enforcement officials, more stringent requirements may be imposed to uphold the purpose of these regulations.
- 1.5.2 It is not the intent of this Article to repeal, abrogate, or impair any existing easement, covenant, or deed restriction where these provisions conflict or overlap. Whichever imposes the more stringent restrictions shall prevail.

- 1.5.3 Should any Article, Section, Subsection, or Provision of these regulations be found to be or declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the regulation as a whole or any part thereof, other than the portion so declared to be invalid or unconstitutional.

1.6 Repeal of Conflicting Regulations

- 1.6.1 All prior subdivision regulations or parts of prior subdivision regulations are hereby declared repealed.

1.7 Enforcement and Violations

- 1.7.1 The City Council has designated, by Resolution 2018-1, the City Administrator as administrative official of the municipality to approve Plats in lieu of approval by the governing body as allowed under SDCL 11-3-6.
- 1.7.2 The City Administrator is hereby designated as the Authorized Official of these regulations and directed to enforce all the provisions of this Article and establish rules for its administration. For those purposes, the Authorized Official shall have the powers of a law enforcement officer.
- 1.7.3 The Authorized Official and City Engineer shall together have the authority to make interpretations of these regulations and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions and uphold the purpose of these regulations.
- 1.7.4 Whenever any work is being done contrary to the provisions of this Article, the Authorized Official may order the work stopped by notice in writing served on any persons engaged in the doing or causing the work to be done; and any persons shall forthwith stop the work until notified by the Authorized Official to proceed with the work.
- 1.7.5 It shall be a violation of these regulations for any person having control of any land within the City and its area of jurisdiction to subdivide or resubdivide such land into lots, unless in accordance with the laws of the state and the regulations contained herein.
- 1.7.6 A violation of any provision of these regulations or any amendment thereto, or failure to perform any act required hereunder, is a Class II Misdemeanor. Each day in which a violation of these regulations continues shall constitute a separate offense.
- 1.7.7 No permit shall be issued for any work to occur on land subdivided, developed, or sold in violation of the provisions of these regulations.

1.8 Appeal

- 1.8.1 Decisions of the Authorized Official and/or the City Engineer or their failure to perform any act required by these regulations may be appealed to the City Council if a written appeal is filed with the Authorized Official within fifteen (15) days from the date of the decision being appealed.

Article 2: Subdivision Approval Process

2.1 Overview

2.1.1 Except those listed as exempt under Article 4.3, proposed subdivisions must be approved by the City in accordance with the following procedures which include four (4) principle steps.

1. Concept Plan
2. Preliminary Subdivision Plan
3. Engineering Submittals
4. Plat

2.1.2 **Filing Fee:** A nonrefundable, application fee shall be deposited with the City for a Preliminary Subdivision Plan, Engineering Submittal, or Plat. The amount of fees charged, if any, shall be set forth by resolution of the City Council. Fees established in accordance with this section shall be paid upon submission of a signed application.

2.2 Concept Plan

2.2.1 **Overview:** The purpose of the Concept Plan is to spur discussions between the Subdivider and the City; for each party to provide input into the proposed subdivision; for the Subdivider to gain a better understanding of the City's plans prior to expending funds on preliminary design; and to reduce significant design changes as the plans progress. The Concept Plan does not require certification by an engineer.

2.2.2 **Submission:** The Concept Plan shall be submitted to the Authorized Official in form of one (1) paper copy and one (1) electronic pdf. The Concept Plan is not a required submittal and may be waived by the Authorized Official. However, the information provided to the Subdivider may have a significant impact on the initial layout.

2.2.3 **Review and Approval:** Upon receipt of the Concept Plan, the Authorized Official shall route the Plan to City Staff for review. The Authorized Official or Subdivider may request a meeting to discuss the Concept Plan with City Staff. City Staff shall provide their comments in writing to the Subdivider within ten (10) working days of receipt. Formal approval is not required.

2.2.4 **Content:** The Concept Plan shall be developed in conformance with the City's Comprehensive Plan and Design Standards. It shall contain at a minimum, the general information as follows:

A. General

1. Contact Information of Subdivider
2. Deviations from City standards
3. Note any off site improvements
4. Expectations for City reimbursements

5. Special notes pertaining to the subdivision
6. Preparation date and subsequent revision dates

B. Sketch of Subdivision

1. Name of subdivision
2. Proposed zoning districts
3. General layout of lots, streets, drainage, sanitary sewer, and water mains
4. North arrow

2.3 Preliminary Subdivision Plan

2.3.1 **Overview:** The procedure to develop a Preliminary Subdivision Plan is designed to assist the Subdivider and the City with the efficient and timely development of lots and infrastructure throughout a subdivision. Plans will be evaluated for compliance with the City's Design Standards and comprehensive plans for development and infrastructure.

2.3.2 **Submission:** Upon review of the Concept Plan, the Subdivider may submit a Preliminary Subdivision Plan Application to the Authorized Official for approval. The Application shall include one (1) paper copy and one (1) electronic PDF file of the Subdivider's Preliminary Subdivision Plan, stamped and certified by an engineer registered in the State of South Dakota. Additional information may be required of the Subdivider to assist City Staff in their review. Support documents shall be provided at the request of the Authorized Official.

A petition for voluntary annexation shall accompany the Preliminary Subdivision Plan Application if any portion of the subdivision is considered contiguous to the City's corporate limits.

2.3.3 **Review and Approval:** The Preliminary Subdivision Plan shall conform to all chapters of the City's Design Standards. The paragraphs that follow outline the overall procedures for filing a Preliminary Subdivision Plan Application and review.

- A. Within ten (10) working days of receipt of an Application and fee, the Authorized Official will review the Application to determine whether it is complete.
- B. If the Authorized Official determines that the Application is incomplete, then the Subdivider shall be notified in writing of the specific deficiencies; and that the Application shall not be scheduled for review by the Planning Commission until all elements of the application are submitted.
- C. When the Authorized Official determines the Application to be complete, the Preliminary Subdivision Plan shall be distributed to the City Engineer for review of its content. Plans shall be reviewed within fifteen (15) days of distribution. If the Authorized Official determines the Preliminary Subdivision Plan does not meet the criteria required by these regulations, then the Subdivider shall be notified in writing of the specific deficiencies and that the application shall not be scheduled for review by the Planning Commission until all items are corrected.
- D. When the Authorized Official determines the Preliminary Subdivision Plan to be complete, it shall be reviewed by the Planning Commission at its next regularly scheduled meeting. There shall be a minimum of ten (10) working days between the completion of the Authorized Official's review period and the Planning Commission's scheduled meeting date. The Planning Commission shall review the Preliminary Subdivision Plan and recommend to the City Council to approve, approve with conditions, or deny the plan.
- E. The City Council, in taking action on a Preliminary Subdivision Plan, shall consider the recommendations of the Planning Commission at its next regularly scheduled meeting. Approval of the Preliminary Subdivision Plan shall indicate City Council's approval of the general location of the lots, blocks, and streets including the interrelationship to proposed

zoning districts or land uses. The City Council may elect to approve the Plan with conditions that are deemed necessary to fulfill the general purpose of these regulations under Article 1.2. Any conditions included by the City Council shall be noted on a revised Preliminary Subdivision Plan which shall be submitted to the Authorized Official for administrative approval before any Engineering Submittal or Plat is submitted. The approved Plan shall be signed and kept on file in the Office of the Authorized Official.

2.4 Engineering Submittals

2.4.1 **Overview:** The approval of Engineering Submittals is a process designed to assist the Subdivider and the City with the efficient and timely development of infrastructure and final lot and block layout. Plans will be evaluated for compliance with the City's Design Standards and comprehensive plans for development and infrastructure.

2.4.2 **Submission:** Upon the Council's approval of the Preliminary Subdivision Plan, the Subdivider may submit an Engineering Submittal Application to the Authorized Official. The Application shall include one (1) paper copy and one (1) electronic PDF file of the Subdivider's Engineering Submittal, stamped and certified by an engineer registered in the State of South Dakota. Additional information may be required of the Subdivider to assist City Staff in their review. Support documents shall be provided at the request of the Authorized Official or City Engineer. At a minimum, the Subdivider shall include the following plans:

- A. Phasing Plan
- B. Grading Plan
- C. Erosion Control Plan
- D. Storm Water Management Plan
- E. Sanitary Sewer Plan
- F. Water Distribution Plan
- G. Private Utility Plan
- H. Lighting Plan
- I. Access Plan
- J. Striping and Permanent Signs Plan
- K. Final Lot and Block Layout
- L. Traffic Impact Study, if requested by City Engineer
- M. Ultimate Watershed Basin Study, if requested by City Engineer

2.4.3 **Review and Approval:** The Engineering Submittal shall conform to the approved Preliminary Subdivision Plan and all chapters of the City's Design Standards. Engineering Submittal Applications shall be reviewed and approved as follows:

- A. Within five (5) working days of receipt of an Application and fee, the Authorized Official will review the Application to determine whether it is complete.
- B. If the Authorized Official determines the Application is incomplete, then the Subdivider shall be notified in writing of the specific deficiencies; and that the application shall not be reviewed until all elements of the Application are submitted.
- C. When the Authorized Official determines the Application to be complete, the submittal shall be distributed to the City Engineer for review of its content. Plans shall be reviewed within fifteen (15) days of distribution. If the City Engineer determines the Engineering Submittal does not meet the criteria required by these regulations, then the Subdivider shall be notified in writing of the specific deficiencies and that the Application shall not be approved until all items are corrected.

D. When determined the Engineering Submittal is complete, the City Engineer shall notify the Subdivider and make approval in writing.

2.4.4 **Grading Permit:** After all Engineering Submittals are approved and prior to commencing earthwork activities, the Subdivider shall obtain a Grading Permit from the City.

2.4.5 **Construction Permit:** After all Engineering Submittals are approved and prior to connecting to or extending public infrastructure, the Subdivider shall obtain a Construction Permit from the City.

2.5 The Plat

2.5.1 **Overview:** Platting is the act of establishing tracts of land and legally recording them with the County Register of Deeds. The purpose of the Plat is to provide the Subdivider with the legal authority to begin transferring or building upon lots in a subdivision. Approving the Plat gives the City the opportunity to ensure all improvements necessary to serve the subdivision are installed in compliance with City standards or that adequate surety for their installation is acquired.

2.5.2 **Prerequisites:** Unless otherwise exempt or not applicable, the following shall be provided to the Authorized Official prior to approving the Plat:

- A. An approved Preliminary Subdivision Plan
- B. Approved Engineering Submittals
- C. An executed Subdivision Construction Agreement per 4.1.1
- D. Executed maintenance agreements for shared facilities per 4.1.2
- E. Contributions for public space per 4.1.3
- F. Platting and Cost Recovery Fees
- G. Agreements for annexation per 4.1.4

2.5.3 **Submission:** Upon approval of all prerequisites, the Subdivider may submit a Plat Application to the Authorized Official. The Application shall include one paper copy and one electronic PDF file of the Plat, stamped and certified by a Land Surveyor registered in the State of South Dakota. Additional information may be required of the Subdivider to assist City Staff in their review. Support documents shall be provided at the request of the Authorized Official.

2.5.4 **Review and Approval:** The Plat shall be considered for approval only after all prerequisites are approved. The Plat shall include the minimum criteria indicated in Article 3 .

- A. Within five (5) working days of receipt of the Plat Application and fee, the Authorized Official will review the application to determine whether it is complete.
- B. If the Authorized Official determines that the application is incomplete, then the Subdivider shall be notified in writing of the specific deficiencies; and that the application shall not be reviewed until all elements of the application are submitted.
- C. When the Authorized Official determines the application to be complete, the Plat shall be distributed to the City Engineer for review of its content. The Plat shall be reviewed within fifteen (15) days of distribution. If the Authorized Official determines the Plat does not meet the criteria required by these regulations, then the Subdivider shall be notified in writing of the specific deficiencies and that the Plat shall not be approved until all items are corrected.
- D. When the Plat is determined as complete and is within the City's corporate limits,
 - 1. The Authorized Official shall notify the Subdivider in writing. The Subdivider shall deliver copies as required by the County Register of Deeds to the Authorized Official for signature. The Authorized Official may elect to defer approval of any Plat to the City Council.

2. The Subdivider shall collect the remaining signatures and file the Plat with the County Register of Deeds.
- E. When the Plat is determined as complete and is within the unincorporated jurisdiction of the City,
1. The Subdivider shall deliver copies as required by the County Register of Deeds to the Authorized Official for signature. The Authorized Official shall schedule the Plat to be reviewed by the Planning Commission at its next regularly scheduled meeting. There shall be a minimum of seven (7) working days between the completion of the review period and the Planning Commission's scheduled meeting date. The Planning Commission shall review the Plat and recommend to the City Council to approve, approve with conditions, or deny the Plat.
 2. The City Council, in taking action on the Plat, shall consider the recommendations of the Planning Commission and approve, approve with conditions, or deny the Plat.
 3. If approved, the Subdivider shall collect the remaining signatures and file the Plat with the County Register of Deeds.

Article 3: Plat Criteria

3.1 In General

- 3.1.1 A Plat filed with the County Register of Deeds shall be drawn with waterproof, permanent black ink upon a sized mylar sheet per SDCL 11-3-10.
- 3.1.2 As allowed by SDCL 11-6-40, the City hereby requires that any parcel of land of less than forty (40) acres which is located within three (3) miles of its corporate limits, be platted prior to the sale or transfer of the land.
- 3.1.3 Plats shall conform to the Preliminary Subdivision Plan and Engineering Submittals of record. Either all or a portion of the final lot and block layout of the approved Engineering Submittals may be platted.

3.2 Map Content

- 3.2.1 Plats shall bear the following:
 - A. The proposed name of the subdivision, centered at the top of the page, describing the subdivision as required by SDCL 11-3-7. Plats outside of corporate limits shall include the section, township, range, and meridian. The name shall not duplicate, be the same in spelling, or alike in pronunciation with the name of any other recorded subdivision, unless it is an extension of or adjacent to said subdivision.
 - B. Corner markers set by the surveyor per SDCL 11-3-2.
 - C. All lots included in blocks shall be numbered in consecutive numbers starting with one, and the blocks shall also be numbered in consecutive numbers per SDCL 11-3-3
 - D. The precise length and necessary angles of all lot and block lines, and the precise length and bearing angles of all subdivision boundary lines. The Plat shall include the length, central angle, and any other data necessary to properly survey any curve included on the Plat per SDCL 11-3-3.
 - E. Acreage of each lot, parcel, or tract and the total acreage of the subdivision boundaries, together with any streets which shall divide or border the same per SDCL 11-3-3.
 - F. Scale, north arrow, vicinity map, submittal date and north point.
 - G. Adjoining unplatted property, labeled as such.
 - H. The location and width of all proposed and existing rights-of-way, alleys, and easements.

- I. The boundary lines of the area being subdivided with accurate angles or bearings and distances tying the perimeter boundaries to the nearest established street line, section corner, other previously described subdivision, or other recognized permanent monuments which shall be accurately described on the Plat as required by SDCL 43-18, 43-20 and 43-21.
- J. Location of all monuments and permanent control points, and all survey pins, either set or located, as required by SDCL 43-18, 43-20 and 43-21.
- K. Existing building outlines to verify setbacks and lot area requirements, and ensure current and proposed easements are clear of obstructions. The Subdivider may submit a Site Plan in lieu of drawing buildings on the Plat.

3.3 Certificates Required

3.3.1 The following certifications and resolutions shall appear on the Plat followed by lines for the appropriate signature(s) and date:

A. Surveyor's Certificate:

Per SDCL 11-3-4, the Registered Land Surveyor who performed the survey or had the survey performed under his direct supervision shall certify that the Plat is in all respects correct and shall attach thereto his official seal as specified in SDCL 36-18A-45.

B. Owner's Certificate of Compliance:

Per SDCL 11-3-4, the landowner, or his duly authorized agent, shall certify that the Plat has been made at the request and under the direction of the landowner for the purposes indicated therein, that he is the owner of all land included therein, and that development of this land shall conform to all existing applicable zoning, subdivision, and erosion and sediment control regulations. This certification shall be acknowledged before some officer authorized to take the acknowledgement of deeds, and this acknowledgement shall be endorsed on the Plat.

C. Conveyance of Dedications and Grants:

The surveyor shall mark on the Plat any dedications or grants for the owner to certify. Where dedications or grants are intended for public use, the following language shall be included in the owner's certificate.

I hereby dedicate to the public for public use forever the streets, roads and alleys, parks and public grounds, if any, as shown on said Plat, including all sewers, culverts, bridges, water distribution lines, sidewalks, and other improvements on or under the streets, alleys, parks, and public grounds whether such improvements are shown or not. I also hereby grant easements to run with the land for water, drainage, sewer, gas, electric, telephone, or other public utility lines or services under, on, or over those strips of land designated hereon as easements for the purposes of constructing, maintaining, repairing, and improving said facilities. The owner, their lessees and

assignees shall, at their own expense, keep the easement area in good repair and clear of obstructions. No improvements of any kind may be erected within an easement which might interfere in any way with the proper maintenance, use, repair, reconstruction, and patrolling of the easement. This covenant shall run with the land.

I hereby certify that this plat will not place any existing lot or building in violation of any applicable ordinance, code, regulation, or law, including but not limited to zoning, building, subdivision, and flood prevention.

I hereby waive any rights of protest to any special assessment program which may be initiated for the purpose of installation of improvements required by the City of Lennox Subdivision Regulations.

D. Private Maintenance of Facilities

Where the subdivision contains facilities or services which are necessary to or desirable for the area, and which are of common use or benefit and which are not accepted for maintenance by an existing public agency, the surveyor shall include the following language on the Plat for the owner to certify:

I further grant that the private facilities as shown on said Plat will be privately maintained by the owner, their lessees and assignees. The owners, their lessees and assignees shall maintain private facilities at their own expense, keeping it in good repair and clear of obstructions. No improvements of any kind may be constructed within said private facility. This covenant shall run with the land.

Where private streets are shown, include the following:

I further grant and certify that the roadway shown as (Name of private road) is a private roadway easement which is hereby reserved as a permanent unobstructed access. Said street or road is for vehicular and pedestrian travel for the purpose of access to the abutting property. It is understood that the owner, their lessees and assignees, have the responsibility with respect to maintaining said private street or road. Said grant is to run with the land and shall remain in effect until such street or road is accepted for public declaration. The owners, their lessees and assignees, of the property platted as (Name of property), shall at their own cost and expense keep and preserve said private street or road at all times in a good condition of repair and maintenance, and clear of snow and other obstructions and neither erect nor permit erection of any improvements of any kind within said private street or road which might interfere in any way with the property maintenance, use, repair, reconstruction, and patrolling of said private street or road.

If access easements are shown, include:

I further grant and certify that an access easement is hereby created as a perpetual common unobstructed access in favor of the lots abutting it. The easement is for vehicular and pedestrian travel over the roadway for the purpose of access to the

abutting property. The owner, their lessees and assignees, shall maintain the easement area. They shall, at their own expense, keep the easement area in good repair and maintenance and clear of snow and other obstructions. No improvements of any kind may be erected within the easement area which might interfere in any way with the proper maintenance, use, repair, reconstruction, and patrolling of the access easement. This covenant shall run with the land.

E. Vacating Prior Plats

Where land is to be re-platted, the new Plat shall specifically describe all previous Plats sought to be vacated including the book and page or document number of all existing Plats in the County Register of Deeds Office. The new Plat shall specifically state that all previous Plats so listed are to be vacated in whole or in part per SDCL 11-3-20.2.

F. Highway Authority's Certificate

Each Street or Highway Authority having jurisdiction shall certify that the location of the proposed access to an abutting subdivision street(s) from the existing public street or highway is approved and any change in the location of said access street(s) shall require additional approval per SDCL 11-3-12.1.

G. Authorized Official Certificate

Include the following certificate per SDCL 11-3-6 for the Authorized Official:

I, _____, Authorized Official of the City of Lennox, do hereby certify that this Plat has been approved by me or my authorized agent and that the Finance Officer is hereby directed to certify the same thereon. Approved this _____ day of _____, 20____.

Authorized Official
City of Lennox, South Dakota

H. Finance Officer's Certificate

Include the following certificate per SDCL 11-3-6 for the City Finance Officer:

I, _____, the duly appointed, qualified and acting Finance Officer of the City of Lennox, South Dakota, hereby certify that the certificate of approval is true and correct including the signature thereon, and that any special assessments which are liens upon the land shown in the above Plat, as shown by the records in my office, on this _____ day of _____, 20____, have been paid in full.

City Finance Officer
City of Lennox, South Dakota

I. County Treasurer's Certificate

The County Treasurer shall certify that all taxes that are liens upon any land included within such Plat, as shown by the records of his or her office, have been fully paid per SDCL 11-3-9.

J. Director of Equalization

The County Director of Equalization shall certify that he or she has received a copy of such Plat per SDCL 11-3-9.

K. Register of Deeds

Every Plat shall bear a certificate of the County Register of Deeds indicating the date and time of recording. This certification shall also indicate the location of filing by plat book, page number or document number.

3.3.2 As required by SDCL 11-6-26, a Plat outside of the City's corporate limits but within its platting jurisdiction shall require the recommendation of the City's Planning Commission and the approval of the City Council. The following certificates shall be included on said Plat in lieu of the Authorized Official's approval.

A. City Planning Commission

Be it resolved by the Planning Commission of the City of Lennox, South Dakota that this plat be approved and that the same be presented to the City Council with the recommendation to adopt said plat. Approved this _____ day of _____, 20_____.

Chairman
City of Lennox Planning Commission

B. City Council Resolution

Whereas this Plat has been examined by the City Council of Lennox and it appears to the City Council that the system of streets set forth therein conforms to the system of streets of the existing plats of the City, that all provisions of the City's subdivision regulations have been complied with, that all taxes and special assessments upon the tract or subdivision have been fully paid, and that such plat and the survey thereof have been executed according to law.

Now therefore, be it resolved by the City Council of Lennox, South Dakota that said plat is hereby approved, and the City Finance Officer is hereby directed to endorse on said plat a copy of this resolution and certify the same thereon. Approved this _____ day of _____, 20_____.

Mayor
City of Lennox, South Dakota

Article 4: General Requirements

4.1 Assurances

- 4.1.1 **Subdivision Construction Agreement:** No Plat of any subdivision shall be approved until the Subdivider has executed a subdivision construction agreement as the responsible party to establish the responsibility and security for the construction and warranting of the public improvements required by these regulations in a satisfactory manner and within a period specified by the Authorized Official, such period not to exceed two years. Sample language of the subdivision construction agreement is included in Appendix A.
- 4.1.2 **Maintenance Agreements:** Where the subdivision contains sewers, sewage treatment plants, water supply systems, park areas, storm drainage systems, road systems, or other facilities or services which are necessary to or desirable for the area, and which are of common use or benefit and which are not accepted for maintenance by the City, provisions shall be made by maintenance agreement for the proper and continuous maintenance and supervision of such facilities. A final and signed copy of the agreement shall be attached to each and every Plat having a facility or service covered by such an agreement.
- 4.1.3 **Public Space Contributions:** The City recognizes the need for open space and recreational areas for the health and welfare of its citizens. Therefore, the City shall require a dedication of land for public use as parks, playgrounds, public open spaces, and/or trails prior to the approval of any Plat within the City's corporate limits. The minimum dedication of land shall be five percent of the entire land within the subdivision. Land to be dedicated shall be free of encumbrances such as floodways or restrictive easements. In lieu of the minimum dedication of land, the Authorized Official may require the Subdivider to contribute cash. The amount of the cash contribution shall be \$1000 per acre or fraction thereof being subdivided.
- 4.1.4 **Annexation:** No Plat within the City's unincorporated jurisdiction shall be approved unless the Subdivider has filed a petition for annexation or executed an agreement to annex with the City Council. In general, annexation agreements shall be written to require the property to annex voluntarily at the request of the City and at the time the subdivision becomes contiguous with the City's corporate limits. All infrastructure shall be improved to meet the City's Design Standards at the time of annexation. Landowners within said subdivision shall be responsible for the cost of improvements. Annexation agreements shall be recorded with the County Register of Deeds at the time of platting.

4.2 Effective Period of Approval and Amendments

4.2.1 **Effective Period of Approval:** A Preliminary Subdivision plan or Engineering Submittal approved prior to the Plat shall have an effective period from the time of approval. The Plat shall not be approved after the effective period has expired for any of the Plans listed below:

- A. Preliminary Subdivision Plans – 4 years
- B. Engineering Submittals – 3 years

4.2.2 **Extensions:** Prior to expiration, the Subdivider may submit a request to extend the effective period of a plan to the Authorized Official. The Request shall include one paper copy and one electronic PDF file of the Plan. The Request and subsequent Plan shall be distributed to the City Engineer and reviewed within 15 working days. The Plan shall be subject to any new regulations or design standards in place at the time of the Request. If the Authorized Official determines the Plan does not meet the regulations or design standards in place at the time of the Request, then it shall be denied in writing. If the Authorized Official determines the Plan meets the regulations and design standards in place at the time of the Request, then the Authorized Official shall grant a two year extension to the effective period.

4.2.3 **Revisions and Amendments:** A revision to a plan of record shall be submitted to the Authorized Official for review. The Authorized Official shall distribute the Revisions to the City Engineer for review. Revisions shall be reviewed within ten (10) days of distribution and shall be reviewed to determine the impact to the plans of record. Should the Authorized Official determine the Revision to have minimal adverse impact, it shall be recorded and filed as an addendum to the plans of record.

Should the Authorized Official determine the impact of the Revision to be significant, an amendment shall be required. An Amendment shall be submitted and approved through the same process as required under Article 2. Approved amendments shall be kept on file with the Authorized Official.

4.3 Exemptions

4.3.1 **Subdivision Plan Exemptions:** For the purpose of providing timely review, subdivisions that do not discernibly affect or are of minor impact to the surrounding properties, environmental resources, or public facilities, otherwise referred herein as a Minor Plat, shall be exempt from the Concept Plan and Preliminary Subdivision Plan portions of the approval process of Article 2. The Subdivider may submit a Plat to the Authorized Official, in like form as required by Article 2.5.4 , to determine whether the Plat meets the definition of a Minor Plat. The Authorized Official shall review the Plat and decide within ten (10) days. Engineering Submittals or other information may be required of the Subdivider to assist City Staff in their review. Support documents shall be provided at the request of the Authorized Official. If the Authorized Official determines the Plat does not meet the definition of a Minor Plat, then the Subdivider shall be notified in writing that the Plat is denied. If the Authorized Official determines the Plat does meet the definition of a Minor Plat, then it shall be reviewed and approved in conformance with Article 2.5.

4.3.2 **Plat Exemptions:** Plats of the following form shall be exempt from all provisions of these regulations.

- A. **Cemetery Grave Plats:** A Plat or Plot which is filed and maintained as a permanent cemetery record.
- B. **H-Lots:** A Plat to facilitate the transfer of ownership from a property owner to a government entity for a public right-of-way.

4.4 Subdivisions within Unincorporated Jurisdiction

4.4.1 The City hereby elects to approve subdivision Plats outside of its corporate limits as allowed by SDCL 11-6-26. The City has adopted a Comprehensive Plan, which includes a major street plan that identifies the unincorporated area to be governed by municipal platting authority. A copy of the adopted Comprehensive Plan was forwarded to the Lincoln County Commissioners through the Office of the County Auditor.

4.4.2 The City hereby discourages premature subdivision of land due to unavailability of urban services, higher energy consumption, premature and excessive loss of agricultural land, and inefficient delivery of basic government services. A Plat within the City's unincorporated jurisdiction that is considered by the City to be premature, to conflict with the purpose of these regulations, or to conflict with the City's Comprehensive Plan will be denied.

Article 5: Definitions

- 5.1.1 **Alley.** A public or private right-of-way which affords only a secondary means of access to abutting property and not intended for general traffic circulation.
- 5.1.2 **Annex.** The act of incorporating a territory into the corporate limits of the City.
- 5.1.3 **Annexation Agreement.** An agreement between a Subdivider and the City to identify stipulations for voluntary annexation at the time the City's corporate limits become contiguous with a subdivision.
- 5.1.4 **Authorized Official.** The person, officer, or official and his authorized representative, whom the City Council has designated as its agent for the administration of these regulations.
- 5.1.5 **Block.** A tract of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines of waterways, or corporate limits of municipalities.
- 5.1.6 **Building.** Any structure having a roof, supported by columns or walls, for shelter or enclosure of persons or property.
- 5.1.7 **City.** The City of Lennox, South Dakota.
- 5.1.8 **Comprehensive Plan.** The long-range plan adopted by the City that describes and illustrates the goals, policies and objectives of the municipality to interrelate all functional and natural systems and activities relating to the development of the territory under its jurisdiction.
- 5.1.9 **Concept Plan.** A Concept Plan is a basic plan that is preparatory to the Preliminary Subdivision Plan.
- 5.1.10 **Contiguous.** Contiguous shall be as defined in SDLC 9-4-1.
- 5.1.11 **Corporate Limits.** The defined boundary or border of territory under jurisdictional power of the City.
- 5.1.12 **Dedicated.** A grant of land to the public for their perpetual use.
- 5.1.13 **DENR.** The South Dakota Department of Environment and Natural Resources.
- 5.1.14 **Design Standards.** The standards, specifications and requirements for public improvements adopted by the City.
- 5.1.15 **Easement.** Authorization by a property owner for the use by another, and for a specified purpose, of any designated part of the property. An easement is also a means to acquire a legal right for a specific use of land owned by others.
- 5.1.16 **Engineer.** A professional engineer, registered and in good standing with the State of South Dakota.
- 5.1.17 **Engineering Submittal.** A plan prepared and certified by an Engineer that describes and details improvements.
- 5.1.18 **Grading.** Excavating, filling or stockpiling soil.

- 5.1.19 **Homeowners Association.** An association or organization, whether or not incorporated, which operates under and pursuant to recorded covenants or deed restrictions through which each owner or a portion of a subdivision—be it a lot, parcel site, unit plot, condominium, or any other interest—is automatically a member or assessment for a prorated share of expense of the association which may become a lien against the lot, parcel, unit, condominium, or other interest or member.
- 5.1.20 **Improvement.** Changes and additions to land in effort to add value or use to benefitting real property.
- 5.1.21 **Lot.** A designated parcel, tract, or area of land established by Plat, subdivision, or as otherwise permitted by law, to be separately owned, used, developed, or built upon.
- 5.1.22 **Lot Line.** The line bounding a lot that divides one lot from another lot or from a public street or any other public space.
- 5.1.23 **Lot of Record.** A Plat that has been recorded in the office of the County Register of Deeds.
- 5.1.24 **Minor Plat.** A Plat that does not discernibly affect or is of minor impact to the surrounding properties, environmental resources, or public facilities and is necessary to transfer ownership of property. Typically, it involves the adjustment of common lot lines between several lots, consolidation of existing lots, or the resubdivision of previously platted lots. A Minor Plat does not conflict with the City’s Comprehensive Plan or any other plans previously approved by the City. It does not require the dedication of right-of-way, construction of new streets, or other public infrastructure.
- 5.1.25 **Owner.** The owner of real property as recorded by the County Register of Deeds
- 5.1.26 **Parcel.** Any contiguous quantity of land in the possession of, owned by, or recorded as the property of the same claimant, person, or company.
- 5.1.27 **Planning Commission.** As duly appointed by the Mayor and confirmed by the City Council.
- 5.1.28 **Plan of Record.** A Preliminary Subdivision Plan or Engineering Submittal adopted or approved by the City or their authorized agents in conformance with these regulations.
- 5.1.29 **Plat.** A map, or representation on paper or transferable to paper (e.g., electronic) of a piece of land subdivided into lots, parcels, tracts, or blocks, including streets/roads, commons, and public grounds, if any, all drawn to scale and complete with all irrevocable offers of dedication.
- 5.1.30 **Preliminary Subdivision Plan.** A Plan indicating the Subdivider’s intentions for subdividing and improving land.
- 5.1.31 **Prerequisite.** A required prior condition for final approval.
- 5.1.32 **Private Street/Road.** A roadway that has not been dedicated for public use, but rather reserved by platting of a lot or by a private easement. The private street or road shall be owned and maintained by the property owners which it serves.
- 5.1.33 **Re-Plats.** The adjustment and/or vacation of property lines which reallocates or consolidates land area of contiguous lots or parcels, provided that the adjustment or vacation of property lines, sites, or other divisions of land under stated conditions of these regulations.

- 5.1.34 **Right-of-Way.** A strip of land defined by right of way lines on a Plat that is intended to be occupied by a street, recreation trail, utility lines, or other similar use and to be used by the public.
- 5.1.35 **Street.** A public thoroughfare that affords the principal means of egress to abutting property. This term may be used interchangeably with “avenue”, “boulevard”, “drive”, “highway”, “road”, or “roadway”.
- 5.1.36 **Structures.** Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings, walls, fences, and signs.
- 5.1.37 **Subdivider.** The owner of land proposed to be subdivided or its authorized agent who shall have express written authority to act on behalf of the owner. Consent shall be required from the legal owner of the premises.
- 5.1.38 **Subdivision.** The division or re-division of land into two or more lots, tracts, parcels, sites, condominiums, or divisions for the purpose of sale, lease, or transfer of ownership.
- 5.1.39 **Subdivision Construction Agreement.** A contract entered into by the Subdivider and the City by which the Subdivider warrants and promises to complete the required public improvements within the subdivision within a specified time period.
- 5.1.40 **Surveyor.** A professional land surveyor, registered and in good standing with the State of South Dakota.

Appendix A: The Subdivision Construction Agreement

APPENDIX A: SUBDIVISION CONSTRUCTION AGREEMENT

The requirements contained herein shall apply to Public Improvements for subdivisions or for connection to subdivisions built privately and to be dedicated to the City of Lennox ("City"). The intent of these requirements is to set forth the security to be provided relative to the construction of Public Improvements. Any capitalized terms not defined herein, but defined in City Ordinance, shall have the meaning as defined in the City Ordinance.

THIS AGREEMENT ("Agreement") is made this _____ day of _____ 20____, between the City of Lennox, South Dakota (hereinafter referred to as "City") and _____, its heirs, executors, administrators, successors, transferees, and assigns jointly and severally (hereinafter referred to as "Responsible Party") and is effective upon signature of the Mayor of the City.

Declarations

WHEREAS, _____ is the Owner or Developer of certain lands subject to jurisdiction of the City (hereinafter referred to as "Owner" or "Developer"); and

WHEREAS, the City wishes to prevent the use of public funds to complete private developments; and

WHEREAS, the City requires the execution of this agreement as a prerequisite to approval of the Plat of the subdivision or the issuance of a Construction Permit authorizing the commencement of construction activities; and

Complete one of the following:

_____ WHEREAS, the Responsible Party wishes to proceed with construction of the required Public Improvements before platting and has submitted, and the City has approved construction documents for the subdivision identified as _____ Addition Phase _____, which are hereby attached to and made part of this agreement. Also, attached and hereby made part of this agreement is a draft of the final, unrecorded plat, identifying the property to which this Agreement applies; or

_____ WHEREAS, the Responsible Party wishes to proceed with platting of _____ (Legal Description) prior to installation of the required Public Improvements of which the final, unrecorded plats, signed by the Owner are hereby attached to and made part of this Agreement. The Responsible Party has submitted and the City has approved engineering

submittals or construction documents identified as _____
Addition Phase _____, which are hereby attached to and made part of this Agreement. The Responsible Party will have approved construction documents prior to issuance of the Construction Permit.

NOW, THEREFORE, in consideration of the above, the City and Responsible Party hereby agree as follows:

1. Definitions—The Definitions Set Forth Herein Shall Apply Solely To This Agreement.

- A. Authorized Official. The City Administrator for the City.
- B. City Engineer. The City Engineer for the City or his or her authorized representative.
- C. City Ordinance. Revised Ordinances of the City of Lennox, South Dakota, as adopted and as amended from time to time.
- D. Construction Permit. The permit required prior to connecting to or extending city infrastructure; including but not limited to street grading, roadway base, curb and gutter, asphalt or concrete surfacing, drainage and flood control, water and sanitary sewer, sump pump collection, or other such improvements in proposed subdivisions or which connect proposed subdivisions.
- E. Construction Season. The time of year between May and November when construction typically occurs.
- F. Contractor. A person, partnership, or entity hired by the Responsible Party to construct Public Improvements.
- G. Developer. The owner of land proposed to be subdivided or its authorized agent who shall have express written authority to act on behalf of the owner. Consent shall be required from the legal owner of the premises.
- H. Acceptance. A resolution by the City Council to accept improvements for maintenance.
- I. Plat. The plat approved by the City pursuant to the City's Subdivision Ordinance.
- J. Performance Security. The financial security as provided for herein to ensure that all Public Improvements are completed by the Responsible Party or as provided herein.
- K. Public Improvements. Are those improvements which will be accepted for operation and maintenance by the City and shall include, but not be limited to, street grading, roadway base, curb and gutter, asphalt or concrete surfacing, drainage and flood control, water and sanitary

sewer, sump pump collection, roadway lighting or other such improvements in proposed subdivisions.

L. Responsible Party. A responsible party means any person seeking to plat a subdivision, including but not limited to (a) owners holding the land for investment purposes, who are not engaged in construction and not holding themselves out as real estate developers, and (b) any developer who is holding or purchasing the land primarily for sale to customers in the ordinary course of business and who is seeking to subdivide property or obtaining a construction permit authorizing the commencement of construction activities for a subdivision. A responsible party must file and comply with subdivision plans and other requirements under this chapter (including entering into a Subdivision Construction Agreement and posting a suitable Performance Security and/or Warranty Security, as applicable), regardless of whether such requirements refer to an “Owner” or “Developer” or both.

M. Warranty Period. The two (2) year period from the date of acceptance by the City Council.

N. Warranty Security. The financial security as provided for herein to warrant all Public Improvements as more fully provided for herein by the Responsible Party or security provider as set forth herein.

2. Time Period for Construction.

The Responsible Party shall complete construction of all Public Improvements in accordance with the approved plans, specifications and standards within two (2) years of the date of this Agreement. At the Responsible Party’s request, the City Council may extend the time period in which to complete the construction for one additional year if the City Council determines that such an extension is justified. The City Council may allow for an additional extension in cases of extreme hardship as set forth herein

3. Construction Permit.

Prior to the start of work, the Responsible Party shall obtain a Construction Permit from the City allowing the Responsible Party to connect to or extend City infrastructure within the specified subdivision. The Construction Permit shall be kept valid for the term and any extension of this Agreement. Should the Construction Permit terminate for any reason, before continuing work the Responsible Party will be required to revise the plans to meet the current standards and obtain a new Construction Permit.

4. Performance Security.

The Responsible Party understands and agrees the City will not approve any Plat within the identified subdivision until all Public Improvements are completed and accepted in accordance with this Agreement, unless prior to any Plat, the Responsible Party executes a Performance Security in favor of the City in the amount of 100 percent of the Engineer's Estimate to construct the Public Improvements not yet installed and accepted by the Engineer.

The Responsible Party shall use the Performance Security form and/or criteria approved by the City Attorney. The Performance Security shall be secured in favor of the City by one of the following methods:

- A. Escrow account.
- B. A bond issued by a Corporate surety licensed and authorized to do business in the State of South Dakota as surety and subject to written approval by the City Attorney which approval shall be at its sole discretion.
- C. Irrevocable letter of credit.

Any facilities that will be or has been furnished and installed by the City and has not been paid for must also be included in the Engineer's Estimate and Performance Security prior to platting.

The Responsible Party shall utilize the form provided by the City relative to the escrow account, irrevocable letter of credit, or bond methods of security. Said agreement(s) must be elected and signed at the inception of this Agreement.

5. Performance Security Reductions.

A Performance Security may be reduced prior to Acceptance of all required Public Improvements. To qualify for a Performance Security reduction, the completed Public Improvements must be completed in compliance with the approved plans, specifications, and standards as determined by the City Engineer.

Each reduction allowed will be in the amount of the estimated cost, prepared and certified by the Responsible Party's engineer, of the part of the subdivision improvements accepted in writing by the City Engineer. In no event shall the Performance Security be reduced to less than 10 percent of the Engineer's Estimate for all subdivision improvements until all Public Improvements are completed, accepted by the City Engineer, and the Warranty Security is in place.

A request for reduction in the Performance Security may be made no more frequently than every 30 days. Upon receipt of a reduction request, the City Engineer will respond to the Responsible Party within 7 working days approving or denying the request.

6. Engineer's Estimate.

The engineer retained by the Responsible Party ("Responsible Party's Engineer") shall prepare and provide an itemized estimate ("Engineer's Estimate") to construct the Public Improvements. The Responsible Party's Engineer shall be a professional engineer, P.E., licensed to work in the state of South Dakota. The Engineer's Estimate shall be itemized to clearly indicate the value of improvements proposed. Proof of actual costs may be utilized to develop the Engineer's Estimate.

The Engineer's Estimate will be subject to the approval of the City Engineer. In the event there will be oversizing or material reimbursement payments made by the City to the Responsible Party, said payment may be shown as a credit in arriving at the Engineer's Estimate.

7. Facilities by Others

In addition to the cost of all public improvements, the Engineer's Estimate shall include costs anticipated by private entities such as utility companies. Charges from each respective utility shall be itemized on the Engineer's Estimate.

8. Preconstruction Conference

Before any Work at the Site is started, a conference attended by Responsible Party, Contractor, City and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss schedules and procedures. The Responsible Party shall schedule, invite and conduct the conference.

9. Authority of the City Engineer.

As the representative of the City, the City Engineer is in charge of engineering details and administration of the Public Improvements. Work shall be performed to the satisfaction of the City Engineer. The City Engineer will decide questions which may arise as to the quality and acceptability of materials furnished, work performed, all questions which may arise as to the interpretation of documents, and all questions as to the acceptable fulfillment of this Agreement on the part of the Responsible Party. The City Engineer has the authority to reject defective material and work.

The City Engineer will have the authority to suspend the work wholly or in part, by written suspension order, for failure to carry out conditions of this agreement, for failure to carry out orders, for conditions considered unsuitable for the prosecution of the work, or for other conditions or reasons determined by the City to be in the public interest.

The City Engineer's decision shall be final but shall be subject to appeal pursuant to Lennox City Ordinance.

10. Coordination of Documents.

The construction documents are hereby made a part of this Agreement in their entirety.

The coordination of these documents is an essential part of the Agreement. A requirement occurring in one is as binding as though occurring in all. They are intended to be complimentary and to describe and provide for a complete work. For discrepancies, the items shall prevail, or govern, in the following descending order:

- A. Subdivision Construction Agreement.
- B. City of Lennox Design Standards
- C. Construction Documents

Nothing contained herein shall relieve the Responsible Party of complying with other requirements imposed by Lennox City Ordinance or as otherwise legally or contractually required.

11. Cooperation by Responsible Party.

The Responsible Party shall give the work the constant attention necessary to facilitate the progress and shall cooperate with the City Engineer and City Inspectors ("Inspector(s)"). The Responsible Party shall not take advantage of apparent errors or omissions in the plans and specifications. If the Responsible Party discovers an error or omission, the City Engineer shall be immediately notified in writing or via email. The City Engineer will make corrections and interpretations as necessary to fulfill the intent of the plans and specifications.

12. Duties of the Inspector.

Inspectors employed by the City are authorized to inspect work and materials furnished by the Responsible Party. Inspection may extend to any part of the work, preparation, fabrication, or manufacture of the materials to be used. The Inspector is not authorized to alter or waive the conditions of this Agreement. The Inspector is not authorized to issue instructions contrary to the plans and specifications or to act in a supervisory capacity for the Responsible Party. The Inspector will have the authority to reject work or materials until any questions at issue can be referred to and decided by the City Engineer.

Neither the City's authority to inspect all work nor any actual inspections performed by the City during the course of construction shall constitute an acceptance of work performed or operate to relieve the Responsible Party and/or Contractor's obligation to construct the project in compliance with the plans and specifications.

13. Inspection of Work.

The Responsible Party shall request, schedule, and otherwise coordinate all required inspections, tests, or approvals with the Inspector and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. The Inspector shall be allowed to enter upon Responsible Party's property and have access to the work site to inspect during all hours and shall be furnished with such information and assistance by the Responsible Party as is required to make a complete and detailed inspection. The Inspector will provide a list of required inspections at the request of the Responsible Party.

The City shall employ and pay for inspection services required by the Construction Documents or by the City's standard procedures except for costs incurred due to failed inspections. The Responsible Party shall pay all claims, costs, losses and damages arising out of or relating to failed inspections.

14. Materials.

All materials and equipment furnished under this Agreement shall be new unless approved in writing by the City Engineer. Materials used shall conform to requirements of the approved plans, specifications, and standards. The City retains the right to perform any and all record testing which may be deemed necessary or advisable by the City Engineer. To expedite the inspection and testing of materials, the Responsible Party may notify the City Engineer of proposed sources of materials prior to delivery. Work in which unapproved materials are used shall be performed at the Responsible Party's risk and are subject to inspection, testing, or rejection. Copies of tests will be furnished to the Responsible Party's representative when requested.

Samples taken and tests made will be in accordance with the most recent standard or tentative standard methods of AASHTO, ASTM, and the "South Dakota Department of Transportation, Materials Manual—Sampling and Testing Procedures" ("SDDOT's Materials Manual"). Samples will be taken and tests made by a representative of the City and at the City's expense except as otherwise stipulated.

If a discrepancy exists, the order of precedence is as follows:

- A. SDDOT's Materials Manual.
- B. AASHTO.
- C. ASTM.

15. Conformity with Plans and/or Specifications.

Work performed and materials furnished shall conform to the lines, grades, cross sections, dimensions, and material requirements, including tolerances, shown on the plans, specifications, or other documents.

If the City Engineer finds the materials furnished, work performed, or the finished product is not in full conformity with the plans and specifications, resulting in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or corrected by and at the expense of the Responsible Party.

If the City Engineer finds the materials furnished, work performed, or the finished product is not in full conformity with the plans and specifications but that reasonably acceptable work has been produced, he shall then determine if the work shall be accepted and remain in place. If acceptable, the City Engineer will document the basis of acceptance and provide an amount of compensation to become due to the City for allowing the work to remain in place and the same shall be signed by the Responsible Party and may be taken from the Performance Security. Should the Responsible Party not agree, the work or materials shall be removed and replaced or corrected by and at the expense of the Responsible Party. Items of work that may have an impact on public use or public safety that are accomplished contrary to specifications shall be corrected immediately.

16. Remedies for Substandard Work and/or Materials.

Work which does not conform to the requirements of the plans and specifications will be considered as unacceptable, unless otherwise determined acceptable under the provisions of Section 17.

Unacceptable work, whether the result of poor workmanship, use of defective materials, or damage through carelessness or other cause, shall be removed immediately and replaced in an acceptable manner.

17. Revisions to the Approved Construction Documents.

The Responsible Party may revise the approved construction documents as necessary to complete the subdivision improvements, provided the changes are reviewed and approved per the City's standard processes. If the revisions result in increased liability to the City, the City Engineer may withhold

performance security reductions or require increases in the Performance Security until such work is completed and accepted by the City. If the revisions result in a liability decrease, the performance security may be reduced in accordance with Section 5 of this agreement.

18. Responsible Party and/or Contractor Employees, Methods, and Equipment.

A. Workers:

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Any person employed by the Responsible Party and/or by any Contractor who does not perform assigned work in a proper and skillful manner, or who is intemperate or disorderly, shall be removed from the project forthwith by the Responsible Party upon written order of the City Engineer and shall not be employed again on any portion of the work without the City Engineer's consent. Should the Responsible Party fail to remove such person, or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the City Engineer may suspend the work until the Responsible Party has complied with the order(s).

B. Methods and Equipment:

- (1) The methods and equipment used by the Responsible Party and/or Contractor shall produce a satisfactory quality of work. Equipment used on any portion of the project shall be such, and its use so regulated, that no serious or irreparable damage to the roadway, adjacent property, or other streets or highways will result from its use. If damage does occur to these areas, suitable repairs shall be made at the Responsible Party's expense.
- (2) When the methods and equipment to be used by the Responsible Party and/or Contractor in accomplishing the construction are not prescribed in the plans, specifications, or standards, the Responsible Party and/or Contractor is free to use any methods or equipment that will accomplish the work in full conformity with the requirements of the approved plans, specifications, and standards, as demonstrated to the satisfaction of the City Engineer.

19. Acceptance and Warranty of Improvements.

- A. When all required Public Improvements are complete, Responsible Party shall submit a written request for a final inspection. Within seven (7) working days of the request, the City Engineer will complete an inspection; and will notify Responsible Party in writing of all particulars in which the inspection reveals that the work is incomplete or defective. Responsible Party shall immediately take such actions as are necessary to complete such work or remedy such deficiencies. After Responsible Party has, in the opinion of the City Engineer, satisfactorily completed all required public improvements in accordance with the approved construction documents, and standards, including those corrections identified during the final inspection, the City Engineer shall provide a written certificate of completion of those Public Improvements to Responsible Party.

Upon issuance of the certificate of final completion to the Responsible Party and execution of applicable warranty securities, set forth in Section 7, the Authorized Official shall prepare a resolution for the City Council to accept the installed public improvements and begin the warranty period. The resolution shall be placed on the next City Council agenda for action.

- B. Responsible Party shall warrant all improvements free from defects for a time period of two years from the date the City Council accepts by resolution said public improvements.
- C. Exceptions for Extreme Hardship:

(1) Extreme Hardship.

The Responsible Party may submit a written request to the City Council requesting an exception to the installation of the required Public Improvements within the specified timeframe when installation of said improvements will create an extreme hardship for the Responsible Party. The City Council will have sole discretion in determining if an extreme hardship exists. If the City Council determines an extreme hardship exists, the City Council will determine the length of time the installation of the improvements will be allowed to be delayed up to a maximum of five years from the date of such determination. The City Council may require a Performance Security be provided for an amount of up to one hundred percent (100%) of the cost of the improvements not completed plus projected inflationary costs for said Public Improvements.

(2) Extension of Warranty Periods.

Warranty Security in the amount of ten percent (10%) of the original Engineer's Estimate for all the work will be required to remain in place until all warranty periods, including delayed installation improvements, have been completed with the following exception: if the original Warranty Periods have expired and the cost of the delayed installation improvements are less than the warranty security, then the Warranty Security for the delayed installation warranty improvement security may be reduced to one hundred percent (100%) of the cost of the delayed installation improvements.

20. Acceptance Limitation.

The acceptance of a Public Improvement shall in no way constitute an assumption by the City of liability for defects in the improvement. By accepting the improvement, the City does not warrant or guarantee the Public Improvement has been properly designed or constructed, or waive any claims relating thereto. Any errors or omission of the Responsible Party, the Responsible Party's Engineer, or the Contractor shall not be the responsibility of the City.

21. Warranty Security.

The Responsible Party understands and agrees that the City will not accept, and therefore, will not maintain any improvements within the identified Subdivision until said improvements are found free of defects for the required Warranty Period, unless prior to any platting the Responsible Party executes a Warranty Security in favor of the City for ten percent (10%) of the Engineer's Estimate for the

duration of the Warranty Period(s). The Responsible Party shall use the Warranty Security form approved by the City Attorney. Each Warranty Security required by this Agreement shall be secured in favor of the City by one of the following methods:

- A. Escrow account.
- B. A bond from a Corporate surety licensed and authorized to do business in the State of South Dakota as surety and subject to written approval by the City Engineer which approval shall be at its sole discretion.
- C. Irrevocable letter of credit.

The Responsible Party is not required to provide a warranty for facilities furnished and installed by the City. However, the cost of the same shall be used for purposes of calculating the ten percent (10%) Warranty Security as set forth herein.

22. Warranty Inspections.

Prior to the expiration of the Warranty Period, the City Engineer will conduct an inspection. A written list of warranty repairs will be prepared and presented to the Responsible Party. The Responsible Party will be responsible to notify the City Engineer in writing when the warranty repairs have been completed and the Engineer shall inspect the same within ten (10) business days of such notice. The City Engineer will verify the warranty repairs have been completed and provide written correspondence acknowledging acceptance of the warranty repairs. The Warranty Security will remain until all warranty repairs have been completed and accepted by the City Engineer.

23. Maintenance of Traffic and the Premises.

Unless otherwise specified, the Responsible Party shall be solely responsible for maintaining the premises being subdivided in a safe condition and for keeping the project secured from public use until work is complete. Measures to adequately restrict public access must be used and maintained by the Responsible Party. If the requirements call for public access, the Responsible Party shall install and maintain appropriate controls as required. The Responsible Party shall be responsible for installation and maintenance of any barricades or warning signs required until Acceptance is granted and permanent signage is in place. The Responsible Party shall notify the City Engineer ten (10) business days prior to the need for permanent signage.

Until Acceptance is granted, the Responsible Party shall be responsible for maintaining traffic throughout the subdivision.

24. Maintenance of Improvements.

Responsible Party shall be responsible for maintaining all improvements until the time of acceptance by the City Council. Any damage to work caused by Responsible Party's maintenance shall be subject to repair or replacement. Snow removal and street sweeping shall be Responsible Party's responsibility for maintenance. Responsible Party may contract separately from this Agreement with the City to provide snow removal and street sweeping services.

In the case of an emergency repair where, in the judgment of the City, delay would cause serious loss or damage, repairs may be made without notice being sent to the Responsible Party, and the Responsible Party shall pay the cost thereof.

25. Transfer of Responsibility.

In the event of the sale, conveyance, or transfer of the Subdivision or any portion thereof, the City will not release the Responsible Party from its obligations under this Agreement and will continue to hold the Responsible Party responsible for all Public Improvements until a successor in interest to the Responsible Party has posted a suitable Performance Security and/or Warranty Security, as applicable, and entered into an Agreement to Construct Subdivision Improvements with the City. The Responsible Party may also assign over its Performance Security with the written consent of the City, which consent shall not be unreasonably withheld to cover said Public Improvements.

26. Failure to Complete the Required Improvements.

In the event the Responsible Party shall fail or neglect to fulfill the obligations under this Agreement, the City shall have the right to construct or cause to be constructed the Public Improvements specified herein, as shown on the Plat and in the plans and specifications as approved, and the Responsible Party shall be liable to pay to and indemnify the City, the total cost to the City thereof, including but not limited to, engineering, attorney fees, and contingent costs together with any damages, either direct or consequential, which the City may sustain on account of the failure of the Responsible Party to carry out and execute all of the provisions of this Agreement and any agreements referenced herein. The City shall have the unconditional right to call upon the Performance or Warranty Security for the purposes specified and in the amounts enumerated herein.

If the Responsible Party fails to or refuses to complete the Public Improvements under the terms of this Agreement by the dates required, the City may upon written notice to Responsible Party at any time (or times) execute against the Performance or Warranty Security for those funds it deems necessary to complete the work—whether by the City, a private company, or a public agency—upon certifying that the Responsible Party has not completed the Public Improvements. The certification shall be made by a notarized statement signed by the City Engineer or his designated agent.

If the City takes over the completion of the Public Improvements because of the Responsible Party's failure or refusal to complete the same, and if the bond, escrow, or letter of credit posted is insufficient to complete the Public Improvements and cover the Warranty Security, the Responsible Party shall be liable to the City upon demand for the additional funds necessary to complete or repair the Public Improvements according to the plans and specifications.

If the City performs, or has performed on its behalf by a private company or a public agency, the Public Improvements specified in the plans and specifications, and if the final costs of the Public Improvements to the City including, but not limited to, administrative costs, is less than the amount drawn against the bond or letter of credit after withholding a sum sufficient to cover the Warranty Security, then the City shall refund the excess to the Responsible Party or surety within thirty days from completion and acceptance of the Public Improvements.

27. Breach of Agreement.

A. The following non-inclusive list shall constitute a breach of this Agreement:

- (1) Failure by the Responsible Party to complete the Public Improvements within the contract period or any extension thereof.
- (2) Failure or refusal by the Responsible Party to comply with an order of the City Engineer within a reasonable time.
- (3) Responsible Party's disregard of laws, ordinances, or instructions of the City Engineer.
- (4) Failure or refusal by the Responsible Party to remove rejected materials.
- (5) Failure or refusal by the Responsible Party to replace, perform anew, or correct any defective or unacceptable work.
- (6) Bankruptcy or insolvency of the Responsible Party, or the making of an assignment for the benefit of creditors by the Responsible Party.
- (7) Failure by the Responsible Party to carry on the work in an acceptable manner.
- (8) Any other breach of a material provision of this Agreement.

Upon Responsible Party's breach, the City shall be entitled to give notice of default to the Responsible Party and security provider, if any. The notice of default shall indicate how the Responsible Party has breached and shall indicate what action the Responsible Party must take to cure such breach. The Responsible Party shall have fifteen (15) days to take substantial action to cure such breach.

B. If the Responsible Party does not, within the time for cure provided in the notice of default, take substantial action to cure such breach, the Responsible Party shall, at the written direction of the City Attorney, relinquish possession and control of the work, and the City shall thereupon have full power and authority, to terminate the contract, to take over the completion of the work, to enter into agreements with others for the completion of said contract according to the terms and provisions thereof, or to use such other methods as in the City's opinion may be required for the performance of said contract, or completion of Public Improvements, in an acceptable manner.

C. The Responsible Party and its security provider shall be liable for all outlay and expense incurred by the City, together with the costs of completing the Public Improvements, and such costs may be deducted from any monies due or which may become due to the Responsible Party. In case such outlay and expense exceeds the sum that would have been payable under the Warranty Security, or to the extent said Warranty Security fails to make payments, the Responsible Party shall be liable for and shall pay to the City the amount of said sums.

D. Neither the City, nor any officer, agent, nor employee thereof, shall be in any way liable or accountable to the Responsible Party or the Responsible Party's security provider for the method by which the completion of said Public Improvements, or any portion thereof, may be accomplished, or for the price paid therefore. Neither by taking over the work nor by declaring a default, shall the City forfeit the right to recover damages from the Responsible Party for failure to complete the Public Improvements.

RESPONSIBLE PARTY:

By: _____

STATE OF _____)
:SS
COUNTY OF _____)

On this _____ day of _____, 20____, before me, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be the person(s) whose name(s) _____ subscribed to the within instrument and acknowledged that ___ he ___ executed the same for the purposes therein contained.

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

(SEAL)

Notary Public—State of: _____
My Commission Expires: _____

CITY OF LENNOX:

Mayor

Date: _____

ATTEST:

Finance Officer