

ROSE HILL TOWNSHIP RESOLUTION

WHEREAS, Sweetland Wind Farm, LLC ("Sweetland") has entered into a Road Use and Maintenance Agreement ("Agreement") with Hand County, South Dakota ("County"), attached hereto as Exhibit A, related to the construction of the up to 200 megawatt Sweetland Wind Farm Project and associated 230 kilovolt Gen-Tie Line ("Project"); and

WHEREAS, the Agreement addresses certain issues relating to the roads within and under the supervision of the County, including section line highways and township roads where the applicable township has agreed to and/or ratified the County's oversight and control for purposes of the Agreement;

WHEREAS, Rose Hill Township ("Township") desires to agree to and ratify the Agreement as it pertains to the use, maintenance, and restoration of the Township's roads, including section line highways ("Township Roads"); and

WHEREAS, the Township has reviewed the Agreement negotiated for the Project with the County;

WHEREAS, the Township agrees to have the County, including the County's Designated Representative (as set forth in the Agreement), represent it in the enforcement of the provisions of the Agreement;

WHEREAS, the Township agrees to have the County approve access points (driveways), road crossings, and other permits affecting Township Roads in the manner set forth in the Agreement;

WHEREAS, the Township agrees that for each Township Road, the Baseline Road Study and the Post-Construction Road Study (as set forth in the Agreement) shall be compared and Developer shall make the repairs needed to return each Township Road to its pre-construction condition, to the extent reasonably practicable;

WHEREAS, the Township agrees that, for improvements on minimum maintenance roads or unimproved section lines, Developer shall not be required to improve minimum maintenance roads or unimproved section lines to the standards and specifications applied to roads that are fully maintained for public use; and

WHEREAS, the Township agrees to have the County issue a Certificate of Completion for Township Roads in accordance with the Agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Township Board of Rose Hill Township, Hand County, South Dakota, that the Township agrees to and ratifies the Road Use and Maintenance Agreement;

BE IT FURTHER RESOLVED that the Township authorizes the County, including the County's Designated Representative, to act on its behalf in the enforcement of the provisions of the Agreement;

BE IT FURTHER RESOLVED that the Township authorizes the County to approve access points (driveways), road crossings, and other permits affecting Township Roads;

BE IT FURTHER RESOLVED that the Township authorizes the County to issue a Certificate of Completion for Township Roads in accordance with the Agreement and this Resolution; and

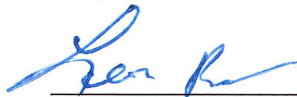
BE IT FURTHER RESOLVED that the Township Board authorizes the Chair to execute this Resolution on its behalf.

BOARD OF TOWNSHIP SUPERVISORS,
ROSE HILL TOWNSHIP, HAND COUNTY, SOUTH DAKOTA



Andrew Michaelis, Chair

ATTEST:



Leon Boomsma, Township Clerk

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Exhibit A

Hand County Road Use and Maintenance Agreement (Attached Hereto)

ROAD USE AND MAINTENANCE AGREEMENT

This ROAD USE AND MAINTENANCE AGREEMENT (this "Agreement") is made and entered into this 30TH day of DECEMBER, 2019 by and between Hand County, South Dakota (the "County"), and Sweetland Wind Farm, LLC, a Delaware limited liability company ("Sweetland" or "Developer"). The County and Developer are sometimes referred to individually as a "Party" and collectively as the "Parties." The term "Developer's Representative(s)" shall include Developer's contractors, subcontractors, agents, employees, representatives, suppliers and designees.

WHEREAS, Developer is in the process of developing a wind-powered electric energy generating facility in Hand County, South Dakota, which will require construction of wind turbines, transmission facilities, substations, roads, overhead and underground collection lines, telecommunication facilities (including without limitation, fiber), and other ancillary facilities (collectively referred to in this Agreement as the "Project") in the area depicted in Exhibit A (the "Project Area"),

WHEREAS, the Parties desire to address certain issues relating to the roads within and under the supervision of the County, including section line highways and township roads where the applicable township has agreed to and/or ratified County oversight and control for purposes of this Agreement or otherwise (collectively, the "Roads"),

WHEREAS, in connection with the construction, operation and maintenance of the Project, Developer and Developer's Representative(s) plan to do the following on or to a portion of the Roads: (i) transport heavy equipment and materials which may be in excess of local design limits; (ii) transport materials, such as concrete and gravel; (iii) make specific modifications and improvements to permit Project-related equipment and materials to pass; (iv) place electrical and communications cables (collectively "Cables") for the Project adjacent to, along, under, or across Roads; (v) install approaches; and (vi) install permanent Project access roads, and

WHEREAS, Developer and the County wish to set forth their understanding and agreement relating to the use, modification and maintenance of Roads during and after the construction and operation of the Project.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, the Parties, intending to be legally bound, agree as follows:

General Obligations of the Parties

1. Developer Designated Representative. Developer agrees to designate a representative with authority to represent Developer in all matters related to this Agreement. Developer's initial designated representative is Mark Wengierski. Developer may change the designated representative with prior written notice to the County.

2. County Designated Representative. The County agrees to designate a representative with authority to represent the County in all matters related to this Agreement, including review and approval of any proposals submitted by Developer under this Agreement. The County's initial designated representative is Jeff Hargens. The County may change the designated representative with prior written notice to Developer.
3. Developer's Project Notification Obligations.
 - a. Developer agrees to notify the County in writing of the date of commencement of construction of the Project at least seven (7) calendar days before said date. For purposes of this Agreement, the phrase "the date of commencement of construction of the Project" shall be the date set forth in the notice required under this provision, and the term "construction" shall mean any clearing of land, excavation or other action that would affect the environment of the Project site, including the construction, modification or improvement of any Roads, but does not include geotechnical evaluation or other survey work.
 - b. Developer agrees to notify the County in writing of the date of the Project's commercial operations date ("COD") within seven (7) calendar days after said date. For purposes of this Agreement, the term "COD" shall be the date set forth in the notice required under this provision.
 - c. Developer agrees to notify the County in writing of the date that the Project has been decommissioned within thirty (30) calendar days after said date. For purposes of this Agreement, the phrase "the date the Project is scheduled to be decommissioned" shall be the date set forth in the notice required under this provision.

Use, Improvement, Maintenance and Repair of Roads

4. Transport of Equipment and Materials. Developer shall submit to the County one or more maps identifying the Roads it proposes to use as haul roads at least thirty (30) days prior to the date of commencement of construction of the Project, which shall be attached as Exhibit B to this Agreement. Exhibit B may be amended by Developer at any time upon providing an updated Exhibit B to the County, so long as Developer complies with the road inventory requirement set forth in Paragraph 5.
5. Road Inventory.
 - a. *Baseline Road Study.* Prior to Developer modifying, improving, or transporting any Project-related equipment or materials over any of the Roads identified in Exhibit B, including any Roads identified in an amendment thereto, Developer shall hire a third-party firm to survey the condition of the Roads ("Baseline Road Study"). The Developer shall receive at least two proposals, but no more than three proposals, from firms qualified to conduct the Baseline Road Study and acceptable to the County. The County and the Developer shall mutually agree upon one of said firms to do the study. The Baseline Road Study shall be

conducted at Developer's expense, and Developer will provide a copy of the Baseline Road Study to the County. Developer will notify the County in writing of the name of the firm retained prior to the study being conducted.

- b. *Post-Construction Road Study.* Within thirty (30) calendar days of the date of commencement of commercial operation of the Project, Developer shall retain a third-party firm to perform a post-construction inventory of the Roads identified in **Exhibit B**, including any Roads identified in an amendment thereto ("Post-Construction Road Study"). The Post-Construction Road Study shall be conducted at Developer's expense, and Developer will provide a copy of the Post-Construction Road Study to the County. Developer will notify the County in writing of the name of the firm retained prior to the study being conducted and, to the extent possible, will try to use the same firm that conducted the Baseline Road Study.

6. Road Maintenance and Repair.

- a. *Routine and Regular Maintenance of Maintained Roads.* Throughout the term of this Agreement, the County agrees to continue to perform routine and regular maintenance of all Roads identified in **Exhibit B**, to the extent required by law. Routine and regular maintenance may include, but is not limited to: grading, snow removal, routine signage, and regularly scheduled maintenance and repair. The Developer is authorized by the County to perform and shall be responsible for performing maintenance of Designated Roads that is associated with upgrades for and construction of the Project including but not limited to adding additional crushed rock, gravel and/or asphalt surfacing, making temporary repair of roadway damage (soft spots, blow outs, rutting, etc.), repairing damaged bridges and/or culverts, addressing significant fugitive dust, posting construction warning signs in accordance with the latest version of the Manual on Uniform Traffic Control Devices and blading and snow removal beyond the County's routine intervals, in each case, solely to the extent necessitated by construction of the Project. Notwithstanding the foregoing, the County or Township agrees that Developer may, at its sole discretion, conduct snow removal on any Roads identified in **Exhibit B** to enable access to the Project. If Developer conducts snow removal on said Roads, Developer shall be responsible for any repairs needed to return said Roads to their pre-construction condition, to the extent reasonably practicable, if said Roads are damaged.
- b. *Third-Party Engineer.* In the event that the County and Developer are unable to agree upon the repairs required to return the Roads to their pre-construction condition, the Parties agree to designate a third-party engineer to determine the repairs required. Such expense associated with hiring a third-party engineer's services shall be split 50/50 between the County and Developer.

- c. *Certificate of Completion.* Once the Roads have been returned to their agreed-upon pre-construction condition, the County agrees to issue to Developer the Certificate of Completion provided in Exhibit C.
- 7. Road Modifications and/or Improvements.
 - a. The County authorizes Developer to make modifications and/or improvements to the Roads identified in Exhibit B, including any Roads identified in an amendment thereto, that are reasonably necessary to accommodate transportation of Project-related equipment, materials and personnel on said Roads, including, but not limited to, the strengthening and widening of Roads, the modification of corners on the Roads, and the strengthening, lengthening and/or spanning of existing culverts and bridges.
 - b. With respect to modifications and/or improvements to any Roads identified in Exhibit B, including any amendments thereto, the County shall notify Developer in writing within thirty (30) calendar days of COD of the Project of any modifications and/or improvements made by Developer to said Roads that the County wants to remain in place ("Improvement Notice"). All other modifications or improvements to said Roads made by Developer shall be removed by Developer, and said Roads shall be repaired in accordance with Paragraph 6. Upon Developer's receipt of the County's Improvement Notice, the County assumes all rights, responsibility and liability for the identified improvements.
 - c. Notwithstanding other provisions in this Agreement, Developer is authorized to leave in place for the life of the Project any upgrades to Roads that will serve as permanent access roads for the Project. The County assumes all rights, responsibility and liability for said Roads as of the date of commencement of commercial operation of the Project, subject to Developer's rights and obligations in Paragraph 6.a, provided that Developer has the right, but not the obligation, to conduct routine and regular maintenance on Project access roads to facilitate access to Project facilities, including but not limited to snow removal.
- 8. Access Points and Road Crossings. Developer shall submit to the County in writing and obtain prior approval from the County of all Project-related site access points and access road crossings of the Roads; however, approval from the County shall not be unreasonably withheld or delayed. The County shall timely review and respond to all Project-related site access point and access road Road crossing proposals that are submitted by Developer. In the event that no written comments are provided by the County to Developer within fourteen (14) calendar days after Developer's submission of a site access point or access road Road crossing proposal, said proposal shall be considered approved.
- 9. Utility Encroachments. The County represents that it has the authority to grant Developer the right to utilize Road rights-of-way for Cables or electric lines serving and

benefiting the Project. Developer agrees to obtain any required permits or approvals for such placement as authorized by South Dakota law.

10. Oversize/Overweight Permits. The County agrees to issue master overweight and oversize permits (if applicable) in a timely manner consistent with normal County practice, not to exceed 45 calendar days. Developer agrees to transport or cause to be transported the tower segments and other oversize loads in accordance with good industry practice to reasonably minimize, where possible, adverse impact on the local traffic.
11. Oil Roads. The oil roads (i.e. Vayland Road and 216th Street) within the Project shall be returned to the same condition post-construction of the Project as identified in the Baseline Road Study. The County acknowledges that during Construction Developer may need to patch the Oil Roads. Post-Construction Developer shall limit the use of patches to repair said Oil Roads on those portions of roads utilized by Developer. Nothing contained herein shall bind Developer to repair said roads to a condition greater than what was determined in the Baseline Road Survey.
12. Dust Abatement. Developer shall be responsible for Dust Abatement created by Developer's activities pertaining to the haul roads. When requested by the County, Developer shall reasonably address or make commercially reasonable efforts to minimize dust resulting from Developer's activities using water, calcium chloride, or other appropriate commercially available reasonable means in Developer's reasonable discretion. Such Dust Abatement shall only occur on gravel roads utilized by Developer and shall comply with all environmental rules and regulations.
13. Materials Used for Maintenance and Restoration of Improved County Roads.
 - a. At completion of construction of the Project, Developer shall return the gravel depth on roads utilized by Developer to an average depth equal to, or greater than what is identified in the Baseline Road Survey. Such work shall be in accordance with SDDOT state specification "gravel surfacing" material as defined in section 882 of the SDDOT specification book on improved County gravel roads defined in this Agreement or comparable surface material and cover as to what was determined during the Baseline Road Survey.
 - b. All materials used for the maintenance of the haul roads during construction and all materials used for the restoration of the haul roads after construction (including any bridges or culverts) shall be in accordance with the SDDOT Standard Specifications for Roads and Bridges, 2015 edition with current updates. In the event any of the following defined materials, specifications, and/or minimum requirements are not available and/or commercially unreasonable then Developer may utilize other comparable materials in accordance with standard industry practices.

A list of common road materials and minimum specifications are listed below. This is not an all-inclusive list.

Category	Material	SDDOT Specification Sections	Other Minimum Requirements
Road subgrade	In-Place Soils	120	
Road subgrade stabilization	Soil Cement Stabilizer	NA	County Approved
Road subgrade stabilization	Geotextile Fabric	831	County Approved
Road subgrade stabilization	Crushed Rock	NA	County approved clean crushed ledge rock
Road base	Aggregate Base Course	260, 882	Minimum compacted thickness required for anticipated loads
Grave road surfacing	Gravel Surfacing	260, 882, 883	3" minimum compacted thickness
Asphalt road surfacing	Asphalt Concrete Class E	320, 321, 880, 890	Minimum compacted thickness required for anticipated loads

At a minimum, all materials shall be installed in accordance with the SDDOT Standard Specifications for Roads and Bridges, 2015 edition with current updates. All materials shall be installed in accordance with this Agreement and all costs associated with Developer's activities contained hereunder including the materials and installation, for the maintenance and restoration of the roadways, bridges and culverts along the haul roads shall be paid for by the Developer.

Miscellaneous

14. Limitations of Liability. In no event shall Developer or any of its members, officers, directors or employees or the County or any of its Boards, officers or employees be liable (in contract or in tort, involving negligence, strict liability, or otherwise) to any other Party or their contractors, suppliers, employees, members and shareholders for indirect,

incidental, consequential or punitive damages resulting from performance, non-performance or delay in performance under this Agreement.

15. Remedies and Enforcement. Any failure by a Party to this Agreement to perform a material obligation which is not remedied within thirty (30) days after receipt by the defaulting party of written notice of such failure shall be deemed a default under this Agreement and allow the non-defaulting party to seek any remedies available at law or equity. Notwithstanding the foregoing, so long as the defaulting party has initiated and is diligently attempting to affect a cure, the defaulting party's cure period shall extend for a time period reasonably sufficient for the default to be remedied, but in no event shall the cure period exceed 180 days. The time period prior to a third-party engineer issuing a decision pursuant to Paragraph 6.d is not included in the 180 day cure period.
16. Due Authorization. Developer represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of Developer. The County represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of the County.
17. Severability. If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, said provision may thereafter be modified to implement the intent of the Parties to the maximum extent allowable under the law, and the remainder of this Agreement shall remain unaffected and in full force and effect.
18. Amendments. Except as otherwise stated in this Agreement, no amendment or modification to this Agreement or waiver of a Party's rights is binding unless in writing and signed by both Parties to this Agreement.
19. Notices. All written notices under this Agreement shall be sent to the Parties at the address (or to such other address designated by a Party in writing to the other Party at any time) via registered or certified mail.

Developer: Sweetland Wind Farm, LLC
c/o Mark Wengierski
4865 Sterling Drive, Suite 200
Boulder, CO 80301

County: Hand County Highway Superintendent
c/o Jeff Hargens
810 E. 2nd Street
Miller, SD 57362

20. Assignment. Neither Party shall assign this Agreement, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the County's consent is not required for Developer to assign this Agreement to an affiliate of Sweetland, or to assign this Agreement to a lender or tax credit investor, provided that the Assignee agrees in writing

to be bound by the terms of this Agreement. Additionally, the County acknowledges and agrees that a lender or tax credit investor may request and receive notices of default from the County in order to have an opportunity to cure any default under this Agreement.

21. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.
22. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of South Dakota.
23. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto, their respective successors and assignees.
24. Termination. The parties may agree to terminate this Agreement any time in the event that Developer decides to abandon the Project and provides the County at least sixty (60) calendar days prior written notice of its decision to terminate the Agreement. If Developer abandons the Project, Developer shall restore all Roads to the condition determined in the Baseline Road Survey. If not terminated sooner, the Parties agree that this Agreement shall terminate as of the date the Project has been decommissioned.
25. Entire Agreement. It is mutually understood and agreed that this Agreement constitutes the entire agreement between the Parties and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representations or statements, verbal and written, have been made that modify, amend, qualify or affect the terms of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective the day and year written above.

HAND COUNTY BOARD OF COMMISSIONERS
HAND COUNTY, SOUTH DAKOTA

By

Its

Chairman

ATTEST:

Doug A. Beer

Hand County Auditor, Clerk

SWEETLAND WIND FARM, LLC

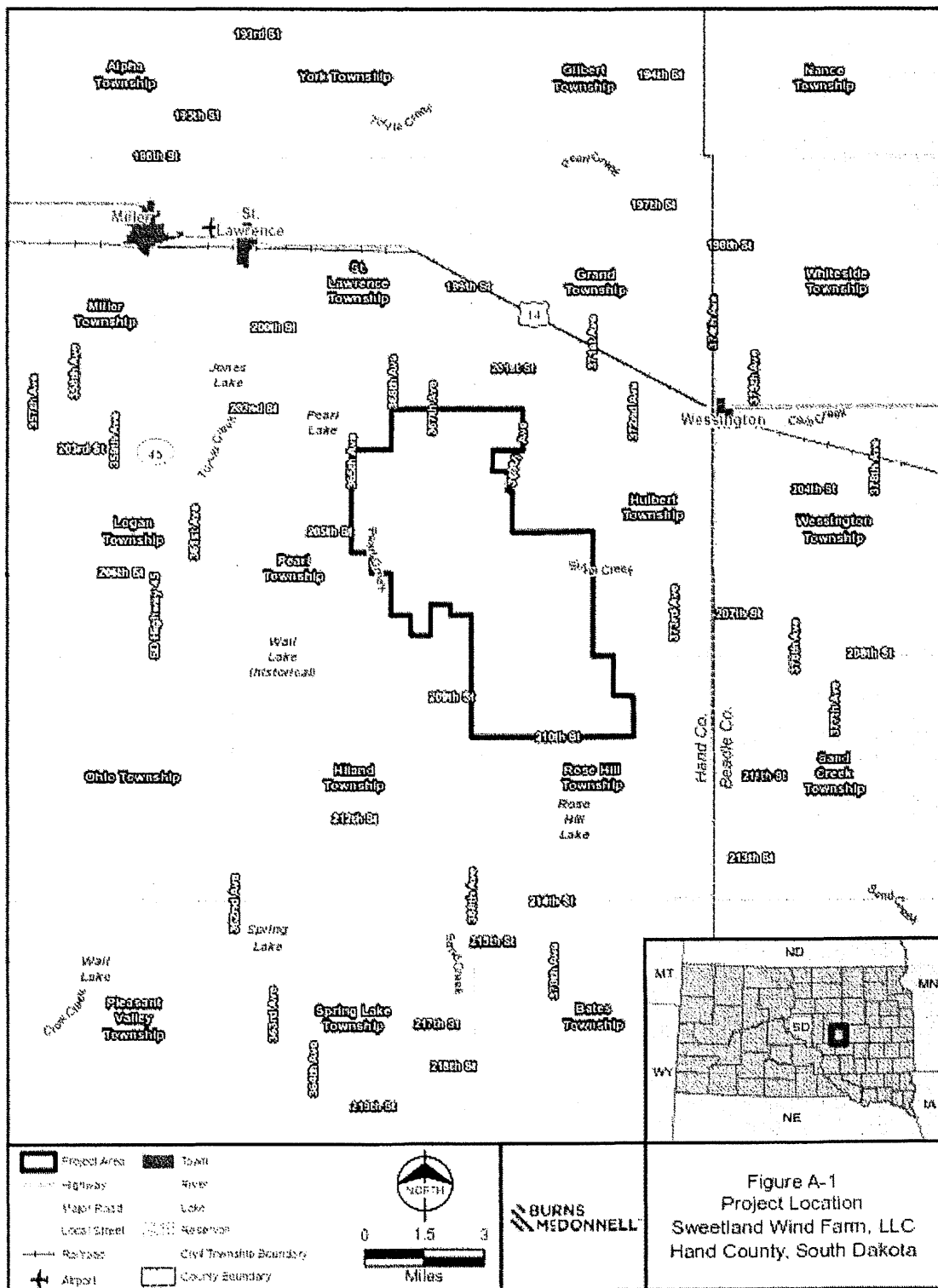
By:

Name: Michael Rucker

Title: Manager

EXHIBIT A

Project Area



Source: ESRI, FMC, Census, USGS, BLM, Sweetland Wind Farm, LLC, and Burns & McDonnell Engineering Company, Inc.

Issued: 2/28/2013

EXHIBIT B

Haul Road Map(s)

EXHIBIT C

Certificate of Completion

Pursuant to Section 6(f) of the Road Use and Maintenance Agreement ("Agreement") made and entered into on DECEMBER 30, 2019 by and between Hand County, South Dakota (the "County"), and Sweetland Wind Farm, LLC, a Delaware limited liability company ("Sweetland"), the County hereby attests that Sweetland has returned the Roads (as defined in the Agreement) to their agreed-upon pre-construction condition as of _____, 20__.

HAND COUNTY BOARD OF COMMISSIONERS
HAND COUNTY, SOUTH DAKOTA

By _____

Its _____, Chairman

ATTEST:

_____, Clerk