

SECOG

SOUTH EASTERN COUNCIL OF GOVERNMENTS

SOUTH DAKOTA

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The Director's Corner

As the year comes to a close, we would like to reflect on some of the funding successes of 2019.

- SECOG assisted its members with securing over \$83.77 million in grants and loans in 2019
- SECOG's members paid \$284,051 in dues in 2019
- For every dollar paid in dues, SECOG's members received a return of \$294.92 in grant and loan funding which amounts to a 29488% Return on Investment





<u>Funding Source</u>	<u>Amount</u>
Clean Water State Revolving Fund Loan/Principal Forgiveness	\$75,589,800
Community Action Grant	\$ 1,800,000
Community Development Block Grant	\$ 2,307,000
Drinking Water State Revolving Fund Loan/Principal Forgiveness	\$ 2,878,000
Economic Development Administration Grant	\$ 210,000
Housing Opportunity Fund Grant	\$ 277,200
Local Infrastructure Improvement Program Grant	\$ 308,998
Recreational Trails Grant	\$ 75,000
Revolving Loan Fund Capitalization Grant	\$ 10,000
Small Community Planning Grant	\$ 20,000
Solid Waste Grant	\$ 295,000
Total	\$83,770,998

Please let us know if you have any projects you would like assistance with in 2020. We enjoy working with you to make the region a better place!



FACT SHEET

OPPORTUNITIES TO BE INVOLVED

-  Learn about the project and leave comments at www.gosiouxfalls2045.com
-  Take our online questionnaire in March 2020
-  Attend project Open Houses in January and March 2020
-  Comment on the draft plan in Summer/Fall 2020

The Sioux Falls Metropolitan Planning Organization is updating its Long-Range Transportation Plan (LRTP). The LRTP is being conducted through a community-driven, data reinforced process that will provide a comprehensive look at the current and future multimodal transportation needs in portions of Lincoln and Minnehaha Counties, including the cities of Brandon, Crooks, Harrisburg, Hartford, Sioux Falls, and Tea.

WHAT IS A LONG-RANGE TRANSPORTATION PLAN?

A Long-Range Transportation Plan (LRTP) determines the projects and strategies that help shape a region's transportation network. It considers all travel modes - including driving, walking, bicycling, transit, rail, and air - to help set priorities for the years 2021-2045.

Since the last plan was adopted in 2015, the Sioux Falls region has seen many changes. The area is growing quickly, people are getting around in different ways, and transportation technology is advancing faster than ever before. The LRTP is a way for the Sioux Falls region to think proactively about the present and future transportation needs, consider the way emerging trends may impact the region, and plan for projects and policies to keep things running smoothly.

WHO IS DEVELOPING THE PLAN?



The Sioux Falls Metropolitan Planning Organization (MPO) is leading plan development through a public process with direction from a Study Advisory Team, Citizens Advisory Committee, Technical Advisory Committee, and Urbanized Development Commission. The LRTP will be completed by Fall 2020.

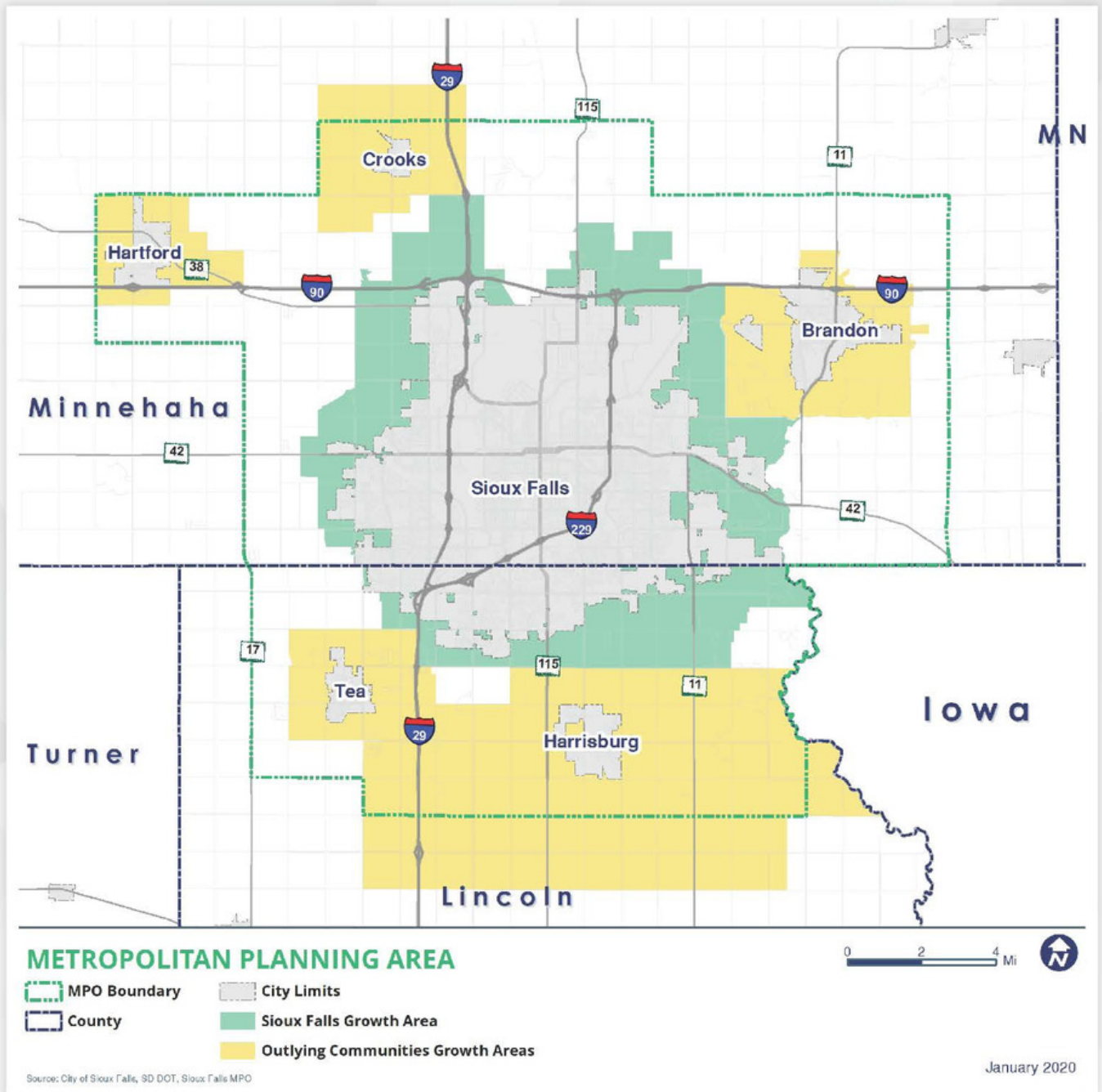
PROJECT SCHEDULE

	SUMMER/FALL 2019	WINTER 2019/2020	SPRING 2020	SUMMER 2020	FALL 2020
TECHNICAL TASKS	<ul style="list-style-type: none"> Gather Community Input on Transportation Priorities 	<ul style="list-style-type: none"> Website Launch Outline Goals and Objectives Review Takeaways From Former Engagement Efforts 	<ul style="list-style-type: none"> Gather Stakeholder Input Begin Prioritizing Strategies System Performance Report 	<ul style="list-style-type: none"> Refine Strategies & Recommendations Develop Emerging Issues & Trends Toolbox Develop Financial Plan 	<ul style="list-style-type: none"> Finalize LRTP Environmental Review
OPPORTUNITIES FOR INVOLVEMENT	<ul style="list-style-type: none"> Market Research Resident and Employer Survey Market Research Focus Groups Stakeholder Interviews 	<ul style="list-style-type: none"> Website Podcast Video Kickoff Open House 	<ul style="list-style-type: none"> Stakeholder Meetings Community Open Houses Online Social Media 	<ul style="list-style-type: none"> Draft LRTP Presentation(s) Online Social Media 	<ul style="list-style-type: none"> Final LRTP Presentation(s) GIS Story Map Online Social Media



STUDY AREA MAP

The Sioux Falls Metropolitan Planning Area encompasses Lincoln and Minnehaha Counties, including the cities of Brandon, Crooks, Harrisburg, Hartford, Sioux Falls, and Tea.



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State Historical Society Announces Spring Deadwood Fund Grant Applications

The South Dakota State Historical Society announces that the applications for the first round of the 2020 Deadwood Fund grant program are due on Feb. 1, 2020, for work beginning no earlier than May 1, 2020.

Grant forms are available online at

<https://history.sd.gov/preservation/fundingopportunities.aspx>.

The program is designed to encourage restoration or rehabilitation of historic properties by individuals, organizations, or public agencies, according to Jay D. Vogt, director of the State Historical Society, whose historic preservation office administers the program.

"It is one more way we can promote and protect our history and culture," Vogt said.

Grants will be awarded in amounts ranging from \$1,000 to \$25,000. The grant amount must be matched at least on a dollar-for-dollar basis from non-federal and non-state sources. Nonprofit organizations will be allowed to use in-kind services for one-half of their match.

In 2018, \$117,000 was awarded among 10 projects, which had matching funds of \$580,106. The resulting total public-private investment was \$697,106.

Funding for the program is from Deadwood gaming revenue earmarked by state law for historic preservation projects throughout the state and distributed by the State Historical Society.

The second round of 2020 applications will be due Oct. 1, 2020, for work beginning no earlier than Jan. 1, 2021.

For more information on the South Dakota State Historical Society's Deadwood Fund grant program, contact the State Historic Preservation Office at the Cultural Heritage Center, 900 Governors Drive, Pierre, SD 57501-2217; telephone 605-773-3458.





City of Dell Rapids Receives National Award

The City of Dell Rapids wastewater treatment facility was one of 13 projects recognized by the US Environmental Protection Agency (EPA) for excellence within the Clean Water State Revolving Fund Program. The National award, Performance and Innovation in the State Revolving Fund Creating Environmental Success (PISCES), recognizes exceptional projects for water quality improvements, protection of public health, economic benefits, sustainability, or innovation.

The Board of Water and Natural Resources awarded a \$2,386,000 Clean Water State Revolving Fund loan and \$3,372,000 in grants for the project. The City was recognized by the Department of Environment and Natural Resources at its January City Council meeting.

South Eastern Council of Governments worked with the City to obtain funding for the project and worked closely with the City's consulting engineers, DGR Engineering. Congratulations to the City of Dell Rapids and its engineers.



Pictured from left: Justin Weiland, Dell Rapids City Administrator; Tom Earley, Mayor of Dell Rapids; Andy Bruels, Department of Environment and Natural Resources Engineering Manager; Clarence Fjellanger, City of Dell Rapids Public Works Director; Sam Johnson, DGR Engineering.



Davis-Bacon Act Compliance

The 2020 construction season is on the horizon. An important component of the bid packet and subsequent contracts is language regarding the Davis-Bacon Act and prevailing wages.

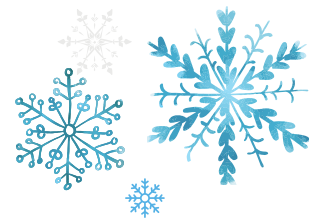
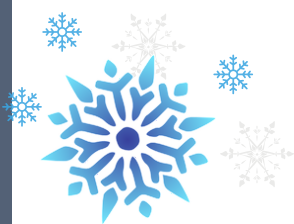
The Davis-Bacon Act applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the local prevailing wages and fringe benefits for corresponding work on similar projects in the area. The US Department of Labor determines local prevailing wage rates. The Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance.

For prime contracts in excess of \$100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, pay laborers and mechanics at least one and one-half times their regular rate of pay for all hours worked over 40 in a workweek.

Compliance monitoring is a responsibility of South Eastern Council of Governments for projects located within the six-county region. Compliance is measured by:

- Ensuring proper wage determination is included in bid packets.
- Review of weekly payrolls to ensure employees are paid prevailing wage for the job classification.
- Conducting employee interviews on the job site.
- Posting the "Employee Rights Under the Davis-Bacon Act" poster and the current prevailing wage rates at the job site.

SECOG staff has modeled its policies and procedures based on feedback from the Department of Labor to ensure communities are in compliance with Davis Bacon Act. Contact Leslie or Sara if you have questions regarding Davis-Bacon Act compliance.



DENR Water and Waste Funding Awards

The Board of Water and Natural Resources approved more than \$21.9 million for water, wastewater, watershed, recycling, and solid waste projects on January 3rd. South Eastern Council of Governments assisted the following communities with funding requests and subsequent awards:

- *Elk Point was awarded \$1,088,000 for water and wastewater improvements.
- *Sioux Falls was awarded \$9,457,400 for storm water drainage improvements.
- *Viborg was awarded \$1,771,000 for storm water and sanitary sewer improvements.

The next application deadline for funding requests is April 1, 2020. Projects submitted for funding must be on the State Water Plan prior to the request.

The next deadline to place a project on the State Water Plan is February 1, 2020.

Contact Sara Lum at for projects in Lincoln, Turner, and Union Counties and Leslie Mastroianni for projects in Minnehaha, McCook, and Clay Counties.



2020 LWCF Grant Round



Funding for the Land Water Conservation Fund (LWCF) was included in the approved Federal FY20 appropriations bill. Federal funding levels for the program were increased, but South Dakota's allocation has not been determined yet. Game, Fish and Parks hopes to open the application cycle earlier this year so now is the time for communities to start thinking about potential projects to enhance recreation opportunities.

Starting the process early will allow plenty of time to get good written estimates with plans and engineering as needed. Cities should refer to the [2018 SD State-wide Comprehensive Outdoor Recreation Plan](#) for priority projects for grant assistance. As a reminder, the upper grant limit was removed to allow for a greater variety of projects. If you are thinking of a project or want to explore some ideas, contact Leslie or Sara for guidance in turning your community's vision into a reality.

LESLIE MASTROIANNI | 605.681.8184 | LESLIE@SECOG.ORG

SARA LUM | 605.681.8188 | SARA@SECOG.ORG



SDHDA Develops New Housing Program

In response to the shortage of affordable housing in rural communities, South Dakota Housing Development Authority (SDHDA) created the DakotaPlex Program.

DakotaPlex units are built by the prison inmates at the Mike Durfee State Prison in Springfield. Units are based off of the Governor's Houses and are one, two and three bedroom units to be used as a duplex, triplex, or quadriplex.

The objective of the DakotaPlex Program is to provide rental housing in small communities based on the following criteria:

Community: ~Must be placed in South Dakota community of fewer than 5,000 people based on most current population information.
~Must show a documented need for housing via market or housing needs study.
~Must be placed within a community's city limits.

Eligible Purchasers: Can be purchased for development by for-profit developers, not-for-profit developers, or community development groups.

Maximum Rents: Purchaser can market to any potential tenant in the community but rents cannot exceed maximum rent at 70% of the State Median Income as determined by HUD each year.

2019 Max Monthly Rents: (Including Utilities) One Bedroom ~ \$1,054.00
Two Bedroom ~ \$1,186.00
Three Bedroom ~ \$1,186.00

Rental Affordability: DakotaPlex must remain an affordable rental property with maximum rents in place for a minimum of ten (10) years. A restrictive covenant will be placed on the property to ensure compliance with this requirement.

Delivered Price: (Excluding Tax) One Bedroom ~ \$54,700.00
Two Bedroom ~ \$59,700.00
Three Bedroom ~ \$66,700.00





South Dakota's Fourth Category of Regulatory Takings

Several months ago, I briefly discussed the three categories of regulatory takings recognized by the United States Constitution. However, Article VI, Section 13 of our State Constitution goes above and beyond those in two key respects. First, we impose "public use" requirements that are stricter than the federal requirements. Second, our Constitution establishes a fourth category of regulatory takings by requiring that the government compensate a property owner not only when a federally recognized taking has occurred, but also when private property has been "damaged."

This article focuses on the second topic and is designed to provide cities with a basic understanding of a particular takings argument they may encounter anytime they undertake or permit a project that will, at a minimum, inconvenience neighboring landowners.

In *Krier v. Dell Rapids Township*, 709 N.W.2d 841 (S.D. 2006), the South Dakota Supreme Court explained, "The words 'or damaged' were, without doubt, added to the usual provisions contained in earlier constitutions for the purpose of extending the remedy to incidental or consequential injuries to property, not actually taken for public use, in the ordinary acceptance of that term." Basically, any governmental action which takes and uses property so located and in such a manner as to effectively destroy or impair the usefulness of another's land may constitute a taking.

"The primary purpose of the 'damages' clause is to ensure that individuals are not unfairly burdened by disproportionately bearing the cost of projects intended to benefit the public generally." *Krsnak v. Brant Lake Sanitary Dist.*, 921 N.W.2d 698 (S.D. 2018). However, it is not an unlimited right since "such damage is compensable [only] if the consequential injury is peculiar to the owner's land and not of a kind suffered by the public as a whole." *Krier* at 847. Accordingly, "the plaintiff's injury 'must be different in kind and not merely in degree from that experienced by the general public.' " *Rupert v. City of Rapid City*, 827 N.W.2d 55 (S.D. 2013).

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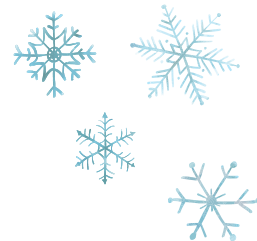
Unfortunately, “there is no ‘magic formula’ that enables a court to judge, in every case, whether a given government interference with property is a taking. Instead, the viability of a takings claim is dependent upon ‘situation-specific factual inquiries.’ ” *Id.* at 61 (quoting *Ark. Game & Fish Comm’n v. United States*, 133 S.Ct. 511 (2012)). That being said, even the Court recognizes that its prior cases involving the damages clause have not been entirely consistent. *Krier* at 847.

The South Dakota Supreme Court did find that a taking occurred in *Rupert*. In that case, the Ruperts alleged that the deicer the City applied to streets adjacent to their property during the winter had run off onto their property, killing 42 pine trees and other vegetation. Upon review, the Court upheld the trial court’s determination that the damage (1) only resulted from the deicer used by the City; and (2) was entirely confined to the Ruperts’ property. In reaching its decision, the Court emphasized the fact that the City presented no evidence to support its claim that the general public suffered similar damages as a result of its use of the deicer.

The Court reached the opposite conclusion in *Krier*. In that case, the Township decided to resurface a road with gravel, rather than with asphalt. As a result, a neighboring landowner alleged the gravel caused an accumulation of dust and dirt on his property. In rejecting his claim, the Court determined it wasn’t related to a unique form of injury as similar impacts occurred on neighboring properties. Rather, his argument focused on the degree of the injury or damages that he purported to suffer. “The fact that a plaintiff suffers a higher degree of injury or damages will not entitle him to recovery under the consequential damages rule.” *Krier*, 709 N.W.2d at 848. The Court reached a similar result in *Krsnak* regarding odors emitted by a nearby sewage pond.

As discussed above and in my prior article, regulatory takings are often legally complex and very fact-specific situations. If you encounter such a situation or have further questions, you should consult with your attorney.





Annual DOT Road Inventory Project

Keep an eye out because South Eastern Council of Governments (SECOG) will soon be sending out maps and letters for the annual road inventory.

Since 1995, the South Dakota Department of Transportation (SDDOT) and the South Dakota Planning and Development Districts have been working together to update any changes to the public road system. SECOG members will soon receive packages which contain two copies of their local road map and a letter further detailing what information is being requested by the DOT Road Inventory program. This information includes new roads, change of road surface, addition of curb, change of road surface width, change of road alignment, and more.

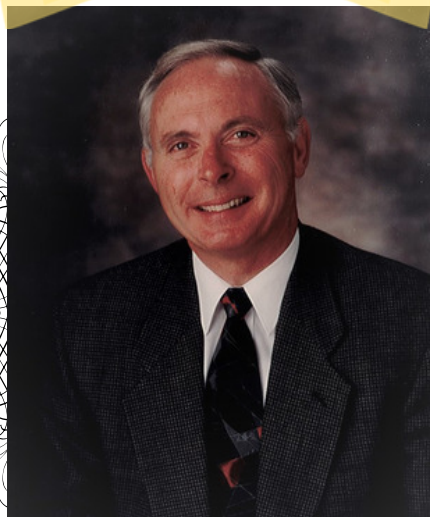
Members are asked to carefully review these maps for accuracy and provide a response using the included return envelope ***even if there have been no new roads constructed or any changes made to road surfaces or alignment in the previous year.*** Your assistance is critical to the accuracy of SDDOT's public road inventory.

In addition to road information, it would also be appreciated if member cities would pay close attention to the city limit boundaries represented on the map. Please report any annexations you have made or inaccuracies you find so SECOG is able to maintain accurate information.

If you have any questions about what is entailed in this program please contact Kristen at gis@secog.org or 681-8174.



Member Spotlight



Outgoing SECOG Board Chair Mike Broderick

Shortly after Mike Broderick was appointed to the State House of Representatives in 1993, he was asked to join the South Eastern Council of Governments (SECOG) Board as a Legislative Representative. He has served in other capacities since that time, including being the current Executive Board Chair. After 26 years of service, Mike has decided to step down from this role and continue to spend time enjoying his retirement. Mike was born in Walthill, NE and currently lives with his wife, Lois Jean in Canton, SD. They have two children and 5 grand children. Following his high school graduation from Pender Nebraska High

School in 1956, Mike served in the US Navy (PNS E-5) from 1956-1960. Upon return from his service in the Navy, Mike worked at First National Bank, Sioux City, IA, as Vice President, 1960-1975, while also attending Iowa Bankers Assoc. Ag. Credit School, Iowa State Univ., Ames, Iowa and graduating from School of Banking, University of Colorado, 1973.

He was President & CEO of First American Bank, Canton, SD from 1975-1998 and then completed his professional career with First American Bank & Trust, Canton, SD, as President from 1998-2000.

Mike stated, "Serving on the SECOG Board has given me a better understanding of the Planning District's role in providing assistance to the six member counties and municipalities. I have always felt that "things don't just happen, we need a driving force to make things happen". I believe that Lynne Keller Forbes, Executive Director of SECOG and her staff make up that driving force. It has been my pleasure to serve SECOG as the Board Chair for so many years".

*many
thanks* to Mike, for his
dedication and time
to SECOG!

New Approved Loans

Dakota BUSINESS Finance
South Eastern Development Foundation



Regency Retirement Living
Chamberlain, SD
Purpose: Refinance
Participating Lender: Dave Kroll,
First Dakota Bank

The Atrium at Blue Haven
Sioux Falls, SD
Purpose: Refinance and build a
second venue
Participating Lender:
Matt Nelson, Bank Midwest



Bright Eyes Daycare
Sioux Falls, SD
Purpose: Purchase of real estate
Participating Lender:
Patrick Erickson, Great Western Bank

Continued on next page

New Approved Loans

Dakota BUSINESS Finance
South Eastern Development Foundation



ABC Rentals Sioux Falls, SD

Purpose: Purchase and renovate an existing building

Participating Lender: Chris Nickles, Minnwest Bank



Little Explorers Childcare. LLC Sioux Falls, SD

Purpose: Business Acquisition

Boulder Creek Custom Homes Sioux Falls, SD

Purpose: Purchase of equipment, machinery and working capital.

Participating Lender: Keith Portner, Metabank



Continued on next page

New Approved Loans

Dakota BUSINESS Finance
South Eastern Development Foundation



Olson Law Firm
Sioux Falls, SD
Purpose: Purchase
and renovate building
Participating Lender:
Mike Flint,
First Dakota Bank

Jones Family Eyecare

Purpose: Purchase and
renovate building

Participating Lender:

Scott Speer,
The First National Bank Sioux Falls



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