

**PROPOSED AGENDA**  
**PUBLIC WORKS / SAFETY COMMITTEE**  
**Tuesday, April 23, 2013, 12:00 p.m.**

1. Approval of the Agenda.
2. Approval of minutes from the April 9, 2013 meeting.
3. Consideration of bids received for the 2013 Street Sweeper.
4. Approval of Plans & Specs and authorization to advertise for bids for the 20<sup>th</sup> Avenue South & Foley Road Intersection Realignment Project No. 1203.
5. Consideration of Development Agreement for East Woods 17<sup>th</sup> Addition.
6. Consideration of Development Agreement for Willow Creek Village 2<sup>nd</sup> Addition.

Old Business

New Business

Executive Session Pursuant to SDCL §1-25-2

*Note: It is expected that a **quorum** of the City Council will be in attendance at this committee meeting.*

## PUBLIC WORKS/SAFETY COMMITTEE MEETING

Tuesday, April 9, 2013

Present: Mayor Williams and Council Members Danforth, Jones, Rieffenberger & Solberg

Also Present: Tom Drake, Sarah Caron, Mike Rye, Mike Boerger, Todd Swenson, Stanton Fox and Kyle Horst

### Approval of the Agenda.

City Engineer Tom Drake proposes to amend the agenda by adding a discussion on proposed Ordinance No.13-11 amending Chapter 17.02 adding a sewer connection charge and tapping charges. Motion was made by Dennis Solberg and seconded by Mike Danforth to approve the agenda as amended. Motion carried.

### Minutes.

Motion was made by Dennis Solberg and seconded by Dana Jones to approve the minutes from the March 26, 2013 meeting. Motion carried.

### Consideration of Development Agreements:

Tom Drake reviewed four development agreements for new plats. The purpose of the development agreements is to establish responsibility for infrastructure improvements.

**a. Hosanna Church Addition:** This is seven acres of land north of 14<sup>th</sup> Avenue North, just east of 15<sup>th</sup> Street. The developer will ultimately be responsible for the installation of ½ of the improvements to 15<sup>th</sup> Street East from 14<sup>th</sup> Avenue to the north edge of the plat. Motion was made by Dennis Solberg and seconded by Dana Jones to recommend approval of the development agreement. Motion carried.

**b. Prairie View Addition:** This area is in the northeast part of town, just south of 14<sup>th</sup> Avenue and east of East Woods Additions. Required street improvements by the developer include ½ the cost of 14<sup>th</sup> Avenue from the existing pavement to 27<sup>th</sup> Street NE, and all of the cost to improve 27<sup>th</sup> Street NE and an extension of Cherry Drive, all to be constructed as urban sections. Cost estimates for improving all three streets were handed out. The engineering consultant recommends the installation of a full street on 14<sup>th</sup> Avenue to control drainage. One half of the cost of installing a full street would be the responsibility of the City, at an approximate cost of \$144,000.00. A decision will need to be made whether or not to extend the improvements to the west and how to phase in the improvements. A discussion ensued regarding half streets and full streets in new developments. The policy has been to build half streets at the developer's expense, but at times it makes sense to build a full street with the city funding the other half. A cost recovery can then be set up to recover the costs at a later date. After discussion, motion was made by Mike Danforth and seconded by Bill Rieffenberger to recommend approval of the development agreement. Motion carried.

**c. Prairie Hills Development Second Addition:** This area is east of Hidden Valley Addition at the lake. It is being replatted to include a cul-de-sac entitled Prairie Hills Circle, to be constructed and funded by the developer. The zoning will be determined with the approval of the plat. Motion was made by Mike Danforth and seconded by Bill Rieffenberger to recommend approval of the development agreement. Motion carried.

**d. Marvined Second Addition:** This area is north of Willow Creek Drive and east of 19<sup>th</sup> Street East. The developer will plat a 66' right-of-way to the city on the east side, and 10' of right-of-way along Willow Creek Drive. In exchange, the City will vacate 5' of the land acquired previously for the Willow Creek Drive right-of-way. This land was intended to be used when the intersection was widened, but instead the intersection was widened on the south side of Willow Creek Drive. The City would also vacate 20' of the original 132.5' of utility easement on the east end of the development. The developer will install sanitary sewer services for each lot

served. Motion was made by Mike Danforth and seconded by Bill Rieffenberger to recommend approval of the development agreements. Motion carried.

**Discussion on Sanitary Sewer Connection Fees.**

Proposed Ordinance No. 13-11 was distributed to the committee for their consideration. This ordinance amends Chapter 17.02 of the Ordinances by adding a sewer trunkline connection fee. Currently there are 28 different assessment resolutions pertaining to different areas of town, and it is becoming difficult to keep track of them. The new system will provide a standardized system that is fairer across the board, and will make it easier to inform developers of these costs up front. The existing tapping fee is also included in the ordinance revision. Currently the tapping charges are set by a separate resolution, and this ordinance revision will enable those fees to be included in the fee resolution with the other city fees that the council adopts annually. Staff will return to the next Public Works Committee meeting with the fee resolution. Motion was made by Dennis Solberg and seconded by Mike Danforth to recommend approval of Ordinance No. 13-11. Motion carried.

***Old Business***

None

***New Business***

None

***Executive Session***

None

Motion made by Mike Danforth and seconded by Dennis Solberg to adjourn meeting at approximately 1:00 p.m.

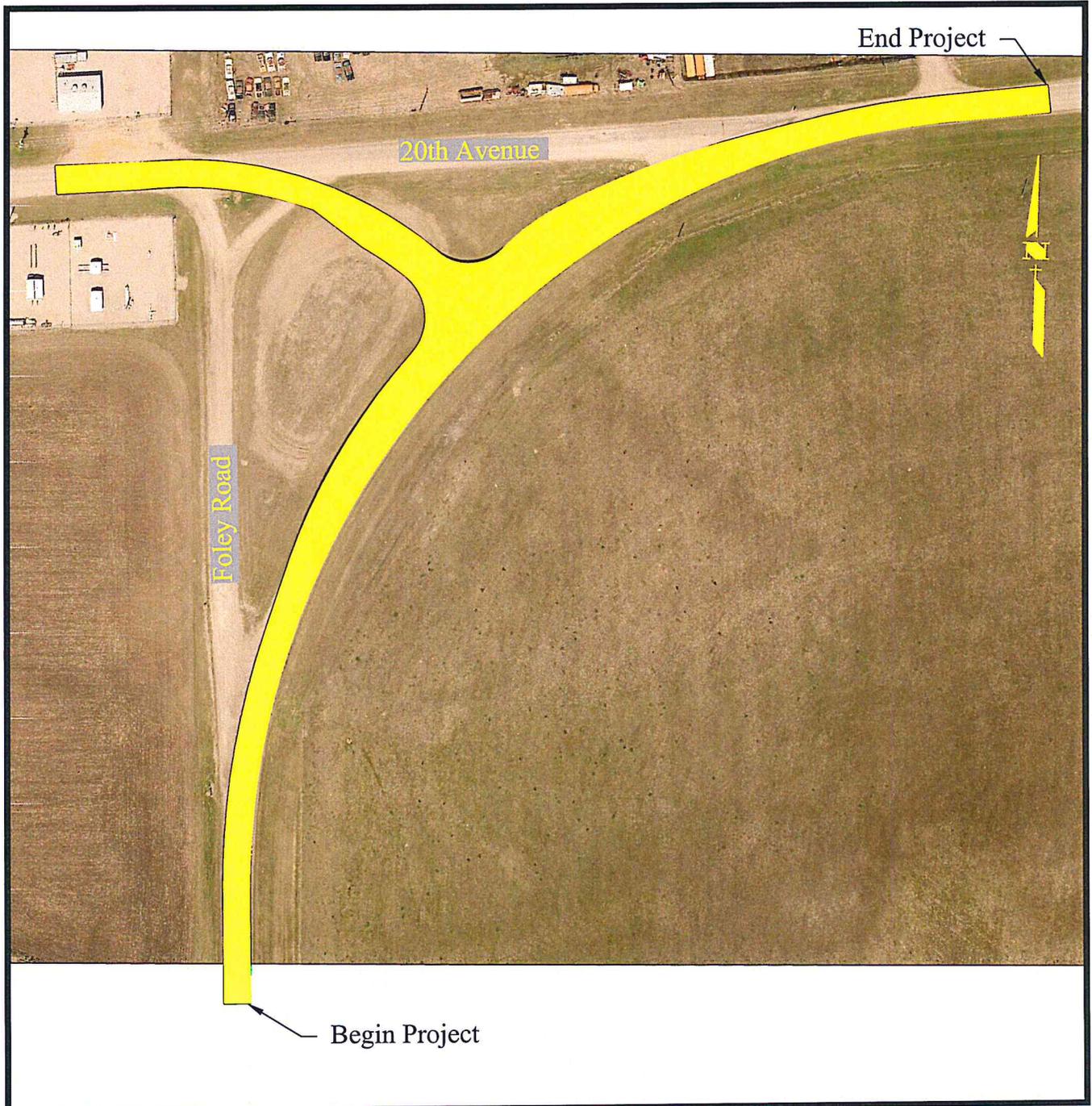
Respectfully submitted,  
Lori Marscheider

## Bid Results for 2013 Street Sweeper

Date & Time of Bid Opening: April 10, 2013, 10:00 am  
 No Trade-in

	<b>DMI</b>	<b>Sheehan Mack</b>	<b>Sanitation Products</b>
<b>Bid Price &amp; Description</b>	\$242,500.00 Swartz M6 Avalanche	\$248,000.00 Global 3000 \$177,000.00 Global S2000 Demo \$192,000.00 Global S2000 New	\$269,386.50 2012 Autocar chassis with Elgin Eagle sweeper
<b>Bid Bond</b>	Yes	Yes	Yes
<b>Acknowledgement of Revised Specs</b>	Yes	Yes	Yes

PROJECT MANUAL FOR THE  
20TH AVENUE SOUTH AND FOLEY ROAD  
INTERSECTION REALIGNMENT PROJECT  
WATERTOWN, SOUTH DAKOTA



G:\Projects\2013 Proj\13010 Watertown 20th Ave S & 7th St W Intersection Realignment\Design\13010 Fertilizer Plant Road Design - J.L.W.dwg, Spec Cover, 4/8/2013 2:13:32 PM, Justin

**CLARK**  
ENGINEERING CORPORATION

16 5th Street NE  
Watertown, SD 57201  
Phone: (605) 880-3122  
Fax: (605) 331-2602  
watertown@clark-eng.com  
Clark Project No. 13010

EOE

Document prepared by:  
Engineering Department  
23 2nd Street NE  
Watertown, SD 57201  
(605) 882-6202

## DEVELOPMENT AGREEMENT

THIS AGREEMENT IS MADE and entered into this \_\_\_\_ day of \_\_\_\_\_ 2013, by and between Joy C. Nelson and Peggy M. Haugan, hereinafter “Developer,” and the City of Watertown, a municipal corporation of the State of South Dakota, hereinafter ‘City’ and is subject to the following terms and conditions:

### 1. Recitals.

A. Developer certifies they are the owners of a tract of land described as *“the West 570.2’ of the North 681.9’ of the South Half of the Northeast Quarter, less Isler’s Addition, less the South 307.4’ of the North 1327.4’ of the East 601.4’ of the West 1150’ of the Northeast Quarter; and the unplatted portion of the South half of the Northwest Quarter; all in Section 28, T117N, R52W of the 5<sup>th</sup> P.M., in the County of Codington, South Dakota,* which upon annexation and platting shall be known as:

***“East Woods Seventeenth Addition to the Municipality of Watertown, Codington County, South Dakota.”***

B. Developer has caused the Plat of said property; and

C. A copy of the plat drawing is attached hereto and incorporated by reference; and

D. City subdivision regulations require that all infrastructure improvements essential to the proper development of any subdivision, or portion thereof, be completed by the subdivider or Developer at its sole expense and in accordance with applicable City standards; and

E. City subdivision regulations require, as a prerequisite to the approval of a plat, written assurances from the Developer fixing responsibility for said required improvements; and

F. Developer, in order to satisfy the conditions set forth above and in order to induce the City to approve and accept the plat attached hereto, and City hereby knowingly and voluntarily enter into this agreement.

G. This agreement is given for the benefit of the City as well as successors in interest of lots in the subdivision as shown on the plat.

### 2. Developer’s Obligations and Improvements Required.

A. Developer will install at its sole cost, unless otherwise specified herein, the improvements required in the Subdivision Ordinance of the City of Watertown in accordance with the final plans as approved by the City Engineer or the Municipal Utilities Department, as applicable.

B. Unless otherwise noted, the required improvements will be accepted as dedications to, and shall

become the property of the City, when completed to City standards to the satisfaction of the City Engineer.

The following streets are included in the required improvements:

- 1) 12<sup>th</sup> Avenue North from existing approximately 550 feet east (urban residential section)
- 2) Oak Drive from existing to 12<sup>th</sup> Avenue North (urban residential section).

A cost estimate of all required improvements is attached.

- C. Developer hereby agrees to maintain all public streets until such time that they are paved and all required improvements are completed to the satisfaction of the City Engineer.
- D. Developer shall install, or cause to be installed, sanitary sewer services to City standards to the property for each lot so served.
- E. Developer will, prior to installation, coordinate with the Watertown Municipal Utilities Department to ensure that the electric, natural gas, and water supply utilities are installed according to policies and standards established by the Department.
- F. Developer shall install, or cause to be installed, water services to the property line for each lot so served.
- G. Developer shall construct, or cause to be constructed, to City standards, all storm sewers, catch basins, drop inlets, drainage-ways and other related and required drainage. Drainage improvements will be made to ensure stabilization along all drainage courses during construction and permanently thereafter.
- H. Sidewalks are required to be installed in the public right-of-way adjacent to all lots. Developer intends to pass the responsibility for all other sidewalk installation onto the owners of individual lots. These sidewalks shall be installed in conjunction with any building permit issuance, however City reserves the right to order sidewalks installed when they have been installed on adjacent lots. If the Developer or any future owner fails to install such sidewalk the City shall assess their full cost as a petitioned improvement based on the waiver of right of protest included in this agreement. The Developer will be required to install all pedestrian ramps at the street intersections with the curb and gutter improvements. Said pedestrian ramps will need to comply with current ADA standards including the truncated dome detection. Developer will instruct each new lot owner of his or her responsibility to install the remainder of the sidewalks with the building permits or upon order of the City.
- I. Developer acknowledges the City has the power to make assessments for local improvements on property adjoining or benefited thereby, to collect same in the manner provided by law, and to fix, determine and collect penalties for nonpayment of any special assessment. The Developer agrees that if at any time in the future the City determines it is necessary or desirable to install aggregate base and grading, geo-textile fabric, concrete curb & gutter, bituminous paving, sidewalk, sanitary sewer and services, water main and services within or adjacent to the subdivision through an assessed project, the Developer or its heirs, assigns, or successors in interest, waive any right to object to such assessed project as allowed under state law in consideration for final approval of the subdivision plat without the immediate installation of said improvements. It is understood by the Developer that the City's primary consideration for granting approval of the subdivision plat on the herein described property and its forbearance from requiring Developer to immediately install aggregate base and grading, concrete curb and gutter, bituminous pavement, sidewalk, sanitary sewer and services, water services is the Developer's covenant and promise to waive any objection to the assessed project and its consent to the assessed project.
- J. No grading or other improvements shall take place until such time that a Stormwater Pollution

Prevention Plan (SWPPP) is completed and approved by the City Engineer and a General Permit for Stormwater Discharges Associated with Construction Activities is obtained from the State DENR.

- K. Developer shall implement the Erosion Control Plan approved by the City Engineer. Developer agrees to maintain the erosion control devices and employ additional measures as necessary if the installed measures fail to retain soil on the site, until such time as the site is fully stabilized.
  - L. Developer acknowledges that substantial fill and grading will be required for development of the individual lots within the subdivision, and intends to pass the responsibility for fill and grade onto the owners of individual lots who will perform the necessary work in conjunction with building permit issuance. Developer will instruct each new lot owner of his or her responsibility.
  - M. Developer acknowledges that Watertown's Revised Ordinances contain minimum requirements pertaining to park dedication in conjunction with annexation of property intended for residential use. This requirement will be satisfied by future land dedication for a park. The Park Board has made the decision to accept a donation of land. This is calculated to be 19,384 sf based on 5% of the 387,684 sf of land requested for platting. Actual park location will be determined in the next preliminary plan review.
  - N. Developer agrees to pay their pro-rata share of the cost recovery for land acquisition associated with the implementation of the Willow Creek Tributaries Drainage Master Plan prior to the recording of the plat. This has been calculated to be approximately \$6,513.64 but is subject to change based on the Consumer Price Index at the time of platting.
3. General Provisions.
- A. All required improvements shall be installed to the satisfaction of the City Engineer within five (5) years of the date this instrument is recorded with the Codington County Register of Deeds. Notwithstanding any contrary provision in either statute or ordinance, including those relating to the passage of time, Developer acknowledges and agrees that all terms and conditions contained herein shall remain a continuing obligation until satisfaction or completion. The City may complete any required improvements not installed within this prescribed timeframe with the associated costs being equitably assessed to the Developer and/or heirs, assigns, or successors in interest of the Developer.
  - B. All of the terms and conditions herein shall extend to and be binding upon the heirs, assigns, or successors in interest of the Developer, and are to be deemed a covenant running with the above described property. Furthermore, it is agreed that, in accepting title to the above described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this agreement which shall, upon its execution, be recorded with the Codington County Register of Deeds Office contemporaneously with the plat and pursuant to the provisions of South Dakota law.
  - C. City may undertake any legal or equitable action available to enforce the provisions of this agreement in addition to any other remedy provided herein. In the event the City is required to undertake any action to enforce the terms of this agreement or its subdivision regulations in connection with this agreement, the Developer, their heirs, assigns or successors in interest agree the City may recover its reasonable expenses, including attorney's fees incurred with respect to such action.
  - D. Should any section or provision of this agreement be declared invalid for any reason whatsoever by any court of competent jurisdiction, such invalidity shall not affect any other section or provision of this agreement in the event such remaining provisions can be given effect without those sections having been declared invalid.

- E. This agreement shall be construed according to the laws of the State of South Dakota. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.
- F. If a Developer is a corporation, it hereby warrants that it has the authority to enter into this agreement for and on behalf of its officers and/or directors.

4. Street Maintenance and Acceptance

A. Maintenance of Gravel Streets Under Development

For streets under construction the Developer will provide minimum maintenance and snow removal on gravel and first lift asphalt streets to provide minimum vehicular passage and provide minimum street sweeping on asphalt streets. If there is any damage to manholes, valves, curb and gutter, valley gutters, or other appurtenances, repairs shall be done at the developer's expense. Gravel streets will be allowed through one winter season only. The City will take over maintenance upon completion of the final lift of asphalt and written acceptance by the City.

B. Completion of Final Lift on Street

No sooner than one year after the first lift has been applied or at any time when requested by the City of Watertown, the developer shall place the final lift of asphalt on the street. Prior to this action, the developer will notify the City and state its intentions. The City Engineer will inspect the improvements and make an inspection report to the developer as to the necessary work needed for the project to meet City specifications. This inspection report will encompass all aspects of the water, sewer, storm sewer, curb and gutter, valley or any other part of the construction as provided for in the preliminary plan as approved. Adjustments or repairs will be the responsibility of the developer and shall be made prior to the placement of the final lift.

C. Final Acceptance of Improvements

After the Developer deems that all the street and utility improvements have been completed and has placed the final lift of asphalt, the developer will notify the City in writing that the street is completed. The City Engineer will then inspect all the improvements and inform the developer of any deficiencies. And those deficiencies shall be remedied by the developer at the developer's expense. Prior to final acceptance the Developer shall furnish a complete set of "As-Built" drawings in AutoCAD format to the City Engineer. Upon the recommendation of the City Engineer, the City will then issue a Certificate of Completion noting any deficiencies and setting a date as to when the one year warranty will end.

D. Developer's Warranty Responsibilities

The developer shall warranty the water, sewer, storm sewer, curb and gutter, valley or any other part of the construction specified in the preliminary plan for a period of one year from the date as stated in the Certificate of Completion. Prior to the end of the one-year warranty period the City Engineer will inspect the improvements and report his findings to the City Council. The City Council shall by resolution confirm or reject the Acceptance Certificate. If confirmed, the developer's responsibility for the improvements ends and the improvements become the responsibility of the City. If any portion is rejected, the developer will repair or replace the rejected portion and a one (1) year warranty period will begin again on the rejected portion and the developer shall again comply with the provisions as stated in this ordinance.

**DEVELOPER:**

**CITY OF WATERTOWN:**

\_\_\_\_\_  
Joy C. Nelson

\_\_\_\_\_  
Gary Williams, Mayor

\_\_\_\_\_  
Peggy M. Haugan

ATTEST:

\_\_\_\_\_  
Rochelle M. Ebbers  
Finance Officer

(SEAL)

State of South Dakota )

)SS:

County of Codington )

On this the \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned officer, personally appeared Gary Williams and Rochelle M. Ebbers, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Watertown, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:

State of South Dakota )

)SS:

County of Codington )

On this the \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned officer, personally appeared Joy C. Nelson and Peggy M. Haugan, known to me or satisfactorily proven to be the persons whose names are subscribed to within this instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:

Document prepared by:  
Engineering Department  
23 2nd Street NE  
Watertown, SD 57201  
(605) 882-6202

## DEVELOPMENT AGREEMENT

THIS AGREEMENT IS MADE and entered into this \_\_\_\_ day of \_\_\_\_\_ 2013, by and between Glacial Lakes Capital, LLC, 100 22<sup>nd</sup> Avenue, Brookings, SD 57006, Donald L. Endres, CEO, hereinafter “Developer,” and the City of Watertown, a municipal corporation of the State of South Dakota, hereinafter ‘City” and is subject to the following terms and conditions:

### A. RECITALS

1. Developer certifies he is the owner of a tract of land described as *a replat of Willow Creek Plaza Second Addition in the County of Codington, South Dakota*, which upon annexation and platting shall be known as:

***“Willow Creek Village Second Addition to the Municipality of Watertown, Codington County, South Dakota.”***

and that he or she has the legal authority to enter into this agreement.

2. Developer has caused the Plat of said property; and
3. A copy of the plat drawing is attached hereto and incorporated by reference; and
4. City subdivision regulations require that all infrastructure improvements essential to the proper development of any subdivision, or portion thereof, be completed by the Developer; and
5. City subdivision regulations require, as a prerequisite to the approval of a plat, written assurances from the Developer fixing responsibility for the required improvements; and

### B. DEVELOPER’S OBLIGATIONS AND IMPROVEMENTS REQUIRED

1. General
  - a. Developer agrees to install, or cause to be installed, the following subdivision improvements: street base and surface, water lines, sanitary sewer, storm sewer and drainage, sidewalk/trail; and all other improvements necessary to develop the area in accordance with the Subdivision Regulations, Engineering Design Standards and Specifications, Zoning Ordinance, and all other applicable ordinances of the City. All public improvements shall be installed in accordance with the Construction Plans filed with and approved by the City Engineer.
  - b. A cost estimate of all required improvements is attached as Exhibit A.
  - c. Unless otherwise noted, required improvements will be accepted as dedications to, and shall become the property of the City, when completed to City standards to the satisfaction of the City Engineer.

## 2. STREETS

- a. The following streets are included in the required improvements:
  - 1) 23<sup>rd</sup> Street E from Hwy 212 to 8<sup>th</sup> Avenue SE (urban commercial section)
  - 2) 8<sup>th</sup> Avenue SE from 23<sup>rd</sup> Street SE to east edge of Plat (urban commercial section)
  - 3) Hwy 212 turn lanes at 23<sup>rd</sup> Street (arterial rural section)
- b. The City will reimburse the Developer for costs of furnishing and installing the box culvert under the 23 Street which is estimated at                     .
- c. All streets shall be constructed in each and every right-of-way platted and shall be built to the exterior lot line of the subdivision and constructed with a temporary turn around as directed by the City Engineer.

## 3. SANITARY SEWER

- a. Developer shall install, or cause to be installed, sanitary sewer and services to the property for each lot served.
- b. Highway 212 Trunk Line Sewer assessment of \$4,873.68 is due and payable before building permit can be issued.

## 4. STORM SEWER AND DRAINAGE

- a. Developer shall construct, or cause to be constructed, to City standards, all storm sewers, catch basins, drop inlets, culverts, drainage-ways and other related and required drainage improvements.
- b. Developer shall comply with City Stormwater regulations found in Title 23 of the City Ordinances.
- c. Major drainage improvements shall be constructed during the first phase of the development including, but not limited to the detention and retention basins and necessary downstream improvements.

## 5. MUNICIPAL UTILITIES

- a. Developer will, prior to installation, coordinate with the Watertown Municipal Utilities Department to ensure that the electric, natural gas, and water supply utilities are installed according to policies and standards established by the Department.
- b. Developer shall install, or cause to be installed, water services to the property line for each lot so served.

## 6. GRADING AND EROSION CONTROL

- a. No grading or other improvements shall take place until such time that a Stormwater Pollution Prevention Plan (SWPPP) is completed and approved by the City Engineer and a General Permit for Stormwater Discharges Associated with Construction Activities is obtained from the State DENR.
- b. Developer shall implement the Erosion Control Plan approved by the City Engineer. Developer agrees to maintain the erosion control devices and employ additional measures as necessary if the installed measures fail to retain soil on the site, until such time as the site is fully stabilized.

- c. Developer acknowledges that substantial fill and grading will be required for development of the individual lots within the subdivision, and intends to pass the responsibility for fill and grade onto the owners of individual lots who will perform the necessary work in conjunction with building permit issuance. Developer will instruct each new lot owner of his or her responsibility.
- d. All structures built within the subdivision must comply with the National Flood Insurance Program requirements. Lowest floor elevations, including basements and crawlspaces must be elevated at least one foot above the base flood elevation.

#### 7. SIDEWALKS AND RECREATION TRAIL

- a. Developer shall install, or cause to be installed, five (5) foot wide sidewalks in all public right-of-ways adjacent to all lots. The Developer may elect to provide an alternate path for pedestrian travel through the subdivision to be approved by the City Engineer.
- b. Developer may pass the responsibility for sidewalk installation onto the owners of individual lots. The Developer will instruct each new lot owner of his or her responsibility to install the sidewalks in conjunction with the building permits or upon order of the City.
- c. The City reserves the right to order sidewalks installed when they have been installed on adjacent lots. If the Developer or any future owner fails to install such sidewalk the City shall assess their full cost as a petitioned improvement based on the waiver-of-right-to-protest included in this agreement.
- d. Developer shall install all pedestrian ramps at street intersections with the curb and gutter improvements. Ramps will need to comply with current ADA standards, including the truncated dome detection.

#### C. GENERAL PROVISIONS

- 1. All required improvements shall be installed to the satisfaction of the City Engineer within five (5) years of the date this instrument is recorded with the Codington County Register of Deeds. This time frame may be extended by mutual agreement of both parties. Notwithstanding any contrary provision in either statute or ordinance, including those relating to the passage of time, Developer acknowledges and agrees that all terms and conditions contained herein shall remain a continuing obligation until satisfaction or completion.
- 2. City may undertake any legal or equitable action available to enforce the provisions of this agreement in addition to any other remedy provided herein. In the event the City is required to undertake any action to enforce the terms of this agreement or its subdivision regulations in connection with this agreement, the Developer, their heirs, assigns or successors in interest agree the City may recover its reasonable expenses, including attorney's fees incurred with respect to such action.
- 3. Developer acknowledges the City has the power to make assessments for local improvements on property adjoining or benefited thereby, to collect same in the manner provided by law, and to fix, determine and collect penalties for nonpayment of any special assessment. The Developer agrees that if at any time in the future the City determines it is necessary or desirable to install aggregate base and grading, geo-textile fabric, concrete curb & gutter, bituminous paving, sidewalk, sanitary sewer and services, water main and services within or adjacent to the subdivision through an assessed project, the Developer or its heirs, assigns, or successors in interest, waive any right to object to such assessed project as allowed under state law in consideration for final approval of the subdivision plat without the immediate installation of said improvements. It is understood by the Developer that the City's primary consideration for

granting approval of the subdivision plat on the herein described property and its forbearance from requiring Developer to immediately install aggregate base and grading, concrete curb and gutter, bituminous pavement, sidewalk, sanitary sewer and services, water services is the Developer's covenant and promise to waive any objection to the assessed project and its consent to the assessed project.

4. All of the terms and conditions herein shall extend to and be binding upon the heirs, assigns, or successors in interest of the Developer, and are to be deemed a covenant running with the above described property. Furthermore, it is agreed that, in accepting title to the above described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this agreement which shall, upon its execution, be recorded with the Codington County Register of Deeds Office contemporaneously with the plat and pursuant to the provisions of South Dakota law.
5. Should any section or provision of this agreement be declared invalid for any reason whatsoever by any court such invalidity shall not affect any other section or provision of this agreement in the event such remaining provisions can be given effect without those sections having been declared invalid.
6. This agreement shall be construed according to the laws of the State of South Dakota. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

#### **D. MAINTENANCE AND ACCEPTANCE**

##### **1. Maintenance of Gravel Streets Under Development**

For streets under construction the Developer will provide minimum maintenance and snow removal on gravel and first lift asphalt streets to provide minimum vehicular passage and provide minimum street sweeping on asphalt streets. If there is any damage to manholes, valves, curb and gutter, valley gutters, or other appurtenances, repairs shall be done at the Developer's expense. Gravel streets will be allowed through one winter season only. The City will take over maintenance upon completion of the final lift of asphalt and written acceptance by the City.

##### **2. Completion of Final Lift on Street**

No sooner than one year after the first lift has been applied or at any time when requested by the City, the Developer shall place the final lift of asphalt on the street. Prior to this action, the Developer will notify the City and state its intentions. The City Engineer will inspect the improvements and make an inspection report to the Developer as to the necessary work needed for the project to meet City specifications. This inspection report will encompass all aspects of the water, sewer, storm sewer, curb and gutter, valley or any other part of the construction as provided for in the preliminary plan as approved. Adjustments or repairs will be the responsibility of the Developer and shall be made prior to the placement of the final lift.

##### **3. Final Acceptance of Improvements**

After the Developer deems that all the street and utility improvements have been completed and has placed the final lift of asphalt, the Developer will notify the City in writing that the street is completed. The City Engineer will then inspect all the improvements and inform the Developer of any deficiencies. And those deficiencies shall be remedied by the Developer at the Developer's expense. Prior to final acceptance the Developer shall furnish a complete set of "As-Built" drawings in AutoCAD format to the City Engineer. Upon the recommendation of the City Engineer, the City will then issue a Certificate of Completion noting any deficiencies and setting a date as to when the one (1) year warranty will end.

4. Developer's Warranty Responsibilities

The Developer shall warranty the water, sewer, storm sewer, curb and gutter, valley or any other part of the construction specified in the preliminary plan for a period of one year from the date as stated in the Certificate of Completion. Prior to the end of the one (1) year warranty period the City Engineer will inspect the improvements and report his findings to the City Council. The City Council shall confirm or reject the Acceptance Certificate. If confirmed, the Developer's responsibility for the improvements ends and the improvements become the responsibility of the City. If any portion is rejected, the Developer will repair or replace the rejected portion and a one (1) year warranty period will begin again on the rejected portion and the Developer shall again comply with the provisions as stated in this agreement.

DRAFT

**DEVELOPER:**  
Glacial Lakes Capital, LLC

**CITY OF WATERTOWN:**

\_\_\_\_\_  
Donald L. Endres

\_\_\_\_\_  
Gary Williams, Mayor

100 22<sup>nd</sup> Avenue  
Brookings, SD 57006  
Phone; (605) 696-7201

ATTEST:

\_\_\_\_\_  
Rochelle M. Ebbers  
Finance Officer

(SEAL)

State of South Dakota )

)SS:

County of Codington )

On this the \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned officer, personally appeared Gary Williams and Rochelle M. Ebbers, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Watertown, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:

State of South Dakota )

)SS:

County of Codington )

On this the \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned officer, personally appeared Donald L. Endres, known to me or satisfactorily proven to be the person whose name is subscribed to within this instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires: