

**PROPOSED AGENDA
CITY COUNCIL REGULAR MEETING
CITY HALL
23 SECOND STREET NORTHEAST
WATERTOWN, SOUTH DAKOTA**

Tuesday, July 5th, 2016

7:00 PM

Call to Order

Prayer

Pledge of Allegiance

Roll Call

1. Approval of consent agenda
 - a. Approval of the minutes of the Council meetings held on June 20, 2016
 - b. Authorization to write-off uncollectible ambulance accounts receivable in the amount of \$12,806.89
 - c. Authorization for the Fire Department to apply for a grant from Homeland Security for upgrading digital radio communications and a thermal imaging camera
 - d. Approval of bills & payroll and authorization to pay
2. Approval of agenda
3. Approve appointment of City Attorney
4. Election of Officers
 - a. Council President
 - b. Council Vice President
5. Application for a transfer of ownership and location of a retail (on-off sale) malt beverage license from Harry's Haircuts and Hot Towels, LLC. (inactive) at 1522 Parkview Drive to Binde Enterprises, Inc., d/b/a Highway 81 Liquors, 507 Arrow Ave. NE
 - a. Public hearing
 - b. Council action
6. Second reading of Ordinance No. 16-10 amending zoning district boundaries by rezoning property from PUD Planned Unit Development, Single Family Attached Residential District, and I-1 Light Industrial to A-1 Agricultural District
 - a. Public hearing
 - b. Council action
7. Vacation of a portion of alley adjacent to Block 2 of Lake View Addition
 - a. Public hearing
 - b. Council action
8. First reading of Ordinance No. 16-08 amending Section 3.0101, 3.0109, 3.0110 and 3.0112 of Title 3 regarding Animals, Poultry, Etc. for the City of Watertown
9. Vacation of a portion of Public Right of Way adjacent to South Lake Drive (Resolution No. 16-22)
10. Renewal of the Cable Communication Franchise Agreement with the City of Watertown

11. Consideration of Change Order No. 2 to the contract with Industrial Process Technology, Inc. for the Ultraviolet Disinfection Improvements Project and authorization to issue final payment in the amount of \$25,287.93
12. Discussion on hiring a marketing firm for retail development in Watertown
13. Old Business
14. New Business
15. Liaison member reports
16. Executive Session pursuant to SDCL 1-25-2
17. Motion to adjourn

Rochelle M. Ebbers, CPA

Finance Officer

The City of Watertown, South Dakota does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

ADA Compliance: The City of Watertown fully subscribes to the provisions of the Americans with Disabilities Act. If you desire to attend this public meeting and are in need of special accommodations, please notify the City Finance Office 24 hours prior to the meeting so that appropriate auxiliary aids and services are available.

**OFFICIAL PROCEEDINGS
CITY COUNCIL, CITY OF
WATERTOWN, SOUTH DAKOTA**

June 20, 2016

The City Council met in regular session at 7:00 PM in the Council Chambers, City Hall, 23 2nd Street NE. Mayor Steve Thorson presiding. Present upon roll call: Aldermen Solum, Thorson, Danforth, Roby, Rieffenberger, Buhler, Tupper, Vilhauer, Albertsen and Alderwoman Mantey.

Motion by Solum, seconded by Buhler, to approve the following item on the consent agenda: minutes of the Council Meeting held on June 6, 2016; authorization to declare police vehicle in the Street Department as surplus and donate to the LATI Law Enforcement Program; authorization for the Finance Office to disburse funds to BZ-Sandland Welding for work completed at the Zoo in the amount of \$18,363.30; summary of surplus breakdown; approval of business license for Midwest Grease as a Liquid Waste Hauler (\$100) and approval of list of Camp Chance Volunteers for Workers Compensation Coverage. Motion carried.

Mayor Thorson removed Ordinance No. 16-08 from the agenda. Motion by Buhler, seconded by Vilhauer to approve the agenda as amended. Motion carried.

This being the time scheduled for the public hearing on the renewal of a (on-off sale) malt beverage license for Mario Santos Guzman d/b/a San Miguel Ristorante, 715 9th Ave. SE, Lots 16-21, Blk 28, Brocks Addn, for the period of July 1, 2016 to June 30, 2017; the Mayor called for public comment. Hearing no comment from the public, motion by Tupper, seconded by Roby, to approve the license as presented. Motion carried.

This being the time scheduled for the public hearing on Resolution No. 16-22 for vacation of a portion of Public Right of Way adjacent to South Lake Drive, the Mayor called for public comment. Hearing no comment from the public, motion by Tupper, seconded by Buhler, to defer Council action on Resolution No. 16-22 until the July 5th council meeting. This will allow time for the Plan Commission to make a recommendation to the Council on the Vacation request. Motion carried with Roby recused.

Ordinance No. 16-11 amending Section 6.0501 (Veteran's Burial Plots within Mount Hope Cemetery) of the Revised Ordinances of the City of Watertown was placed on its second reading and the title was read. Motion by Albertsen, seconded by Mantey, to approve Ordinance No. 16-11 as presented. Motion carried.

Ordinance No. 16-10 amending zoning district boundaries by rezoning property from PUD Planned Unit Development, Single Family Attached Residential District, and I-1 Light Industrial to A-1 Agricultural District was placed on its first reading and the title was read. No action was taken.

Motion by Mantey, seconded by Solum, to approve the amendment to the Development Agreement for the Kampeska Dunes 2nd Addition. All voted against, motion failed.

Motion by Danforth, seconded by Roby, to approve Change Order No. 1 to the contract with Bates Construction Company Inc. for the Watertown Regional Landfill Cell #6 Construction project increasing the contract amount by \$3,000. Motion carried.

Motion by Tupper, seconded by Danforth, to go into executive session for the purpose of discussing contract negotiations. Motion carried.

Motion by Danforth, seconded by Tupper, to reconvene in open session. Motion carried.

Motion by Solum, seconded Buhler, to adjourn until 7:00 PM on Tuesday, July 5, 2016. Motion carried.

The City of Watertown, South Dakota does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of service.

Dated at Watertown, South Dakota, the 20th day of June, 2016.

ATTEST:

Rochelle Ebbers, CPA
Finance Officer

Steve Thorson
Mayor

**AMBULANCE MANAGEMENT
WRITE-OFFS / CREDIT BUREAU OR COURT
June 2016**

<u>Call No.</u>	<u>Amount</u>
32623	655.40
32985	860.90
33080	772.95
32952	89.47
32672	799.85
32420	756.60
32440	44.00
33151	764.85
32885	787.80
32742	732.00
32866	693.45
33250	660.80
33288	660.80
32967	701.60
32082	606.60
32183	596.00
31819	72.47
32769	225.81
32413	50.91
32421	50.91
33056	832.25
33043	110.53
33046	79.34
32468	484.10
33114	717.50
	12806.89

Approved:

Mayor

Finance officer

Request for City Council Action

TO: Mayor and City Council
FROM: Finance Office
MEETING DATE: June 20, 2016
SUBJECT: Application for transfer of ownership and location of an on-off sale malt beverage license

Background: The on-off sale malt beverage license with video lottery currently held as inactive by Harry's Haircuts and Hot Towels, LLC is being transferred to Binde Enterprises, Inc. with the location of 507 Arrow Ave. NE. Mr. Binde is adding on to the north side of Highway 81 Liquors. The license will be used in the new section and 7 lottery machines will be added to the location. The application was approved by the Board of Adjustment.

Council Action Requested: Motion to approve the transfer of the on-off sale malt beverage license.

Date Received _____
Date Issued _____

License No. RB-3251

Uniform Alcoholic Beverage License Application

Mail this copy to: Department of Revenue, Special Tax Division 445 East Capitol Ave Pierre, SD 57501-3100.

A. Owner Name and Address

Binde Enterprises, Inc
567 Arrow Ave NE
Watertown, SD 57201

Owner's Telephone #: 886-9961

B. Business Name and Address

Highway 81 Liquors
567 Arrow Ave NE

License Number: RB-3251

Business Telephone #: 886-9961

C. Indicate the class of license being applied for
(submit separate application for each class of license).

- Retail (on-sale) Liquor
- Retail (on-sale) Liquor - Restaurant
- Retail (on-off sale) Wine
- Package (off-sale) Liquor
- Retail (on-off sale) Malt Beverage
- Retail (on-off sale) Malt Beverage & SD Farm Wine
- Package (off sale) Malt Beverage
- Package (off sale) Malt Beverage & SD Farm Wine
- Other (please classify) _____
- Transfer Fee \$150.00

Number of other Package Liquor Licenses held: 1

Number of other On-sale Liquor Licenses held: 0

Is this License in active use? Yes No

D. Legal description of licensed premise:

W90' of Lots 6-8, Blk 19, R E.
Pettigrew's Addn

Have you ever been convicted of a felony? Yes No

Do you own or lease this property? (Check one)

E. State Sales Tax Number: 1018-0328-ST

F. Remember to obtain a Federal Alcohol Stamp, for help call TTB at 1-800-937-8864.

G. New license? Transfer? (\$150) Re-issuance?

H. CERTIFICATE: The undersigned applicant certifies under the penalties of perjury that all statements provided herein are true and correct; that the said applicant complies with all of the statutory requirements for the class of license being applied for and in addition agrees to permit agents of the Department of Revenue access to the licensed premises and records as provided in SDCL 35-2-2.1, and agrees this application shall constitute a contract between applicant and the State of South Dakota entitling the same or any peace officers to inspect the premises, books and records at any time for the purpose of enforcing the provisions of Title 35 SDCL, as amended.

Date 6-28-16 Print Name [Signature] Signature Troy A Binde

I. Any Application required to be submitted to a local governing board must be signed in the presence of the city or county auditor, the town clerk or notary public. This applies to ALL applications EXCEPT the following: distillers, manufacturers, wholesalers, municipalities, airports, solicitors, dispensers, carriers, transportation companies, and farm wineries.

Place of business is located in a municipality? Yes No County: Codington

This application was subscribed and sworn to before me this 27th day of June 2016

Approving Officer's Telephone number 605 882-6203(18) Signature: [Signature]

J. APPROVAL OF LOCAL GOVERNING BODY - Notice of hearing was published on Jun 25, 2016. Public hearing on the application was held July 5, 2016, not less than SEVEN (7) days after official publication. The governing body by majority vote recommends the approval and granting of this license and certifies that requirements as to location and suitability of premises and applicant have been reviewed and conform to the requirements of local and South Dakota law.

Application approved for Sunday on-sale operation? Yes No

Are real property taxes paid to date? Yes No

Ineligible for video lottery

Number of video lottery terminals on licensed premise: 7

Renewal - no public hearing held

Amount of fee collected with application \$ 540.00

Amount of fee retained \$ 465.00

Forwarded with application \$ 75.00

For Local Government Use

(Seal) _____
Mayor or Chairman

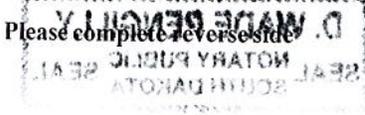
If disapproved, endorse reason thereon and return to applicant

Transferred (State Use)

From: _____

Sales tax approval _____ Date _____

STATE LIQUOR AUTHORITY: APPROVAL _____ REVIEW _____



**Company supplement information
(For corporate/partnership/LP/LLC applicants)**

If supplement unchanged from last year check this box and sign below.

State of South Dakota)

Affidavit

County of _____)

We, the undersigned, being first duly sworn upon oath, supply the following information:

Name of corporation/partnership/LP/LLC _____

Address of office and principal place of business of corporation/partnership/LP/LLC _____

Date of incorporation _____

Date of last report filed with Secretary of State _____

Are all managing officers of this corporation/partnership/LP/LLC of good moral character? _____

Have any of the managing officers of this corporation/partnership/LP/LLC ever been convicted of a felony? _____

Name, title of office, occupation and address of each of the officers/owners of the corporation, partnership, LP or LLC:

Name

Office

Address

Occupation

Name, address and occupation of each of the directors of the corporation:

Name

Address

Occupation

Name and address of each of the stockholders and percentage of shares owned or held by each:

Name

Address

Percentage of Shares

Name of any officers, directors, partners or stockholders of applicant having a financial interest or capital stock in any other retail liquor outlet:

Name

Type of License, Financial Interest Held, and Address of Retail Outlet

Where and with whom are all company records kept, such as charter, by-laws, minutes, accounts, notes payable, and notes and accounts receivable, etc?

With signature the applicant agrees to the following:

That the applicant company will comply with all provisions of ARSD chapter No. 64:75:02 of the Department of Revenue, relating to the transfer of stock and prior approval of the transfer of such stock by the Secretary of Revenue and violation of any of the provisions of said regulation or failure to comply therewith, whether by the undersigned corporation, partnership/LP/LLC or by any stockholder thereof, or by anyone interested in said company, shall constitute cause for revocation or suspension of any license issued pursuant to and in reliance on this application, or for refusal to renew such license upon expiration thereof.

We the undersigned officers and directors of the applicant company acknowledge that the within supplement application form is true and correct in every respect and that there exists no financial arrangement concerning this or any other alcoholic beverage license than that expressly set forth above. If company stock is to be transferred we ask for approval of such voluntary stock transfer.

Signature of Authorized Officer/Director/Partner _____

Subscribed and sworn to before me this 27 of June, Codington County, State of South Dakota.

My commission expires 11-09-2018



D. Wade Pengilly
(Notary Public)

Request for City Council Action

TO: City Council
THROUGH: Steve Thorson, Mayor
FROM: Shane Waterman, City Engineer
MEETING DATE: June 9, 2016
SUBJECT: City Property – Rezone

Background: Lyons Park, north of the intersection of 3rd Avenue NW and 1st Avenue NW is primarily zoned PUD with some I-1 and R-2A Zoning. No PUD proposal is on file for the property, therefore no building permits can be issued for the property until a plan is updated or the property is suitably zoned. The Planning Commission initiated the rezoning of this property on April 21, 2016.

Facts:

1. Adjacent Zoning Designation:
 - A-1 Agricultural District (park) north.
 - R-2A Single Family Attached Residential District west.
 - A-1 Agricultural District (park); I-1 Light Industrial District east.
 - A-1 Agricultural District (park); I-1 Light Industrial District south.

2. Minimum Lot Requirements:

	<u>A-1</u>	<u>Current Property</u>
a. Min. Lot Area:	35 Acres	>35 Acres
b. Min. Lot Width:	400 ft	1,100 ft
c. Min. Front Yard:	30 ft	NA
d. Min. Side Yard:	25 ft	NA
e. Min. Rear Yard:	40 ft	NA

3. The properties will be able to conform with the A-1 District’s lot requirements.
4. Approval of the rezoning will allow the construction of structures accessory to the park(s) located on these parcels held under contiguous ownership by the City.

Action: City Council action on Ordinance 16 – 10

History: 04/21/16 City Council Initiated the Rezone
 06/09/16 City Council Public Hearing

Future: 06/20/16 City Council First Reading
 07/05/16 City Council Second Reading and Public Hearing
 07/09/15 Published – *if Approved*
 07/29/15 Effective

ORDINANCE NO. 16-10

An Ordinance Amending Zoning District Boundaries by Rezoning property from PUD Planned Unit Development, R-2A Single Family Attached Residential District, and I-1 Light Industrial to A-1 Agricultural District

BE IT ORDAINED by the City of Watertown and based on the report and recommendation of the City Plan Commission in its Resolution No. 2016-19, that real property legally described as:

Charles A. Todd Outlot to Watertown, South Dakota, in the Southwest Quarter of Section 30, T117N, R52W, of the Fifth P.M.; and

Trail Way Addition to the City of Watertown, South Dakota; and

Lots 4 & 5 of Trail Way Addition to the City of Watertown; and

Block 7, The West Addition, Blocks 4 – 7, to Watertown, Dakota Territory; and

Vacated Fourth Avenue North (formerly Second Avenue) lying North of Block 7, The West Addition, Blocks 4 – 7, to Watertown, Dakota Territory,

from its existing designation of *PUD Planned Unit Development* pursuant to Watertown Revised Ordinance §21.38 to *A-1 Agricultural District* pursuant to Watertown Revised Ordinance §21.12 and,

Block 4, The West Addition, Blocks 4 – 7, to Watertown, Dakota Territory; and

Block 3, The West Addition to Watertown, Dakota Territory, less road; and

Block 2, The West Addition to Watertown, Dakota Territory; and

Block 1, Davis Addition to Watertown, Dakota Territory,

from its existing designation of *R-2A Single Family Attached Residential District* pursuant to Watertown Revised Ordinance §21.18 to *A-1 Agricultural District* pursuant to Watertown Revised Ordinance §21.12 and,

Lot A of Charles A. Todd Outlot to Watertown, South Dakota, in the Southwest Quarter of Section 30, T117N, R52W, of the Fifth P.M.

from its existing designation of *I-1 Light Industrial District* pursuant to Watertown Revised Ordinance §21.32 to *A-1 Agricultural District* pursuant to Watertown Revised Ordinance §21.12.

BE IT FURTHER ORDAINED that the new zoning designation referenced above be extended and applied to the centerline of the adjacent public rights-of-ways.

BE IT FURTHER ORDAINED that the zoning map of the City of Watertown be so amended.

The above and foregoing Ordinance was moved for adoption by Alderperson _____, seconded by Alderperson _____, and upon voice vote motion carried, whereupon the Mayor declared the Ordinance duly passed and adopted.

I hereby certify that Ordinance 16-10 was published in the Watertown Public Opinion, the official newspaper of said City, on the ___ day of, _____ 2016.

Rochelle M. Ebbers, CPA

First Reading: June 20, 2016
Second Reading: July 5, 2016
Published: July 9, 2016
Effective: July 29, 2016

City of Watertown

Attest:

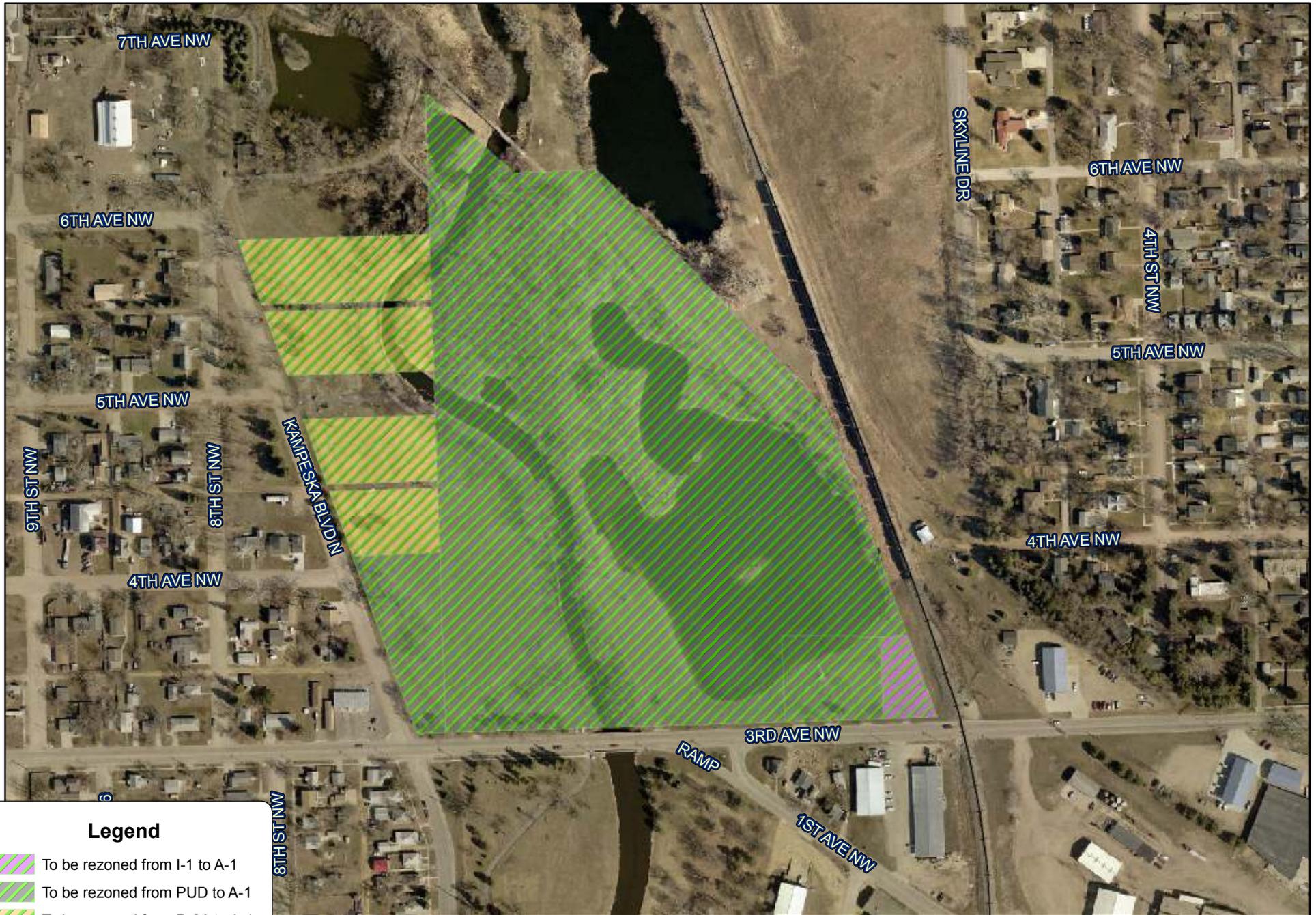
Rochelle M. Ebbers, CPA
Finance Officer

Steve Thorson
Mayor



1 inch = 300 feet

Vicinity Map Park Property Rezone



Legend

-  To be rezoned from I-1 to A-1
-  To be rezoned from PUD to A-1
-  To be rezoned from R-2A to A-1



Request for City Council Action

TO: City Council
FROM: Shane Waterman, City Engineer
MEETING DATE: July 5, 2016
SUBJECT: Vacating a portion of Alley adjacent to Block 2 of Lake View Addition

Petitioner: The Petitioner, Prairie Lakes Healthcare System, Owner of the adjacent properties

Background: Petitioner requests that a portion of alley adjacent to Block 2 of Lake View Addition be vacated from approximately 9th Ave NW south to the north Right of Way line of 7th Ave NW. The reason that the petitioner is requesting the vacation is the proposed construction of a new addition to the Prairie Lakes Hospital Facility.

Facts:

- The land adjacent to this stretch of alley is almost entirely owned by the Prairie Lakes Healthcare System.
- There is one privately owned property adjacent to the area requested for vacation. However, the City has been informed that a purchase agreement to acquire this property has been obtained by Prairie Lakes Healthcare System. A subsequent request to vacate the remainder of the alley is anticipated. Until the time of subsequent vacation utility easements will remain in place to serve Lot 2 & N1/2 Lot 3 Block 2 Lakeview Addition.
- The utility companies within the proposed vacation have been contacted and support the vacation of the alley. They will maintain all utility service within the alley until the final portion of the alley has been approved for vacation.

Recommendation: The Plan Commission recommended approval of the vacation.

Action: Plan Commission decision on Resolution 16-22

History: 06/03/16 Petition Received
06/23/16 Plan Commission Public Hearing
07/05/16 City Council Public Hearing and action

Future: 07/09/16 Published – *if Approved*
07/29/16 Effective

Prepared by:
Engineering Department
City of Watertown
23 Second Street NE
P.O. Box 910
Watertown, SD 57201
(605) 882-6201

RESOLUTION 16-24

A Resolution Vacating a portion of Alley adjacent to Block 2 of Lake View Addition

WHEREAS, Petition for Vacation of Public Right of Way, has been presented to the City Council of the City of Watertown, South Dakota. Said Public Right of Way petitioned for vacation is described as:

The alley adjacent to Lots 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, and the Southern Halves of Lots 3 and 18 within Block 2 of Lake View Addition as recorded in Codington County, South Dakota Plat Book AP, Pages 104 and 105.

WHEREAS, Prairie Lakes Healthcare System, the owner of all real property abutting the described Public Right of Way, has signed the Petition for Vacation indicating that they have reviewed the Petition and consent to the vacation of Public Right of Way described in the Petition;

WHEREAS, the City Plan Commission of the City of Watertown, South Dakota, has by Resolution 2016-22, approved said vacation, recommending to the City Council approval thereof;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Watertown, South Dakota, that the Public Right of Way described in the Petition be, and is hereby, declared vacated, retaining a utility easement over its entirety, as recommended by the City Plan Commission.

AND BE IT FURTHER RESOLVED that this Resolution shall be published, and upon taking effect, the Finance Officer is authorized to note the vacation on the City records and record this Resolution with the office of the Register of Deeds of Codington County.

Dated at Watertown, South Dakota, this ____ day of _____, 2016.

The above and foregoing Resolution was moved for adoption by Alderperson _____, seconded by Alderperson _____, and upon the roll call all voted aye whereupon the Mayor declared the resolution to be duly passed and adopted.

I hereby certify that Resolution 16-24 was published in the Watertown Public Opinion, the official newspaper of said City, on the ____ day of _____, 2016

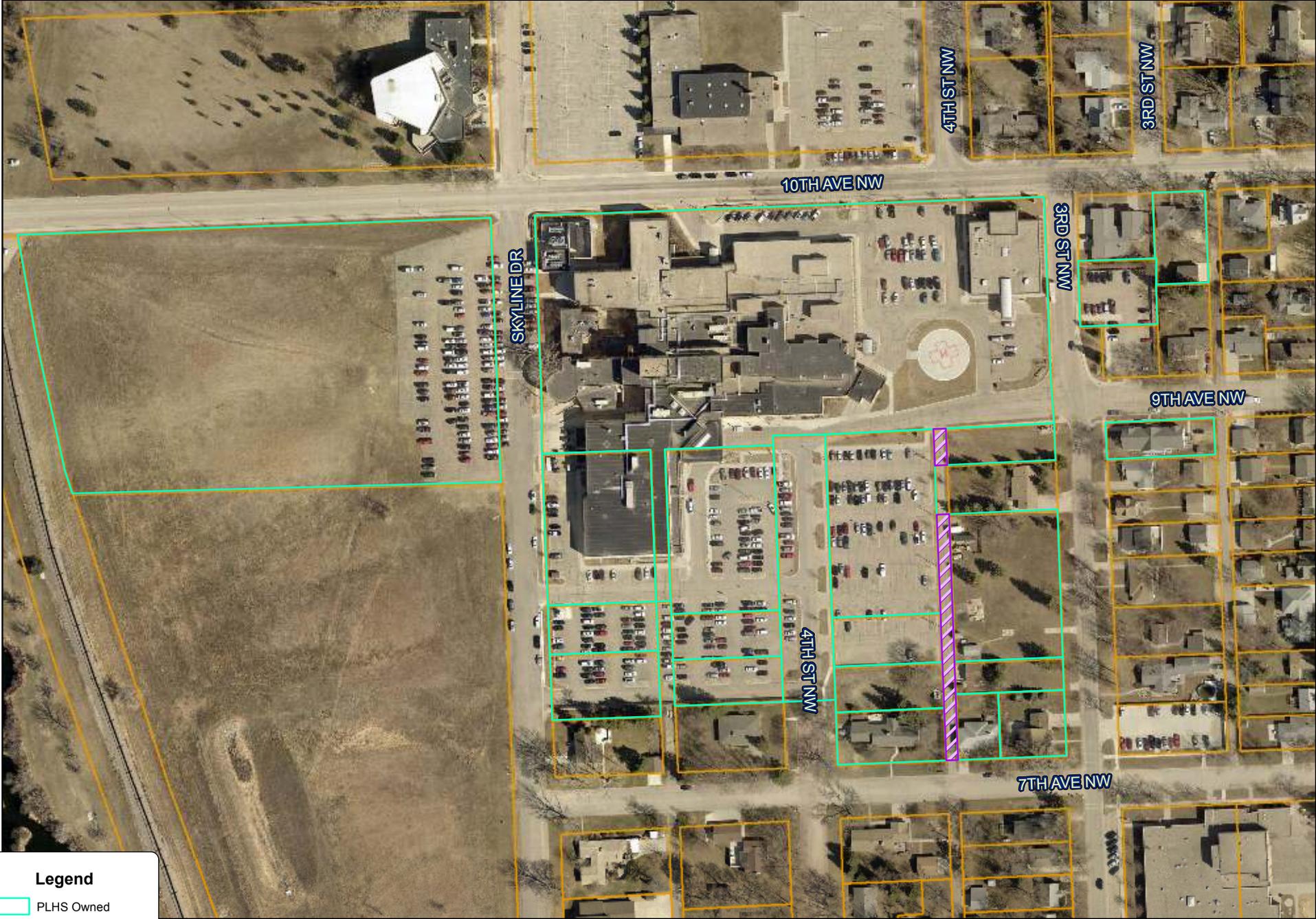
Rochelle M. Ebbers, CPA
City of Watertown

Attest:

Rochelle M. Ebbers, CPA
Finance Officer

Steve Thorson
Mayor

Vacation of Portion of Alley Block 2 Lake View Addition



Legend

-  PLHS Owned
-  Alley to be Vacated

Prepared by:

Brad Roath

HGA

420 North 5th Street, Suite 100

Minneapolis, MN 55401-2338

612-758-4570

PETITION FOR VACATION OF AN ALLEY ADJACENT TO LOTS 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, AND THE SOUTHERN HALVES OF LOTS 3 AND 18.

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF
WATERTOWN, CODINGTON COUNTY, SOUTH DAKOTA:

The undersigned, being the owner of all the real property abutting both sides of an alley hereinafter described, hereby petitions the City Council of Watertown, South Dakota, to vacate said alley pursuant to the statutes in such cases made and provided, particularly SDCL 9-45-7, et seq., and said Petitioner respectfully shows and represents the following:

1. The alley sought to be vacated is described as follows:

ALLEY ADJACENT TO LOTS 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, AND THE SOUTHERN HALVES OF LOTS 3 AND 18 WITHIN LAKE VIEW ADDITION, BLOCK 2 AS RECORDED IN CODINGTON COUNTY, SOUTH DAKOTA PLAT BOOK AP, PAGES 104 AND 105.

2. A figure depicting the alley proposed to be vacated is attached hereto and marked as Exhibit "A" and incorporated herein by reference.
4. Pursuant to SDCL 9-45-7, this petition is being submitted because the lots on both sides of the alley described herein are under common ownership.

WHEREFORE, Petitioner respectfully requests that the governing body of the City of Watertown, South Dakota, order this Petition filed with the City Finance office and direct that notice of the time and place when the Petition will be considered be given by publication once each week for two successive weeks, with the final publication being a minimum of 10 days prior to the public hearing; and, that upon said

hearing the governing body adopt a resolution vacating said alley, all according to the law in such cases being provided, and particularly under SDCL 9-45-7, et seq.

Dated at Watertown, South Dakota, this 3rd day of June, 2016.

By Joel Fuller - President & CEO, Prairie Lakes Healthcare System

State of South Dakota)

)SS:

County of Codington)

On this the 3rd day of June, 2016, before me, the undersigned officer, personally appeared **[Petitioner(s)]** known to me or satisfactorily proven to be the **[people]** whose name(s) 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.

Kristen Munger
Notary Public

(SEAL)

My Commission Expires: May 10, 2020

ORDINANCE NO. 16-08

**AN ORDINANCE AMENDING SECTIONS 3.0101, 3.0104, 3.0109, 3.0110, and 3.0112 OF
TITLE 3 ANIMALS, POULTRY, ETC. FOR THE CITY OF WATERTOWN**

BE IT ORDAINED by the City of Watertown that Sections 3.0101, 3.0104, 3.0109, 3.0110, and 3.0112 of the Revised Ordinances of the City of Watertown regulating animals, poultry, etc. be amended as follows:

**Chapter 3.01
GENERAL PROVISIONS**

Section

<u>3.0101</u>	<u>Definitions</u>
<u>3.0102</u>	<u>Running At-Large Prohibited</u>
<u>3.0103</u>	<u>Dogs and Cats on School Grounds or Municipally Controlled Public Parks and Recreation Areas</u>
<u>3.0104</u>	<u>Vicious Dogs</u>
<u>3.0105</u>	<u>Dog Kennels: Animals Disturbing the Public</u>
<u>3.0106</u>	<u>Cruelty to Animals</u>
<u>3.0107</u>	<u>Stray, Abandoned or Unkept Animals</u>
<u>3.0108</u>	<u>Unlawful to Poison</u>
<u>3.0109</u>	<u>Keeping of Certain Animals Other than Dogs</u>
<u>3.0110</u>	<u>Responsibility</u>
<u>3.0111</u>	<u>Abandoning of Animals</u>
<u>3.0112</u>	<u>Permissions and Appeals</u>

3.0101: DEFINITIONS

For the purposes of this chapter, the following words and phrases have the meanings respectively ascribed to them.

Animal: any mammal, bird, reptile, amphibian, or fish; except humans. (E-660)

At-Large: a dog or cat shall be deemed to be running at-large when off or away from the premises and not under the control of the owner, possessor, keeper, agent or a member of the family by means of a leash, except in areas designated as “off-leash” by the City. (Ord 10-16; Rev 10-01-10).

Dangerous Animals: skunks, foxes or raccoons or other indigenous animals with a propensity for carrying or transmitting rabies or other harmful diseases or having vicious propensities and capabilities, and unpredictability despite attempts at domestication.

Domestic Fowl: ducks, geese and chickens.

Exotic Animals: non-human primates, venomous reptiles and crocodilians.

Owner: any person harboring or keeping ~~a dog or cat~~ an animal, and who is the head of the household, of the residence, or the owner or manager in charge of the establishment or premises at which ~~a dog or cat~~ an animal remains or returns to, is the owner of the ~~dog or cat~~ animal within the meaning of this ordinance.

Animal Control Officer: the person designated by the Mayor who shall work under the direction of the Police Department for the enforcement of this chapter. (E-397-1) (E-420-1)

Service animal: any dog owned by any state, county or municipal police department or any state or federal law enforcement agency which has been trained to aid law enforcement officers and is actually being used for law enforcement purposes, or any properly trained dog certified by a licensed seeing-eye or hearing-ear dog agency and actually being used by a visually or hearing impaired person. (Ord 01-08; Rev 09-14-01)

Pet Shelter: a building and facilities therein approved by the health authority for the impounding of dogs or cats (E-259-2). The Board of Health shall enter into appropriate agreement with the Codington County Humane Society for use of their facilities as a pet shelter and for office space for the Animal Control Officer. (E-384-1) (E-549-1)

3.0104: VICIOUS DOGS

1. A dog may be declared vicious within the meaning of this section when a propensity to attack, bite, or menace human beings such that a person has a reasonable fear that they are in imminent danger of an attack, shall exist and is known or ought reasonably to be known to the owner. Such declaration may be made by the Animal Control Officer, his deputy, or any officer of the Police Department. Such declaration shall be made on the standard form of a uniform traffic citation but shall not serve as a complaint for a criminal offense. Such declaration shall be served upon the owner of the dog in one of the following manners:
 - a. Personal service upon the owner;
 - b. Personal service upon the owner or a resident of the premises upon which the dog is located;
 - c. Posting such declaration upon the front door, above the mailbox on the residence or on a conspicuous location near the kennel of the animal. For purposes of this section should a residence consist of a multi-family unit, the posting need only be made on an entrance to the building facing a city street or common parking lot. Such posting shall include the date of first posting which shall constitute the date of service.
2. No vicious dog shall be allowed off the premises of its owner unless muzzled, on a leash, and in charge of the owner or a member of the owner's family who is over sixteen (16) years of age.
3. No vicious dog shall be allowed in an area on the premises which are not included within a six (6) foot solid wall in which no path of ingress or egress exists except for one gated and latched entrance which must be locked at any time the dog is in the enclosure.
- ~~4. An owner may appeal such declaration to the Animal Control Board by filing with the Chief of Police or the Finance Officer a written statement of objection or appeal to the declaration of vicious dog on an animal. Such written statement of objection or appeal must be filed within ten (10) business days of the date of service.~~
- ~~4. Within ten (10) business days of the date of filing the appeal the Animal Control Board shall hear such appeal and determine whether it has been shown by a preponderance of the evidence that such animal is vicious. Such hearing date may be extended by a written order signed by a majority of the Animal Control Board.~~
- 5.4. Any vicious dog which is found off the premises of its owner other than provided herein shall be seized by the Animal Control Officer and/or Police Officer and impounded. If the dog cannot be captured without risking injury to the Animal Control Officer and/or Police Officer, it may be destroyed. Further, if the dog has been seen running at-large, or bites a person and it can be witnessed, the Animal Control Officer or a Police Officer may order the owner to deliver the dog to the pet shelter within twenty four (24) hours and the owner ordered to appear in court to show cause why this dog should not be destroyed. Such order may be served in the same manner as the declaration of vicious dog described in (1) above. (E-259-2) (E-707).

3.0109: REGULATIONS ON THE KEEPING OF CERTAIN ANIMALS OTHER THAN DOGS

1. Horses: It shall be unlawful for any person to maintain horses or to operate or maintain stables in any R1, R2, R2A, R3 or R4 residential district within the city limits of this City, unless signatures by petition of one hundred percent (100%) of the adjoining land owners and fifty percent (50%) of the land owners within three hundred (300) feet of the same shall have signified approval thereof and provided further that said area be adequately fenced with woven wire, wood or equivalent fence at least two and one-half (2-1/2) feet high and plain strand for any higher fence.
 - a. The City Council shall have authority to grant variances from the above requirements after notice and hearing.
 - b. Any area where horses are maintained shall be kept neat and orderly.
2. Hooved Animals Other than Horses: Excluding horses, no hooved animals shall be kept or maintained in any residential zone in this City. In other zoning districts, hooved animals may be kept with the special permission of the animal control board.
3. Domestic Fowl: The keeping of domestic fowl ~~such as ducks, geese and chickens or predators such as skunks, foxes or raccoons as pets~~ shall be by special permission of the animal control board.
- ~~4. The keeping of animals on any lot shall not be on a scale or basis creating a nuisance. (E-259-2)~~

4. Dangerous Animals: The keeping or harboring of dangerous animals, not already declared vicious under Section 3.0104, is expressly prohibited within the city limits of Watertown. Any Dangerous Animal found within the city limits of Watertown shall be immediately impounded by proper authority and either removed from the city limits or humanely destroyed. Dangerous Animal determinations are not subject to appeal to the animal control board.

5. Exotic Animals: Any Exotic Animal found within the city limits of Watertown shall be immediately impounded by proper authority and removed from the city limits. Exotic Animal determinations may be appealed to the animal control board with the exception of non-human primates.

3.0110: RESPONSIBILITY

1. No person shall create or maintain any condition, or operate any equipment or keep any animal, fowl, pet or insect under his jurisdiction in such a way that such condition or operation causes or is likely to cause the transmission of diseases from animals or insects to man.
2. The Bramble Park Zoo shall not be governed by this chapter but shall have an ongoing program to minimize the public's exposure to disease communicable from animal to man within its jurisdiction.
3. No owner, keeper, caretaker or attendant of a dog or cat shall allow a dog or cat to defecate on public or private property other than his own. If such a dog or cat does defecate upon public or private property, the owner, keeper, caretaker or attendant must immediately and thoroughly clean the fecal material from such property. (E-259-2) (E-600-2)
4. Any person accompanied by any animal on public or private property other than his own must carry with him visible means of cleaning up any fecal matter left by the animal. Service animals and animals used in parades are exempt from the provisions of this section. (Ord 01-08; Rev 09-14-01).
5. No person shall keep any animals on any lot on a scale or basis creating a nuisance (E-259-2).

3.0111: ABANDONING OF ANIMALS

No person shall abandon an animal within the city limits of this City. (E-259-2).

3.0112 : SPECIAL PERMISSIONS AND APPEALS

~~2.~~ 1. An owner may appeal a declaration or seek permission under Sections 3.0104 and 3.0109 to the Animal Control Board by filing with the Chief of Police or the Finance Officer a written statement seeking special permission or objecting or appealing to the declaration of an animal. Such written statement of objection or appeal or request for special permission must be filed within ten (10) business days of the date of service of a declaration or violation.

~~2.3.~~ 2. Within ten (10) business days of the date of filing the appeal or request for special permission the Animal Control Board shall hear such appeal or request for special permission and determine whether it has been shown by a preponderance of the evidence that such animal is declared as a vicious dog or should be granted special permission to remain within the city limits. Such hearing date may be extended by a written order signed by a majority of the Animal Control Board.

Pursuant to the authority vested in the City of Watertown under S.D.C.L. §9-19-13; the City Council has declared this ordinance to be necessary for the immediate preservation of the public peace, health, safety, or support of the municipal government and its existing public institutions, and it shall therefore take effect immediately upon its passage on July 18, 2016.

The above and foregoing Ordinance was moved for adoption by Alderperson _____, seconded by Alderperson _____, and upon voice vote motion carried, whereupon the Mayor declared the Ordinance duly passed and adopted.

I certify that Ordinance 16-08 was published in the Watertown Public Opinion, the official newspaper of said City, on the ___ day of July, 2016.

Rochelle M. Ebbers, CPA

First Reading: July 5th, 2016
Second Reading: July 18th, 2016
Published: July 23rd, 2016
Effective: July 18th, 2016

City of Watertown

Attest:

Rochelle M. Ebbers, CPA
Finance Officer

Steve Thorson
Mayor



Request for City Council Action

TO: City Council
THROUGH: Steve Thorson, Mayor
FROM: Shane Waterman, City Engineer
MEETING DATE: July 5, 2016
SUBJECT: 18' Vacation – South Lake Drive Adjacent to Arends Park Subdivision

Petitioner: Jeff and Paula Orthaus, Dennis Murphy, Donald Roby, Alan and Michele Hendricks, Valerie Nordhus, Eric Meier, Heath and Anne Rylance, Aaron and Jody Aadland, Lois Johnson, Randall Hartley (Trustee of Randall A. Hartley Revocable Trust, Dated December 3, 2015), Barbara Naab, Ardyce and Dean Gackstetter (Trustees of Gackstetter Family Trust), Hazel Nygaard (Trustee of Hazel Nygaard Trust), and Steven and Beverly Mack (Trustees of Steve C. and Beverly A Mack Living Trust), all (15) owners of the adjacent properties

Background: Petitioners request the northerly 18' of South Lake Drive between the West edge of Lot 27, Block 2 to the midpoint of Lot 6 of Arends Park Addition (approx. 1,100 feet). The request is made to make legal the existence of structures already located in the right of way and allow consideration of future construction in the area to be vacated.

Engineering Staff has been able to research the right of way through the area and collect other surveying data to adequately investigate the impacts of the requested vacation. The results of the investigation showed the vacation of the 18 feet of right of way along the north side of the street will not impact the roadway or utilities as they will remain in the right of way. The proposed vacation will also remove private structures from within the public right of way.

Facts:

- Petitioner was advised by the Plan Commission that the Board would not consider vacating a portion of S. Lake Drive unless ALL adjoining landowners in this area signed.
- S. Lake Drive is a collector street in this stretch. Right-of-way west of this stretch is 70' wide, east of this property varies between 50' and 88'.
- Vacating 18' of Right-of-Way would leave a remaining 70' right-of-way for S. Lake Drive and the bike trail.
- It has been determined no utilities or street surface of S. Lake Drive would be left on private property if all 18' were vacated in this whole stretch.
- Planning Commission passed Resolution 2016-20 to approve the requested vacation at the June 23, 2016 Planning Commission meeting.

Action: City Council approve Resolution 16-22 vacating 18 feet of right of way on S. Lake Drive.

History: 05/02/16 Petition Received
06/09/16 Plan Commission Tabled item
Future: 06/20/16 City Council Public Hearing and action

Prepared by:
Engineering Department
City of Watertown
23 Second Street NE
P.O. Box 910
Watertown, SD 57201
(605) 882-6201

RESOLUTION 16-22

A Resolution Vacating a portion of Public Right of Way adjacent to South Lake Drive

WHEREAS, Petition for Vacation of Public Right of Way, has been presented to the City Council of the City of Watertown, South Dakota. Said Public Right of Way petitioned for vacation is described as:

The Northerly Eighteen Feet of South Lake Drive from the West edge of Lot 27 of Block 2 of Arends Park to the midpoint of Lot 6 of Block 2 of Arends Park

WHEREAS, the following are the owners of all real property abutting the described Public Right of Way: Jeff and Paula Orthaus, Dennis Murphy, Donald Roby, Alan and Michele Hendricks, Valerie Nordhus, Eric Meier, Heath and Anne Rylance, Aaron and Jody Aadland, Lois Johnson, Randall Hartley (Trustee of Randall A. Hartley Revocable Trust, Dated December 3, 2015), Barbara Naab, Ardyce and Dean Gackstetter (Trustees of Gackstetter Family Trust), Hazel Nygaard (Trustee of Hazel Nygaard Trust), and Steven and Beverly Mack (Trustees of Steve C. and Beverly A Mack Living Trust) and have signed the Petition for Vacation indicating that they have reviewed the Petition and consent to the vacation of Public Right of Way described in the Petition;

WHEREAS, the City Plan Commission of the City of Watertown, South Dakota, has by Resolution 2016-20, approved said vacation, recommending to the City Council approval thereof;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Watertown, South Dakota, that the Public Right of Way described in the Petition be, and is hereby, declared vacated, retaining a utility easement over its entirety, as recommended by the City Plan Commission.

AND BE IT FURTHER RESOLVED that this Resolution shall be published, and upon taking effect, the Finance Officer is authorized to note the vacation on the City records and record this Resolution with the office of the Register of Deeds of Codington County.

Dated at Watertown, South Dakota, this ____ day of _____, 2016.

The above and foregoing Resolution was moved for adoption by Alderperson _____, seconded by Alderperson _____, and upon the roll call motion carried, whereupon the Mayor declared the resolution to be duly passed and adopted.

I hereby certify that Resolution 16-22 was published in the Watertown Public Opinion, the official newspaper of said City, on the ____ day of _____, 2016

Rochelle M. Ebbers, CPA
City of Watertown

Attest:

Rochelle M. Ebbers, CPA
Finance Officer

Steve Thorson
Mayor

City Council Resolution 16-22 Vacation of North 18' of South Lake Drive



Legend

-  Proposed Vacation
-  Private Property
-  Right-of-Way

Prepared by:
Jeff Brink
Urban Planner/Engineer II
23 2nd Street NE
Watertown, SD 57201
605-882-6201 Ext 42

**PETITION FOR VACATION OF *PUBLIC RIGHT-OF-WAY* ADJACENT TO SOUTH LAKE
DRIVE**

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF
WATERTOWN, CODINGTON COUNTY, SOUTH DAKOTA:

The undersigned, being the owners of all the real property abutting the west side of public right-of-way hereinafter described, hereby petitions the City Council of Watertown, South Dakota, to vacate said public right-of-way pursuant to the statutes in such cases made and provided, particularly SDCL 9-45-7, et seq., and said Petitioner respectfully shows and represents the following:

1. The public right-of-way sought to be vacated is described as follows:

*The Northerly Eighteen Feet of South Lake Drive from the West edge of Lot 27 of
Block 2 of Arends Park to the midpoint of lot 6 of Block 2 of Arends Park*

2. A drawing of the public right-of-way proposed to be vacated is attached hereto and marked as "Potential ROW Vacation Vicinity Map" and incorporated herein by reference.
3. Pursuant to SDCL 9-45-7, this petition is being submitted because the above-described public right-of-way is needed to remove structures from the public right-of-way.

WHEREFORE, Petitioner respectfully requests that the governing body of the City of Watertown, South Dakota, order this Petition filed with the City Finance office and direct that notice of the time and place when the Petition will be considered be given by publication once each week for two successive weeks, with the final publication being a minimum of 10 days prior to the public hearing; and, that upon said hearing the governing body adopt a resolution vacating said public right-of-way, all according to the law in such cases being provided, and particularly under SDCL 9-45-7, et seq.

Dated at Watertown, South Dakota, this 6th day of April, 2016

By Jeff D. Orthaus Paula R. Orthaus
Jeff D. Orthaus Paula R. Orthaus,
Property owners of 564 South Lake Drive

State of South Dakota)
)SS:
County of Codington)

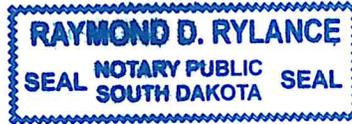
On this the 6th day of April, 2016, before me, the undersigned officer, personally appeared Jeff D. Orthaus and Paula R. Orthaus known to me or satisfactorily proven to be the person whose name is subscribed to within this instrument and acknowledged that he executed the same for the purposes therein contained.

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

[Signature]
Notary Public

(SEAL)

My Commission Expires: 4/15/19



Dated at Watertown, South Dakota, this 5th day of ~~March~~ April, 2016.

By *Dennis J. Murphy*
Dennis J. Murphy, Property owner, of 570 South Lake Drive

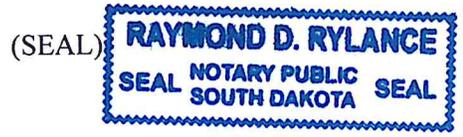
State of South Dakota)
)SS:
County of Codington)

On this the 5th day of ~~March~~ April, 2016, before me, the undersigned officer, personally appeared Dennis J. Murphy known to me or satisfactorily proven to be the person whose name is subscribed to within this instrument and acknowledged that he/she executed the same for the purposes therein contained.

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

[Signature]
Notary Public

My Commission Expires: 4/15/19



Dated at Watertown, South Dakota, this 7th day of April, 2016.

By *Donald L. Roby*
Donald L. Roby, Property owner of 572 South Lake Drive

State of South Dakota)
)SS:
County of Codington)

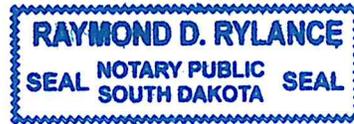
On this the 7th day of April, 2016, before me, the undersigned officer, personally appeared Donald L. Roby known to me or satisfactorily proven to be the person whose name is subscribed to within this instrument and acknowledged that he/she executed the same for the purposes therein contained.

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

Ray Rylance
Notary Public

(SEAL)

My Commission Expires: 4/15/19



Dated at Watertown, South Dakota, this 20th day of April, 2016.

By Alan D. Hendricks Michele L. Hendricks
Alan D. Hendricks Michele L. Hendricks, Property
Owners of 576 South Lake Drive

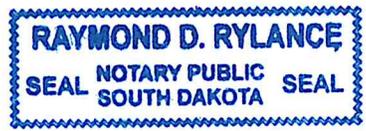
State of South Dakota)
)SS:
County of Codington)

On this the 20th day of April, 2016, before me, the undersigned officer, personally appeared Alan D. Hendricks and Michele L. Hendricks known to me or satisfactorily proven to be the person whose name is subscribed to within this instrument and acknowledged that he/she executed the same for the purposes therein contained.

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

[Signature]
Notary Public

My Commission Expires: 4/15/19 (SEAL)



Dated at Watertown, South Dakota, this 30 day of April 2016

By Valerie R. Nordhus
Valerie R. Nordhus Property owner of 578 South Lake Drive

State of South Dakota)
)SS:
County of Codington)

On this the 30 day of April, 2016, before me, the undersigned officer, personally appeared Valerie R. Nordhus known to me or satisfactorily proven to be the person whose name is subscribed to within this instrument and acknowledged that he/she executed the same for the purposes therein contained.

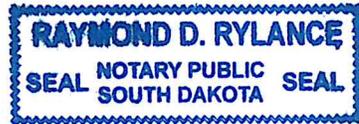
IN WITNESS WHEREOF I hereunto set my hand and official seal.

[Signature]
Notary Public

(SEAL)

My Commission Expires:

4/15/2019



Dated at Watertown, South Dakota, this 15 day of April, 2016.

By Eric C. Meier

Eric C. Meier, Property owner of 580 South Lake Drive

State of South Dakota)

)SS:

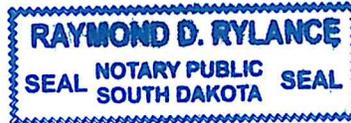
County of Codington)

On this the 15 day of April, 2016, before me, the undersigned officer, personally appeared Eric C. Meier known to me or satisfactorily proven to be the person whose name is subscribed to within this instrument and acknowledged that he/she executed the same for the purposes therein contained.

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

[Signature]
Notary Public
My Commission Expires:

(SEAL)



Dated at Watertown, South Dakota, this 9th day of April, 2016.

By Heath R. Rylance Anne E. Rylance
Heath R. Rylance Anne E. Rylance, Property
Owners of 582 South Lake Drive

State of South Dakota)
)SS:
County of Codington)

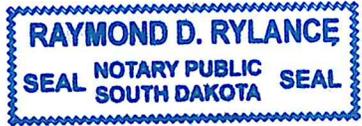
On this the 9th day of April, 2016, before me, the undersigned officer, personally appeared Heath R. Rylance or Anne E. Rylance known to me or satisfactorily proven to be the person whose name is subscribed to within this instrument and acknowledged that he/she executed the same for the purposes therein contained.

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

[Signature]
Notary Public

(SEAL)

My Commission Expires: 4/15/16



Dated at Watertown, South Dakota, this 21 day of April, 2016.

By [Signature] [Signature]
Aaron A. Aadland Jody R. Aadland
Property owners of 586 South Lake Drive

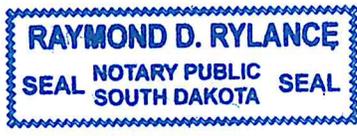
State of South Dakota)
)SS:
County of Codington)

On this the 21 day of April, 2016, before me, the undersigned officer, personally appeared Aaron A. Aadland or Jody R. Aadland known to me or satisfactorily proven to be the person whose name is subscribed to within this instrument and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.
[Signature]
Notary Public

My Commission Expires: 7/15/19

(SEAL)



Dated at Watertown, South Dakota, this 7th day of April, 2016.

By Randy Hartley
Randall R. Hartley, Trustee of Randall A. Hartley Revocable Trust, Dated December 3, 2015
Property owner of 590 South Lake Drive and 592 South Lake Drive

State of South Dakota)
)SS:
County of Codington)

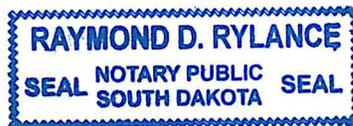
On this the 7th day of April, 2016, before me, the undersigned officer, personally appeared Randall R. Hartley known to me or satisfactorily proven to be the person whose name is subscribed to within this instrument and acknowledged that he/she executed the same for the purposes therein contained.

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

Ray Rylance
Notary Public

(SEAL)

My Commission Expires: 4/15/19



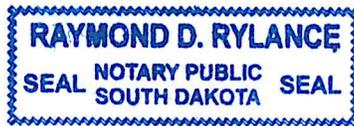
Dated at Watertown, South Dakota, this 21st day of April, 2016.

By BARBARA NAAB POA Missy Ahlers
Barbara L. Naab, Property owner of 594 South Lake Drive

State of South Dakota)
)SS:
County of Codington)

On this 21st day of April, 2016, before me, the undersigned officer, personally appeared Missy Ahlers, known to me or satisfactorily proven to be the person whose name is subscribed as attorney in fact for Barbara L. Naab, and acknowledged that she executed the same as the act of his principal for the purposes herein contained.

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



[Handwritten Signature]

Notary Public
Title of Officer
4/15/16

Dated at Watertown, South Dakota, this 5th day of APRIL, 2016.

By Ardyce E. Gackstetter Dean D. Gackstetter
Ardyce E. Gackstetter Dean D. Gackstetter, Trustees of Gackstetter Family Trust
Property owners of 596 South Lake Drive

State of South Dakota)

)SS:

County of Codington)

On this the 5th day of APRIL, 2016, before me, the undersigned officer, personally appeared Ardyce Gackstetter and Dean D. Gackstetter known to me or satisfactorily proven to be the person whose name is subscribed to within this instrument and acknowledged that he/she executed the same for the purposes therein contained.

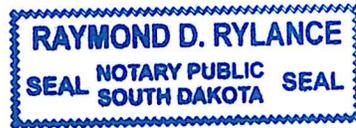
IN WITNESS WHEREOF I hereunto set my hand and official seal.

[Signature]
Notary Public

My Commission Expires:

4/15/19

(SEAL)



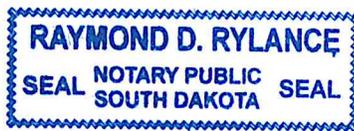
Dated at Watertown, South Dakota, this 9th day of April, 2016.

By Hazel W Nygaard by Nancy Webster POA
Hazel W. Nygaard, Trustee of Hazel Nygaard Trust
Property owner of 598 South Lake Drive and 602 South Lake Drive

State of South Dakota)
)SS:
County of Codington)

On this 9th day of April, 2016, before me, the undersigned officer, personally appeared Nancy S. Webster, known to me or satisfactorily proven to be the person whose name is subscribed as attorney in fact for Hazel W. Nygaard, and acknowledged that she executed the same as the act of his principal for the purposes herein contained.

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



[Signature]
Notary AD
Title of Officer
4/15/19

Dated at Watertown, South Dakota, this 3rd day of May, 2016.

By Steven C. Mack Beverly A. Mack
Steven C. Mack Beverly A. Mack,
Trustees of Steve C. and Beverly A. Mack Living Trust, Property owners of 604 South Lake Drive

State of South Dakota)
)SS:
County of Codington)

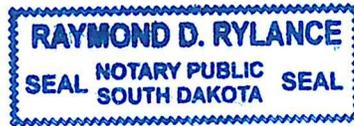
On this the 3rd day of May, 2016, before me, the undersigned officer, personally appeared Steven C. Mack or Beverly A. Mack known to me or satisfactorily proven to be the person whose name is subscribed to within this instrument and acknowledged that he/she executed the same for the purposes therein contained.

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

[Signature]
Notary Public

My Commission Expires: 4/15/19

(SEAL)



AN AGREEMENT PURSUANT TO THE ORDINANCE AUTHORIZING THE GRANT OF CABLE COMMUNICATIONS FRANCHISE IN THE CITY OF WATERTOWN, SOUTH DAKOTA TO MIDCONTINENT COMMUNICATIONS AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE.

WHEREAS, pursuant to the Revised Ordinance of the City of Watertown, Chapter 7.04 Cable Television Regulatory Ordinance (the "Ordinance"), the City of Watertown ("City") is authorized to grant and renew one or more nonexclusive revocable Franchises to operate, construct, maintain and reconstruct a cable television within the City; and

WHEREAS, Midcontinent Communications ("Grantee") currently has a Franchise Agreement with the City and has requested a renewal of that Franchise Agreement.

NOW, THEREFORE, after due consideration and evaluation by the City of Grantee's technical ability, financial condition, and legal qualifications, the City has found it to be in the best interest of the City to renew the Grantee's Franchise for a period of Ten (10) years.

The City and Grantee agree as follows:

SECTION 1.

DEFINITIONS

- 1.) Definitions. For the purposes of this Agreement, capitalized terms shall be defined as set out in the Ordinance.

SECTION 2.

GRANT OF AUTHORITY AND GENERAL PROVISIONS

- 1.) Grant of Franchise. Any Franchise that is granted in City shall be subject to the terms and conditions contained herein as well as the Ordinance.
- 2.) Grant of Nonexclusive Authority.
 - (a) Grantee shall have the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in Franchise Area, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in Franchise Area of a Cable System.
 - (b) The Franchise shall be nonexclusive, and City reserves the right to grant a similar use of said Streets to any MVPD at any time, provided, however, that all Franchises shall contain the same terms and conditions as this Franchise in order that one MVPD is not granted a competitive advantage over another.

(d) The Franchise shall apply to the entire service area of the City, as it exists now or may later be configured.

(e) Neither City nor Grantee may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the ordinance shall control.

3.) Franchise Term. This Franchise Agreement shall be in effect for a period of up to Ten (10) years from the effective date of the Agreement, unless renewed, revoked, or terminated sooner as herein provided.

4.) Territorial Area Involved. This Franchise shall be granted for the corporate boundaries of City, as it exists from time to time. In the event of annexation by City, or as development occurs, any new territory shall become part of the area covered, provided, however, that Grantee shall not be required to extend service beyond its present System boundaries unless there is a minimum of twenty-five (25) homes per cable mile as measured from the last fiber node or terminating amplifier.

5.) Written Notice. All notices, reports, or demands required to be given in writing under this Agreement shall be deemed to be given when delivered personally to any officer of Grantee or City's Administrator.

SECTION 3.

CONSTRUCTION AND OPERATIONS STANDARDS

1.) Conditions on Street Use.

(a) The Grantee shall obtain all required permits from City before commencing any construction upgrade or extension of the System.

(b) The City shall impose no permit fees upon a Grantee.

(c) If at any time during the period of this Franchise City shall elect to alter, or change the grade or location of any Street, alley or other public way, a Grantee shall, at its own expense, upon reasonable notice by City, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System. If City reimburses other occupants of the Street, a Grantee shall be likewise reimbursed.

(d) The Grantee shall, on request of any Person holding a moving permit issued by City, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting the same, and a Grantee shall be given not less than ten (10) days advance notice to arrange for such temporary changes.

(e) A Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.

- (f) Nothing contained in this Agreement shall relieve any Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities.
- (g) In areas where all other utility lines are placed underground, Grantee shall construct and install its cables, wires and other facilities underground. In any area where one or more public utilities are aerial, Grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.
- (h) A Grantee shall at all times construct and operate its System in accordance with applicable FCC Technical specifications.
- (i) In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this Agreement, or the rights granted hereunder have been terminated, cancelled or have expired, Grantee shall, subject to the rights of the City to acquire the system as specified herein, promptly remove from the streets, or public places all such property and poles of such system other than any which the City may permit to be abandoned in place. In the event of such removal, Grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the City.
- (j) Any property of Grantee to be abandoned in place shall be abandoned in such a manner as the City may prescribe. Upon permanent abandonment of the property of Grantee in place, it shall submit to the City an instrument to be approved by the City, transferring to the City the ownership of such property.
- (k) All cable and passive equipment for cable television reception service installed by Grantee at a subscriber's location shall remain the property of Grantee and Grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the Grantee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon his request.
- (l) No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the designated representative of the City Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City Council or its designated representative determines that the public convenience would be enhanced thereby.
- (m) Where poles or other wire-holding structures already existing in use in serving the City are available for use by Grantee, but it does not make

arrangements for such use, the City Council may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the Grantee are just and reasonable.

(n) Where the City or a public utility serving the City desires to make use of poles or other wire-holding structures of the Grantee but agreement therefore with the Grantee cannot be reached, the City Council may require the Grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

(o) Grantee shall at all times maintain on file with the City a schedule setting forth all rates and charges to be made to subscribers for basic cable service, including installation charges.

(p) During the term hereof, the City may regulate rates only if authorized to do so by Federal Communications Commission regulations and then such regulation shall only be in accordance with the provisions of such regulations.

SECTION 4.

SYSTEM PROVISIONS AND PUBLIC SERVICES

1.) Operation and Maintenance of System. The Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

2.) Emergency Use. In the case of any emergency or disaster, the Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use. A Grantee shall comply with the emergency alert requirements of federal law.

3.) Service to Public Buildings. The Grantee shall provide free basic cable television service to one (1) cable outlet to each of the locations listed in Exhibit 1 provided the location is within two-hundred (200) feet of a technically feasible tap.

SECTION 5.

OPERATION AND ADMINISTRATION PROVISIONS

1.) Indemnification of City.

(a) The Grantee shall indemnify, defend, and hold harmless City, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages, and penalties which they may legally be required to pay as a result of the exercise of a Franchise granted pursuant to this Agreement, except claims covered by worker's compensation insurance or any claims arising from or related to City's negligence. Nothing in this Agreement

relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring the Grantee's facilities while performing work connected with grading, regarding, or changing the line of a Street or public place or with the construction or reconstruction of a sewer or water system.

(b) In order for City to assert its rights to be indemnified, defended, and held harmless, City must with respect to each claim:

(1) Promptly notify a Grantee in writing of any claim or legal proceeding which gives rise to such right;

(2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

(3) Fully cooperate with reasonable requests of Grantee, at Grantee's expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to paragraph two (2) above.

2.) Insurance. A Grantee shall maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of City in its capacity as such. The policies of insurance shall be at all times with the limits set forth in the Ordinance.

3.) Franchise Fee.

(a) A Grantee will pay City a monthly franchise fee in the amount of Five (5) percent of Grantee's Gross Revenues.

(b) The franchise fee shall be payable monthly, together with a brief report showing the basis for the computation.

(c) The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by Grantee is due.

SECTION 6.

MISCELLANEOUS PROVISIONS

1.) Franchise Renewal. Any renewal of a Franchise shall be done in accordance with applicable federal law.

2.) Amendment of Franchise. A Grantee and City may agree, from time to time, to amend a Franchise. Such written amendments may be made at any time.

3.) Marketing. A Grantee shall have the right to conduct direct selling in the Franchise Area, including door to door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary.

4.) Severability. If any section, sentence, clause or phrase of this Agreement is for any reason held to be invalid, unenforceable or unconstitutional by a decision of any authority or court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Agreement and the remainder shall remain in full force and effect.

SECTION 7.

ACCEPTANCE AND EFFECTIVE DATE

1.) Acceptance.

(a) Grantee shall accept this Franchise by executing same. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. With its acceptance, Grantee shall also deliver any insurance certificates required herein that have not been previously delivered.

(b) Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

Passed and adopted this ____ day of _____, 2016.

CITY OF WATERTOWN

By: _____
Its: _____

MIDCONTINENT COMMUNICATIONS

By: _____

Its: _____
Midcontinent Communications Investor, LLC
Managing Partner of Midcontinent
Communications

Date: _____

Request for Council Action

TO: Mayor and City Council
FROM: Shane Waterman, P.E., City Engineer
MEETING DATE: July 5, 2016
SUBJECT: **Change Order #2 (Final) for the Ultraviolet (UV) Disinfection Improvements Project No. 1512 and Final Payment Application #5**

Background:

This Change Order adjusts the contract amount to reflect the actual quantities installed. Final Payment Application #5 in the amount of \$25,287.93 represents the remaining balance owed to Industrial Process Technology, Inc.

Recommendation:

The work was completed to the satisfaction of the Project Engineer (HR Green) and Wastewater Staff and adequate funds are available in the original budget, approval is recommended.

Council Action Requested:

Motion to approve Change Order #2 (Final) to the contract with Industrial Process Technology, Inc. for Ultraviolet (UV) Disinfection Improvements Project 1512 decreasing the contract amount \$6,500.00 and authorizing issuance of final payment in the amount of \$25,287.93 .

Budget Summary:

Line Item Description in Budget	Amended Contract BY Change Order #1	Revised Contract Amount
Ultraviolet (UV) Disinfection Improvements	\$ 238,679.26	\$232,179.26

City of Watertown Construction Change Order No. 2

Original Contract Amount:	\$ 236,180.00	Project Name:	WWTP Ultraviolet (UV) Disinfection Improvements		
Net Change by Previous CCOs:	\$ 2,499.26	Contractor Name:	Industrial Process Technology, Inc.		
Increase/Decrease this CCO:	\$ (6,500.00)	City Project No.:	1512		
Current Contract Amount:	\$ 232,179.26				

All CCO's must comply with South Dakota Codified Law 5-16B-19. To view the law in its entirety, <http://legis.state.sd.us/statutes/index.aspx>.
The following change in plans and/or specifications for the subject project is hereby made. Attach supporting documents as required.

Line Item(s) or RFP #	Description of Proposed Work	Justification	Cost	
1	4	Slide gate invert repair	HR Green and IPT determined that no inverts were in need of repair.	\$ 2,000.00
2	5	Concrete spall repair	HR Green and IPT determined that there was no spall repair needed within the channels.	\$ 4,500.00
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				

See Attachment for Quantities and/or Justifications: Yes No Net Increase/Decrease this Change Order: \$ 6,500.00

Original Completion Date:	4/29/16	Net Time Change of Previous CCO's:	N/A	Time Change Due On This Change Order:	N/A	Revised Contract Completion Date:	NA
Time Extension Justification:							

The changes contained in this Construction Change Order are made in accordance with the provisions of the contract for subject project, and when accepted by the Contractor and upon approval by the City of Sioux Falls, shall become part of said contract.

Signature <i>Dawn Horner</i> Engineer Recommendation	Date 6-3-16	Signature <i>Paul A. [Signature]</i> City Administrator	Date
Contractor Acceptance:	6-3-16	<i>[Signature]</i>	

CONTINUATION SHEET

Project No.: 200-15
 General Contractor: Industrial Process Technology Inc.
 Engineer: H R GREEN

Application No.:
 Period from: 4-15-16
 to: 5-31-16
 5

ITEM No.	Description of work A	Scheduled Value B	WORK COMPLETED		Stored Materials E	COMPLETED AND STORED TO DATE		Balance to Finish G
			Previous Application C	This Application D		Total F	%	
1	Mobilization	\$11,000.00	\$11,000.00	\$0.00	\$0.00	\$11,000.00	100%	\$0.00
2	Demobilization	\$7,500.00	\$6,500.00	\$1,000.00	\$0.00	\$7,500.00	100%	\$0.00
3	Concrete	\$16,000.00	\$16,000.00	\$0.00	\$0.00	\$16,000.00	100%	\$0.00
4	Slide Gate Invert Repair	\$2,000.00	\$0.00	\$2,000.00	\$0.00	\$2,000.00	100%	\$0.00
5	Concrete Spall Repair	\$4,500.00	\$0.00	\$4,500.00	\$0.00	\$4,500.00	100%	\$0.00
6	Metal	\$7,600.00	\$7,100.00	\$500.00	\$0.00	\$7,600.00	100%	\$0.00
7	UV Installation	\$36,000.00	\$36,000.00	\$0.00	\$0.00	\$36,000.00	100%	\$0.00
8	Fiberglass Wier	\$8,280.00	\$8,280.00	\$0.00	\$0.00	\$8,280.00	100%	\$0.00
9	Refurbish Slide/Sluice Gates	\$95,000.00	\$95,000.00	\$0.00	\$0.00	\$95,000.00	100%	\$0.00
10	Electrical/Controls	\$47,500.00	\$47,500.00	\$0.00	\$0.00	\$47,500.00	100%	\$0.00
11	Arc Flash Labeling	\$800.00	\$0.00	\$800.00	\$0.00	\$800.00	100%	\$0.00
12	Change Order #1	\$2,499.26	\$2,499.26	\$0.00	\$0.00	\$2,499.26	100%	\$0.00
13	Change Order #2	(\$6,500.00)	\$0.00	(\$6,500.00)	\$0.00	(\$6,500.00)	100%	\$0.00
14		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00
15		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00
16		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00
17		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00
18		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00
19		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00
20		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00
21		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00
22		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00
23		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00
24		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00
25		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00
26		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00
27		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00
TOTALS		\$232,179.26	\$229,879.26	\$2,300.00	\$0.00	\$232,179.26	100%	\$0.00



▷ 431 North Phillips Avenue | Suite 400 | Sioux Falls, SD 57104
Main 605.334.4499 + Fax 605.338.6124

▷ HRGREEN.COM

June 16, 2016

Shane Waterman
City Engineer
City of Watertown
P.O. Box 910
Watertown, SD 57201-0910

RE: Final Completion
Wastewater Treatment Plant Ultraviolet (UV) Disinfection Improvements
Project No. 1512

Dear Shane:

HR Green recommended that the City of Watertown accept the Final Completion of Project No. 1512 - Wastewater Treatment Plant Ultraviolet (UV) Disinfection Improvements as of June 13, 2016. The Operation and Maintenance (O&M) Manuals have been delivered and punch list items are complete. The work was constructed to Final Completion in accordance with the plans and specifications. **The warranty started after acceptance by Owner on May 15, 2016.**

The original contract price for the project was bid at \$236,180.00 and the final project construction cost is \$232,179.26 via change orders No. 1 and 2. The Trojan UV 3000Plus UV equipment was purchased at \$334,000. The total construction cost for this project is \$566,179.26

If you have questions or comments, please don't hesitate to contact me.

Sincerely,

HR GREEN, INC.

A handwritten signature in blue ink that reads 'Dawn Horner'.

Dawn Horner, P.E.
Principal/Project Manager

Enclosure

cc: Darryl Doty, IPT

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