

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

Monday, December 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 meeting held on November 21, 2016
 - b. Authorization to write-off uncollectible ambulance accounts receivable in the amount of \$10,681.93
 - c. Authorization for the Police Department to advertise for bids for the Animal Control Vehicle and Police Department vehicles budgeted in 2017
 - d. Appointment of Bill McElhany to the Parks, Recreation and Forestry Board to replace Jay Johnson
 - e. Authorization for the Fire Department to accept two Hazardous Materials Emergency Preparedness Grant awards for Hazmat training
 - f. Approval of bills & payroll and authorization to pay
2. Approval of agenda
3. Annexation and Zoning – Endres Property
 - a. Annexation (Resolution No. 16-40)
 - b. Second reading of Ordinance No. 16-24 amending zoning district boundaries by zoning the SE ¼ Section 4-116-52 to I-Light Industrial District
 - i. Public hearing
 - ii. Council action
4. Ordinance No. 16-21 amending Sections 19.0115, 19.0416 and Chapter 19.12 of the Revised Ordinances of the City of Watertown to clarify authority for establishing traffic regulations, signals, and signage
 - a. Second reading
 - b. Council action
5. Ordinance No. 16-22 adding Section 8.0201 to the Revised Ordinances of the City of Watertown regarding city employees to which the Civil Service Ordinance applies
 - a. Second reading
 - b. Council action
6. Ordinance No. 16-23 repealing Section 11.0805 to the Revised Ordinances of the City of Watertown to eliminate a redundant penalty for abandoned vehicle violations
 - a. Second reading
 - b. Council action
7. First reading of Ordinance No. 16-25 supplemental appropriations for 2016
8. First reading of Ordinance No. 16-26 amending Section 1.0418 of the Revised Ordinances of the City of Watertown regarding flying clubs

9. Resolution establishing fees for city licenses, permits, administration and other miscellaneous items (Resolution No. 16-41)
10. Authorization for the Mayor to sign a professional services agreement for the 2017 health insurance benefits consultant
11. Authorization to issue payment for the renewal of the workers compensation policy for 2017
12. Consideration for the Fire Department to add one temporary staff on day shift for EMS services for 2017
13. Authorization for the Mayor to sign a vending space lease agreement with PepsiCo Food Service to provide vending service at the Regional Airport
14. Authorization for the Mayor to sign a professional services agreement with RSArchitects for the Ice Arena project
15. Consideration of bids received for the Petroleum Products and Street Department Materials for 2017
16. Consideration of bids received for the Cardio Machines for Prairie Lakes Wellness Center
17. Old Business
18. New Business
19. Liaison member reports
20. Executive Session pursuant to SDCL 1-25-2
21. 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**

November 21, 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 Rieffenberger, Roby, Buhler, Vilhauer, Solum, Danforth, Albertsen, Tupper and Alderwoman Mantey. Absent was Alderman Thorson.

Motion by Buhler, seconded by Mantey, to approve the following item on the consent agenda: minutes of the Council Meeting held on November 7, 2016; approval of business licenses to Seppala Heating for a Gas Fitting Contractor License (\$250) and Ted Seppala as a Gas Fitter (\$50), and authorization for the Fire Department to accept a grant from Homeland Security in the amount of \$30,000 to replace radios. Motion carried.

Motion by Vilhauer, seconded by Danforth, to approve the agenda as presented. Motion carried.

This being the time scheduled for the public hearing on the application for County Fair Banquet Hall for a special retail (on-off sale) malt beverage license and (on-off sale) wine license, 1910 West Kemp, W 17' of Lot 60, & all of Lots 61-71, W 110' of Lots 72-82, & all of Lots 83-93, Way's 4th Lake Drive Addn, from 11:00 AM on Friday, December 2, 2016 until midnight on December 2, 2016, the Mayor called for public comment. Hearing no comment from the public, motion by Tupper, seconded by Buhler, to approve the license with a fee of \$300.00. Motion carried.

This being the time scheduled for the public hearing on Resolution No. 16-39 for necessity a Street Improvement assessment project for 2017, the Mayor called for public comment. Two residents spoke against Project 1701-E. Hearing no further comment from the public, motion by Danforth, seconded by Roby, to approve Resolution No. 16-39 as presented. Substitute motion by Danforth, seconded by Roby to approve Resolution No. 16-39 removing projects 1701-A and 1701-E. Motion carried as amended.

Ordinance No. 16-21 amending Sections 19.0115, 19.0416 and Chapter 19.12 of the Revised Ordinances of the City of Watertown to clarify authority for establishing traffic regulations, signals and signage was placed on its first reading and the title was read. No action was taken.

Ordinance No. 16-22 adding Section 8.0201 to the Revised Ordinances of the City of Watertown regarding city employees to which the Civil Service Ordinance applies was placed on its first reading and the title was read. No action was taken.

Ordinance No. 16-23 repealing Section 11.0805 to the Revised Ordinances of the City of Watertown to eliminate a redundant penalty for abandoned vehicle violations was placed on its first reading and the title was read. No action was taken.

Ordinance No. 16-24 amending zoning district boundaries by zoning the SE ¼ Section 4-116-52 to I-Light Industrial District was placed on its first reading and the title was read. No action was taken.

Motion by Mantey, seconded by Solum, authorizing the Mayor to sign a professional services agreement with Retail Strategies to provide retail marketing services for the City of Watertown. The contract will be for a period of three years billed one year at a time in the amount of \$40,000 each year. Motion carried.

Motion by Albertsen, seconded by Mantey, authorizing the Mayor to enter into a purchase agreement with Watertown Development Company to convey 7 acres of property for economic development selling to GLE in the amount of \$12,500 less applicable closing costs. Motion carried.

Watertown Assistant Fire Department Chief Don Rowland presented the tabulation of bids received for a 2017 Ambulance Remount. Bids were opened at 10:00 AM on November 10, 2016 and are as follows: Arrow

Manufacturing, Inc. \$119,891.00 total bid and Premier Specialty Vehicles \$137,626.00 total bid. Motion by Buhler, seconded by Vilhauer, to approve the bid of Arrow Manufacturing, Inc. in the amount of \$119,891.00. Motion carried.

Motion by Rieffenberger, seconded by Mantey, to approve Change Order No. 2 (final) to the contract with Duininck, Inc. for the 15th St. Ne project decreasing the contract amount \$1,144.43. Motion carried.

Motion by Tupper, seconded by Solum, to approve Change Order No. 2 (final) to the contract with Clausen Construction, Inc. for the Koch Complex/Extension Center Parking Lot Improvement project increasing the contract amount \$17,715.04. Motion carried.

Motion by Solum, seconded Buhler, to adjourn until 7:00 PM on Monday, December 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 21st day of November, 2016.

ATTEST:

Rochelle Ebbers, CPA
Finance Officer

Steve Thorson
Mayor

**AMBULANCE MANAGEMENT
UNCOLLECTIBLE ACCOUNTS FORWARDED TO COLLECTIONS
November 2016**

<u>Call No.</u>	<u>Amount</u>
33814	123.80
33607	790.40
33555	448.60
34242	227.83
34315	681.05
33675	700.20
33595	406.05
33759	454.80
34231	662.15
33548	300.00
34276	694.85
33419	89.25
34490	689.05
34008	721.45
34542	667.55
34218	2202.50
34226	782.40
33546	40.00
	10681.93

Approved:

Mayor

Finance officer

SOUTH DAKOTA OFFICE OF EMERGENCY MANAGEMENT
2015 HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS (HMEP) GRANT SUBAWARD AGREEMENT

Federal Award No. (FAIN)	Federal Award Date	CFDA No.	Program Name
HM-HMP-0485-15-01-00	09/30/2015	20.703	Hazardous Materials Emergency Preparedness Grant Program

Federal Awarding Agency	Federal Award Amount
USDOT Pipeline & Hazardous Materials Safety Administration	\$171,612.00

State Awarding Agency	State Project Officer	Phone No.	Address
S.D. Office of Emergency Management	Autumn Stout	(605) 773-3231	221 South Central Avenue Pierre, SD 57501

Subrecipient Name	Subrecipient DUNS No.	Subrecipient Contact
Watertown Fire Rescue	605989599	Scott Jongbloed

Subrecipient Award Amount	Project Description
\$10,000.00	HazCat Training

Subaward Start Date	Subaward End Date	Total Funds Obligated to Subrecipient (all projects)
10/01/2015	03/30/2017	\$10,000.00

By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

1. South Dakota Office of Emergency Management 2015 HMEP Grant Subaward Terms & Conditions.
2. FY 2015 HMEP Grant Program Funding Opportunity Announcement
3. Special Conditions: (specify)

Senate Bill 162 was passed during the 2016 Legislative Session. In accordance with this new law, you attest to the following:

1. A conflict of interest policy is enforced within your organization.
2. The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on your website.
3. An effective internal control system is employed by your organization.
4. If applicable, your organization is in compliance with the federal Single Audit Act, in compliance with 4-11-2.1, and audits are displayed on your website.

(SDOEM fills in this box when needed.)

SUBRECIPIENT AUTHORIZED OFFICIAL SIGNATURE	DATE
SUBRECIPIENT AUTHORIZED OFFICIAL PRINTED NAME AND TITLE	

S.D. OFFICE OF EMERGENCY MANAGEMENT	DATE
Autumn Stout, HMEP Grant Administrator	

SOUTH DAKOTA OFFICE OF EMERGENCY MANAGEMENT
2016 HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS (HMEP) GRANT SUBAWARD AGREEMENT

Federal Award No. (FAIN)	Federal Award Date	CFDA No.	Program Name
HM-HMP-0523-16-01-00	09/30/2016	20.703	Hazardous Materials Emergency Preparedness Grant Program

Federal Awarding Agency	Federal Award Amount
USDOT Pipeline & Hazardous Materials Safety Administration	\$144,617.00

State Awarding Agency	State Project Officer	Phone No.	Address
S.D. Office of Emergency Management	Autumn Stout	(605) 773-3231	221 S. Central Avenue Pierre, SD 57501

Subrecipient Name	Subrecipient DUNS No.	Subrecipient Contact
Watertown Fire & Rescue	605989599	Scott Jongbloed

Subrecipient Award Amount	Project Description
\$30,159.00	Cold Zone Conference (\$3,308), Hazmat/WMD Technician for Surface Transportation (\$12,262) , STTS Truck Tank Emergency Response Workshop (\$14,589) <i>ARPP training (8000), TBD (4,262)</i>

Subaward Start Date	Subaward End Date	Total Funds Obligated to Subrecipient (all projects)
10/01/2016	09/30/2017	\$30,159.00

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(SDOEM fills in this box when needed.)

SUBRECIPIENT AUTHORIZED OFFICIAL SIGNATURE	DATE
SUBRECIPIENT AUTHORIZED OFFICIAL PRINTED NAME AND TITLE	

S.D. OFFICE OF EMERGENCY MANAGEMENT	DATE
Autumn Stout, HMEP Grant Administrator	



Request for City Council Action

TO: City Council
THROUGH: Shane Waterman, City Engineer
FROM: Brandi Hanten, Urban Planner
MEETING DATE: December 5th, 2016
SUBJECT: Annexation & Zoning of SE ¼ of Sec 4, Twp 116N, Range 52W of the 5th P.M., Codington County, South Dakota

Petitioner: Joan S. Endres, Owner of property and Watertown Development Company

Background: Petitioners submitted application and petition on October 25, 2016 requesting approval for Annexation and I-1 Light Industrial Zoning. Watertown Development Company will be purchasing the property but closing is contingent on approval of annexation and zoning.

Facts:

1. Adjacent Zoning Designation:
 - o I-1 Light Industrial District *North*
2. Adjacent public right-of-ways will be included in the annexation and zoning of the property.
 - o 20th Ave SE (Bypass)
 - o 29th St SE (Bypass)
3. Public water and sewer
4. 84.4 acres
5. Is not in the floodway or floodplain.
6. Does not need park dedication since proposed zoning is Industrial

Recommendation: The Plan Commission recommended approving the annexation and zoning request.

Action: City Council second reading and public hearing of Zoning of the above said property and Council Action of Annexation and Zoning.

History: 10/25/16 Petition and plans received
11/10/16 Plan Commission Public Hearing (Annexation, & Zoning)

Future: 11/21/16 City Council First Reading (Zoning)
12/05/16 City Council Second Reading and Public Hearing (Zoning) followed
by Action (Annexation & Zoning)
12/10/16 Published – *if Approved*
12/30/16 Effective

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

RESOLUTION 16-40

A Resolution for Annexing SE ¼ of Section 4-116-52 to the City of Watertown, Codington County, South Dakota

WHEREAS, Joan Endres, owner of real property located at STR 4-116-52 in Codington County, South Dakota, currently outside city limits and described as:

The SE ¼ including abandoned Railroad Land Less the following:

The North 30 Acres

The South 487 feet of the North 982 feet less the East 850 feet

The North 495 feet of the East 850 feet

The South 825 feet of the North 1320 feet of the East 850 feet of the NE ¼ of the SE ¼

And Lot H1 in the SE ¼ except the North 495 feet of the East 850 feet of the NE ¼ of the SE ¼

which, following annexation it is anticipated a subsequent plat will be submitted to the Municipality of Watertown, in the County of Codington, South Dakota,

did petition the Mayor and the City Council of the City of Watertown, Codington County, South Dakota, to include the said property within the limits of the City, pursuant to §9-4-1 SDCL 1967 and acts amendatory thereof; and,

WHEREAS, the City Plan Commission of the City of Watertown, in its Resolution 2016-32 has recommended that the above described property be annexed into the city limits with no zoning designation and the condition that the property be platted, and that an appropriate zoning designation be assigned to said property upon recommendation of the Plan Commission and following a public hearing of the City Council; and

WHEREAS, there are no legal voters residing on the said property, and the property petitioned for annexation is contiguous to the City of Watertown and should be annexed thereto.

BE IT FURTHER RESOLVED that this Resolution shall be deemed to have no force and effect and shall be deemed rescinded with no further action taken by the governing body if, for any reason, platting of said property has not been recorded at the Codington County Register of Deeds within three (3) years of the effective date of Resolution 16-40.

BE IT FURTHER RESOLVED that all of the public right-of-way adjacent to the above described property be annexed with no zoning designation.

NOW, THEREFORE, BE IT RESOLVED by the City Council, City of Watertown, Codington County, South Dakota, that the petition is hereby approved and the above described property is hereby declared to be annexed to the City of Watertown, South Dakota.

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

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

I hereby certify that Resolution 16-40 was published in the Watertown Public Opinion, the official newspaper of said City, on the 10th day of December 2016.

City of Watertown

Attest:

Rochelle M. Ebbers, CPA
Finance Officer

Steve Thorson
Mayor

Prepared by:
Aason Engineering Co., Inc.
1022 6th Street SE
Watertown, SD 57201
Phone: 605-882-2371

PETITION FOR ANNEXATION OF PROPERTY
TO THE CITY OF WATERTOWN,
CODINGTON COUNTY, SOUTH DAKOTA

To the Honorable Steve Thorson, Mayor, and to the City Council of the City of Watertown, Codington County, South Dakota:

The undersigned, as owners of real property located in Codington County, South Dakota, currently outside the city limits and described as:

The SE ¼ including abandoned Railroad Land Less the following:

The North 30 Acres

The South 487 feet of the North 982 feet less the East 850 feet

The North 495 feet of the East 850 feet

The South 825 feet of the North 1320 feet of the East 850 Feet of the NE ¼ of the SE ¼

And Lot H1 in the SE ¼ except the North 495 feet of the East 850 feet of the NE ¼ of the SE ¼

All located in Section 4, Township 116 North, Range 52 West of the 5th P.M., Codington County, South Dakota.

Do hereby petition the City of Watertown, Codington County, South Dakota, to include said property within the limits of the City, pursuant to SDCL 9-4-1, as shown on the exhibit drawing attached hereto and incorporated by reference.

Petitioners certify that there are no legal voters residing upon subject property and that it is contiguous to the City of Watertown.

Petitioners further request that the zoning ordinance of the City of Watertown be amended to include said property and that proposed property be zoned I-1 (Light Industrial District) under the zoning ordinances of the City of Watertown.

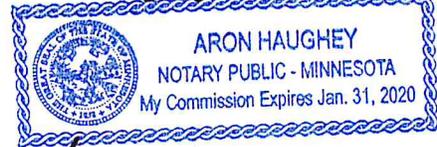
Dated this 19th day of October, 2016, A.D.


Joan S. Endres

MINNESOTA
STATE OF ~~SOUTH DAKOTA~~ }
Henne Pin } SS
COUNTY OF ~~CODINGTON~~ }

On this the 19th day of OCTOBER, 2016, personally appeared before me, JOAN ENDRES, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the foregoing instrument for the purposes therein contained.

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



[Signature]
Notary Public, ~~South Dakota~~
MINNESOTA

My Commission Expires: 1-31-20

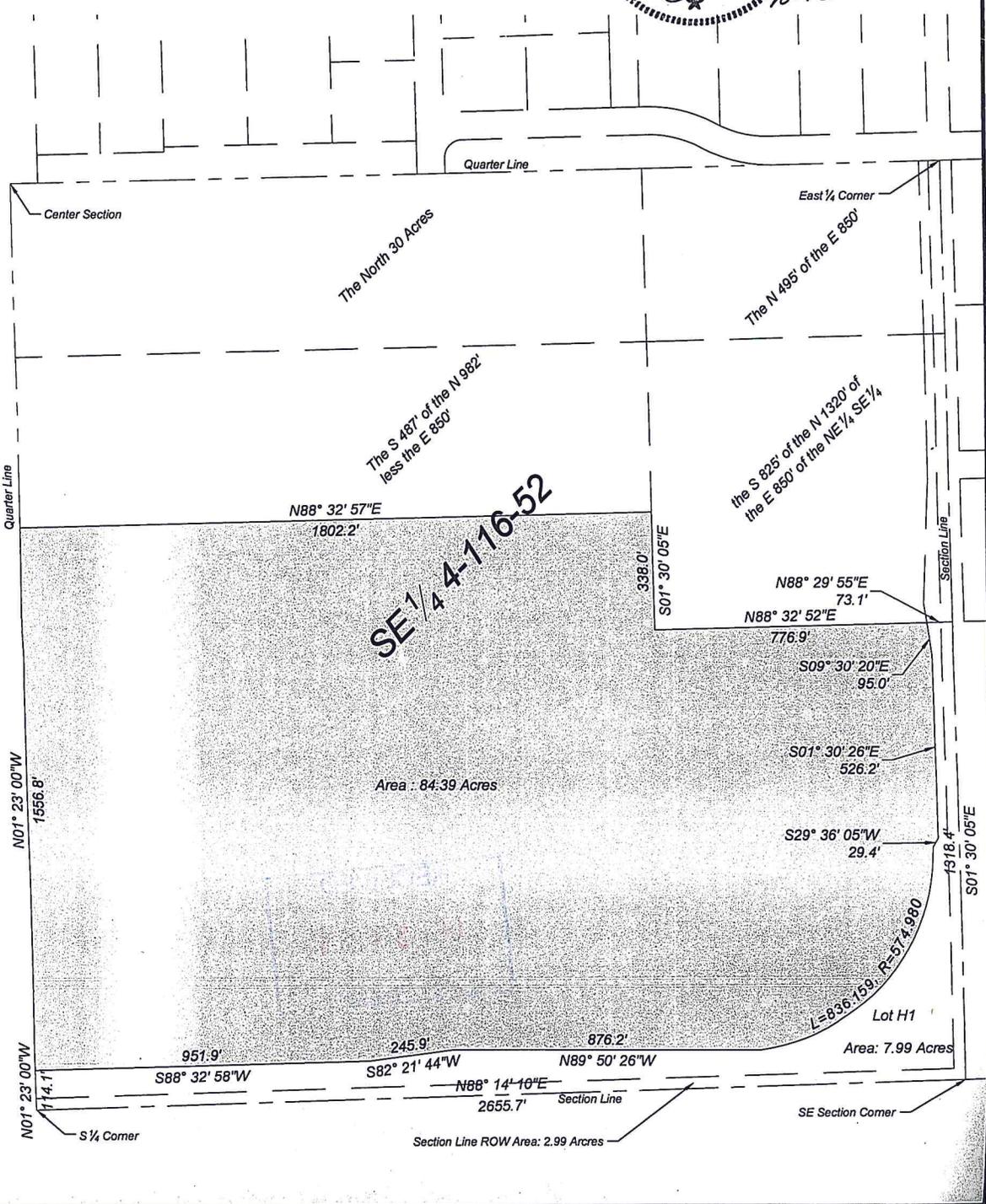
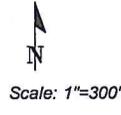
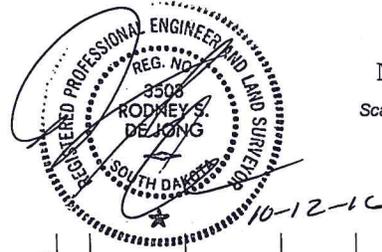
(seal)

Survey of

The SE 1/4 including abandoned Railroad Land Less the following:

1. The North 30 Acres,
2. The South 487 feet of the North 982 Feet less the East 850 feet,
3. The North 495 feet of the East 850 feet,
4. The South 825 feet of the North 1320 feet of the East 850 Feet of the NE 1/4 of the SE 1/4,
5. and Lot H1 in the SE 1/4 except the North 495 feet of the East 850 feet of the NE 1/4 of the SE 1/4,

all located in Section 4, Township 116 North, Range 52 West of the 5th P.M., Codington County, South Dakota



ORDINANCE 16-24

An Ordinance Amending Zoning District Boundaries by Zoning SE ¼ of Section 4-116-52 to I-1 Light Industrial District

BE IT ORDAINED by the City of Watertown, upon examination of the Petition for Zoning of property to the City of Watertown by owner, Joan Endres, of the real property legally described as:

The SE ¼ including abandoned Railroad Land Less the following:

The North 30 Acres

The South 487 feet of the North 982 feet less the East 850 feet

The North 495 feet of the East 850 feet

The South 825 feet of the North 1320 feet of the East 850 feet of the NE ¼ of the SE ¼

And Lot H1 in the SE ¼ except the North 495 feet of the East 850 feet of the NE ¼ of the SE¼

and based on the report and recommendation of the City Plan Commission in its Resolution 2016-33, that the zoning designation of said property, annexed in accordance with City Council Resolution 16-30 , be established as *I-1 Light Industrial District* pursuant to Watertown Revised Ordinance §21.32; and

BE IT FURTHER ORDAINED that the new zoning designation referenced above include all adjacent public rights-of-way.

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 certify that Ordinance 16-24 was published in the Watertown Public Opinion, the official newspaper of said City, on the 10 day of December, 2016.

Rochelle M. Ebbers, CPA

First Reading: November 21, 2016
Second Reading: December 5, 2016
Published: December 10, 2016
Effective: December 30, 2016

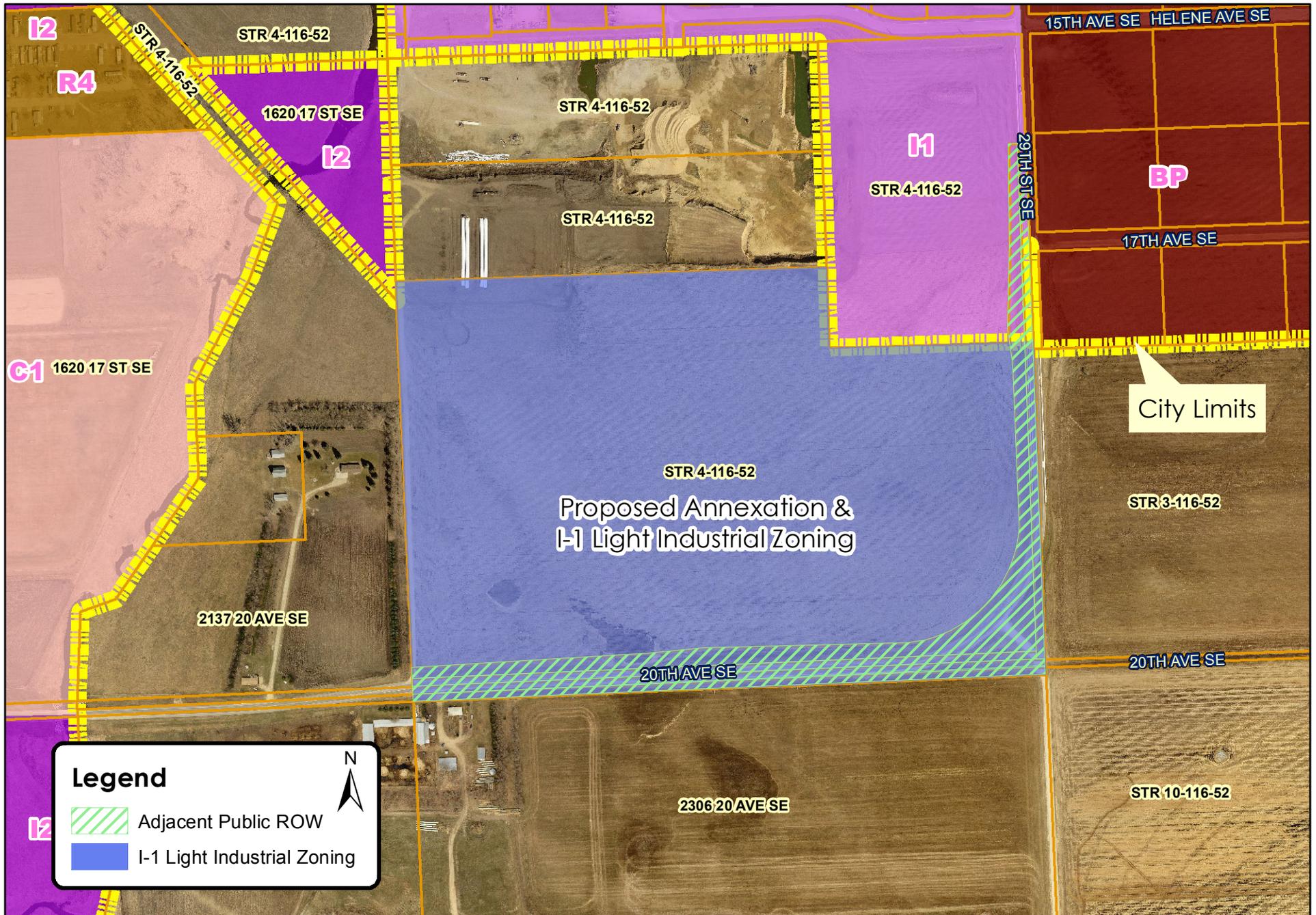
City of Watertown

Attest:

Rochelle M. Ebbers, CPA
Finance Officer

Steve Thorson
Mayor

Endres Annexation & Zoning



REQUEST FOR CITY COUNCIL ACTION

TO: Mayor and City Council

FROM: Justin Goetz, City Attorney

MEETING: November 21, 2016

RE: Proposed Ordinance 16-21, Amending Title 19 to Clarify Authority for Establishing Traffic Regulations, Signals, and Signage

In November 2015, the City Council adopted Ordinance No. 15-27, which modified Revised Ordinance § 19.0501 to transfer authority to “place and maintain traffic control signs, signals and devices” to the Mayor, who would consult with the Police Chief, Street Superintendent, and City Engineer in exercising that authority. *See Rev. Ord. § 19.0501* (reproduced below). That authority was removed from a standalone, then-defunct “Safety Committee of the City Council.”

This proposed Ordinance is intended to clarify certain sections of Title 19 (Traffic) in light of Ordinance 15-27’s changes. The ability to place and maintain “traffic control devices” translates, in practice, to the ability to establish a range of traffic regulations, including speed limits, crosswalks, stop lights, and driving weights over bridges. Therefore, this proposed Ordinance amends the sections in our Revised Ordinances that relate to these traffic concerns (§ 19.0115, speeding; § 19.0416, [redundant] temporary traffic regulations; and Chapter 19.12, truck routes and load limits) to more clearly reflect this comprehensive authority.

Text of Rev. Ord. § 19.0501 (revised by Ordinance No. 15-27, on 11/27/2015):

19.0501: AUTHORITY TO INSTALL TRAFFIC CONTROL DEVICES

The Street Department shall place and maintain traffic control signs, signals and devices when and as required under the traffic ordinances of this City. The Mayor, with the consultation of the Police Chief, Street Superintendent and City Engineer, shall make effective the provisions of said ordinances, and may order the placement, removal, and maintenance of such additional traffic control devices as deemed necessary to regulate traffic under the traffic ordinances of this City, or under the state law, to guide or warn the traffic. (C-352-1) (Ord 15-27; Rev 11-27-15)

ORDINANCE 16-21

AN ORDINANCE AMENDING SECTIONS 19.0115, 19.0416, AND CHAPTER 19.12 OF THE REVISED ORDINANCES OF THE CITY OF WATERTOWN TO CLARIFY AUTHORITY FOR ESTABLISHING TRAFFIC REGULATIONS, SIGNALS, AND SIGNAGE

BE IT ORDAINED by the City of Watertown, South Dakota, that Title 19 of the Revised Ordinances of the City of Watertown be amended as follows:

19.0115: SPEED

1. No person shall operate a vehicle or motor vehicle upon any street, alley or public place in this City at a speed greater, or in any manner, than is reasonable and prudent under the conditions then existing. This provision shall apply in addition to any maximum speed limitation provided by ordinance or police regulation, unless a different speed is posted in the manner authorized by Section 19.0501.
2. Maximum speed regulations. Subject to the above provision, the following speed limitations shall constitute the maximum speed at which any vehicle or motor vehicle may be operated:
 - a. Fifteen (15) miles an hour when approaching within fifty (50) feet of a grade crossing of any railway grade crossing when the driver's view is obstructed. The driver's view shall be deemed to be obstructed when at any time during the last fifty (50) feet of his approach to such crossing he does not have a clear and unobstructed view of such railway crossing and of any traffic on such railway for a distance of fifty (50) feet in each direction from such crossing. Where safety lights, signals, gates or other warning devices have been installed, the same shall govern.
 - b. Fifteen (15) miles an hour within any school zone as marked and posted between the hours of eight o'clock (8:00) a.m. and five o'clock (5:00) p.m. of each day, Monday through Friday, during the entire year, except during the period of school vacations. During any times that said school yards are used under a directed recreational program, the Mayor, pursuant to authority granted in Section 19.0501, and the Safety Committee may by regulation direct and enforce limited speed regulations during said excepted months, in which case proper and reasonable warning signs must be posted. (E-323-1)
 - c. Fifteen (15) miles an hour when approaching within fifty (50) feet and in traversing an intersection of streets when the driver's view is obstructed. A driver's view shall be deemed to be obstructed when at any time during the last fifty (50) feet of his approach to such intersection he does not have a clear and uninterrupted view of such intersection for a distance of fifty (50) feet from such intersection and traffic upon all the streets entering such intersection.
 - d. Fifteen (15) miles an hour in traversing or going round curves or traversing a grade upon a highway when the driver's view is obstructed within a distance of one hundred (100) feet along such street or highway in the direction in which he is proceeding or approaching said intersection either from the right or left.
 - e. Twenty five (25) miles per hour in the residence district as defined by ordinance and in public parks, unless a different speed is fixed and duly posted by the city or state.
 - f. Reserved. (00-3)
 - g. Thirty five (35) miles per hour upon Federal Highway 212, State Highway 20 and that part of 4th Avenue S.W. west of State Highway 20, and that part of Federal Highway 81 north of 11th Avenue N.E. (D-430-3)
 - h. Thirty five (35) miles an hour on U.S. 212 beginning at the southwest corner of Section 36, Township 117 North, Range 53 West, also known as 21st Street West, to a point seventeen hundred (1,700) feet east of the southeast corner of Section 32, Township 117 North, Range 52 West; and thirty five (35) miles per hour on U.S. Highway 81 beginning at a point two thousand two hundred eighty four (2,284) feet south of U.S. Highway 212 to the place where U.S. Highway 81 intersects with U.S. Highway 212. (D-462-1)

3. The speed limits set out in this section shall not apply to authorized emergency vehicles when responding to emergency calls if the drivers thereof sound audible signals by siren or horn. This provision shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the streets nor shall it protect a driver of any such vehicle from the consequences of a reckless disregard for the safety of others. (D-430-3)

BE IT FURTHER ORDAINED by the City of Watertown, South Dakota, that Section 19.0416 of the Revised Ordinances of the City of Watertown be amended as follows:

19.0416: ~~TEMPORARY TRAFFIC REGULATIONS REPEALED~~

~~The Safety Committee of the City Council and the Chief of Police shall have the right to establish temporary speed and traffic regulations for the safety and convenience of the public, and when such changes are made proper signs and signals thereof shall be posted. (D-430-5)~~

BE IT FURTHER ORDAINED by the City of Watertown, South Dakota, that Chapter 19.12 of the Revised Ordinances of the City of Watertown be amended as follows:

**Chapter 19.12
TRUCK ROUTES AND LOAD LIMITS**

Section

19.1201 Bridge Load Limits
19.1202 Truck Routes

19.1201: BRIDGE LOAD LIMITS

~~The Safety Committee of the City Council, w~~When deemed necessary for the safety or convenience of the public, the Mayor, pursuant to powers granted in Section 19.0501, shall have the authority to establish load limits upon any bridge located within the city limits of the City of Watertown, South Dakota. When any such limit is imposed, a copy of such action shall be filed in the office of the Finance Officer and proper signs shall be posted on such bridge. (E-222-1)

19.1202: TRUCK ROUTES

~~The Safety Committee of the City Council, w~~When deemed necessary for the safety or convenience of the public, the Mayor, pursuant to powers granted in Section 19.0501, shall have the authority to establish truck routes within this City and to prohibit truck traffic upon such streets as deemed necessary. The ~~Safety Committee~~Mayor may, in ~~its~~his or her discretion, limit the size of trucks upon certain streets or ban such traffic completely. Such action of the ~~Safety Committee~~Mayor shall be referred to the full Council for vote. (E-222-1)

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 16-21 was published in the Watertown Public Opinion, the official newspaper of said City, on this ____ day of _____, 2016.

Rochelle M. Ebbers, CPA

First Reading: November 21, 2016

Second Reading:

Published:

Effective:

City of Watertown

Attest:

Rochelle M. Ebbers, CPA

Finance Officer

Steve Thorson

Mayor

REQUEST FOR CITY COUNCIL ACTION

TO: Mayor and City Council

FROM: Justin Goetz, City Attorney

MEETING: November 21, 2016

RE: Proposed Ordinance 16-22, Amending Title 8 (Civil Service) to Clarify Which Job Descriptions Fall Under “Classified Employee” Status

In January 2015, the City Council passed Ordinance 15-01, which substantially revised Title 8 of the Revised Ordinances to update the powers and duties of the Civil Service Board. Ordinance 15-01 substantially shortened Title 8, including the striking of Chapter 8.02, which contained provisions that were duplicated in state statute, were covered in the collective bargaining agreements with our unionized City employees, or were no longer practiced by the City. In the process, the Ordinance mistakenly struck § 8.0201, which defined those City of Watertown job descriptions to which the Civil Service title applied. This list roughly corresponded to the “exempt”/“non-exempt” employee distinction that exists under the Fair Labor Standards Act.

The purpose of this proposed ordinance is to restore that provision to the Revised Ordinance as a housekeeping measure. There are certain provisions that remain within Title 8 which rely upon a distinction between “Title 8 classified” or “unclassified” employees. *See* Rev. Ord. §§ 8.0301, 8.9902.

Because this proposed ordinance does not change any provision of Title 8 that impacts or affects our existing collective bargaining agreements, or the employees who are covered by those agreements, no consultation with the union preceded this request for Council action.

ORDINANCE NO. 16-22

AN ORDINANCE ADDING SECTION 8.0201 TO THE REVISED ORDINANCES OF THE CITY OF WATERTOWN REGARDING CITY EMPLOYEES TO WHICH THE CIVIL SERVICE ORDINANCE APPLIES

BE IT ORDAINED by the City of Watertown, South Dakota, that Title 8 of the Revised Ordinances of the City of Watertown be amended by adding the following provision:

**Chapter 8.02
SCOPE AND GENERAL PROVISION**

Section

8.0201 Scope

8.0201: SCOPE

The provisions of this title shall apply to all regular appointive officers and employees of said City, except the Finance Officer, Assistant Finance Officer, Human Resources Coordinator/Risk Manager, Finance Officer II – payroll, Superintendent of Wastewater and Solid Waste, Wastewater Treatment Facility Lead Operator, Assistant Wastewater Superintendent, Landfill Supervisor, Solid Waste Collections Supervisor, City Park Manager, Library Director, Assistant Fire Chief, Fire Battalion Chief, all other Library Employees, Assistant Police Chief, Police Captain, Cemetery Manager, Chief of Police, Chief of Fire Department, City Engineer, City Attorney, Airport Manager, Engineer I, Director of Parks and Recreation Department, Recreation Superintendent, Golf Course Superintendent, Zoo Superintendent, Park and Forestry Superintendent, Building Official, Street Superintendent, Street Foreman, Prairie Lakes Wellness Center Director, Wastewater Collection Forman, Sioux River Watershed Project Coordinator, Assistant City Engineer, Assistant Recreation Superintendent, Recreation Center Aquatics/Program Manager, Fitness Director, Zoo Educator, Zoo Curator, Senior Computer Network Administrator, Computer Network Administrator members of any Board or Commission of the City, any private administrative assistant, casual or temporary employees employed to discharge a casual or temporary duty, or emergency employees employed for a period of emergency. Appointed officials removed or not reappointed, except for cause, are entitled to one (1) week of severance pay for each year of appointed service, not to exceed twenty-six (26) weeks. (E-195-i) (E-200-I) (E-219-I) (E-209-I) (E-202-1) (E-251-I) (E-282-1) (E-310) (E-377-I) (E-438) (E-504) (E-506) (E-517) (E-605-I) (E-641-1) (E-646) (E-654) (E-656) (E-688) (99-16) (Ord 04-01; Rev 02-27-04) (Ord 04-08; Rev 07-30-04) (Ord 15-01; Repealed 02-13-15)

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 16-22 was published in the Watertown Public Opinion, the official newspaper of said City, on this ____ day of _____, 2016.

Rochelle M. Ebbers, CPA

First Reading: November 21, 2016

Second Reading:

Published:

Effective:

City of Watertown

Attest:

Rochelle M. Ebbers, CPA

Finance Officer

Steve Thorson

Mayor

REQUEST FOR CITY COUNCIL ACTION

TO: Mayor and City Council

FROM: Justin Goetz, City Attorney

MEETING: November 21, 2016

RE: Proposed Ordinance 16-23, Repealing Section 11.0805 to Eliminate a Redundant Penalty for Abandoned Vehicle Violations

Section 11.0805 establishes that any violation of Chapter 11.08 is an (un-specified, not Class 1 or Class 2) misdemeanor, and each day the violation is committed or continues is a separate offense. However, Chapter 11.99 (reproduced below), provides for *all* violations of Title 11, was adopted later in time than § 11.0805, and is much more comprehensive. These three qualities, and the fact that § 11.0805 and Chapter 11.99 do not substantively conflict with one another, makes Section 11.0805 redundant.

This redundancy, like most redundancies in law, are harmless. However, there are over 500 pages to the Revised Ordinances of the City of Watertown. A more concise Code is a more effective Code.

Text of Chapter 11.99 (yellow highlight denotes what makes § 11.0805 redundant):

Chapter 11.99 PUNISHMENT

11.9901: PUNISHMENT

Any person violating any of the provisions of this title shall, upon conviction thereof, be punished by a fine of not to exceed two hundred dollars (\$200), or by imprisonment for not to exceed thirty (30) days or by both such fine and imprisonment; **and each day of violation shall constitute a separate offense.** (E-679)

Any person violating any of the provisions of Chapter 11.04, shall be punished by a fine of not to exceed two hundred dollars (\$200) and the violator shall be required to return the premises to their natural condition and upon failure so to do within thirty (30) days after notice in writing, the City may return the premises to the natural condition and assess the costs thereof to the landowner. (E-300-2) (E-679)

ORDINANCE NO. 16-23

AN ORDINANCE REPEALING SECTION 11.0805 TO THE REVISED ORDINANCES OF THE CITY OF WATERTOWN TO ELIMINATE A REDUNDANT PENALTY FOR ABANDONED VEHICLE VIOLATIONS

BE IT ORDAINED by the City of Watertown, South Dakota, that Chapter 11.08 of the Revised Ordinances of the City of Watertown be amended as follows:

**Chapter 11.08
ABANDONMENT OF VEHICLES**

Section

- [11.0801 Definitions](#)
- [11.0802 Abandonment of Vehicles](#)
- [11.0803 Leaving of Wrecked, Nonoperating Vehicle on Street](#)
- [11.0804 Disposition of Wrecked or Discarded Vehicles](#)
- ~~[11.0805 Penalties](#)~~
- [11.0806 Disposal of Abandoned Vehicles](#)

11.0801: DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this ordinance:

Person: any person, firm, partnership, association, corporation, company or organization of any kind.

Property: any real property within the City which is not a street or highway. (E-119-1)

Street or highway: the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Vehicle: a machine propelled by power other than human power designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery and shall include, without limitation, automobile, truck, trailer, motorcycle or tractor.

11.0802: ABANDONMENT OF VEHICLES

No person shall abandon any vehicle within the City and no person shall leave any vehicle at any place within the City for such time and under such circumstances as to cause such vehicle reasonably to appear to have been abandoned. (E-119-1)

11.0803: LEAVING OF WRECKED, NONOPERATING VEHICLE ON STREET

No person shall leave any partially dismantled, non-operating, wrecked or junked vehicle on any street, highway, alley, boulevard, or other public property or public parking lot within the City. (E-119-1) (Ord 04-05; Rev 06-19-04)

11.0804: DISPOSITION OF WRECKED OR DISCARDED VEHICLES

No person in charge or control of any property within the City, whether as owner, tenant, occupant, lessee or otherwise, shall allow any partially dismantled, non-operating, unlicensed, wrecked, junked or discarded vehicle to remain on such property longer than ten (10) days; and no person shall leave any such vehicle on any property within the City for a longer time than ten (10) days; except that this ordinance shall not apply with regard to a vehicle in an enclosed building, or to a vehicle on the premises of a business enterprise operated in a lawful place and manner, when necessary to the operation of such business enterprise, or to a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the City or authorized by the City. (E-119-1) (Ord 04-05; Rev 06-19-04)

11.0805: PENALTIES

REPEALED

~~Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. (E-119-1)~~

11.0806: DISPOSAL OF ABANDONED VEHICLES

The Chief of Police or any member of his department designated by him is hereby authorized to remove, or have removed, any vehicle left at any place within the City which reasonably appears to be in violation of this ordinance, or lost, stolen or unclaimed. Such vehicle shall be impounded until lawfully claimed or disposed of in accordance with Section 32-30 SDCL 1967. (E-119-1)

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 16-22 was published in the Watertown Public Opinion, the official newspaper of said City, on this ____ day of _____, 2016.

Rochelle M. Ebbers, CPA

First Reading: November 21, 2016

Second Reading:

Published:

Effective:

City of Watertown

Attest:

Rochelle M. Ebbers, CPA
Finance Officer

Steve Thorson
Mayor

ORDINANCE NO. 16-25

**AN ORDINANCE PROVIDING FOR A SUPPLEMENTAL APPROPRIATION FOR THESE FUNDS:
GENERAL, PARKS, RECREATION & FORESTRY, CAPITAL IMPROVEMENT SALES TAX,
GO BOND DEBT SERVICE AND AIRPORT FUNDS**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WATERTOWN, SOUTH DAKOTA:

SECTION I.

That the Annual Appropriation Ordinance No. 15-24, approved and adopted on the 21st day of September, 2015 failed to provide sufficient funds necessary to enable the City of Watertown to conduct indispensable functions of government which require the incurring of liabilities or expenditures.

SECTION II.

That it is necessary to appropriate the additional amount of \$1,928,635 as follows:

General Fund (101):

Finance Office (41530):	
Consultant Fees (42202)	7,500
Street Department (43120):	
Street Improvements (43700)	341,250
Street Lighting (43160):	
Utilities (42800)	6,500
Transfer Out (49300):	
Transfers Out - Airport (49312)	17,000

Park & Recreation Fund (201):

Aquatic Center (45126):	
Temporary Salaries (41102)	11,075
Overtime Pay (41109)	3,350
Insurance Premiums (42104)	3,000
Equipment Maintenance (42501)	2,500
Merchandise for Resale (42631)	2,760
Ice Arena (45135):	
Equipment Maintenance (42501)	15,000

Capital Improvement Sales Tax Fund (212):

Public Safety Improvements (42084):	
Training Center - Fire (43213)	6,600
Street System Improvements (43180):	
South Broadway Bridge (43922)	400,000
Debt Service Payment (47000):	
Principal (44100)	425,000
Interest (44101)	323,600
Other Financing Uses (49000):	
Transfer Out - To Airport (49300)	163,000

GO Debt Service (301):

Debt Service (47002):

Cost of Bond Issuance (44900) 20,500

Airport Fund (606):

Personnel Services (43500):

Overtime Pay (41109) 6,300

Current Expenditures (43500):

Publication and Rec Fees (42300): 10,700

Capital Expenditures (43500):

Improvements to Buildings (43201) 115,800

Aircraft Hangar (43219) 26,000

Improv. Other than Bldgs (43900) 21,200

SECTION III.

Out of all the moneys belonging to the City of Watertown, South Dakota, on January 1, 2016, and in the hands of the Finance Officer of said City and out of all the moneys coming into the treasury of said City during the year 2016 that there be, and there is hereby appropriated by the City Council for the fiscal year commencing January 1, 2016 and ending December 31, 2016, and the above sum of money which is hereby deemed necessary to enable the city to conduct the indispensable functions of the government and to discharge a duty which is a lawful duty of the Municipality to discharge which required the incurring of liabilities and expenditures of funds for the purposes or objects for which no provision was made in the above mentioned Annual Appropriation Ordinance.

SECTION IV.

This Ordinance is declared to be for the supplement of the City Government and its existing public institutions and shall be in full force and effect from and after its passage and publication.

SECTION V.

All Ordinances or parts of ordinances in conflict herewith are hereby expressly repealed.

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.

Rochelle M. Ebbers, CPA

First Reading: December 5, 2016

Second Reading: December 19, 2016

CITY OF WATERTOWN

ATTEST:

Steve Thorson, Mayor

Rochelle M. Ebbers, CPA
Finance Officer

ORDINANCE NO. 16-25

That it is necessary to appropriate the additional amount of \$1,928,635 as follows:

	<u>Purpose of Request</u>	<u>Funding Source for Request</u>	
General Fund (101):			
Finance Office (41530):			
Consultant Fee (42202)	ACA consultant contract	General Fund Unassigned Fund Balance	7,500
Street Department (43120):			
Street Improvements (43700)	Special Assessment Project	Special Assessment levy	341,250
Street Lighting (43160):			
Utilities (42800)	Actual Cost exceed Budget estimate	General Fund Unassigned Fund Balance	6,500
Transfer Out (49300):			
Transfer Out - Airport (49312)	Actual expenses over anticipated budget	General Fund Unassigned Fund Balance	17,000
Park & Recreation Fund (201):			
Aquatic Center (45126):			
Temporary Salaries (41102)	Increase in wages, busy season	Park and Rec Fund Balance	11,075
Overtime Pay (41109)	Busy Season	Park and Rec Fund Balance	3,350
Insurance Premiums (42104)	Increase in premiums	Park and Rec Fund Balance	3,000
Equipment Maintenance (42501)	Replace boiler in adventure pool	Park and Rec Fund Balance	2,500
Merchandise for Resale (42631)	Increase in purchases	Park and Rec Fund Balance	2,760
Ice Arena (45135):			
Equipment Maintenance (42501)	Repair compressor for ice	Park and Rec Fund Balance	15,000
Capital Improvement Sales Tax Fund (212):			
Public Safety Improvement (42084):			
Training Center - Fire (43213)	Burn Tower	Donations received	6,600
Street System Improvements (43180):			
South Broadway Bridge (43922)	Repair South Broadway Bridge to close South Broadway Road	Reimbursement from GLE	400,000
Debt Service Payments (47000):			
Principal (44100)	2015C Sales Tax Bonds issued after budget approved	Capital Improvement Sales Tax Unassigned Fund Balance	425,000
Interest (44101)	2015C Sales Tax Bonds issued after budget approved	Capital Improvement Sales Tax Unassigned Fund Balance	323,600
Other Financing Uses (49000):			
Transfer Out - To Airport (49300)	Approved costs not accounted for in 2016 budget	Capital Improvement Sales Tax Unassigned Fund Balance	163,000
GO Bond Debt Service (301):			
Debt Service (47002):			
Cost of Bond Issuance (44900)	Refunded GO Bonds	GO Bond Fund Balance	20,500
Airport Fund (606):			
Personnel Services (43500):			
Overtime Pay (41109)	Federal mandate change	General Fund Transfer	6,300
Current Expenditures (43500):			

Publication and Rec Fees (42300)	Increase in airline advertising	General Fund Transfer	10,700
Capital Expenditures (43500):			
Improvements to Buildings (43201)	Storage building purchased per Council	Capital Improvement Sales Tax Fund Unassigned Fund Balance Transfer	115,800
Aircraft Hangar (43219)	Actual cost over budget amount per bid approved by Council	Capital Improvement Sales Tax Fund Unassigned Fund Balance Transfer	26,000
Improvements othe than Buildings (43900)	Replacing signs per federal audit	Capital Improvement Sales Tax Fund Unassigned Fund Balance Transfer	21,200

REQUEST FOR CITY COUNCIL ACTION

TO: Mayor and City Council

FROM: Justin Goetz, City Attorney

MEETING: December 5, 2016

RE: Proposed Ordinance 16-26, Amending Section 1.0418 Regarding Flying Clubs to Comport with Federal Guidance

In early November 2016, a private citizen inquired with the Airport Manager and City Attorney about providing flight instruction at the Watertown Regional Airport without obtaining the hangar space required by Revised Ordinance § 1.0408 for flight training operations. That ordinance is reproduced here:

1.0408: FLIGHT TRAINING

Any person, firm or corporation desiring to engage in pilot flight instruction shall provide as a minimum the following:

1. **Building Requirements:** Lease or construct a building having nine hundred (900) square feet of properly lighted and heated floor space to provide classroom, briefing room, pilot lounge, office space, public use telephone, and rest rooms. Buildings shall be all metal or an approved equal with such approval to be made by the Building Inspector and the Airport Committee jointly, and shall meet all city codes including, but not limited to, the most current International Building Code, as adopted by the City.
2. **Personnel Requirements:** One person properly certificated by FAA as flight instructor to cover the type of training offered.
3. **Aircraft Requirements:** The lessee shall own or have leased to him in writing one properly certificated aircraft equipped for flight instruction.
4. **Hours of Operation:** Normal operating hours will be five (5) days per week and eight (8) hours per day.
5. **Insurance Coverage:** for Owned or Leased Aircraft.
 - a. Aircraft Liability:

Bodily Injury	\$ 250,000 each person
	\$ 500,000 each accident
Property Damage	\$ 250,000 each accident
 - b. Passenger Liability

	\$ 250,000 each person
	\$ 500,000 each accident (if appropriate)

After some research, Federal Aviation Administration (FAA) guidance indicated that our City ordinance regarding flying clubs, at section 1.0418, could be updated to better flesh out requirements such clubs must meet and to allow for limited flight instruction. All of the proposed changes come from this guidance, save

the renaming of the “airport owner” (an antiquated title that is only found in section 1.0418) to the Airport Manager, in keeping with other sections in Title 1.

Flying clubs are designed to be nonprofit entities that permit its members to engage their passion for flying in a more recreational or hobbyist context. The proposed amendment underscores that fact, requiring that the flying club supply additional paperwork attesting to their nonprofit status. It also updates and underscores the administrative authority of the Airport Manager to ensure the flying club is operated as a nonprofit operation. If that authority did not exist, flying clubs could be operated to circumvent the above hangar requirements that apply to private flight training operations at the Watertown Regional Airport, providing an unfair advantage, as well as defeating the purpose of the flying club as a hobbyist endeavor.

ORDINANCE 16-26

AN ORDINANCE AMENDING SECTION 1.0418 OF THE REVISED ORDINANCES OF THE CITY OF WATERTOWN REGARDING FLYING CLUBS

BE IT ORDAINED by the City of Watertown, South Dakota that Section 1.0418 be amended to comport with Federal Aviation Administration guidance regarding “Reasonable Commercial Minimum Standards” of flying clubs for the Watertown Regional Airport:

1.0418: SPECIAL INTEREST FLYING CLUBS

The following requirements pertain to all special interest flying clubs desiring to base their aircraft on the airport and be exempt from the minimum standards.

1. Special Interest Flying Club Organizations. Each "Special Interest" club may not derive greater revenue from the use of its aircraft than the amount necessary for the actual use of operation, maintenance and replacement of its aircraft. The property rights of the members of the club shall be equal: no part of the net earnings of the club will inure to the benefit of any individual in any form, including salaries, bonuses, etc. The club will file and keep current with the airport a complete list of the club's membership, tax returns, insurance policies, and other documents as may be reasonably necessary to assure that the club is a nonprofit organization.
2. The club's aircraft will not be used by other than bona fide members for rental and by no one for hire, charter or air taxi. Clubs may conduct aircraft flight instruction for regular members only, and only members of the flying club may operate the aircraft. No club shall permit its aircraft to be used for flight instruction for any person, including members of the club owning the aircraft, when such person pays or becomes obligated to pay for such instruction. Club flight instructors may only be compensated by credit to the instructor against payment of dues or flight time associated with the club. Otherwise, sStudent instruction must be given by a Lessee based on the airport who provides flight training.
3. Violations. In the event that the club fails to comply with these conditions, the ~~a~~Airport owner/Manager will notify the club in writing of such violations. If the club fails to correct the violations in fifteen (15) days, the ~~airport~~Airport owner-Manager may take any action deemed advisable by the ~~owner~~Manager, including termination of all operations as a special interest flying club.
4. Insurance. Each aircraft owned by the special interest flying club must have aircraft liability insurance coverage for no less than the following amounts:

Aircraft Liability:

Bodily Injury	\$ 250,000 each person
	\$ 500,000 each accident
Property Damage	\$ 250,000 each accident (E-437-1)

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 16-26 was published in the Watertown Public Opinion, the official newspaper of said City, on this ____ day of December, 2016.

Rochelle M. Ebbers, CPA

First Reading: December 5, 2016

Second Reading:

Published:

Effective:

Attest:

City of Watertown

Rochelle M. Ebbers, CPA

Steve Thorson
Mayor

Resolution No. 16-41

A RESOLUTION ESTABLISHING FEES FOR CITY LICENSES, PERMITS, ADMINISTRATION AND OTHER MISCELLANEOUS ITEMS

WHEREAS, City Ordinances require certain license fees to be established by resolution; and,

WHEREAS, it is appropriate that certain other fees be established by Council resolutions;

NOW, THEREFORE, BE IT RESOLVED that the City of Watertown, Codington County, South Dakota, hereby establishes the following schedule of fees to remain in effect until further action by the City Council:

<u>General</u>	<u>Fee</u>
Certified Mail	City will bill the applicant for actual costs incurred
Codington County Register of Deeds	City will bill the applicant for actual filing and recording costs incurred
Fax Charge (incoming)	\$.50 per page
Fax Charge (outgoing)	\$2.00 first page; \$.50 per page thereafter (US)
Photocopy Charge (letter or legal)	\$.25 black and white per page/\$1.00 color per page
Photocopy charge (11x17)	\$1.00 black and white per page/\$5.00 color per page
Photocopy charge (24x36)	\$4.00 black and white per page/\$12.00 color per page
Print Charge (larger than 24x36)	\$.50 per sq ft black and white/\$2.00 per sq ft color
Publication	\$40
Ward & Precinct Maps	\$3.00 (18x24)/\$5.00 (24x36)
Marriage Ceremony	\$50
<u>Finance</u>	
Liquor License Establishment	\$50
Commercial Garbage Hauler	\$50
Gasfitter	\$50
Gasfitter Contractor	\$50 (\$250 first year)
House Mover	\$50 (\$250 first year) plus \$50 per vehicle

Finance Con't

<u>Finance Con't</u>	<u>Fee</u>
Liquid Waste Hauler	\$100 plus \$20 per vehicle
Liquor Sale License (Sunday)	\$200
Mobile Home Court	\$50 plus \$2.50 per lot
Pawn Broker	\$50
Peddler (Annual)	\$500
Peddler (5-day)	\$100
Pipe Layer	\$50 (\$250 first year)
Sidewalk Cafe Permit	\$25
Sign Installer	\$50 (\$250 first year)
Secondhand Dealer	\$50
Security Guard	\$50 (\$500 first year)
Taxi Cab Company	\$50 plus \$5 per vehicle
Taxi Driver	\$50
Transient Merchant	\$100
Video Lottery Machine License	\$50 per machine

Building Services/Board of Adjustment

Accessory Structure Permit (\leq 200 sf)	\$20
Conditional Use	\$100
Deck Permit (residential)	\$20
Demolition Permit	\$20
Fence Permit (residential)	\$20
Manufactured Home Inspection Permit	\$25
Microwave Antenna Permit	\$20
Moving Permit	\$25

Building Services/Board of Adjustment Con't**Fee**

Relocation Investigation Fee (300' radius)	\$100
Research - Documents	\$95 per request
Sign Permit (less than or equal to 100 sf)	\$25
Sign Permit (greater than 100 sf)	\$50
Special Meeting of Board of Adjustment	\$300
Special Meeting of Sign Code Board of Appeals	\$300
Variance	\$100
Residential Contractors License	\$60
IRC Handbook	\$10

Engineering/Planning**Fee**

Excavation Permit	\$50 (plus cost of patch repair if done by City)
Grading Permit	\$50 base fee (up to one acre), plus \$20/acre (max. \$250)
Flood Plain Development Permit	\$50
Permit to place Bldg. Materials on Streets	\$25
Connection to Public Storm Sewer	\$100
Sidewalk, Driveway, Curb/Gutter Permit	\$25
Annexation Petition	\$50 plus publication/certified mail fees
Ordinance Amendment	\$125 plus publication fees
Planned Unit Development (PUD) Review	\$200 plus publication/certified mail fees
PUD Review (Major Amendment)	\$200 plus publication/certified mail fees
PUD Review (Minor Amendment)	\$75
Plat Review (Final)	\$150 minimum or \$100 plus \$5 per lot
Plat Review (County joint planning area)	\$75
Preliminary Plan Review	\$200 plus publication/certified mail fees

Engineering/Planning Con't

	<u>Fee</u>
Special Meeting of the Plan Commission	\$300 plus publication/certified mail fees
Vacation (Right-of-Way/Utility Access)	\$125 plus publication
Zoning Map Amendment	\$125 plus publication/certified mail fees

Police Department

Fingerprint Fee	\$15
Scale Drawing - letter size	\$25
1/10 Scale Drawing - large full scale	\$50
Reports - includes witness stmt	\$6
Photographs	\$2.50 each
Video, photos, etc on CD	\$25
Add'l Statements (officers, investigations etc.)	\$.50 each
Panhandler	\$15

Fire Department

Fire Suppression - Residential Structure	\$500
Fire Suppression - Commercial Structure	Cost of overtime and materials used
Automated Alarm Activation - after 4 in year	\$100
Unpermitted or Uncontrolled Burns	Cost of overtime and materials used
Hazardous Materials Response	Cost of overtime and materials used
Fire Prevention Permits	\$52 plus \$2 per sprinkler head
Fire Sprinkler New Installation Permit	\$128 plus \$2 per device
Fire Alarm Systems Permit	\$100
Kitchen Hood Extinguishing System New	\$50
Kitchen Hood Extinguishing System Modification	\$75
Commercial Spray Booth or Room New Permit	\$25

<u>Fire Department Con't</u>	<u>Fee</u>
Commercial Spray Booth or Room Modification	\$75
Standpipe Installation Permit	\$50
Use of Pyrotechnic Special Effect Permit	\$50
Compressed Gases & Combustible Liquid Tank	\$50

Fire Regional Training Center

Classroom (1/2 day)	\$25
Classroom (full day)	\$50
Training Ground (1/2 day)	\$150
Training Ground (full day)	\$250
Facilitator Fee (training grounds only)	\$35 per hour

Ambulance Department

BLS - Basic Life Support	\$650
ALS - Advanced Life Support	\$750 – \$1,000
Mileage - per loaded mile	\$13.50
Ambulance Standby - Special Events	\$100 per hour

Library

Photocopy Charge	\$.15 black and white \$.50 color
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Dated at Watertown, South Dakota this 5th day of December, 2016.

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

I hereby certify that Resolution No. 16-41 was published in the Watertown Public Opinion, the official newspaper of said City, on the ____ day of _____, 2016.

City of Watertown

Attest:

Rochelle M. Ebbers, CPA
Finance Officer

Steve Thorson
Mayor

BROKER SERVICES AND CONSULTING AGREEMENT

This Consulting Agreement ("Agreement") between City of Watertown and its group health plan ("Client") and Howalt+McDowell Insurance, a Marsh & McLennan Agency LLC Company ("MMA") is made this 1st day of December, 2016.

WHEREAS, MMA provides consultation and risk management services of insurance programs and in providing other services (hereinafter collectively "Benefit Consulting Services"), and Client desires to retain MMA for such services.

THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

1. **Purpose.**

MMA shall assist Client in maintenance or establishment of the Client's employee benefit programs. MMA will provide the Agreed Benefit Consulting Services as detailed in the attached Exhibit A ("Scope of Services"). MMA accepts no responsibility for any programs of previous brokers/consultants.

2. **Term and Termination.**

A. Client hereby appoints MMA to provide the Agreed Services effective January 1, 2017, for a one-year term. Unless a party gives the other party written notice of its intent not to renew this agreement at least 90 days prior to the expiration date, this agreement shall automatically renew on the same terms and conditions for successive one (1) year terms.

B. In the event of a material breach of the terms of this Agreement, the non-breaching party may terminate this Agreement by providing written notice of intent to terminate to the breaching party. The breaching party thereafter shall be provided 30 calendar days to cure the alleged breach. If such alleged breach is cured within 30 days, the Agreement remains in effect.

C. Services may be terminated at any time upon 90 days prior written notice to the non-terminating party or as mutually agreed upon by the parties in writing.

D. Client shall be responsible for fees incurred through the date termination is effective. Upon termination, MMA shall cooperate in good faith in assisting Client with any transfer of program or coverages to a subsequent service provider.

3. Limits of Authority.

MMA will report to the City of Watertown as Client's representative. MMA will not enter into any contract on behalf of Client without Client's express approval.

4. Client Responsibilities.

Client shall make available, with reasonable promptness, such information as is required for MMA to provide its services and shall be liable for the accuracy thereof. Client shall have the responsibility to report and communicate changes in exposures, loss-related data or other information that may materially affect Client's Employee Benefit program.

5. Payment and Compensation Disclosure.

A. MMA will provide the Agreed Services described in this Agreement and any activities incidental to the Agreed Services based on the fee arrangement described on Exhibit B. Such fees shall be deemed earned when billed. The foregoing fee is not required by the insurer(s) with which MMA will place insurance hereunder, and MMA is not required by such insurer(s) to charge this fee. In the event client's operations change substantially by merger, acquisition, expansion or other material change in scope and nature of expenses, losses and/or insurance program, Client and MMA will negotiate in good faith to revise the compensation payable to MMA as appropriate.

B. MMA's Compensation Disclosure is attached as Exhibit C.

6. Confidentiality.

A. MMA recognizes that certain confidential information will be furnished by Client to MMA in connection with its services pursuant to this Agreement. MMA agrees that it will disclose Confidential Information only to those who, in MMA's reasonable determination, have a need to know such information and are permitted by applicable Federal and State laws or this Agreement to be privy to such Information. Client recognizes that as a function of its role as Consultant, MMA will provide Confidential Information to insurers, underwriters, wholesalers, or other insurance marketing representatives with whom MMA has privacy agreements in place as required by law or this Agreement. Confidential information shall not include information that (i) is in the possession of MMA prior to its receipt of such information from Client; (ii) becomes publicly available other than as a result of breach of this Agreement by MMA; or (iii) is or can be independently acquired or developed by MMA without violating any of its obligations under this Agreement. Notwithstanding the foregoing, disclosure by MMA of any confidential information pursuant to the terms of a valid and effective subpoena or order issued by a court of competent

jurisdiction, judicial or administrative agency or by a legislative body or committee shall not constitute a violation of this Agreement, provided MMA shall give prior written notice to Client and agrees to reasonably cooperate with Client in seeking any protective or other order to protect the Confidential Information.

B. Client agrees that MMA is the sole owner of the following material and that Client shall not use or disclose such material following termination of this Agreement except to the extent (i) specific written consent to such use or disclosure is obtained from Client; (ii) required pursuant to the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee; or (iii) subject to disclosure under ORC 149.43:

- 1) Proprietary computer programs;
- 2) Proprietary procedures and methods of administration; and
- 3) Underwriting and client files and/or reports developed by MMA.

C. MMA understands and agrees to limit its use and disclosure of protected health information, as defined by the Health Information Portability and Accountability Act of 1996 and all amendments ("HIPAA"), per the terms of the Business Associate Agreement attached as Exhibit D. The parties agree to execute any updates or amendments to the Business Associate Agreement as required by law.

7. Independent Contractor.

It is understood and agreed that MMA is engaged by Client to perform services under this Agreement as an independent contractor. MMA shall use its best efforts to follow written, oral and electronically-transmitted (i.e. fax and e-mail) instructions from Client as to policy and procedure.

8. No Fiduciary Responsibility.

Client acknowledges that: (i) MMA shall have no discretionary authority or discretionary control respecting the management of any of the employee benefit plans; (ii) MMA shall exercise no authority or control with respect to management or disposition of the assets of Client's employee benefit plans; and (iii) MMA shall perform services pursuant to this Agreement in a non-fiduciary capacity. Client agrees to notify MMA as soon as practicable of any proposed amendments to the plans' legal documents to the extent the amendments would affect MMA in the performance of its obligations under this Agreement.

9. Liability Limitation/Waiver of Jury Trial

The aggregate liability of MMA and its affiliates (including its officers, directors, employees and agents) arising out of or relating to any services on Client's account shall not exceed one million dollars (\$1,000,000), and in no event shall MMA or its affiliates be liable for any indirect, special, incidental, consequential or punitive damages or for any lost profits or other economic loss arising out of or relating to such services. In addition, Client agrees to waive its right to a jury trial in any action or legal proceeding arising out of or relating to such services. The foregoing limitation of liability and jury waiver shall apply to the fullest extent permitted by law.

10. Market Security.

MMA cannot and does not guarantee the solvency of any insurers with which we place insurance. MMA encourages Client to review any publicly-available information as well as information provided by MMA to evaluate the financial integrity of any insurers in relation to Client's decision to accept or reject a particular insurer.

11. Force Majeure.

MMA shall not be liable for any delay or failure to perform the services if such failure is caused directly or indirectly by fire, flood, explosion, nuclear incident or other casualty, strike or other labor disturbance, war, insurrection, invasion, riots, terrorist acts, or by any existing or future governmental regulation, restriction or appropriations, or any other cause beyond MMA's control.

12. Severability.

The various provisions of this Agreement are severable and if any provision or part thereof is held to be unenforceable by any court of competent jurisdiction, then such unenforceability shall not affect the validity or enforceability of the remaining provisions of in this Agreement.

13. Non-Assignability.

Neither party shall assign or transfer the respective rights or obligations under this Agreement without specific written, prior approval of the other party. This section shall not apply, however, to corporate reorganizations or mergers which do not materially change the operations of either party.

14. Governing Law.

To the extent not preempted by federal law, this Agreement shall be construed, interpreted and enforced in accordance with the laws of the state of New York, without giving effect to the choice of law principles thereof or any canon, custom or rule of law requiring construction against the drafter.

15. Notice.

All notice required herein shall be in writing, and shall be sent certified mail, postage prepaid, with return receipt requested to the following persons:

Howalt+McDowell Insurance
Attn: Christy Westerman
PO Box 5113
Sioux Falls, SD 57117

Notice via e-mail is acceptable but shall not be deemed delivered until acknowledgement of receipt.

16. Entire Agreement.

This Agreement, including all exhibits and addenda hereto, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, between the parties regarding the subject matter herein. This Agreement may be modified or amended only by a written instrument executed by both parties.

AGREED this _____ day of _____, 2016:

On behalf of City of Watertown:

Print name/Title

Signature

Date

On behalf of MMA:

Print name/Title

Signature

Date

EXHIBIT A

Scope of Services

Coordinate MMA activities relating to the Client's employee benefits program.

- Strategic Planning & Stewardship
 - Identify goals, challenges and strategies relevant to business operations
 - Develop strategies to meet established objectives
 - Provide periodic progress updates in accordance with established timeline
 - Marketplace overview and trends
 - Discuss satisfaction with current vendors and carriers
 - Explore alternative funding methodologies
 - Evaluate/review current employee benefits package
 - Review employee/employer cost sharing arrangement
 - Review total plan costs
 - Benchmarking
- Vendor & Carrier Marketing
 - Develop strategy to identify goals
 - Determine vendors and carriers selection criteria
 - Analyze marketplace and vendors and carriers options as requested
 - Prepare and distribute request-for-proposal (RFP) to competitive vendors and carriers
 - Support vendors and carriers through competitive bidding/proposal process
 - Evaluate vendors and carrier proposals
 - Compile due diligence of finalists
 - Negotiate financial and contractual terms and funding arrangements
 - Compare with incumbent vendors and carriers and identify finalists
 - Facilitate decision-making process
 - Communicate decisions to all vendors and carriers
- Vendor & Carrier Implementation Management
 - Create timeline of expectations
 - Facilitate implementation meetings
 - Communicate coverage termination to incumbent, if applicable
 - Assist in the completion and delivery of placement paperwork
 - Coordinate the ordering and delivery of employee communication & enrollment materials
 - Review and assist with vendor and carrier contracts including Plan Document, Summary Plan Description and wrap document services
 - Attend or present at employee communication meetings
- Renewal analysis
 - Establish renewal timeline and goals
 - Review claims experience, demographics and employee contribution strategies
 - Independent claims analysis with summary and recommendations
 - Analyze and validate vendors and carriers renewal terms
 - Negotiate renewals with respective vendors and carriers
 - Coordinate all related plan design and financial requests to vendors and carriers
 - Provide renewal alternatives with employee and strategy cost impact
 - Create employee contribution modeling reports
 - Assist with determining COBRA rates for self-funded plans
 - Assist with annual budget-projections
 - Communicate decisions to all vendors and carriers
 - Present to senior management or board of directors as requested
- Claims Advocacy and Management
 - Summary of plan costs

- Review network utilization
- Work to develop carrier/medical management accountability for high cost claimant management & disease case management
- Planning & Analytics for Total Health (PATH) data and reporting
- Illustrate future plan costs and funding gaps (Strategic Forecasting Model)
- Cost and utilization review
- Comparison of plan costs to aggregate stop-loss projections, if applicable
- Review vendor/provider arrangements and advocate for best practices
- Training, Development and Education
 - Assist with open enrollment including materials and meetings
 - iBenefits mobile app (if applicable)
 - Education meetings on various benefits-related topics
 - Total compensation statements (with provided information)
- Compliance Assistance
 - Assist with daily questions and plan administration
 - Review plan documents and summary plan descriptions prior to client approval
 - Evaluate plan design to assist with compliance with state and federal regulations
 - Conduct periodic public seminars and webinars on regulatory issues
 - Provide timely client alerts and compliance checklists
 - Provide guidance on ACA, ERISA, COBRA, HIPAA and other applicable laws
 - Health Care Reform Impact Analysis
 - Health Care Reform assistance
- Day-to-day Administration and Management
 - Claim problem resolution
 - Billing, enrollment and eligibility assistance
 - Assistance with plan amendments and communications
 - Provider network issue assistance
 - Daily admin assistance with policy changes, service issues and/or questions
 - Dedicated account manager

EXHIBIT B

Professional Fees

Client shall compensate MMA as follows:

- Beginning January 1, 2017, until termination of the Agreement, Client shall pay MMA \$15 per contract per month for services rendered plus applicable sales tax.
- MMA shall bill Client in monthly installments for professional service fees plus applicable sales tax.
- Client agrees to tender payment within 30 days of billing

EXHIBIT C

Compensation Disclosure

(Rev. July 1, 2015)

Marsh & McLennan Agency ("MMA") prides itself on being an industry leader in the area of transparency and compensation disclosure. We believe you should understand how we are paid for the services we are providing to you. We are committed to compensation transparency and to disclosing to you information that will assist you in evaluating potential conflicts of interest.

As a professional insurance services provider, MMA and its subsidiaries facilitate the placement of insurance coverage on behalf of our clients. In accordance with industry custom, we are compensated either through commissions that are calculated as a percentage of the insurance premiums charged by insurers, or fees agreed to with our clients.

MMA receives compensation through one or a combination of the following methods:

- **Retail Commissions** – A retail commission is paid to MMA by the insurer (or wholesale broker) as a percentage of the premium charged to the insured for the policy. The amount of commission may vary depending on several factors, including the type of insurance product sold and the insurer selected by the client. Retail commission rates can vary from transaction to transaction.
- **Client Fees** – Some clients may negotiate a fee for MMA's services in lieu of, or in addition to, retail commissions paid by insurance companies. Fee agreements are in writing, typically pursuant to a Client Service Agreement, which sets forth the services to be provided by MMA, the compensation to be paid to MMA, and the terms of MMA's engagement. The fee may be collected in whole, or in part, through the crediting of retail commissions collected by MMA for the client's placements.
- **Contingent Commissions** – Many insurers agree to pay contingent commissions to brokers who meet set goals for all or some of the policies the brokers place with the insurer during the current year. The set goals may include volume, profitability, retention and/or growth thresholds. Because the amount of contingent commission earned may vary depending on factors relating to an entire book of business over the course of a year, the amount of contingent commission attributable to any given policy typically will not be known at the time of placement.
- **Supplemental Commissions** – Certain insurers and wholesalers agree to pay supplemental commissions, which are based on a broker's performance during the prior year. Supplemental commissions are paid as a percentage of premium that is set at the beginning of the calendar year. This percentage remains fixed for all eligible policies written by the insurer during the ensuing year. Unlike contingent commissions, the amount of supplemental commission is known at the time of insurance placement. Like contingent commissions, they may be based on volume, profitability, retention and/or growth.
- **Wholesale Broking Commissions** – Sometimes MMA acts as a wholesale insurance broker for certain transactions. In these placements, MMA is engaged by a retail agent that has the direct relationship with the insured. As the wholesaler, MMA may have specialized expertise, access to surplus lines markets, or access to specialized insurance facilities that the retail agent does not have. In these transactions, the insurer typically pays a commission that is divided between the retail and wholesale broker pursuant to arrangements made between them.

- **Other Compensation** – From time to time MMA may be compensated by insurers for providing administrative services to clients on behalf of those insurers. Such amounts are typically calculated as a percentage of premium or are based on the number of insureds.

We will be pleased to provide you additional information about our compensation and information about alternative quotes upon your request. For more detailed information about the forms of compensation we receive please refer to our Marsh & McLennan Agency Compensation Guide at <http://res.cloudinary.com/mma/image/upload/v1437281898/ayzkoj0jzsqcy6rzom6.pdf>

MMA's aggregate liability arising out of or relating to any services on your account shall not exceed ten million dollars (\$1,000,000), and in no event shall we be liable for any indirect, special, incidental, consequential or punitive damages or for any lost profits or other economic loss arising out of or relating to such services. In addition, you agree to waive your right to a jury trial in any action or legal proceeding arising out of or relating to such services. The foregoing limitation of liability and jury waiver shall apply to the fullest extent permitted by law.

We appreciate your business and look forward to your instructions regarding the placement of your coverage on the terms outlined in this proposal.

EXHIBIT D
Business Associate Agreement
Health Insurance Portability and Accountability Act

This Business Associate Agreement (the "Agreement") is made and entered into as of the 1st day of December, 2016 (hereinafter the "Date") by and between the City of Watertown on behalf of the City of Watertown's Group Health Plan (hereinafter "Covered Entity"), and **Howalt McDowell Insurance, a Marsh & McLennan Agency LLC** (hereinafter "Business Associate").

Recitals

WHEREAS, the Department of Health and Human Services ("HHS") has promulgated regulations at 45 C.F.R. Parts 160-164 (the "Privacy Rule" and the "Security Rule"), implementing the privacy and electronic security requirements set forth in the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"); and

WHEREAS, the Privacy Rule and Security Rule and HIPAA have been amended by Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, entitled the Health Information Technology for Economic and Clinical Health Act of 2009 and the regulations promulgated thereunder (collectively, the "HITECH Act"), effective as of various dates set forth therein; and

WHEREAS, references to HIPAA in this Agreement shall include the Privacy Rule and Security Rule and the HITECH Act, and any subsequent amendments, modifications or supplements thereto, as appropriate for the context of its use; and

WHEREAS, the Privacy Rule and Security Rule, as so amended, provide among other things, that a covered entity is permitted to disclose Protected Health Information (as defined below) to a business associate and allow the business associate to obtain and receive Protected Health Information, if the covered entity obtains satisfactory assurances in the form of a written contract that the business associate will appropriately safeguard the Protected Health Information; and

WHEREAS, Business Associate will have access to, create and/or receive certain Protected Health Information in conjunction with the services being provided by Business Associate to Covered Entity, thus necessitating a written agreement that meets the applicable requirements of HIPAA. Both parties have mutually agreed to satisfy the foregoing regulatory requirements through this Agreement; and

WHEREAS, Covered Entity and Business Associate might have, or might be in the process of establishing, a separate agreement governing Business Associate's provision of services to Covered Entity (the "Services Contract") but the parties intend the "business associate" relationship between the parties to be governed by this Agreement.

NOW THEREFORE, Company and Business Associate agree as follows:

1.0 Definitions

- (a) Covered Entity. "Covered Entity" shall have the meaning as set forth in the first paragraph of this Agreement.
- (b) Individual. "Individual" shall mean the person who is the subject of the Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- (c) Protected Health Information. "Protected Health Information" shall have the meaning defined in 45 CFR § 160.103, which also sets forth the definition of health information, including genetic information as clarified by Public Law 110-233 and applicable regulations.
- (d) Secretary. "Secretary" shall mean the Secretary of the US Department of Health and Human Services or his designee.
- (e) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- (f) Security Rule. "Security Rule" shall mean the Standards for Security of Electronic Protected Health Information at 45 CFR part 160 and part 164, subparts A and C.

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR part 160 and part 164, including §§ 160.103, 164.103, 164.304, 164.404 and 164.501.

2.0 Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by Section 3.0 of this Agreement or as Required by Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to report to Covered Entity, in writing within ten (10) business days, any use or disclosure of the Protected Health Information not provided for by this Agreement and/or any Security Incident of which it becomes aware. "Security Incident" shall have the same meaning as the term "Security Incident" in 45 CFR § 164.304. The parties acknowledge and agree that any written report provided by Business Associate pursuant to this Section will constitute notice by Business Associate to Company of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no

additional notice to Company shall be required. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of Protected Health Information.

- (d) Business Associate agrees to mitigate, to the best abilities of a leading provider of services of this type, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement or any Security Incident. Business Associate will provide written notice to Covered Entity as soon as possible, but no later than ten (10) business days after discovery of any such unauthorized use or disclosure or Security Incident of (i) the actions taken by Business Associate to mitigate any harmful effect of such unauthorized Use or Disclosure or Security Incident; and (ii) the corrective action Business Associate has taken or shall take to prevent future similar unauthorized uses or disclosures or Security Incidents in the future. Such report shall not include instances where Business Associate inadvertently misroutes Protected Health Information to a medical practitioner, as long as the disclosure is not a Breach as defined under 45 CFR §164.402.

- (e) Business Associate agrees to ensure that any agent, including a subcontractor, that creates, receives, maintains or transmits Protected Health Information or Electronic Protected Health Information on behalf of Business Associate agrees, in writing, to the same restrictions, conditions, rights and obligations that apply through this Agreement to Business Associate with respect to such information. In addition, Business Associate shall notify Covered Entity immediately of any act or practice of a subcontractor that Business Associate believes may constitute a pattern of activity or practice that constitutes a material breach or violation of this Agreement by Business Associate, and to cooperate with Covered Entity or Company in taking steps to cure such violation.

- (f) Business Associate agrees to provide access, at the request of Covered Entity or an Individual, and within thirty (30) calendar days and in a manner consistent with the HIPAA regulations, to Protected Health Information in a Designated Record Set, to Covered Entity or directly to an Individual in order to meet the requirements under 45 CFR § 164.524. If the Individual requests an electronic copy of such Protected Health Information, Business Associate shall provide the Individual with access to the Protected Health Information in the electronic form and format requested by the Individual, if it is readily producible in such form and format.

- (g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity or an Individual directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity or an Individual, within thirty (30) calendar days and in a manner consistent with the HIPAA regulations.

- (h) Business Associate agrees to make its internal practices, books, and records, including policies and procedures regarding Protected Health Information, relating to the use and disclosure of Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to Covered Entity, or at Covered Entity's request, to the Secretary in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (i) Business Associate shall document its procedures to demonstrate its compliance with its obligations set forth in this Agreement and, within five (5) business days of a request from the Covered Entity, shall supply Covered Entity with copies of such documentation.
- (j) Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528 and any subsequent legislation or guidance regarding an Individual's right to an accounting of the disclosures of his or her Protected Health Information, including, but not limited to, the requirements of Section 13405 of the ARRA (as defined in Section 2.0(w) below) regarding electronic health records.
- (k) Business Associate agrees to provide to Covered Entity or an Individual an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528, in a prompt and reasonable manner consistent with the HIPAA regulations but in no event later than thirty (30) calendar days after receiving a request for such an accounting. Business Associate will also provide, if applicable, an accounting of disclosures of any "electronic health records," to the extent required by Section 13405(c) of the ARRA (as defined in Section 2.0(w) below).
- (l) Business Associate agrees to comply with and satisfy all applicable provisions of HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange ("EDI") Standards, at 45 CFR Part 162, as well as all operating rules that apply to standard transactions, submission of certifications to HHS (to the extent HHS permits) concerning standard transactions, and all other electronic data interchange requirements included in the Patient Protection and Affordable Care Act of 2010. Business Associate further agrees to ensure that any agent, including a subcontractor that conducts standard transactions on its behalf will comply with the EDI Standards.
- (m) Business Associate agrees that it will determine the Minimum Necessary type and amount of Protected Health Information required to perform its services and will comply with 45 CFR §§ 164.502(b) and 514(d).

- (n) Business Associate agrees to restrict the use or disclosure of Protected Health Information as may be agreed to in accordance with 45 CFR § 164.522, to document those restrictions, and to provide to Covered Entity such documentation within five (5) business days of any request and in a manner consistent with the HIPAA regulations.
- (o) Business Associate agrees to accommodate alternative means or alternative locations for communicating Protected Health Information and to document those alternative means or alternative locations at the request of Covered Entity or an Individual, pursuant to 45 CFR § 164.522(b), in a prompt and reasonable manner consistent with the HIPAA regulations.
- (p) Business Associate agrees to be the primary party responsible for receiving and resolving requests from an Individual exercising his or her individual rights described in subsections (f), (g), (k), and (o) of this Section 2.0.
- (q) To the extent that Business Associate is to carry out an obligation of Covered Entity under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements that apply to Covered Entity with respect to the performance of such obligation.
- (r) Business Associate agrees to implement any and all administrative, technical, and physical safeguards necessary to reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity, including ensuring compliance with 45 CFR §§ 164.308, 164.310, 164.312, 164.314, and 164.316.
- (s) Business Associate agrees to ensure that access to Electronic Protected Health Information related to Covered Entity is limited to those workforce members who require such access because of their role or function.
- (t) Business Associate agrees to implement safeguards to prevent its workforce members who are not authorized to access Electronic Protected Health Information from obtaining access and to otherwise ensure compliance by its workforce with the Security Rule.
- (u) Business Associate shall, within three (3) business days following the discovery of a Breach of Unsecured Protected Health Information, as defined by 45 CFR § 164.402, notify Covered Entity of such Breach in a manner compliant with the terms of 45 CFR § 164.410. Business Associate shall fully cooperate with Covered Entity and shall be responsible for notification of Individuals and any governmental entities requiring notification; provided, however, that Business Associate shall not provide notice, or otherwise contact, any Individual, the Secretary, the media or any other third party, regarding this Agreement or the Protected Health Information without the

prior written consent and involvement of Covered Entity. Any notification provided pursuant to this Section will contain the elements required in 45 CFR § 164.410 or applicable state law.

- (v) Business Associate shall not receive direct or indirect remuneration for any exchange of Protected Health Information otherwise authorized under the Privacy Rule and/or Security Rule without an Individual's authorization.

- (w) Business Associate acknowledges that enactment of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5, "ARRA") amended certain provisions of HIPAA in ways that now directly regulate Business Associate's obligations and activities under HIPAA's Privacy Rule and Security Rule, including the Breach Notification Rule. Business Associate agrees to comply, as of the applicable effective dates of each such HIPAA obligation relevant to Business Associate, with the requirements imposed by ARRA, including monitoring of federal guidance and regulations published thereunder and timely compliance with such guidance and regulations. In consequence of the foregoing direct regulation of Business Associate by HIPAA laws and regulations, notwithstanding any other provision of the Agreement, Business Associate further agrees to monitor HIPAA Privacy Rule and Security Rule requirements imposed by future laws and regulations, and to timely comply with such requirements when acting for or on behalf of the Covered Entity in its capacity as a Business Associate.

- (x) In the event Business Associate is served with legal process or a request from a governmental agency that may potentially require the disclosure of Protected Health Information, Business Associate shall promptly, and in any case within twenty-four (24) hours of its receipt of such legal process or request, notify Covered Entity. Business Associate shall not disclose Protected Health Information without Covered Entity's consent unless pursuant to a valid and specific court order or to comply with a requirement for review of documents by a governmental regulatory agency under its statutory or regulatory authority to regulate the activities of either party.

- (y) Business Associate agrees to obtain Covered Entity's written consent in advance of transmitting, disclosing or maintaining (whether by Business Associate or any person/entity engaged by Business Associate) in either of the following: (1) a location outside of the United States; or (2) by or to a person outside the United States.

- (z) Each year during the term of this Agreement, Business Associate shall obtain a SSAE 16 (SOC 2) Type 2 Report for each Business Associate service location from which services are provided to Covered Entity pursuant to the Underlying Agreement. Business Associate shall provide Covered Entity with a copy of each such SSAE 16 (SOC2) Type 2 Report within fifteen (15) calendar days of Business Associate's receipt thereof from the applicable auditor, which date shall be no later than November 30 of every year. Business Associate shall bear all costs and expenses associated with obtaining and delivering each SSAE 16 (SOC 2) Type 2

Report. In addition, if any services are provided or related systems are operated by a Business Associate subcontractor, and if such services or systems (or any controls or other aspects of such services or systems) would require delivery, pursuant to this Section 2.0(z), of a SSAE 16 (SOC 2) Type 2 Report had such services or systems been provided directly by Business Associate, then Business Associate shall cause each such subcontractor to comply with the requirements of this Section 2.0(z). As requested by Covered Entity, Business Associate shall either (1) certify to Covered Entity in writing that during each applicable SSAE16 (SOC 2) Gap Period no changes have been made to the services or the systems, the manner in which the services or systems are provided or operated, applicable controls, or the Control Objectives that could reasonably be expected to have any impact on the contents of, or opinions set forth in, the applicable SSAE 16 (SOC 2) Type 2 Report; or (2) provide Covered Entity with a written description of any such changes.

3.0 Permitted or Required Uses and Disclosures by Business Associate

(a) General Use and Disclosure

- (i) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in any governing Services Contract and in this Agreement, provided that such use or disclosure of Protected Health Information would not violate the Privacy Rule, including the Minimum Necessary requirement, if done by Covered Entity.
- (ii) Business Associate shall share Protected Health Information as reasonably requested by Covered Entity (and as permitted by Section 5.0) with Covered Entity, the Centers for Medicare and Medicaid Services (CMS), and their agents, and with any other parties permitted by CMS guidance (including CMS's FAQ No. 5482), where Covered Entity is submitting to CMS the Protected Health Information required by 42 CFR § 423.884 for Medicare's retiree drug subsidy program.

(b) Additional Use and Disclosure

- (i) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (ii) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that such disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(iii) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

(iv) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

4.0 Obligation to Inform Business Associate of Covered Entity's Privacy Practices and any Authorization or Restriction

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, authorization by Individual or his or her personal representative to use or disclose Protected Health Information, if such changes affect Business Associate's uses or disclosures of Protected Health Information.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522, if such changes affect Business Associate's uses or disclosures of Protected Health Information.

5.0 Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

6.0 Term and Termination

(a) **Term.** The term of this Agreement shall be effective as of the Effective Date, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information in accordance with the termination provisions in this Section.

(b) **Termination for Cause.** Without limiting the termination rights of Covered Entity pursuant to the governing Services Contract, Covered Entity may terminate the Services Contract and this Agreement in the event that it determines that Business Associate has violated the terms of this Agreement or violated any of their obligations under HIPAA and the underlying Services Contract and failed to cure such breach within thirty (30) days after receipt of written notice thereof.

(c) **Effect of Termination.** The parties mutually agree that it is essential for Protected Health Information to be maintained after the expiration of the Agreement for

regulatory and other business reasons. The parties further agree that it would be infeasible for Covered Entity to maintain such records because Covered Entity lacks the necessary system and expertise and does not receive or maintain Protected Health Information. Accordingly, Covered Entity hereby appoints Business Associate as its custodian for the safe keeping of any record containing Protected Health Information that Business Associate may determine it is appropriate to retain. Notwithstanding the expiration or termination of any governing Services Contract, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further use or disclosure of the Protected Health Information to those purposes that make the return or destruction of the Protected Health Information infeasible.

7.0 Miscellaneous

- (a) **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended and for which compliance is required.
- (b) **Amendment.** Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, the parties agree to negotiate in good faith to amend the Agreement as necessary to comply with such law or regulation. Covered Entity shall have a right to terminate this Agreement in the event that (i) Business Associate fails to enter into such good faith negotiations within a reasonable period of time, or (ii) the parties are not able to agree to a mutually acceptable amendment and Covered Entity reasonably believes that it is in violation of HIPAA by continuing this Agreement without such amendment.
- (c) **Survival.** This Section 7.0 and the respective rights and obligations of Business Associate under Section 6.0(c) of this Agreement shall survive the termination of this Agreement.
- (d) **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule and Security Rule.
- (e) **No third party beneficiary.** Nothing expressed or implied in this Agreement or in any governing Services Contract is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assignees of the parties, any rights, remedies, obligations, or liabilities whatsoever.
- (f) **Severability.** If any provision of this Agreement is held illegal, invalid, prohibited, or unenforceable by a court of competent jurisdiction, that provision shall be revised, limited or eliminated in that jurisdiction to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

- (g) **Governing law.** To the extent the federal Privacy Rule or Security Rule, as amended by ARRA, do not govern, this Agreement shall be governed by and construed in accordance with the laws of the State of New York except for its principles governing choice of laws.

- (h) **Agency.** The parties agree that Business Associate is not and will not act as an agent of Covered Entity. Business Associate will indemnify the Company and/or Covered Entity for any and all losses and expenses, including but not limited to reasonable attorneys' fees relating to colorable claims that Business Associate has acted as Covered Entity's or the Company's agent.

- (i) **Indemnification and Performance Guarantees.** Business Associate's indemnification and performance guarantee obligations contained in any governing Services Contract shall extend to the terms of this Agreement. Further, notwithstanding any other provision of the Agreement or any governing Services Contract between the parties, Business Associate agrees to pay all losses, penalties and expenses, including those incurred in connection with any remediation efforts, as a result of Business Associate's (or its subcontractor's) violation of HIPAA or any acts or omissions related to its HIPAA obligations or a violation of the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

City of Watertown

On behalf of: City of Watertown Group Health Plan

By:

Name:

Title:

Howalt McDowell Insurance, a Marsh & McLennan Agency LLC

By:

Name:

Title:



**Watertown, City of
2017 Renewal Billing**

Member #: 4
Member: Watertown, City of
Address: Shelly Ebbers, Finance Officer
PO Box 910
Watertown, SD 57201

Invoice #: 15314
Inv Date: 10/11/2016
Billing Period: 1/1/2017
Thru: 1/1/2018

Code	Description	# Empl	Payroll	Rate	Contribution
0106	Tree Pruning, Spraying - incl Mtn Pine Beetle Project	2	73,636	26.39	19,433
3724	Traffic Signals	1	42,553	6.76	2,877
5506	Street & Road Const Incl Snow Removal/Cleaning	14	485,478	6.65	32,284
5606	Highway/Street Superintendent	1	60,168	2.99	1,799
6217	Grading (Landfill)	7	225,230	7.42	16,712
6319	Gas Mains (Incl. Drivers)	11	601,056	4.85	29,151
7370	Paid Ambulance Services/ EMT's	30	1,423,366	5.55	78,997
7370e	Volunteers under 18 years old	8	0	21.00	168
7382	Bus Company	3	3,600	4.94	178
7403	Airport Operations	3	127,309	3.39	4,316
7502	Gas Company	5	262,380	2.54	6,664
7520	Waterworks	7	374,192	3.67	13,733
7538	Electrical Underground & Trenching	13	775,090	5.07	39,297
7539	Electric Power	3	201,616	2.86	5,766
7580	Sewage Disposal	13	533,928	2.99	15,964
7590	Garbage Workers - Recycling Centers	1	44,390	4.89	2,171
7704	Paid Firefighters	7	338,157	8.23	27,830
7720	Law Enforcement	36	1,596,854	3.41	54,453
7720a	Reserve Police	7	0	77.00	539
8227	Contractors Perm. Yard/Warehouse	3	104,298	6.33	6,602
8380	Auto Service & Repair/Hwy Shop	2	65,287	3.54	2,311
8601	Consulting Engineer	4	173,574	0.72	1,250
8810	Clerical Incl. Board Members	111	3,974,322	0.39	15,500
8810a	Volunteer Board Members/Clerical/Librarians	12	0	10.00	120
8820	Attorney	1	66,378	0.28	186
8831	Animal Control/Vet/Hospital	1	40,709	2.48	1,010
8868	College/Schools Professionals	6	59,373	0.48	285
9015	Buildings NOC Incl. Custodial	24	280,838	4.88	13,705
9015a	Miscellaneous Volunteers	75	0	10.00	750
9016	Amusement Park & Exhibitions	2	7,600	2.95	224
9063	Recreation Center - All Emp.	172	586,141	1.39	8,147
9063a	Recreation Volunteers (Incl Coaches, Referees, Mnt)	200	0	10.00	2,000
9102	Parks NOC (Incl. Lifeguards)	150	1,271,239	3.91	49,705
9220	Cemetery Operations	6	109,660	4.24	4,650
9402	Sewer Cleaning/Mosquito Spraying/Misc	1	9,200	5.14	473
9403	Garbage or Refuse Collection	10	224,741	8.61	19,350

Code	Description	# Empl	Payroll	Rate	Contribution
9404	Automated Garbage Service	5	114,366	7.12	8,143
9410	Municipal/County Employees (Outside office)	8	297,004	2.83	8,405
Totals:		965	\$14,553,733		\$495,148

Due Date: January 1, 2017

Make Checks Payable to:
SDML Workers' Compensation Fund
208 Island Drive
Ft. Pierre, SD 57532

Subtotal		\$495,148
Fund Modifier		1.000
Modified Contribution		\$495,148
Size Discount	6.90%	-\$34,165
Contribution - Size Discount		\$460,983
Renewal Credit	15.00%	-\$69,147
Return on Equity		-\$27,262
Loss Control Credit	9.00%	-\$32,812
Total Due		\$331,762

Copy A - Return with payment

2017 Worker's Comp Renewal Estimate Billing - MUD

FUND	DEPT	ACCT	WC CODE	Estimated PREMIUM
MUD			6319 Gas/Water Mains (incl. drivers)	19,532
MUD			7502 Gas	4,465
MUD			7520 Water	9,201
MUD			7538 Electrical underground & trenching	26,330
MUD			7539 Electric	3,864
MUD			8227 Contractors Perm. Yard/Warehouse	4,424
MUD			8380 Auto Services & Repair	1,261
MUD			8601 Consulting Engineers	837
MUD			8810 Clerical	3,533
MUD			9015A Board	34
				73,481

2017 Municipal Utilities Estimate Renewal Premium 73,481

2017 Worker's Comp Renewal Estimate Billing - City of Watertown

FUND	DEPT	ACCT	WC CODE		Estimated PREMIUM	
101	41110	41400	8810 Mayor		471	471
101	41110	42913	9015A Disability Board		107	107
101	41520	41400	8820 Attorney		125	
101	41520	41400	8810 Attorney-Admin Asst		56	181
101	41530	41400	8810 Finance Office		900	
101	41530	41400	8810 Election Workers		0	
101	41530	41400	9015A Civil Service Board		20	920
101	41933	41400	8810 Information Technology		428	428
101	41110	41400	9015A Public Health Office		13	
101	41110	41400	9015A Watertown Housing Board		40	
101	41110	41400	9015A Fair Housing Board		34	87
101	41960	41400	8810 City Engineer		673	
101	41960	41400	9410 Engineering		2,745	3,418
101	42100	41400	7720 Police Officers		36,485	
101	42100	41400	8380 Police - Auto Service & Repair		287	
101	42100	41400	8810 Police - Clerical		498	
101	42100	41400	9015 Police - Facility Maintenance		1,178	
101	42100	41400	7370E Police - Explorers		113	
101	42100	41400	9063A Police - Volunteer		670	
101	42100	41400	7720A Police - Reserves		361	
101	42100	41400	9015A Animal Control Board		13	39,605
101	42220	41400	7704 Fire		18,647	
101	42220	41400	9015A Fire - Volunteer		0	18,647
101	42291	41400	7370 Ambulance		52,930	
101	42291	41400	8810 Fire - Clerical		115	53,045
101	46512	41400	8810 Building Services		359	
101	46512	41400	9410 Building Services-Inspector/Code Enforce		896	1,255
101	46512	42915	9015A Planning Board		54	54
101	43120	41400	8810 Street -PT office		32	
101	43120	41400	5506 Street		19,580	
101	43120	41400	5606 Street - Superintendent		1,205	
101	43120	41400	3724 Maintenance - Signs		1,927	22,744
101	43125	41400	5506 Snow Removal		2,052	2,052
101	43700	41400	9220 Cemetery		3,115	3,115
604	43252	41400	9402 Mosquito		317	317
101	44143	41400	8831 Animal Control (reinstated)		676	676
101	45240	41400	106 Forestry		13,021	
101	45240	41400	7382 Forestry		119	
101	45240	41400	9102 Forestry - Superintendent		833	13,973
101	45500	41400	9015 Library - Janitor		1,525	
101	45500	41400	8810 Library - Clerical		981	
101	45500	41400	8810A Library - Volunteer		80	
101	45500	41400	9015A Library - Board		34	2,620
272	46320	41400	9015 Urban Renewal		0	
272	46320	41400	9015A Urban Renewal Board		7	7
201	45121	41400	8810 Park & Rec Supervision		376	
201	45121	41400	9015A Park and Rec Board		40	416
201	45123	41400	8810 Recreation - office staff (pt)		31	
201	45123	41400	9063 Recreation		2,260	
201	45123	41400	9060 Recreation Programs (instructors/coord)		0	
201	45123	41400	9063A Park & Rec Volunteers		536	2,827
201	45125	41400	9102 Golf		6,376	
201	45125	41400	9015 Golf - Janitor		367	6,743

201	45126	41400	9102 Aquatic Center - Lifeguards	2,145	
201	45126	41400	9015 Aquatic Center - Maintenance	123	
201	45126	41400	9063 Aquatic Center - Concessions	784	3,052
201	45127	41400	9102 Koch Complex - Field Maintenance	201	201
201	45128	41400	9015 Auditorium - Maintenance	2,178	2,178
201	45134	41400	9102 Zoo	14,397	
201	45134	41400	8868 Zoo - Educator/Roots & Shoots	191	14,588
201	45135	41400	9102 Ice Arena	548	
201	45135	41400	9016 Ice Arena	150	698
201	45142	41400	9102 Parks - Maintenance	6,159	6,159
201	45147	41400	9102 City Park	1,080	1,080
204	45122	41400	9063 WCRC-Recreation Programs	2,415	
204	45122	41400	9015A WCRC - Board	60	
204	45122	41400	9015A WCRC - Volunteer	0	
204	45122	41400	9063A WCRC - Recreation Volunteers	134	
204	45122	41400	9015 WCRC- Maintenance	3,204	
204	45122	41400	8810 WCRC - Clerical	265	
204	45122	41400	9102 WCRC - Lifeguards	941	7,019
214	42151	41400	8810 E-911 Dispatch	1,195	1,195
273	46210	41400	9410 Upper Big Sioux River Watershed	1,064	
273	46210	41400	8810 Upper Big Sioux River - Clerical	52	
273	46210	41400	7580 Upper Big Sioux River - Phosphorus Operator	148	
273	46210	41400	9015A Upper Big Sioux River - Volunteer	0	
273	46210	41400	9015A Upper Big Sioux River - Board	13	1,277
604	43252	41400	7580 WW - Collection Foreman	4,219	
604	43252	41400	9402 WW - Utility Maintenance	0	
604	43252	41400	8810 WW - Administration	42	4,261
604	43256	41400	7580 WW - Treatment Plant	4,550	
604	43256	41400	8810 WW - Treatment Plant Administration	66	4,616
604	43257	41400	9410 WW - Pretreatment	927	
604	43257	41400	8810 WW - Pretreatment Administration	132	1,059
604	43258	41400	7580 WW - Lab Tech	1,779	
604	43258	41400	8810 WW - Lab Administration	60	1,839
605	43230	41400	8810 SW Collection- Administration	41	
605	43230	41400	9403 SW - Collection	7,693	
605	43230	41400	9404 SW Collection - Automated	0	7,734
605	43240	41400	6217 SW - Disposal (grading/landfill)	11,198	
605	43240	41400	8810 SW Disposal-Administration	41	
605	43240	41400	7590 SW Recycle Ctr - Admin	1,454	12,693
605	43245	41400	8810 SW Recycle-Administration	38	
605	43245	41400	9404 SW Recycle - Automated	5,456	
605	43245	41400	9403 SW-Recycling	5,272	10,766
606	43500	41400	7403 Airport	2,892	
606	43500	41400	9015A Airport Board	33	
606	43500	41400	9015 Airport - Janitorial Maintenance	609	
606	43500	41400	9102 Airport - Grounds Maintenance	624	4,158

2017 City of Watertown Estimate Renewal Premium

258,281

COMBINED ESTIMATE 2017 WC RENEWAL PREMIUM FOR MUD AND CITY

331,762

Figures from Renewal Invoice

331,762

Request for City Council Action

TO: Mayor and City Council
FROM: Doug Kranz, Fire Chief
MEETING DATE: December 5, 2016
SUBJECT: Request for additional EMS staffing

Background: Currently, there is one full-time Firefighter/EMT deployed through the National Guard for most of 2017. With this absence, there was a need to temporarily fill the position to continue adequate staffing and manage overtime. The current day shift EMS employee will be temporarily transferred to the shift position vacated by the deployed employee and a temporary employee will be hired to fill the day shift position. This creates an opportunity to hire an additional temporary day shift EMS staff to provide 7 days a week coverage. Both positions will be hired with the understanding that their employment will end when the deployed employee returns to work or at the end of 2017 whichever comes first.

Request for staffing: The additional day shift employee will work opposite shifts of the current day shift position giving coverage 7 days a week during peak call times of 7 am – 7 pm. Having the additional day shift staff each day should decrease the overtime volume during normal operations. Unusually high call volume or a large structure fire will require overtime regardless of the added staff. Data on call volume, staffing levels and overtime back fill will be tracked throughout the year and compared to the previous year to determine the effect on overtime numbers.

Funding for additional staff: Funding for the additional staffing will come from the revenues received from hospital transfers to the airport that weren't anticipated in the 2017 budget. This is a temporary position until data can be collected to justify the request for permanent day shift staffing during the 2018 budget process.

Council Action Requested: Motion to authorize one additional temporary employee to the 2017 budget.

VENDING SPACE LEASE AGREEMENT

This Vending Space Lease Agreement is made and entered into this ____ day of December, 2016, by and between PepsiCo Food Service (hereinafter “LESSEE”), Watertown, South Dakota, and the City of Watertown (hereinafter “LESSOR”).

1. Leased Premises.

LESSOR hereby agrees to lease to LESSEE sufficient to accommodate three (3) vending machines and one (1) coffee machine within the terminal building located at the Watertown Regional Airport, 2416 Boeing Avenue, Watertown, South Dakota.

2. Term.

The term of this Vending Space Lease Agreement shall be one month, and shall automatically renew for successive one month term(s), unless otherwise terminated as provided for herein.

3. Rent.

LESSEE shall pay LESSOR Thirty Dollars (\$30.00) per month. Said rent amount shall include the costs of all utilities supplied to the vending machine, as well as the reasonable rental value of the square feet the vending machine occupies. Rent payments due hereunder must be made on or before the 15th day of each month during this Vending Space Lease Agreement. A late fee of 10% shall be added to each outstanding balance not paid within thirty (30) days of its due date.

4. Obligations of LESSOR.

- A. LESSOR warrants that it has authority to lease said premises to LESSEE for the purposes described herein.
- B. LESSOR warrants that LESSEE shall, during the term of this Vending Space Lease Agreement, have the right of quiet enjoyment in the leased premises, except as provided for herein.
- C. LESSOR hereby agrees that throughout the term of this Vending Space Lease Agreement it will pay for utility service to the vending machines and will not knowingly cause any termination or disruption of utility service.

5. Obligations of LESSEE.

- A. LESSEE shall own and supply the vending and coffee machines subject to this Lease Agreement.
- B. LESSEE agrees to observe and obey customary vending service practices upon the subject property, including but not limited to those related to maintenance, cleaning, stocking, and making any legitimate reimbursement to patrons of the vending machines.

- C. LESSEE specifically agrees that he will not perform any service or maintenance on any machines provided hereunder within thirty (30) minutes prior to, or after, any scheduled flight.
- D. LESSEE agrees, at his sole expense, to comply with all rules, regulations, ordinances, or statutes promulgated by the federal, state or county governments relating to, but not limited to, the dispensation of foodstuffs and beverages for consumption by the public.
- E. LESSEE agrees that at no time during the term of this Vending Space Lease Agreement will it permit any person, company, entity or organization to, in any manner, place or file against the leased premises any lien or encumbrance.

6. **Rights of LESSEE.**

LESSEE may utilize the leasehold premises, during the period this Lease Agreement is in effect, for vending machine service purposes.

7. **Indemnification.**

LESSEE agrees to indemnify and hold LESSOR harmless, for any liability, whether to person or property, arising out of, or occurring as a result of, any activities conducted on or equipment contained within the leased premises that is not the result of LESSOR's negligence, during the term of this Vending Space Lease Agreement. It is specifically agreed and understood that this express provision cannot be amended or extinguished, in any manner, during the term of this Agreement, is binding on the LESSEE's assigns and successors, and is to be construed to the fullest extent permitted by law.

8. **Right of Termination.**

Except as otherwise provided herein, this Lease Agreement may be terminated after its execution, without any penalty or further liability, upon thirty (30) days' written notice by a party. LESSEE hereby agrees that upon termination of this Vending Space Lease Agreement, it will remove any and all equipment from the leased premises prior to the effective date of such termination and will exercise its best efforts, prior to surrender of the leased premises, to restore the leased premises to the condition then existing at the time LESSEE took possession thereof.

9. **Notices.**

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered, or sent via certified mail, return receipt requested, to the following addresses:

If to LESSOR:

City of Watertown
 Watertown Municipal Airport

If to LESSEE:

Diane Kline
 PepsiCo Food Service

2416 Boeing Avenue.
Watertown, SD 57201

2400 E 52nd ST.
Sioux Falls, SD 57104

10. Assignment and Subletting.

LESSEE may not, in any manner, assign or sublet the leased premises, or any portion thereof.

11. Successors and Assigns.

This Vending Space Lease Agreement shall run with the property, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

12. Miscellaneous.

A. This Vending Space Lease Agreement constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Vending Space Lease Agreement must be in writing and executed by both parties.

B. This Vending Space Lease Agreement shall be construed in accordance with the laws of the State of South Dakota.

C. If any term of this Vending Space Lease Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Vending Space Lease Agreement, which shall continue in full force and effect. The parties shall agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

D. This Vending Space Lease Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

LESSEE:

LESSOR:

Diane Kline

Steve Thorson
Mayor

ATTEST:

Rochelle M. Ebbers, CPA
Finance Officer

(SEAL)

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

On this the __ day of _____ 2016, before me, the undersigned officer, personally appeared Steve Thorson 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 of Watertown 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 Minnehaha)

On this the __ day of 2016, _____ before me, the undersigned officer, personally appeared Diane Kline, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she 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 B133™ – 2014

Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

AGREEMENT made as of the 21st day of November in the year 2016
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Watertown
23 Second Street N.E., P.O. Box 910
Watertown, SD 57201-0910

and the Architect:
(Name, legal status, address and other information)

Randall.StanleyArchitects, Inc. (dba RSArchitects)
2307 W. 57th Street, Ste. 201
Sioux Falls, SD 57108

for the following Project:
(Name, location and detailed description)

Watertown Ice Sheets
Located immediately north of the new softball complex off 17th street.
The facility will have two sheets of ice, will seat up to 1900 spectators, and will have a footplate of 75,000 SF.

The Construction Manager (if known):
(Name, legal status, address and other information)

Gray Construction
180 Second St. NE, P.O. Box 123
Watertown, SD 57201

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A201™–2007, General Conditions of the Contract for Construction; A133™–2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134™–2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

AIA Document A201™–2007 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in Phase 1 and further defined by committee review as part of this contract along with the CMAR's input on potential costs.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution," or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

Will be confirmed by committee utilizing Phase 1 information as basics.

The facility is planned to have two sheets of ice, seat up to 1900 spectators, and have a footplate of 75,000 SF.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

The project is generally described in the TEGRA RFP and on page 1 of this contract and will be confirmed by committee action.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

Owner's budget is to be determined by the CMAR but is in the \$8M range.

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

DD completion by February 1, 2017.

Init.

.2 Commencement of construction:

Spring of 2017

.3 Substantial Completion date or milestone dates:

TBD

.4 Other:

N/A

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:
(Indicate agreement type.)

- [] AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

(Paragraph deleted)

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling or phased construction TBD.
(List number and type of bid/procurement packages.)

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as the Owner's sustainable objective, if any, or historic preservation requirements.)

The owner may reuse certain existing equipment in the new facility

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.5:
(List name, address and other information.)

Steve Thorson - Mayor
Jau DeLange – City Parks Director
Shane Waterman – City Engineer

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address and other information.)

Dustin Brownell, Project Executive
Gray Construction Co.
180 Second St. NE, P.O. Box 123
Watertown, SD 57201

§ 1.1.10 The Owner will retain the following consultants:
(List name, legal status, address and other information.)

.1 Construction Manager:

Init.

(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1)

Gray Construction Co.
180 Second St. NE, P.O. Box 123,
Watertown, SD 57201

(Paragraphs deleted)

.2 Land Surveyor: Owner's responsibility to provide survey of the site.

Helms and Associates
P.O. Box 111
Aberdeen, SD 57402
Bob Babcock, PE

.3 Geotechnical Engineer: Soil testing completed by Geotek Engineering

Geotek Engineering & Testing Services, Inc.
909 E 50th St. N.
Sioux Falls, SD 57104
Ralph Lindner, PE

(Paragraphs deleted)

.4 Other consultants:
(List any other consultants retained by the Owner, such as a Project or Program Manager, or scheduling consultant.)

Nate Pearson
The TEGRA Group
801 Nicolette Mall, Suite 1850
Minneapolis, MN 55402

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address and other information.)

Gary L. Stanley, AIA - Principle in Charge
Justin Oleson, Associate AIA – Project Designer/Document Specialist
Keith Neuharth, AIA – Specifications/Assistant Director
RSArchitects
2307 W 57th St., Ste 201
Sioux Falls, SD 57108

§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address and other information.)

§ 1.1.12.1 Consultants retained under Basic Services:

- .1 Architectural Design Consultant.
- .2 Structural Engineer
- .3 Civil Engineer:

Init.

Banner Associates, Inc.
2307 W 57th Street, Suite 102
Sioux Falls, SD 57108

.4 Mechanical/Electrical Engineer
Associated Consulting Engineering, Inc.
340 S. Phillips Ave,
Sioux Falls, SD 57104-6910

.5 Ice System Engineer
Stevens Engineers
2211 O'Neil Road
Hudson, WI 54016

§ 1.1.12.2 Consultants retained under Additional Services:

Not known at this time.

§ 1.1.13 Other Initial Information on which the Agreement is based:

None

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 **Insurance.** The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost as set forth in Section 11.8.3.

§ 2.6.1 Commercial General Liability with policy limits of not less than One million dollars (\$ 1,000,000.00) for each occurrence and two million dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

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§ 2.6.2 Automobile Liability covering vehicles owned by the Architect and non-owned vehicles used by the Architect with policy limits of not less than One million dollars (\$ 1,000,000.00) per claim and one million dollars (\$ 1,000,000.00) in the aggregate for bodily injury and property damage along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.6.1 and 2.6.2.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with policy limits of not less than one million dollars (\$ 1,000,000.00).

§ 2.6.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than one million dollars (\$ 1,000,000.00) per claim and two million dollars (\$ 2,000,000.00) in the aggregate.

§ 2.6.6 The Owner shall be an additional insured on the Architect's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations.

§ 2.6.7 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as additional insureds on the Commercial General Liability, Automobile Liability, and any excess policies.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include civil, ice system, structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Construction Manager a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Construction Manager's review, (3) for the performance of the Construction Manager's Preconstruction Phase services, (4) for the performance of the Owner's consultants, and (5) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 Once the Owner, Construction Manager, and Architect agree to the time limits established by the Project schedule, the Owner and Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, in coordination with the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.8 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Evaluation of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 Prior to the Owner's acceptance of the Guaranteed Maximum Price proposal or Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner on all communications related to substitution requests, clarifications, and interpretations.

§ 3.2.2 During one of the design phases, the Owner will receive a Guaranteed Maximum Price proposal or Control Estimate, as appropriate, from the Construction Manager. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.3 Upon authorization by the Owner, and subject to Section 4.3.1.15, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the feasibility of incorporating sustainable design approaches, and consideration of the implementation of the Owner's sustainable objective, if any. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval and the Construction Manager's review. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, implications of sustainable code

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requirements enacted in the relevant jurisdiction, if any, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other sustainable design services under Article 4.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality, or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval and Construction Manager's review. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and obtain the Owner's approval of the Construction Documents.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or the Owner's issuance of a Notice to Proceed to the Construction Manager. Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions pursuant to section 3.6.2.3 rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Construction Manager that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests

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for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Construction Manager and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Construction Manager; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Services	Responsibility <i>(Architect, Owner or Not Provided)</i>	Location of Service Description <i>(Section 4.2 below or in an exhibit attached to this document and identified below)</i>
§ 4.1.1 Assistance with selection of the Construction Manager	Owner	
§ 4.1.2 Programming (B202™-2009)	Basic Service	
§ 4.1.3 Multiple preliminary designs	Basic Service	

§ 4.1.4	Measured drawings	N/A	
§ 4.1.5	Existing facilities surveys	N/A	
§ 4.1.6	Site Evaluation and Planning (B203™-2007)	Basic Service	
§ 4.1.7	Building Information Modeling (E203™-2013)	N/A	
§ 4.1.8	Civil engineering	Basic Service	
§ 4.1.9	Landscape design	Basic Service	
§ 4.1.10	Architectural Interior Design (B252™-2007)	Basic Service	
§ 4.1.11	Value Analysis (B204™-2007)	By CMAR	
§ 4.1.12	Detailed cost estimating	By CMAR	
§ 4.1.13	On-site project representation (B207™-2008)	N/A	
§ 4.1.14	Conformed construction documents	N/A	
§ 4.1.15	As-Designed Record drawings	N/A	
§ 4.1.16	As-Constructed Record drawings	Basic Service	
§ 4.1.17	Post occupancy evaluation	N/A	
§ 4.1.18	Facility Support Services (B210™-2007)	N/A	
§ 4.1.19	Tenant-related services	N/A	
§ 4.1.20	Coordination of Owner's consultants	N/A	
§ 4.1.21	Telecommunications/data design	Owner	
§ 4.1.22	Security Evaluation and Planning (B206™-2007)	Owner	
§ 4.1.23	Commissioning (B211™-2007)	N/A	
§ 4.1.24	Extensive sustainable design services	N/A	
§ 4.1.25	LEED® Certification (B214™-2012)	N/A	
§ 4.1.26	Historic Preservation (B205™-2007)	N/A	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™-2007)	Owner	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- .3 Services necessitated by the Owner's request for extensive sustainable design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;

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- .4 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations, or official interpretations;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 Preparation

(Paragraphs deleted)

for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

- .7 Evaluation of the qualifications of bidders or persons providing proposals;
- .8 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- .9 Assistance to the Initial Decision Maker, if other than the Architect;
- .10 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .11 Services necessitated by the Owner's delay in engaging the Construction Manager; and
- .12 Making revisions in Drawings, Specifications, and other documents resulting from substitutions included in the agreed to assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 One (1) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 Twenty-four (24) visits to the site by the Architect over the duration of the Project during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within fourteen (14) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

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ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall furnish the services of a Construction Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.4 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall furnish the services of a Construction Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.4.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.6 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.7 The Owner has furnished services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. If further testing is required, it will be the owner's responsibility to provide.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

Init.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall contemporaneously provide the Architect with any communications provided to the Construction Manager about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Managers' general conditions costs, overhead, and profit. The Cost of the Work does not include the compensation of the Architect, the compensation of the Construction Manager for Preconstruction Phase services, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and may be adjusted throughout the Project as required under Sections 5.4 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

(Paragraph deleted)

§ 6.3.2 Subject to Section 4.3, if the Owner engages a Cost Consultant and a discrepancy exists between the Construction Manager's estimate and the Cost Consultant's estimate, the Architect shall assist the Cost Consultant and Construction Manager as necessary to conform the estimates to one another.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

(Paragraph deleted)

§ 6.7 The Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the

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Construction Manager, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

[] Litigation in a court of competent jurisdiction
(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the

Init.

interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates with the exception of certificates of insurance per section 2.6.7, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors for the project whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

The fee for Professional Basic Services shall be 5.9% of the GMP as prepared by the CMAR. Prior to determination of the GMP, monthly invoicing shall be based on \$8,000,000.00 of construction cost.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Hourly, utilizing rates provided in the response to the RFP.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Hourly, utilizing rates provided in the response to the RFP.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10% %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	ten	percent (10	%)
Design Development Phase	twenty	percent (20	%)
Construction Documents Phase	forty-five	percent (45	%)
Construction Phase	twenty-five	percent (25	%)
Total Basic Compensation	one hundred	percent (100	%)

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services as appropriate.

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the Owner-accepted Guaranteed Maximum Price Amendment or Control Estimate, as applicable, or (2) if the Guaranteed Maximum Price proposal or Control Estimate has not been accepted by the Owner, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth to comport with section 11.1. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Hourly rates are listed in the cost proposal that was included with the response to the RFP.

(Table deleted)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets for Stevens Engineers
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .7 Architect's consultants' expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .8 All taxes levied on professional services and on reimbursable expenses when billed to the architect.
- .9 Site office expenses; and
- .10 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and most of the Architect's consultants plus zero percent (0 %) of the expenses incurred. Stevens Engineers adds 10% unto their reimbursable expenses.

§ 11.8.3 If the insurance requirements listed in Section 2.6 exceed the types and limits the Architect normally maintains and the Architect incurred additional costs to satisfy such requirements, the Owner shall reimburse the Architect for such costs as set forth below:

N/A

§ 11.9 Compensation for Use of Architect's Instruments of Service

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

§ 11.10 Payments to the Architect

§ 11.10.1 An initial payment of zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

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§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

N/A

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B133™–2014, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition

(Paragraphs deleted)

- .2 Other documents:

(List other documents, if any, including additional scopes of service forming part of the Agreement.)

Attachment A – Phase 1 documentation

Attachment B – Cost proposal as part of the RFP response

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

(Printed name and title)



ARCHITECT (Signature)

Gary L Stanley – President

(Printed name and title)

11-28-16.

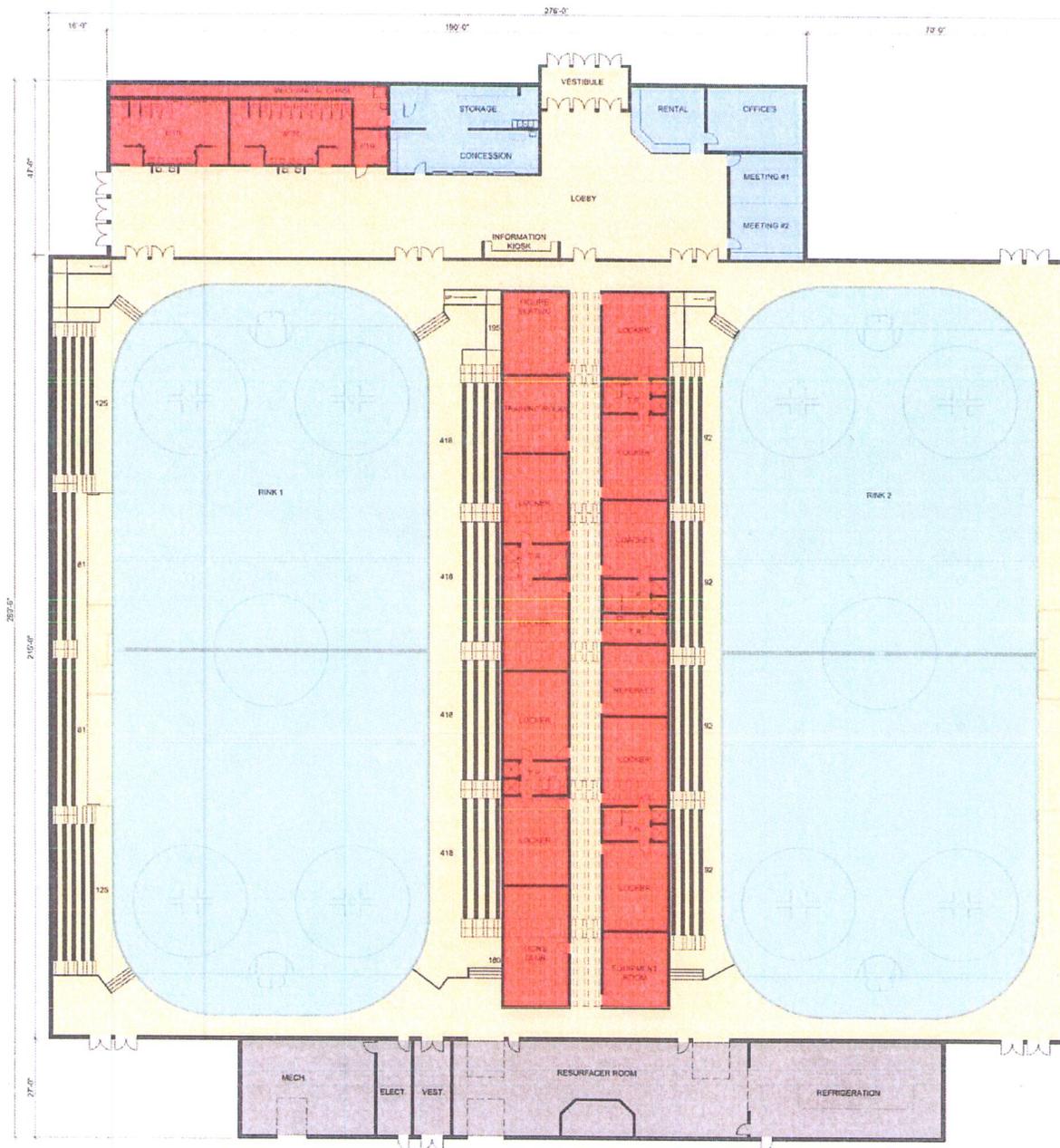
ATTACHMENT A

Phase 1 Documentation

1. Preliminary Site Plan
2. Preliminary Floor Plan
3. Preliminary Building Section
4. Preliminary Exterior Rendering
5. Preliminary Cost Estimate
6. Meeting Minutes- 05.13.16

Watertown Ice Facility Study

Watertown, SD

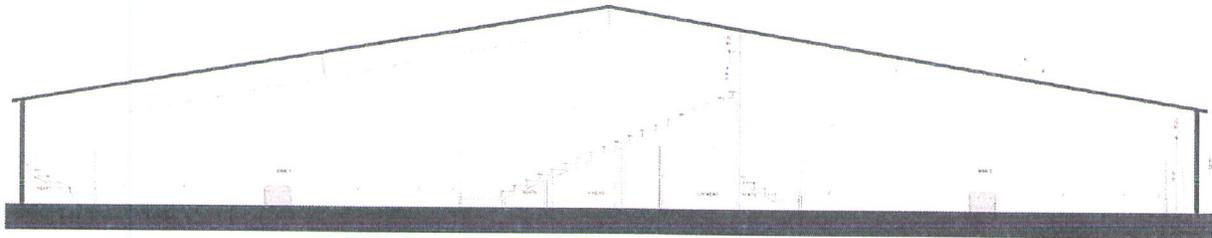


Facility Study Breakdown:

- 1,900+ Total Seating
- 75,000 Total S.F.

Watertown Ice Facility Study

Watertown, SD



Preliminary Building Section



Preliminary Exterior Rendering

Watertown Ice Complex
 Watertown, South Dakota
 Gray Construction Company

Item #	Description	Quantity	Unit	Unit Price	Total Price
1	General Requirements	1	LS	\$ 144,214.43	\$ 144,214.43
2	Unclassified Excavation	2925	CuYd	\$ 3.75	\$ 10,968.75
3	Borrow Material	0	CuYd	\$ 3.00	\$ -
4	Topsoiling from Backfill	1000	CuYd	\$ 4.00	\$ 4,000.00
5	Granular Base Course Building	3950	CuYd	\$ 16.50	\$ 65,175.00
6	Geotextile Fabric	0	SqYd	\$ 2.00	\$ -
7	4" Reinforced Concrete Sidewalk	4000	SqFt	\$ 4.50	\$ 18,000.00
8	Asphalt Paving	0	Tons	\$ 105.00	\$ -
9	Curb & Gutter	0	LF	\$ 18.00	\$ -
10	6" Valley Gutter	0	SqYd	\$ 55.00	\$ -
11	Sanitary Sewer	1	LS	\$ 25,000.00	\$ 25,000.00
12	Footings	3054	LF	\$ 18.00	\$ 54,972.00
13	Foundation	1187	LF	\$ 52.00	\$ 61,724.00
14	Floor Slabs (rinks not included)	106496	SqFt	\$ 3.47	\$ 369,541.12
15	Mezzanine Floor Slabs	9900	SqFt	\$ 3.62	\$ 35,838.00
16	Precast Core Plank	9900	SqFt	\$ 4.00	\$ 39,600.00
17	Precast "L" Panels for Seating	2150	LF	\$ 50.00	\$ 107,500.00
18	Masonry Walls	24576	per Block	\$ 12.60	\$ 309,657.60
19	Steel Building with Labor	73549	SqFt	\$ 17.50	\$ 1,287,107.50
20	Insulation for Steel Building	73549	SqFt	\$ 1.15	\$ 84,581.35
21	Interior Steel Studs & Gypsum Walls	437	LF	\$ 62.00	\$ 27,094.00
22	Painting	1	LS	\$ 118,000.00	\$ 118,000.00
23	Aluminum Glazing	1	LS	\$ 44,000.00	\$ 44,000.00
24	Double Pair Hollow Metal Doors	16	Each	\$ 1,800.00	\$ 28,800.00
25	Single Hollow Metal Door	39	Each	\$ 1,100.00	\$ 42,900.00
26	Overhead Garage Door	1	Each	\$ 4,200.00	\$ 4,200.00
27	VCT Flooring in Concessions/Storage	960	SqFt	\$ 3.00	\$ 2,880.00
28	Rubber Flooring for Ice arena Areas	18480	SqFt	\$ 7.00	\$ 129,360.00
29	Toilet Partitions	23	Each	\$ 525.00	\$ 12,075.00
30	Bathroom Accessories	1	LS	\$ 3,000.00	\$ 3,000.00
31	Fire Extinguishers	12	Each	\$ 200.00	\$ 2,400.00
32	Dasher Boards	2	Each	\$ 197,950.00	\$ 395,900.00
33	Refrigeration System	1	LS	\$ 2,330,000.00	\$ 2,330,000.00
34	HVAC	1	LS	\$ 763,000.00	\$ 763,000.00
35	Plumbing	1	LS	\$ 321,000.00	\$ 321,000.00
36	Electrical	1	LS	\$ 749,000.00	\$ 749,000.00
					\$ 7,591,488.75
	2 1/2% Contingency			\$ 189,787.22	\$ 7,781,275.97

\$ 8,307,625.00

Date: May 12, 2016 * notes in red. from the meeting. (05.13.16)

Subject: Cost Review
Watertown Iceplex
Watertown, SD.
RS 214.35

Exterior:

Additional South Parking - decided it was not needed (Helms on 5/17)
North Service Drive - can be mostly gravel, paving at OH doors.
East Service Drive - not needed
Landscaping - by the City.
Outdoor Furniture - by the City
Flagpoles - by the City
Trash Encl./Containers - by the city
Pole Lighting - shouldn't be needed
Monument Sign ---]
Building Signage] signage by the city
Directional Signage]
Em. Generator - set up for portable (city).

Interior:

Display Cases/Directories/BB. - by the city
Lockers - should be limited, and by the city.
Benches - by the City
Hooks - by the city
Rental Counter - will be in the project.

(Interior Continued)

- Rental Storage Lockers — should not be needed.
- Concession's Counter — will be in the project.
- Concession's Coiling Grille/Grilles — will be in the project.
- Concession's Cooking/Food Prep. Equip. — by the city (some existing)
- Concession's Coolers/Freezers. — by the city (some existing)
- Office Furniture — by the city
- Meeting Room-Tables/Chairs — by the city
- Meeting Room Counter — will be in the project.
- Lobby Furniture — by the city
- Showers — will be in the project (CMU)
- Plank Seating — by the city.
- Individual Spectator Seats — future.
- Bleachers — by the city (some existing)
- Scoreboards/clocks — by the city.
- Interior Signage — by the city
- Goals — by the city (some existing)
- Practice Equipment-Skates/Sticks — by the city (if needed)
- Training Equipment — by the city
- Em. Medical Equipment — by the city.
- Security Systems/Cameras — not required
- Phone/Data/WiFi — conduit in the project, cabling by the city
- Cable/Sat. T.V. — conduit in the project, system to be future.
- Broadcasting Equip. — not required
- Information Kiosk — will be in the project.
- Laundry Equipment — not required
- Trash Containers — by the city.
- Equipment Storage Cabinets — not required.
- Zamboni — existing
- Dasher Boards — needed at Rink 1, future for Rink 2.

Professional Fees:

- Architectural
- Civil
- Structural
- Mechanical/Electrical
- Refrigeration

gathering proposals. At the meeting, informed the Mayor that professional services would not exceed 5.5% of the construction cost.



Celebrating **25** years

ATTACHMENT B

Cost Proposal – 09.28.16

September 28, 2016

Nate Pearson
The TEGRA Group
801 Nicollet Mall, Suite 1850
Minneapolis, MN 55402

RE: Cost Proposal
Watertown Ice Sheets Facility
Watertown, SD

Dear Mr. Pearson,

RSArchitects proposes a fee of 5.9% of the construction cost of the work as outlined in the RFP under Cost Basis. The proposed fee includes the professional services of RSArchitects, Banner, Associated Consulting Engineering, Stevens, and Landscape Garden Center.

The breakdown for the various phases of the work would be as follows:

Schematic Design	10%
Design Development	20%
Construction Documents	45%
Bidding	3%
<u>Construction and Closeout</u>	<u>22%</u>
Total:	100%

The estimate for reimbursable expenses is \$28,000.00.

- Hourly Rates

RSArchitects

Principal Architect	\$165/hr.
Project Architect	\$145/hr.
Architectural Designer (1)	\$130/hr.
Architectural Designer (2)	\$115/hr.
Administrative Assistant	\$ 70/hr.

Banner

Sr. Project Manager	\$135 - \$180/hr.
Project Manager	\$105 - \$135/hr.
Project Engineer and Architect	\$ 85 - \$105/hr.
Staff Engineer and Architect	\$ 70 - \$ 85/hr.
CADD Drafting	\$ 60 - \$ 90/hr.
Surveying/Geomatics	\$ 50 - \$100/hr.
Administrative	\$ 40 - \$ 79/hr.

ACEI

Principal	\$136/hr.
Senior Engineer	\$113/hr.
Design Engineer	\$100/hr.
Designer II	\$ 90/hr.
Designer I	\$ 77/hr.
Draftsperson	\$67/hr.
Non-Technical	\$ 50/hr.

Stevens

Principal Engineer/Project Manager	\$125 - \$200/hr.
Specialist	\$185 - \$200/hr.
Project Engineer	\$ 95 - \$160/hr.
Graduate Engineer	\$ 75 - \$100/hr.
Technician/Inspector	\$ 50 - \$ 90/hr.
Administrative	\$ 55 - \$ 65/hr.

Hourly rates typically do not vary much for firms in our area. They will include the base hourly wage for the employee plus the calculated hourly benefits that the company contributes. The equivalent hourly wage is increased by a multiplier usually up to three times to arrive at the billing rate.

- Excluded Services (Relating to Article 4)
 1. Detailed cost estimating would be the responsibility of the CMAR.
 2. Project representation during construction would not be full-time.
 3. 4.1.16 and 4.1.17 would not apply
 4. 4.1.19, 4.1.20 and 4.1.21 would be excluded.
 5. 4.1.22 and 4.1.24 are not being pursued by the City.
 6. 4.1.25 would not apply
 7. 4.1.26 is excluded.
- All consultants listed are part of the Basic Services. Should there be an additional consultant needed, RSA would require a fixed fee for the service and then add 10% for the final number.
- RSA would establish a set number for their self-produced reimbursables and there would be no mark-up. RSA would also pass reimbursables from other vendors to the City at their invoiced amount. Stevens Engineers will add 10% to their reimbursables.

Submitted by,



Gary L. Stanley, AIA, NCARB.
President - RSArchitects

Request for City Council Action

TO: Mayor and City Council
FROM: Shane Waterman, P.E., City Engineer *SLW*
MEETING DATE: December 5, 2016
SUBJECT: **Consideration of Bids for 2017 Supply of Petroleum Products and Street Maintenance Materials, Project 1613**

Background: At 2:00 PM on November 21, 2016 bids were opened for the Petroleum Products and Street Maintenance Materials for the year 2017. This is done annually at this time of year. This year, the following materials were bid out:

1. Hot mix and cold mix asphalt
2. Emulsified asphalt
3. Pit run, crushed rock, crushed concrete, rock chips, pea gravel, deicing sand, dirt, and rip rap
4. Gasoline, diesel fuel & fuel oil
5. Salt & calcium chloride
6. Cutting edges
7. Manhole frames & covers
8. Joint sealant

No bids were received for rip rap, calcium chloride, and manhole frames & covers. The tabulation of bid prices is attached.

Recommendation: Award contracts for the various items to the low bidders, and in the case of deicing sand and cutting edges, award contracts to several bidders in the best interest of the City.

Council Action Requested:

Motion to award contracts as follows:

- Hot mix and cold mix asphalt to **Duininck, Inc.;**
- Emulsified asphalt to **Jebro, Inc.;**
- Pit run, crushed rock, crushed concrete, rock chips, pea gravel, and dirt to **Duininck, Inc.;**
- Deicing sand to **Lowe Backhoe;**
- Gasoline, diesel fuel & fuel oil to **Sioux Valley Coop;**
- Salt to **Blackstrap Inc.;**
- Cutting edges to **Titan Machinery;** and
- Joint sealant to **Bierschbach Equipment. & Supply, Inc.**

Mayor's Comments:

TABULATION OF BIDS

Project 1613

Date and Time of Bid Opening: November 21, 2016 @ 2:00 P.M.

Hot Mix & Cold Mix Asphalt

ITEM DESCRIPTION	NAME OF BIDDERS		
	Duininck Inc. 408 6th St. Prinsburg MN 56281 Ph: 320-978-6011 Fax: 320-978-4978		
Bid Security	\$200 Check		
ALL PRICES ARE PER TON			

HOT MIX			
Up to 500 ton	\$73.50		
Up to 1500 ton	\$73.50		
Up to 3000 ton	\$73.50		
Over 3000 ton	\$73.50		

COLD MIX			
Up to 500 ton	\$119.00		
Up to 1500 ton	\$119.00		
Up to 3000 ton	\$119.00		
Over 3000 ton	\$119.00		

Emulsified Asphalt

ITEM DESCRIPTION	NAME OF BIDDERS		
	Jebro Inc. 2303 Bridgeport Drive Sioux City, Iowa 51111 Ph: 712-234-2800 Fax: 712-277-8451		
Bid Security & Remarks	NONE		
CRS-2P \$/Ton	\$509.00		

Pit Run, Crushed Rock, Rock Chips, Pea Gravel, Sand, Dirt, Rip Rap

ITEM DESCRIPTION	NAME OF BIDDERS		
	Duininck Inc. 408 6th St. Prinsburg MN 56281 Ph: 320-978-6011 Fax: 320-978-4978	Lowe Backhoe 46253 158th St. South Shore SD 57263 Ph: 605-756-4556	
Bid Security	\$200 Check	\$200 Check	
ALL PRICES ARE PER TON			
	ALL AT DUININCK PIT, WATERTOWN	AT SOUTH SHORE SD	
ITEM I - PIT RUN GRAVEL 4,000 tons more or less	\$9.50		
ITEM II - CRUSHED ROCK (GRAVEL) 4,000 tons more or less	\$11.50		
ITEM III - CRUSHED CONCRETE 4,000 tons more or less	\$12.50		
ITEM IV - ROCK CHIPS 4,000 tons more or less	\$24.50		
ITEM V - PEA GRAVEL 2,000 tons more or less	\$12.00		
ITEM VI - DE-ICING SAND 3,000 tons more or less (City Haul)	\$10.00	\$6.10	
3,000 tons more or less (Deliver)	\$15.00	\$9.80	
ITEM VII - DIRT (a) fill dirt	\$10.00		
(b) black dirt	\$19.00		
ITEM VIII - RIP RAP 100 tons, more or less	NO BID		

2016 Prices	% Change
McLaughlin & Schulz, Inc. Box 201 Marshall, MN 56258 (605) 886-2257 Fax (605) 886-9061	
\$200 Check	

\$72.50	1.38%
\$72.50	1.38%
\$72.50	1.38%
\$72.50	1.38%

\$118.00	0.85%
\$118.00	0.85%
\$118.00	0.85%
\$118.00	0.85%

2016 Prices	% Change
Jebro Inc. 2303 Bridgeport Drive Sioux City, Iowa 51111 Ph: 712-234-2800 Fax: 712-277-8451	
\$400 Bid Bond	
\$595.00	-14.45%

2016 Prices	% Change
McLaughlin & Schulz, Inc. Box 201 Marshall, MN 56258 Ph: 605-886-2257 Fax: 605-886-9061	
\$200 Check	
ALL AT F.J.MCLAUGHLIN PIT, WATERTOWN	
\$9.25	2.70%
\$11.00	4.55%
\$12.00	4.17%
\$24.00	2.08%
\$11.75	2.13%
\$10.00	-39.00%
\$14.75	-33.56%
\$9.50	5.26%
\$19.00	0.00%
NO BID	

TABULATION OF BIDS

Project 1613

Date and Time of Bid Opening: November 21, 2016 @ 2:00 P.M.

Gasoline and Diesel Fuel

ITEM DESCRIPTION	NAME OF BIDDERS		
	Sioux Valley Cooperative 220 10th Street NW Watertown, SD 57201 (605) 886-5829 Fax (605) 886-4995		
Bid Security	\$200 Check		
PRICE REDUCTION PER GALLON			
ITEM #1a. Unleaded Gasoline At supplier's pump 250 gallons or more delivered	\$0.060 \$0.060		
ITEM #1b. 10% Ethanol Blend Unlead 87 At supplier's pump 250 gallons or more delivered	\$0.060 \$0.060		
ITEM #2. 10% Ethanol Blend Unlead 89 At supplier's pump 250 gallons or more delivered	NO BID NO BID		
ITEM #3. E85 Ethanol Blend Unleaded At supplier's pump	\$0.060		
ITEM #4. Premium Unleaded At supplier's pump	\$0.060		
ITEM #5a. Diesel Fuel No. 1-D At supplier's pump 250 gallons or more delivered	\$0.060 \$0.060		
ITEM #5b. Diesel Fuel No. 1-D With Dye At supplier's pump 250 gallons or more delivered	\$0.060 \$0.060		
ITEM #6a. Diesel Fuel No. 2-D At supplier's pump 250 gallons or more delivered	\$0.060 \$0.060		
ITEM #6b. Diesel Fuel No. 2-D With Dye At supplier's pump 250 gallons or more delivered	\$0.060 \$0.060		
ITEM #7a. Diesel Fuel 50/50 Blend At supplier's pump	\$0.060		
ITEM #7b. Diesel Fuel 50/50 Blend At supplier's pump With Dye	\$0.060		
ITEM #8a. Bio-Diesel Blend At supplier's pump	NO BID		
ITEM #8b. Bio-Diesel Blend With Dye At supplier's pump	NO BID		

2016 Prices	% Change
Sioux Valley Cooperative 220 10th Street NW Watertown, SD 57201 (605) 886-5829 Fax (605) 886-4995	
\$200 Check	
\$0.060	0.00%
\$0.060	0.00%
\$0.060	0.00%
\$0.060	0.00%
NO BID	
NO BID	
\$0.060	0.00%
\$0.060	0.00%
\$0.060	0.00%
\$0.060	0.00%
\$0.060	0.00%
\$0.060	0.00%
\$0.060	0.00%
\$0.060	0.00%
NO BID	
NO BID	
NO BID	

Salt and Calcium Chloride

ITEM DESCRIPTION	NAME OF BIDDERS		
	Blackstrap Inc. Box 258 Neligh, NE 68756 Ph: 402-887-5658 Fax: 402-887-5659	Compass Minerals 9900 W 109th St. Ste 100 Overland Park KS 66210 Ph: 913-344-9360 Fax: 913-338-7945	
Bid Security & Remarks	\$200 check	\$400 Bid Bond	
	\$64.70	\$103.27	
300 Tons Rock Salt \$/Ton	\$19,410.00	\$30,981.00	
25 Tons Calcium Chloride \$/Ton	NO BID	NO BID	

2016 Prices	% Change
Johnson Feed, Inc. 305 W. Industrial Rd. Canton, SD 57013 Ph: 605-764-7370 Fax 605-764-8370	
\$200 check	
\$67.00	-3.43%
\$20,100.00	
\$510.00	
\$12,750.00	

TABULATION OF BIDS

Project 1613

Date and Time of Bid Opening: November 21, 2016 @ 2:00 P.M.

Cutting Edges

ITEM DESCRIPTION	NAME OF BIDDERS			2016 Prices	% Change
	Titan Machinery 4201 N Cliff Ave Sioux Falls SD 57104 Ph: 605-336-3434 Fax: 605-336-3456	Equipment Blades, Inc. 27127 Parklane Dr. Sioux Falls SD 57106 Ph: 605-368-5221 Fax: 605-368-9714	Diesel Machinery Inc. 4301 N Cliff Ave Sioux Falls SD 57104 Ph: 605-336-0411 Fax: 605-336-9503		
Bid Security	\$400 Bid Bond	\$200 check	NONE	\$200 check	
1. One Way Plows					
1" X 8" X 6' bolt on, 50	\$124.42	\$118.49	\$157.49	\$118.60	-0.09%
2. Motor Grader					
5/8" X 8" X 7' Dbl bevel bolt on, 100	\$79.89	\$82.90	\$70.74	\$89.25	#DIV/0!
5/8" X 8" X 8' Dbl bevel bolt on, 50	\$91.09	\$95.21	\$77.35	NB	
Combined Total	\$18,764.50	\$18,975.00	\$18,816.00		

Manhole Frames & Covers

ITEM DESCRIPTION	NAME OF BIDDERS			2016 Prices	% Change
Bid Security				\$400 Bid Bond	
Item 1. 4" MH Frames Covers \$/Ea. Lots of 50 or more	NO BID			\$270.00	
Lots of 30 to 49	NO BID			\$275.00	
Lots of 10 to 29	NO BID			\$280.00	
Lots of 1 to 9	NO BID			\$280.00	
Item 2. 7" MH Frames Covers \$/Ea. Lots of 50 or more	NO BID			\$285.00	
Lots of 30 to 49	NO BID			\$290.00	
Lots of 10 to 29	NO BID			\$295.00	
Lots of 1 to 9	NO BID			\$295.00	

Joint Sealant

ITEM DESCRIPTION	NAME OF BIDDERS			2016 Prices	% Change
	Brock White Co. LLC 818 E 50th St N Sioux Falls SD 57104 Ph: 605-339-1977 Fax: 605-339-2460	Bierschbach Equip. & Supply 1101 S. Lyons Sioux Falls SD 57106 Ph: 605-332-4466 Fax: 605-332-2762			
Bid Security	\$200 Check	\$400 Bid Bond		\$400 Bid Bond	
Item #1 ASTM 3405 Joint Sealant 33 tons - \$/ton	\$1,040.00 \$34,320.00	\$980.00 \$32,340.00		\$980.00 \$32,340.00	0.00%
Alternate to Item #1 ASTM 3405 Modified Joint Sealant 33 tons - \$/ton	\$1,160.00 \$38,280.00	\$1,140.00 \$37,620.00		\$1,140.00 \$37,620.00	0.00%

<p>Prairie Lakes Wellness Center</p>

Equipment Bid:	Cardio Equipment for Prairie Lakes Wellness Center
Opened At:	City Hall, Watertown, SD
Date:	1st of December, 2016

Bidder Name:	Amount of Bid	Bid Security		Comments
Orthotech Sports Medicine	\$79,270.00	5% Check	x	
		10% Bond		
Fitness Equipment Supply	\$85,109.00	5% Check	x	
		10% Bond		
Nova Fitness Equipment	\$79,014.98	5% Check	x	
		10% Bond		
Life Fitness Corporate	\$80,110.70	5% Check		
		10% Bond	x	
Life Fitness Steve Herbert	\$82,108.87	5% Check		
		10% Bond	x	
Pro Maxima	\$72,434.00	5% Check	x	Does Not Meet Specs
		10% Bond		
		5% Check		
		10% Bond		
		5% Check		
		10% Bond		