

**PROPOSED AGENDA
CITY COUNCIL ADJOURNED MEETING
CITY HALL
23 2ND ST NE
WATERTOWN, SOUTH DAKOTA**

Monday, December 19th, 2016

7:00 PM

Call to Order

Pledge of Allegiance

Roll Call

1. Approval of consent agenda
 - a. Approval of the minutes of the Council meeting held on December 5, 2016
 - b. Authorization to advertise for bids for two ¾ ton pickup trucks for the Wastewater Department budgeted in 2017
 - c. Authorization to advertise for bids for 95-gallon containers for the Solid Waste Department budgeted in 2017
 - d. Approval of a business licenses to Stronghold as a Gas Fitting Contractor (\$250) and Raymond Jacobs as a Gas Fitter (\$50)
 - e. Authorization for the Mayor to sign an annual maintenance agreement with First District for GIS Planning and Zoning Services for 2017 budgeted in the Engineering Department (\$20,070)
 - f. Authorization for the Mayor to sign an annual maintenance agreement with First District to host the GIS Website for 2017 budgeted in the Engineering Department (\$4,500)
 - g. Authorization for the Mayor to sign an annual maintenance agreement with First District for E-911 mapping for 2017 budgeted in the E-911 Fund (\$21,000)
 - h. Authorization for the Parks, Recreation and Forestry Department to apply for a grant from the Tony Hawks Foundation to fund a bowl feature for the new skate park
2. Approval of agenda
3. Renewal of a retail (on-sale) liquor license to Lunkers, Inc. d/b/a Lunkers at 100 North Lake Drive for the 2017 calendar year
 - a. Public hearing
 - b. Council action
4. Proposed lease agreement with Worthington Industries for the Cold Storage building at the Airport
 - a. Public hearing
 - b. Council action
5. 2016 Budget Supplements
 - a. Ordinance No. 16-25 supplemental appropriations for 2016
 - i. Second reading
 - ii. Council action
 - b. Grants and line item transfers
6. Ordinance No. 16-26 amending Section 1.0418 of the Revised Ordinances of the City of Watertown regarding flying clubs
 - a. Second reading
 - b. Council action
7. First reading of Ordinance No. 16-28 amending Section 14.0209 regarding prohibited injury to public trees to clarify its inapplicability to nuisance tree trimming requirements
8. First reading of Ordinance No. 16-29 amending Section 14.0704 regarding inspection of Dutch Elm disease infections
9. Authorization to apply for two bridge improvement grants for the 3rd Ave NW bridge and 20th Ave South bridge (Resolution No. 16-42)

10. Renew Airport Liability Insurance Policy for 2017 and authorization to pay the premium
11. Authorization for the Mayor to sign a Memorandum of Understanding between the City of Watertown and the Local Union 2488 of the American Federation of State, County, and Municipal Employees
12. Authorization for the Mayor to sign a Joint Powers Agreement with the SD Department of Game, Fish and Parks for the McLaughlin Pond fishing pier project
13. Authorization for the Mayor to sign a Construction Manager agreement with Gray Construction for the Ice Arena project
14. Consideration of Amendment No. 2 to the Construction Financing Facilitation Agreement with Watertown Development Company to facilitate Improvements on a portion of 8th Ave. SE
15. Authorization for the Mayor to sign Contract Amendment No. 1 to the Contract with HR Green for engineering services for the Digester Rehabilitation Project increasing the contract \$15,000
16. Authorization for the Mayor to sign Contract Amendment No. 2 to the contract with HR Green for the construction administration and observation services for the Digester Rehabilitation Project increasing the contract \$108,000
17. Authorization for the Mayor to sign a professional services agreement with HR Green for the Wastewater Laboratory Replacement/Rehabilitation Project in the amount of \$25,250
18. Authorization for the Mayor to sign a professional services agreement with HR Green for the Biosolids Dewatering Improvement Project in the amount of \$88,900
19. Consideration of Change Order No. 1 to the contract with Jeff Argo Excavating for the Big Sioux River Weir Breach Repair Project increasing the contract amount \$500
20. Old Business
21. New Business
22. Liaison member reports
23. Executive Session pursuant to SDCL 1-25-2
24. 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**

December 5, 2016

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

Motion by Buhler, seconded by Tupper, to approve the following item on the consent agenda: minutes of the Council Meeting held on November 21, 2016; approval to write-off uncollectible ambulance accounts receivable in the amount of \$10,681.93; authorization for the Police Department to advertise for bids for the Animal Control Vehicle and Police Department vehicles budgeted in 2017; appointment of Bill McElhany to the Parks, Recreation and Forestry Board to replace Jay Johnson; authorization for the Fire Department to accept two Hazardous Materials Emergency Preparedness grants awards for Hazmat training and approval of bills & payroll and authorization to pay. Motion carried.

BILLS:

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| A & B BUSINESS SOLUTIONS, | SUPPLIES | 52.99 | LESLI KERFIEN | REIMB | 1,000.00 |
| A-OX WELDING CO, INC. | SUPPLIES | 71.00 | LES MILLS US TRADING, INC. | SUPPLIES | 615.98 |
| AASON ENGINEERING, INC. | CONSTR | 15,309.75 | LYLE SIGNS, INC. | SUPPLIES | 3,645.18 |
| ACTIVE HEATING, INC. | SERVICE | 500.00 | M & T FIRE AND SAFETY | SUPPLIES | 1,241.00 |
| ADVANCE AUTO PARTS | PARTS | 475.19 | MAC'S INC. | SUPPLIES | 1,688.58 |
| ADVANTAGE SIGNS & GRAPHICS | SUPPLIES | 431.43 | MACKSTEEL WAREHOUSE INC. | SUPPLIES | 78.24 |
| AIRCO INC. | SERVICE | 1,001.90 | MAHOWALD'S HARDWARE | SUPPLIES | 580.99 |
| AIRGAS USA, LLC | RENT | 1.60 | MARCO INC. | SERVICE | 101.25 |
| ALANNA PENGILLY | SERVICE | 225.00 | MARK KUHLMAN | TRAVEL | 37.00 |
| ALLEGIANT EMERGENCY SERVIC | SUPPLIES | 2,200.03 | MARK WILSON | REIMB | 796.87 |
| ALTERATIONS BY CARLA | FEE | 24.50 | MATT SCHELL | REIMB | 68.74 |
| AMAZON.COM | SUPPLIES | 77.50 | MARY REDLIN | RENT | 699.98 |
| AMERICAN ENGINEERING TESTI | SERVICE | 2,657.50 | MATHESON TRI-GAS, INC. | SUPPLIES | 106.87 |
| AMERICAN LEGION STATE HEAD | SUPPLIES | 40.00 | MAYOR PETTY CASH | CASH | 8.52 |
| AMERICAN LIBRARY ASSOCIATI | SERVICE | 1,435.00 | MEAD & HUNT, INC. | SERVICE | 1,017.50 |
| AMERICAN RED CROSS - HEALT | SERVICE | 70.00 | MENARD'S | SUPPLIES | 4,665.97 |
| AMY KJETLAND | REIMB | 811.00 | MICRO MARKETING ASSOCIATE | SUPPLIES | 569.55 |
| ANDOR INC. | SERVICE | 21,684.22 | MIDCONTINENT COMMUNICATIO | SERVICE | 1,453.50 |
| ANNE RYLANCE | REIMB | 147.81 | MIDWEST AG SUPPLY, L.L.C. | PARTS | 10.18 |
| AP AUTO PROS, INC. | SERVICE | 1,409.64 | MIDWEST ALARM COMPANY, INC | SERVICE | 878.01 |
| ARAMARK UNIFORM SERVICES, | SERVICE | 95.62 | MIDWEST LABORATORIES INC. | SUPPLIES | 1,377.80 |
| ARROYO COMMUNICATIONS, LLC | SERVICE | 1,375.51 | MIDWEST TAPE | SUPPLIES | 504.81 |
| ART OF THE WOODS | SERVICE | 400.00 | MIKE MULLIN | TRAVEL | 84.00 |
| ARTISTIC CONCRETE LLC | SERVICE | 1,514.70 | MILBANK HIGH SCHOOL | REIMB | 56.93 |
| ASSOCIATED SUPPLY COMPANY | SUPPLIES | 587.37 | MILLER ELECTRIC, INC. | SERVICE | 896.53 |
| ASSOCIATION OF STATE FLOOD | DUES | 150.00 | MINNESOTA KNIFE | SERVICE | 200.00 |
| ASSOCIATION OF ZOOS AND AQ | DUES | 95.00 | MIRACLE RECREATION EQUIP | SUPPLIES | 343.00 |
| AT&T MOBILITY | SERVICE | 45.00 | MJ WALSH TRUCKING, INC. | SUPPLIES | 420.88 |
| AUSTREIM LANDSCAPING | SERVICE | 48.00 | MOE OIL CO, INC. | SUPPLIES | 1,276.40 |
| B & R TREE MOVING | SERVICE | 1,277.50 | MONICA HANTEN | SERVICE | 225.00 |
| BAKER & TAYLOR | SUPPLIES | 6,688.44 | MONOPRICE, INC. | SUPPLIES | 293.92 |
| BATES CONSTRUCTION COMPANY | CONSTR | 147,396.99 | MUNICIPAL UTILITIES | SERVICE | 123,488.86 |
| BATTERIES UNLIMITED, INC. | PARTS | 570.00 | MUTH ELECTRIC, INC. | SERVICE | 96.01 |
| BAYMONT INN & SUITES PIERR | SERVICE | 119.98 | NARTEC, INC | SUPPLIES | 168.50 |
| BECKER ARENA PRODUCTS | PARTS | 500.32 | NESD SHRM | DUES | 40.00 |
| BERN'S BLADING | SERVICE | 2,450.00 | NEUHAUSER REPAIR INC. | PARTS | 133.95 |
| BIG HILL SERVICES LTD. | PARTS | 254.14 | NOLZ DRAGLINE & CONSTRUCTI | CONSTR | 142,606.37 |
| BIG STONE CITY SCHOOL DIST | REIMB | 41.06 | NORTH CENTRAL LABORATORIES | SUPPLIES | 157.14 |
| BLACKBURN MANUFACTURING | SUPPLIES | 92.83 | NORTHERN TRUCK EQUIPMENT C | PARTS | 132.05 |
| BORNS GROUP | SERVICE | 2,105.00 | NYGAARD CONCRETE CONSTRUCT | SERVICE | 816.33 |
| BOUND TREE MEDICAL LLC | SUPPLIES | 3,833.40 | OCLC INC, | SUBSCR | 305.15 |
| BOWIE INDUSTRIES, INC. | PART | 134.78 | OFFICE PEEPS, INC. | SUPPLIES | 3,933.12 |
| BRANDI HANTEN | TRAVEL | 92.36 | ONE SOURCE | SERVICE | 35.00 |
| BULLET SPORTSWEAR AND GRAP | SUPPLIES | 959.50 | OVERDRIVE, INC. | SUPPLIES | 55.86 |
| BULLEX, INC. | SERVICE | 858.76 | OVERHEAD DOOR CO INC. | SERVICE | 357.09 |
| BUREAU OF ADMINISTRATION | SERVICE | 266.52 | PATTI JACKSON | REIMB | 266.43 |
| BUSINESS TELEPHONE CO., IN | SERVICE | 76.43 | PEARSON GOLF MANAGEMENT,LL | SERVICE | 682.04 |
| BUTLER MACHINERY CO INC. | SUPPLIES | 40.89 | PENWORTHY COMPANY | SERVICE | 4,500.00 |
| CARTNEY BEARING CORPORATIO | PARTS | 83.41 | PEPSI | SERVICE | 990.14 |
| CASHWAY LUMBER INC. | SUPPLIES | 26.20 | PIPE MASTERS | SERVICE | 470.00 |

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| CBA LIGHTING & CONTROLS, I | SUPPLIES | 831.05 | PIZZA RANCH | FOOD | 97.93 |
| CEDAR SHORE RESORT | TRAVEL | 717.80 | POLICE PETTY CASH FUND | CASH | 167.08 |
| CENTER POINT LARGE PRINT | SUPPLIES | 607.11 | POWER SYSTEMS | SUPPLIES | 309.32 |
| CENTURY BUSINESS PRODUCTS | SUPPLIES | 233.58 | PRAIRIE CONSULTING GROUP I | SERVICE | 3,182.00 |
| CENTURYLINK | SERVICE | 1,728.04 | PRAIRIE LAKES HEALTHCARE | SUPPLIES | 481.24 |
| CENTURYLINK | SERVICE | 516.74 | PRAIRIE LAKES HEALTHCARE S | REIMB | 4,827.20 |
| CENTURYLINK | SERVICE | 142.10 | PRIMARY PRODUCTS COMPANY | SUPPLIES | 65.10 |
| CENTURYLINK | SERVICE | 99.64 | PRINT EM NOW | SUPPLIES | 19.85 |
| CENTURYLINK | SERVICE | 1,375.14 | PRO LINE, INC. | SUPPLIES | 26.67 |
| CHAD FOUST | GOTV | 960.00 | PRODUCTIVITY PLUS ACCOUNT | SERVICE | 18,095.10 |
| CHELSEY BORKHUIS | SERVICE | 225.00 | PUETZ CORPORATION | CONSTR | 1,000,205.58 |
| CHIEF LAW ENFORCEMENT SUPP | SUPPLIES | 94.86 | QUALITY BOOKS, INC. | SUPPLIES | 242.76 |
| CHRIS NOELDNER | REIMB | 934.10 | QUALITY FLOW SYSTEMS INC. | EQUIP | 6,086.86 |
| CHRIS PREMUS | REIMB | 22.00 | R & R INDUSTRIES, INC. | SUPPLIES | 814.67 |
| CHUCK'S BIKE SHOP | SUPPLIES | 228.60 | RAMADA BISMARCK HOTEL | TRAVEL | 363.56 |
| CITIES DIGITAL, INC. | SERVICE | 1,113.00 | RAMKOTA HOTEL | TRAVEL | 110.00 |
| CIVICPLUS | FEES | 5,956.65 | RC TECHNOLOGIES, INC | SERVICE | 134.90 |
| CLAREY'S SAFETY EQUIPMENT | SUPPLIES | 219.88 | REDLINGER BROS INC. | SERVICE | 321.68 |
| CLARKFIELD ASSEMBLY OF GOD | REIMB | 8.19 | REEDE CONSTRUCTION, INC. | CONSTR | 225,000.00 |
| CLASSROOM CONNECTION | SUPPLIES | 75.97 | RENEA KNUDSON | REIMB | 1,000.00 |
| COCA COLA BOTTLING COMPANY | SERVICE | 262.47 | RESCUE TECH 1, INC, | SUPPLIES | 380.47 |
| CODINGTON CLARK ELECTRIC C | SERVICE | 1,172.64 | RIVARD'S TURF & FORAGE | SUPPLIES | 166.11 |
| CODINGTON CO CLERK OF COUR | FEES | 13.88 | ROB BEYNON | REIMB | 6.98 |
| CODINGTON CO REGISTER OF D | SERVICE | 322.00 | ROB'S AUTO REPAIR | SER | 1,005.91 |
| CONNECTING POINT, INC. | SERVICE | 12,800.00 | ROBERT HEMILLER JR. | SERVICE | 210.00 |
| CONSOLIDATED READY MIX, IN | SUPPLIES | 4,320.00 | ROBERT RASMUSSEN | CONSTR | 2,062.52 |
| COUNTY FAIR FOODS | SUPPLIES | 840.99 | ROCHELLE EBBERS | REIMB | 1,000.00 |
| CREATIVE REWARDS & SPECIAL | SUPPLIES | 425.00 | ROGER FOOTE | TRAVEL | 89.88 |
| CREATIVE VISIONS LANDSCAPE | SERVICE | 9,000.00 | ROGER SOLUM | REIMB | 904.00 |
| CRESENT ELECTRIC SUPPLY, C | PART | 815.85 | RON'S SAW SHOP | SUPPLIES | 441.08 |
| CRESTONE BUILDERS | SERVICE | 287.42 | ROY'S SPORT SHOP INC. | SUPPLIES | 150.00 |
| CROSS COUNTRY FREIGHT SOLU | SERVICE | 89.16 | RUNNINGS FARM AND FLEET | SUPPLIES | 1,093.44 |
| CULLIGAN | SERVICE | 320.75 | SAFETY KLEEN SYSTEMS, INC. | SERVICE | 243.39 |
| CUTTING TECHNOLOGIES | SUPPLIES | 81.80 | SAME DAY EXPRESS, INC. | SHIPPING | 20.00 |
| CYBEX INTERNATIONAL, INC. | PARTS | 497.44 | SANDY CASTER | REIMB | 133.69 |
| DAGWOOD'S SUBS | FOOD | 64.99 | SANFORD HEALTH OCCUPATIONA | SERVICE | 310.00 |
| DAHLE TIRE COMPANY | SERVICE | 169.00 | SANFORD USD MEDICAL CENTER | SERVICE | 900.00 |
| DAKOTA ELECTRONICS | SERVICE | 240.00 | SARAH CARON | TRAVEL | 88.20 |
| DAKOTA PORTABLE TOILETS, I | RENT | 1,090.00 | SCHUNEMAN EQUIPMENT CO. | PARTS | 6,335.75 |
| DAKOTA PUMP & CONTROL, INC | PARTS | 180.00 | SCOTT ENGINEERING | CONSTR | 7,725.00 |
| DANIEL LINDNER | REIMB | 310.78 | SD AIRPORT MANAGEMENT ASSO | DUES | 25.00 |
| DANKO EMERGENCY EQUIPMENT | SERVICE | 172.80 | SD AMBULANCE ASSOCIATION | DUES | 575.00 |
| DARWIN TORSTENSON | REIMB | 1,000.00 | SD ASSOCIATION OF CODE ENF | DUES | 40.00 |
| DATA TRUCK, LLC | SERVICE | 390.00 | SD BOARD OF TECHNICAL PROF | FEE | 80.00 |
| DC ELECTRIC | SERVICE | 306.00 | SD BUILDING OFFICIALS | DUES | 65.00 |
| DECORATIVE FILMS | SUPPLIES | 476.94 | SD DEPT OF ENVIRONMENT & N | FEES | 3,971.45 |
| DEIRDRE WHITMAN | REIMB | 13.85 | SD DEPT OF REVENUE | SERVICE | 45.00 |
| DEMCO, INC. | SUPPLIES | 311.10 | SD DEPT OF TRANSPORTATION | SERVICE | 1,316.64 |
| DENNIS PENGILLY | REIMB | 1,000.00 | SD GOVERNMENTAL FINANCE OF | DUES | 70.00 |
| DEPENDABLE SANITATION INC. | SERVICE | 4,166.66 | SD GOVERNMENTAL HUMAN RESO | DUES | 25.00 |
| DETCO INDUSTRIES | SUPPLIES | 444.90 | SD MUNICIPAL ATTORNEY'S AS | DUES | 35.00 |
| DIAMOND VOGEL PAINT CENTER | SUPPLIES | 955.00 | SD MUNICIPAL LEAGUE | DUES | 10,405.06 |
| DIANE'S ENGRAVING & SIGNS | SERVICE | 6.50 | SD MUNICIPAL STREET MAINTEN | DUES | 35.00 |
| DON JELLIS WELDING & REPAI | SERVICE | 100.00 | SD POLICE CHIEF'S ASSOCIAT | DUES | 325.14 |
| DOUG KRANZ | TRAVEL | 49.00 | SDN COMMUNICATIONS | SERVICE | 1,071.20 |
| DUGAN SALES & SERVICE INC. | SERVICE | 117.95 | SERENDIPITY | SERVICE | 35.00 |
| DUININCK, INC | SERVICE | 163,286.20 | SERVICEMASTER OF WATERTOWN | SERVICE | 2,928.96 |
| ELECTRIC MOTORS & MOORE IN | SERVICE | 63.00 | SHANE WATERMAN | REIMB | 7.50 |
| ELECTRIC PUMP INC. | PARTS | 440.92 | SHARI BEKAERT | REIMB | 1,000.00 |
| ELKS LODGE | TRAVEL | 421.86 | SHEEHAN MACK SALES AND EQU | SUPPLIES | 11,638.00 |
| ENERGY LABORATORIES, INC. | SERVICE | 1,220.00 | SHERMAN CANVAS | SERVICE | 20.00 |
| ENGELSTAD ELECTRIC | SERVICE | 924.00 | SHIRTS IN THE WORKS INC | SUPPLIES | 183.50 |
| EXHAUST PROS INC. | PARTS | 25.00 | SHOPKO STORES OPERATING CO | SUPPLIES | 201.84 |
| FARNAM'S GENUINE PARTS | PARTS | 1,361.32 | SIOUX FALLS TWO WAY RADIO, | SERVICE | 1,337.90 |
| FASTENAL COMPANY | SUPPLIES | 745.17 | SIOUX RURAL WATER SYSTEM | SERVICE | 72.01 |
| FERGUSON WATERWORKS #2516 | PARTS | 1,472.52 | SIOUX VALLEY COOP | SERVICE | 30,754.87 |
| FIRST NATIONAL BANK IN SIO | SERVICE | 458,548.75 | SIOUX VALLEY GREENHOUSE | SUPPLIES | 9,479.00 |
| FIRST NATIONAL BANK OMAHA | SERVICE | 1,948.49 | SKYVIEW CONSTRUCTION | SERVICE | 1,224.00 |
| FISHER SCIENTIFIC | PART | 187.44 | SLUMBERLAND FURNITURE, INC | SUPPLIES | 2,949.87 |
| FITNESS GIANT, LLC | EQUIP | 2,325.60 | SNYDER INDUSTRIES, INC. | SUPPLIES | 14,028.20 |
| FORESTRY SUPPLIERS, INC. | SUPPLIES | 427.50 | SODAK PEST CONTROL | SERVICE | 80.00 |
| FREMONT INDUSTRIES, INC. | SUPPLIES | 2,622.60 | SOUTH CENTRAL A/V | SERVICE | 95.00 |
| G & K SERVICES, INC. | SERVICE | 175.54 | SOUTH SHORE AMBULANCE | REIMB | 233.64 |
| GALE | SUPPLIES | 560.70 | SPENSOR TENEYCK | TRAVEL | 90.30 |
| GCR TIRES & SERVICE | SERVICE | 1,214.91 | SPORTSMITH | PARTS | 44.17 |

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| GEOTEK ENGINEERING | CONSTR | 1,322.50 | STAN HOUSTON EQUIPMENT INC | SERVICE | 402.29 |
| GLACIAL LAKES EROSION CONT | SERVICE | 2,084.88 | STANDARD PRINTING | SUPPLIES | 630.00 |
| GLASS PRODUCTS INC. | SERVICE | 589.43 | STAR LAUNDRY & CLEANERS, I | SERVICE | 573.05 |
| GLEN HJELLMING | REIMB | 1,000.00 | STATE BAR OF SD | DUES | 415.00 |
| GRAINGER | SUPPLIES | 223.68 | STEIN SIGN | SERVICE | 284.00 |
| GRAY CONSTRUCTION | CONSTR | 328,822.26 | STEIN'S INC. | SUPPLIES | 1,782.28 |
| GRUBCO INC. | SUPPLIES | 40.95 | STEVE THORSON | TRAVEL | 50.17 |
| HARRISON TRUCK CENTERS | PARTS | 136.31 | STURDEVANT'S AUTO PARTS IN | SUPPLIES | 401.30 |
| HEIMAN, INC. | PARTS | 4,912.80 | SUPERIOR JETTING, INC. | SERVICE | 6,228.75 |
| HELMS & ASSOCIATES | SERVICE | 69,341.35 | T & J REDDER WELL AND ELEC | SERVICE | 2,062.30 |
| HENRY JOHNSON | REIMB | 587.76 | TEAM ELECTRONICS | PARTS | 191.80 |
| HGF GLASS INC. | PARTS | 390.89 | TEAM LABORATORY CHEMICAL C | SERVICE | 768.50 |
| HILLYARD / SIOUX FALLS | SUPPLIES | 1,106.22 | TECHNICOLOR SCREEN PRINTIN | SUPPLIES | 127.00 |
| HOLIDAY INN | TRAVEL | 188.00 | TEGRA GROUP, INC. | SERVICES | 6,842.07 |
| HOME OASIS, LLC | SUPPLIES | 239.96 | TERRY INGALLS | TRAVEL | 37.00 |
| HOMETOWN BUILDING CENTER, | SUPPLIES | 1,528.70 | TESTAMERICA LABORATIES, IN | SERVICE | 1,877.62 |
| HOUCHEM BINDERY | SUPPLIES | 685.60 | THE EMBLEM AUTHORITY | SUPPLIES | 195.00 |
| HOUSTON ENGINEERING, INC. | CONSTR | 26,471.42 | THE LODGE AT DEADWOOD | TRAVEL | 393.00 |
| HUMAN SERVICE AGENCY | SERVICE | 50.00 | THOMSON REUTERS - WEST | SERVICE | 500.00 |
| HUMAN SERVICE AGENCY | SERVICE | 300.00 | THYSSENKRUPP ELEVATOR CORP | SERVICE | 358.83 |
| HURKES IMPLEMENT CO., INC. | PARTS | 127.90 | TIA HEMILLER | SERVICE | 105.00 |
| HY VEE FOOD STORE | SUPPLIES | 921.44 | TODD SYHRE | TRAVEL | 216.01 |
| INDUSTRIAL PROCESS TECHNOL | SERVICE | 4,381.00 | TOM BOLDT | SERVICE | 500.00 |
| INFRASTRUCTURE DESIGN GROU | SERVICE | 1,950.00 | TONY AAS | REIMB | 714.29 |
| INTERNATIONAL ACADEMIES OF | DUES | 135.00 | TOOL TIME RENT ALL | RENT | 395.00 |
| INTOXIMETERS, INC. | SUPPLIES | 160.00 | TRACY EISCHEMS | REIMB | 437.61 |
| ITC | SERVICE | 387.83 | TRAFFIC CONTROL CORPORATIO | PARTS | 680.00 |
| J & B SCREEN PRINTING INC. | SUPPLIES | 779.00 | TRAV'S OUTFITTER, INC. | SUPPLIES | 5,531.98 |
| J H LARSON ELECTRICAL CO. | PARTS | 782.50 | TREE FARM | SUPPLIES | 465.75 |
| JAMES SOUCY | REIMB | 1,000.00 | TRISHA RIEFFENBERGER | REIMB | 42.60 |
| JANA MILLS | REIMB | 42.59 | TURFWERKS | SERVICE | 2,352.92 |
| JAY DELANGE | REIMB | 1,000.00 | UNITED RENTALS INC. | SERVICE | 1,105.42 |
| JCL - SIOUX FALLS BRANCH | SUPPLIES | 241.63 | UPS STORE | SERVICE | 166.58 |
| JEFF ARGO EXCAVATING | SERVICE | 6,229.60 | VAN DIEST SUPPLY CO. | SUPPLIES | 500.00 |
| JENNIFER GIESSINGER | TRAVEL | 21.00 | VANCO SERVICES,LLC | FEES | 9.00 |
| JESSICA FISCHER | REIMB | 125.39 | VAST BROADBAND | SERVICE | 395.09 |
| JILL STEINER | TRAVEL | 200.26 | VERIZON WIRELESS | SERVICE | 394.36 |
| JIM LLOYD | REIMB | 1,000.00 | VOLGA CHRISTINA SCHOOL | REIMB | 7.74 |
| JLG ARCHITECTS | CONSTR | 8,480.00 | WAL-MART COMMUNITY BRC | SUPPLIES | 1,748.82 |
| JOHN GILMAN | REIMB | 31.96 | WARD DIESEL FILTER SYSTEMS | PART | 307.14 |
| JOSEPH RETHKE | REIMB | 86.50 | WARNE PLUMBING & HEATING | SERVICE | 371.49 |
| JOSHUA MAAG | REIMB | 1,000.00 | WATER ENVIRONMENT FEDERATI | DUES | 180.00 |
| JOY RANCH | FEES | 1,780.00 | WATERTOWN AREA CHAMBER OF | SERVICE | 3,950.00 |
| JURGENS PRINTING INC. | SUPPLIES | 19.50 | WATERTOWN BOYS AND GIRLS O | SUBSIDY | 17,037.50 |
| K SCALE | SERVICE | 315.00 | WATERTOWN BUSINESS DISTRIC | SUBSIDY | 22,430.00 |
| KADRMAS, LEE AND JACKSON, | SERVICE | 2,400.00 | WATERTOWN CONVENTION & VIS | SUBSIDY | 22,700.00 |
| KESTELOOT ENTERPRISES, IN. | PARTS | 133.86 | WATERTOWN COOP ELEVATOR AS | SUPPLIES | 338.40 |
| KIWANIS CLUB | DUES | 133.13 | WATERTOWN FORD | PART | 2,105.84 |
| KIXX | ADV | 350.00 | WATERTOWN LIONS CLUB | LOAN | 150,000.00 |
| KPHR | ADV | 150.00 | WATERTOWN OPTIMIST CLUB | DONATION | 1,000.00 |
| KXLG | ADV | 550.00 | WATERTOWN PUBLIC OPINION | SERVICE | 3,588.66 |
| L MARQUARDT ELECTRIC INC. | SERVICE | 921.73 | WATERTOWN TIRE CENTER, INC | SERVICE | 52.06 |
| LACAL EQUIPMENT INC. | SUPPLIES | 1,833.08 | WATERTOWN WHOLESALE | SUPPLIES | 373.12 |
| LAKE AREA / BIT | SERVICE | 236.25 | WATERTOWN WINNELSON CO. | SUPPLIES | 409.86 |
| LAKE AREA DOOR, INC. | SERVICE | 173.47 | WEISMANTEL RENT ALL | RENT | 175.00 |
| LAKE AREA VETERINARY CLINI | SERVICE | 245.54 | WEST CENTRAL COMMUNICATION | SUPPLIES | 293.25 |
| LAKE AREA ZOOLOGICAL SOCIE | REIMB | 3,900.18 | WHEELCO TRUCK & TRAILER PA | SUPPLIES | 78.59 |
| LAKE CITY FIRE EQUIPMENT, | SERVICE | 673.59 | WILLOW LAKE SCHOOL DISTRIC | REIMB | 21.09 |
| LAKE NORDEN AMBULANCE | REIMB | 92.94 | WORLD POINT ECC, INC. | SUPPLIES | 558.03 |
| LARRY HOWARD | REIMB | 1,000.00 | WW TIRE SERVICE INC. | SERVICE | 85.00 |
| LARRY'S LUMBER, INC. | SUPPLIES | 554.79 | XEROX GOVERNMENT SYSTEMS, | SERVICE | 2,265.00 |

PAYROLL:

| | Sal | SS | Pen | Ins | | Sal | SS | Pen | Ins |
|------------------|------------|-----------|-----------|-----------|------------------------|------------|----------|----------|-----------|
| Mayor/CC | 17,005.49 | 1,244.38 | 499.03 | 1,149.63 | Forestry | 10,496.73 | 761.80 | 561.50 | 1,686.05 |
| Attorney | 8,284.75 | 580.64 | 495.28 | 1,149.63 | Library | 39,133.22 | 2,819.08 | 2,188.58 | 6,744.20 |
| Finance | 32,383.31 | 2,346.70 | 1,939.98 | 4,789.94 | Building Serv. | 16,908.80 | 1,238.45 | 953.94 | 2,490.68 |
| Info Tech | 13,043.96 | 913.09 | 778.44 | 2,299.26 | Park & Rec. | 124,420.55 | 9,027.38 | 6,377.35 | 17,662.53 |
| Engineer | 33,203.67 | 2,437.75 | 1,983.77 | 4,444.94 | WRC | 41,394.58 | 3,069.05 | 1,776.44 | 3,908.52 |
| Police | 184,776.82 | 13,293.17 | 14,325.84 | 29,703.70 | E-911 | 47,012.91 | 3,397.84 | 2,820.78 | 7,472.04 |
| Fire | 186,819.17 | 2,909.09 | 14,737.32 | 26,092.78 | Upper Big Sioux | 6,652.88 | 454.93 | 397.97 | 881.42 |

| | | | | | | | | | |
|---------------------------|--|----------|----------|----------|-----------------|-----------|----------|----------|-----------|
| Street | 52,333.67 | 3,867.33 | 3,043.21 | 7,472.04 | Sewer | 73,453.31 | 5,396.41 | 4,095.85 | 9,501.78 |
| Cemetery | 9,893.45 | 708.95 | 503.42 | 1,417.84 | Landfill | 68,124.20 | 4,850.74 | 3,999.19 | 11,265.94 |
| Animal Cntrl | 3,797.21 | 279.19 | 226.63 | 536.42 | Airport | 15,167.75 | 1,109.95 | 908.26 | 1,954.26 |
| Add'l 5.25 long | C. Gamber, B. Johnson, T. Schaefer (Police), G. Langerock, G. Noeldner, K. Steffensen (Fire), J. Riley (Street), T. Kelly, J. Gilman (P&R), | | | | | | | | |
| Add'l 5.25 long | C. Mitchell, T. Murray (Sewer), K. Anderson (E-911) | | | | | | | | |
| New Hires WCRC | N. Schamens (8.75/hr), T. Hamlin (10.75/hr) New Hire Library C. Stein (3,179.00/mo), New Hire Police J. Johnson (3,468.00/mo), | | | | | | | | |
| New Hires P&R | E. Hansen (20.00/hr) | | | | | | | | |
| Salary Inc P&R | B. Mitchell (8.75/hr), H. DeVille (9.00/hr), K. Johnson (12.25/hr), G. Osthus (12.50/hr) Salary Inc IT S. Teneyck (4,810.81/mo) | | | | | | | | |
| Salary Inc WCRC | S. Cole (10.25/hr), A. Knippling (11.00/hr & 15.00/hr) | | | | | | | | |

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

Motion by Albertsen, seconded by Rieffenberger, to approve Resolution No. 16-40 for the annexation on Endres property. Motion carried.

Ordinance No. 16-24 amending zoning district boundaries by zoning the SE ¼ Section 4-116-52 to I-1 Light Industrial was placed on its second reading and the title was read. This being the time scheduled for a public hearing on Ordinance No. 16-24, the Mayor called for public comment. Hearing no comments from the public, motion by Mantey, seconded by Solum, to approve Ordinance No. 16-24 as presented. Motion carried.

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 second reading and the title was read. Motion by Buhler, seconded by Thorson, to approve Ordinance No. 16-21 as presented. Motion carried.

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 second reading and the title was read. Motion by Danforth, seconded by Rieffenberger, to approve Ordinance No. 16-22 as presented. Motion carried.

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 second reading and the title was read. Motion by Tupper, seconded by Vilhauer, to approve Ordinance No. 16-23 as presented. Motion carried.

Ordinance No. 16-25 supplemental appropriations for 2016 was placed on its first reading and the title was read. No action taken.

Ordinance No. 16-26 amending Section 1.0418 of the Revised Ordinances of the City of Watertown regarding flying clubs was placed on its first reading and the title was read. No action taken.

Motion by Danforth, seconded by Mantey, to approve Resolution No. 16-41 establishing fees for city licenses, permits, administration and other miscellaneous items with the following amendment: Flood Plain Development Permit cost changed from \$50 to \$0. Motion carried as amended.

Motion by Mantey, seconded by Danforth, authorizing the Mayor to sign a professional services agreement for the 2017 health insurance benefits consultant with Howalt+McDowell Insurance. Upon Roll call vote: voting in favor were Rieffenberger, Solum, Albertsen, Buhler, Danforth, Mantey and Vilhauer, voting against were Roby, Thorson and Tupper. The result being 7 in favor and 3 against, motion carried.

Motion by Vilhauer, seconded by Mantey, to issue payment for the renewal of the workers compensation policy for 2017. Motion carried.

Motion by Danforth, seconded by Roby, to approve one temporary staff position on day shift for EMS services with the Fire Department for 2017. Motion carried.

Motion by Roby, seconded by Buhler, authorizing the Mayor to sign a vending space lease agreement with PepsiCo Food Service to provide vending service at the Regional Airport. Motion carried.

Motion by Albertsen, seconded by Mantey, authorizing the Mayor to sign a professional services agreement with RSArchitects for the Ice Arena project. Motion carried.

City Engineer Shane Waterman presented the tabulation of bids received for the 2017 petroleum products & Street Maintenance Materials. Bids were opened at 2:00 PM November 21, 2016 and are as follows:

GASOLINE & DIESEL FUEL: Sioux Valley Co-op bid \$.06 reduction per gallon for Unleaded, Unleaded Blend 87 Octane, E85 Ethanol Blend Unleaded, Premium Unleaded, Diesel Fuel No. 1, Diesel Fuel No. 1 (dyed), and Diesel Fuel No. 2, Diesel No. 2 (dyed) and Diesel Fuel 50/50 blend.

HOT MIX & COLD MIX ASPHALT: Duininck, Inc. bid \$73.50 ton for Hot Mix and \$119.00 a ton for Cold Mix.

EMALSIFIED ASPHALT: Jebro Inc., bid \$509.00 a ton.

PIT RUN, CRUSHED ROCK, ROCK CHIPS, AND PEA GRAVEL: Duininck, Inc. bid \$9.50/ton for Pit Run Gravel, \$11.50/ton for Crushed Rock, \$12.50/ton for Crushed Concrete, \$24.50/ton for Rock Chips, \$12.00/ton for Pea Gravel, \$10.00/ton for De-Icing Sand (City Haul), \$15.00/ton for De-Icing Sand (Delivered), \$10.00/ton for Fill Dirt, \$19.00/ton for Black Dirt, no bid for RIP RAP.

SALT & CALCIUM CHLORIDE: Blackstrap, Inc. bid No bid for Calcium Chloride, \$19,410.00 for 300 Ton of Rock Salt, Compass Minerals bid No bid for Calcium Chloride, \$30,981.00 for 300 Ton Rock Salt.

CUTTING EDGES: Titan Machinery bid \$124.42 for 1"x8"x6' bolt on one way plow, \$79.89 for 5/8"x8"x7' double bevel bolt on Motor Grader, \$91.09 for 5/8"x8"x8' double bevel bolt on Motor Grader; Equipment Blades, Inc. bid \$118.49 for 1"x8"x6' bolt on one way plow, \$82.90 for 5/8"x8"x7' double bevel bolt on Motor Grader, \$95.21 for 5/8"x8"x8' double bevel bolt on Motor Grader and Diesel Machinery, Inc. bid \$157.49 for 1"x8"x6' bolt on one way plow, \$70.74 for 5/8"x8"x7' double bevel bolt on Motor Grader, \$77.35 for 5/8"x8"x8' double bevel bolt on Motor Grader.

JOINT SEALANT: Bierschbach Equipment & Supply bid \$32,340.00 for 33 Tons Joint Sealant, \$37,620.00 for 33 Tons of Modified Joint Sealant; Brock White Co. LLC bid \$34,320.00 for 33 Tons Joint Sealant, \$38,280.00 for 33 Tons of Modified Joint Sealant.

Motion by Tupper, seconded by Thorson, to approve the various bids for Gasoline & Diesel, Hot & Cold Mix Asphalt, Emulsified Asphalt, Pit Run, Crushed Rock, Rock Chips, Pea Gravel, Sand, Dirt and Rip Rap, Cutting Edges and Joint Sealant. A complete price list is available for inspection at the City Finance Office. Motion carried.

Prairie Lakes Wellness Center Director John Small presented the tabulation of bids received for the Cardio Equipment. Bids were opened at 10:00 AM on December 1, 2016 and are as follows: Orthotech Sports Medicine bid of \$79,270.00; Fitness Equipment Supply bid of \$85,109.00; Nova Fitness Equipment bid of \$79,014.98; Life Fitness Corporate bid of \$80,110.70; Life Fitness – Steve Herbert bid of \$82,108.87 and Pro Maxima bid of \$72,434.00. The low bid of Pro Maxima did not meet specs on three items. Motion by Rieffenberger, seconded by Solum, to approve the second low bid from Nova Fitness Equipment in the amount of \$79,014.98. Motion carried.

Motion by Albertsen, seconded by Tupper, to approve the employee request for a sick leave bank up to 24 hours. Motion carried.

Motion by Mantey, seconded Danforth, to adjourn until 7:00 PM on Monday, December 19, 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 5th day of December, 2016.

ATTEST:

Rochelle Ebberts, CPA
Finance Officer

Steve Thorson
Mayor

APPLICATION FOR LICENSE

INSTRUCTIONS: File this application and the amount of your license fee with the City Finance Officer. All licenses, except those issued under §12.0203 and §12.0206 expire December 31, each year, and applications for renewal should be filed with the City Finance Office, PO Box 910, Watertown, SD 57201 before December 1st.

City of Watertown, County of Codrington, State of South Dakota

To the Honorable Mayor and City Council:

Application for license to engage in the business of Gasfitting Contractor

at the following location Watertown

For the period of 2016 Fee: \$ 250⁰⁰

Business Name: Stronghold New Renewal

Address: 112 Stanley Rd

City, State, Zip: Fort Pierre, SD 57532

Phone #: 608 910 539-9387

State Sales Tax License # _____

Insurance Company: _____ Policy#: _____

Insurance Certificate Attached: Yes No Vehicle Inventory Attached: Yes No

Print Name of applicant Raymond Jacobs

Signature of applicant: Raymond Jacobs Date: 12-5-16

TYPES:

Yearly:

- 15.0402 - Pipe Layer
- 11.0201 - Liquor Establishment
- 21.8010 - Sign Installer
- 17.0501 - Liquid Waste Hauler
- 21.1006 - Mobile Home Courts
- 12.1502 - House Moving Business

- 11.0407 - Commercial Garbage Hauler
- 12.1001 - Security Guard Business
- 20.06 - Gas Fitter\Contractor
- 19.09 - Taxicab Company\Driver
- 12.0501 - Pawn Broker\2nd Hand Dealer

Temporary:

- 12.0203 - Transient Merchant
- 12.0206 - Solicitation Ordinance

For City Office Use Only:

Applicant is hereby approved:

Department Head

City Council Approved on: 12-19-16

Finance Officer

Fee Paid \$ 250⁰⁰ Treasury Receipt No. 91579 License or Permit No. 1167

APPLICATION FOR LICENSE

INSTRUCTIONS: File this application and the amount of your license fee with the City Finance Officer. All licenses, except those issued under §12.0203 and §12.0206 expire December 31, each year, and applications for renewal should be filed with the City Finance Office, PO Box 910, Watertown, SD 57201 before December 1st.

City of Watertown, County of Codington, State of South Dakota

To the Honorable Mayor and City Council:

Application for license to engage in the business of Gasfitter

at the following location Watertown

For the period of 2016 Fee: \$ 50⁰⁰

Business Name: Raymond Jacobs New Renewal

Address: 112 Stehley Rd

City, State, Zip: Fort Pierre, SD 57532

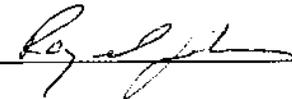
Phone #: 910 539-9387

State Sales Tax License # _____

Insurance Company: _____ Policy#: _____

Insurance Certificate Attached: Yes No Vehicle Inventory Attached: Yes No

Print Name of applicant Raymond Jacobs

Signature of applicant:  Date: 12-5-16

TYPES:

Yearly:

- 15.0402 - Pipe Layer
- 11.0201 - Liquor Establishment
- 21.8010 - Sign Installer
- 17.0501 - Liquid Waste Hauler
- 21.1006 - Mobile Home Courts
- 12.1502 - House Moving Business

- 11.0407 - Commercial Garbage Hauler
- 12.1001 - Security Guard Business
- 20.06 - Gas Fitter\Contractor
- 19.09 - Taxicab Company\Driver
- 12.0501 - Pawn Broker\2nd Hand Dealer

Temporary:

- 12.0203 - Transient Merchant
- 12.0206 - Solicitation Ordinance

For City Office Use Only:

Applicant is hereby approved:

Department Head

City Council Approved on: 12-19-16

Finance Officer

Fee Paid \$ 50⁰⁰ Treasury Receipt No. 91519 License or Permit No. 1168



First District Association of Local Governments

124 1st Ave NW

PO Box 1207

Watertown, SD 57201

Phone: (605) 882-5115

Fax: (605) 882-5049

Serving counties and communities for over 45 years.

December 1, 2016

Shane Waterman
City Engineer
PO Box 910
Watertown SD 57201

Dear Shane:

Attached you will find two copies of the Letter of Agreement between the First District Association of Local Governments and the City of Watertown, for calendar year 2017, to continue providing GIS services for the Watertown Building Services Department. You will note that the total price of \$20,070 is the same as last year.

Please sign both copies of the agreement and return one to the First District. If you have any questions, please do not hesitate to call.

Sincerely,

Todd A. Kays
Executive Director

Enclosures

cc: Shelly Ebbers

LETTER OF AGREEMENT

FIRST DISTRICT ASSOCIATION
OF LOCAL GOVERNMENTS
PO BOX 1207
WATERTOWN SD 57201
(605) 882-5115

CITY OF WATERTOWN
PO BOX 910
WATERTOWN SD 57201-0910

Referred to as District

Referred to as City

The City hereby enters into an agreement with the District.

I. THE DISTRICT

- A. This agreement shall commence on or about January 1, 2017 and end on December 31, 2017.
- B. The District agrees to perform work activities as described in "First District Association of Local Governments Proposed Scope of Work for City of Watertown Building Services Department GIS/GPS Needs."

II. THE CITY

- A. The City will make payment of twenty thousand seventy dollars (\$20,070) after the work activities (as identified in the proposed scope of work) have been completed. These activities will be completed and billed on a quarterly basis.
- B. Total agreement amount (not to exceed) twenty thousand seventy dollars (\$20,070).



12/1/2016

District Signature

Date

Mayor

Date

**First District Association of Local Governments Proposed Scope of Work
for
City of Watertown Building Services Department GIS/GPS Needs**

Work Activities:

A. Planning Commission/City Council Monthly Meeting Data Needs

1. District Staff will receive new preliminary plan/plat/annexation/zoning data for Planning Commission/City Council Action on the Monday following the City submission deadline.
2. District Staff will create new preliminary plan/annexation/zoning data as a GIS Shapefile and provide to the City within seven (7) days of City submitting data per deadline described above.

B. Monthly Plat, Ownership Parcel and Preliminary Plan GIS Data Sets Update

1. District Staff will receive all new parcel splits/transaction data from the Codington County Director of Equalization on the first Monday of the month.
2. District Staff will update the plat, parcel and preliminary plan GIS data sets.
3. District Staff will incorporate all new parcel splits/transactions, approved preliminary plan/plat data and other updated GIS data into City's MXD file on the last Friday of the month.

Cost:

TOTAL ANNUAL COST FOR "A" AND "B": \$20,070



First District Association of Local Governments

124 1st Ave NW

PO Box 1207

Watertown, SD 57201

Phone: (605) 882-5115

Fax: (605) 882-5049

Serving counties and communities for over 45 years.

December 1, 2017

Shane Waterman
City Engineer
PO Box 910
Watertown SD 57201

Dear Shane:

Enclosed you will find a contract for services between the City of Watertown and the First District for the provision of services relating to the development and hosting of the city/county GIS web site, as well as a voucher for calendar year 2017. The funding for this project is shared between the Watertown Development Company, Codington County, Watertown Municipal Utilities, and the City of Watertown. You will note that the total project cost for the year is \$10,000, of which the City of Watertown's share of the project is \$4,500. This cost is identical to last year.

In addition, I would like to call to your attention that the First District has spent the past year updating the functionality and presentation of the GIS website. You may find the new website at <http://www.1stdistrict.org/codingtonjs>

Please sign both copies of the contract for services and return one to the First District office.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd A. Kays". The signature is stylized with a large, looping initial "T".

Todd A. Kays
Executive Director

Enclosure

**LETTER OF AGREEMENT
BETWEEN
THE CITY OF WATERTOWN
AND
FIRST DISTRICT ASSOCIATION OF LOCAL GOVERNMENTS**

This agreement is hereby entered into between the First District Association of Local Governments, hereinafter referred to as "District" and the City of Watertown, hereinafter referred to as "City."

I. PURPOSE/PROJECT DESCRIPTION

- A. Provide services in the development and hosting of a Geographic Information System (GIS) website.
- B. The project will consist of:
 - 1. Annual access cost for Internet services.
 - 2. Arc IMS Maintenance – The annual cost paid to ESRI for Technical Assistance and updates to the Arc IMS software. There is no cost for this component charge for the first year of the project due to the first year of Arc IMS Maintenance component being included within the purchase of Arc IMS software. The City will remit its proportion of the annual cost of Arc IMS Maintenance, beginning in 2006. The cost will be shared between the City of Watertown, Focus Watertown, the Watertown Municipal Utilities, and Codington County.
 - 3. Setup and operation - First District will set up, customize and maintain the website.
- C. Term of Contract: January 1, 2017 to December 31, 2017.
- D. Total Cost of Project: Not to exceed \$4,500.

II. DISTRICT RESPONSIBILITIES

The District shall:

- A. Develop and maintain a Geographic Information System (GIS) website which will contain a variety of GIS databases regarding the City of Watertown and Codington County.

III. CITY RESPONSIBILITIES

- A. The City shall pay the District a sum, not to exceed, four thousand five hundred dollars (\$4,500) for services as described in "I. Purpose/Project Description" and "II. District Responsibilities."
- B. Total contract amount: Four thousand five hundred dollars (\$4,500).

IV. OTHER PROVISIONS

- A. Amendment Provision: This contract contains the entire agreement between the parties and may be amended only in writing signed by both parties.
- B. Termination Provision: This agreement can be terminated upon thirty (30) days written notice by either party.

In witness hereto the parties signify their agreement by affixing their signatures hereto.



12/1/2016

District

Date

Mayor

Date

ATTEST:

Finance Officer



First District Association of Local Governments

124 1st Ave NW

PO Box 1207

Watertown, SD 57201

Phone: (605) 882-5115

Fax: (605) 882-5049

Serving counties and communities for over 45 years.

VOUCHER

Scott McMahon
Captain of Support Services
Watertown Police Department
128 N Maple
Watertown SD 57201

Description of Service: Total payment for Watertown Dispatch E-911 mapping maintenance for calendar year 2017.

Total: \$21,000.00

Todd A. Kays, Executive Director

Date: January 1, 2017



GIS-GPS/MAPPING DIVISION

124 1ST AVE NW
WATERTOWN, SD 57201
PHONE: (605) 882-5115
FAX: (605) 882-5049
EMAIL: ryan@1stdistrict.org

Watertown Dispatch E-911 Mapping Maintenance Contract January 2017

First District will perform the following maintenance functions for Clark, Codington, Day, Deuel, Grant and Hamlin Counties:

- 1. Creation of Building Layer from Customer Records Database**

The District will receive a copy of each County's customer records database. A residence point layer will then be generated and sent via email or regular mail (depending on file size) to the County 911 Coordinator when completed. This will be performed to insure the County has the most current information regarding resident names, addresses, and phone numbers. First District will make trips to Watertown Police Department as needed to perform an onsite installation of the residence point layer should they experience problems after updating the residence database.
- 2. Update of Road Centerline Data**

First District will receive updates to each County's Master Street Addressing Guide (MSAG) and make the appropriate changes to the road centerline GIS layer. Should additional roads need to be added First District will utilize GPS or digitize them from aerial photography. Additional data regarding new or updated roads may be requested from the County or the City Planning/Engineer's office. First District will also assign the appropriate name, address ranges, and emergency zone information, and merge this new data into the existing road shapefile.
- 3. MSAG Update**

The District will make necessary updates to the GIS data and generate MSAG changes spreadsheets when necessary, which will be provided back to the Counties for Entrado/Qwest notification purposes.
- 4. Address Assignment**

For county and community addressing, the addressing official would provide location information for the new residence (for example, 1550 feet from the east intersection of 451st Ave and US Highway 212.) First District would locate the area on the map and use ArcGIS's Address Inspector to assign the correct address and emergency service zone. A labeled photo of the area would be sent back to the 911 official for verification. They would in turn inspect the photo, provide feedback if necessary, and then make the official address assignment.

New developments will be addressed by providing First District a plat map (digital copy is always preferred) of the new streets and plats of the area. First District would then digitize the plats, define address ranges for the new streets, and assign addresses to each of the lots. A map of the new development with addresses for each lot will be provided back to the addressing official.

Cost

Cost of this tech support contract is **21,000.00**.

Timeline

The contract period is from January 1, 2017 to December 31, 2017



Todd Kays

12/1/2016

First District Executive Director

City of Watertown Representative

[DONATE \(HTTP://TONYHAWKFOUNDATION.ORG/DIRECT-DONATION/\)](http://tonyhawkfoundation.org/direct-donation/)[SKATEPARKS \(HTTP://TONYHAWKFOUNDATION.ORG/SKATEPARKS/\)](http://tonyhawkfoundation.org/skateparks/)

Skatepark Grants

[WAYS TO GIVE \(HTTP://TONYHAWKFOUNDATION.ORG/DONATE/\)](http://tonyhawkfoundation.org/donate/)[ABOUT \(HTTP://TONYHAWKFOUNDATION.ORG/ABOUT/\)](http://tonyhawkfoundation.org/about/)[CONNECT \(HTTP://TONYHAWKFOUNDATION.ORG/CONNECT/\)](http://tonyhawkfoundation.org/connect/)[EVENTS](#)

The primary mission of the Tony Hawk Foundation is to promote high quality, public skateparks in low-income areas throughout the United States, and to support international programs that enrich the lives of youth through skateboarding. Only organizations seeking to build free, public skateparks in low-income communities in the United States may apply for a grant from the Tony Hawk Foundation. International projects are considered on an invitation-only basis.

While we realize that not every community can afford to build big, expensive skateparks, we feel strongly that public skateparks should be designed and constructed by experienced contractors. We also believe that local officials should treat public skateparks the same way they treat public basketball courts or tennis courts, meaning that anyone may show up and use them anytime, unsupervised. The foundation primarily considers skatepark projects that:

1. are designed and built from concrete by qualified and experienced skatepark contractors.
2. include local skaters throughout the planning, fundraising, and design process.
3. are in low-income areas and/or areas with a high population of "at-risk" youth.
4. can demonstrate a strong grassroots commitment to the project, particularly in the form of fundraising by local skateboarders and other community groups.
5. have a creative mix of street obstacles (rails, ledges, stairs, etc.) and transition/vert terrain (quarterpipes, bowls, halfpipes, etc.)
6. don't require skaters or their parents to sign waivers.
7. encourage skaters to look after their own safety and the safety of others without restricting their access to the park or over-regulating their use of it.
8. are open during daylight hours, 365 days a year.
9. don't charge an entrance fee.
10. are in areas that currently have no skateboarding facilities.

Supply vs. Demand

As skateparks grow in popularity, the demand for grants from the Tony Hawk Foundation is far exceeding our available resources. We have received as many as 450 applications in a single year, with the vast majority requesting our maximum \$25,000 grant. In other words, the competition for THF funds is stiff, so please don't get your hopes too high. If your proposed skatepark is not located in a low-income area, if you are not able to illustrate strong community and grassroots support for the project, and if your project does not meet the criteria listed above, you are unlikely to receive a significant grant from our foundation.

All Tony Hawk Foundation Grant Applicants will receive a detailed review of their projects and skatepark designs, whether a grant is awarded or not.

Before beginning the Grant Application process, you should review these eligibility requirements.

Grant Applicant Eligibility

Can we apply for a Tony Hawk Foundation grant?

1. If your organization is not a public charity (organized under IRC Sec. 501c3, and qualified under IRC Sec. 170b1A and does not have a Federal ID# number and an IRS Determination Letter to confirm your tax-exempt status) or your organization is not a state or local agency, including public school systems or public projects, it is not eligible to apply for a Tony Hawk Foundation grant. Name of the Applicant Organization MUST match the name on the IRS document you will be asked to submit.
2. If your organization is not prepared to sign a Grant Agreement document absolving the Tony Hawk Foundation from any and all liability claims resulting from use of your skatepark, you are not eligible to apply for a Tony Hawk Foundation grant.
3. If your organization plans to build a skatepark from temporary ramps (steel or wood), it is not eligible to apply for a Tony Hawk Foundation grant. Your project must be a permanent, concrete skatepark.
4. If your organization has already received a grant larger than \$1,000 from the Foundation for the same project, it is not eligible to apply for another Tony Hawk Foundation grant.
5. If your organization seeks funds for anything other than the construction of a NEW skatepark in the United States (including projects such as expansion of an existing skatepark or amenities like bleachers or water fountains), it is not eligible to apply for a Tony Hawk Foundation grant.
6. If the Median Household Income in the city or town where the skatepark will be located is significantly higher than your State's Median Household Income (using U.S. Census 2010 data from www.census.gov (<http://www.census.gov>)), your organization is not eligible to apply for a Tony Hawk Foundation grant.
7. If your project is just getting off the ground and your organization has not achieved ANY fundraising goals or secured a location for your skatepark, you are not eligible to apply for a Tony Hawk Foundation grant.
8. If your organization does not have at least a preliminary design for the skatepark, it is not eligible to apply for a Tony Hawk Foundation grant.
9. If you plan to charge a fee or require a membership to use the skatepark, your organization is not eligible to apply for a Tony Hawk

Foundation grant.

10. Aside from daylight hours, city curfew, or city park hours, if you **plan to limit the hours of access** to the skatepark, your organization is not eligible to apply for a Tony Hawk Foundation grant.
11. If your skatepark will not be located on public property, you are not eligible to apply for a Tony Hawk Foundation grant (this condition does not include skateparks built on private property that will then be donated to a public entity—city, county, parks and recreation department, etc.).

How To Apply

The Tony Hawk Foundation seeks to foster lasting improvements in society, with an emphasis on supporting and empowering youth in disadvantaged communities. In the U.S., the foundation supports the creation of public skateboard parks that promote healthy, active lifestyles.

Focus of Foundation Grants

The principal focus of foundation grants will be to encourage and facilitate the design, development, and construction of new quality skateboard parks and facilities, located in low-income communities in the United States. International organizations or those seeking funding for anything other than the construction of a skateboard park in the U.S. may not apply for a Tony Hawk Foundation grant.

Grant Amount

- Minimum Grant: \$1,000
- Maximum Grant: \$25,000

Additional Support

The foundation may offer technical assistance on design and construction, promotional materials, and other information. The foundation may also facilitate support from vendors, suppliers, and community leaders.

Frequency

Grants are based on a one-time, single-year award, although they may be paid over more than one year, if appropriate. The foundation does not provide sustaining funds or multi-year grants.

Organizational Requirements

Applicant must be a public charity, organized under IRC Sec. 501(C)(3), and qualified under IRC Sec. 170(B)(1)(A), or a state or local agency, including public school systems or public projects. For organizations that are not municipalities or state or local agencies, **proof of federal tax-exempt status is required with the grant application.** A photocopy of the organization's IRS Determination Letter, showing its tax-exempt status, will satisfy this requirement. The foundation is legally prohibited from providing grants to private, for-profit entities.

Application Procedure and Process

Tony Hawk Foundation grant applications are completed online, and all supporting documents are then mailed to our office. A printed Worksheet may be used to prepare answers before completing the online grant application. **THE PRINTED WORKSHEET MAY NOT SUBSTITUTE THE ONLINE GRANT APPLICATION.** Printed grant-application worksheets and supporting documents sent to our offices that do not correspond to a completed online application will not be considered.

(http://tonyhawkfoundation.org/wp-content/uploads/2016/11/THF_GrantWorksheet_S1_2017.pdf)

Worksheet (PDF)

(http://tonyhawkfoundation.org/wp-content/uploads/2016/11/THF_GrantWorksheet_S1_2017.pdf)

(http://tonyhawkfoundation.org/wp-content/uploads/2016/11/THF_GrantWorksheet_S1_2017.pdf)

(http://tonyhawkfoundation.org/wp-content/uploads/2016/11/THF_GrantWorksheet_S1_2017.pdf)

(http://tonyhawkfoundation.org/wp-content/uploads/2016/11/THF_GrantWorksheet_S1_2017.doc)

Worksheet (DOC)

(http://tonyhawkfoundation.org/wp-content/uploads/2016/11/THF_GrantWorksheet_S1_2017.doc)

(http://tonyhawkfoundation.org/wp-content/uploads/2016/11/THF_GrantWorksheet_S1_2017.doc)

(http://tonyhawkfoundation.org/wp-content/uploads/2016/11/THF_GrantWorksheet_S1_2017.doc)

We recommend completing the Worksheet and collecting ALL necessary supporting documents before beginning the online application process. Supporting documents include the following:

IRS Determination Letter: If this application is coming from a non-profit organization other than a municipality or public agency, a copy of your IRS Determination Letter **must** be submitted with this application.

Press: Please include documentation (such as newspaper clips or letters from prominent officials) of community support for your skatepark.

Skatepark Design: A copy of your skatepark design **must** be submitted. A final design of the proposed skatepark is preferred, but a preliminary design is acceptable. The Tony Hawk Foundation Design Committee will review each skatepark design, make recommendations to the Board of Directors, and may return the diagram with comments and feedback. Including a copy of your skatepark design helps the Board understand the scope of your project.

Designer: If you have hired a professional designer, please include a link to their Web site where examples of previous work can be viewed.

Builder/Contractor: If you have hired a builder/contractor, please include a link to their Web site where examples of previous work can be viewed.

Financial Statements: Most recent financial statements and budget of skatepark committee, if any (please don't include your municipality's entire budget. We just need to see numbers pertinent to the skatepark project).

If the grant application is approved, the applicant will be required to sign a Grant Agreement, confirming the terms of the award.

Only applications submitted via the online form will be considered. Applications may not be submitted via printed forms, FAX, e-mail, or CDs and other digital media.

The foundation anticipates approving grant requests twice a year. To be considered within a calendar semester, applications should be submitted via the online Grant Application on or before the dates posted at the top of this page. All required supporting documents must be post-marked within one business day following the Grant Application deadline.

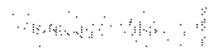
Deadlines

- January 18, 2017 (for awards announced in February 2017, Application will be available here after December 5, 2016)
- June 14, 2017 (for awards announced in July 2017, Application will be available here May 3, 2017)

Guidelines For Reapplying

There is no limit to the number of times an organization or community can apply for a Tony Hawk Foundation Grant, though any applicant may only receive one Tony Hawk Foundation Grant over \$1,000. Grant recipients that have received no more than \$1,000 from the Tony Hawk Foundation may re-apply for another grant.

Tony Hawk Foundation Grant Applications are now available. Please use the Worksheet (linked above) to prepare your answers. Once you are ready to complete the Grant Application, use the link below to begin the application. Deadline to complete and submit the application is midnight (end of day), January 18, 2017.



(https://www.surveymonkey.com/r/THF_2017_1)

| SKATEPARKS | GET INVOLVED | ABOUT | CONNECT | STAND UP FOR SKATEPARKS |
|---|--|---|--|---|
| Build a Skatepark (http://tonyhawkfoundation.org/skateparks/) | How to Donate (http://tonyhawkfoundation.org/donate/#howtodonate) | Gallery (http://tonyhawkfoundation.org/category/gallery/) | Contact THF (http://tonyhawkfoundation.org/contact/) | Annual THF Benefit Event (http://tonyhawkfoundation.org/standupfor/skateparks/) |
| Skatepark Grants (http://tonyhawkfoundation.org/grant-application/) | | Leadership (http://tonyhawkfoundation.org/about/) | | |
| FAQ (http://tonyhawkfoundation.org/faq/) | | News (http://tonyhawkfoundation.org/category/news/) | | |
| | | How Funds are Raised (http://tonyhawkfoundation.org/donate/) | | |
| | | Partners (http://tonyhawkfoundation.org/partners/) | | |
| | | Annual Reports (http://tonyhawkfoundation.org/annual-report/) | | |



(<http://www.guldestar.org/organizations/33-0965889/tony-hawk-foundation.aspx>)

The Tony Hawk Foundation seeks to foster lasting improvements in society, with an emphasis on supporting and empowering youth. Through special events, grants, and technical assistance, the Foundation supports recreational programs with a focus on the creation of public skateboard parks in low-income communities. The Foundation favors programs that clearly demonstrate that funds received will produce tangible, ongoing, positive results.

(<https://www.facebook.com/tonyhawkfoundation/>)
(<https://twitter.com/THF>)
(<http://www.youtube.com/user/TonyHawkFoundation02>)

(<http://www.pinterest.com/thawkfoundation/>)

(<https://www.linkedin.com/company/tony-hawk-foundation/>)

Date Received _____
Date Issued _____

2017

License No. RL-6057

Uniform Alcoholic Beverage License Application

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

| | |
|--|---|
| A. Owner Name and Mailing Address LUNKERS LLC 100 N LAKE DR WATERTOWN, SD 57201-5506 Owner's Telephone# : _____ | B. Business Name and Address Lic # RL-6057 LUNKERS 100 N LAKE DR WATERTOWN, SD 57201-5506 Business Telephone #: _____ |
| C. Indicate the class of license being applied for (submit separate application for each class of license). <input checked="" type="checkbox"/> Retail (on-sale) Liquor <input type="checkbox"/> Retail (on-sale) Liquor - Restaurant <input type="checkbox"/> Retail (on-off sale) Wine <input type="checkbox"/> Package (off-sale) Liquor <input type="checkbox"/> Retail (on-off sale) Malt Beverage <input type="checkbox"/> Retail (on-off sale) Malt Beverage & SD Farm Wine <input type="checkbox"/> Package (off-sale) Malt Beverage <input type="checkbox"/> Package (off-sale) Malt Beverage & SD Farm Wine <input type="checkbox"/> Other (please classify) _____ <input type="checkbox"/> Transfer Fee \$150.00 Number of other Package Liquor Licenses held: <u>0</u> Number of other On-sale Liquor Licenses held: <u>0</u> Is this License in active use? [] Yes [X] No | D. Legal description of licensed premise: Have you ever been convicted of a felony? [] Yes [X] No Do you own [] or lease [] this property? (Check one) E. State Sales Tax Number: _____ Alcohol licenses will not be reissued unless all state taxes are paid or are not delinquent F. Contact the TTB for Federal Alcohol registration at 1-800-937-8864. G. New license? _____ Transfer? (\$150) _____ Re-issuance? <input checked="" type="checkbox"/> |

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

Date 12/6/16 Print Name Jeff Pike Signature [Signature]

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

Place of business is located in a municipality? Yes [] No County: Codington
This application was subscribed and sworn to before me this 6 day of December
Approving Officer's Telephone Number 605 882-6203 (18) Signature [Signature]

J. APPROVAL OF LOCAL GOVERNING BODY - Notice of hearing was published on 12-10-16. Public hearing on the application was held 12-19-16, not less than SEVEN (7) days after official publication. The governing body by majority vote recommends the approval and granting of this license and certifies that requirements as to location and suitability of premises and applicant have been reviewed and conform to the requirements of local and South Dakota law.

Application approved for Sunday on-sale operation? [] Yes [X] No
Are real property taxes paid to date? [] Yes [] No
Ineligible for video lottery []
Number of video lottery terminals on licensed premise: _____
Renewal - no public hearing held
Amount of fee collected with application \$ 1540.00
Amount of fee retained \$ 1540.00
Forwarded with application \$ 0

| | |
|--|--|
| For Local Government Use (Seal) _____ Mayor or Chairman _____ If disapproved, endorse reason thereon and return to applicant | Transferred (State Use) From _____ Sales tax approval _____ Date _____ STATE LIQUOR AUTHORITY: APPROVAL _____ REVIEW _____ |
|--|--|

Please complete reverse side.

Company supplement information
(For corporate/partnership/LP/LLC applicants)
 If supplement unchanged from last year check this box and sign below.

State of South Dakota) **Affidavit**
)
 County of)
)

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

Name of corporation/partnership/LP/LLC _____
 Address of office and principal place of business of corporation/partnership/LP/LLC _____
 Date of incorporation _____
 Date of last report filed with Secretary of State _____
 Are all managing officers of this corporation/partnership/LP/LLC of good moral character? _____
 Have any of the managing officers of this corporation/partnership/LP/LLC ever been convicted of a felony? _____

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

| Name | Office | Address | Occupation |
|------|--------|---------|------------|
| | | | |
| | | | |

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

| Name | Address | Occupation |
|------|---------|------------|
| | | |
| | | |

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

| Name | Address | Percentage of Shares |
|------|---------|----------------------|
| | | |
| | | |

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

| Name | Type of license of financial interest and address of retail outlet |
|------|--|
| | |
| | |

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

With signature the applicant agrees to the following:

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

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

Signature of Authorized Officer/Director/Partner _____
[Handwritten Signature]

Subscribed and sworn to before me this 6th of December, Codington County, State of South Dakota.

My commission expires 11-09-2018

D. WADE PENGILL
 NOTARY PUBLIC
 SEAL SOUTH DAKOTA SEAL
 (Notary Public)

**AIRPORT COLD STORAGE AREA
LEASE AGREEMENT**

This Lease Agreement made this ___ day of December, 2016, by and between the Watertown Regional Airport, located at 2416 Boeing Avenue, Watertown, South Dakota, 57201 (hereinafter “LESSOR”), and Worthington Industries, located at 315 Airport Drive, Watertown, South Dakota, 57201 (hereinafter “LESSEE”).

1. Leased Premises.

LESSOR hereby leases to LESSEE the following described property, to wit:

COLD STORAGE SPACE CONSISTING OF APPROXIMATELY 5000
SQUARE FEET in Hangar Lot C of Private Block B, located in the Southeast ¼
of Section 23, Township 117 North, Range 53 West of the 5th P.M., Codington
County, South Dakota, as more fully depicted in Exhibit A.

2. Term.

This Agreement shall be for a term of ONE (1) year from the date of its execution. Thereafter, LESSEE shall have the option to renew the Agreement on a quarterly term upon similar terms, subject to automatic rent increases described in Section 4. LESSEE must provide written notice to LESSOR of his intent to renew not more than ten (10) days prior to the expiration of the original term.

3. Use of Premises by LESSEE.

A. LESSEE shall have the right to use the leased premises for the following primary activities: Cold storage of material and equipment for non aeronautical use.

B. LESSEE has the right of ingress and egress to the leased premises on City owned or leased ground adjacent to the lease premises. LESSEE agrees to comply with any Federal Aviation Administration, State or Local security requirements pertaining to the Airport Operations Area in effect during the term of this Lease. LESSEE shall be responsible for employees, vendors, business invitees and/or contract personnel when they are on the leased premises.

C. LESSEE specifically agrees that access to the aeronautical area, for himself, his agents, guests or invitees shall be permitted only to individuals possessing and displaying an Access Gate Card issued by the Watertown Municipal Airport. LESSEE hereby acknowledges that at the time of executing this Agreement, the cost of each Access Gate Card is Five Dollars (\$5.00), which sum shall be paid prior to any card being issued, or any access to the aeronautical area being taken. LESSEE agrees that any card lost or damaged will be replaced at LESSEE’s sole expense and LESSEE agrees to immediately notify the Airport Manager if any Access Gate Card is lost, stolen or damaged.

4. Rent.

LESSEE shall pay as rental for said space to LESSOR the sum of \$.153 per square foot per month for that leased space, for a total monthly rent payment of \$765.00 (Seven Hundred Sixty-Five), due and payable on the 15th of each month. In addition, LESSEE shall pay for all utilities provided to the leased premises in a timely manner.

The total monthly rent payment will automatically increase by 2% (two percent) on October 1, 2017, and rent will automatically increase by an additional 2% (two percent) on that same date, every year thereafter.

Rent will be delinquent if not paid prior to or on the date of the billing invoice. Late or unpaid rents will result in a ten percent (10%) late charge assessed upon all rent outstanding.

Payment of rent will be in legal tender and submitted to the City of Watertown, Finance Office at: PO BOX 910, Watertown SD, 57201.

5. Maintenance of Leased Premises.

A. Any exterior signage shall comply with any applicable ordinances or codes and shall further be subject to the prior written approval of the Airport Manager.

B. Trash and other wastes will be properly disposed of by the LESSEE, at LESSEE's sole expense, and the sanitary sewer shall not be used to dispose of toxic and hazardous materials or chemicals. LESSEE specifically agrees that he will promptly remove any trash, waste or other debris from the LESSOR's premises and will not permit the accumulation or storage of any waste or any other type of refuse to occur upon the leased premises.

C. Toxic and hazardous materials stored on the premises will be stored and disposed of according to applicable local, state and federal laws and regulations.

6. Loss and Liability Over and Upon Leased Premises.

LESSEE shall keep and maintain a commercial general liability insurance policy in a minimum amount of coverage of One Million Dollars (\$1,000,000.00) single limit liability for any one accident or occurrence. The policy shall name LESSOR as an additional insured.

A certificate covering conditions described shall be filed at the Watertown Municipal Airport within thirty (30) days from the date of this Agreement. Notice of certificate renewal is required prior to policy expiration, and a new certificate shall be filed within fifteen (15) days.

LESSEE shall, during the term hereof, or any part hereof, hold LESSOR harmless and indemnify it from any and all third party damages, liability, and demands that may result from negligence of LESSEE, including, but not limited to, personal injury and property

damage claims arising out of or incidental to the use, maintenance or operation by LESSEE or his employees or agents, of any of the structures, appliances, equipment or operations referred to in this Agreement.

7. Remedies

In the event of default on the part of the LESSEE in any of the obligations or covenants hereunder, LESSOR shall provide LESSEE with a written notice of the breach or default, whereupon LESSEE shall have thirty (30) days to cure the claimed breach or default. In the event of failure of LESSEE to cure any breach of default within thirty (30) days after written notice by LESSOR, then LESSOR may terminate the Agreement and re-enter the premises. In that event, LESSEE agrees to give quiet and peaceful possession of the premises to LESSOR, or any of its agents, provided that the waiver by LESSOR of any default or breach on the part of the LESSEE shall not constitute a waiver of any other or subsequent default hereunder. The remedy stipulated in this paragraph shall be cumulative and in addition to any and all legal remedies that LESSOR may have for default and breach of this Agreement.

8. Equal Employment and Affirmative Action.

LESSEE agrees that in the operation and use of the premises, the use of the airport and the conduct of LESSEE at the airport, LESSEE will not, on the grounds of race, color or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by law and hereby grants LESSOR the right to take such actions as the Government may direct to enforce such covenant.

9. Assignment and Subletting.

This agreement shall be binding upon the heirs, legal representatives and successors in interest of any of the parties hereto and shall be assignable by the LESSEE only upon first obtaining the written consent of LESSOR and the premises shall not be sublet except upon receiving prior written consent of LESSOR. It is further understood and agreed that the term "sublet" as contained herein, shall except the normal leasing of one or more hangar spaces for such periods of time as may be consistent with the terms of this Agreement. Assignment to a corporation of this Agreement, of which the named LESSEE has the majority of the stock or has effective control of the corporation, shall not be deemed to be an assignment within the meaning of this lease, it being the intention of the parties that the LESSEE shall retain, through individual or through a corporate organization, the active management of the premises leased. The LESSEE, without prior consent of LESSOR, may assign this Agreement to any department, bureau, corporation, administration, authority, or other instrumentality of the government of the United States or of the State of South Dakota or any South Dakota State or National Bank for the purpose of securing a loan from such government of the State of South Dakota or from the United States.

10. Miscellaneous.

A. This Agreement is non-exclusive, and LESSOR reserves the right to make any other or similar agreements with any person or persons, firms, or corporations, relative to other premises at the Watertown Municipal Airport.

B. The LESSEE shall not allow any mechanic's or materialmen's liens against the airport property of LESSOR.

C. Either party may terminate the Agreement for cause by giving the other party sixty (60) days written notice. As used herein, "cause" shall be deemed to include the breach, failure, or refusal to comply with any material term, covenant or provision of this Lease Agreement. Either party may terminate the Agreement without cause by giving the other party ninety (90) days' written notice.

D. LESSOR has the right to enter and inspect the premises when deemed necessary. If the buildings fall into a state of disrepair or become unsightly, then upon thirty (30) days written notice, LESSOR has the right to make repairs. In the event any repair is caused by the act or omission of LESSEE, LESSOR shall be permitted to make any necessary repair and the cost shall be paid by LESSEE. The rights hereunder are to be cumulative and in addition to other remedies; and further, LESSOR shall have no obligation to make any repairs, except at its own option.

E. LESSOR reserves the right to the air space above the leased property and a fence and utility right of way within ten (10) feet of the outside boundary of the leased property (shown on Exhibit A). In the event the utilities located on the leased property require excavation or maintenance, LESSEE shall allow the LESSOR necessary and reasonable access for performance of such maintenance or excavation.

F. LESSEE agrees that this Agreement is subordinate to any agreements with the United States Government necessary during time of national defense emergency.

G. LESSEE will abide by all City, State and Federal laws governing the use of said airport, including policies and regulations adopted and as amended from hereafter by LESSOR or Airport Board regarding LESSEE's operations on airport premises.

H. It is an express condition of this Agreement that upon its termination for whatever cause, LESSEE shall, within 30 days of such termination, have the right to enter upon the leased premises for the limited and exclusive purpose of removing LESSEE's building and any other personal property of LESSEE and to restore LESSOR's property to the condition existing at the time this Agreement was executed.

I. Any amendments to this Agreement must be in writing and executed by both parties.

11. Choice of Law.

This Agreement is to be construed and governed under the laws of the State of South Dakota.

WORTHINGTON INDUSTRIES:

Bruce Lear, Operations Manager

CITY OF WATERTOWN:

Steve Thorson, Mayor

ATTEST:

Shelly Ebbers, CPA
Finance Officer
(SEAL)

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

On this the ___ day of December, 2016, before me, the undersigned officer, personally appeared Steve Thorson and Shelly 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 Codington)

On this ___ day of December, 2016, before me, the undersigned officer, personally appeared Bruce Lear, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

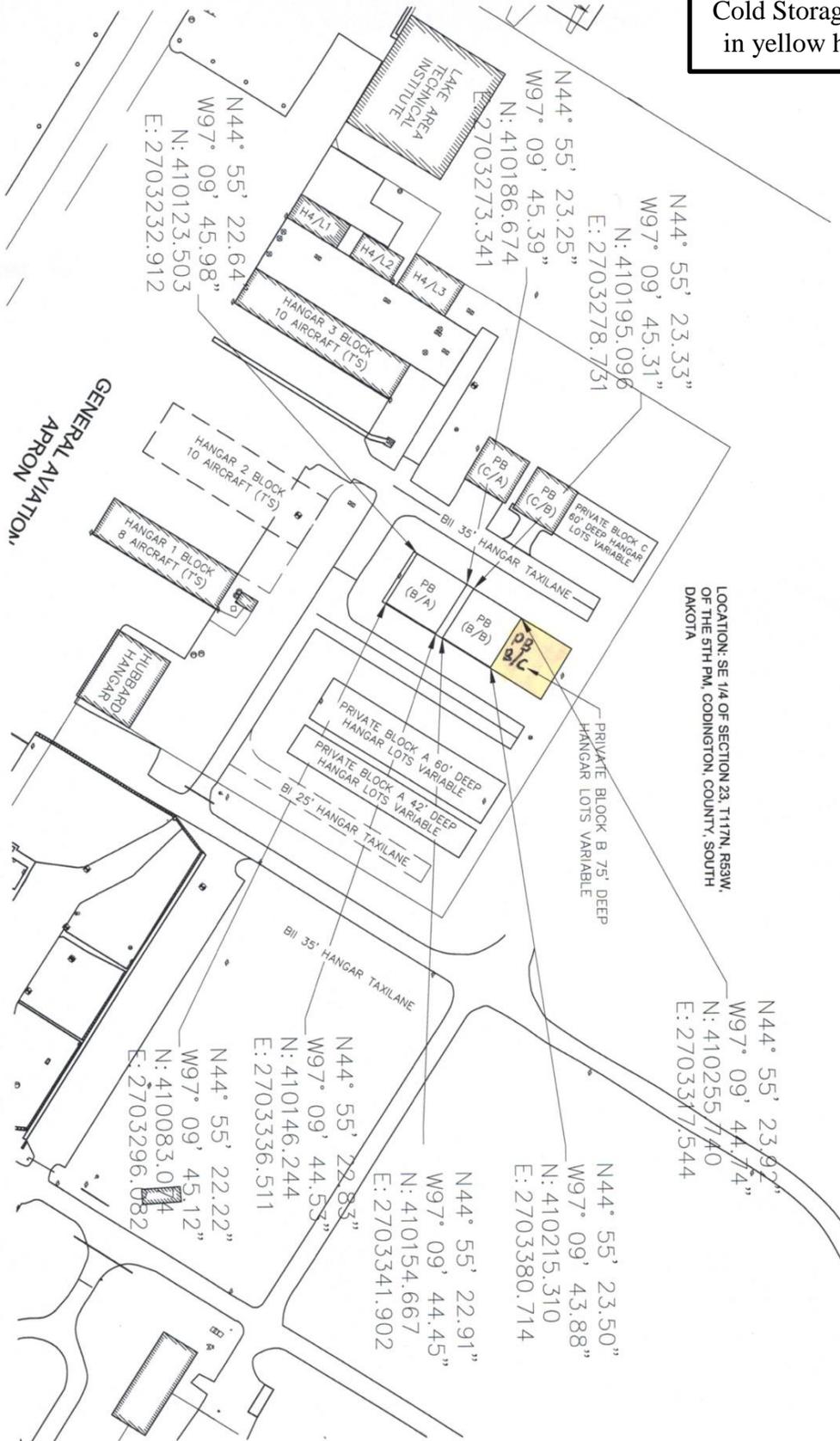
Notary Public

(SEAL)

My Commission Expires:

Exhibit A

Cold Storage denoted in yellow highlight.



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 \$1,860,135 as follows:

General Fund (101):

| | |
|---------------------------------|---------|
| Finance Office (41530): | |
| Consultant Fees (42202) | 7,500 |
| Street Department (43120): | |
| Street Improvements (43700) | 272,750 |
| 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

Appropriation of State and Federal Grants

General Fund (#101)

Police Department - 42100:

| | | | |
|-------|----------------|---------------|-------------------------|
| 42701 | Travel Expense | <u>26,150</u> | Homeland Security Grant |
| | Subtotal | | <u>26,150</u> |

Fire Department - 42220:

| | | | |
|-------|-----------------------|---------------|-----------------|
| 42701 | Travel Exp. Personnel | 14,350 | HLS/HMEP Grant |
| 43600 | Machinery & Equipment | <u>41,400</u> | HLS /HMEP Grant |
| | Subtotal | | <u>55,750</u> |

| | | | |
|--------------------|--|----------------------|--|
| General Fund Total | | <u><u>81,900</u></u> | |
|--------------------|--|----------------------|--|

Budget Line-Item Transfer

Capital Improvement Sales Tax Fund:

15th St. North from 14th Ave. to 16th Street Project:

Transfer from:

| | | |
|-----------------|-----------------------------|----------------|
| 212-43180-43715 | 7th St. NE Improvements | 50,000 |
| 212-43280-43960 | 11th St SE Storm Sewer Proj | 150,000 |
| Total | | <u>200,000</u> |

Transfer to:

| | | |
|-----------------|--------------------------------|----------------|
| 212-43180-43713 | 15th St N from 14 Ave to 16 St | 50,000 |
| 212-43180-43713 | 15th St N from 14 Ave to 16 St | 150,000 |
| Total | | <u>200,000</u> |

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

REQUEST FOR CITY COUNCIL ACTION

TO: Mayor and City Council

FROM: Justin Goetz, City Attorney

MEETING: December 19, 2016

RE: Proposed Ordinance 16-28, Amending § 14.0209 (Prohibited Injury to Public Trees) to Clarify a Potential Conflict with Nuisance Tree Trimming Requirements

The City of Watertown defines “public trees and shrubs” in relevant part as “all trees or shrubs planted or to be planted . . . on any public street, alley, sidewalk or highway within the public right-of-way.” See Rev. Ord. § 14.0402. By defining these trees as public, the City has taken some responsibility for their care. That responsibility is shown in how the City requires a permit from the Parks Director or his designee before any trees are planted in these right of ways. See Rev. Ord. § 14.0202. It is also shown by how the City requires a similar permit for “cut[ting], defac[ing], or in any way injur[ing] or interfer[ing] with any tree or shrub on any of the avenues, streets, alleys, or public grounds,” as provided in the section sought to be amended here, § 14.0209.

While that regulatory framework is straightforward, confusion may arise from instances where well-meaning citizens seek to follow our nuisance ordinances regarding such trees. Specifically, Rev. Ord. § 11.0713 establishes overhanging tree limbs, or those limbs “hanging within seven (7) feet above the sidewalk surface in this City,” as being a nuisance. The owner of the lot where the overhanging tree limbs exist is charged with removing the nuisance, per Rev. Ord. § 11.0715:

11.0715: DUTY TO REMOVE OVERHANGING TREE LIMBS

It shall be the duty of the owner or occupant of any lot or lots in this City to keep all overhanging limbs of trees described in Section 11.0713 hereof cut down and removed on all lots owned or occupied by them. (571) (Ord 05-04; Rev 05-2-05)

As most City sidewalks are located within the right of way of highways, streets, and alleys, many—if not most—overhanging limbs will grow from public trees. Therefore, this proposed amendment is intended to clarify that a property owner may abate an overhanging limb nuisance without fearing City action for failure to obtain a permit to trim that public tree.

The need for this amendment appears fairly substantial. The City has authority to abate these nuisances on our own, per Rev. Ord. § 11.0717, and to then specially assess the City's cost for abating overhanging tree limbs to the property owner, per Rev. Ord. § 11.0718. City ordinance also authorizes punishments for a landowner's failure to trim an overhanging tree limb, with a maximum of fine of \$200, but with "each day of violation . . . constitut[ing] a separate offense." *See* Rev. Ord. § 11.9901. If bringing clarity to these provisions encourages more property owners to remedy these nuisances on their own, and forestall the above, logistically complex penalties, the City would appear to benefit from this amendment.

ORDINANCE 16-28

AN ORDINANCE AMENDING SECTION 14.0209 REGARDING PROHIBITED INJURY TO PUBLIC TREES TO CLARIFY ITS INAPPLICABILITY TO NUISANCE TREE TRIMMING REQUIREMENTS

BE IT ORDAINED by the City of Watertown, South Dakota, that § 14.0209 of the Revised Ordinances of the City of Watertown be amended as follows:

14.0209: INJURING TREES

No person shall remove, destroy, cut, deface or in any way injure or interfere with any tree or shrub on any of the avenues, streets, alleys or public grounds, including parks and parkways, without a permit from the Director or his designee. This section does not apply to the lawful removal of overhanging tree limbs, in accordance with §§ 11.0713 and 11.0715 of the Revised Ordinances of the City of Watertown. (297)

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 16-28 was published in the Watertown Public Opinion, the official newspaper of said City, on this 7th day of January, 2017.

Rochelle M. Ebbers, CPA

First Reading: December 19th, 2016
Second Reading: January 2nd, 2017
Published: January 7th, 2017
Effective: January 27th, 2017

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: December 19, 2016

RE: Proposed Ordinance 16-29, Amending § 14.0704 (Inspection of Dutch Elm Diseased Trees) to Reflect Existing City Practice

The Revised Ordinances of the City of Watertown dedicate an entire chapter to the control of Dutch Elm disease. *See* Rev. Ord. ch. 14.07. Most of this chapter has remained substantively unchanged since its initial adoption in 1976. The chapter was revised slightly in 1999 to replace the City Forester title with that of the Superintendent of Parks and Forestry. The chapter now vests the Superintendent with authority to obtain complaints, investigate, and act decisively to remedy cases of Dutch Elm disease in the community.

Dutch elm disease remains an issue of concern within the community. However, the ordinances relating to inspection appear to suggest a difficult, if not impossible, requirement of the Superintendent. Specifically, Revised Ordinance § 14.0704 appears to require that the Superintendent “inspect . . . all premises and places within the City at least twice each year to determine whether” Dutch Elm disease “exists thereon.” The section would therefore appear to require a top-to-bottom inspection of the entire community twice a year, not just a tailored search of elm trees reported to be infected. This burden, if enforced literally, would occupy nearly all of the finite resources currently available to the City for forestry needs.

The amendment seeks to continue to assert the Superintendent’s authority to investigate all places in the community where Dutch Elm disease is reported or found by the City, without the steep burden referenced above. Such an amendment appears to be in keeping with the City Council’s declaration of policy in establishing the Dutch Elm disease chapter:

14.0701: DECLARATION OF POLICY

The City Council has determined that the health of the elm trees within the municipal limits is threatened by a fatal disease known as Dutch Elm disease. It has further determined that the loss of elm trees growing upon public and private property would substantially depreciate the value of property within the City and impair the safety, good order, general welfare and convenience of the public. It is declared to be the intention of the City Council to control and prevent the spread of this disease and this article is enacted for that purpose. (E-260-5)

ORDINANCE 16-29

**AN ORDINANCE AMENDING SECTION 14.0704 REGARDING INSPECTION OF
DUTCH ELM DISEASE INFECTIONS**

BE IT ORDAINED by the City of Watertown, South Dakota, that § 14.0704 of the Revised Ordinances of the City of Watertown be amended as follows:

14.0704: INSPECTION

The Superintendent of Parks and Forestry is authorized to inspect and determine whether any public nuisance as defined in this article exists on all premises and places within the City, and shall also inspect or cause to be inspected any elm tree reported or suspected to be infected with the Dutch Elm disease or any elm bark bearing material reported or suspected to be infected with either species of the elm bark beetle. (E-260-5) (99-10)

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 16-29 was published in the Watertown Public Opinion, the official newspaper of said City, on this ____ day of _____, 2017.

Rochelle M. Ebbers, CPA

First Reading: December 19th, 2016

Second Reading: January 2nd, 2017

Published: January 7th, 2017

Effective: January 27th, 2017

City of Watertown

Attest:

Rochelle M. Ebbers, CPA
Finance Officer

Steve Thorson
Mayor

Request for Council Action

TO: Mayor and City Council
FROM: Shane Waterman, PE, City Engineer *SLW*
MEETING DATE: December 19, 2016
SUBJECT: Bridge Improvement Grant (BIG) Application

Background: The City of Watertown may apply for two separate Bridge Improvement Grants in 2017: one for engineering for reconstruction of the 3rd Avenue NW Bridge over the Big Sioux River, and one for maintenance work on the 20th Avenue South bridge over the Big Sioux River. Last year, we applied for the engineering work on the 3rd Avenue Bridge, but were not awarded a grant, so we need to apply again. We made no application for a maintenance grant. The maintenance work on the 20th Avenue Bridge would be done in 2018 in advance of heavy traffic during construction work on US Highway 212. The deadline for the 2017 grant application is January 2, 2017. Applications will be scored, with higher scoring applications receiving funds.

3rd Avenue Bridge: We hope to complete design work in 2018/2019 and reconstruct the 3rd Avenue NW Bridge in 2020. The condition of the bridge has deteriorated to the point that further repair is not cost effective, and replacement by 2020 has been recommended by Clark Engineering, the consultant that completed the 2015 annual bridge inspections. This bridge was in the State Transportation Improvement Program for years, and was scheduled for replacement in the year 2020, but that program has been discontinued. In order to receive state and federal assistance to replace bridges, agencies must now make application to the Bridge Improvement Grant program administered by the South Dakota Department of Transportation.

The first step in the process will be to complete the preliminary engineering design as necessary to apply for construction funds. The estimated cost for preliminary engineering, including hydraulic and structural design is \$34,400. The minimum local cost share is 20% (\$6,880), but local agencies can earn 3 points for every 5% of increased local match beyond the required 20%.

20th Avenue Bridge: We recommend completing the rehabilitation work identified in the 2015 Bridge Inspection Report completed by Clark Engineering. The project would include several work items, however, an emphasis should be made on the proposed Epoxy Chip Seal application for the deck. This type of work has become a main focus for bridge preservation by the SD DOT. The SD DOT has recently completed this same type of preservation work on many of the state highway bridges in our area.

This application would apply to both engineering design and construction funds. The estimated cost for the engineering and construction is \$282,700. The minimum local cost share is 20% (\$56,540), but local agencies can earn 3 points for every 5% of increased local match beyond the required 20%.

Recommendation: Applying for Bridge Improvement Grant (BIG) funding is recommended.

Council Action Requested: Motion to authorize Mayor to sign Bridge Improvement Grant (BIG) Application for Preliminary Engineering for the 3rd Avenue NW Bridge replacement and for the 20th Ave SE Bridge Preservation.

Staff Comments: There is currently nothing budgeted for this in 2017. If the grant were awarded, our local share would need to be allocated in the 2018 budget.

RESOLUTION NO. 16-42

**BRIDGE IMPROVEMENT GRANT PROGRAM
RESOLUTION AUTHORIZING SUBMISSION OF APPLICATIONS**

WHEREAS, THE City of Watertown wishes to submit an application/applications for consideration of award for the Bridge Improvement Grant Program:

Structure Numbers and Location(s):

Structure 15-181-170 on 3rd Ave NW 0.3 miles East of SD Hwy 20 over the Big Sioux River

Structure 15-196-190 on 20th Ave SE 0.5 miles East of US Hwy 81 over the Big Sioux River

And WHEREAS, the City of Watertown agrees to pay the 20% match on the Bridge Improvement Grant funds;

And WHEREAS, the City of Watertown hereby authorizes the Bridge Improvement Grant applications(s) and any required funding commitments.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Watertown, SD requests that the South Dakota Department of Transportation to accept the attached Bridge Improvement Grant application(s).

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

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

I hereby certify that Resolution No. 16-42 was published in the Watertown Public Opinion, the official newspaper of said City, on the ____ day of December, 2016.

CITY OF WATERTOWN

ATTEST:

Rochelle M. Ebbers, CPA
Finance Officer

Steve Thorson
Mayor



2017 APPLICATION FOR BRIDGE IMPROVEMENT GRANT (BIG) FUNDS

South Dakota Department of Transportation
 SUBMIT APPLICATION TO: Wade.Dahl@state.sd.us

| | | |
|---|--|--|
| Identification | Bridge ID # <u>15-181-170</u> Owner <u>City of Watertown</u> Location <u>0.3 Miles E. of SD HWY 20 (or 10th St NW)</u> | Fed Aide Route Number: <u>4300</u> Over: <u>Big Sioux River</u> Road/Street/Avenue Name: <u>3rd Ave. NW</u> Proposed Const. Year: <u>2020</u> |
| Grant | Total Project Amount \$ <u>34,400</u> = Requested Grant Amount \$ <u>27,520</u> + Local Match \$ <u>6,880</u> Select One: <input checked="" type="checkbox"/> Preliminary Engineering Grant (PE-BIG) (80% of approved design hour costs maximum) <input type="checkbox"/> Preservation BIG Grant (\$37,500 min. = \$30,000 + \$7,500 Local Match (20%)) <input type="checkbox"/> Major Rehab/Replacement Grant (BIG) (\$125,000 min. = \$100,000 + \$25,000 Local Match (20%)) Select All That Apply: <input checked="" type="checkbox"/> Request DOT Geotechnical Services <input type="checkbox"/> Request DOT Right of Way Services(example: Tribal Lands) | |
| Eligibility | All Projects: (Attach separate sheet with explanation if any of the following are False) Structure serves multiple residences, farms, ranches or a multi-lot development? <input checked="" type="checkbox"/> True <input type="checkbox"/> False Structure is located on a Full Maintenance Road? <input checked="" type="checkbox"/> True <input type="checkbox"/> False Roadway does not terminate into a field entrance, driveway, single residence, farm, or ranch? <input checked="" type="checkbox"/> True <input type="checkbox"/> False Local Public Agency (LPA) is in full compliance with Federal and State NBIS requirements? <input checked="" type="checkbox"/> True <input type="checkbox"/> False County Applicant: Amount of County Wheel Tax per wheel for >6000 lb classification: <u>N-A</u> Is the structure listed in the County 5-year plan? <input type="checkbox"/> Yes <input type="checkbox"/> No For Preliminary Engineering: (Attach cost proposal (DOT format) of the requested work) For Preservation: (Attach separate sheet w/ description of requested work, Engineer's cost proposal (Design & CE separated in DOT format), Engineer's cost estimate for construction, and photos of existing conditions to be addressed) For Major Rehab/Replacement: (Attach Type, Size, & Location (TS&L) report and an, Engineer's cost proposal (Design & CE separated in DOT format), and Engineer's cost estimate for construction) | |
| Prioritization | Describe the economic importance of evaluating/replacing this bridge (attach additional sheets as needed): <u>The 3rd Avenue NW bridge has the highest ADT of city-owned bridges. It is a main route to the downtown business district and nearby fire station. The bridge is currently load posted which limits traffic to the downtown district. It was previously on the 2020 STIP.</u> Bid Ready Plans (Attach final plans, final hydraulics, load ratings, design calculations and check design, certifications, and permits)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| LPA Authorization | <u>Shane Waterman, City Engineer</u> LPA Contact (print) Contact email and phone number: <u>swaterman@watertownsd.us</u> <u>(605) 753-3546</u> Attach resolution from Commission/Council authorizing application of grant(s). | |
| Recommendation | <div style="text-align: right; font-weight: bold;">STATE AID USE ONLY</div> Date Received: _____ BIG Candidacy <input type="checkbox"/> Yes <input type="checkbox"/> No Statewide Ranking _____ BIG Funds \$ _____ (%) BIG Recommendation <input type="checkbox"/> Yes <input type="checkbox"/> No Local Match \$ _____ (%) SDDOT Local Government Engineer _____ TOTAL \$ _____ <div style="text-align: right;">Date _____</div> | |
| Commission Approved on: _____ Project Number: _____ | | |



2017 APPLICATION FOR BRIDGE IMPROVEMENT GRANT (BIG) FUNDS

South Dakota Department of Transportation
 SUBMIT APPLICATION TO: Wade.Dahl@state.sd.us

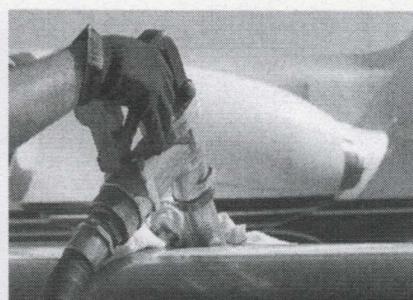
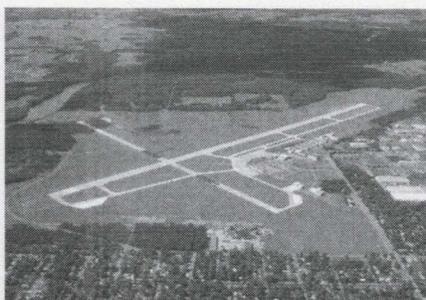
| | | |
|--|--|---|
| Identi- fication | Bridge ID # <u>15-196-190</u> Owner <u>City of Watertown</u> Location <u>0.5 Miles E. of US HWY 81 (or 5th St SE)</u> | Fed Aide Route Number: <u>4411</u> Over: <u>Big Sioux River</u> Road/Street/Avenue Name: <u>20th Ave. SE</u> Proposed Const. Year: <u>2018</u> |
| Grant | Total Project Amount \$ <u>282,700</u> = Requested Grant Amount \$ <u>226,160</u> + Local Match \$ <u>56,540</u> Select One: <input type="checkbox"/> Preliminary Engineering Grant (PE-BIG) (80% of approved design hour costs maximum) <input checked="" type="checkbox"/> Preservation BIG Grant (\$37,500 min. = \$30,000 + \$7,500 Local Match (20%)) <input type="checkbox"/> Major Rehab/Replacement Grant (BIG) (\$125,000 min. = \$100,000 + \$25,000 Local Match (20%)) Select All That Apply: <input type="checkbox"/> Request DOT Geotechnical Services <input type="checkbox"/> Request DOT Right of Way Services(example: Tribal Lands) | |
| Eligibility | All Projects: (Attach separate sheet with explanation if any of the following are False) Structure serves multiple residences, farms, ranches or a multi-lot development? <input checked="" type="checkbox"/> True <input type="checkbox"/> False Structure is located on a Full Maintenance Road? <input checked="" type="checkbox"/> True <input type="checkbox"/> False Roadway does not terminate into a field entrance, driveway, single residence, farm, or ranch? <input checked="" type="checkbox"/> True <input type="checkbox"/> False Local Public Agency (LPA) is in full compliance with Federal and State NBIS requirements? <input checked="" type="checkbox"/> True <input type="checkbox"/> False County Applicant: Amount of County Wheel Tax per wheel for >6000 lb classification: <u>N-A</u> Is the structure listed in the County 5-year plan? <input type="checkbox"/> Yes <input type="checkbox"/> No For Preliminary Engineering: (Attach cost proposal (DOT format) of the requested work) For Preservation: (Attach separate sheet w/ description of requested work, Engineer's cost proposal (Design & CE separated in DOT format), Engineer's cost estimate for construction, and photos of existing conditions to be addressed) For Major Rehab/Replacement: (Attach Type, Size, & Location (TS&L) report and an, Engineer's cost proposal (Design & CE separated in DOT format), and Engineer's cost estimate for construction) | |
| Prioritization | Describe the economic importance of evaluating/replacing this bridge (attach additional sheets as needed): <u>The 20th Avenue SE bridge is located on the new bypass South of town to alleviate road congestion on US Highway 212. The bridge was recently constructed in 2010 and the deck is in need of an epoxy deck seal and joint replacement.</u> Bid Ready Plans (Attach final plans, final hydraulics, load ratings, design calculations and check design, certifications, and permits)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| LPA Authorization | <u>Shane Waterman, City Engineer</u> LPA Contact (print) Contact email and phone number: <u>swaterman@watertownsd.us</u> <u>(605) 753-3546</u> Attach resolution from Commission/Council authorizing application of grant(s). | |
| Recommendation | STATE AID USE ONLY | |
| | Date Received: _____ BIG Candidacy <input type="checkbox"/> Yes <input type="checkbox"/> No Statewide Ranking _____ BIG Funds \$ _____ (%) | |
| | BIG Recommendation <input type="checkbox"/> Yes <input type="checkbox"/> No Local Match \$ _____ (%) | |
| | TOTAL \$ _____ | |
| | SDDOT Local Government Engineer _____ Date _____ | |
| Commission Approved on: _____ Project Number: _____ | | |

AVIATION GENERAL LIABILITY PROPOSAL

prepared for:

City of Watertown

P.O. Box 910
Watertown, SD 57201



Presented by:

Steve Bruss
Aviation Insurance Broker



GLOBAL SOLUTIONS

Wings Insurance
14871 Pioneer Trail
Eden Prairie, Minnesota 55347
www.wingsinsurance.aero

FIRE UNDERWRITERS BOARD OF

WATERTOWN

P O BOX 761
WATERTOWN SD 57201

December 9, 2016

City of Watertown
Box 910
Watertown SD 57201

Airport Liability
1-1-17 renewal

Annual Premium.....\$5,485.00

Please pay from this invoice the amount of \$5,485.00 to Fire Underwriters Board

Thank you – your business is appreciated.

AVIATION GENERAL LIABILITY PROPOSAL

Named Insured: City of Watertown
PO Box 910
Watertown, SD 57201

Effective Date 01/01/2017 – 01/01/2019
Insurance Company: Old Republic Aerospace
Annual Premium: \$5,485 (billed annually)

INSURED PREMISES:

ATY: Watertown Regional Airport – Watertown, SD

COVERAGES:

| <u>Coverage</u> | <u>Deductible</u> |
|---|-------------------------|
| Premises Liability: \$10,000,000 Each Occurrence | \$0 Each & Every Loss |
| Products & Completed Operations: \$10,000,000 Each Occurrence/Aggregate | |
| Premises Medical Payments: \$5,000 Each Person / \$25,000 Each Occurrence | |
| Fire Legal Liability: \$250,000 Each Premises | |
| Non-Owned Aircraft Liability: \$10,000,000 Each Occurrence | |
| Hangarkeepers Liability: \$10,000,000 Each Aircraft \$10,000,000 Each Occurrence | \$0 Each and Every Loss |

RECEIPTS:

| | | | | | |
|----------------------------------|----------|-----------------------------|----------|------------------------|---------|
| Repair/Service – Fixed Wing | \$0 | Sale of Used Aircraft | \$0 | Aircraft Rental | \$0 |
| Repair/Service – Rotor Wing | \$0 | Sale of Parts Not Installed | \$0 | Charter | \$0 |
| Engine Overhaul | \$0 | Fuel Sales – 100 LL | \$3,500 | Food/Catering | \$0 |
| Prop Overhaul | \$0 | Fuel Sales – Jet A | \$0 | Pilot Services | \$0 |
| Install / Repair – Avionics | \$0 | Fuel Sale – Airlines | \$0 | Sale of Pilot Supplies | \$0 |
| Sale of Avionics – Not Installed | \$0 | Hangaring | \$56,950 | Aircraft Painting | \$0 |
| Sale of New Aircraft | \$0 | Tie Downs | \$0 | Landing Fees | \$6,000 |
| FBO/Terminal Rent | \$48,000 | Misc. Rent | \$58,900 | | |

ADDITIONAL INTERESTS:

MN Airlines, LLC dba Sun Country Airlines – Additional Insured

REMARKS:

The City of Watertown should attempt to be made an Additional Insured on Aerodynamics, Inc's insurance policy in regards to their agreement.

COVERAGE PLACEMENT INSTRUCTIONS:

Please check the box next to your desired choice and fax or mail to our office.

Please proceed with the auto-renewal as quoted for a Total Annual Premium of **\$5,485**.

Date: _____

Signed: _____

All policy terms, conditions, and exclusions shall apply in accordance with the policy form in use by the company upon the date of binding. This quotation shall be valid for no longer than a period of 30 days from the date shown above. Coverages have not been bound at this time; however, we would be pleased to bind coverages after receipt of the signed and dated Binding Instructions.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF WATERTOWN
AND
LOCAL UNION 2488
OF THE
AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO**

1. Purpose.

The purpose of this Memorandum of Understanding (MOU) is to amend the Collective Bargaining Agreement (CBA) effective January 1, 2016 through December 31, 2018 between the AFSCME Local 2488 and the City of Watertown (collectively, “the Parties”) to correct a mutual mistake of the Parties’ negotiating teams in drafting Section 8.01(b) of said Agreement—namely, an unintended omission of language that existed in the 2013 CBA. Accordingly, Section 8.01 is hereby amended as follows:

Section 8.01. One and one-half (1½) times the employee's regular hourly rate of pay shall be paid for work under any of the following conditions:

- (a) All work performed in excess of forty (40) hours in one week; sick leave, vacation and/or compensatory time taken cannot be used in calculating overtime.
- (b) All holidays observed on an employee’s regularly scheduled work day shall be considered as hours worked to calculate overtime.
- (c) Work performed under provisions of call-back and reporting and stand-by pay.
- (d) The parties further agree that compensatory time at the rate of one and one-half (1½) times the hours worked may be used in place of overtime pay if mutually agreed between the employee and the Department Head.

2. Recitals.

A. This MOU has been approved by the City Council for the City of Watertown and the Executive Board of AFSCME Local 2488 acting for and on behalf of its bargaining unit members.

B. This MOU shall be deemed to be integrated into the collective bargaining agreement described herein as if more fully set forth therein, and shall be in full force and effect for an identical term.

C. This MOU 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.

IN WITNESS WHEREOF, the undersigned being duly authorized by their respective governing bodies, execute this MOU.

Dated this ____ day of December 2016 at Watertown South Dakota.

CITY OF WATERTOWN:

AFSCME LOCAL 2488:

Steve Thorson
Mayor

Bob Nichols, President

ATTEST:

Rochelle M. Ebbers, CPA
Finance Officer
(SEAL)

**JOINT POWERS AGREEMENT
BETWEEN
SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS
AND
THE CITY OF WATERTOWN**

1. PURPOSE

To define the relationship between the South Dakota Department of Game, Fish and Parks and the City of Watertown on issues relating to the construction and installation of a Americans with Disabilities Act (ADA) accessible fishing pier, referred to as the PROJECT, on McLaughlin Pond, located in the City of Watertown, South Dakota.

2. GOAL

It is the mutual goal of the South Dakota Department of Game, Fish and Parks (GFP) and the City of Watertown (CITY) to provide recreational opportunity for the citizens of the State and its visitors on the waters of McLaughlin Pond, located in the City of Watertown, South Dakota.

3. AGREEMENT

This AGREEMENT between GFP and the CITY will commence on July 1, 2016, and continue until such time that the PROJECT needs to be replaced due to old age or damage. This agreement may also be terminated by the mutual written agreement of the CITY and GFP.

I. General Provisions

1. The PROJECT shall include the GFP ordering, delivery, and initial setup and installation of one roll-in fishing pier. The CITY is responsible for the construction of an ADA accessible sidewalk leading to the fishing pier from a parking area or trail.
2. The TOTAL approved cost for the construction of said fishing pier shall not exceed \$25,000.00.
3. The funding for construction of the fishing pier structure will be as follows: STATE will provide 75% of the fishing pier structure costs (up to \$18,750.00) using funds available under the Federal Aid in Sport Fish Restoration Program, and the CITY will provide 25% of the fishing pier structure costs (up to \$6,250.00).
4. The CITY will be responsible for initial payment of fishing pier structure. To make cash reimbursement of STATE'S share of the fishing pier structure (75%) the CITY must provide the STATE with the following:
 - a. A final report setting forth a short narrative explaining the work that was completed.
 - b. Pictures of the items purchased and/or improvements made with the PROJECT, including the installation of the Sport Fish Restoration sign provided by the STATE.
 - c. Receipts for paid invoice(s) and documentation of payment (copies of front and back of cancelled checks.)

5. The project site, as per this agreement, shall consist of property owned or managed by the CITY and is located in NE ¼ of the SE ¼ of Section 36, Township 117 North, Range 53 West, Codington County, South Dakota.
6. This Agreement shall become effective upon last date of signature and shall remain in force for a period for the useful life of the PROJECT, or ten years (10), whichever comes first.
7. The PROJECT will be maintained and preserved from willful destruction by CITY during its minimum useful life.
8. CITY agrees that equipment and materials purchased, provided, or cost shared by the State cannot be sold, traded or otherwise disposed of without written authorization from the Federal Aid Coordinator. This does not include disposal of materials and equipment relative to maintenance or repair of the PROJECT.
9. The CITY agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), and in accordance with Title VI of the Civil Rights Act of 1964, no person in the United States shall, on the ground of race, color, or national origin, be otherwise subjected to discrimination under any program or activity for which the CITY receives federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
10. CITY agrees to grant the STATE, Department of the Interior, the US Fish and Wildlife Service, or any of their duly authorized representatives, access to any documents, paper, and records of the CITY which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.
11. Allow free, unrestricted, public access to all components of this fishing access project for the life of the project.
12. Maintain the project, at CITY expense, for the life of the project. Maintenance shall include, but not limited to:
 - a. routine trash removal
 - b. Mowing and weed control
 - c. Routine maintenance of the fishing pier, including installation each spring and removal each fall before the lake freezes.
13. In the event that the development is abandoned, destroyed or irreparably damaged under authority of the CITY before the end of its useful life due to City negligence or failure to maintain, the CITY will reimburse the STATE 75% of the remaining amortized value of the development. This does not include damages to the PROJECT that are determined to be acts of God.
14. The CITY agrees to hold harmless and indemnify the State of South Dakota, its officers, agent and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of performing services under this agreement. This section does not require the CITY to be responsible for or defend against claims or damages arising solely from acts or omissions of the STATE, its officers, agents or employees, and the STATE agrees to hold harmless and indemnify the CITY, its officers, agents and employees, from and against any and all actions, suits, damages liability, or other proceedings which may arise as a result of the STATE's acts or omissions.
15. The Project will become the property of the CITY upon completion of construction.

16. Nothing in the Agreement will be construed as limiting or affecting in any way the authority or legal responsibility of the STATE or CITY, or as binding any party to this Agreement to perform beyond the respective authority of each.
17. CITY will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.
18. This project is granted under the Federal Assistance in Sportfish Restoration Grant. Grant number F-38-DB-61 Am #0. CITY will be responsible to meet federal audit requirements.

II. Agreement Conditions

1. This agreement may depend upon the continued availability of appropriated funds and expenditure authority from the GFP Commission for the purposes contemplated herein. In the event it becomes necessary that the GFP Commission appropriates funds and grants expenditure authority for the purposes contemplated herein but fails to do so, this AGREEMENT may be terminated by GFP.
2. The parties shall negotiate in good faith the terms of any other agreement that is determined to be necessary or desirable to carry out the terms of this AGREEMENT.
3. Time is of the essence of this AGREEMENT and all of its covenants, terms, conditions, and provisions
4. This AGREEMENT and the covenants herein contained shall inure to the benefit of and be obligatory upon the legal representatives, successors in interest, and assigns of the respective parties hereto.
5. The parties declare that no specific entity as contemplated in SDCL 1-24-4(2) is being created to implement this AGREEMENT, and that the cooperative undertaking herein described shall be administered by the Director of the Division of Wildlife for GFP and the CITY or their authorized designees.
6. All notices or other communications hereunder shall be in writing and shall be deemed given when delivered, and if delivered by mail, shall be sent by first class, postage prepaid, to the parties at the following addresses:

CITY: City of Watertown
 P.O. Box 910
 Watertown, SD 57201
 Attn: Jay DeLange, Park and Rec Director

GFP: S.D. Department of Game, Fish and Parks
 523 E. Capitol Avenue
 Pierre, SD 57501
 Attn: Director, Division of Wildlife

The parties, by notice given hereunder, may designate any further or different methods of notification and addresses to which notices and communications shall be provided.

7. In the event that any court of competent jurisdiction shall hold any provision of this AGREEMENT unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.
8. This AGREEMENT is intended to only govern the rights and interests of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at any law by any third party in any manners, civil or criminal.
9. The parties acknowledge that a true copy of this AGREEMENT will be filed with the Office of the Attorney General and the Legislative Research Council within fourteen (14) days of the execution hereof, as required by law.
10. By the signature of their representative below, GFP and the CITY certify that approval of this AGREEMENT by ordinance, resolution or other appropriate means has been obtained by that governmental body's governing body or officer pursuant to SDCL 1-24-3 and 1-24-6 and that the representative is authorized to sign on the party's behalf. A copy of any authorizing resolution or ordinance is attached to this AGREEMENT and incorporated herein by reference.

IN WITNESS WHEREOF, the duly authorized officers of the parties hereto have executed this Agreement on the dates shown with their respective signatures.

CITY OF WATERTOWN

Steve Thorson, Mayor
City of Watertown, SD

On this _____ day of _____, 2016

STATE OF SOUTH DAKOTA
DEPARTMENT OF GAME, FISH AND PARKS

Anthony P. Leif, Wildlife Division Director
South Dakota Department of Game, Fish and Parks

On this _____ day of _____, 2016

DRAFT 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

AGREEMENT made as of the «1» day of «December» in the year «2016»
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

«City of Watertown», a Municipal Corporation»
«23 Second Street NE, PO Box 910
Watertown, SD 57201-0910»

and the Construction Manager:
(Name, legal status and address)

«Gray Construction Co. »« »
«180 Second St. NE, PO Box 123
Watertown, SD 57201 »

for the following Project:
(Name and address or location)

«Watertown Ice Sheets»
«Located immediately north of the new softball complex off 17th Street SE in
Watertown, SD. »

The Architect:
(Name, legal status and address)

Randall Stanley Architects, Inc. (dba RSArchitects)
«2307 W. 57th Street, Ste. 201
Sioux Falls, SD 57108»

The Owner's Designated Representative:
(Name, address and other information)

«Steve Thorson - Mayor»
«Jay DeLange - City Parks Director»
«Shane Waterman - City Engineer»
«City of Watertown»
«23 Second Street NE, PO Box 910»
«Watertown, SD 57201-0910»

The Construction Manager's Designated Representative:
(Name, address and other information)

Dustin Brownell - Project Executive
«Gray Construction Co.»
«180 Second St. NE, PO Box 123»

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.

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

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

«Watertown, SD 57201»

<>

<>

The Architect's Designated Representative:
(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 »

The Owner and Construction Manager agree as follows.

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. The Construction Manager's Preconstruction Phase services will begin with preparing a cost estimate of the programming design documents prepared by the Architect. The Construction Manager will be expected to actively participate in all design meetings, tours of comparable buildings, construction reviews, periodically provide cost estimates during the design process, and ultimately develop a Guaranteed Maximum Price after the Architect completes the Design Development Documents. More specifically, the Construction Manager will assist the Owner, Project Manager, and the Architect to keep the Project within the fixed Project Budget.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's

review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project. The Construction Manager will manage the bidding process, evaluation proposals, and interview Subcontractors along with Architect and Owner, utilizing a competitive process based on the principles of "Best Value" and agreed to by the Owner. The Construction Manager, the Architect and the Owner will utilize, by mutual agreement, any of the following methods for awarding contracts to Subcontractors for portions of the Work: competitive bid; best value; and negotiated terms. For those subcontracts to be awarded on a competitive bid or best value basis, the Construction Manager will obtain a minimum of three (3) competitive bids for each sub-trade category, unless otherwise authorized by the Owner, and will interview, if requested, a minimum two (2) bidders with the Architect and Owner. The Construction Manager will provide to the Owner a written award recommendation. For the mechanical and electrical Subcontract portions of the work, the bidding process applies even though Construction Manager has included certain subcontractors for preconstruction services.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;~~and~~
- .5 A date by which the Owner must accept the Guaranteed Maximum ~~Price.~~ Price; and
- .6 A list of those portions of the Work the Construction Manager proposes to perform with its own labor, resources, and supplies, as well as the Work the Construction Manager proposes to perform with subcontractors hired by the Construction Manager. For those portions of the Work the Construction Manager proposes to perform, the Construction Manager must follow the competitive bid requirements of SDCL ch. 5-18A with respect to those portions of the Work.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. Any unused contingency at the end of the cost of the work shall be 100% returned to the Owner. Contingency, after the Guaranteed Maximum Price has been established, shall not be included in Change Orders.

§ 2.2.4.1 Construction Manager may permit funds to be expended from the Construction Contingency for Cost of the Work incurred for completion of the Work; provided, however, that the Owner approved the use of Construction Contingency, such approval not to be unreasonably withheld. Any expenditures of the Construction Contingency shall be evidenced on the pay application requesting payment for the Work in question. The Owner, in consultation with the Architect, will have the right to request, and the Construction Manager will consider, and the parties may agree to a reduction in the contingency amount at any time. Owner and Construction Manager each agrees to negotiate in good faith to reach agreement on the amount of each reduction.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the ~~Work~~ Work, and shall deliver such bids to the Owner. The Owner and Construction Manager shall then determine which bids or competitive proposals will be accepted and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct weekly meetings with the appropriate Subcontractors, the Owner's representatives, and the Architect's representative, unless a lesser frequency is otherwise agreed to by the parties, to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and ~~Architect~~ Architect as soon as is reasonably possible following the meeting, but in all circumstances within 48 hours of the meeting, unless otherwise agreed to by Owner.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the ~~Owner~~ Owner, including Construction Manager's contingency status, subcontract and materials buy-out status versus Guaranteed Maximum Price schedule of values, list of identified and potential issues affecting construction progress or having the potential to result in a cost or Schedule claim, action item list and responsibility for resolution for action items affecting the Work or its progress, and Schedule versus actual progress analysis including detailed action plans to correct any negative schedule deviations. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site,

identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above. Said report shall also contain an update of actual progress versus the scheduled progress.

§ 2.3.2.9 The Construction Manager will keep the Owner informed on a timely basis of any event, circumstance or issue that may be cause for a cost or Schedule claim from the Construction Manager, or any Subcontractor or supplier under contract with the Construction Manager. Written notification to the Owner of any potential cost or Schedule claim must be provided within fourteen days (14) of the Construction Manager's first knowledge of any potential claim. Failure to notify Owner within this fourteen-day (14) period will be cause for the Owner to deny any such claim. Construction Manager will include this notice requirement in its agreements with all Subcontractors and suppliers. This requirement is in addition to the reporting requirements in § 2.3.2.7.

§ 2.3.2.10 While the Construction Manager will not be liable for any failure of the Architect or the Architect's or Owner's other contractors to perform their work or services in the conformance with the Schedule, if the Construction Manager observes or suspects that any of those parties have or may deviate from the Schedule, the Construction Manager must promptly advise the Owner and the involved party and must also indicate what action the Construction Manager recommends to avoid, correct or minimize such deviation.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.6 Project Safety Plan

The Construction Manager will develop, implement and maintain a Site-Specific Project Safety Plan.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 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 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a 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.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish 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.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. 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.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

~~§ 4.1.2~~ For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: *(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

«Forty-Eight Thousand Dollars (\$48,000) »

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ~~(1)~~ months of the date of this Agreement, by ~~«May 31, 2017»~~ through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid ~~«forty-five»~~ (~~«45»~~) 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 Construction Manager. (Insert rate of monthly or annual interest agreed upon.)

~~«2»~~ % ~~«over Prime Rate annually as published by Wells Fargo, N.A.»~~

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

~~«2.95% of Cost of the Work »~~

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

~~«2.95% of Cost of Work and will forgo this fee with change orders within five percent (5%) of the Guaranteed Maximum Price »~~

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

~~«Under no circumstances will the compensation to Subcontractors in connection with Change Orders and Construction Change Directives be more than the Subcontractor's costs set forth in Article 7.3.7 of AIA Document A201-2007, as amended, plus no more than ten percent (10%) as full compensation to the Subcontractor for overhead and profit.»~~

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ~~percent~~ ~~eighty percent~~ (~~«80»~~ %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

| Item | Units and Limitations | Price per Unit (\$0.00) |
|------|-----------------------|-------------------------|
|------|-----------------------|-------------------------|

(See § 12.2.5 - Exhibit A, Gray Construction Rental Rates)

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the

Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.
(Insert specific provisions if the Construction Manager is to participate in any savings.)

~~«All savings--if the Cost of Work plus the Construction Manager's Fee is less than the Guaranteed Maximum Price-- will be returned one hundred percent (100%) to Owner. »~~

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents. ~~Construction Manager's Fee is locked in at time the Guaranteed Maximum Price is set forth in the Guaranteed Maximum Price Amendment, and any additions or subtractions to the Guaranteed Maximum Price thereafter will not increase or decrease the Fee except as provided in Section 5.1.2.~~

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.2.6 If the Construction Manager elects to bid the performance of any trade work, that work will be performed under a fixed price subcontract. If successful in securing said self-performed work through the bidding and interview process conducted and supervised by Owner and its designated representative, all skill, labor, material, direct and subcontracted costs, general condition costs and fees directly attributable to the prosecution of self-performed work will be included in that subcontract fixed amount. No costs incurred for prosecution, supervision and management of self-performed work will accrue to or be reimbursed outside of the subcontract. Additionally, the subcontracted amount for the Construction Manager's self-performed trade work will be a line item guarantee in the Guaranteed Maximum Price Schedule of Values; no costs in excess of the subcontract fixed amount will be reimbursed through the Construction Manager's contingency fund.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or

failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term “related party” includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the

Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the «17th» day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the «10th» day of the «following» month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than «fifteen» («15») days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

- .3 Add the Construction Manager's Fee, less retainage of «five» percent («5» %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of «ten» percent («10» %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

« »

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to

request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner’s request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager’s Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007. *(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*

| Type of Insurance or Bond | Limit of Liability or Bond Amount (\$0.00) |
|--|--|
| <u>-Each Occurrence</u> | <u>\$1,000,000</u> |
| <u>General Aggregate</u> | <u>\$2,000,000</u> |
| <u>Personal & Advertising Injury</u> | <u>\$1,000,000</u> |
| <u>Products-Completed Operations</u> | <u>\$2,000,000</u> |
| <u>Aggregate</u> | <u>\$1,000,000</u> |
| <u>Each Accident</u> | |
| <u>Umbrella Coverage</u> | <u>\$10,000,000</u> |
| <u>*Each Occurrence</u> | <u>\$10,000,000</u> |
| <u>*Annual Aggregate</u> | <u>\$10,000,000</u> |
| <u>*Retainage Limit</u> | |

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager 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, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*
-

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

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ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager 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. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

§ 11.5.1 The Construction Manager will be liable to and must indemnify the Owner and its elected and appointed officials, agents, officers, city council members, employees, and consultants, and must hold each of the foregoing harmless from and against any and all claims made against any of the foregoing for infringement of any copyright, trademark or patent arising out of the use of any plans, designs, drawings, or specifications furnished by the Construction Manager in the performance of this Agreement, unless the Owner has given its written approval of the use of the system, method, or equipment in connection therewith after explicit warning that there may be an infringement.

§ 11.5.2 In addition to the indemnification provision incorporated by reference in § 3.18.1 of AIA Document A201–2007, the Construction Manager agrees to indemnify and hold harmless, to the fullest extent of the law, the Owner, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, that is attributable to lien claims, infringement, stop-work notices, governmental actions created by the Construction Manager, or Construction Manager's failure to perform an obligation under the contract documents, but only to the extent caused by the negligent acts or omissions of the Construction Manager. Further,

the Construction Manager agrees to defend all of the foregoing obligations associated with these indemnification provisions.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager 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 Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 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
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

«»

- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

«»

- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

«Exhibit A, Gray Construction Rental Rates
Exhibit B, Request for Proposals for Construction Manager at Risk, dated October 17, 2016 »

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

« »

OWNER (Signature)

«Steve Thorson » Mayor, City of Watertown »

(Printed name and title)

« »

CONSTRUCTION MANAGER (Signature)

«Dustin Brownell » Project Executive, Gray Construction Co.

(Printed name and title)

Ice Arena

| WATERTOWN ICE ARENA FACILITY | | | | | | | | | | |
|--|--------------|----------|-----|------|-----|------|-----|-----|-------|------|
| WEEK ENDING: | | | | | | | | | | |
| Rental rates attached to standard form of agreement between City of Watertown, South Dakota and Gray Construction Co. | | | | | | | | | | |
| ITEM | RATE | QUANTITY | MON | TUES | WED | THUR | FRI | SAT | TOTAL | COST |
| AIR COMPRESSOR *1 | 15.00 PER HR | | | | | | | | 0 | \$ - |
| AIR CHIPPING HAMMER | 1.90 PER HR | | | | | | | | 0 | \$ - |
| AIR JACK HAMMER | 2.00 PER HR | | | | | | | | 0 | \$ - |
| AIR NAILER | 1.30 PER HR | | | | | | | | 0 | \$ - |
| AIR TAMPER | 1.90 PER HR | | | | | | | | 0 | \$ - |
| BLANKETS-per blanket (4 wks \$30.00) | 15.00 PER WK | | | | | | | | 0 | \$ - |
| BOBCAT *1 | 25.00 PER HR | | | | | | | | 0 | \$ - |
| BOBCAT GRADER | 45.00 PER HR | | | | | | | | 0 | \$ - |
| BREAKER BOOM MOUNTED | 14.65 PER HR | | | | | | | | 0 | \$ - |
| BRUTE BREAKER ELECTRIC | 4.00 PER HR | | | | | | | | 0 | \$ - |
| CAT FORKLIFT-RT 60 *1 | 50.00 PER HR | | | | | | | | 0 | \$ - |
| JCB *1 | 75.00 PER HR | | | | | | | | 0 | \$ - |
| CHIPPING HAMMER TP 800 | 3.28 PER DAY | | | | | | | | 0 | \$ - |
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Ice Arena

| <u>ITEM</u> | <u>RATE</u> | <u>QUANTITY</u> | <u>MON</u> | <u>TUES</u> | <u>WED</u> | <u>THUR</u> | <u>FRI</u> | <u>SAT</u> | <u>TOTAL</u> | <u>COST</u> |
|--|------------------------|-----------------|------------|-------------|------------|-------------|------------|------------|--------------|-------------|
| CHOP SAW | 2.50 PER HR | | | | | | | | 0 | \$ - |
| COMPACTOR RAMMER *1 | 4.00 PER HR | | | | | | | | 0 | \$ - |
| COMPACTOR ROLLER *1 | 7.90 PER HR | | | | | | | | 0 | \$ - |
| COMPACTOR VIBRATOR *1 | 4.65 PER HR | | | | | | | | 0 | \$ - |
| CONCRETE FLOOR GRINDER *1 *4 | 4.50 PER HR | | | | | | | | 0 | \$ - |
| CONCRETE FLOOR PLANER | 8.00 PER HR | | | | | | | | 0 | \$ - |
| CONCRETE PUMP - TRUCK MOUNTED *1 *3 | 50.00 PER HR | | | | | | | | 0 | \$ - |
| YARDS PUMPED | 2.00 PER YD | | | | | | | | 0 | \$ - |
| CONCRETE TROWEL *1 | 5.00 PER HR | | | | | | | | 0 | \$ - |
| CONCRETE TROWEL - RIDER | 12.50 PER HR | | | | | | | | 0 | \$ - |
| CONCRETE SCREED - VIBRATOR *1 | 8.00 PER HR | | | | | | | | 0 | \$ - |
| CONCRETE VIBRATOR 1" - 1 1/2" | 3.10 PER HR | | | | | | | | 0 | \$ - |
| CONCRETE VIBRATOR - 2 5/8" MOTOR IN HEAD | 4.96 PER HR | | | | | | | | 0 | \$ - |
| CONDOR *1 | 56.25 PER HR | | | | | | | | 0 | \$ - |
| CORING 1" TO 4" | 2.00 X SIZE X DEPTH | | | | | | | | 0 | \$ - |
| CRANE 30 TON ALL TERRAIN *1 | 50.00 PER HR | | | | | | | | 0 | \$ - |
| CRANE 40 TON *1 | 80.00 PER HR | | | | | | | | 0 | \$ - |
| DRILL 1/2" & LARGER | 3.00 PER HR | | | | | | | | 0 | \$ - |

Ice Arena

| <u>ITEM</u> | <u>RATE</u> | <u>QUANTITY</u> | <u>MON</u> | <u>TUES</u> | <u>WED</u> | <u>THUR</u> | <u>FRI</u> | <u>SAT</u> | <u>TOTAL</u> | <u>COST</u> |
|---|--------------|-----------------|------------|-------------|------------|-------------|------------|------------|--------------|-------------|
| DRILL - HAMMER DRILL | 5.00 PER HR | | | | | | | | 0 | \$ - |
| FAN - 30" SQUARE - PER FAN | 10.00 PER WK | | | | | | | | 0 | \$ - |
| FORKLIFT - JCB *1 | 75.00 PER HR | | | | | | | | 0 | \$ - |
| FORMING CURB - PER LFT - PER POUR | 0.15 | | | | | | | | 0 | \$ - |
| FORMING SIDEWALK - PER LFT - PER POUR | 0.15 | | | | | | | | 0 | \$ - |
| FORMING WALL SYSTEM SF OF WALL PER POUR | 0.50 | | | | | | | | 0 | \$ - |
| GRINDER - HAND | 2.15 PER HR | | | | | | | | 0 | \$ - |
| HEATER - ELECTRIC - 30 KV | 2.00 PER DAY | | | | | | | | 0 | \$ - |
| HEATER - LP *1 | 1.70 PER HR | | | | | | | | 0 | \$ - |
| HEATER - 100,000 *1 | 2.35 PER HR | | | | | | | | 0 | \$ - |
| HEATER - 200,000 *1 | 5.55 PER HR | | | | | | | | 0 | \$ - |
| HOIST TOWER *1 | 3.88 PER HR | | | | | | | | 0 | \$ - |
| LOADER - HI LIFT 3,000# - LULL *1 | 45.00 PER HR | | | | | | | | 0 | \$ - |
| OFFICE/ STORAGE TRAILER | 30.00 PER WK | | | | | | | | 0 | \$ - |
| PAYLOADER *1 | 20.00 PER HR | | | | | | | | 0 | \$ - |
| PICKUP - PER MILE *1 | .85/MILE | | | | | | | | 0 | \$ - |
| PLANNERS, JOINTER, ROUTER | 2.10 PER HR | | | | | | | | 0 | \$ - |

Ice Arena

| <u>ITEM</u> | <u>RATE</u> | <u>QUANTITY</u> | <u>MON</u> | <u>TUES</u> | <u>WED</u> | <u>THUR</u> | <u>FRI</u> | <u>SAT</u> | <u>TOTAL</u> | <u>COST</u> |
|---|---------------|-----------------|------------|-------------|------------|-------------|------------|------------|--------------|-------------|
| POWER SCAFFOLD 20'-SCISSORS LIFT | 225.00 PER WK | | | | | | | | 0 | \$ - |
| PUMP - WATER DIAPHRAM 3" GAS *1 | 4.35 PER HR | | | | | | | | 0 | \$ - |
| PUMP - CENTRIFUGAL 2" ELECTRIC | 4.00 PER HR | | | | | | | | 0 | \$ - |
| PUMP - ELECTRIC 1 1/4" | 3.80 PER HR | | | | | | | | 0 | \$ - |
| SAND BLAST EQUIPMENT & HOOD | 5.00 PER HR | | | | | | | | 0 | \$ - |
| SAW - BAND SAW *2 | 1.00 PER HR | | | | | | | | 0 | \$ - |
| SAW - BRICK MASONRY *2 | 2.71 PER HR | | | | | | | | 0 | \$ - |
| SAW - CHAIN SAW *1 | 3.00 PER HR | | | | | | | | 0 | \$ - |
| SAW - CONC/STEEL/MAS-GAS HANDHELD *1 *2 | 2.87 PER HR | | | | | | | | 0 | \$ - |
| SAW - CONCRETE ELECTRIC HANDHELD | 3.75 PER HR | | | | | | | | 0 | \$ - |
| SAW - CONCRETE ELEC. *1 *2 | 5.80 PER HR | | | | | | | | 0 | \$ - |
| SAW - CONC WALL SAW 7800 X .002 *2 | 15.60 PER HR | | | | | | | | 0 | \$ - |
| SAW - HYDRAULIC & POWER PACK *1 | 14.00 PER HR | | | | | | | | 0 | \$ - |
| SAW - RADIAL ARM | 1.00 PER HR | | | | | | | | 0 | \$ - |
| SAW - TABLE | 1.00 PER HR | | | | | | | | 0 | \$ - |
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Ice Arena

| <u>ITEM</u> | <u>RATE</u> | <u>QUANTITY</u> | <u>MON</u> | <u>TUES</u> | <u>WED</u> | <u>THUR</u> | <u>FRI</u> | <u>SAT</u> | <u>TOTAL</u> | <u>COST</u> |
|--|--------------|-----------------|------------|-------------|------------|-------------|------------|------------|--------------|-------------|
| SCAFFOLD STAIR UNIT | 61.39 PER WK | | | | | | | | 0 | \$ - |
| SCISSOR LIFT | 25.00 PER HR | | | | | | | | 0 | \$ - |
| STRING LIGHTS | 2.77 PER WK | | | | | | | | 0 | \$ - |
| TEMP ENCLOSURES - KELLY - PER PANEL | 2.10 PER DAY | | | | | | | | 0 | \$ - |
| TRACTOR & TRAILER - PER MILE *1 | 1.75/MILE | | | | | | | | 0 | \$ - |
| TRACTOR, BACKHOE, SCOOP *1 | 35.00 PER HR | | | | | | | | 0 | \$ - |
| TRACTOR WHEEL LOADER, BACKHOE & DRILL *1 | 15.00 PER HR | | | | | | | | 0 | \$ - |
| TRENCHER 4" TO 12" WIDE - PER FT | .60 - 1.20 | | | | | | | | 0 | |
| TRUCK Kodiak dump truck *1 | .85/MILE | | | | | | | | 0 | \$ - |
| WELDER - ELECTRIC | 2.18 PER HR | | | | | | | | 0 | \$ - |
| WELDER - GAS ENGINE *1 | 3.66 PER HR | | | | | | | | 0 | \$ - |
| GENIE *1 | 75.00 PER HR | | | | | | | | 0 | \$ - |
| TOTAL | | | | | | | | | TOTAL | \$ - |
| #1 PLUS FUEL | | | | | | | | | | |
| #2 PLUS .32 PER LFT PER 1" DEPTH CONCRETE PLUS .22 PER LFT PER 1" DEPTH MASONRY | | | | | | | | | | |
| #3 PLUS \$2.00 PER CY PUMPED | | | | | | | | | | |
| #4 PLUS STONES | | | | | | | | | | |

EXHIBIT B - Request for Proposals for Construction Manager at Risk, dated October 17, 2016



City of Watertown
Ice Sheets Facility

Request for Proposal (RFP) for
Construction Manager at Risk (CMAR) Services

**Section 1
Advertisement for Proposals**

Publish: Monday October 17, 2016

The City of Watertown, SD, requests proposals for Construction Manager at Risk Services for a Watertown Ice Sheets Facility.

Proposals shall be addressed "Watertown Ice Sheets Facility" and received by Watertown's Finance Department, City Hall, 23 2nd Street NE, Watertown, SD 57201, no later than 2 p.m., Monday October 31, 2016.

The Request for Proposals for Construction Manager at Risk Services for the Watertown Ice Sheets Facility document is available on the City's website at: <http://www.watertownsd.us>

The City of Watertown reserves the right to reject any or all proposals, waive technicalities, and make award(s) as deemed to be in the best interest of Watertown, SD.

**Section 2
Selection Schedule**

| | |
|----------------------------|--|
| Monday, October 17, 2016 | RFP posted on City's Website |
| Tuesday, October 25, 2016 | Deadline for questions |
| Thursday, October 27, 2016 | Answers to questions posted on City's website |
| Monday, October 31, 2016 | Proposals received, City Hall no later than 2:00 PM |
| Friday, November 4, 2016 | Anticipated selection of firms for interviews |
| Tuesday, November 8, 2016 | Anticipated interview dates |
| Mid/End-November | Anticipated limited Notice to Proceed (subject to City Council's approval) |

**Section 3
Introduction**

The City of Watertown ("CITY") is seeking an Architect / Engineering team ("AE") to provide design services for the design and construction of Watertown's new Ice Sheets Facility. The AE team and the selected CMAR will be expected to provide maximum effort to breakground on the project in the spring of 2017.

Section 4 Project Overview

The Watertown Ice Sheets Facility project is approximately 75,000 square feet. The new facilities will be used for local hockey and figure skating clubs, public events and potentially event space.

- Features include:
 - Two ice sheets
 - Approximate 1,900 seats
 - Restroom, locker room facilities
 - Minimal lobby and management space
 - Commons areas

Section 5 Project Delivery System

The City of Watertown intends to enter into an open book Cost of the Work plus a Fee with Guaranteed Maximum Price (GMP) contractual arrangement with the selected CMAR for the construction work required, but will retain the option to select a different CMAR after the completion of the preconstruction services or utilize a different selection and/or bidding process if deemed to be in the City's best interest.

Section 6 Project Budget

The total construction cost is estimated to be \$8,000,000. Delivering the completed project within this budget is a high priority. It is imperative the City, the AE team, and the CMAR team (collectively the "Project Team") work cooperatively and successfully to keep the final cost of the construction within this fixed budget.

Section 7 Construction Manager at Risk Scope of Work

The following summary is intended to provide a general understanding of the City's expectations and is not all inclusive.

Preconstruction Services and Activities

The Preconstruction Services of the CMAR will begin immediately with preparing a cost opinion of the schematic design documents prepared by selected AE. The CMAR will be expected to actively participate in all design meetings, tours of comparable buildings, constructability reviews, periodically provide cost estimates during the design process,

and ultimately develop a Guaranteed Maximum Price (GMP) after the AE completes Construction Documents (CD) in early 2017.

More specifically, the CMAR shall provide the following preconstruction services and activities:

Cost Management:

- Assist the City and AE to keep project within the fixed project budget.
- CMAR to provide recommendations to the AE and City regarding materials, building components and systems and also evaluate building systems, components and materials for long term performance, life cycle cost analysis and economy.
- CMAR to provide cost control resources for the Project Team which includes reviewing and monitoring the development and preparation of documents to maintain the project cost within the project budget. CMAR to notify the AE and City of potential cost issues during the development of the drawings and specifications that may have an impact on the cost of the work. Work collaboratively with the City and AE to develop alternatives to keep the project estimates within the fixed budget.
- CMAR to provide formal review and comments, and cost estimates at 100% Schematic Design ("SD") and 50% Design Development ("DD") documents including evaluating costs of alternatives.
- CMAR to provide a Guaranteed Maximum Price ("GMP") at the conclusion of Design Development documents. GMP to include pricing of alternates as defined by the AE which will be equal to approximately 5% of the GMP.
- CMAR to develop a strategy for issuing bid packages that facilitate the completion of the scope of work.
- The Project Team to consider early selection of the mechanical and electrical subcontractors to provide design assist services to the AE. These Subcontractors shall provide pre-construction support services during the design phases in addition to the Construction Manager's services. If the Project does not proceed, these Subcontractors shall not be entitled to any compensation.

Construction Planning and Scheduling:

- CMAR to work with the City and AE to develop a work plan for design activities in support of the schedule and budget for the project.
- Evaluate all systems, components, and materials for constructability, economy, long-term performance for use intended and schedule impacts, and provide recommendations for preferred options consistent with cost and schedule goals.
- Identify long lead items requiring early bid packages and recommend issue dates for same to meet required completion date.

Other

- Assist the City in working with various governing authorities as requested.
- Work with Project Team to develop a project communication system that is effective for the participants and meets the schedule requirements of the project.

Construction Phase Services and Activities

Project Management Team:

- CMAR to provide competent, experienced full-time staff, including an experienced construction field superintendent and project management team to coordinate the work, maintain the progress of the subcontractors, coordinate with ongoing activities and operations, and provide overall direction to the project during the construction phase. Establish on-site organization and levels of authority to carry out the overall plans of the construction team.
- Demonstrate high levels of effective, proactive project leadership.
- Work cooperatively and constructively with members of the Project Team to foster positive relationships that support positive outcomes for the team members and the project.
- CMAR will be contractually obligated to not reassign key staff members to other projects without the City's prior written consent. City will have approval rights of any and all new personnel assigned to this project.

Cost Management

- Implement effective cost management control and tracking procedures to provide the City with the opportunity to make such decisions as required to keep project cost within the fixed budget.
- Implement and maintain cost control methods with "open book" sharing of cost information.
- CMAR to inform the City of pending cost issues within five (5) business days of identifying potential issues.
- Implement and maintain a current log of pending cost issues impacting the final cost of the project and review no less than monthly with the City.
- Provide drawdown and cash flow projections for the project during construction and update as necessary.
- Work with the City and AE to develop and implement a change management process for the project.

Procurement

- CMAR to manage bidding process, evaluate proposals, and interview subcontractors (along with the AE and City). Project Team to utilize, by mutual

agreement, any of the following methods for awarding contracts to subcontractors for portions of the work: competitive bid, best value, and negotiated terms. For those subcontracts to be awarded on a competitive bid or best value basis, CMAR to obtain a minimum of three (3) competitive bids for each sub-trade category unless otherwise authorized by the City and shall interview at a minimum two (2) bidders with the Project Team. CMAR to provide a written award recommendation to the City for each recommended subcontractor.

- If the Construction Manager desires to self-perform portions of the work, the construction manager must follow the competitive bid requirements of SDCL Chap 5-18 with respect to those portions of the work. Following the City's approval of recommendation, CMAR to award and administer all subcontracts and material purchases.

Coordination Meetings

- Conduct weekly job site meetings that include appropriate subcontractors, City representatives, and AE representative to review open issues, schedule work, and resolve pending or upcoming issues. CMAR to prepare a written agenda in advance of each meeting. CMAR to maintain a list of action items with identification of responsible party and due dates for each item. CMAR to distribute written meeting minutes and action item lists within 48 hours of each meeting.

Schedule Management

- CMAR to prepare and manage a logic-based project schedule indicating key milestone events, dates and responsibilities. Project Schedule to include design efforts, preconstruction activities, procurement and construction activities. CMAR to provide regular monitoring of the actual progress versus the scheduled progress, identify any variances and prepare a written action plan along with an updated schedule to maintain the scheduled completion dates.
- CMAR to determine the adequacy of the subcontractors' personnel and equipment and the availability of materials and supplies to meet the schedule. Report status no less than weekly in regular weekly coordination meetings.
- CMAR to prepare a short-term (3 to 4 week look-ahead) schedule on a weekly basis.
- Coordinate City-purchased and/or third party provided furniture, fixtures and equipment with construction of the project.

Project Reporting

- CMAR to prepare a monthly report with each progress billing that details a project work status report, buy-out to schedule of value analysis, contingency

status, schedule status and project progress commentary with applicable job-site photos. Provide other formal communications as requested by the City.

Quality Management

- CMAR to complete a quality/coordination/constructability review of each bid package prior to issuing bid documents to subcontractors.
- Complete construction of the work in strict accordance with the quality requirements established by the contract documents.
- All testing and independent inspection services required will be secured and paid for by the City. CMAR to cooperate and coordinate with testing and inspection service agencies. CMAR will be responsible for the cost of excessive additional testing due to failed tests.
- Develop an initial CMAR punch list to subcontractors prior to formal punch list issued by AE. CMAR to insure completion of CMAR's initial punch list prior to AE's punch list walk thru.
- Work cooperatively with the Project Team to develop and implement an effective commissioning plan.

Safety

- Implement a formal project specific safety plan.

Project Closeout

- Timely submission of operation/maintenance manuals, completed punch lists, coordination of training, submission of as-built field documents, and financial close-out of project. CMAR to actively support and participate in commissioning activities.

Section 8 Form of Owner/Construction Manager at Risk Agreements

The City intends to utilize an amended AIA Document A133-2009. This will form the basis of the Agreement between the Owner and CMAR. An amended AIA Document A201 – 2007 General Conditions of the Contract for Construction with added supplementary conditions will also be utilized.

This RFP will be superseded by the Owner/Construction Manager Agreement and its related contract documents.

Section 9 Submittal Requirements

Submit eight (8) paper copies and an electronic PDF version of the proposal. The proposals should be in an 8 1/2-inch by 11-inch bound package. 11-inch by 17-inch size sheets folded into 8 1/2-inch by 11-inch size within the package are acceptable. The proposal to include photos of past projects and should be limited to 15 pages (one sided) with a font size no smaller than 11 point.

The submittal must contain the following information:

- 1. Cover Letter:** Provide name and address of the firm(s) and project contact person with address, telephone number, and email address. Acknowledge receipt of any addenda if applicable. Summarize your understanding of the project scope and services being required. Provide a statement indicating your ability to provide timely services for this project and to meet the requirements of the proposed schedule. Indicate your acceptance of the requirements of this RFP including the referenced Owner/Contractor Agreement documents. Provide a one-page summary of the benefits you believe the Owner would receive from selecting your firm.

The cover letter must be signed by a duly authorized official of the firm. Consortiums, joint ventures, or teams submitting proposals must establish contractual responsibility solely with one company or one legal entity. Each submittal should indicate the entity responsible for execution on behalf of the proposal team.

2. Project Team

- a. Include an organizational chart showing your proposed staff for both the preconstruction and construction phases of the project. Specifically identify project executive, project manager and on-site day-to-day project superintendent for the construction phase, the availability of each person during the term of the project and their history of working together on previous projects. Indicate experience of key team members working together on past projects.
- b. Provide résumés or a listing of information for each person included in your proposed project team. State the educational background of each individual, years of experience, length of employment with your firm, and previous project experience. For each person, list specific responsibilities on this project, experience on projects of similar sizes and types, specific qualifications applicable to this project, and current work assignments and availability for this project.
- c. List other assignments your Project Manager will be handling during the period of assignment to our project.

- d. For the Project Manager, Superintendent, and other “key” staff members proposed, provide client references from two of their most recent projects and two architect/engineer references (contact person and telephone number).

3. Project Approach and Management Capabilities: Provide a description of your project approach and management capabilities as it relates to the following areas:

- a. Commitment to building positive team working relationships.
- b. Preconstruction services. Describe your firm’s approach to preconstruction services. Provide an estimate of the number of total anticipated hours for the assigned personnel prior to the City’s acceptance of the GMP.
- c. Cost management. Describe the level of detail included in your cost estimates as various phases of design. Describe three examples that demonstrate your firm’s creativity in value analysis/engineering and constructability reviews.
- d. Describe your change management process and reporting during and construction.
- e. Submit a preliminary overall project schedule for the key activities from the date of the notice to proceed through project construction.
- f. Safety: A description of your organization’s approach to managing safety on construction projects. Also include an overview of your company’s recent safety record and your company’s experience modification rate (EMR) for the last three (3) years.
- g. Quality: A description of your organization’s approach to quality control on construction projects.

4. Relevant Project Experience: Describe a minimum of two (2), similar projects in size, region, and scope constructed within the past ten (10) years. Also please provide examples of other projects that required high humidity environments. Provide information on each project that will allow the Selection Committee to evaluate your work against the selection criteria noted in this RFP. Indicate for each project the following minimum information:

- a. Name of project, location, and construction date.
- b. Types of multi-purpose functions included in project.
- c. Client and architect contact information. Include phone number and email address.

Proposers may provide preprinted brochures or other literature you feel will be helpful in understanding your firm’s unique capabilities and experience. Do not include this material in the body of your proposal.

5. Statement of financial strength/stability and insurance coverage. Provide the following information about your firm:

- a. Name and contact of your organization's surety and description of bonding capacity available. Additionally, provide a statement from a surety company authorized to do business in South Dakota indicating the firm(s) ability to obtain a performance and payment bond in the amount of not less than \$20 million.
- b. Name of your insurance carriers and a description of the insurance coverage your firm could provide.
- c. Name and contact information for your primary bank.

6. Special Resources: A description of special resources or capabilities your organization could employ on the project which would enhance the value your organization would bring to the project.

Describe what steps your company has taken during recent years to be innovative and progressive in the development of your business and state how these activities serve your clients.

7. Acknowledgement and certification statements:

- a. Certify that your Response to RFP will remain in effect for 30 days.
- b. Certify that all representations stated in the Response to RFP are true and accurate.
- c. Acknowledge that all materials submitted in the Response to RFP will become property of the City of Watertown.
- d. Acknowledge that all costs associated with preparation of the Response to RFP will be the responsibility of the proposing CMAR.

**Section 9
RFP Response**

Questions should be emailed to the following:

- Nate Pearson - npearson@tegragroup.com

RFP responses are to be delivered as follows, no later than 2:00 pm CST, October 31, 2016

- Four (4) printed copies & one (1) electronic copy, including all attachments, to –

Mayor Steve Thorson
Attn: Finance Department
City of Watertown
23 2nd Street NE

Watertown, SD 57201

- Three (3) printed copies, (2) separate sealed fee proposal packages and one (1) electronic copy, including all attachments, to –

Nate Pearson
The TEGRA Group
801 Nicollet Mall, Suite 1850
Minneapolis, MN 55402
612-752-5744
npearson@tegragroup.com

CMAR Fee and General Conditions Worksheet and Questionnaire shall be sealed separately and delivered to TEGRA as noted above.

Section 10 Questions and Addenda

Questions regarding this RFP shall be submitted via email to:

Nate Pearson, npearson@tegragroup.com

Please email questions related to this RFP no later than 5:00 PM on the date indicated in Section 2 of this RFP.

Responses to questions will be issued to all participants. Shortlisted firms will be interviewed on the dates indicated in Section 2 of this RFP. Order of interviews will be in alphabetical order by company name. If deemed necessary, addenda to the RFP will be issued and posted on the City's website at www.watertownsd.us No addenda will be issued after 5 p.m. on the date indicated in Section 2 of the RFP.

Responding firms are prohibited from communicating in any other manner about this project with any other City employee or any member of the AE's firm. Other means of communications or contact may disqualify the submitting firm.

Section 11 Review of Proposals and Selection of Finalists for Interviews

To be considered for the shortlist selection, the firm must demonstrate the ability to provide a performance and payment bond in the amount of not less than \$15 million as described in section 9.5.a.

Upon receipt of the proposals, the selection committee will determine a short list of no more than three firms whose proposals are deemed most qualified based on the following criteria:

1. Company background and applicable experience
2. Project approach and management capabilities

3. CMAR experience
4. City of Watertown and surrounding community experience
5. Financial and bonding capacity
6. Other factors deemed applicable

The short list of those firms deemed most qualified will be invited to participate in an interview. The City of Watertown reserves the right to reject any or all proposals and issue subsequent Requests for Proposals.

Section 12 Interviews

The order of interviews will be determined by the selection committee. The interview will consist of up to a 45-minute presentation by the CMAR, a question and answer session, and a 5-minute wrap-up. The proposed key project personnel must participate in the interview. Only project personnel who will have an active key role in the project should participate in the interview. An agenda will be provided.

Section 13 Selection Criteria

The selection committee will rely on the qualitative information contained and presented in the proposals, interviews, and reference checks in making the decision to select the most qualified firm to provide services for this project. Selection criteria will be based on:

1. Experience, qualifications, and availability of proposed team leaders
2. Broader team structure
3. History of project team working together on similar projects
4. Technical work process
5. Proposal, interview and response
6. General Conditions and fee
7. Other factors deemed applicable

Upon completion of the interviews, the firms will be ranked. The City of Watertown will start negotiations of the contract with the highest ranking firm. If an agreement for services cannot be reached with the highest ranked firm, the City will move to the second ranked firm. The same process will be repeated with the other ranked firms if no such agreement can be reached. The City of Watertown reserves the right to not select a firm as part of this process if an agreement cannot be reached with the interviewed firms.

Acceptance of a proposal shall be by written notice to the construction manager submitting the accepted proposal and by simultaneously notifying in writing the other construction managers that their proposals were not accepted.

**Section 14
Special Conditions**

Excluding proprietary information, the proposal and the professional service contract of the CMAR awarded the contract are deemed public records and shall be available to the public upon request. In addition, the City shall maintain a "Register of Proposals for a Professional Service Contract," which shall contain the names of firms who submitted a proposal and the name of the firm who was awarded the contract; however, the proposals of the submitting firms not awarded the contract are nonpublic records and will remain confidential.

CMAR Fee and General Conditions Worksheet and Questionnaire

CMAR FEE

| | | |
|--|----|---|
| Preconstruction Fee (management staff time, overhead and profit beginning at the time of contract award and ending at the time of the GMP) | \$ | |
| Percentage of Cost of the Work (beginning at GMP through project completion. The percentage will be converted to fixed fee at time of GMP) | | % |
| Please define in writing what is included in your CMAR fee vs. Cost of Work | | |

Not to Exceed CMAR Management Staff General Conditions

| | | |
|-------------------------------------|----|--|
| Management Staff General Conditions | \$ | |
|-------------------------------------|----|--|

Based on the schedule outlined in the RFP, provide a not-to-exceed price for staff related general conditions beginning at the time of the GMP through project completion. Price to include home office staff and on-site management including all necessary staff general conditions such as benefits, bonuses, vacation time, personal time off, cell phone, mileage, per diem, relocation, etc. Price to include office trailer including copiers, furniture, computers, phones, radios, office supplies, etc. Please provide detailed line itemization of buildup of the price quote.

Do NOT include project general conditions such as utilities, dumpsters, temporary toilets, safety equipment, hoisting, snow removal, periodic and final clean, etc. as they are intended to be reimbursed at actual cost without profit markup.

Reimbursable General Condition Costs

| | | Comments |
|---|----|----------|
| Full insurance package expressed in dollars per \$1,000 of construction costs. (Include type and limits of coverage). | \$ | |
| Performance Bond | % | |

Please include a company 2015 equipment rental rate schedule

Please comment on the following:

| | |
|---|--|
| 1 | Bonding rate, total bonding line, line available, surety provider & agent (reference contact). |
| 2 | Confirmation that your firm will have General Conditions % mark-up on change orders using the General Conditions % at time of GMP |
| 3 | Willingness to forgo CMAR fee on change orders within 5% of GMP? |
| 4 | Labor burden rate for general conditions field labor (straight time and overtime)? |
| 5 | Small tools: % of field labor. |
| 6 | Equipment rental rate structure (owned & 3rd party rentals). Willingness to cap rental costs at no more than purchase price? Willingness to discount from AED rates? |
| 7 | Confirmation that your firm will have an open bid/open book policy with the City on all aspects of the project including providing subcontractor buy-out costs vs. line item estimates carried in the GMP. |
| 8 | Acknowledgement that your firm is willing to return buyout savings, reduce construction contingency incrementally during construction rather than at end of project. |

| | |
|----|---|
| 9 | Recommended Contractor Contingency at Design Development and GMP stages (% of construction cost). |
| 10 | Recommended inflation factor to be included within GMP. |
| 11 | Recommended Owner Contingency (% of construction cost). |

Request for City Council Action

TO: Mayor and City Council
FROM: Shane Waterman, P.E., City Engineer
MEETING DATE: December 19, 2016
SUBJECT: **Consideration of Addendum No. 2 to the Construction Financing Facilitation Agreement with Watertown Development Company to Facilitate Improvements on a Portion of 8th Avenue SE**

Background: On October 14, 2015, the City Council authorized the City to enter an agreement with Watertown Development Company (WDC) to help facilitate improvements to that portion of 8th Avenue SE and 26th Street SE lying north of Hwy 212 in the City. The parties made the agreement to fix the terms by which the City shall provide donations to WDC for the economic purpose described in said agreement document.

The WDC was the Contracting party for all of the proposed infrastructure improvements scheduled for this portion of 8th Avenue SE. The original agreement amount was \$440,000; however, on May 2, 2016 an Addendum was made to the Agreement reducing the amount to the 2016 approved budget amount of \$400,000.

The scheduled work has subsequently been completed during the 2016 construction season. Upon receipt of the final construction bills, including engineering and public utilities, the WDC reported the final construction costs exceeded the amended budget by approximately \$50,000.

The WDC would like the Council to consider Addendum No. 2 to fix the final amount at \$450,000 for the Construction Financing Facilitation Agreement for the 8th Ave SE Improvements.

The additional donation amount will come from the Capital Improvement Sales Tax Fund fund balance since the amount exceeds the budgeted amount of \$400,000.

Recommendation: Approval of Addendum No. 2 to Construction Financing Facilitation Agreement with the WDC.

Council Action Requested: Motion to authorize the City to sign an Addendum to the Agreement with WDC increasing the City donation by \$50,000 for a total amount of \$450,000.

Request for City Council Action

TO: Mayor and City Council
FROM: Shane Waterman, P.E., City Engineer *SW*
MEETING DATE: December 19, 2016
SUBJECT: **Consideration of Contract Amendment No. 1 for Engineering Services for the Wastewater Treatment Facility – Digester Rehabilitation**

Background: On December 7, 2015, the City Council authorized the City to enter an agreement with HR Green, Inc. to provide design services for rehabilitation of two (2) Digester units at the Wastewater Treatment Facility.

During design, there were concerns over the condition of the existing floating cover and related appurtenances. A site visit was conducted with personnel from the cover manufacturer to perform a visual exterior inspection and discuss recommendations on potential issues which might need to be resolved during the work. Another concern was the extreme weight of the floating cover due to the attached ballast. Staging of the work was also a concern and the design team contacted potential contractors to discuss the concerns. All of the work described was completed in the best interest of the proposed project but not part of the original scope for the project.

HR Green has provided a document which includes the description of the additional services provided under the contract amendment at their current rate schedule with a maximum fee to be increased by \$15,000. Therefore, the total authorized compensation for this Amendment is \$40,000.

The Wastewater Staff recommends approval of the amended services and has adequate funds available for the project. Engineering Staff also recommends approval of the additional engineering services.

Recommendation: Approval of Professional Services Agreement No. 1 with HR Green, Inc.

Council Action Requested: Motion to authorize City Staff to sign an amendment to the Agreement for Professional Services Agreement No. 1 with HR Green, Inc. increasing the City share by \$15,000.



HR GREEN, INC.
PROFESSIONAL SERVICES AGREEMENT AMENDMENT NO. 1

THIS AMENDMENT, made this _____ day of December, 2016 by and between, City of Watertown, South Dakota the CLIENT, and HR GREEN, INC. (hereafter "COMPANY"), for professional services concerning:

Wastewater Treatment Facility – Digester Rehabilitation

hereby amends the original Professional Services Agreement dated December 10, 2015 as follows:

The CLIENT and COMPANY agree to amend the Scope of Services of the original Professional Services Agreement and previous amendments as follows:

Final Design – additional tasks per attachment.

COMPANY Project Number: 50150028

The CLIENT and COMPANY agree to amend other provisions of the original Professional Services Agreement and previous amendments as follows:

N/A

In consideration for these services, the CLIENT AGREES to adjust the payment for services performed by COMPANY on the following basis:

- Per current rate schedule with a maximum fee to be increased by [Fifteen Thousand Dollars (\$ 15,000.00)]

The total authorized compensation after this Amendment, including the original Professional Services Agreement and all previous Amendments, is Forty Thousand Dollars (\$40,000).

THIS AMENDMENT is subject to all provisions of the original Professional Services Agreement.

THIS AMENDMENT, together with the original Professional Services Agreement and all previous amendments represents the entire and integrated AGREEMENT between the CLIENT and COMPANY.

THIS AMENDMENT executed the day and year written above.

CITY OF WATERTOWN, SD

HR GREEN, INC.

By: Steve Thorson, Mayor

By: Dawn Horner, Principal



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

▷ HRGREEN.COM

December 9, 2016

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

RE: Digester Rehabilitation
Design Amendment

Dear Shane:

HR Green has reviewed the original scope for the Digester Rehabilitation project and the effort expected to finalize the design and bidding for the project. HR Green submitted a scope and fee for design and bidding on December 7, 2015. The engineering fee for the Biosolids Disposal Study was a not to exceed fee of \$25,700. The total amount of effort used on this project was below this amount, and only \$23,383 was invoiced. The engineering fee for the Digester Rehabilitation was a not to exceed fee of \$25,000. The project is scheduled to bid in February 2017. The fee was based on the original estimate for the project of \$768,880.

HR Green requests an amendment for additional design on the project. The current estimate for the project based on final design is \$974,000.

- During design, there were concerns that we do not know the condition of the existing cover, appurtenances, or interior walls. Many unit price bid items were added to track issues that may come up during construction. Additional specifications and plan details were created to implement resolutions to these potential issues. These items will be determined during construction and the quantities updated.
 - A site visit was made with the personnel from the manufacture of the floating cover to perform a visual exterior inspection of the cover with recommendations on potential issues that could need to be resolved.
- During final design, the weight of the floating cover was determined to be extremely high due to the attached ballast. Several lifting scenarios were reviewed and discussed with contractors to determine the costs associated with removing the cover for coating.
- Staging of the project required additional coordination. The project was discussed with potential contractors and it was determined that the project should be constructed over a two year period.
- At the final design meeting, the operators expressed concerns with the drawdown pipe and the need for a second pipe. This will be designed and a new sheet for both tanks will be required to show the lower level piping within the tanks.



| TOTAL HOURS | 99 | | | 9 | 33 | 9 | 32 | 16 |
|--------------------------------------|---------------------|----------------|------------------|-----------------------|---------------------|-----------------------|----------------------|----------------------|
| COST PER HOUR/UNIT (CHARGE-OUT RATE) | | | | 195 | 136 | 186 | 144 | 117 |
| DESCRIPTION OF TASK | Labor Task Total | ODC Task Total | Task Total | SR PROJ MGR Horner | PROJECT ENG Pajl | Structural Neumann | PROJECT ENG Runge | ENG TECH VanLiere |
| Digester Final Design | | | | | | | | |
| Opinion of Probable Cost | \$ 2,621 | \$ 108 | \$ 2,729 | 1 | 8 | 1 | 8 | |
| Process/Structural | \$ 11,776 | \$ 495 | \$ 12,271 | 8 | 25 | 8 | 24 | 16 |
| | Design Total | | \$ 15,000 | | | | | |

The total engineering effort is as follows:

- \$ 25,000 – Original Contract
- \$ 15,000 – Amendment 1
- **\$ 40,000 – TOTAL**

If you have any questions, please contact me to discuss.

Sincerely,

HR GREEN, INC.

Dawn Horner, P.E.
Principal/Project Manager

\\hrgsfcd\data\50150028\Design\Contract\ltr-120916-Watertown-DigesterDesignAmendment.docx

Request for City Council Action

TO: Mayor and City Council
FROM: Shane Waterman, P.E., City Engineer *SLW*
MEETING DATE: December 19, 2016
SUBJECT: **Consideration of Contract Amendment No. 2 for Engineering Services for the Wastewater Treatment Facility – Digester Rehabilitation**

Background: On December 7, 2015, the City Council authorized the City to enter an agreement with HR Green, Inc. to provide design services for rehabilitation of two (2) Digester units at the Wastewater Treatment Facility. Now that the project has essentially reached the construction phase City Staff desires to amend the engineering services to include construction administration and observation.

HR Green has provided a document which includes the description of the services to be provided under the contract amendment at their current rate schedule with a maximum fee to be increased by \$108,000. Therefore, the total authorized compensation following the execution of this Amendment is \$148,000.

The Wastewater Staff recommends approval of the amended services and has adequate funds available for the project. Engineering Staff also recommends approval of the additional engineering services.

Recommendation: Approval of Professional Services Agreement No. 2 with HR Green, Inc.

Council Action Requested: Motion to authorize City Staff to sign an amendment to the Agreement for Professional Services Agreement No. 2 with HR Green, Inc. increasing the City share by \$108,000.



HR GREEN, INC.
PROFESSIONAL SERVICES AGREEMENT AMENDMENT NO. 2

THIS AMENDMENT, made this _____ day of December, 2016 by and between, City of Watertown, South Dakota the CLIENT, and HR GREEN, INC. (hereafter "COMPANY"), for professional services concerning:

Wastewater Treatment Facility – Digester Rehabilitation

hereby amends the original Professional Services Agreement dated December 10, 2015 as follows:

The CLIENT and COMPANY agree to amend the Scope of Services of the original Professional Services Agreement and previous amendments as follows:

Construction Administration and Observation services per Attachment.

COMPANY Project Number: 50150028

The CLIENT and COMPANY agree to amend other provisions of the original Professional Services Agreement and previous amendments as follows:

N/A

In consideration for these services, the CLIENT AGREES to adjust the payment for services performed by COMPANY on the following basis:

Per current rate schedule with a maximum fee to be increased by [One Hundred Eight Thousand Dollars (\$ 108,000.00)]

The total authorized compensation after this Amendment, including the original Professional Services Agreement and all previous Amendments, is One Hundred Forty Eight Thousand Dollars (\$148,000)

THIS AMENDMENT is subject to all provisions of the original Professional Services Agreement.

THIS AMENDMENT, together with the original Professional Services Agreement and all previous amendments represents the entire and integrated AGREEMENT between the CLIENT and COMPANY.

THIS AMENDMENT executed the day and year written above.

CITY OF WATERTOWN, SD

HR GREEN, INC.

By: Steve Thorson, Mayor

By: Dawn Horner, Principal

Attachment

Construction Phase Scope of Services

HR Green offers the following specific task-based Scope of Services for the construction phase of the project.

PHASE 1 –CONSTRUCTION ADMINISTRATION

1. **Project Management.**
 - a. Provide project management for the duration of the project. Assume five (5) months in 2017 and five (5) months in 2018.
 - b. Set up lines of communication with the City and the Contractor. Include project team in emails as needed to gather data.
 - c. Provide monthly invoicing for the project.
2. **Progress Meetings.**
 - a. Develop preconstruction agenda based on past projects and project details. Coordinate with project team to discuss critical items. Invite all parties.
 - b. Conduct preconstruction meeting. Distribute meeting minutes.
 - c. Conduct monthly on site progress meetings during the construction period. Develop agenda and distribute meeting minutes.
 - d. Assume one (1) preconstruction meeting and four (4) construction progress meetings for Digester 1 and five (5) construction progress meetings for Digester 2.
3. **Shop Drawings**
 - a. Review shop drawings required to be submitted by the Contractor by the project specifications. Evaluate and determine the acceptability of the submittal and review with the City.
4. **Interpret Contract Documents/Correspondence/Change Orders**
 - a. Correspond with the Contractor to issue interpretations and clarifications of the contract documents. Prepare contract change orders including justifications and recommendations.
 - b. **Submit Pay Requests.** Coordinate with construction observer to review and prepare recommendations to Contractor's monthly pay requests for submittal to City.
5. **Final Completion/Punch List**
 - a. Witness final performance testing for each digester
 - b. Conduct one (1) on-site final meeting with City, Contractor, and HR Green construction observer, prepare and distribute punch list **for each digester**. Observe that the punch list items are completed.
 - c. Assist City with final construction closeout and obtain final acceptance from the City.
 - d. Prepare a statement of completion for the first digester and for the second.
6. **Record Drawings**
 - a. Provide record drawings of any changes via addendum or during construction for City records. Provide disc of submittals for future reference. Provide one (1) hard copy and pdf of plans on a disc.
 - b. Provide binder with submittals from the project.

PHASE 2 – COVER STRUCTURAL INSPECTION

1. **On-Site Inspection for Each Digester**
 - a. Provide preliminary inspection of digester interior after tank is cleaned by Owner.
 - b. Provide initial inspection per Spec Section 01 1000 after contractor has provided equipment.

- c. Provide report of findings. This will define the bid items and quantity that will be required for various items such as concrete crack repair, steel plate repair, roller assembly replacement, etc.
- d. Provide final inspection prior to startup of tank.

PHASE 3 – CONSTRUCTION OBSERVATION

2. Shop Drawings.

- a. Review shop drawings and manufacturer's data submitted as required in the specifications.

3. On-Site Construction Observation

- a. Provide on-site construction observation during major construction tasks.
- b. **Assume 16 hours (2 days) per week for 10 weeks.**
- c. Construction of first digester: July 2017 to September 2017.
- d. Construction of second digester: July 2018 to September 2018.
- e. Tasks include:
 - i. Observe, review, and/or reject construction workmanship and materials.
 - ii. Prepare daily reports of construction activities and quantities when observer is on-site.
 - iii. Review Contractor-supplied quantities for monthly pay request.
 - iv. Monitor Contractor performance and construction progress relative to meeting the contract completion date. This will be accomplished by on-site observation and a list of activities, equipment, personnel and weather conditions that affect construction performance. (Shall include digital pictures when appropriate.)
 - v. Coordinate with discipline staff to provide correspondence on design related questions during construction as required.
 - vi. Arrange for training time that best meets the plant operation staff schedule.
 - vii. Receive Contractor's record drawings and compile HR Green record drawings to complete for Owner.

4. Final Closeout.

- a. Witness performance testing. Assume 1 day on site per digester.
- b. Conduct one (1) on-site final meeting with City, Contractor, and HR Green construction observer, prepare and distribute punch list **for each digester**. Observe that the punch list items are completed.
- c. Review and accept warranty certificates including follow-up after acceptance of the project.
- d. Assist City with final construction closeout and obtain final acceptance from the City; closeout the project.

ITEMS PROVIDED BY THE CITY

City staff shall provide the following items:

1. Prompt review of change orders and information submitted by the Engineer.
2. Legal review of information as needed by the project.
3. Responses to City action items.

Effort and Fee

HR Green developed the task list for the construction phase services based on the Scope of Services, past projects, previous experience, and the estimated construction schedule. The estimated amount of effort per task was designated for the appropriate staff members. **The engineering effort and other direct charges are estimated at \$108,000.**

Request for City Council Action

TO: Mayor and City Council
FROM: Shane Waterman, P.E., City Engineer *SLW*
MEETING DATE: December 19, 2016
SUBJECT: Consideration of Contract Agreement for Engineering Services for the Wastewater Treatment Facility – Laboratory Replacement/Rehabilitation Project #1716

Background: The City Wastewater Superintendent requested an engineering services proposal from HR Green, Inc. to provide design services for the Laboratory Replacement/Rehabilitation Project #1716 at the Wastewater Treatment Facility.

The current laboratory is in need of new cabinets along with ceiling tile replacement, painting of walls, and coating of floors. The facility recently upgraded the HVAC, however, minor alterations may be necessary to accommodate the new layout of the lab. It is anticipated the new layout will also include plumbing and electrical revisions. The estimated cost for the Laboratory Replacement/Rehabilitation project is \$156,000.

HR Green has provided a document providing the Project Understanding and Scope of Services which includes design, bidding, and construction management for the project. The engineering effort is estimated at 185 hours for the project. HR Green is proposing to complete the work for a lump sum fee in the amount of \$25,250.

The Wastewater Staff recommends approval of the services as the project is included in the Capital Improvement Plan and has adequate funds available for the project.

Recommendation: Approval of Professional Services Agreement with HR Green, Inc. for the Laboratory Replacement/Rehabilitation Project #1716.

Council Action Requested: Motion to authorize the Mayor to sign an Agreement for Professional Services Agreement with HR Green, Inc. in the amount of \$25,250.



PROFESSIONAL SERVICES AGREEMENT

For

**Wastewater Treatment Facility
Laboratory Replacement**

City of Watertown, South Dakota

Shane Waterman
23 2nd Street NE
PO Box 910
Watertown, SD 57201-0910

Mike Boerger
1300 11th Street SE
Watertown, SD 57201

Dawn Horner, Project Manager
HR Green, Inc.
431 N Phillips Ave, Suite 400
Sioux Falls, SD 57104
HR Green Project Number: 160410

December 9, 2016

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- 1.0 PROJECT UNDERSTANDING
- 2.0 SCOPE OF SERVICES
- 3.0 DELIVERABLES AND SCHEDULES INCLUDED IN THIS AGREEMENT
- 4.0 ITEMS NOT INCLUDED IN AGREEMENT/SUPPLEMENTAL SERVICES
- 5.0 SERVICES BY OTHERS
- 6.0 CLIENT RESPONSIBILITIES
- 7.0 PROFESSIONAL SERVICES FEE
- 8.0 TERMS AND CONDITIONS

THIS **AGREEMENT** is between City of Watertown (hereafter "CLIENT") and HR GREEN, INC. (hereafter "COMPANY").

1.0 Project Understanding (See attached Proposal)

2.0 Scope of Services

The CLIENT agrees to employ COMPANY to perform the following services:

Wastewater Treatment Facility design, bidding, and construction for the Laboratory Replacement (see attached Proposal).

3.0 Deliverables and Schedules Included in this Agreement (See attached Proposal)

Begin design in January 2017. Develop final costs for construction by April for CIP planning. Bid the project in mid-2017 with construction to follow.

This schedule was prepared to include reasonable allowances for review and approval times required by the CLIENT and public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes in the scope of the project requested by the CLIENT or for delays or other causes beyond the control of COMPANY.

4.0 Items not included in Agreement/Supplemental Services

The following items are not included as part of this agreement:

- Survey
- Geotechnical soil borings/reports
- Material testing

Supplemental services not included in the agreement can be provided by COMPANY under separate agreement, if desired.

5.0 Services by Others

Not Applicable

6.0 Client Responsibilities (See Attached Proposal)

7.0 Professional Services Fee

7.1 Fees

The fee for services will be based on COMPANY standard hourly rates current at the time the agreement is signed. These standard hourly rates are subject to change upon 30 days' written notice. Non salary expenses directly attributable to the project such as: (1)

living and traveling expenses of employees when away from the home office on business connected with the project; (2) identifiable communication expenses; (3) identifiable reproduction costs applicable to the work; and (4) outside services will be charged in accordance with the rates current at the time the service is done.

7.2 Invoices

Invoices for COMPANY's services shall be submitted, on a monthly basis by the 20th of the month for the City of Watertown. The City will pay the invoice by the 10th of the following month. Invoices shall be due and payable upon receipt.

7.3 Extra Services

Any service required but not included as part of this contract shall be considered extra services. Extra services will be billed on a Time and Material basis with prior approval of the CLIENT.

7.4 Exclusion

This fee does not include attendance at any meetings or public hearings other than those specifically listed in the Scope of Services. These service items are considered extra and are billed separately on an hourly basis.

7.5 Payment

The CLIENT AGREES to pay COMPANY on the following basis:

Lump Sum in the amount of \$25,250.

8.0 Terms and Conditions

The following Terms and Conditions are incorporated into this AGREEMENT and made a part of it.

8.1 Standard of Care

Services provided by COMPANY under this AGREEMENT will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing at the same time and in the same or similar locality.

8.2 Entire Agreement

This Agreement, and its attachments, constitutes the entire understanding between CLIENT and COMPANY relating to professional engineering services. Any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein are of no effect. Subsequent modifications or amendments to this Agreement shall be in writing and signed by the parties to this Agreement. If the CLIENT, its officers, agents, or employees request COMPANY to perform extra services pursuant to this Agreement, CLIENT will pay for the additional services even though an additional written Agreement is not issued or signed.

8.3 Time Limit and Commencement of Services

This AGREEMENT must be executed within ninety (90) days to be accepted under the terms set forth herein. The services will be commenced immediately upon receipt of this signed Agreement.

8.4 Suspension of Services

If the Project or the COMPANY'S services are suspended by the CLIENT for more than thirty (30) calendar days, consecutive or in the aggregate, over the term of this Agreement, the COMPANY shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, the CLIENT shall compensate the COMPANY for expenses incurred as a result of the suspension and resumption of its services, and the COMPANY'S schedule and fees for the remainder of the Project shall be equitably adjusted.

If the COMPANY'S services are suspended for more than ninety (90) days, consecutive or in the aggregate, the COMPANY may terminate this Agreement upon giving not less than five (5) calendar days' written notice to the CLIENT.

If the CLIENT is in breach of this Agreement, the COMPANY may suspend performance of services upon five (5) calendar days' notice to the CLIENT. The COMPANY shall have no liability to the CLIENT, and the CLIENT agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this Agreement by the CLIENT. Upon receipt of payment in full of all outstanding sums due from the CLIENT, or curing of such other breach which caused the COMPANY to suspend services, the COMPANY shall resume services and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.

8.5 Book of Account

COMPANY will maintain books and accounts of payroll costs, travel, subsistence, field, and incidental expenses for a period of five (5) years. Said books and accounts will be available at all reasonable times for examination by CLIENT at the corporate office of COMPANY during that time.

8.6 Insurance

COMPANY will maintain insurance for claims under the Worker's Compensation Laws, and from General Liability and Automobile claims for bodily injury, death, or property damage, and Professional Liability insurance caused by the negligent performance by COMPANY'S employees of the functions and services required under this Agreement.

8.7 Termination or Abandonment

Either party has the option to terminate this Agreement. In the event of failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, then the obligation to provide further services under this Agreement may be terminated upon seven days written notice. If any portion of the services is terminated or abandoned by CLIENT, the provisions of this Schedule of Fees and Conditions in regard to compensation and payment shall apply insofar as possible to that portion of the services not terminated or abandoned. If said termination occurs prior to completion of any phase of the project, the fee for services performed during such phase shall be based on COMPANY'S reasonable estimate of the portion of such phase completed prior to said termination, plus a reasonable amount to reimburse COMPANY for termination costs.

8.8 Waiver

COMPANY'S waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

8.9 Severability

If any provision of this Agreement is declared invalid, illegal, or incapable of being enforced by any Court of competent jurisdiction, all of the remaining provisions of this Agreement shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.

8.10 Successors and Assigns

All of the terms, conditions, and provisions hereof shall inure to the benefit of and are binding upon the parties hereto, and their respective successors and assigns, provided, however, that no assignment of this Agreement shall be made without written consent of the parties to this Agreement.

8.11 Third-Party Beneficiaries

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 CLIENT or the COMPANY. The COMPANY'S services under this Agreement are being performed solely for the CLIENT'S benefit, and no other party or entity shall have any claim against the COMPANY because of this Agreement or the performance or nonperformance of services hereunder. The CLIENT and COMPANY agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this project to carry out the intent of this provision.

8.12 Governing Law and Jurisdiction

The CLIENT and the COMPANY agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of South Dakota without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions.

It is further agreed that any legal action between the CLIENT and the COMPANY arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in the State of South Dakota.

8.13 Attorney's Fees

If litigation arises for purposes of collecting fees or expenses due under this Agreement, the Court in such litigation shall award reasonable costs and expenses, including attorney fees, to the party justly entitled thereto. In awarding attorney fees, the Court shall not be bound by any Court fee schedule, but shall, in the interest of justice, award the full amount of costs, expenses, and attorney fees paid or incurred in good faith.

8.14 Ownership of Instruments of Service

All reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates and other documents including all documents on electronic media prepared by COMPANY as instruments of service shall remain the property of COMPANY. COMPANY shall retain these records for a period of five (5) years following completion/submission of the records, during which period they will be made available to the CLIENT at all reasonable times even in event of early termination.

8.15 Reuse of Documents

All project documents including, but not limited to, plans and specifications furnished by COMPANY under this project are intended for use on this project only. Any reuse, without specific written verification or adoption by COMPANY, shall be at the CLIENT's sole risk, and CLIENT shall defend, indemnify and hold harmless COMPANY from all claims, damages and expenses including attorney's fees arising out of or resulting therefrom.

Under no circumstances shall delivery of electronic files for use by the CLIENT be deemed a sale by the COMPANY, and the COMPANY makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the COMPANY be liable for indirect or consequential damages as a result of the CLIENT's use or reuse of the electronic files.

8.16 Failure to Abide by Design Documents or To Obtain Guidance

The CLIENT agrees that it would be unfair to hold COMPANY liable for problems that might occur should COMPANY'S plans, specifications or design intents not be followed, or for problems resulting from others' failure to obtain and/or follow COMPANY'S guidance with respect to any errors, omissions, inconsistencies, ambiguities or conflicts which are detected or alleged to exist in or as a consequence of implementing COMPANY'S plans, specifications or other instruments of service. Accordingly, the CLIENT waives any claim against COMPANY, and agrees to defend, indemnify and hold COMPANY harmless from any claim for injury or losses that results from failure to follow COMPANY'S plans, specifications or design intent, or for failure to obtain and/or follow COMPANY'S guidance with respect to any alleged errors, omissions, inconsistencies, ambiguities or conflicts contained within or arising as a result of implementing COMPANY'S plans, specifications or other instruments of services. The CLIENT also agrees to compensate COMPANY for any time spent and expenses incurred remedying CLIENT'S failures according to COMPANY'S prevailing fee schedule and expense reimbursement policy.

8.17 Opinion of Probable Construction Cost

COMPANY shall submit to the CLIENT an opinion of probable cost required to construct work recommended, designed, or specified by COMPANY, if required by CLIENT. COMPANY is not a construction cost estimator or construction contractor, nor should COMPANY'S rendering an opinion of probable construction costs be considered equivalent to the nature and extent of service a construction cost estimator or construction contractor would provide. This requires COMPANY to make a number of assumptions as to actual conditions that will be encountered on site; the specific decisions of other design professionals engaged; the means and methods of construction the contractor will employ; the cost and extent of labor, equipment and materials the contractor will employ; contractor's techniques in determining prices and market conditions at the time, and other factors over which COMPANY has no control. Given the assumptions which must be made, COMPANY cannot guarantee the accuracy of his or her opinions of cost, and in recognition of that fact, the CLIENT

waives any claim against COMPANY relative to the accuracy of COMPANY'S opinion of probable construction cost.

8.18 Design Information in Electronic Form

Because electronic file information can be easily altered, corrupted, or modified by other parties, either intentionally or inadvertently, without notice or indication, COMPANY reserves the right to remove itself from its ownership and/or involvement in the material from each electronic medium not held in its possession. CLIENT shall retain copies of the work performed by COMPANY in electronic form only for information and use by CLIENT for the specific purpose for which COMPANY was engaged. Said material shall not be used by CLIENT or transferred to any other party, for use in other projects, additions to this project, or any other purpose for which the material was not strictly intended by COMPANY without COMPANY's expressed written permission. Any unauthorized use or reuse or modifications of this material shall be at CLIENT'S sole risk. Furthermore, the CLIENT agrees to defend, indemnify, and hold COMPANY harmless from all claims, injuries, damages, losses, expenses, and attorney's fees arising out of the modification or reuse of these materials.

The CLIENT recognizes that designs, plans, and data stored on electronic media including, but not limited to computer disk, magnetic tape, or files transferred via email, may be subject to undetectable alteration and/or uncontrollable deterioration. The CLIENT, therefore, agrees that COMPANY shall not be liable for the completeness or accuracy of any materials provided on electronic media after a 30 day inspection period, during which time COMPANY shall correct any errors detected by the CLIENT to complete the design in accordance with the intent of the contract and specifications. After 40 days, at the request of the CLIENT, COMPANY shall submit a final set of sealed drawings, and any additional services to be performed by COMPANY relative to the submitted electronic materials shall be subject to separate AGREEMENT. The CLIENT is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the COMPANY and electronic files, the signed or sealed hard-copy construction documents shall govern.

8.19 Information Provided by Others

The CLIENT shall furnish, at the CLIENT's expense, all information, requirements, reports, data, surveys and instructions required by this AGREEMENT. The COMPANY may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The COMPANY shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the CLIENT and/or the CLIENT's consultants and contractors.

COMPANY is not responsible for accuracy of any plans, surveys or information of any type including electronic media prepared by any other consultants, etc. provided to COMPANY for use in preparation of plans. The CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the COMPANY from any damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, arising out of or connected in any way with the services performed by other consultants engaged by the CLIENT.

COMPANY is not responsible for accuracy of topographic surveys provided by others. A field check of a topographic survey provided by others will not be done under this contract unless indicated in the Scope of Services.

8.20 Force Majeure

The CLIENT agrees that the COMPANY is not responsible for damages arising directly or indirectly from any delays for causes beyond the COMPANY's control. CLIENT agrees to defend, indemnify, and hold COMPANY, its consultants, agents, and employees harmless from any and all liability, other than that caused by the negligent acts, errors, or omissions of COMPANY, arising out of or resulting from the same. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in timely manner; failure of performance by the CLIENT or the CLIENT'S contractors or consultants; or discovery of any hazardous substances or differing site conditions. Severe weather disruptions include but are not limited to extensive rain, high winds, snow greater than two (2) inches and ice. In addition, if the delays resulting from any such causes increase the cost or time required by the COMPANY to perform its services in an orderly and efficient manner, the COMPANY shall be entitled to a reasonable adjustment in schedule and compensation.

8.21 Job Site Visits and Safety

Neither the professional activities of COMPANY, nor the presence of COMPANY'S employees and subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. COMPANY and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The CLIENT agrees that the General Contractor is solely responsible for job site safety, and warrants that this intent shall be made evident in the CLIENT's AGREEMENT with the General Contractor. The CLIENT also agrees that the CLIENT, COMPANY and COMPANY'S consultants shall be indemnified and shall be made additional insureds on the General Contractor's and all subcontractor's general liability policies on a primary and non-contributory basis.

8.22 Hazardous Materials

CLIENT hereby understands and agrees that COMPANY has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at CLIENT's premises, or in connection with or related to this project with respect to which COMPANY has been retained to provide professional engineering services. The compensation to be paid COMPANY for said professional engineering services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions. Therefore, to the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold COMPANY, its officers, directors, employees, and consultants, harmless from and against any and all claims, damages, and expenses, whether direct, indirect, or consequential, including, but not limited to, attorney fees and Court costs, arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acid, alkalis, toxic chemicals, liquids gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.

It is acknowledged by both parties that COMPANY'S scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event COMPANY or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of COMPANY'S services, COMPANY may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until the CLIENT retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrants that the job site is in full compliance with applicable laws and regulations.

Nothing contained within this Agreement shall be construed or interpreted as requiring COMPANY to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 U.S.C.A., §6901 et seq., as amended, or within any State statute governing the generation, treatment, storage, and disposal of waste.

8.23 Certificate of Merit

The CLIENT shall make no claim for professional negligence, either directly or in a third party claim, against COMPANY unless the CLIENT has first provided COMPANY with a written certification executed by an independent design professional currently practicing in the same discipline as COMPANY and licensed in the State in which the claim arises. This certification shall: a) contain the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of a Design Professional performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to COMPANY not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any judicial proceeding.

8.24 Limitation of Liability

In recognition of the relative risks and benefits of the Project to both the CLIENT and the COMPANY, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of the COMPANY and COMPANY'S officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses

from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the COMPANY and COMPANY'S officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed \$50,000.00, or the COMPANY'S total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

8.31 Municipal Advisor

The COMPANY is not a Municipal Advisor registered with the Security and Exchange Commission (SEC) as defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act. When the CLIENT is a municipal entity as defined by said Act, and the CLIENT requires project financing information for the services performed under this AGREEMENT, the CLIENT will provide the COMPANY with a letter detailing who their independent registered municipal advisor is and that the CLIENT will rely on the advice of such advisor. A sample letter can be provided to the CLIENT upon request.

This AGREEMENT is approved and accepted by the CLIENT and COMPANY upon both parties signing and dating the AGREEMENT. Services will not begin until COMPANY receives a signed agreement. COMPANY's services shall be limited to those expressly set forth in this AGREEMENT and COMPANY shall have no other obligations or responsibilities for the Project except as agreed to in writing. The effective date of the AGREEMENT shall be the last date entered below.

Sincerely,

HR GREEN, INC.

Dawn Horner

Approved by: _____

Printed/Typed Name: Dawn Horner

Title: Principal Date: _____

CITY OF WATERTOWN, SD

Accepted by: _____

Printed/Typed Name: _____

Title: _____ Date: _____

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December 9, 2016

Shane Waterman
City Engineer
23 2nd Street NE
PO Box 910
Watertown, SD 57201

Re: Laboratory Replacement

Dear Shane:

Thank you for allowing HR Green, Inc. (HR Green) to provide a budget price and engineering fee for your review and incorporation into the City Capital Improvement Program (CIP) for the Wastewater Treatment Facility (WWTF) Laboratory Replacement Rehabilitation project. Enclosed is a proposal for the design, bidding and construction. The estimated cost for the Laboratory Replacement is \$156,000. HR Green, Inc. (HR Green) appreciates the opportunity to assist on this project.

The engineering fee is based on combining trips during design with the Biosolids Dewatering design and construction observation overlap with the Digester Rehabilitation project. If you have any questions or comments regarding this proposal, please contact me at 605-221-2654 or dhorner@hrgreen.com.

Respectfully submitted,

HR GREEN, INC.

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

Dawn Horner, PE
Principal/Project Manager

Enclosure

cc: Mike Boerger

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A large green graphic consisting of a vertical line and a horizontal line intersecting at the center, forming a cross shape.

HR Green.com

Phone 605.334.4499 Fax 605.338.6124

431 N. Phillips Avenue, Suite 400, Sioux Falls, SD 57104

Project Understanding

The laboratory is in need of new cabinets along with ceiling tile replacement, painting of walls, coating of floors. HVAC in laboratory was recently upgraded.

Scope of Services

PHASE 1 – DESIGN

1. **Project Management.** Provide on-going project management for the duration of the project.
 - a. Assume 5 months for design/bidding.
 - b. Provide monthly invoicing for the project.
 - c. Project kickoff Meeting. Conduct kickoff meeting to tour lab and note replacements areas. Verify past drawings.
 - i. Meet with WRF laboratory staff and others to discuss the desired layout for efficiency and other options that may be acceptable to save costs.
 - ii. Revising the layout will cause plumbing, electrical and HVAC revisions and the cost differences for the desired option and alternates can be reviewed during design.
 - iii. Review the process testing to be completed in each area and the type of cabinets and drawers required for the testing equipment.
 - iv. Invite a representative from Kewaunee to attend the kickoff meeting to discuss various options.
 - d. Project Progress Meetings. Conduct review meeting at 90% design.
 - i. Confirm decisions that will be used to move efficiently into final design with comments from the project team.
 - ii. Provide agenda and meeting minutes to document decisions made and items discussed. Distribute to the entire project team.
 - e. Data Collection. Review the existing plans.
 - f. Prepare Cost Opinion. Prepare preliminary opinion of probable construction costs. Develop a final opinion of probable construction cost for the work based on the final scope, schedule, and anticipated jobsite conditions.
 - g. QC Review. Prior to the 90% plan submittal, conduct an internal quality control (QC) review of the preliminary design and incorporate the recommendations from that review as needed.
2. **Final Design**
 - a. General Design (2 plans).
 - i. Develop cover sheet with location maps and sheet index.
 - ii. Develop overall site plans to show access and location of the laboratory and site access.
 - b. Demolition: Floor Plan and Sections (2 plans).
 - c. Process/Architectural: Floor Plan and Sections (2 plans).
 - d. Review mechanical and electrical in existing lab. If upgrades are required, assume supplemental services will be provided via amendment.

- e. Specifications.
 - i. Prepare front-end documents for bidding.
 - ii. Prepare bid items for proposal form.
 - iii. Prepare laboratory equipment and coating specifications.

3. Bidding Services

- a. Produce Plans and Specifications. Produce electronic plans and specifications to distribute electronically. Maintain the list of plan holders.
- b. Advertise for Bids. Assist the City in advertising for bids by sending out a Notice of Project to potential Contractors. Provide notice to be published, if required.
- c. Prebid Meeting. A prebid meeting is not anticipated. The contractors will be allowed to contact the wastewater plant staff to visit the site prior to bidding.
- d. Issue Addenda. Communicate with potential bidders and suppliers. Issue Addenda as appropriate to interpret, clarify, or expand bidding documents.
- e. Bid Review/Award. City to attend the bid opening. Assist City in evaluating bids. Consult with and advise the City as to the acceptability of Contractor. Provide a written recommendation to the City for awarding the contract.

PHASE 2 –CONSTRUCTION ADMINISTRATION

1. Project Management.

- a. Provide project management for the duration of the project. Assume five (5) months for overall construction phase.
- b. Set up lines of communication with the City and the Contractor. Include project team in emails as needed to gather data.
- c. Provide monthly invoicing for the project.

2. Preconstruction/Progress Meetings.

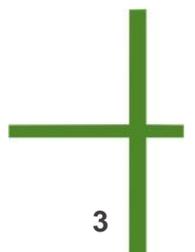
- a. Develop preconstruction agenda based on past projects and project details. Coordinate with project team to discuss critical items. Invite all parties.
 - i. Conduct preconstruction meeting. Distribute meeting minutes.
- b. Conduct monthly on site progress meetings during critical construction period as necessary. Develop agenda and distribute meeting minutes.
 - i. Assume one (1) preconstruction meeting and two (2) construction progress meetings.

3. Shop Drawings

- a. Review shop drawings required to be submitted by the Contractor by the project specifications. Evaluate and determine the acceptability of the submittal and review with the City.

4. Interpret Contract Documents/Correspondence/Change Orders

- a. Correspond with the Contractor as necessary to issue interpretations and clarifications of the contract documents. Prepare contract change orders including justifications and recommendations.
- b. Review Pay Requests. Coordinate with City and construction observer to review and prepare recommendations to Contractor’s monthly pay requests for submittal to City.
- c. Arrange for training time that best meets the plant operation staff schedule. HR Green will not attend training for fume hoods or other equipment.



5. **Construction Observation.** No hours are shown for observation of the laboratory. The construction will overlap the Digester Rehabilitation construction and the observer will overlook both projects and bill time to the Digester project.
6. **Final Completion/Punch List**
 - a. Conduct one (1) on-site final meeting with City, Contractor, and HR Green construction observer, prepare and distribute punch list. Observe that the punch list items are completed.
 - b. Assist City with final construction closeout and obtain final acceptance from the City.
 - c. Prepare a statement of completion.
7. **Record Drawings**
 - a. Provide record drawings of any changes via addendum or during construction for City records. Provide disc of submittals for future reference. Provide hard copy and pdf of plans.
 - b. Provide binder with submittals from the project.

ITEMS PROVIDED BY THE CITY

City staff shall provide the following items:

1. Pertinent available drawings, reports, data, maps, benchmarks, and utility information.
2. Prompt review of drawings and information submitted by the Engineer.
3. Legal review of information as needed by the project.

Project Schedule

The project schedule will be coordinated with the City:

| <u>Task</u> | <u>Schedule</u> |
|-------------------------------|------------------|
| Kickoff meeting..... | January 2017 |
| 90% Design..... | February 2017 |
| Bid..... | March/April 2017 |
| Construction Completion | September 2017 |

Effort and Fee

HR Green developed a task list for the project based on the detailed Scope of Services, past projects with the City, and previous experience. The estimated amount of effort per task was designated for the appropriate staff members. **The engineering effort is estimated at 185 hours and \$25,250.**



Request for City Council Action

TO: Mayor and City Council
FROM: Shane Waterman, P.E., City Engineer *SLW*
MEETING DATE: December 19, 2016
SUBJECT: **Consideration of Contract Agreement for Engineering Services for the Wastewater Treatment Facility – Biosolids Dewatering Improvements Project #1715**

Background: The City Wastewater Superintendent requested an engineering services proposal from HR Green, Inc. to provide design services for the Biosolids Dewatering Improvements Project #1715 at the Wastewater Treatment Facility (WWTF).

HR Green recently completed a study to review the interim and long-term solutions and recommendations for management of the biosolids generated at the WWTF. The interim solution and recommendation was to maintain current biosolids management practices through year 2018. The long-term solution and recommendation included changing biosolids management from land application of liquid biosolids to landfill disposal of dewatered biosolids. The proposed improvements include the installation of a screw press to dewater the biosolids from the existing anaerobic digesters for landfill disposal.

The estimated cost for the Biosolids Dewatering Improvements project is \$757,000.

HR Green has provided a document providing the Project Understanding and Scope of Services which includes the design and bidding phases for the project. HR Green is proposing to complete the work for a lump sum fee in the amount of \$88,900.

The Wastewater Staff recommends approval of the services as the project is included in the Capital Improvement Plan and has adequate funds available for the project.

Recommendation: Approval of Professional Services Agreement with HR Green, Inc. for the Biosolids Dewatering Improvements Project #1715.

Council Action Requested: Motion to authorize the Mayor to sign an Agreement for Professional Services Agreement with HR Green, Inc. in the amount of \$88,900.



PROFESSIONAL SERVICES AGREEMENT

For

**Wastewater Treatment Facility
Biosolids Dewatering Improvements
Design & Bidding Phases**

City of Watertown, South Dakota

Shane Waterman
23 2nd Street NE
PO Box 910
Watertown, SD 57201-0910

Mike Boerger
1300 11th Street SE
Watertown, SD 57201

Michael Roth, Project Manager
HR Green, Inc.
431 N Phillips Ave, Suite 400
Sioux Falls, SD 57104
HR Green Project Number: 160409

December 9, 2016

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- 2.0 SCOPE OF SERVICES
- 3.0 DELIVERABLES AND SCHEDULES INCLUDED IN THIS AGREEMENT
- 4.0 ITEMS NOT INCLUDED IN AGREEMENT/SUPPLEMENTAL SERVICES
- 5.0 SERVICES BY OTHERS
- 6.0 CLIENT RESPONSIBILITIES
- 7.0 PROFESSIONAL SERVICES FEE
- 8.0 TERMS AND CONDITIONS

THIS **AGREEMENT** is between City of Watertown (hereafter "CLIENT") and HR GREEN, INC. (hereafter "COMPANY").

1.0 Project Understanding (See attached Proposal)

2.0 Scope of Services

The CLIENT agrees to employ COMPANY to perform the following services:

Wastewater Treatment Facility design and bidding for the Biosolids Dewatering Improvements (see attached Proposal).

3.0 Deliverables and Schedules Included in this Agreement (See attached Proposal)

Begin design in January 2017. Verify estimated costs by late April for CIP. Bid the project in January 2018 with construction to follow.

This schedule was prepared to include reasonable allowances for review and approval times required by the CLIENT and public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes in the scope of the project requested by the CLIENT or for delays or other causes beyond the control of COMPANY.

4.0 Items not included in Agreement/Supplemental Services

The following items are not included as part of this agreement:

- Survey
- Geotechnical soil borings/reports
- Material testing
- Construction Phase Services

Supplemental services not included in the agreement can be provided by COMPANY under separate agreement, if desired.

5.0 Services by Others

Not Applicable

6.0 Client Responsibilities (See Attached Proposal)

7.0 Professional Services Fee

7.1 Fees

The fee for services will be based on COMPANY standard hourly rates current at the time the agreement is signed. These standard hourly rates are subject to change upon 30

days' written notice. Non salary expenses directly attributable to the project such as: (1) living and traveling expenses of employees when away from the home office on business connected with the project; (2) identifiable communication expenses; (3) identifiable reproduction costs applicable to the work; and (4) outside services will be charged in accordance with the rates current at the time the service is done.

7.2 Invoices

Invoices for COMPANY's services shall be submitted, on a monthly basis by the 20th of the month for the City of Watertown. The City will pay the invoice by the 10th of the following month. Invoices shall be due and payable upon receipt.

7.3 Extra Services

Any service required but not included as part of this contract shall be considered extra services. Extra services will be billed on a Time and Material basis with prior approval of the CLIENT.

7.4 Exclusion

This fee does not include attendance at any meetings or public hearings other than those specifically listed in the Scope of Services. These service items are considered extra and are billed separately on an hourly basis.

7.5 Payment

The CLIENT AGREES to pay COMPANY on the following basis:

Lump Sum in the amount of \$88,900.

8.0 Terms and Conditions

The following Terms and Conditions are incorporated into this AGREEMENT and made a part of it.

8.1 Standard of Care

Services provided by COMPANY under this AGREEMENT will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing at the same time and in the same or similar locality.

8.2 Entire Agreement

This Agreement, and its attachments, constitutes the entire understanding between CLIENT and COMPANY relating to professional engineering services. Any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein are of no effect. Subsequent modifications or amendments to this Agreement shall be in writing and signed by the parties to this Agreement. If the CLIENT, its officers, agents, or employees request COMPANY to perform extra services pursuant to this Agreement, CLIENT will pay for the additional services even though an additional written Agreement is not issued or signed.

8.3 Time Limit and Commencement of Services

This AGREEMENT must be executed within ninety (90) days to be accepted under the terms set forth herein. The services will be commenced immediately upon receipt of this signed Agreement.

8.4 Suspension of Services

If the Project or the COMPANY'S services are suspended by the CLIENT for more than thirty (30) calendar days, consecutive or in the aggregate, over the term of this Agreement, the COMPANY shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, the CLIENT shall compensate the COMPANY for expenses incurred as a result of the suspension and resumption of its services, and the COMPANY'S schedule and fees for the remainder of the Project shall be equitably adjusted.

If the COMPANY'S services are suspended for more than ninety (90) days, consecutive or in the aggregate, the COMPANY may terminate this Agreement upon giving not less than five (5) calendar days' written notice to the CLIENT.

If the CLIENT is in breach of this Agreement, the COMPANY may suspend performance of services upon five (5) calendar days' notice to the CLIENT. The COMPANY shall have no liability to the CLIENT, and the CLIENT agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this Agreement by the CLIENT. Upon receipt of payment in full of all outstanding sums due from the CLIENT, or curing of such other breach which caused the COMPANY to suspend services, the COMPANY shall resume services and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.

8.5 Book of Account

COMPANY will maintain books and accounts of payroll costs, travel, subsistence, field, and incidental expenses for a period of five (5) years. Said books and accounts will be available at all reasonable times for examination by CLIENT at the corporate office of COMPANY during that time.

8.6 Insurance

COMPANY will maintain insurance for claims under the Worker's Compensation Laws, and from General Liability and Automobile claims for bodily injury, death, or property damage, and Professional Liability insurance caused by the negligent performance by COMPANY's employees of the functions and services required under this Agreement.

8.7 Termination or Abandonment

Either party has the option to terminate this Agreement. In the event of failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, then the obligation to provide further services under this Agreement may be terminated upon seven days written notice. If any portion of the services is terminated or abandoned by CLIENT, the provisions of this Schedule of Fees and Conditions in regard to compensation and payment shall apply insofar as possible to that portion of the services not terminated or abandoned. If said termination occurs prior to completion of any phase of the project, the fee for services performed during such phase shall be based on COMPANY's reasonable estimate of the portion of such phase completed prior to said termination, plus a reasonable amount to reimburse COMPANY for termination costs.

8.8 Waiver

COMPANY's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

8.9 Severability

If any provision of this Agreement is declared invalid, illegal, or incapable of being enforced by any Court of competent jurisdiction, all of the remaining provisions of this Agreement shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.

8.10 Successors and Assigns

All of the terms, conditions, and provisions hereof shall inure to the benefit of and are binding upon the parties hereto, and their respective successors and assigns, provided, however, that no assignment of this Agreement shall be made without written consent of the parties to this Agreement.

8.11 Third-Party Beneficiaries

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 CLIENT or the COMPANY. The COMPANY's services under this Agreement are being performed solely for the CLIENT's benefit, and no other party or entity shall have any claim against the COMPANY because of this Agreement or the performance or nonperformance of services hereunder. The CLIENT and COMPANY agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this project to carry out the intent of this provision.

8.12 Governing Law and Jurisdiction

The CLIENT and the COMPANY agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the State of South Dakota without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions.

It is further agreed that any legal action between the CLIENT and the COMPANY arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in the State of South Dakota.

8.13 Attorney's Fees

If litigation arises for purposes of collecting fees or expenses due under this Agreement, the Court in such litigation shall award reasonable costs and expenses, including attorney fees, to the party justly entitled thereto. In awarding attorney fees, the Court shall not be bound by any Court fee schedule, but shall, in the interest of justice, award the full amount of costs, expenses, and attorney fees paid or incurred in good faith.

8.14 Ownership of Instruments of Service

All reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates and other documents including all documents on electronic media prepared by COMPANY as instruments of service shall remain the property of COMPANY. COMPANY shall retain these records for a period of five (5) years following completion/submission of the records, during which period they will be made available to the CLIENT at all reasonable times even in event of early termination.

8.15 Reuse of Documents

All project documents including, but not limited to, plans and specifications furnished by COMPANY under this project are intended for use on this project only. Any reuse, without specific written verification or adoption by COMPANY, shall be at the CLIENT's sole risk, and CLIENT shall defend, indemnify and hold harmless COMPANY from all claims, damages and expenses including attorney's fees arising out of or resulting therefrom.

Under no circumstances shall delivery of electronic files for use by the CLIENT be deemed a sale by the COMPANY, and the COMPANY makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the COMPANY be liable for indirect or consequential damages as a result of the CLIENT's use or reuse of the electronic files.

8.16 Failure to Abide by Design Documents or To Obtain Guidance

The CLIENT agrees that it would be unfair to hold COMPANY liable for problems that might occur should COMPANY'S plans, specifications or design intents not be followed, or for problems resulting from others' failure to obtain and/or follow COMPANY'S guidance with respect to any errors, omissions, inconsistencies, ambiguities or conflicts which are detected or alleged to exist in or as a consequence of implementing COMPANY'S plans, specifications or other instruments of service. Accordingly, the CLIENT waives any claim against COMPANY, and agrees to defend, indemnify and hold COMPANY harmless from any claim for injury or losses that results from failure to follow COMPANY'S plans, specifications or design intent, or for failure to obtain and/or follow COMPANY'S guidance with respect to any alleged errors, omissions, inconsistencies, ambiguities or conflicts contained within or arising as a result of implementing COMPANY'S plans, specifications or other instruments of services. The CLIENT also agrees to compensate COMPANY for any time spent and expenses incurred remedying CLIENT'S failures according to COMPANY'S prevailing fee schedule and expense reimbursement policy.

8.17 Opinion of Probable Construction Cost

COMPANY shall submit to the CLIENT an opinion of probable cost required to construct work recommended, designed, or specified by COMPANY, if required by CLIENT. COMPANY is not a construction cost estimator or construction contractor, nor should COMPANY'S rendering an opinion of probable construction costs be considered equivalent to the nature and extent of service a construction cost estimator or construction contractor would provide. This requires COMPANY to make a number of assumptions as to actual conditions that will be encountered on site; the specific decisions of other design professionals engaged; the means and methods of construction the contractor will employ; the cost and extent of labor, equipment and materials the contractor will employ; contractor's techniques in determining prices and market conditions at the time, and other factors over which COMPANY has no control. Given the assumptions which must be made, COMPANY cannot guarantee the accuracy of his or her opinions of cost, and in recognition of that fact, the CLIENT

waives any claim against COMPANY relative to the accuracy of COMPANY'S opinion of probable construction cost.

8.18 Design Information in Electronic Form

Because electronic file information can be easily altered, corrupted, or modified by other parties, either intentionally or inadvertently, without notice or indication, COMPANY reserves the right to remove itself from its ownership and/or involvement in the material from each electronic medium not held in its possession. CLIENT shall retain copies of the work performed by COMPANY in electronic form only for information and use by CLIENT for the specific purpose for which COMPANY was engaged. Said material shall not be used by CLIENT or transferred to any other party, for use in other projects, additions to this project, or any other purpose for which the material was not strictly intended by COMPANY without COMPANY's expressed written permission. Any unauthorized use or reuse or modifications of this material shall be at CLIENT'S sole risk. Furthermore, the CLIENT agrees to defend, indemnify, and hold COMPANY harmless from all claims, injuries, damages, losses, expenses, and attorney's fees arising out of the modification or reuse of these materials.

The CLIENT recognizes that designs, plans, and data stored on electronic media including, but not limited to computer disk, magnetic tape, or files transferred via email, may be subject to undetectable alteration and/or uncontrollable deterioration. The CLIENT, therefore, agrees that COMPANY shall not be liable for the completeness or accuracy of any materials provided on electronic media after a 30 day inspection period, during which time COMPANY shall correct any errors detected by the CLIENT to complete the design in accordance with the intent of the contract and specifications. After 40 days, at the request of the CLIENT, COMPANY shall submit a final set of sealed drawings, and any additional services to be performed by COMPANY relative to the submitted electronic materials shall be subject to separate AGREEMENT. The CLIENT is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the COMPANY and electronic files, the signed or sealed hard-copy construction documents shall govern.

8.19 Information Provided by Others

The CLIENT shall furnish, at the CLIENT's expense, all information, requirements, reports, data, surveys and instructions required by this AGREEMENT. The COMPANY may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The COMPANY shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the CLIENT and/or the CLIENT's consultants and contractors.

COMPANY is not responsible for accuracy of any plans, surveys or information of any type including electronic media prepared by any other consultants, etc. provided to COMPANY for use in preparation of plans. The CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the COMPANY from any damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, arising out of or connected in any way with the services performed by other consultants engaged by the CLIENT.

COMPANY is not responsible for accuracy of topographic surveys provided by others. A field check of a topographic survey provided by others will not be done under this contract unless indicated in the Scope of Services.

8.20 Force Majeure

The CLIENT agrees that the COMPANY is not responsible for damages arising directly or indirectly from any delays for causes beyond the COMPANY's control. CLIENT agrees to defend, indemnify, and hold COMPANY, its consultants, agents, and employees harmless from any and all liability, other than that caused by the negligent acts, errors, or omissions of COMPANY, arising out of or resulting from the same. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in timely manner; failure of performance by the CLIENT or the CLIENT'S contractors or consultants; or discovery of any hazardous substances or differing site conditions. Severe weather disruptions include but are not limited to extensive rain, high winds, snow greater than two (2) inches and ice. In addition, if the delays resulting from any such causes increase the cost or time required by the COMPANY to perform its services in an orderly and efficient manner, the COMPANY shall be entitled to a reasonable adjustment in schedule and compensation.

8.21 Job Site Visits and Safety

Neither the professional activities of COMPANY, nor the presence of COMPANY'S employees and subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. COMPANY and its personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The CLIENT agrees that the General Contractor is solely responsible for job site safety, and warrants that this intent shall be made evident in the CLIENT's AGREEMENT with the General Contractor. The CLIENT also agrees that the CLIENT, COMPANY and COMPANY'S consultants shall be indemnified and shall be made additional insureds on the General Contractor's and all subcontractor's general liability policies on a primary and non-contributory basis.

8.22 Hazardous Materials

CLIENT hereby understands and agrees that COMPANY has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at CLIENT's premises, or in connection with or related to this project with respect to which COMPANY has been retained to provide professional engineering services. The compensation to be paid COMPANY for said professional engineering services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions. Therefore, to the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold COMPANY, its officers, directors, employees, and consultants, harmless from and against any and all claims, damages, and expenses, whether direct, indirect, or consequential, including, but not limited to, attorney fees and Court costs, arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acid, alkalis, toxic chemicals, liquids gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.

It is acknowledged by both parties that COMPANY'S scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event COMPANY or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of COMPANY'S services, COMPANY may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until the CLIENT retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrants that the job site is in full compliance with applicable laws and regulations.

Nothing contained within this Agreement shall be construed or interpreted as requiring COMPANY to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 U.S.C.A., §6901 et seq., as amended, or within any State statute governing the generation, treatment, storage, and disposal of waste.

8.23 Certificate of Merit

The CLIENT shall make no claim for professional negligence, either directly or in a third party claim, against COMPANY unless the CLIENT has first provided COMPANY with a written certification executed by an independent design professional currently practicing in the same discipline as COMPANY and licensed in the State in which the claim arises. This certification shall: a) contain the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of a Design Professional performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to COMPANY not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any judicial proceeding.

8.24 Limitation of Liability

In recognition of the relative risks and benefits of the Project to both the CLIENT and the COMPANY, the risks have been allocated such that the CLIENT agrees, to the fullest extent permitted by law, to limit the liability of the COMPANY and COMPANY'S officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses

from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the COMPANY and COMPANY'S officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed \$50,000.00, or the COMPANY'S total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

8.25 Design Without Construction Observation

It is agreed that the professional services of COMPANY do not extend to or include the review or site observation of the contractor's work or performance and the CLIENT assumes all responsibility for interpretation of the contract documents and for construction observation. It is further agreed that the CLIENT will defend, indemnify and hold harmless COMPANY from any claim or suit whatsoever, including but not limited to all payments, expenses or costs involved, arising from the contractor's performance or the failure of the contractor's work to conform to the design intent and the contract documents. COMPANY agrees to be responsible for its employees' negligent acts, errors or omissions.

8.26 Municipal Advisor

The COMPANY is not a Municipal Advisor registered with the Security and Exchange Commission (SEC) as defined in the Dodd-Frank Wall Street Reform and Consumer Protection Act. When the CLIENT is a municipal entity as defined by said Act, and the CLIENT requires project financing information for the services performed under this AGREEMENT, the CLIENT will provide the COMPANY with a letter detailing who their independent registered municipal advisor is and that the CLIENT will rely on the advice of such advisor. A sample letter can be provided to the CLIENT upon request.

This AGREEMENT is approved and accepted by the CLIENT and COMPANY upon both parties signing and dating the AGREEMENT. Services will not begin until COMPANY receives a signed agreement. COMPANY'S services shall be limited to those expressly set forth in this AGREEMENT and COMPANY shall have no other obligations or responsibilities for the Project except as agreed to in writing. The effective date of the AGREEMENT shall be the last date entered below.

Sincerely,

HR GREEN, INC.

Dawn Horner

Approved by: _____

Printed/Typed Name: Dawn Horner

Title: Principal Date: _____

CITY OF WATERTOWN, SD

Accepted by: _____

Printed/Typed Name: _____

Title: _____ Date: _____



December 9, 2016

Mike Boerger, Superintendent
Wastewater and Solid Waste
1300 11th Street SE
Watertown, SD 57201

Re: Watertown WWTF Biosolids Dewatering Improvements

Dear Mike:

Enclosed is HR Green Inc.'s (HR Green) proposal for the design and bidding of the WWTF Biosolids Dewatering Improvements.

HR Green appreciates the opportunity to propose on this project. This proposal contains the Project Understanding, Scope of Services, Project Schedule, and Effort and Fee. If you have any questions or comments regarding this proposal, please contact me at 515-657-5304 or mroth@hrgreen.com or Dawn Horner at 605-221-2654 or dhorner@hrgreen.com.

Respectfully submitted,

HR GREEN, INC.

A handwritten signature in black ink that reads "Dawn Horner".

Dawn Horner, PE
Principal/Client Service Manager

A handwritten signature in blue ink that reads "Michael Roth".

Michael Roth, PE
Project Manager

J:\2016\160409\Design\Contract\Pro-120216-Watertown-WWTP-biosolids_dewatering_design&bid.docx

A large green graphic consisting of a vertical line and a horizontal line intersecting at the center, forming a cross shape.

HRGreen.com

Phone 605.334.4499 Fax 605.338.6124 Toll Free 800.593.2339
431 N. Phillips Avenue, Suite 400, Sioux Falls, SD 57104

Project Understanding

In 2016 the City studied current and future alternatives for biosolids processing, storage, and disposal at the Wastewater Treatment Facility (WWTF). This study provided interim and long-term solutions and recommendations for the biosolids management program. Interim solutions and recommendation were to maintain current biosolids management practices through year 2018. Beyond the interim period, the study recommendations included changing to biosolids management from land application of liquid biosolids to landfill disposal of dewatered biosolids.

Based on the long-term recommendations as outlined in the May 20, 2016 Technical Memorandum, design of biosolids dewatering improvements are needed in 2017 to maintain the outlined schedule to implement the new biosolids management program at the Watertown WWTF. The EOPC for the alternate chosen was \$757,000.

The design effort will further detail the recommended long-term improvements, which include:

- Design and installation of a screw press to dewater biosolids from the existing anaerobic digesters for landfill disposal,
- Retrofit of the existing pretreatment building to accommodate dewatering equipment and ancillary support system (e.g. polymer feed systems, storage, etc.) and related mechanical, structural, and electrical upgrades/improvements,
- Necessary site process piping modifications to allow liquid biosolids pumping to the existing pretreatment building with flexibility to pump to/from existing thickening building and liquid biosolids storage tank, and
- Use of roll-off dumpsters for dewatered biosolids storage prior to ultimate landfill disposal.

Scope of Services

HR Green offers the following specific task-based Scope of Services for the project.

PHASE 1 – PRELIMINARY AND GENERAL WORK

1. **Project Management.** Provide on-going project management for the duration of the project.
 - a. Set up lines of communication, project schedule, applicable codes and standards, as well as quality control plan. Include project team in emails as needed to gather data.
 - b. Provide monthly project summary for the project including budget update.
 - c. Provide monthly invoicing for the project.
 - d. Assume design and bidding will be twelve (12) months.
2. **Project Kickoff.** Conduct a project kickoff meeting with the City to further clarify the specific project elements and objectives and go over Owner requirements. Set the detailed project schedule with critical dates, milestones, and deliverables. Identify Owner operational issues for design.
3. **Project Progress Meetings.** Conduct status review correspondence and/or meetings with the City to present a summary of the work completed on each task, estimated

completion of tasks, discussion of project issues, and a summary of the project schedule and budget.

- a. Develop a detailed agenda defining data gathered and design assumptions.
 - b. Confirm decisions that will be used to move efficiently into final design with comments from the project team.
 - c. Provide meeting minutes to document decisions made and items discussed. Distribute to the entire project team.
 - d. Manage an action item/deliverables list for items that are to be done by both the City and Consultant.
 - e. Assume two (2) progress meetings at 50% and 90% design with structural and electrical joining via conference call.
4. **Data Collection.** Review the existing plans, submittals from existing system, and operation and maintenance manuals.
 5. **South Dakota Department of Environment and Natural Resources (SD DENR) Coordination.** Provide coordination with the SD DENR to review the final plans and specifications.
 6. **Prepare Cost Opinion.** Use the preliminary opinion of probable construction costs developed with the Biosolids Management Study. Develop a final opinion of probable construction cost for the work based on the final scope, schedule, and anticipated jobsite conditions. Identify and track significant cost changes as cost trends. Develop a summary of cost trends for the project through all design phases and communicate trends with the City.
 7. **QC Review.** Prior to the 90% plan submittal, conduct an internal quality control (QC) review of the preliminary design and incorporate the recommendations from that review as needed. The QC review will include a review within each discipline as well as a review of the project across discipline lines. The review will focus on issues of readability, consistency, presentation, organization, completeness, clarity, coordination, constructability, and cost effectiveness of the deliverables.

PHASE 2 – FINAL DESIGN

A. Initiation - Design Memorandum

1. Prepare a design memorandum and preliminary drawings based on the recommended alternative from the 2016 Biosolids Study to establish agreement between Owner and Engineer on scope, design parameters, performance requirements, and project approach. Submit five (5) copies of draft design memorandum to Owner for review.
2. Meet with Owner and obtain Owner's comments on the draft design memorandum and preliminary drawings. Meeting shall be held via telephone conference call. Resolve any questions, revise documents if necessary, and resubmit five (5) copies to Owner.
3. Submit the design memorandum to the South Dakota Department of Environment and Natural Resources (SDDENR).

B. Schematic Design Phase (50%)

1. Prepare general plans, civil site plans, mechanical plans, structural plans, electrical & control plans, and architectural plans. Anticipated plan sheets include:
 - a. General plans & details (2 sheets)
 - b. Civil site plan & details (2 sheets)
 - c. Structural plan, sections, & details (3 sheets)

- d. Mechanical plan, schedules & details (2 sheets)
 - e. Electrical & controls plans, schedules & details (4 sheets)
 - f. Architectural plans & details (2 sheets)
2. Select major items of equipment and prepare basic specification data.
 3. Prepare layouts of process plans with equipment and piping dimensions. Anticipated plan sheets include:
 - a. Process plans, sections, & details (4 sheets)
 4. Coordinate biosolids dewatering process controls with plant-wide process control system. Information on plant-wide controls will be made available by Owner. Develop process flow and instrumentation diagrams for biosolids dewatering, and polymer systems. Anticipated plan sheets are listed above.
 5. Review of Owner-drafted front-end documents.
 6. Submit three (3) sets of drawings and specifications to Owner for review.
 7. Meet with Owner in one (1) meeting to review Schematic Design documents.
 8. Prepare a preliminary opinion of probable construction cost in conjunction with the Schematic Design documents for the proposed work.

C. Construction Documents Phase (90%)

1. Prepare detailed drawings and specifications and other contract documents for the proposed construction work and for the materials and equipment required. Documents will be developed from the Schematic Design documents. Documents shall be prepared for selection of private construction contractors on a competitive bid basis.
2. Prepare an opinion of probable construction cost in conjunction with the Construction Documents Phase documents for the proposed work.
3. Provide **five (5)** sets of the contract documents to Owner for review.
4. Provide building code review and coordinate revisions with City.
5. Meet with Owner in one (1) meeting to review Construction Documents Phase documents.

D. Completion Phase (FINAL)

1. After the meeting with Owner, make modifications and submit **three (3)** sets of revised contract documents to state agency for approval, and **two (2)** sets to Owner for the record.
2. Review the opinion of probable construction cost and revise as required.
3. Provide one (1) electronic copy of final project drawings to Owner in AutoCAD format.

PHASE 3 – BIDDING SERVICES

1. **Produce Plans and Specifications.** Produce electronic plans and specifications to send out on disc for bidding. Print the required number of plans, specifications, and contract documents for distribution to bidders if requested instead of electronic. It is anticipated that five (5) sets of printed documents will be required. Maintain the list of plan holders.
2. **Advertise for Bids.** Assist the City in advertising for bids by sending out a Notice of Project to potential Contractors. Provide notice to be published as required.
3. **Prebid Meeting.** Attend prebid Meeting at the WWTP to review bidding requirements and address contractor questions. Provide site tour for Contractors.

4. **Issue Addenda.** Communicate with potential bidders and suppliers. Issue Addenda as appropriate to interpret, clarify, or expand bidding documents.
5. **Bid Review/Award.** Assist the City in evaluating bids. Consult with and advise the City as to the acceptability of Contractor, suppliers, and other persons and organizations proposed by the Contractor. Provide a written recommendation to the City for awarding the contract.

ITEMS PROVIDED BY THE CITY

City staff shall provide the following items:

1. Pertinent available drawings, reports, data, maps, benchmarks, and utility information.
2. Prompt review of drawings and information submitted by the Engineer.
3. Responses to City action items.
4. Confirmation of current and projected biosolids quantities.

Project Schedule

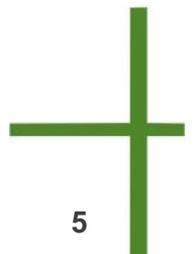
The preliminary project schedule will be coordinated with the City, but the following assumes that disinfection is not required from November 1st to March 31st.

| <u>Task</u> | <u>Schedule</u> |
|---|-----------------|
| Project Kickoff | January 2017 |
| Preliminary Cost estimate for CIP | April 2017 |
| 50% Design | May 2017 |
| 90% Design | August 2017 |
| Bid | January 2018 |
| Construction | 2018 |

Effort and Fee

HR Green developed the task list required for the design and bidding services based on the Scope of Services, past projects, previous experience, and the construction schedule shown herein. The estimated amount of effort per task was designated for the appropriate staff members.

The engineering effort is estimated at a lump sum fee of \$88,900. The other direct costs (ODC), which include mileage and the technology and communication fee, are included in the fee.



Request for City Council Action

TO: Mayor and City Council
FROM: Shane Waterman, P.E., City Engineer *SLW*
MEETING DATE: December 19, 2016
SUBJECT: **Consideration of Change Order No. 1 – Big Sioux River Weir Breach Repair Project #1617**

Background: On November 7, 2016 the City Council awarded a contract for the Big Sioux River Weir Breach Repair Project #1617 to Jeff Argo Excavating of Watertown with the low bid of \$138,066.60. Construction began in the last week of November. When the contractor exposed the existing sheet pile, he could see that the top was bent over and would not allow a connection to a new sheet pile section. In order to facilitate a strong junction between the existing sheet pile and the extension, the bent part of the existing pile was cut off, and the first new section was driven into its interlocking position connecting to the existing pile. The gap created by the cut will be closed with a flat plate welded into place.

This repair and its suggested price of \$500 was agreed upon between the contractor, the Engineering Department, and the City's consulting structural engineer, Vanessa Victor of Infrastructure Design Group. Since construction could not move forward without the repair, a field order was issued on November 29, 2016 and the work has been done.

If approved Change Order No. 1 will increase the contract by \$500.00.

Recommendation: Approve Change Order No.1 to the contract with Jeff Argo Excavating for the Big Sioux River Weir Breach Repair Project #1617 in the amount of \$500.00, increasing the contract price to \$138,566.60.

Council Action Requested:
Motion to Approve.

CONSTRUCTION CHANGE ORDER NO. 1

Date: December 19, 2016

Project: Project No. 1617
BIG SIOUX RIVER WEIR BREACH REPAIR

Contract Date: November 7, 2016

Contractor: Jeff Argo Excavating

YOU ARE HEREBY DIRECTED TO MAKE CHANGES IN THE SUBJECT CONTRACT AS DESCRIBED BELOW:

For the City of Watertown

Mayor: _____
Mayor Steve Thorson

Date: _____

Nature of Changes: Prior damage to the weir became visible when the contractor exposed the end of the existing weir as he was starting construction of the extension. Repairs were required in order to connect the first new sheet pile to the existing. Cost includes cutting existing pile and cap, and welding a plate between the existing and new sections. This was unexpected work and not included in the original contract price.

These Changes result in the following adjustment of Contract Price and Time:

| | |
|---|-------------------------|
| Contract Price Prior to This Change Order | <u>\$138,066.60</u> |
| Net INCREASE in Price Resulting from this Change Order | <u>\$500.00</u> |
| Current Contract Price Including This Change Order | <u>\$ 138,566.60</u> |
| Substantial Completion Date Prior to This Change Order | <u>January 31, 2017</u> |
| Net INCREASE in Time Resulting from this Change Order | <u>0 days</u> |
| Substantial Completion Date Including This Change Order | <u>January 31, 2017</u> |

APPROVAL OF CHANGE ORDER

City Engineer: _____
Shane Waterman, PE

Date: _____

ACCEPTANCE OF CHANGE ORDER

This Change Order is hereby acknowledged and accepted for Jeff Argo Excavating.

By: _____

Date: _____

Name: _____

Title: _____