



BAXTER CITY COUNCIL AGENDA

Tuesday, January 5, 2016

The regular meeting of the Baxter City Council will be held on Tuesday, January 5, 2016 at 7:00 p.m. at the Baxter City Hall, 13190 Memorywood Dr., Baxter, MN.

1. Call Meeting to Order

2. Roll Call

3. Pledge of Allegiance

4. Public Comments

Comments received from the public may be placed on a future meeting agenda for consideration.

5. Consent Agenda

The following items are considered non-controversial by staff and are recommended to be read and passed in one motion. Any council person, staff, citizen, or meeting attendee can request one or more items be pulled from the Consent Agenda and the item will be pulled and addressed immediately after the passage of the Consent Agenda; otherwise, the following items will be passed in one motion:

- A. Approve City Council Minutes from December 17, 2015 (pp. 4 – 6).
- B. Approve City Council Work Session Minutes from December 17, 2015 (pp. 7 – 10).
- C. Approve the Payment of Bills and Finance Report (Addendum A and Addendum A-1).
- D. Approve Resolution No. 2016-001 Establishing the 2016 Council Appointments (pp. 11 – 12).
- E. Approve Resolution No. 2016-002 Establishing the 2016 Annual Designations (pp. 13 – 15).
- F. Approve Ordinance 2016-001 Amending the Text of Title 5, Chapter 6 Tobacco and Tobacco Related Devices, of the Baxter City Code and Approve Ordinance 2016-002 Summary Publication of Ordinance 2016-001 (pp. 18 – 29).

- G. Approve Ordinance 2016-003 Regulating the Use of Electronic Delivery Devices within the City of Baxter Minnesota and Ordinance 2016-004 Summary Publication of Ordinance 2016-003 (pp. 30 – 32).
- H. Approve Resolution 2016-003 Receiving Feasibility Report and Calling Hearing on Improvement for the 2016 Fairview Road and Trail Improvement Project for Monday, February 1, 2016 at 6:00 p.m. (pg. 33)
- I. Approve Resolution No. 2016-004 Support from Sponsoring Agency for Inglewood Drive Railroad Crossing Grant Application (pg. 34).
- J. Approve the TKDA Proposal for Professional Engineering Services for the Fixed Network Water Meter Reading System Project in the not to exceed amount of \$12,000.00 (pp. 35 – 42).
- K. Approve Animal Control Agreement with Animal Control Enforcement Services (Don Hannahs) for 2016 (pp 43 – 45).
- L. Adopt 2016 Mileage Reimbursement Rate of 54 cents per mile per IRS Regulations (pg. 46).
- M. Approve SEH Contract for Fairview Road and Trail (pp. 47 – 55).
- N. Approve Settlement Agreement with 7256 Woida Road (pp. 56 – 59).

6. Pulled Agenda Items

7. Other Business

- A. Approve 2016 Meeting Calendar for City Council and Commissions (pp. 60 – 61).
- B. Planning & Zoning Actions.
 - 1. PUBLIC HEARING at 7:00 p.m. of thereafter to discuss vacating a 10 foot wide right-of-way easement over and across Lot 2, Block 1 Citizens Addition.
 - 2. Adopt Resolution No. 2016-005 vacating a 10 foot wide right-of-way easement over and across Lot 2. Block 1 Citizen’s Addition. (pg. 62).

8. Council Comments

- A. Quinn Nystrom
- B. Steve Barrows
- C. Todd Holman
- D. Mark Cross

E. Darrel Olson

9. City Administrator's Report

A. Dellwood Drive Improvement Project Update

10. City Attorney's Report

A. Closed Session under Minnesota Statute 13D.05, Subd. 3 (c) (3) to develop an offer for the purchase of real property

11. Adjourn

BAXTER CITY COUNCIL MINUTES
December 15, 2015

Mayor Darrel Olson, who led in the pledge to the flag, called the regular meeting of the Baxter City Council to order at 7:00 p.m.

COUNCIL MEMBERS PRESENT: Mayor Darrel Olson and Council Members Quinn Nystrom, Steve Barrows, Todd Holman, and Mark Cross

COUNCIL MEMBERS ABSENT: None

STAFF PRESENT: City Administrator Gordon Heitke, Community Development Director Josh Doty, Chief of Police Jim Exsted, Assistant City Administrator Kelly Steele, Finance Director Jeremy Vacinek, and Public Works Director Trevor Walter

CONSENT AGENDA

- A. Approve City Council Minutes from December 1, 2015
- B. Approve City Council Work Session Minutes from December 1, 2015
- C. Approve City Council 2016 Budget and Levy Informational Minutes from November 30, 2015
- D. Approve the Payment of Bills and Finance Report
- E. Approve Long Range Planning Commission Minutes from December 7, 2015.
- F. Approve Resolution 2015-118 Approving the 2016 Fee Schedule for the City of Baxter
- G. Approve 2016 Brainerd Dispatch Advertising Agreement in the Amount of \$5,000
- H. Approve the Recreation Joint Powers 2015 Operational Contribution of \$31,000 to ISD181
- I. Approve transfer of funds from Drug Forfeiture Fund to Police Minor Equipment to pay for a Tactical Shield
- J. Approve Resolution 2015-119 Accepting Sponsorship of 2016 Transportation Alternatives Program grant project for Oakwood Drive Trail Connection
- K. Approve Resolution 2015-120 Accepting Trail Facilities Agreement of 2016 Transportation Alternatives Program grant project for Oakwood Drive Trail Connection
- L. Approve Resolution 2015-121 Establishing a School Speed Zone on Fairview Road from 200 feet West of Maplewood Drive to 900 feet East of Maplewood Drive
- M. Accept the Utilities Commission Minutes of December 2, 2015.
 1. Approve the 5546 Fairview Road request to remove J-Barriers with conditions
 2. Approve the 2016 Fairview Road and Trail Improvements Project Feasibility Study
 3. Approve the WSB Excelsior Road Area Transportation Study Supplemental Traffic Analysis Report
 4. Approve the WSB Excelsior Road Intersection at Fairview Road and Edgewood Drive Intersection Control Evaluation Report

5. Approve the WSN Contract for Excelsior Road Intersection at Fairview Road and Edgewood Drive Improvements Project Feasibility Study in the not to exceed amount of \$12,500.00
6. Approve the Anderson Brothers Partial Pay Estimate No. 6 in the amount of \$107,421.20 for the 2015 Excelsior Road Improvements Project
7. Approve the Anderson Brothers Partial Pay Estimate No. 4 in the amount of \$45,131.51 for the 2015 Mill and Overlay Improvements Project
8. Approve the R. L. Larson Excavating Partial Pay Estimate No. 3 in the amount of \$658,087.63 for the 2015 Dellwood Drive, Novotny Road, Inglewood Drive and Independence Road Improvements Project
9. Approve the WSN Cost Proposal and Work Plan for Local Water Supply Plan in the Not to Exceed amount of \$7,200.00
10. Approve the WSN Proposal for Engineering Services for the Sanitary Sewer Lift Station Maintenance Plan Update in the Not to Exceed Amount of \$1,500.00
11. Approve the WSN Proposal for Engineering Services for the Lift Station No. 8 Reconstruction in the Lump Sum Amount of \$9,150.00
12. Approve final payment to Crow Wing County for the 2015 Crow Wing County's Inglewood Drive North from Woida Road to CSAH 77 Improvements Project in the amount of \$50,640.81
13. Approve moving the Utilities Commission Meeting to 5:30 p.m. starting on January 6, 2016.

MOTION by Council Member Cross, seconded by Council Member Barrows to approve the Consent Agenda with the exception of agenda item M2. Motion carries unanimously.

PULLED AGENDA ITEMS

City Administrator Heitke asked the council to remove agenda item M2, the Fairview Road feasibility study, from the consent agenda. Scott Hedlund, SEH, explained the council could revise the study at any time. With revisions, the council would want to update the costs included in the study, not the whole study. Council approval of the report would not bind the council to complete the project. The next steps would be to approve the study and order the improvement hearing with a resolution.

MOTION by Council Member Cross, seconded by Council Member Nystrom to table the approval. Motion carries unanimously.

COUNCIL COMMENTS

Mark Cross: Council Member Cross explained Community Action is conducting a gift-wrapping fundraiser in the mall.

CITY ATTORNEY'S REPORT

Closed Session under MN Statute 13D.05, Subd. 3(c)(3) to develop an offer for the purchase of real property.

Attorney Brad Person asked the council to enter into a closed session under Minnesota Statute 13D.05, Subd. 3(c)(3) to develop an offer for the purchase of real property.

MOTION by Council Member Cross, seconded by Council Member Barrows to enter a closed session at 7:12 p.m. Motion carries unanimously.

Mayor Olson opened the meeting at 7:24 p.m.

Attorney Person explained staff would continue to gather information before the council makes any decision on the offers of acquisition for land. Attorney Person recommends the council enter a closed session at the next meeting to further discuss the information gathered by staff.

MOTION by Council Member Barrows, seconded by Council Member Cross to table the discussion for further review. Motion carries unanimously.

ADJOURNMENT

MOTION by Council Member Cross, seconded by Council Member Holman to adjourn the meeting at 7:25 p.m. and return to the work session. Motion carries unanimously.

Approved by:

Respectfully submitted,

Todd Holman
Vice Mayor

Kelly Steele
Assistant City Administrator/Clerk

BAXTER CITY COUNCIL MINUTES
Work Session
December 15, 2015

Mayor Darrel Olson called the Work Session to order at 5:30 p.m.

COUNCIL MEMBERS PRESENT: Mayor Darrel Olson and Council Members Quinn Nystrom, Steve Barrows, Todd Holman, and Mark Cross

COUNCIL MEMBERS ABSENT: None

STAFF PRESENT: City Administrator Gordon Heitke, Community Development Director Josh Doty, Assistant City Administrator Kelly Steele, Public Works Director Trevor Walter, and Finance Director Jeremy Vacinek

Amended Excelsior Road Traffic Study

Chuck Rickart, WSB, explained the council approved the Excelsior Road Area Transportation Study on August 4, 2015. Since that meeting, concerns have been raised with respect to timing of the recommended alternative for the alignment of the Fairview Road extension and realignment of Edgewood Drive. The concern is that development north or south of Excelsior Road may not be completed at the same time and that the improvements may need to be completed separately.

Based on those discussions two additional alternatives were recommended to be studied. These are options that could be constructed as potential short-term solutions prior to construction of the full recommended Alternative #2.

Alternative #4 provides for a roundabout at the new Fairview Road intersection and ¾ access at the existing Edgewood Drive. This alternative would be similar to Alternative #1 with the Fairview Road connection to Excelsior Road on the west side of the site leaving Edgewood Drive where it is located today. It would however, assume a roundabout at Fairview Road and revises Edgewood Drive to a modified ¾ access intersection, not allowing the eastbound to northbound left turn until such time as the roadway was required or could be realigned.

Alternative # 5 provides for the realignment of Edgewood Drive to the west approximately 350 feet without the Fairview Road connection to the south until the roadway is constructed with future development.

Mr. Rickart explained a capacity and level of service analysis was completed for the study area intersections for 2017, which is the year after the proposed initial development would be completed,

and for the 2035 conditions, which represents the 20-year design timeframe assumed to be full development of the area.

Alternative #4 shows that all intersections would operate at overall LOS D or better in 2017 and 2035 during both the weekday morning and evening peak hours. The only exceptions are at the Edgewood Drive $\frac{3}{4}$ access intersection in 2035 during the evening peak hour would operate at an overall LOS E, and at the intersection of TH 371 and Excelsior Road in 2035 during the evening peak hour which would operate at an overall LOS E.

Alternative #5 shows that all intersections would operate at overall LOS D or better in 2017 and 2035 during both the weekday morning and evening peak hours. The only exception is at the intersection of TH 371 and Excelsior Road in 2035 during the evening peak hour that would operate at an overall LOS E.

Mr. Rickart explained based on the supplemental traffic analysis, two additional alternatives were included with the analysis to provide a connection from Fairview Road to Excelsior Road to accommodate potential phasing of future development in the area. Alternative #4 Fairview Road connection to Excelsior Road without realignment of the existing Edgewood Drive with a roundabout at Fairview Road and $\frac{3}{4}$ intersection at Edgewood Drive. Alternative #5 Edgewood Drive realignment with no Fairview Road connections.

Intersection traffic operations for the 2017 and 2035 build alternatives shows that all intersections would operate at overall LOS D or better in 2017 and 2035 during both the weekday morning and evening peak hours. The only exceptions are with Alternative #4 at the Edgewood Drive $\frac{3}{4}$ access intersection in 2035 during the evening peak hour would operate at an overall LOS E and for both Alternative #4 and #5 at the intersection of TH 371 and Excelsior Road in 2035 during the evening peak hour which would operate at an overall LOS E.

Based on the analysis either short-term alternative would provide safe and efficient vehicle operation in 2017, however by 2035 the recommended Alternative #2 from the original traffic study should be constructed.

Mr. Rickart explained based on these conclusions it is recommended to allow either Alternative #4 or #5 as a short term improvement depending on how development occurs adjacent to Excelsior Road and construct the Fairview Road to Excelsior Road Alternative #2 recommended plan as adopted when development occurs both north and south of Excelsior Road or prior to 2035.

Excelsior Road ICE Report

Mr. Rickart explained the report documents the existing conditions, operations, and safety concerns at the intersection and analyzes the proposed future traffic volumes with the existing and proposed traffic control and lane geometry.

For analysis purposes, a 20-year (2035) forecast was developed for turning movements at the intersection. Several traffic control options were studied for the intersection of Excelsior Road and Fairview Road/Edgewood Drive, including an all-way stop, traffic signal, and a roundabout.

The intersection of Excelsior Road and Edgewood Drive does not currently meet the guidance for an all-way stop. Although no traffic warrants for roundabouts currently exist, if a traffic signal or an all-way stop warrant is met, a roundabout should also be considered as a warranted traffic control device. There are no signal or all-way stop warrants that are currently met for this intersection. A roundabout will improve future roadway conditions now and into the future. A roundabout would be constructed with the extension of Fairview Road and the realignment of Edgewood Drive. The ICE report will be submitted to MnDOT for review. A feasibility study will be prepared to provide design details, cost, and funding. The city would have to acquire right-of-way for the roundabout. The roundabout would be designed as a one-lane roundabout. If the city would consider adding a lane in the future, the additional right-of-way should be acquired now.

Fairview Road and Parallel Trail Project

City Administrator Heitke explained he has prepared some alternatives from comments received during the public hearing. City Administrator Heitke further explained there are some issues with the alternatives and timing concerns requiring council discussion.

Scott Hedlund, SEH, explained he would like to discuss the feedback received from the informational meeting, the project construction options, and the project schedule. Mr. Hedlund described a common concern expressed during the informational meeting was the need to provide screening from the trail; however the screening will add significant cost to the project. Mr. Hedlund summarized comments received from the property owners. A majority of the association property owners were against the trail. Mr. Hedlund received written comments from both churches. Mr. Hedlund asked the council what is the goal of the trail. Mr. Hedlund reviewed various trail routes and explained state aid standards for trails.

MOTION by Council Member Barrows, seconded by Council Member Nystrom to recess the work session at 6:57 p.m. and to resume following the completion of the regular meeting. Motion carries unanimously.

The Council resumed the work session at 7:25 p.m.

The consensus of the council was to move forward with a five-foot bike and pedestrian lanes on both sides of Fairview Road, the project would be constructed in 2016, and a trail would be constructed from Knollwood Drive to Inglewood Drive. Mr. Hedlund explained he would draft an updated project schedule and reminded the council negotiating easements is not included of the scope of the current SEH contract.

E-Cigarettes

Assistant City Administrator Steele explained based on previous council discussions an ordinance amendment was prepared to provide for licensing of e-cigarettes and to address sampling of licensed establishments. A second ordinance was drafted to prohibit the use of e-cigarettes in all public spaces the Minnesota Clean Indoor Air Act covers with a specific description allowing e-cigarette sampling in tobacco product shops. Alicia Bauman, with CentraCare, explained if the council moves to prohibit the indoor use of e-cigarettes in all public Baxter locations, she is available to help implement the new ordinance.

City Administrator Heitke explained he reached out to Crow Wing County and the city of Brainerd but neither expressed interest in considering a ban.

The consensus of the council was to move forward for adoption on January 5, 2016.

Adjournment

MOTION by Council Member Cross, seconded by Council Member Barrows to adjourn at 7:45 p.m. Motion carries unanimously.

Approved by:

Respectfully submitted,

Todd Holman
Vice Mayor

Kelly Steele
Assistant City Administrator/Clerk

REQUEST FOR COUNCIL ACTION

January 5, 2016

Department Origination: Administration **Agenda Section:** Consent

Agenda Item: Resolution 2016-001 Establishing the 2016 Council Appointments

Approval Required: Simple Majority of Vote of the Council

BACKGROUND

Minnesota Statutes authorizes the mayor and city council to appoint members to serve on various commissions, boards, and committees. The attached resolution provides for council member appointments.

FINANCIAL IMPLICATIONS

There are no direct extraordinary fiscal implications from these appointments.

STAFF RECOMMENDATIONS

No staff recommendation.

COUNCIL ACTIONS REQUESTED

Motion to adopt Resolution 2016-001 Establishing the 2016 Council Appointments.

Attachment:

1. Resolution 2016-001 Establishing the 2016 Council Appointments

RESOLUTION 2016-001

A RESOLUTION ESTABLISHING THE 2016 ANNUAL APPOINTMENTS

WHEREAS, Minnesota Statutes authorize the City Council to make various appointments to commissions, boards and committees from its members,

NOW THEREFORE BE IT RESOLVED, the Baxter City Council establishes the following appointments for 2016 as follows:

Parks & Recreation Commission	Quinn Nystrom
Planning & Zoning Commission	Steve Barrows
Utilities Commission	Mark Cross
Long Range Planning Commission	Todd Holman
Architectural Review Committee	Mark Cross
Brainerd Fire Advisory Board	Darrel Olson
Joint Powers Recreation Board	Darrel Olson
Northland Arboretum Board	Darrel Olson
Community Behavioral Health Hospital Advisory Board	Quinn Nystrom
The Center	Steve Barrows

Adopted by the Baxter City Council this 5th day of January, 2016.

Todd Holman
Vice Mayor

ATTEST:

Kelly Steele
Assistant City Administrator/Clerk

REQUEST FOR COUNCIL ACTION

January 5, 2016

Department Origination: Administration

Agenda Section: Consent

Agenda Item: Resolution 2016-002 Establishing the 2016 Annual Designations

Approval Required: Simple Majority of Vote of the Council

BACKGROUND

Minnesota Statutes 412.02, Subd. 2 require city councils to make certain designations at the first meeting of the year. The attached resolution provides for the designations as required by law and also staff and consultant designations. It is understood that designations may be modified by action of the City Council within the calendar year.

FINANCIAL IMPLICATIONS

There are no direct extraordinary fiscal implications from these appointments.

STAFF RECOMMENDATIONS

Staff recommends the designations included in Resolution 2016-002.

COUNCIL ACTIONS REQUESTED

Motion to adopt Resolution 2016-002 Establishing the 2016 Annual Designations.

Attachment:

1. Resolution 2016-002 Establishing the 2016 Annual Designations

RESOLUTION 2016-002

A RESOLUTION ESTABLISHING THE 2016 ANNUAL DESIGNATIONS

WHEREAS, Minnesota Statutes require and authorize the City Council to make various designations at its first meeting of the year, and

WHEREAS, the City Council designates city staff and consultants to carry out specific functions and responsibilities,

NOW THEREFORE BE IT RESOLVED, the Baxter City Council establishes the following designations for 2016 as follows:

Official Newspaper	Brainerd Daily Dispatch
City Depositories	Bremer Bank, N.A.; Stifel, Nicolaus and Company; Wells Fargo Securities; and PMA Financial Network, Inc. (4M Fund)
Acting Mayor	Todd Holman
Brainerd Lakes Area Economic Development Corporation	City Administrator
Emergency Management Director	Police Chief
City Engineer	Trevor Walter
Consulting Engineer	Widseth, Smith, Nolting & Assoc. Short Elliott Hendrickson Inc. WSB & Associates, Inc. Bolton & Menk, Inc.
Attorneys	Brad Person (civil) Matt Mallie (prosecution) Kennedy & Graven (bond counsel) Madden Galanter Hansen, LLP (personnel)
Data Practices Responsible Authority	Assistant City Administrator/Clerk

Data Practices Compliance Official

Assistant City Administrator/Clerk

Assistant Weed Inspector

Public Works Director

Adopted by the Baxter City Council this 5th day of January, 2016.

CITY OF BAXTER, MINNESOTA

Todd Holman
Vice Mayor

ATTEST:

Kelly Steele
Assistant City Administrator/Clerk

REQUEST FOR COUNCIL ACTION

January 5, 2016

Department Origination: Administration

Agenda Section: Consent

Agenda Item: F. Approve Ordinance 2016-001 Amending the Text of Title 5, Chapter 6 Tobacco and Tobacco Related Devices, of the Baxter City Code and Approve Ordinance 2016-002 Summary Publication of Ordinance 2016-001

G. Approve Ordinance 2016-003 Regulating the Use of Electronic Delivery Devices within the City of Baxter Minnesota and Ordinance 2016-004 Summary Publication of Ordinance 2016-003

Approval Required: 4/5 Vote of the Council

BACKGROUND

As discussed during the December 15, 2015 council work session, an ordinance amendment was prepared to provide for licensing of e-cigarettes and address sampling of licensed establishments. A second ordinance was drafted to prohibit the use of e-cigarettes in all public spaces the Minnesota Clean Indoor Air Act covers with a specific description allowing e-cigarette sampling in tobacco product shops.

FINANCIAL IMPLICATIONS

The financial implication to the city in adopting the ordinances is the cost of their publication. To save on publication expenses, both ordinances have been summarized for publication purposes. Council approval of summary ordinances require a 4/5 vote of the council.

STAFF RECOMMENDATIONS

Motion to adopt Ordinance 2016-001 Amending the Text of Title 5, Chapter 6 of the Baxter City Code, Ordinance 2016-002 Summary Publication of Ordinance 2016-001, Ordinance 2016-003 Regulating the Use of Electronic Delivery Devices within the City of Baxter Minnesota, and Ordinance 2016-004 Summary Publication of Ordinance 2016-003.

COUNCIL ACTION REQUESTED

Motion to adopt Ordinance 2016-001 Amending the Text of Title 5, Chapter 6 of the Baxter City Code, Ordinance 2016-002 Summary Publication of Ordinance 2016-001, Ordinance 2016-003 Regulating the Use of Electronic Delivery Devices within the City of Baxter Minnesota, and Ordinance 2016-004 Summary Publication of Ordinance 2016-003.

Attachments:

1. Ordinance 2016-001 Amending the Text of Title 5, Chapter 6 of the Baxter City Code
2. Ordinance 2016-002 Summary Publication of Ordinance 2016-001

3. Ordinance 2016-003 Regulating the Use of Electronic Delivery Devices within the City of Baxter Minnesota
4. Ordinance 2016-004 Summary Publication of Ordinance 2016-003

ORDINANCE NO. 2015-001

AN ORDINANCE TO AMEND THE REGULATING THE POSSESSION, SALE AND CONSUMPTION OF TOBACCO AND TOBACCO RELATED DEVICES AND PRODUCTS WITHIN THE CITY OF BAXTER MINNESOTA

THE CITY COUNCIL OF THE CITY OF BAXTER, MINNESOTA DOES ORDAIN:

Section

- 1 Purpose and intent
- 2 Definitions
- 3 License
- 4 Fees
- 5 Basis for denial of license
- 6 Prohibited sales
- 7 Self-service sales
- 8 Responsibility
- 9 Compliance checks and inspections
- 10 Other illegal acts
- 11 Exceptions and defenses
- 12 Severability
- 13 Violations and penalty

SECTION 1. PURPOSE AND INTENT.

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products, tobacco-related devices, and ~~nicotine or lobelia delivery devices~~ electronic delivery devices, and the sales, possession, and use are violations of both state and federal laws; and because studies, which the city hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this ordinance shall be intended to regulate the sale, possession and use of tobacco, tobacco products, tobacco-related devices, and ~~nicotine or lobelia delivery devices~~ electronic delivery devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco-related devices, and ~~nicotine or lobelia delivery devices~~ electronic delivery devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time. In making these findings, the City Council accepts the conclusions and recommendations of Center for Disease Control in their study "Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997," and of the following medical professionals in these

medical journals: Khuder SA, et al., "Age at Smoking Onset and its Effect on Smoking Cessation," *Addictive Behavior* 24(5):673-7, September-October 1999; D'Avanzo B, et al., "Age at Starting Smoking and Number of Cigarettes Smoked," *Annals of Epidemiology* 4(6):455-59, November 1994; Chen, J & Millar, WJ, "Age of Smoking Initiation: Implications for Quitting," *Health Reports* 9(4):39-46, Spring 1998; Everett SA, et al., "Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students," *Preventive Medicine*, 29(5):327-33, November 1999, copies of which are adopted by reference.

SECTION 2. DEFINITIONS.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, and ~~nicotine or lobelia~~ **electronic** delivery devices are following and complying with the requirements of this ordinance. **COMPLIANCE CHECKS** shall involve the use of minors as authorized by this ordinance. **COMPLIANCE CHECKS** shall also mean the use of minors who attempt to purchase tobacco, tobacco products, tobacco-related devices, or ~~nicotine or lobelia delivery devices~~ **electronic delivery devices** for educational, research and training purposes as authorized by state and federal laws. **COMPLIANCE CHECKS** may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to tobacco, tobacco products, tobacco-related devices, and ~~nicotine or lobelia~~ **electronic** delivery devices.

ELECTRONIC DELIVERY DEVICES. Electronic Delivery Device shall mean any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device shall include any component part of such product whether or not sold separately. Electronic delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.

INDIVIDUALLY PACKAGED. The practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include but not be limited to single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this definition shall not be considered individually packaged.

INDOOR AREA. All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

LOOSIES. The common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term "loosies" does not include individual cigars with a retail price, before any sales taxes, of more than \$2.00 per cigar.

MINOR. Any natural person who has not yet reached the age of 18 years.

MOVEABLE PLACE OF BUSINESS. Any form of business operated out of a truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

~~**NICOTINE OR LOBELIA DELIVERY DEVICES.** Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.~~

RETAIL ESTABLISHMENT. Any place of business where tobacco, tobacco products, tobacco-related devices, or ~~nicotine or lobelia delivery devices~~ electronic delivery devices are available for sale to the general public. The phrase shall include but not be limited to grocery stores, convenience stores, restaurants, and drug stores.

SALE. Any transfer of goods for money, trade, barter or other consideration.

SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products, tobacco-related devices, or ~~nicotine or lobelia delivery devices~~ electronic delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, or ~~nicotine or lobelia~~ electronic delivery devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, tobacco-related device, or ~~nicotine or lobelia delivery device~~ electronic delivery device between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.

SMOKING. Inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product, or inhaling or exhaling vapor from any electronic delivery device. Smoking ~~shall include also includes~~ carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.

TOBACCO or TOBACCO PRODUCTS. Tobacco and tobacco products includes cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking

tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

TOBACCO PRODUCTS SHOP. Tobacco Products Shop shall mean any licensed retail establishment that derives at least 90 percent of its revenue from tobacco or tobacco products and where no person under the age of eighteen is present, or permitted to enter, at any time.

TOBACCO-RELATED DEVICES. Tobacco-related devices includes any tobacco product as well as a pipe, rolling papers, ashtray, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, ~~or tobacco-related devices~~ or electronic delivery devices upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, ~~or tobacco-related device,~~ or electronic delivery device.

SECTION 3. LICENSE.

(A) *License required.* No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related device, or ~~nicotine or lobelia electronic~~ delivery device without first having obtained a tobacco retailer license to do so from the city.

(B) *Application.* An application for a license to sell tobacco, tobacco products, tobacco-related devices, or ~~nicotine or lobelia electronic~~ delivery devices shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Clerk shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

(C) *Action.* The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Clerk shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.

(D) *Term.* All licenses issued under this section shall be valid for one calendar year from the

date of issue.

(E) *Revocation or suspension.* Any license issued under this section may be revoked or suspended as provided in Section 14.

(F) *Transfers.* All licenses issued under this section shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.

(G) *Moveable place of business.* No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this section.

(H) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

(I) *Renewals.* The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license.

(J) *Issuance as privilege and not a right.* The issuance of a license issued under this section shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

~~(K) *Smoking.* Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling tobacco and tobacco related products is prohibited.~~

(K) *Sampling.* Using electronic delivery devices for the purpose of sampling tobacco and tobacco related products is prohibited other than in a tobacco product shop as defined in section 2.

Penalty, see Section 14.

SECTION 4. FEES.

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be established in the city's Ordinance Establishing Fees and Charges, as it may be amended from time to time.

Penalty, see Section 14.

SECTION 5. BASIS FOR DENIAL OF LICENSE.

(A) Grounds for denying the issuance or renewal of a license under this chapter include but

are not limited to the following:

(1) The applicant is under the age of 18 years.

(2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to tobacco, tobacco products, tobacco-related devices, or ~~nicotine or lobelia~~ electronic delivery devices.

(3) The applicant has had a license to sell tobacco, tobacco products, tobacco-related devices, or ~~nicotine or lobelia~~ electronic delivery devices revoked within the preceding 12 months of the date of application.

(4) The applicant fails to provide any information required on the application, or provides false or misleading information.

(5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.

(B) However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license.

(C) If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this chapter.

Penalty, see Section 14.

SECTION 6. PROHIBITED SALES.

It shall be a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, or ~~nicotine or lobelia~~ electronic delivery device:

(A) To any person under the age of 18 years.

(B) By means of any type of vending machine.

(C) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product, tobacco-related device, or ~~nicotine or lobelia~~ electronic delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or ~~nicotine or lobelia~~ electronic delivery device between the licensee, or the licensee's employee, and the customer.

(D) By means of loosies as defined in Section 2.

(E) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic or controlled substances except nicotine and other

substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products.

(F) By any other means, to any other person, on in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.

Penalty, see Section 14.

SECTION 7. SELF-SERVICE SALES.

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, tobacco-related devices, or ~~nicotine or lobelia electronic~~ delivery devices by any means where by the customer may have access to those items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or ~~nicotine or lobelia electronic~~ delivery device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, tobacco-related devices, and ~~nicotine or lobelia electronic~~ delivery devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products, tobacco-related devices, or ~~nicotine or lobelia electronic~~ delivery devices at the time this chapter is adopted shall comply with this section within 90 days following the effective date of this chapter.

Penalty, see Section 14.

SECTION 8. RESPONSIBILITY.

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco-related devices, or ~~nicotine or lobelia electronic~~ delivery devices on the licensed premises, and the sale of an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation.

Penalty, see Section 14.

SECTION 9. COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of 15 years but less than 18 years to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco-related devices, or ~~nicotine or lobelia electronic~~ delivery devices. Minors used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. Minors used for

compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco-related devices, or ~~nicotine or lobelia~~ electronic delivery devices when those items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law.

Penalty, see Section 14.

SECTION 10. OTHER ILLEGAL ACTS.

Unless otherwise provided, the following acts shall be a violation of this chapter:

(A) *Illegal sales.* It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product, tobacco-related device, or ~~nicotine or lobelia~~ electronic delivery device to any minor.

(B) *Illegal possession.* It shall be a violation of this chapter for any minor to have in his or her possession any tobacco, tobacco product, tobacco-related device, or ~~nicotine or lobelia~~ electronic delivery device. This division (B) shall not apply to minors lawfully involved in a compliance check.

(C) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, sniff, inhale or otherwise use any tobacco, tobacco product, tobacco-related device, or ~~nicotine or lobelia~~ electronic delivery device.

(D) *Illegal procurement.* It shall be a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device, or ~~nicotine or lobelia~~ electronic delivery device, and it shall be a violation of this chapter for any person to purchase or otherwise obtain those items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, tobacco-related device, or ~~nicotine or lobelia~~ electronic delivery device. This division (D) shall not apply to minors lawfully involved in a compliance check.

(E) *Use of false identification.* It shall be a violation of this chapter for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

Penalty, see Section 14.

SECTION 11. EXCEPTIONS AND DEFENSES.

Nothing in this chapter shall prevent the providing of tobacco, ~~tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices~~ to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as described by state law.

SECTION 12. SEVERABILITY.

If any section or provision of this ordinance is held invalid, such invalidity shall not affect other sections or provisions which can be given force and effect without the invalidated section or provision.

SECTION 13. VIOLATIONS AND PENALTY.

(A) *Misdemeanor prosecution.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.

(B) *Violations.*

(1) *Notice.* A person violating this chapter may be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter. The citation shall provide notice that a hearing must be requested within ten (10) business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The citation shall provide information on how and where a hearing may be requested, including a contact address and phone number.

(2) *Hearings.*

(a) Upon issuance of a citation, a person accused of violating this chapter may request in writing a hearing on the matter. Hearing requests must be made within ten (10) business days of the issuance of the citation and delivered to the city clerk or other designated city officer. Failure to request a hearing within ten (10) business days of the issuance of the citation will terminate the person's right to a hearing.

(b) The city clerk or other designated city officer shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least ten (10) business days prior to the hearing.

(3) *Hearing Officer.* The city official designated by the City Council shall serve as the hearing officer. The hearing officer must be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

(4) *Decision.*

(a) A decision shall be issued by the hearing officer within ten (10) business days. If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under division (B) of this section, shall be recorded in writing, a copy of which shall be provided to the city and the accused violator by in person delivery or mail as soon as practicable. Likewise, if the

hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the city and the acquitted accused violator by in person delivery or mail as soon as practicable.

(b) *Costs.* If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000.00 shall be paid by the person requesting the hearing.

(c) The decision of the hearing officer is final.

(5) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred within ten (10) business days.

(6) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(C) *Administrative penalties.*

(1) *Licensees.* Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine of \$75 for a first violation of this chapter; \$200 for a second offense at the same licensed premises within a 24-month period; and \$250 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven consecutive days.

(2) *Other individuals.* Other individuals, other than minors regulated by division (C)(3) of this section, found to be in violation of this chapter shall be charged an administrative fine of \$50.

(3) *Minors.* Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, tobacco-related devices, or ~~nicotine or lobelia~~ **electronic** delivery devices, shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the city believes will be appropriate and effective. The administrative fine or other penalty shall be established by City Council ordinance upon the City Council's consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the city. This administrative fine or other penalty may also be established from time to time by the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

(4) *Statutory penalties.* If the administrative penalties authorized to be imposed by M.S. § 461.12, as it may be amended from time to time, differ from those established in this section, then the statutory penalties shall prevail.

SECTION 14. EFFECTIVE DATE.

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by [Minn. Stat. § 412.191, subd. 4](#), as it may be amended

from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

Todd Holman, Vice Mayor

ATTEST:

~~Gordon Heitke~~ Kelly Steele, Assistant City Administrator

City Seal

Published in the Brainerd Daily Dispatch on _____, 2015
~~Recorded with the County Recorder on _____, 2013~~

Drafted By:
The City of Baxter
P.O. Box 2626
13190 Memorywood Drive
Baxter, MN 56425

**CITY OF BAXTER, MINNESOTA
ORDINANCE 2016-002**

SUMMARY OF ORDINANCE NO. 2016-001

AN ORDINANCE AMENDING THE TEXT OF TITLE 5, CHAPTER 6 (TOBACCO AND TOBACCO RELATED DEVICES AND PRODUCTS) OF THE BAXTER CITY CODE

This ordinance amends the text of the Tobacco and Tobacco Related Devices and Products Regulations (Title 5, Chapter 6 of the City Code). The ordinance consists of amendments to definitions and licensing.

A printed copy of the entire amended ordinance is available for inspection by any person at City Hall during the City Clerk's regular office hours.

Whereupon, said Ordinance is hereby declared adopted on this 5th day of January 2016.

Todd Holman, Vice Mayor

ATTEST:

Kelly Steele, Assistant City Administrator/Clerk

City Seal

ORDINANCE NO. 2016-003

**AN ORDINANCE REGULATING THE USE OF ELECTRONIC DELIVERY DEVICES
WITHIN THE CITY OF BAXTER MINNESOTA**

THE CITY COUNCIL OF THE CITY OF BAXTER, MINNESOTA DOES ORDAIN:

SECTION 1. PURPOSE AND INTENT

Unregulated electronic delivery devices, commonly referred to as electronic cigarettes, or e-cigarettes, closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine or other substances created by heat through an electronic ignition system. After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that quality control processes used to manufacture these products are inconsistent or non-existent. ("Summary of results: Laboratory analysis of electronic cigarettes conducted by FDA, "Food and Drug Administration (FDA), July 22, 2009; <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm>)

Electronic delivery devices produce a vapor of undetermined and potentially harmful substances, which may appear similar to smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.

SECTION 2. DEFINITIONS

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this Ordinance, the following definitions shall apply:

Electronic Delivery Device. Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of aerosol or vapor from the product. The term includes any such devices, whether they are manufactured, distributed, marketed or sold as e-cigarettes, e-cigars, e-pipes, or under any other product name or descriptor.

Indoor Area. All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A 0.011 gauge window screen with an 18 by 16 mesh count is not considered a wall.

Use. The inhaling or exhaling of aerosol or vapor from any electronic delivery device. Use shall also mean being in possession of an electronic delivery device that is turned on or otherwise activated.

Retail Tobacco Shop. Tobacco Products Shop shall mean any licensed retail establishment that derives at least 90 percent of its revenue from the sale of tobacco or electronic delivery devices and where no person under the age of eighteen is present, or permitted to enter, at any time.

SECTION 3. PROHIBITION

The use of any electronic delivery device is prohibited anywhere smoking is prohibited by the Minnesota Clean Indoor Act, as it may be amended from time to time.

SECTION 4. OTHER APPLICABLE LAWS

This Ordinance is intended to complement the Minnesota Clean Indoor Air Act, Minnesota Statutes sections 144.411 to 144.417, as it may be amended from time to time. Nothing in this Ordinance authorizes smoking or the use of an electronic delivery device in any location that is regulated by other applicable laws or regulations.

SECTION 5. SAMPLING

Smoking is prohibited within the indoor area of any retail establishment with a tobacco retailer license. This prohibition does not apply to the use of electronic delivery devices for the purposes of sampling in a tobacco products shop as defined in section 2.

SECTION 6. VIOLATION AND PENALTIES

Subd. 1. Use Where Prohibited. It is a violation of this Ordinance for any person to use an electronic delivery device in an area where prohibited by this Ordinance, or to use an electronic delivery device in an area where prohibited by a private policy established by the proprietor or other person in charge of the area.

Subd. 2. Proprietors. It is a violation of this Ordinance for the proprietor, person, or entity that owns, leases, manages, operates, or otherwise controls the use of an area in which the use of an electronic delivery device is prohibited under this Ordinance to knowingly fail to comply with the provisions of this Ordinance.

Subd. 3. Penalties. A person who violates any provision of this Ordinance is guilty of a petty misdemeanor. Each day of violation constitutes a separate offense.

SECTION 7. EFFECTIVE DATE

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

Todd Holman, Vice Mayor

ATTEST:

Kelly Steele, Assistant City Administrator

City Seal

**CITY OF BAXTER, MINNESOTA
ORDINANCE 2016-004**

SUMMARY OF ORDINANCE NO. 2016-003

**AN ORDINANCE REGULATING THE USE OF ELECTRONIC DELIVERY DEVICES WITHIN
THE CITY OF BAXTER**

This ordinance regulates the use of electronic delivery devices within the City of Baxter Minnesota. The ordinance prohibits the use of electronic delivery devices in all public spaces the Minnesota Clean Indoor Air Act covers with a specific description allowing e-cigarette sampling in tobacco product shops.

A printed copy of the entire amended ordinance is available for inspection by any person at City Hall during the City Clerk's regular office hours.

Whereupon, said Ordinance is hereby declared adopted on this 5th day of January 2016.

Todd Holman, Vice Mayor

ATTEST:

Kelly Steele, Assistant City Administrator/Clerk

City Seal

**CITY OF BAXTER MINNESOTA
RESOLUTION 2016-003**

**RESOLUTION RECEIVING FEASIBILITY REPORT AND CALLING HEARING ON
IMPROVEMENT FOR THE 2016 FAIRVIEW ROAD AND TRAIL IMPROVEMENT
PROJECT**

WHEREAS, pursuant to a resolution the council adopted November 17, 2015 a report has been prepared by SEH Inc. with reference to Improvement Number 4113, the improvement of Fairview Road from approximately 300 feet west of Memorywood Drive to Inglewood Drive and pedestrian trail improvements from Art Ward Drive to Inglewood Drive (with spur connections along Kenwood Drive and Knollwood Drive south to Fairview Road); this report was received by the council on January 5, 2016; and

WHEREAS, the report provides information regarding whether the proposed improvement is necessary, cost-effective, and feasible; whether it should best be made as proposed or in connection with some other improvement; the estimated cost of the improvement as recommended; and a description of the methodology used to calculate individual assessments for affected parcels.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF BAXTER, MINNESOTA:

1. The council will consider the improvement of such streets and trails in accordance with the report and the assessment of abutting properties located on Fairview Road from approximately 300 feet west of Memorywood Drive to Inglewood Drive for all or a portion of the cost of the improvement pursuant to Minnesota Statutes, Chapter 429 at an estimated total cost of the improvement of \$2,916,528.68.
2. A public hearing shall be held on such proposed improvement on Monday, February 1, 2016 in the council chambers of the city hall at 6:00 p.m. and the clerk shall give mailed and published notice of such hearing and improvement as required by law.

Whereupon, said Resolution is hereby declared adopted on this 5th day of January, 2016.

Todd Holman, Vice Mayor

ATTEST:

Kelly Steele, Assistant City Administrator/Clerk

City Seal

**CITY OF BAXTER, MINNESOTA
RESOLUTION 2016-004**

RESOLUTION OF SUPPORT FROM SPONSORING AGENCY

BE IT RESOLVED that the City of Baxter act as sponsoring agency for a Transportation Enhancement Project identified as the "Inglewood Drive Extension and Railroad Crossing" and acknowledges herewith that it is willing to be the project sponsor, knowing full well that such sponsorship includes a willingness to secure and guarantee the local share of costs associated with this project and responsibility for seeing this project through to its completion, with compliance of all applicable laws, rules and regulations.

BE IT FURTHER RESOLVED that Public Works Director Trevor Walter is hereby authorized to act as agent on behalf of this applicant.

AGREEMENT TO MAINTAIN FACILITY

WHEREAS: The Federal Highway Administration (FHWA) required that states agree to operate and maintain facilities constructed with federal transportation funds for the useful life of the improvement and not change the use of right of way acquired without prior approval from the FHWA; and

WHEREAS: Transportation enhancement projects receive federal funding from the Fixing America's Surface Transportation (FAST) Act (formerly SAFETEA - LU); and

WHEREAS: City of Baxter is the project sponsor for the transportation project identified as the "Inglewood Drive Extension and Railroad Crossing".

THEREFORE, BE IT RESOLVED THAT the Project Sponsor hereby agrees to assume full responsibility for the operation and maintenance of property and facilities related to the aforementioned transportation enhancement project.

CERTIFICATION

I hereby certify that the foregoing resolution is a true and correct copy of a resolution adopted by the City of Baxter on this 5th day of January, 2016.

CITY OF BAXTER, MINNESOTA

Todd Holman, Vice Mayor

ATTEST:

Kelly Steele, Assistant City Administrator/Clerk

REQUEST FOR COUNCIL ACTION

01.05.2016

Department Origination: IT

Agenda Section: Consent

Agenda Item: Approve the TKDA Proposal for Professional Engineering Services for the Fixed Network Water Meter Reading System Project in the not to exceed amount of \$12,000.00

Approval Required: Simple Majority of Vote of the Council

BACKGROUND

As part of continuing efforts to provide improved service to citizens and increase City process efficiencies, the City is proposing to install a fixed network water meter reading system in 2016. This system will eliminate the need for residents to read and submit meter readings or the need for City staff to collect meter readings in the field, in addition to providing other customer service benefits.

Due to the project scope, myriad of equipment technology options, signal propagation analysis, etc., staff is proposing to utilize TKDA to provide professional services related to preparing plans and specifications, bid advertisement and evaluation, and construction contract administration. Based on their experience providing similar services to other cities and following communications with those cities, staff considers TKDA to be well suited to provide the necessary expertise required for this project.

FINANCIAL IMPLICATIONS

This expenditure is part of the fixed network water meter reading system project, which is included in the 2016 adopted budget, with funding from local option sales tax collections.

STAFF RECOMMENDATIONS

Staff recommends approving the TKDA proposal for professional engineering services.

COUNCIL ACTION REQUESTED

Approve the TKDA Proposal for Professional Engineering Services for the Fixed Network Water Meter Reading System Project in the not to exceed amount of \$12,000.00.

Attachment:

1. TKDA Proposal for Engineering Services



444 Cedar Street, Suite 1500
Saint Paul, MN 55101
651.292.4400
tkda.com

December 17, 2015

Via Email Only: gordon.heitke@ci.baxter.mn.us

Mr. Gordon Heitke
City Administrator, City of Baxter
13190 Memorywood Drive
Baxter, Minnesota 56425

Re: Proposal for Engineering Services
Water Meter Replacement Project
City of Baxter, Minnesota

Dear Mr. Heitke:

Pursuant to communications with you and Mr. Todd DeBoer, we propose to provide Engineering Services in connection with the proposed Water Meter Replacement in Baxter, Minnesota, hereinafter called the Project. Our services will be provided in the manner described in this Proposal subject to the terms and conditions set forth in the attached "General Provisions of Engineer-Architect Agreement" dated July 2009. Hereinafter, the City of Baxter is referred to as the CLIENT.

I. PROJECT DESCRIPTION

The CLIENT proposes to replace approximately 2,800 water meters in their service area with a fixed network water metering system. TKDA will work with the CLIENT's staff to select metering system equipment, develop a Project schedule, prepare plans and specifications for purchase of new metering equipment, advertise and obtain competitive bids for the water metering system equipment/materials and installation. TKDA will assist the CLIENT with construction contract administration through internet services and process contractor Project pay requests and change orders.

II. SERVICES TO BE PROVIDED BY TKDA

Based on TKDA's understanding of the Project, we propose to provide the following services:

A. PLANS AND SPECIFICATIONS

1. Attend one meeting with the CLIENT's staff to discuss Project requirements, evaluate and select metering equipment, and prepare project schedule and procedures.
2. Prepare performance-based plans and specifications that will be used to obtain competitive bids for the Project materials and for metering system installation.
3. Prepare an opinion of probable costs for the Project. Produce four sets of plans and specifications for use in bidding and place Project on QuestCDN.

B. BIDDING PHASE

1. Submit an advertisement for bids as needed to meet legal requirements.
2. Attend the bid opening, prepare bid tabulation, and assist the CLIENT in evaluating bids received.

Mr. Gordon Heitke
City Administrator, City of Baxter
Proposal for Engineering Services - Water Meter Replacement Project
December 17, 2015
Page 2

3. Provide the CLIENT with a letter of recommendation regarding award of the contract, and assist the CLIENT with securing the Project contract.

C. CONSTRUCTION CONTRACT ADMINISTRATION

1. Attend one Project preconstruction meeting.
2. Prepare and process contractor pay requests and change orders.

III. ADDITIONAL SERVICES

If authorized in writing by the CLIENT, we will furnish or obtain from others Additional Services of the types listed below which are not considered as basic services under this Proposal. Additional Services shall be billable on an Hourly Time and Materials basis and such billings shall be over and above any maximum amounts set forth in this Proposal.

- A. Attend additional Project meetings with the CLIENT's staff beyond those included in SECTION II, if required by the CLIENT.
- B. Additional construction phase assistance beyond that included in SECTION II.C.
- C. Observations during the guarantee period and related services.

IV. CLIENT'S RESPONSIBILITIES

These responsibilities shall be as set forth in Article 8 of the General Provisions and as further described or clarified hereinbelow:

- A. Designate one individual to act as a representative with respect to the work to be performed, and such person shall have complete authority to transmit instructions, receive information, interpret and define policies, and make decisions with respect to critical elements pertinent to the Project. That individual shall be identified in the signature block area of this Proposal.
- B. Provide access to the CLIENT's files, records, and data pertaining to the Project.
- C. Provide reasonable access to CLIENT's accounts and meter data included in the Project.
- D. Provide input and review of submitted plans and specifications, and assistance in Project scheduling.

V. PERIOD OF SERVICE

We would expect to start our services promptly upon receipt of your written acceptance of this Proposal and to complete SECTION II services by November 30, 2016. Following is our proposed Project Schedule:

Prepare Plans and Specifications	January-February 2016
Advertise and Secure Bids	March 2016
Award and Issue Construction Contract	April 2016
Installation of Equipment and Water Meters	June-October 2016
Final Completion/Project Close-Out	November 2016



Mr. Gordon Heitke
City Administrator, City of Baxter
Proposal for Engineering Services - Water Meter Replacement Project
December 17, 2015
Page 3

VI. COMPENSATION

Compensation to TKDA for services provided as described in SECTION II of this Proposal shall be on an Hourly Time and Materials basis in the estimated amount of \$12,000. Our detailed Project Fee Estimate and Hourly Rate Schedule are attached. Payment shall be made in accordance with Article 3 of the attached General Provisions.

VII. CONTRACTUAL INTENT

We thank you for the opportunity to submit this Proposal. We agree that this letter and attachments constitute a contract between us upon its signature by an authorized official of the City of Baxter and the return of a signed copy to us. This Proposal will be open for acceptance for 60 days, unless the provisions herein are changed by us in writing prior to that time.

Sincerely,



Verne E. Jacobsen, PE
Project Manager



Dennis M. Postler, PE
Vice President, Municipal Services

VEJ:DMP:adh

ATTACHMENTS: SCHEDULE 2900-M90
PROJECT FEE ESTIMATE
GENERAL PROVISIONS

ACCEPTED FOR THE CITY OF BAXTER, MINNESOTA

By: _____
(signature) Printed Name/Title Date

CLIENT'S DESIGNATED REPRESENTATIVE:

Name/Title Phone Email





2016 SCHEDULE OF HOURLY BILLING RATES

<u>Municipal Services Division Employee Classification †</u>	<u>Range of Hourly Billing Rates*</u>		
Senior Registered Engineer	\$ 125.00	to	\$ 180.00 ***
Registered Engineer or Professional Land Surveyor	\$ 77.00	to	\$ 141.00
Graduate Engineer, Planner, Scientist or Land Surveyor	\$ 58.00	to	\$ 95.00
Senior Planner or Scientist	\$ 107.00	to	\$ 132.00
Planner or Scientist	\$ 55.00	to	\$ 94.00
Engineering Specialist II	\$ 104.00	to	\$ 123.00
Engineering Specialist I	\$ 70.00	to	\$ 110.00
Technician III	\$ 78.00	to	\$ 108.00 **
Technician II	\$ 49.00	to	\$ 83.00 **
Technician I	\$ 32.00	to	\$ 61.00 **

† Hourly billing rates for staff outside the Municipal Services Division will be billed at a 2.90 multiplier.

In addition to the hourly charges, TKDA shall be reimbursed at cost for the following direct expenses when incurred in the performance of the work:

1. Vehicle mileage at current IRS standard rate per mile.
2. Outside professional and technical services with costs defined as the amount billed TKDA plus 10%.
3. Outside reproduction and reprographic costs.

* Rates effective until December 31, 2016.

** For hours worked over 40 hours per week individuals are paid one and one-half times the above rates.

*** Capped Maximum



Project Fee Estimate

Client:		City of Baxter, Minnesota				Date:		12/17/2015	
Project:		Water Meter Replacement Project				Prepared By:		VEJ	
Task	Task Description	Estimated Person Hours Required				Total Hours	Total Dollars		
		Sr Reg Eng	Reg Eng	Grad Eng	Tech II				
A	PLANS AND SPECIFICATIONS								
1	Project Management and Meetings	6	12	6		24	\$	2,364	
2	Prepare Plans and Specs	4	30		6	40	\$	3,462	
3	Project Estimate and QuestCDN Placement		2	2	2	6	\$	420	
B	BIDDING PHASE								
1	Respond to Bidders' Questions	2	4			6	\$	654	
2	Bid Opening; Bid Tabulation	2	6		2	10	\$	940	
3	Evaluate Bids; Recommend Award	2	4			6	\$	654	
C	CONSTRUCTION CONTRACT ADMINISTRATION								
1	Preconstruction Meeting		8			8	\$	648	
2	Contractor Payments; Change Orders	2	24		4	30	\$	2,522	
Total Person Hours		18	90	8	14	130			
Billing Rate/Hr x Multiplier		\$ 165	\$ 81	\$ 67	\$ 62				
Total Billable for Charged Time		\$ 2,970	\$ 7,290	\$ 536	\$ 868		\$	11,664	
Expenses:									
Travel & Subsistence (TS)							\$	200	
Reproduction & Reprographics (RR)							\$	100	
Total Project Fees							\$	11,964	
Total Not to Exceed							\$	12,000	

TOLTZ, KING, DUVALL, ANDERSON AND ASSOCIATES, INCORPORATED
General Provisions of Engineer-Architect Agreement

ARTICLE 1. GENERAL

These General Provisions supplement and become part of the Agreement between Toltz, King, Duvall, Anderson and Associates, Incorporated, a Minnesota Corporation, hereinafter referred to as TKDA, and the other Party to the Agreement, hereinafter referred to as CLIENT, wherein the CLIENT engages TKDA to provide certain Engineering, Architectural, and/or Planning services. Either Party to this Agreement may be referred to as a "Party" or collectively as "Parties."

As used herein, the term "Agreement" refers to (1) TKDA's original Engagement Letter or proposal (the "Engagement Letter") which forms the basis for the Agreement; (2) these General Provisions, and (3) any attached Exhibits, as if they were part of one and the same document. With respect to the order of precedence, any attached Exhibits shall govern over these General Provisions and the Engagement Letter shall govern over any attached Exhibits and these General Provisions.

ARTICLE 2. PERIOD OF SERVICE

The term of this Agreement for the performance of services hereunder shall be as set forth in TKDA's Engagement Letter. Any lump sum or estimated maximum payment amounts set forth in the Engagement Letter have been established in anticipation of the orderly and continuous progress of the project in accordance with the schedule set forth in the Engagement Letter or any Exhibits attached thereto.

ARTICLE 3. COMPENSATION TO TKDA

A. Compensation to TKDA for services shall be as designated in the Engagement Letter. The CLIENT shall make monthly payments to TKDA within 30 days of date of invoice.

B. The CLIENT will pay the balance stated on the invoice unless CLIENT notifies TKDA in writing of the particular item that is alleged to be incorrect within 15 days from the date of invoice, in which case all undisputed items shall be paid and amounts in dispute shall become due upon an adjudicated resolution or upon agreement of the parties. All accounts unpaid after 30 days from the date of original invoice shall be subject to a service charge of 1-1/2% per month, or the maximum amount authorized by law, whichever is less. TKDA shall be entitled to recover all reasonable costs and disbursements, including reasonable attorneys' fees, incurred in connection with collecting amounts owed by CLIENT. In addition, TKDA may, after giving seven days' written notice to the CLIENT, suspend services under this Agreement until TKDA has been paid in full for all amounts then due for services, expenses and charges. CLIENT agrees that it shall waive any and all claims against TKDA and that TKDA shall not be responsible for any claims arising from suspension of services hereunder.

ARTICLE 4. EXTRA WORK

If TKDA is of the opinion that any work it has been directed to perform is beyond the Scope of this Agreement, or that the level of effort required exceeds that estimated due to changed conditions and thereby constitutes extra work, it shall notify the CLIENT of that fact. Upon written notification to CLIENT, TKDA shall be entitled to additional compensation for same, and to an extension of time for completion absent timely written objection by CLIENT to additional services.

ARTICLE 5. ABANDONMENT, CHANGE OF PLAN AND TERMINATION

Either Party has the right to terminate this Agreement upon seven days' written notice for convenience of either CLIENT or TKDA. In addition, the CLIENT may at any time reduce the scope of this Agreement. Such reduction in scope shall be set forth in a written notice from the CLIENT to TKDA. In the event of unresolved dispute over change in scope or changed conditions, this Agreement may also be terminated upon seven days' written notice as provided above.

In the event of a termination or reduction in scope of the project work, TKDA shall be paid for the work performed and expenses incurred on the project work and for any completed and abandoned work for which payment has not been made, computed in accordance with the provisions of the Engagement Letter and payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with TKDA's subconsultants, costs of producing copies of file materials and other related close-out costs.

ARTICLE 6. DISPOSITION OF PLANS, REPORTS AND OTHER DATA

All documents, including reports, drawings, calculations, specifications, CADD materials, computer software or hardware or other work product prepared by TKDA pursuant to this Agreement are TKDA's Instruments of Service and TKDA retains all ownership interests in said Instruments of Service, including copyrights. Any use or reuse of such Instruments of Service, except for the specific purpose intended, by the CLIENT or others without written consent, verification, or adaptation by TKDA will be at the CLIENT's risk and full legal responsibility. In this regard, the CLIENT will indemnify and hold harmless TKDA from any and all suits or claims of third parties arising out of such use or reuse which is not specifically verified, adapted, or authorized by TKDA.

Copies of documents that may be relied upon by the CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by TKDA's Engineer or Architect. Files in electronic format furnished to the CLIENT are only for convenience of the CLIENT. Any conclusion or information obtained or derived from such electronic files

will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. In the event electronic copies of documents are made available to the CLIENT, the CLIENT acknowledges that the useful life of electronic media may be limited because of deterioration of the media, obsolescence of the computer hardware and/or software systems or other causes outside of TKDA's control. Therefore, TKDA makes no representation that such media will be fully usable beyond 30 days from date of delivery to CLIENT.

If requested, at the time of completion or termination of the work, TKDA shall make available to the CLIENT at CLIENT's expense copies of the Instruments of Service upon (i) payment of amounts due and owing for work performed and expenses incurred under this Agreement, and (ii) fulfillment of the CLIENT's obligations under this Agreement.

ARTICLE 7. CLIENT'S ACCEPTANCE BY PURCHASE ORDER

In lieu of or in addition to execution of the Engagement Letter, the CLIENT may authorize TKDA to commence services by issuing a purchase order by a duly authorized representative. Such authority to commence services or purchase order shall incorporate by reference the terms and conditions of this Agreement. In the event the terms and conditions of this Agreement conflict with those contained in the CLIENT's purchase order, the terms and conditions of this Agreement shall govern. Notwithstanding any purchase order provisions to the contrary, no warranties, express or implied, are made by TKDA. In order to implement the intent of Parties to this Agreement, the Parties agree that the Engagement Letter, these General Provisions, and any Exhibits constitute the entire Agreement between them. The Parties further agree that the preprinted terms and conditions of any CLIENT-generated purchase order issued to request work pursuant to this Agreement will not apply to the work, regardless of whether TKDA executes the purchase order in acceptance of the work.

ARTICLE 8. CLIENT'S RESPONSIBILITIES

A. To permit TKDA to perform the services required hereunder, the CLIENT shall supply, in proper time and sequence, the following at no expense to TKDA:

1. All necessary information regarding its requirements as necessary for orderly progress of the work.
2. Designate in writing a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive instructions, receive information, and interpret and define CLIENT's policies with respect to TKDA's services.
3. Furnish, as required for performance of TKDA's services (except to the extent provided otherwise in the Engagement Letter or any Exhibits attached thereto), data prepared by or services of others, including without limitation, soil borings, probing and subsurface explorations, hydrographic and geohydrologic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement, right-of-way, topographic and utility surveys; property descriptions; zoning, deed and other land use restriction; and other special data not covered in the Engagement Letter or any Exhibits attached thereto.
4. Provide access to, and make all provisions for TKDA to enter upon publicly or privately owned property as required to perform the work.
5. Act as liaison with other agencies or involved parties to carry out necessary coordination and negotiations; furnish approvals and permits from all governmental authorities having jurisdiction over the project and such approvals and consents from others as may be necessary for completion of the project.
6. Examine all reports, sketches, drawings, specifications and other documents prepared and presented by TKDA, obtain advice of an attorney, insurance counselor or others as CLIENT deems necessary for such examination, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of TKDA.
7. Give prompt written notice to TKDA whenever the CLIENT observes or otherwise becomes aware of any development that affects the scope or timing of TKDA's services or any defect in the work of Construction Contractor(s), subconsultants or TKDA.
8. Initiate action, where appropriate, to identify and investigate the nature and extent of asbestos, petroleum and/or pollution in the project and to abate and/or remove the same as may be required by federal, state or local statute, ordinance, code, rule, or regulation now existing or hereinafter enacted or amended. For purposes of this Agreement, "pollution" and "pollutant" shall mean any solid, liquid, gaseous or thermal irritant or contaminant, including petroleum, smoke, vapor, soot, alkalis, chemicals and hazardous or toxic waste. Hazardous Materials means any substance, waste, pollutant or contaminant (including petroleum) now or hereafter included within such terms under any federal, state or local statute, ordinance, code, rule or regulation now existing or hereinafter enacted or amended. Waste further includes materials to be recycled, reconditioned or reclaimed. CLIENT further agrees it

will, where appropriate, endeavor to identify, remove and/or encapsulate asbestos products, petroleum, pollutants or Hazardous Materials located in the project area prior to accomplishment by TKDA of any work on the project.

If TKDA encounters, or reasonably suspects that it has encountered, asbestos or pollution in the project, TKDA shall cease activity on the project and promptly notify the CLIENT, who shall proceed as set forth above. Unless otherwise specifically provided in the Engagement Letter, the services to be provided by TKDA do not include identification of asbestos or pollution, and TKDA has no duty to identify or attempt to identify the same within the area of the project.

With respect to the foregoing, CLIENT acknowledges and agrees that TKDA is not a user, handler, generator, operator, treater, storer, transporter or disposer of asbestos, petroleum, Pollutant, or other Hazardous Materials which may be encountered by TKDA on the project. CLIENT agrees to hold harmless, indemnify and defend TKDA and TKDA's officers, subconsultant(s), subcontractor(s), employees and agents from and against any and all claims, lawsuits, damages, liability and costs, including, but not limited to, costs of defense, arising out of or in any way connected with the presence, discharge, release, or escape of asbestos, petroleum or other Hazardous Materials or waste on the site. This indemnification is intended to apply only to existing conditions present at the site prior to TKDA's commencement of services, and does not apply to conditions that arise subsequent to TKDA's commencement of services that are caused or created by TKDA.

9. Provide such accounting, independent cost estimating and insurance counselling services as may be required for the project, such legal services as the CLIENT may require or TKDA may reasonably request with regard to legal issues pertaining to the project including any that may be raised by contractor(s), such auditing service as CLIENT may require to ascertain how or for what purpose any contractor has used the monies paid under the construction contract, and such inspection services as CLIENT may require to ascertain that contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
10. Provide "record" drawings and specifications for all existing physical plants or facilities which are pertinent to the project.
11. Act promptly to approve all pay requests, Supplemental Agreements, or requests for information by TKDA as set forth herein.
12. Require all Utilities with facilities in the CLIENT's right-of-way to locate and mark said utilities upon request, relocate and/or protect said utilities as determined necessary to accommodate work of the project, submit a schedule of the necessary relocation/protection activities to the CLIENT for review and comply with agreed upon schedule.
13. Provide other services, materials, or data as may be set forth in the Engagement Letter or any Exhibits attached thereto.

B. TKDA shall be entitled to rely on the accuracy and completeness of information furnished by the CLIENT. If TKDA finds that any information furnished by the CLIENT is in error or is inadequate for its purpose, TKDA shall promptly notify the CLIENT.

ARTICLE 9. OPINIONS OF COST

Opinions of probable project cost, construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs provided for in the Engagement Letter or any Exhibits attached thereto, are made on the basis of TKDA's experience and qualifications and represent TKDA's judgment as an experienced and qualified design professional. It is recognized that TKDA does not have control over the cost of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining their prices, and that any evaluation of any facility to be constructed, or acquired, or work to be performed on the basis of TKDA's cost opinions, must of necessity, be speculative until completion of construction or acquisition. Accordingly, TKDA does not guarantee that proposals, bids or actual costs will not substantially vary from opinions, evaluations or studies submitted by TKDA to CLIENT hereunder. TKDA assumes no responsibility for the accuracy of opinions of probable project costs or construction costs, and provides these estimates for the sole convenience of the CLIENT for the purposes of general project budgeting.

ARTICLE 10. CONSTRUCTION PHASE SERVICES

CLIENT acknowledges that it is customary for the Architect or Engineer who is responsible for the preparation and furnishing of Drawings and Specifications and other construction-related documents to be employed to provide professional services during the Construction Phases of the project, (1) to interpret and clarify the documentation so furnished and to modify the same as circumstances revealed during bidding and construction may dictate, (2) in connection with acceptance of substitute or equal items of materials and equipment proposed by bidders and contractor(s), (3) in connection with review of shop drawings and sample submittals, and (4) as a result of and in response to TKDA's detecting in advance of performance of affected work inconsistencies or irregularities in such documentation. CLIENT agrees that if TKDA is not employed to provide such professional services during the Construction Phases of the project, TKDA will not be responsible for, and CLIENT shall indemnify and hold TKDA (and TKDA's professional associates and consultants) harmless from, all claims,

damages, losses and expenses including attorneys' fees arising out of, or resulting from, any interpretation, clarification, substitution acceptance, shop drawing or sample approval or modification of such documentation issued or carried out by CLIENT or others. Nothing contained in this paragraph shall be construed to release TKDA (or TKDA's professional associates or consultants) from liability for failure to perform in accordance with professional standards any duty or responsibility which TKDA has undertaken or assumed under this Agreement.

ARTICLE 11. INSURANCE

TKDA shall procure and maintain insurance for protection from claims against it under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees, and from claims against it for damages because of injury to or destruction of property.

Also, TKDA shall procure and maintain professional liability insurance for protection from claims arising out of performance of professional services caused by any negligent act, error, or omission for which TKDA is legally liable.

Certificates of insurance will be provided to the CLIENT upon request.

ARTICLE 12. ASSIGNMENT

This Agreement, being intended to secure the personal service of the individuals employed by and through whom TKDA performs work hereunder, shall not be assigned, sublet or transferred without the written consent of TKDA and the CLIENT. Any assignment of the Agreement, or claims arising under or relating to the Agreement without the written consent of both Parties shall be null and void.

ARTICLE 13. CONTROLLING LAW

This Agreement is to be governed by the laws of the State of Minnesota.

ARTICLE 14. SEVERABILITY

Any provision or portion thereof in this Agreement which is held to be void or unenforceable under any law shall be deemed stricken, and all remaining provisions shall continue to be valid and binding between CLIENT and TKDA.

ARTICLE 15. WAIVER OF CONSEQUENTIAL DAMAGES

CLIENT and TKDA waive consequential damages for claims, disputes or other matters in question arising out of or relating to TKDA's services under this Agreement. This mutual waiver of consequential damages applies and survives termination of this Agreement.

ARTICLE 16. LIMITATION OF LIABILITY

In recognition of the relative risks of CLIENT and TKDA relating to the work, CLIENT agrees, to the extent permitted by law, that TKDA's liability to the CLIENT or anyone claiming through CLIENT for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes including, but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied, of TKDA or its officers, directors, partners, employees, agents, or consultants, or any of them, shall not exceed the total insurance proceeds paid or available on behalf of or to TKDA by its insurers in settlement or satisfaction of CLIENT's claims against TKDA under the terms and conditions of TKDA's insurance policies applicable thereto.

ARTICLE 17. CONFLICT RESOLUTION

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the CLIENT and TKDA agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation as a precondition to any formal legal proceedings.

ARTICLE 18. CONFIDENTIALITY

TKDA agrees to keep confidential and not to disclose to any person or entity, other than TKDA's employees, subconsultants and the general contractor and subcontractors, if appropriate, any data and information furnished to TKDA and marked CONFIDENTIAL by the CLIENT. These provisions shall not apply to information in whatever form that comes into the public domain, nor shall it restrict TKDA from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for TKDA to complete services under the Agreement or defend itself from any suit or claim.

ARTICLE 19. UNDERGROUND UTILITIES

If authorized in the Engagement Letter, TKDA and/or its authorized subconsultant will conduct the research that in its professional opinion is necessary and will prepare a plan indicating the locations intended for subsurface penetrations with respect to assumed locations of underground improvements. Such services by TKDA or its subconsultant will be performed in a manner consistent with the ordinary standard of care. The CLIENT recognizes that the research may not identify all underground improvements and that the information upon which TKDA relies may contain errors or may not be complete.

The CLIENT agrees, to the fullest extent permitted by law, to waive all claims and causes of action against TKDA and anyone for whom TKDA may be legally liable, for claims by CLIENT or its contractors for delay or additional compensation relating to the identification, removal, relocation, or restoration of utilities, or damages to underground improvements resulting from subsurface penetration locations established by TKDA.

REQUEST FOR COUNCIL ACTION

January 5, 2016

Department Origination: Police

Agenda Section: Consent

Agenda Item: Approve Animal Control Agreement with Animal Control Enforcement Services (Don Hannahs) for 2016

Approval Required: Simple Majority of Vote of the Council

BACKGROUND

The City of Baxter currently works with Animal Control Enforcement Services to assist in the enforcement of various dog calls as well as other animal calls in the City of Baxter. The current agreement expired on December 31, 2015. This new contract will again be for one year period from January 1, 2016 until December 31, 2016.

The new contract proposal was presented to the City with no increase in fees for the 2016 year. The current adopted 2016 budget is reflective of the contract rates proposed.

The 2016 agreement is included in the council packet.

FINANCIAL IMPLICATIONS

With no proposed increase for 2016 the budgeted amount will remain the same as 2015 and has been included in the 2016 adopted budget.

STAFF RECOMMENDATION

Staff is recommending approval of the contracted services with Animal Control Enforcement for 2016.

COUNCIL ACTION REQUESTED

Motion to approve contract agreement with Animal Control Services for the 2016 calendar year.

Attachment:

1. Animal Control Enforcement Service Agreement

ANIMAL CONTROL ENFORCEMENT SERVICE AGREEMENT

THIS AGREEMENT, made and entered into by and between, **City of Baxter** hereinafter referred to as the "CITY" and **Animal Control Enforcement Services**, hereinafter referred to as "CONTRACTOR"/

WHEREAS, CONTRACTOR wishes to enter into a contract with CITY, to provide service, labor and expertise as the CITY's Animal Control Officer.

WHEREAS, CONTRACTOR is authorized to and capable of working elsewhere and is free to carry on any activity seen fit, within own discretion, provided that tasks undertaken for CITY are performed; and

WHEREAS, CITY AND CONTRACTOR believe it to be in their respective best interest to enter into this Agreement according to the terms and conditions hereinafter set forth;

NOW THEREFORE, IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

1: CONTRACTOR shall apprehend and deliver back to the owner, if know, or to appropriate kennel facility approved and chosen by CITY, all animals found to be running at large, in violation of city animal ordinance, with in the CITY limits.

2: CONTRACTOR agrees to handle, as appropriate, services outlined and described in "ANIMAL CONTROL ENFORCEMENT PROPOSAL", a copy of which is attached.

3: CONTRACTOR shall provide a satisfactory motor vehicle to transport said animals. Said motor vehicle shall have motor liability insurance coverage for bodily in an amount not less than \$100,000 per person. Proof of such insurance shall be furnished to the CITY.

4: CONTRACTOR shall maintain liability insurance for his services in the aggregate amount of \$1,000,000 and shall include CITY as a named additional insured for the term of this agreement and an extensions thereof. Proof of such insurance shall be furnished to the CITY.

IN CONSIDERATION OF THE FOREGOING, THE CITY AGREES AS FOLLOWS:

1: CITY shall pay CONTRACTOR agreed upon amount for services as described in "ANIMAL CONTROL ENFORCEMENT PROPOSAL", a copy of which is attached.

ADDITIONAL TERMS:

1: CONTRACTOR is not an employee of CITY.

2: CONTRACTOR shall submit monthly reports to CITY as to animal control services rendered.

3: The term of this agreement shall be for one year from January 01, 2016 thru December 31, 2016; except that each party hereto has the right to terminate this agreement upon ninety (90) days written notice to the other party. Written notice shall be considered effective if sent certified mail to the following addresses:

City of Baxter
C/O city administrator
13190 Memorywood
Baxter, MN 56425

Animal Control Enforcement Services
C/O Donald C Hannahs JR
119 3rd Ave NE
Brainerd, MN 56401

IN WITNESS THEREOF, the parties have executed the Agreement on this _____ day of _____, 2016.

CITY OF BAXTER

ANIMAL CONTROL ENFORCEMENT SERVICES

BY: _____
Vice Mayor

BY: _____
Donald C Hannahs JR, owner/operator

BY: _____
Administrator/Clerk

ANIMAL CONTROL ENFORCEMENT PROPOSAL FOR THE CITY OF BAXTER, MN

This proposal will cover the duties of Animal Control Enforcement Services and the proposed compensation for said duties. This proposal is for the City of Baxter, State of Minnesota.

SERVICES PROVIDED

These are the services that Animal Control Enforcement Services provides and a brief description of the service.

ANIMALS RUNNING AT LARGE: This covers the pickup and delivery of animals, said to be running at large in the city limits of Baxter, MN in violation of city ordinance, to either the designated impound facility or owner if know.

Municipalities are responsible for securing impoundment location and any fees involved. Animal Control Enforcement Services fees only cover the pickup and delivery of animals.

CITATIONS: This covers all citations issued for violations of the City Animal Ordinances and /or MN State Statues.

INVESTIGATION OF ANIMAL BITES: This covers all animal bites and necessary reports and pictures, if any. These would be turned into the Baxter Police Department. Animal would be impounded at designated impound facility or owners residence with a periodic check to make sure animal is quarantined as necessary under state statute.

BARKING DOG COMPLAINTS: This covers the investigation of said complaint and necessary reports.

CRUELTY AND/OR NEGLECT COMPLAINTS: This covers the investigation of said complaint and necessary reports.

COURT APPEARANCES: This includes any court appearances or council meetings as may be necessary.

ANY OTHER MATTERS DEEMED NECESSARY AS DIRECTED BY CITY COUNCIL OR DESIGNATE: This covers any service deemed necessary and included in said ordinance.

WILD ANIMALS: These types of calls would be the responsibility of the owner of the residence. Animal Control **does not** handle skunks.

A MONTHLY REPORT: This will be turned into the City Council or designate monthly.

MILEAGE: Mileage is included in the monthly service fee.

SERVICE AVAILABILITY: Services are generally available 24 hours a day, baring illness or injury. With the municipality understanding that Animal Control Enforcement Services contracts with several municipalities and calls will be handled as quickly as possible and on a priority basis.

Animal Control Enforcement takes the equivalency of one day off a week and ten days of vacation time each year. Advanced written notice will be given as to the dates services would be unavailable. This would be included with the monthly statement.

SERVICE FEE

In return for the above mentioned services **a proposed service fee of \$762.00 per month** would be paid to Animal Control Enforcement Services. The proposed fee was figured using the population of the City of Baxter, 7620 people in the city limits at **\$1.20 per person**, for a total of \$9144.00 per year.

REQUEST FOR COUNCIL ACTION

01/05/16

Department Approval: Finance Director Vacinek 

Agenda Section: Consent

Approval Required: Simple Majority Vote of the Council

Item Description: Adopt 2016 Mileage Reimbursement Rate of 54 cents per mile per IRS Regulations

BACKGROUND

The City has consistently reimbursed employees on city business at the IRS standard rate in effect at the time of the travel when a personal vehicle is used. The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating an automobile, including depreciation, insurance, repairs, tires, maintenance, gas and oil. For 2015, the IRS rate was set at 57.5 cents per mile. The IRS recently announced the 2016 standard reimbursement rate will decrease by three and one-half cent to 54.0 cents per mile for business miles driven, as shown in the announcement below. The decrease can be attributed to the lower cost of gasoline.

2016 Standard Mileage Rates for Business, Medical and Moving Announced

IR-2015-137, Dec. 17, 2015

WASHINGTON — The Internal Revenue Service today issued the 2016 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

Beginning on Jan. 1, 2016, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be:

- 54 cents per mile for business miles driven, down from 57.5 cents for 2015
- 19 cents per mile driven for medical or moving purposes, down from 23 cents for 2015
- 14 cents per mile driven in service of charitable organizations

The business mileage rate decreased 3.5 cents per mile and the medical, and moving expense rates decrease 4 cents per mile from the 2015 rates. The charitable rate is based on statute. The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating an automobile. The rate for medical and moving purposes is based on the variable costs.

FINANCIAL IMPLICATIONS

Employee mileage reimbursement for when a city vehicle is not available or practical has been included in the 2016 Budget. The decrease will not have a significant impact the various departmental operating budgets.

STAFF RECOMMENDATIONS

Finance Director Vacinek recommends adopting the 2016 IRS mileage reimbursement rate of 54 cents per mile, consistent with IRS rules and the City’s past practices and policies.

COUNCIL ACTION REQUESTED

Motion to set the 2016 mileage reimbursement rate at the IRS rate of 54 cents per mile.

Agreement for Professional Services

This Agreement is effective as of December 30, 2015, between City of Baxter, Minnesota (Client) and Short Elliott Hendrickson Inc. (Consultant).

This Agreement authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: 2016 Fairview Road Improvements – Appraisals and Easement Support.

Client's Authorized Representative: Trevor Walter

Address: 13190 Memorywood Drive
Baxter, MN 56425-2626

Telephone: 218.454.5110 **email:** twalter@baxtermn.gov

Project Manager: Scott Hedlund

Address: 416 South 6th St, Suite 200
Brainerd, MN 56401

Telephone: 218.855.1705 **email:** shedlund@sehinc.com

Scope: The Basic Services to be provided by Consultant as set forth herein is provided subject to the attached General Conditions of the Agreement for Professional Services (General Conditions Rev. 08.03.11), which is incorporated by reference herein and subject to Exhibits attached to this Agreement.

The scope of services is attached as **Exhibit A**

Assumptions: Scope based on 2016 Fairview Road feasibility report dated December 28, 2015. City Attorney prepares easement agreements. City pays all recording fees.

Schedule: Improvement Hearing: February 1, 2016
Final Design – Draft Plan Submittals to City Council: March 2016
Right of Way Acquisition: November 2015 – July 2016
Wetland Delineation and Permitting: March - July 2016
Final Plans to City: April 2016
Bidding: April/May 2016 (assumed)
Construction: 2016 (assumed)

The schedule could be altered by forces beyond SEH's control like City meeting availability, wetland permitting, right of way acquisition, and utility company coordination.

Payment: The estimated fee increase is subject to a not-to-exceed amount of \$43,104.00 including expenses and equipment.

The previously approved fee is hourly estimated to be \$68,628.00. Including the above \$43,104.00 fee increase, the total fee is hourly estimated to be \$111,732.00, including expenses and equipment. The estimated total fee is subject to a not-to-exceed amount of **\$111,732.00** including expenses and equipment.

The payment method, basis, frequency and other special conditions are set forth in attached Exhibit A-1.

This Agreement for Professional Services, attached General Conditions, Exhibits and any Attachments (collectively referred to as the "Agreement") supersedes all prior contemporaneous oral or written agreements and represents the entire understanding between Client and Consultant with respect to the services to be provided by

Consultant hereunder. In the event of a conflict between the documents, this document and the attached General ~~48-~~ Conditions shall take precedence over all other Exhibits unless noted below under "Other Terms and Conditions". The Agreement for Professional Services and the General Conditions (including scope, schedule, fee and signatures) shall take precedence over attached Exhibits. This Agreement may not be amended except by written agreement signed by the authorized representatives of each party.

Other Terms and Conditions: Other or additional terms contrary to the General Conditions that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein:
None.

p:\ae\b\baxter\133676\1-gen\10-setup-cont\03-proposal\december 2015 fee amendment\letter agreement_december 30, 2015 fee amendment.docx

Short Elliott Hendrickson Inc.

City of Baxter, Minnesota

By: Scott D. Hedlund
Scott Hedlund
Title: Senior Project Manager

By: _____
Title: _____

City of Baxter, Minnesota

By: _____
Title: _____

2016 FAIRVIEW ROAD IMPROVEMENTS

**Professional Services
Work Plan Summary and Fee Estimate
City of Baxter, Minnesota
December 30, 2015**



WORK TASKS	Sr. Prof. Eng./ Sr. Project Manager	Principal/ Sr. Specialist	Professional Engineer/ Specialist	Wetlands Specialist/ Staff Engineer	Sr. Water Resources Eng./ Scientist	Reg. Land Surveyor	Sr. Technician / Surveyor Crew Chief	Technician / Survey Assistant	Admin. Tech	SEH TOTAL HOURS
1.0 Project Management	20	0	0	0	0	0	0	0	0	20
5.0 Right of Way	100	2	0	0	0	8	105	0	15	230
6.0 Appraisals	0	0	0	0	0	0	0	0	0	0
Total Project Hours	120	2	0	0	0	8	105	0	15	250

Total Labor Cost	\$29,306.00
Reimbursables	\$1,698.00
Total SEH Fee	\$31,004.00

Subconsultants	
Appraisals (Ludenia Appraisals)	\$12,100.00
Subconsultant Subtotal	\$12,100.00

Total Project Cost	\$43,104
---------------------------	-----------------

**2016 Fairview Road Improvements
Professional Services
Work Plan**

Client: CITY OF BAXTER, MINNESOTA

December 30, 2015

Work Tasks	Sr Prof Eng/ Sr Project Manager	Principal/ Sr Specialist	Prof. Engineer / Specialist	Wetland Scientists/ Staff Engineer	Water Res. Engineer or Scientist	Reg Land Surveyor	Sr Tech. or Survey Crew Chief	Tech / Survey Assist.	Admin. Tech.	TOTAL
1.0 Project Management										
1.1	5									5
1.2	15									15
Task 1.0 Subtotal Hours:										
	20	0	0	0	0	0	0	0	0	20
<i>Deliverables - Project schedule, monthly progress reports and invoices, and copies of all pertinent Project correspondence.</i>										
5.0 Right of Way										
5.1							35			35
5.2						8	60			68
5.3	2						10			12
5.4	40	2							15	57
5.5	3									3
5.6	15									15
5.7	40									40
Task 5.0 Subtotal Hours:										
	100	2	0	0	0	8	105	0	15	230
<i>Deliverables - Easement exhibits and offer letters (up to 16 parcels)</i>										
6.0 Appraisals										
6.1	Appraisal Reports (for up to 11 parcels)									
Task 6.0 Subtotal Hours:										
	0	0	0	0	0	0	0	0	0	0
<i>Deliverables - Appraisal Reports (for up to 11 parcels)</i>										
TOTAL PROJECT HOURS										
	120	2	0	0	0	8	105	0	15	250
7.0 Additional and Optional Services										
	Bidding and Construction Services									
	Prepare Phase 1 and 2 Environmental Site Assessments (ESA's)									
	Expert witness/ legal testimony									
	To be determined									
	To be determined									
	Hourly plus Reimbursable Expenses									

**2016 Fairview Road Improvements
DESIGN SERVICES
ESTIMATED REIMBURSABLE DIRECT COSTS
City of Baxter, Minnesota**

SEH, INC.

TRAVEL EXPENSES	NUMBER OF TRIPS	MILES/ TRIP	TOTAL MILES	
Local Trips				
SEH Brainerd Based Staff	20	10	200	
SEH St Cloud Based Staff	0	130	0	
SEH Twin Cities Based Staff	0	270	0	
Subtotals:			200	
ESTIMATED MILEAGE COSTS:	\$0.540	per mile		\$108
	Number	Cost	Total Cost	
Hotel	0	\$0.000	\$0	
Meals	0	\$10.000	\$0	
Total			\$0	
ESTIMATED TRAVEL COSTS:				\$108
EXHIBITS:				\$100
Miscellaneous Printing:				\$200
Mailing/Postage Costs				\$100
ROW PLAT				
Title Company Owner and Encumbrance Reports (Up to 6 parcels @ \$100 per parcel)				\$600
EQUIPMENT EXPENSES	Number of Hours	Cost/Hr	Total Cost	
Survey Equipment	20	\$25	\$500	\$500
Survey Truck	20	\$4.5	\$90	\$90
TOTAL ESTIMATED REIMBURSABLE EXPENSES:				\$1,698

Exhibit A-1
to Agreement for Professional Services
Between City of Baxter, Minnesota (Client)
and
Short Elliott Hendrickson Inc. (Consultant)
Dated December 30, 2015

**Payments to Consultant for Services and Expenses
Using the Hourly Basis Option**

The Agreement for Professional Services is amended and supplemented to include the following agreement of the parties:

A. Hourly Basis Option

The Client and Consultant select the hourly basis for payment for services provided by Consultant. Consultant shall be compensated monthly. Monthly charges for services shall be based on Consultant's current billing rates for applicable employees plus charges for expenses and equipment.

Consultant will provide an estimate of the costs for services in this Agreement. It is agreed that after 90% of the estimated compensation has been earned and if it appears that completion of the services cannot be accomplished within the remaining 10% of the estimated compensation, Consultant will notify the Client and confer with representatives of the Client to determine the basis for completing the work.

Compensation to Consultant based on the rates is conditioned on completion of the work within the effective period of the rates. Should the time required to complete the work be extended beyond this period, the rates shall be appropriately adjusted.

B. Expenses

The following items involve expenditures made by Consultant employees or professional consultants on behalf of the Client. Their costs are not included in the hourly charges made for services and shall be paid for as described in this Agreement but instead are reimbursable expenses required in addition to hourly charges for services:

1. Transportation and travel expenses.
2. Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets.
3. Lodging and meal expense connected with the Project.
4. Fees paid, in the name of the Client, for securing approval of authorities having jurisdiction over the Project.
5. Plots, Reports, plan and specification reproduction expenses.
6. Postage, handling and delivery.
7. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client.
8. Renderings, models, mock-ups, professional photography, and presentation materials requested by the Client.
9. All taxes levied on professional services and on reimbursable expenses.
10. Other special expenses required in connection with the Project.
11. The cost of special consultants or technical services as required. The cost of subconsultant services shall include actual expenditure plus 10% markup for the cost of administration and insurance.

The Client shall pay Consultant monthly for expenses.

-53- Equipment Utilization

The utilization of specialized equipment, including automation equipment, is recognized as benefiting the Client. The Client, therefore, agrees to pay the cost for the use of such specialized equipment on the project. Consultant invoices to the Client will contain detailed information regarding the use of specialized equipment on the project and charges will be based on the standard rates for the equipment published by Consultant.

The Client shall pay Consultant monthly for equipment utilization.

p:\ae\b\baxte\133676\1-gen\10-setup-conf\03-proposal\december 2015 fee amendment\exhibit a1.docx

SECTION I – SERVICES OF CONSULTANT

A. General

1. Consultant agrees to perform professional services as set forth in the Agreement for Professional Services or Supplemental Letter Agreement ("Basic Services"). 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 Consultant. The Consultant'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 Consultant because of this Agreement or the performance or nonperformance of services hereunder.

B. Schedule

1. Unless specific periods of time or dates for providing services are specified, Consultant's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.
2. If Client has requested changes in the scope, extent, or character of the Project or the services to be provided by Consultant, the time of performance and compensation for Consultant's services shall be adjusted equitably. The Client agrees that Consultant is not responsible for damages arising directly or indirectly from delays beyond Consultant's control. If the delays resulting from such causes increase the cost or the time required by Consultant to perform its services in accordance with professional skill and care, then Consultant shall be entitled to an equitable adjustment in schedule and compensation.

C. Additional Services

1. If Consultant determines that any services it has been directed or requested to perform are beyond the scope as set forth in the Agreement or that, due to changed conditions or changes in the method or manner of administration of the Project, Consultant's effort required to perform its services under this Agreement exceeds the stated fee for Basic Services, then Consultant shall promptly notify the Client regarding the need for additional services. Upon notification and in the absence of a written objection, Consultant shall be entitled to additional compensation for the additional services, and to an extension of time for completion of additional services absent written objection by Client.
2. Additional services shall be billed in accord with agreed upon rates, or if not addressed, then at Consultant's standard rates.

D. Suspension and Termination

1. If Consultant's services are delayed or suspended in whole or in part by Client, or if Consultant's services are delayed by actions or inactions of others for more than 60 days through no fault of Consultant, then Consultant shall be entitled to either terminate its agreement upon 7 days written notice or, at its option, accept an equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by Consultant.
2. This Agreement may be terminated by either party upon seven days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.
3. This Agreement may be terminated by either party upon thirty days' written notice without cause. All provisions of this Agreement allocating responsibility or liability between the Client and Consultant shall survive the completion of the services hereunder and/or the termination of this Agreement.
4. In the event of termination, Consultant shall be compensated for services performed prior to termination date, including charges for expenses and equipment costs then due and all termination expenses.

SECTION II – CLIENT RESPONSIBILITIES

A. General

1. The Client shall, in proper time and sequence and where appropriate to the Project, at no expense to Consultant, provide full information as to Client's requirements for the services provided by Consultant and access to all public and private lands required for Consultant to perform its services.
2. The Consultant is not a municipal advisor and therefore Client shall provide its own legal, accounting, financial and insurance counseling and other special services as may be required for the Project. Client shall provide to Consultant all data (and professional interpretations thereof) prepared by or services performed by others pertinent to Consultant's services, including but not limited to, previous reports; sub-surface explorations; laboratory tests and inspection of samples; environmental assessment and impact statements, surveys, property descriptions; zoning, deed and other land use restrictions; as-built drawings, electronic data base and maps. The costs associated with correcting, creating or recreating any data that is provided by the Client that contains inaccurate or unusable information shall be the responsibility of the Client.
3. Client shall provide prompt written notice to Consultant whenever the Client observes or otherwise becomes aware of any changes in the Project or any defect in Consultant's services. Client shall promptly examine all studies, reports, sketches, opinions of construction costs, specifications, drawings, proposals, change orders, supplemental agreements and other documents presented by Consultant and render the necessary decisions and instructions so that Consultant may provide services in a timely manner.
4. Client shall require all utilities with facilities within the Client's Project site to locate and mark said utilities upon request, relocate and/or protect said utilities as determined necessary to accommodate work of the Project, submit a schedule of the necessary relocation/protection activities to the Client for review and comply with agreed upon schedule. Consultant shall not be liable for damages which arise out of Consultant's reasonable reliance on the information or services furnished by utilities to Client or others hired by Client.
5. Consultant shall be entitled to rely on the accuracy and completeness of information or services furnished by the Client or others employed by the Client and shall not be liable for damages arising from reasonable reliance on such materials. Consultant shall promptly notify the Client if Consultant discovers that any information or services furnished by the Client is in error or is inadequate for its purpose.

SECTION III – PAYMENTS

A. Invoices

1. Undisputed portions of invoices are due and payable within 30 days. Client must notify Consultant in writing of any disputed items within 15 days from receipt of invoice. Amounts due Consultant will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) for invoices 30 days past due. Consultant reserves the right to retain Instruments of Service until all invoices are paid in full. Consultant will not be liable for any claims of loss, delay, or damage by Client for reason of withholding services or Instruments of Service until all invoices are paid in full. Consultant shall be entitled to recover all reasonable costs and disbursements, including reasonable attorney's fees, incurred in connection with collecting amounts owed by Client.
2. Should taxes, fees or costs be imposed, they shall be in addition to Consultant's agreed upon compensation.
3. Notwithstanding anything to the contrary herein, Consultant may pursue collection of past due invoices in small claims court or through the American Arbitration Association Construction Industry Rules without the necessity of any mediation proceedings and the Client agrees to be bound by such venue.

A. Standards of Performance

1. The standard of care for all professional engineering and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily exercised by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with its services.
2. Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with its construction contract or the construction documents prepared by Consultant. Client acknowledges Consultant will not direct, supervise or control the work of construction contractors or their subcontractors at the site or otherwise. Consultant shall have no authority over or responsibility for the contractor's acts or omissions, nor for its means, methods or procedures of construction. Consultant's services do not include review or evaluation of the Client's, contractor's or subcontractor's safety measures, or job site safety or furnishing or performing any of the Contractor's work.
3. If requested in the scope of a Supplemental Letter Agreement, then Consultant may provide an Opinion of Probable Construction Cost. Consultant's Opinions of Probable Construction Cost provided for herein are to be made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a professional generally familiar with the industry. However, since Consultant has no control over the cost of labor, materials, equipment or service furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids or actual construction cost will not vary from Opinions of Construction Cost prepared by Consultant. If Client wishes greater assurance as to probable Construction Cost, Client shall employ an independent cost estimator or negotiate additional services and fees with Consultant.

B. Indemnity for Environmental Issues

1. Consultant is not a user, generator, handler, operator, arranger, storer, transporter or disposer of hazardous or toxic substances, therefore the Client agrees to hold harmless, indemnify and defend Consultant and Consultant's officers, directors, subconsultant(s), employees and agents from and against any and all claims, losses, damages, liability and costs, including but not limited to costs of defense, arising out of or in any way connected with, the presence, discharge, release, or escape of hazardous or toxic substances, pollutants or contaminants of any kind at the site.

C. Limitations on Consultant's Liability

1. The Client hereby agrees that to the fullest extent permitted by law, Consultant's total liability to the Client for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Consultant's negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not exceed one million dollars (\$1,000,000). In the event Client desires limits of liability in excess of those provided in this paragraph, Client shall advise Consultant in writing and agree that Consultant's fee shall increase by 1% for each additional million dollars of liability limits, up to a maximum limit of liability of five million dollars (\$5,000,000).
2. Neither Party shall be liable to the other for consequential damages, including, without limitation, lost rentals, increased rental expenses, loss of use, loss of income, lost profit, financing, business and reputation and for loss of management or employee productivity, incurred by one another or their subsidiaries or successors, regardless of whether such damages are foreseeable and are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.
3. It is intended by the parties to this Agreement that Consultant's services shall not subject Consultant's employees, officers or directors to any personal legal exposure for the risks associated with this Agreement. The Client agrees that as the Client's sole

and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Consultant, and not against any of Consultant's individual employees, officers or directors, and Client knowingly waives all such claims against Consultant individual employees, officers or directors.

D. Assignment

1. Neither party to this Agreement shall transfer, sublet or assign any rights under, or interests in, this Agreement or claims based on this Agreement without the prior written consent of the other party. Any assignment in violation of this subsection shall be null and void.

SECTION V – DISPUTE RESOLUTION

A. Mediation

1. Any dispute between Client and Consultant arising out of or relating to this Agreement or services provided under this Agreement, (except for unpaid invoices which are governed by Section III), shall be submitted to nonbinding mediation as a precondition to litigation unless the parties mutually agree otherwise. Mediation shall occur within 60 days of a written demand for mediation unless Consultant and Client mutually agree otherwise.

B. Litigation – Choice of Venue and Jurisdiction

1. Any dispute not settled through mediation shall be settled through litigation in the state where the Project at issue is located.

SECTION VI – INTELLECTUAL PROPERTY

A. Proprietary Information

1. All documents, including reports, drawings, calculations, specifications, CADD materials, computers software or hardware or other work product prepared by Consultant pursuant to this Agreement are Consultant's Instruments of Service ("Instruments of Service") and Consultant retains all ownership interests in Instruments of Service, including all available copyrights.
2. Consultant shall retain all of its rights in its proprietary information including, without limitation, its methodologies and methods of analysis, ideas, concepts, expressions, inventions, know how, methods, techniques, skills, knowledge and experience possessed by Consultant prior to, or acquired by Consultant during, the performance of this Agreement and the same shall not be deemed to be Work Product or Work for Hire and Consultant shall not be restricted in any way with respect thereto.

B. Client Use of Instruments of Service

1. Provided that Consultant has been paid in full for its services, Client shall have the right in the form of a license to use Instruments of Service resulting from Consultant's efforts on the Project. Consultant shall retain full rights to electronic data and the drawings, specifications, including those in electronic form, prepared by Consultant and its subconsultants and the right to reuse component information contained in them in the normal course of Consultant's professional activities. Consultant shall be deemed to be the author of such Instruments of Service, electronic data or documents, and shall be given appropriate credit in any public display of such Instruments of Service.
2. Records requests or requests for additional copies of Instruments of Services outside of the scope of services are available to Client subject to Consultant's current rate schedule.

C. Reuse of Documents

1. All Instruments of Service prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other Project. Any reuse of the Instruments of Service without written consent or adaptation by Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to Consultant; and the Client shall release Consultant from all claims arising from such use. Client shall also defend, indemnify and hold harmless Consultant from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting from reuse of Consultant documents without written consent.

REQUEST FOR COUNCIL ACTION

01.05.2016

Department Approval:

Public Works Department

Agenda Section:

Consent

Items Description: Approve Settlement Agreement with 7256 Woida Road

Approval Required: Simple Majority of Vote of the Council

BACKGROUND

7256 Woida Road was part of the 2014 Woida Road, Franklin Drive and Wildflower Drive Improvement Project. The property owners had until December 31, 2015 to connect to sanitary sewer and water.

This parcel has nothing to connect to city services as there was no well, no septic system or restroom facility within the building.

However, the current property owners did have the water and sanitary sewer lines extended to within 8-feet of the existing building.

FINANCIAL IMPLICATIONS

There are no financial implications related to this settlement agreement except for recording fees which will be billed back to the property owner.

STAFF RECOMMENDATIONS

Staff recommends the City Council approve the 7256 Woida Road Settlement Agreement.

COUNCIL ACTIONS REQUESTED

Approve the 7256 Woida Road Settlement Agreement.

Attachment:

1. Settlement Agreement

SETTLEMENT AGREEMENT

THIS AGREEMENT, made and entered into this ___ day of _____, 2016, by and between the City of Baxter, party of the first part, hereinafter referred to as the "City", and Kip L. Dixon and Jodi Dixon, husband and wife, and Robert W. Dixon and Lynae Dixon, husband and wife, party of the second part, hereinafter referred to as "Owner".

WITNESSETH:

WHEREAS, Owner is the owner of the business located at 7256 Woida Road in the City of Baxter, Crow Wing County, Minnesota and legally described as:

The East 165 feet of the East One-Half of the East One-Half of the Southwest Quarter of the Southeast Quarter of Section 31, Township 134 North, Range 28 West, Crow Wing County, Minnesota.

WHEREAS, Owner has failed to connect to city utilities as required by City Code but in this case the building located on said property has no need for water or sewer and has no private system at this time; and

WHEREAS, utilities have been extend to the outside of the building and were capped; and

WHEREAS, the parties would like to agree on how to handle the required connection in this unique case where a building has no need for utilities.

NOW, THEREFORE, IT IS HEREBY AGREED by and between the parties hereto as follows:

1) The City shall remove Owner from the list of nonusers and no current connection need be made.

2) Owner agrees that issuance of building permits for the site without connection shall be limited to any required maintenance for the existing structure until connection of sewer and water utilities has been made inside the building. Owner also agrees that no building permits will be issued related to remodeling or any expansion of the building until connection of sewer and water utilities has been made inside the building. If a development occurs requiring the connection of utilities inside the building, the connection shall be made at the sole expense of the Owner and Owner shall then pay any connection charges then due.

3) In consideration of this Agreement, the requirement to connect to the municipal water and sanitary sewer systems into the building is extended until such time there is a change in ownership, change in use of the Parcels, or change in occupancy of the Parcels. In the case of any of these events, the connection to municipal water and sanitary sewer systems must occur within 60 days of such change and the property owner or his successors shall pay, in addition to any city fees to connect, the legal and recording fees associated with this Agreement.

4) This Agreement is a covenant and agreement which shall run with the land and bind the heirs, successors and assigns of the parties hereto as fully as the parties themselves are bound.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first written.

CITY OF BAXTER:

By: _____
Todd Holman
Its Vice Mayor

Attest: _____
Kelly Steele
Its Asst. City Administrator/Clerk

STATE OF MINNESOTA)
)ss.
COUNTY OF CROW WING)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by Todd Holman and Kelly Steele, the Vice Mayor and Asst. City Administrator/Clerk of the City of Baxter, a municipal corporation under the laws of Minnesota, on behalf of the corporation.

Notary Public

OWNER:

Kip L. Dixon

Jodi Dixon

Robert W. Dixon

Lynae Dixon

STATE OF MINNESOTA)
)ss.
COUNTY OF CROW WING)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Kip L. Dixon and Jodi Dixon, husband and wife, and Robert W. Dixon and Lynae Dixon, husband and wife.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
Brad Person
PO Box 472
Brainerd, MN 56401
218-828-1248

REQUEST FOR COUNCIL ACTION

January 5, 2016

Department Origination: Administration

Agenda Section: Other Business

Agenda Item: Approve 2016 Meeting Calendar for City Council and Commissions

Approval Required: Simple Majority of Vote of the Council

BACKGROUND

In previous years, the council has approved the annual meeting calendar for all council and commission meetings. Each commission has reviewed and recommended approval for their 2016 meeting dates. The 2016 meeting calendar will be published in the Brainerd Dispatch.

The council should be aware of two potential meeting conflicts. The March 1, 2016 council meeting falls on the same day as the caucus. State law prohibits meetings after 6 p.m. on the evening of a major political party precinct caucus. The August 2 council meeting is scheduled the same day as Night to Unite. The Police Department originally planned to hold Night to Unite on August 9 to avoid the conflict with the council meeting and the county fair, but had to reschedule due to August 9 Primary Election. In the past, the council has rescheduled the council meeting to the following Wednesday to avoid the Night to Unite conflict.

Staff is looking for council direction to reschedule the March 1 and August 2 council meetings. Moving both meetings to the next evening, Wednesday, March 2 and Wednesday, August 3 conflicts with the 5:30 p.m. Utilities Commission meeting. The Council could consider moving both meetings to Thursday, March 3 and Thursday, August 4.

FINANCIAL IMPLICATIONS

There will be a fee to publish the meeting calendar in the Brainerd Dispatch. The publication fee has been included in the 2016 budget.

STAFF RECOMMENDATIONS

Staff recommends the council motion to approve the 2016 meeting calendar for city council and commissions after rescheduling the March 1 and August 2 council meetings.

COUNCIL ACTION REQUESTED

Motion to approve the 2016 meeting calendar for city council and commissions.

Attachment:

1. 2016 City of Baxter Meeting Calendar



A Growing Community

2016 City of Baxter Meeting Calendar

City Council:

Meets the first and third Tuesday of each month at 7:00 p.m.

Planning & Zoning Commission:

Meets second Tuesday of each month at 6:00 p.m.

Parks & Trail Commission:

Meets fourth Monday of each month at 4:00 p.m.

Utilities Commission:

Meets first Wednesday of each month at 5:30 p.m.

Long Range Planning Commission:

Meets fourth Monday of each month at 6:00 p.m.

January 5	January 12	January 25	January 6	January 25
January 19	February 9	February 22	February 3	February 22
February 2	March 8	March 28	March 2	March 28
February 16	April 12	April 25	April 6	April 25
March 1	May 10	May 23	May 4	May 23
March 15	June 14	June 27	June 8	June 27
April 5	July 12	July 25	July 6	July 25
April 19	August 10	August 22	August 3	August 22
May 3	September 13	September 26	September 7	September 26
May 17	October 11	October 24	October 5	October 24
June 7	November 9	November 28	November 2	November 28
June 21	December 13	December 27	December 7	December 27
July 5				
July 19				
August 2				
August 16				
September 6				
September 20				
October 4				
October 18				
November 1				
November 15				
December 6				
December 20				

*The Architectural Review Commission meets as needed on the third Thursday of the month at 7:30 a.m.

March 1 reschedule due to caucus

August 2 conflicts with Night to Unite

**CITY OF BAXTER, MINNESOTA
RESOLUTION 2016-005**

RESOLUTION VACATING PROPERTY

WHEREAS, due and proper published and posted notice of public hearing has been given by the City as required by law; and

WHEREAS, after a public hearing held on this date, the City Council finds that it is in the public interest to vacate the property as hereinafter described.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City of Baxter, Minnesota, as follows:

That certain property described as follows is hereby vacated:

Vacate a right-of-way easement contained within Lot 2, Block 1, Citizen's Addition, according to the recorded plat thereof, on file in the Crow Wing County Recorder's office.

Whereupon, said Resolution is hereby declared adopted on this 5th day of January 2016.

CITY OF BAXTER, MINNESOTA

By _____
Todd Holman, Vice Mayor

ATTEST:

Kelly Steele Assistant City Administrator/ Clerk

SEAL

