

from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

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

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

### § 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, if the parties mutually agree, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### § 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

#### ARTICLE 9 TERMINATION OR SUSPENSION

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

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation may be equitably adjusted, as mutually agreed, to provide for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

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

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

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

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

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the

Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

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

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

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

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

§ 10.9 This Agreement and any amendments to this Agreement shall not be in full force and effect until concurred with in writing by the Agency State Director or the State Director's delegate. Such concurrence shall be evidenced by the signature of such a representative of the Agency in the space provided at the end of this Agreement.

§ 10.10 If applicable, the Architect shall comply with section 319 of Public Law 101-121, as supplemented by the Department of Agriculture regulations (7 CFR part 3018). This statute pertains to restrictions on lobbying and applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, the Architect must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Contract. The certification and disclosure forms shall be provided by the Owner.

§ 10.11 The Architect agrees to abide by the requirements under Executive Order 12549, which pertains to the debarment or suspension of a person from participating in a Federal program or activity. If the total compensation described in Article 1.5 exceeds \$25,000, the Architect shall complete the relevant certification form provided by the Owner.

## ARTICLE 11 COMPENSATION

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

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

Three Hundred Sixty-Seven Thousand, Six Hundred Dollars (\$367,600)

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

Hourly Per Exhibit B

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus twenty-five percent ( 25 %), or as otherwise stated below:

Lump sum negotiated per scope determined.

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

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Thirty-five	percent (	35	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
<hr/>				
Total Basic Compensation	one hundred	percent (	100	%)
		(		

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

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

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

Architect- Exhibit B, Civil Engineer – Exhibit C, Landscape Architect – Exhibit D, Structural Engineer – Exhibit E, MEP Engineering – Exhibit F

Employee or Category	Rate
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#### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

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

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent ( 10 %) of the expenses incurred.

#### § 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

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

Five Thousand Dollars (\$5,000)

#### § 11.10 PAYMENTS TO THE ARCHITECT

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

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

1 % per month

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

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

§ 11.10.5 The Architect shall provide a detailed Opinion of Probable Cost for Reimbursable Expenses as defined in subparagraph 11.8., which shall be attached and made a part of this Agreement (Exhibit G). The cost Opinion must be approved in writing by the Owner and shall be concurred with in writing by the Agency before the services are rendered. The billings for reimbursable services shall not exceed the budgeted amount without prior approval of the Owner with the concurrence of the Agency. The Agency may not concur in requests for payments which exceed the budgeted amount unless it is established that funds are available for such expenditures.

### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

12.1 This Agreement is modified and supplemented by RD Instruction 1942-A, Guide 27, Attachment 1.

### ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

.3 Other documents:

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

- Letter dated May 30, 2017
- Exhibit A – Scope of Services
- Exhibit B – FDI\*CO-OP Hourly Rate Schedule
- Exhibit C – KTM Scope of Services – Hourly Rate Schedule
- Exhibit D – Designworks Scope of Services - Hourly Rate Schedule
- Exhibit E – Albertson Engineering Inc. Scope of Services – Hourly Rate Schedule
- Exhibit F – West Plains Engineering Inc. Scope of Services – Hourly Rate Schedule

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

(Table Deleted)

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below.

OWNER:

ATTEST:	By
Type Name	Type Name Daniel Ainslie - City MGR
Title	Title
Date	Date

ARCHITECT:

ATTEST:	By
Type Name	Typed Name Gene A. Fennell - FDI
Title	Title Architect
Date	Date

ARCHITECT:

ATTEST:	By
Type Name	Typed Name Tom Hurlbert - CO-OP
Title	Title Architect
Date	Date

The United States of America, as potential lender or insurer of funds to defray the costs of this agreement and without liability for any payments thereunder, hereby concurs in the form, content and the execution of this agreement.

U.S. Department of Agriculture Rural Development  
Rural Housing Service

By

Print Name

Title

Date

Init.

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User Notes:

(3B9ADA0F)

*City of Riders*

1040 2nd Street, Suite 103  
Sturgis, SD 57785  
www.sturgis-sd.gov



*City Manager*

Voice: (605) 347-4422  
Fax: (605) 347-4861  
dainslie@sturgisgov.com

## Council Report

June 5, 2017

Daniel Ainslie, City Manager

Consideration to Adopt Resolution 2017-33 Establishing a Wastewater Treatment Facility and Infrastructure Surcharge

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### **Background**

For approximately 5 years, the City has been in negotiations with the SD DENR for a new wastewater discharge permit. The new regulations will require significant enhancements to the existing facility. The Council has conducted an in-depth analysis of varying engineered solutions. The result of this analysis has shown that the most affordable long-term solution involves the completion of a new wastewater treatment plant. As described during the May 15 Council meeting and outlined in the last City SIP this solution should be combined with a new and expanded main collection line and rehabilitation of cracked sewer lines and manholes. This project would allow the City to meet the enhanced regulatory guidelines and easily expand capacity if and when necessary.

Recently, the City has been awarded grants and principal forgiveness equal to approximately 12.5% of the total project cost. In addition, the City has been granted very favorable financing terms of 2.5% rates at 30 years. This is the most advantageous time for this project to be built. Numerous communities throughout the state are one to two years behind Sturgis. Meaning in the near future, there will be far less funding available for grants and principal forgiveness. In addition, rising national interest rates and construction costs will greatly increase the total costs for the same project in years to come.

### **Discussion**

The proposed financing package is the most advantageous possible. At this moment, the City of Sturgis is best poised to complete the necessary upgrades at the most affordable rates possible. Despite these being the most affordable rates, it will still unfortunately require a monthly surcharge. Several residents have noted in the past, displeasure at having additional line item surcharges. However, the SRF loan financing requires a separate funding source. Without a separate surcharge, the City would not be able to use this financing package. This means that the alternative would result in a loss of \$2,000,000 in grants and principal forgiveness and the very low 2.5% interest rates.

When calculating the surcharge needed, the Council has taken into account the savings created by beginning to collect the funds early and the impact from further growth. If the surcharge is placed into effect as of July 1, 2017 there is not a need for an increase barring a critical failure for at least five years. In comparison, if a surcharge is not put into place until 2019, the surcharge will need to be at least \$3 per month more. Lastly, the future costs will be dependent greatly upon the continued growth of our community. Meaning, the more account holders added to the system, the lower future rates will be.

The Council has ensured that the total cost of living in Sturgis is in line with surrounding Black Hills communities. While the proposed resolution would change Sturgis' current rankings, it would stabilize the community's future rates before significant changes occur in our neighbors'. In the very near future,



several communities will be facing similar utility increases. However, their cost of construction will be far higher. As such in a short period of time, Sturgis will return to being one of the most affordable Black Hills communities to live.


**Budget Impact**

The proposed resolution would place a new \$17.63 per month surcharge on each billed unit. This would provide for the lowest rate possible to make the necessary improvements to the system and continue to provide necessary sewer services to the community. The proposed resolution also prohibits future wastewater rate increases for at least 3 ½ years. At that point, the Council will be able to see how the actual construction costs and growth in the community has developed.

**Recommendation**

It is recommended that the Council approve the proposed resolution.

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Approved:	 _____ Daniel Ainslie, City Manager
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**RESOLUTION 2017-33**  
**RESOLUTION ESTABLISHING A WASTEWATER TREATMENT AND INFRASTRUCTURE**  
**SURCHARGE FOR THE CITY OF STURGIS**

WHEREAS, the City of Sturgis has adopted through Ordinance 11.04.04 and 11.05.31, which authorize the City of Sturgis to annually review the municipal garbage, sewer and water utility rates; and

WHEREAS, the City of Sturgis is in negotiations with the South Dakota Department of Environment and Natural Resources for a new waste water permit; and,

WHEREAS, the requirements of the permit under discussion will require substantial enhancements to the existing municipal wastewater treatment facility; and,

WHEREAS, the City Council has reviewed numerous potential options during public meetings and has chosen a system which will be the most affordable long term solution to meet the enhanced regulatory requirements and has the greatest capacity to expand in volume and additional treatment measures as needed; and

WHEREAS, the City is also seeking to replace and expand the existing central collection line which is at capacity and line existing cracked sewer mains and manholes throughout the community; and,

WHEREAS, the City of Sturgis has received grants and principal forgiveness of \$2,000,000 for the project and a 40-year low interest loan to finance the remaining portions of the project; and,

WHEREAS, delay in the project will only increase total project costs due to increasing financing rates, increasing construction costs and reduced grants; and,

WHEREAS, the State Revolving Loan Fund requires a separate utility surcharge to fund the debt service requirement; and,

WHEREAS, the State Revolving Loan Fund is willing to provide 12.5% in grant and principal forgiveness and finance the remaining project costs at rates and terms far more advantageous than any other financing source.

NOW, THEREFORE, the Common Council of the City of Sturgis does hereby adopt a Wastewater Treatment and Infrastructure Surcharge in the amount of \$17.63 per billed account unit as of July 1, 2017. In addition, all wastewater charges and surcharges shall not be increased until at least January 1, 2021.

Adopted this 5<sup>th</sup> day of June, 2017.

STURGIS COMMON COUNCIL

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Mark Carstensen, Mayor

ATTEST:

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Fay Bueno, City Finance Officer

Published:

Effective:

# Citizen Request to be on City Council Agenda

City of Sturgis

1040 2<sup>nd</sup> Street, Ste 103, Sturgis, SD 57785

Phone: (605) 347-4422 Fax: (605) 347-4861

Email: [fayb@sturgisgov.com](mailto:fayb@sturgisgov.com)



City Council Meetings are the First & Third Monday of Each Month  
(Exception: When Monday is a holiday, then the meeting will be on Tuesday)

*Agenda Requests must be presented to the Finance Office by **5pm 10 DAYS** prior to Monday Council.*

Meeting Date: 5/29/2017			
Agenda Item:			
Name: AT&T Mobility			
Address: 208 S. Akard St.	City: Dallas	State: TX.	Zip: 75202
Phone :			

Purpose: Building permit closure
Background Information:

Other Comments: AT&T would like to close the building permit that is currently open for the cell site located at 1117 Main St., Sturgis
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Please submit this form via e-mail to: Fay Bueno, Finance Officer: <a href="mailto:fayb@sturgisgov.com">fayb@sturgisgov.com</a> and Daniel Ainslie, City Manager: <a href="mailto:dainslie@sturgisgov.com">dainslie@sturgisgov.com</a> OR may be delivered to City Hall at the above address.
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