

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

CITY OF DAVENPORT, IOWA,)	
)	CASE NO.
Plaintiff,)	
)	
vs.)	
)	PLAINTIFF’S MOTION TO
OFFICE OF AUDITOR OF STATE)	MODIFY SUBPOENA
OF IOWA,)	
)	
Defendant.)	

Plaintiff, City of Davenport, Iowa (“City”), by its attorneys, Lane & Waterman LLP, hereby moves the Court to modify the Subpoena issued by Defendant (“Auditor’s Office”) to Plaintiff dated February 7, 2024 and in support thereof, state as follows:

RELEVANT FACTS

1. On or about January 23, 2024, State Auditor, Rob Sand, appeared on a KWQC news report where he announced that the Auditor’s Office was conducting an investigation into the City’s settlements with three former City employees, Corrin Spiegel, Tiffany Thorndike and Samantha Torres.

2. On February 7, 2024, pursuant to Iowa Code § 11.51 and 17A.13, the Auditor’s Office issued a subpoena (the “Subpoena”) to the City requesting the following information:

- A. Recordings of the following closed session meetings minutes and/or recordings:
 - September 27, 2023 – City Council meeting¹
 - October 4, 2023 – Committee of the Whole
 - October 25, 2023 – City Council meeting
 - December 6, 2023 – Committee of the Whole
 - December 13, 2023 – City Council meeting

- B. Copies of any, and all emails, memorandums, payments and/or other documents discussing proposed settlements and settlement agreements

¹ This closed session was canceled and did not occur.

involving Corrin Spiegel, Samantha Torres, and Tiffany Thorndike from September 1, 2023 to January 31, 2024.

- C. Employment agreements of Spiegel, Torres, and Thorndike.
- D. Final signed settlement agreements involving Spiegel, Torres, and Thorndike.

A copy of the Subpoena is attached hereto as Exhibit 1.

3. Incident to the Subpoena, the Auditor's Office has requested that it be allowed access of the audio recordings and meeting minutes for the City's closed sessions held on October 4, 2023, October 25, 2023, December 6, 2023 and December 13, 2023.

4. The October 4, 2023 closed session was held "to discuss strategy with counsel in matters involving litigation pursuant to Iowa Code Section 21.5(1)(c)." *See* Meeting Minutes dated October 4, 2023 attached hereto as Exhibit 2. In attendance at the October 25, 2023 closed session were City Attorney, Tom Warner, and Jason O'Rourke, the City's outside counsel from Lane & Waterman LLP. *Id.*

5. The October 25, 2023 closed session was held "to discuss strategy with counsel in matters involving litigation pursuant to Iowa Code Section 21.5(1)(c)." *See* Meeting Minutes dated October 25, 2023 attached hereto as Exhibit 3. In attendance at the October 25, 2023 closed session were City Attorney, Tom Warner, and Jason O'Rourke, the City's outside counsel from Lane & Waterman LLP. *Id.*

6. The December 6, 2023 closed session was held "to discuss strategy with counsel in matters involving litigation pursuant to Iowa Code Section 21.5(1)(c)." *See* Meeting Minutes dated December 13, 2023 attached hereto as Exhibit 4. In attendance at the December 6, 2023 closed session were Assistant City Attorney, Brian Heyer, and Richard Davidson and Brett Marshall, the City's outside counsel from Lane & Waterman LLP. *Id.*

7. The December 13, 2023 closed session was held “to discuss strategy with counsel in matters involving litigation pursuant to Iowa Code Section 21.5(1)(c).” *See* Meeting Minutes dated December 13, 2023 attached hereto as Exhibit 5. In attendance at the December 13, 2023 closed session were Assistant City Attorney, Brian Heyer, and Richard Davidson and Brett Marshall, the City’s outside counsel from Lane & Waterman LLP. *Id.*

8. The Subpoena also requests production of “any, and all emails, memorandums, payments and/or other documents discussing proposed settlements and settlement agreements involving Corrin Spiegel, Samantha Torres, and Tiffany Thorndike.”

9. On February 15, 2024, the City’s counsel sent a letter to the Auditor’s Office objecting to the Subpoena on the basis that it demands access to attorney-client privilege and attorney work product. However, in an attempt to comply with the Subpoena, the City produced with the letter the non-privileged information requested in the Subpoena. A copy of this letter is attached hereto as Exhibit 6.

ARGUMENT

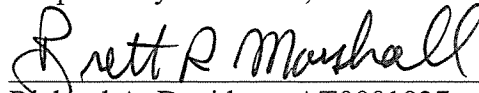
The Subpoena should be modified to exclude the October 4, 2023, October 25, 2023, December 6, 2023 and December 13, 2023 closed session recordings and minutes and any other records constituting attorney-client privilege or attorney work product. The Subpoena issued by the Auditor’s Office is subject to the same rules as in ordinary civil actions. *See* Iowa Code § 17A.13. “Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action”. Iowa R. Civ. Pro. 1.503(1) (emphasis added). Under the Rules of Civil Procedure, a court “must quash or modify a subpoena that ... requires disclosure of privileged or other protected matter, if no exception or waiver applies.” *See* Iowa R. Civ. Pro. 1.1701(4)(d)(1) (emphasis added).

The attorney-client privilege is well established and zealously protected under Iowa law. “[C]onfidential communication between an attorney and the attorney’s client is absolutely privileged from disclosure against the will of the client.” *Fenceroy v. Gelita USA, Inc.*, 908 N.W.2d 235, 242-43 (Iowa 2018). Discussions concerning litigation in closed sessions held among members of a city council and its attorneys are protected by the attorney-client privilege. *See Tausz v. Clarion-Goldfield Community School Dist.*, 569 N.W.2d 125, 129 (Iowa 1997).

Here, there can be no question that the City’s closed sessions on October 4, 2023, October 25, 2023, December 6, 2023 and December 13, 2023 are attorney-client privileged communications, as the purpose for the closed sessions was to discuss pending or threatened litigation with the City’s attorneys pursuant to Iowa Code Section 21.5(1)(c). Both the City’s in-house counsel and its outside counsel from Lane & Waterman were present at these meetings. As attorney-client communications, these meetings are absolutely privileged from disclosure. *See Fenceroy*, 908 N.W.2d at 242-43.

WHEREFORE, Plaintiff, City of Davenport, Iowa, requests that the Court enter an order modifying the Subpoena to exclude the October 4, 2023, October 25, 2023, December 6, 2023 and December 13, 2023 closed session recordings and minutes and any other records constituting attorney-client privilege or attorney work product privilege.

Respectfully submitted,



Richard A. Davidson, AT0001937

Brett R. Marshall, AT0011432

LANE & WATERMAN LLP

220 N. Main Street, Suite 600

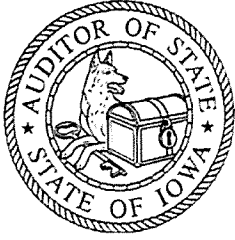
Davenport, IA 52801

Phone: (563) 324-3246

Email: rdavidson@l-wlaw.com

Email: bmarshall@l-wlaw.com

ATTORNEYS FOR PLAINTIFF



OFFICE OF AUDITOR OF STATE
STATE OF IOWA

Rob Sand
Auditor of State

State Capitol Building
Des Moines, Iowa 50319-0004
Telephone (515) 281-5834 Facsimile (515) 281-6518

February 7, 2024

City of Davenport
Attn: Brian Heyer
226 West 4th Street
Davenport, IA 52801

To Mr. Heyer:

We are currently conducting an investigation of certain transactions processed by the City of Davenport. In conjunction with that investigation, we find it necessary to review certain closed meeting minutes. The documents we are requesting are specified on the attachment to the enclosed subpoena.

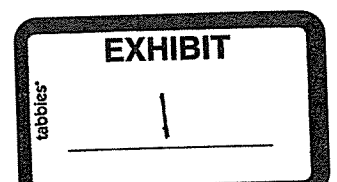
As stated in the subpoena, this subpoena is issued pursuant to Iowa Code sections 11.51 and 17A.13, in addition to the Iowa Rules of Civil Procedure. Information received pursuant to this subpoena will be maintained as confidential work papers pursuant to Iowa Code section 11.42, which states, in part, "Notwithstanding Chapter 22, information received during the course of any audit or examination, including allegations of misconduct or noncompliance, and all audit or examination work papers shall be maintained as confidential." Any disclosure of information resulting from or relating to this subpoena must adhere to the provisions of Iowa Code 11.42.

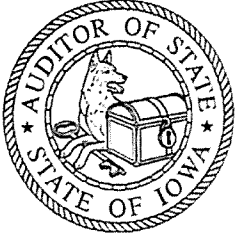
If you have any questions, please feel free to contact me at 515-281-5834 or e-mail me at melissa.finestead@aos.iowa.gov. Thank you for your assistance.

Sincerely,

Melissa Finestead
Melissa J. Finestead, CFE
Director

Enc.





**OFFICE OF AUDITOR OF STATE
STATE OF IOWA**

Rob Sand
Auditor of State

State Capitol Building
Des Moines, Iowa 50319-0004

Telephone (515) 281-5834 Facsimile (515) 281-6518

SUBPOENA

STATE OF IOWA
COUNTY OF POLK
THE STATE OF IOWA
TO City of Davenport, Iowa

You are hereby commanded to appear before the Auditor of the State of Iowa and/or his designated agent at the State Capitol Building to present certain documents relative to an audit of City of Davenport

The documents to be presented are listed on the attached page. Said documents shall be presented to the Office of Auditor of State by Friday, February 16, 2024. Hereof, fail not, under penalty of law.

This subpoena is issued pursuant to Iowa Code sections 11.51 and 17A.13, in addition to the Iowa Rules of Civil Procedure. Information received pursuant to this subpoena will be maintained as confidential work papers pursuant to Iowa Code section 11.42, which states, in part, "Notwithstanding Chapter 22, information received during the course of any audit or examination, including allegations of misconduct or noncompliance, and all audit or examination work papers shall be maintained as confidential." Any disclosure of information resulting from or relating to this subpoena must adhere to the provisions of Iowa Code 11.42.

Dated this 7th day of February, 2024.

AUDITOR OF THE STATE OF IOWA

ROB SAND

BY _____

Handwritten signature of Rob Sand in black ink.

(Subpoena issued under the provisions of Chapters 11.51 and 17A.13, the Code of Iowa.)

**Attachment to Subpoena
To City of Davenport
in Regards to Audit of the
City of Davenport, Iowa**

1. Recordings of the following closed session meeting minutes and/or recordings:
 - September 27, 2023 – City Council meeting
 - October 4, 2023 – Committee of the Whole
 - October 25, 2023 – City Council meeting
 - December 6, 2023 – Committee of the Whole
 - December 13, 2023 – City Council meeting
2. Copies of any, and all emails, memorandums, payments and/or other documents discussing proposed settlements and settlement agreements involving Corrin Spiegel, Samantha Torres, and Tiffany Thorndike from September 1, 2023 to January 31, 2024.
3. Employment agreements of Spiegel, Torres, and Thorndike.
4. Final signed settlement agreements involving Spiegel, Torres, and Thorndike.

If the production of the materials listed in this subpoena will result in a fee billed to the Office of Auditor of State, please contact Melissa Finestead at (515) 281-5834 prior to the preparation of the material with an estimate of the cost. It is necessary to make arrangements to satisfy the fee before it is incurred.

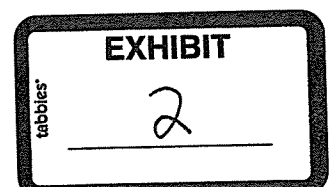
CITY HALL, 226 WEST 4TH STREET, COUNCIL CHAMBERS, Davenport, Iowa, Wednesday, October 4, 2023 -- The Davenport City Council met in Committee of the Whole at 5:30 p.m. with Mayor Matson presiding. The Council observed a moment of silence. Pledge of Allegiance led by Alderwoman Lee. Upon the roll being called, all Aldermen were present except Alderwoman Dickmann (Alderman Dunn, Alderman Kelly, Alderwoman Meginnis, Alderwoman Lee, Alderman Gripp, Alderman Condon, Alderman Jobgen, and Alderman Ortiz).

The following Public Hearings were held: **Community Development:** 1. for Case REZ23-04 being the request of Jason Cousineau to rezone approximately 1.19 acres of land generally located southeast of the Grand Avenue and East 46th Street intersection at 801 East 46th Street from RMF Multi-Family Residential District to I-1 Light Industrial Zoning District. **Finance:** 1. on granting an overhead electric easement across City-owned property south of River Drive at East 4th Street (Parcel L0004A01B) to MidAmerican Energy; and 2. on granting a gas and regulator station easement on City-owned property located at 3000 East Locust Street (Parcel N2009-01) to MidAmerican Energy.

The following Proclamation was issued: Indigenous Peoples' Day | October 9, 2023, **2023-416.**

Action Items for Discussion: (The votes on all motions were by voice vote. All votes were unanimous unless specifically noted.) **Finance:** Alderman Condon reviewed all items listed. On motion by Alderman Gripp, second by Alderman Ortiz item #5, Resolution authorizing the Chief Financial Officer to make the appropriate inter-fund transfers for the City's FY 2023 financial records as required by the Iowa Administrative Code, City Finance Committee Agency Chapter 2, and item #7, Resolution adopting the FY 2025 Budget Policies, moved to the Discussion Agenda and all other items moved to the Consent Agenda. **Community Development:** Alderman Gripp reviewed all items listed. On motion by Alderwoman Lee, second by Alderman Dunn all items moved to the Consent Agenda. **Public Safety:** Alderman Jobgen reviewed all items listed. On motion by Alderman Ortiz, second by Alderwoman Meginnis the annual liquor license renewal for Yoshi's Bar and Filipino Canteen moved to the Discussion Agenda with a staff recommendation for denial of the outdoor area and all other items moved to the Consent Agenda. **Public Works:** Alderman Dunn reviewed all items listed. On motion by Alderman Kelly, second by Alderman Jobgen item #1, Resolution approving and authorizing the use of condemnation and commencement of condemnation proceedings, if necessary, for rights-of-way and easements associated with the Goose Creek Trail Phase III project, CIP #ARP17, moved to the Discussion Agenda and the other item moved to the Consent Agenda.

On motion by Alderman Dunn, second by Alderwoman Meginnis and all Aldermen present voting aye, Council recessed to Executive Session at **7:53 p.m.** to discuss strategy with counsel on



matters involving litigation pursuant to Iowa Code Section 21.5(1)(c). Council reconvened in Executive Session at **7:59 p.m.** with Mayor Matson and all Aldermen present except Alderwoman Dickmann (Alderman Condon, Alderman Dunn, Alderman Gripp, Alderman Jobgen, Alderman Kelly, Alderwoman Lee, Alderwoman Meginnis, and Alderman Ortiz). Others present included Attorney Jason O'Rourke from Lane & Waterman LLP and Corporation Counsel Tom Warner. On motion by Alderman Dunn, second by Alderman Ortiz, Council went back into open session and adjourned at **9:07 p.m.**

City of Davenport, Iowa

City Council Meeting Minutes

Wednesday, October 25, 2023

The City Council of Davenport, Iowa met in regular session on Wednesday, October 25, 2023 at 5:30 p.m. in the Council Chambers at Davenport City Hall, 226 West 4th Street, Davenport, Iowa with Mayor Matson presiding and all Aldermen present (*In person*: Alderman Dunn, Alderman Kelly, Alderwoman Meginnis, Alderwoman Lee*, Alderman Gripp, Alderman Condon, Alderman Jobgen, and Alderman Ortiz; *Via telephone*: Alderwoman Dickmann).

* Left at 6:19 p.m. after the roll call on item #1 on the Discussion Agenda.

I. Moment of Silence

II. Pledge of Allegiance | Led by Alderman Jobgen

III. Roll Call

IV. Meeting Protocol and Decorum

V. Approval of Minutes

APPROVED

Approval of the City Council Meeting minutes for October 11, 2023.

VI. City Administrator Update

VII. Report on Committee of the Whole

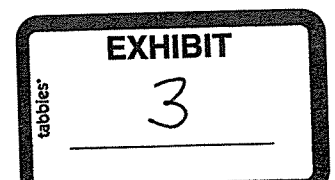
APPROVED

Approval of the Report on Committee of the Whole for October 18, 2023.

CITY HALL, 226 WEST 4TH STREET, COUNCIL CHAMBERS, Davenport, Iowa, Wednesday, October 18, 2023 -- The Davenport City Council met in Committee of the Whole at 5:30 p.m. with Mayor Matson presiding. The Council observed a moment of silence. Pledge of Allegiance led by Alderman Condon. Upon the roll being called, all Aldermen were present except Alderwoman Dickmann (Alderman Dunn, Alderman Kelly, Alderwoman Meginnis, Alderwoman Lee, Alderman Gripp, Alderman Condon, Alderman Jobgen, and Alderman Ortiz).

*The following Public Hearings were held: **Community Development**: 1. for Case REZ23-05 being the request of Anthony Properties to rezone the 10.17 acres of Lot 1 of Phoenix Centre 6th Addition in the 5600 Block of Tremont Avenue (Parcel X1203-01) from I-1 Light Industrial to R-MF Multi-Family Residential District. **Public Works**: 1. on the plans, specifications, form of contract and estimate of cost for the West 46th Street (North Lincoln Avenue to North Pine Street) Reconstruction project, CIP #35062; 2. on the plans, specifications, form of contract, and estimate of cost for the West 46th Street Bridge Over Cardinal Creek Replacement project, CIP #21010; 3. on the plans, specifications, form of contract, and estimate of cost for the Goose Creek Trail Connection project, CIP #28028; 4. on the plans, specifications, form of contract, and estimate of cost for the Duck Creek Sewer Interceptor Extension project, CIP #ARP18; 5. on the plans, specifications, form of contract, and estimate of cost for the Modern Woodmen Park Fire Suppression System Replacement project, CIP #23049; 6. on the plans, specifications, form of contract, and estimate of cost for the Traffic Signalization | 3rd & 4th Street Two-Way Conversion project, CIP #38017; 7. on the plans, specifications, form of contract, and estimate of cost for the Flood Mitigation | River Drive from Carey Avenue to East 3rd Street project, CIP #ARP14; 8. on the plans, specifications, form of contract, and estimate of cost for the Flood Mitigation | West River Drive and Marquette Street project, CIP #68015. **Finance**: 1. on amending the North Urban Renewal Plan to include the Internal TIF.*

*Action Items for Discussion: (The votes on all motions were by voice vote. All votes were unanimous unless specifically noted.) **Community Development**: Alderman Gripp reviewed all items listed. On motion by*

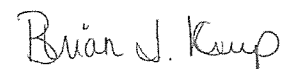


The following is a summary of revenue received for the month of September 2023:

Property Taxes	\$ 9,553,695
Other City taxes	\$ 2,313,571
Special Assessments	\$ -
Licenses & Permits	\$ 238,447
Intergovernmental	\$ 2,311,140
Charges for Services	\$ 5,230,014
Use of Monies & Property	\$ 267,000
Fines & Forfeits	\$ 141,704
Bonds/Loan Proceeds	\$ 30,596
Miscellaneous	\$ 580,564

XVI. Executive Session

*On motion by Alderman Dunn, second by Alderwoman Meginnis and all Aldermen present voting aye, Council recessed to Executive Session at **7:00 p.m.** to discuss strategy with counsel in matters involving litigation pursuant to Iowa Code Section 21.5(1)(c). Council reconvened in Executive Session at **7:07 p.m.** with Mayor Matson and all Aldermen present except Alderwoman Dickmann and Alderwoman Lee (Alderman Condon, Alderman Dunn, Alderman Gripp, Alderman Jobgen, Alderman Kelly, Alderwoman Meginnis, and Alderman Ortiz). Others present included Attorney Jason O'Rourke from Lane & Waterman LLP, Corporation Counsel Tom Warner, and CFO/Assistant City Administrator Mallory Merritt. On motion by Alderman Ortiz, second by Alderman Dunn, Council went back into open session and adjourned at **7:34 p.m.***

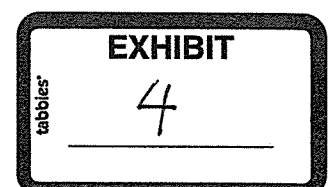


Brian J. Krup
Deputy City Clerk

CITY HALL, 226 WEST 4TH STREET, COUNCIL CHAMBERS, Davenport, Iowa, Wednesday, December, 6 2023 -- The Davenport City Council met in Committee of the Whole at 5:30 p.m. with Mayor Matson presiding. The Council observed a moment of silence. Pledge of Allegiance led by Alderwoman Meginnis. Upon the roll being called, all Aldermen were present except Alderwoman Dickmann and Alderman Ortiz (Alderman Dunn, Alderman Kelly, Alderwoman Meginnis, Alderwoman Lee, Alderman Gripp, Alderman Condon, Alderwoman Lynch, and Alderman Jobgen).

The following Public Hearings were held: **Community Development:** 1. on the proposed conveyance of City-owned property located at 1216 Warren Street to Top Notch Real Estate, LLC, Petitioner. **Public Works:** 1. on the plans, specifications, form of contract, and estimate of cost for the Compost Facility Lot Repairs project; 2. on the plans, specifications, form of contract, and estimate of cost for the CDBG Alley Program: Washington Street to Fillmore Street Permeable Alley With Sewer Separation project, pending HUD approval, #BG250; and 3. on the plans, specifications, form of contract, and estimate of cost for the Goose Creek Trail Overlay project, CIP #28030.

Action Items for Discussion: (The votes on all motions were by voice vote. All votes were unanimous unless specifically noted.) **Community Development:** Alderman Gripp reviewed all items listed. On motion by Alderwoman Lee, second by Alderman Jobgen item #4 would be voted on later and the agenda and all other items moved to the Consent Agenda. **Public Safety:** Alderman Jobgen reviewed all items listed. On motion by Alderman Dunn, second by Alderman Gripp item #1, Third Consideration: Ordinance amending Schedule VII No Parking of Chapter 10.96 entitled "Schedules" of the Municipal Code of Davenport, Iowa by adding West 47th Street along the north side from Pine Street west to the dead end thereto, moved to the Discussion Agenda and all other items moved to the Consent Agenda. **Public Works:** Alderman Dunn reviewed all items listed. On motion by Alderman Gripp, second by Alderwoman Meginnis item #17, Resolution awarding a contract for the Traffic Signalization | 3rd & 4th Street Two-Way Conversion project to Davenport Electric Contract Company of Davenport, Iowa in the amount of \$2,895,075.50, CIP #38017, moved to the Discussion Agenda; item #27, Motion approving a waiver of sidewalk installation for Birdie's Nest Daycare at 2627 Hickory Grove Road, and that said waiver is valid as long as certain conditions remain in effect, moved to the Discussion Agenda with a recommendation for denial by staff; and all other items moved to the Consent Agenda. Council recessed for a break at 7:15 p.m. and reconvened at 7:25 p.m. **Finance:** Alderman Condon reviewed all items listed. On motion by Alderwoman Lynch, second by Alderman Jobgen all items moved to the Consent Agenda.



Other Ordinances, Resolutions and Motions: A motion for suspension of the rules to vote on the listed items was moved by Alderman Gripp and seconded by Alderwoman Lee. Upon the roll being called, all Aldermen present voted aye and the rules were suspended.

On motion by Alderman Gripp, second by Alderwoman Meginnis and all Aldermen present voting aye, the following Motion passed:

Motion to reconsider Ordinance 2023-483 to amend the conditions of Case REZ23-05 being the request of Anthony Properties to rezone the 10.17 acres of Lot 1 of Phoenix Centre 6th Addition in the 5600 Block of Tremont Avenue from I-1 Light Industrial to R-MF Multi-Family Residential District. [Ward 8] **PASSED 2023-507**

A motion to amend the conditions for Ordinance 2023-483 was moved by Alderman Gripp and seconded by Alderwoman Meginnis. Upon the roll being called, all Aldermen present voted aye and the conditions to Case REZ23-05 were amended to be replaced with the following:

1. Upon development, a buffer yard of no less than fifteen feet in width shall be provided along the north and east property lines. The buffer yard shall contain a six-foot fence and landscaping.
2. The developer shall obtain approval from all utilities to install signage within the designated utility easement.
3. The developer shall install signage near the driveway entrance to the development. The signage shall be a minimum of thirty-two square feet and illuminated.

A motion to place Ordinance 2023-483 on the Consent Agenda for the December 13, 2023 City Council Meeting was moved by Alderman Gripp and seconded by Alderwoman Meginnis. Upon the roll being called, all Aldermen present voted aye.

On motion by Alderman Gripp, second by Alderman Dunn and all Aldermen present voting aye, Council recessed to Executive Session at **8:10 p.m.** Council reconvened in Executive Session at **8:18 p.m.** to discuss a real estate transaction pursuant to Iowa Code Section 21.5(1)(j) with Mayor Matson and all Aldermen present except Alderwoman Lee, Alderwoman Dickmann, and Alderman Ortiz (Alderman Condon, Alderman Dunn, Alderman Gripp, Alderman Jobgen, Alderman Kelly, Alderwoman Lynch, and Alderwoman Meginnis). Others present included Interim City Administrator/CFO Mallory Merritt, Community and Economic Development Director Bruce Berger, Assistant City Administrator/Public Works Director Nicole Gleason, and Interim Corporation Counsel Brian Heyer. On motion by Alderwoman Meginnis, second by Alderman Dunn, this Executive Session ended at **8:36 p.m.** Council returned to Executive Session at **8:37 p.m.** to discuss strategy with counsel in matters involving litigation pursuant to Iowa Code Section 21.5(1)(c) with Mayor Matson and all Alderman present except Alderwoman Lee, Alderwoman Dickmann, and Alderman Ortiz (Alderman Condon, Alderman Dunn, Alderman Gripp, Alderman Jobgen, Alderman Kelly, Alderwoman Lynch, and

Alderwoman Meginnis). Others present included Attorneys Dick Davidson and Brett Marshall from Lane & Waterman, Interim City Administrator/CFO Mallory Merritt, and Interim Corporation Counsel Brian Heyer. On motion by Alderman Jobgen, second by Alderman Dunn, Council went back into open session and adjourned at **9:46 p.m.**

City of Davenport, Iowa
City Council Meeting Minutes
Wednesday, December 13, 2023

The City Council of Davenport, Iowa met in regular session on Wednesday, December 13, 2023 at 5:30 p.m. in the Council Chambers at Davenport City Hall, 226 West 4th Street, Davenport, Iowa with Mayor Matson presiding and all Aldermen present (*In person:* Alderman Dunn, Alderman Kelly, Alderwoman Meginnis, Alderman Gripp, Alderman Condon, Alderwoman Lynch, Alderman Jobgen, and Alderman Ortiz; *Via telephone:* Alderwoman Lee and Alderwoman Dickmann).

I. Moment of Silence

II. Pledge of Allegiance | Led by Alderman Gripp

III. Roll Call

IV. Meeting Protocol and Decorum

V. Approval of Minutes

APPROVED

Approval of the City Council Meeting minutes for November 21, 2023.

VI. City Administrator Update

VII. Report on Committee of the Whole

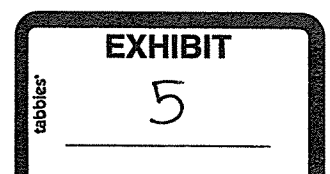
APPROVED

Approval of the Report on Committee of the Whole for December 6, 2023.

CITY HALL, 226 WEST 4TH STREET, COUNCIL CHAMBERS, Davenport, Iowa, Wednesday, December, 6 2023 -- The Davenport City Council met in Committee of the Whole at 5:30 p.m. with Mayor Matson presiding. The Council observed a moment of silence. Pledge of Allegiance led by Alderwoman Meginnis. Upon the roll being called, all Aldermen were present except Alderwoman Dickmann and Alderman Ortiz (Alderman Dunn, Alderman Kelly, Alderwoman Meginnis, Alderwoman Lee, Alderman Gripp, Alderman Condon, Alderwoman Lynch, and Alderman Jobgen).

*The following Public Hearings were held: **Community Development:** 1. on the proposed conveyance of City-owned property located at 1216 Warren Street to Top Notch Real Estate, LLC, Petitioner. **Public Works:** 1. on the plans, specifications, form of contract, and estimate of cost for the Compost Facility Lot Repairs project; 2. on the plans, specifications, form of contract, and estimate of cost for the CDBG Alley Program: Washington Street to Fillmore Street Permeable Alley With Sewer Separation project, pending HUD approval, #BG250; and 3. on the plans, specifications, form of contract, and estimate of cost for the Goose Creek Trail Overlay project, CIP #28030.*

*Action Items for Discussion: (The votes on all motions were by voice vote. All votes were unanimous unless specifically noted.) **Community Development:** Alderman Gripp reviewed all items listed. On motion by Alderwoman Lee, second by Alderman Jobgen item #4 would be voted on later and the agenda and all other items moved to the Consent Agenda. **Public Safety:** Alderman Jobgen reviewed all items listed. On motion by Alderman Dunn, second by Alderman Gripp item #1, Third Consideration: Ordinance amending Schedule VII No Parking of Chapter 10.96 entitled "Schedules" of the Municipal Code of Davenport, Iowa by adding West 47th Street along the north side from Pine Street west to the dead end thereto, moved to the Discussion Agenda and all other items moved to the Consent Agenda. **Public Works:** Alderman Dunn reviewed all items listed. On motion by Alderman Gripp, second by Alderwoman Meginnis item #17, Resolution awarding a contract for the Traffic Signalization | 3rd & 4th Street Two-Way Conversion project to Davenport Electric Contract Company of Davenport, Iowa in the amount of \$2,895,075.50, CIP #38017, moved to the Discussion Agenda; item #27, Motion approving a waiver of sidewalk installation for Birdie's Nest Daycare at 2627 Hickory Grove Road, and*



36. Motion approving a professional services agreement for engineering services for the East Locust Street (Grand Avenue to Eastern Avenue) Resurfacing project to Snyder & Associates, Inc of Iowa City, Iowa in the amount of \$99,100, CIP #35062. [Ward 5] **PASSED 2023-545**

37. Motion determining property values for the 2024 Alley Resurfacing Program. [Wards 3 & 5] **PASSED 2023-546**

38. Motion approving the Washington State Department of Enterprise Services Cooperative Purchasing Agreement for Transit Buses (contract #06719). [All Wards] **PASSED 2023-547**

XIII. Other Ordinances, Resolutions and Motions

XIV. Public with Business

XV. Reports of City Officials

The following is a summary of revenue received for the month of November 2023:

Property Taxes	\$ 5,465,605
Other City Taxes	\$ 3,638,503
Special Assessments	\$ -
Licenses & Permits	\$ 147,836
Intergovernmental	\$ 4,440,376
Charges for Services	\$ 4,248,912
Uses of Monies & Property	\$ 82,151
Fines & Forfeits	\$ 135,905
Bonds/Loan Proceeds	\$ 390,659
Miscellaneous	\$ 171,928

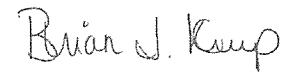
XVI. Executive Session

*On motion by Alderwoman Meginnis, second by Alderman Ortiz and all Aldermen present voting aye (Alderwoman Lynch was not in the room for the vote and Alderwoman Lee was no longer connected via telephone), Council recessed to Executive Session at **7:09 p.m.** Council reconvened in Executive Session at **7:16 p.m.** to discuss strategy with counsel in matters involving litigation pursuant to Iowa Code Section 21.5(1)(c) with Mayor Matson and all Alderman present except Alderwoman Lee and Alderwoman Dickmann (Alderman Condon, Alderman Dunn, Alderman Gripp, Alderman Jobgen, Alderman Kelly, Alderwoman Lynch, Alderwoman Meginnis, and Alderman Ortiz). Others present included Attorneys Dick Davidson and Brett Marshall from Lane & Waterman, Interim City Administrator/CFO Mallory Merritt, and Interim Corporation Counsel Brian Heyer. On motion by Alderman Jobgen, second by Alderman Gripp, Council went back into open session at **8:42 p.m.** to consider a Motion to ratify the settlement agreements with Corri Spiegel, Tiffany Thorndike, and Samantha Torres with Mayor Matson and all Aldermen present except Alderwoman Dickmann, Alderwoman Lee, and Alderwoman Lynch (Alderman Condon, Alderman Dunn, Alderman Gripp, Alderman Jobgen, Alderman Kelly, Alderwoman Meginnis, and Alderman Ortiz). On motion by Alderman*

Dunn, second by Alderman Jobgen and all Aldermen present voting aye except Alderman Kelly, the following Motion passed:

Motion to ratify the settlement agreements with Corri Spiegel, Tiffany Thorndike, and Samantha Torres. **PASSED 2023-548**

XVII. Adjourn **8:43 p.m.**



Brian J. Krup
Deputy City Clerk

Joe R. Lane (1858-1931)
Charles M. Waterman (1847-1924)
Richard A. Davidson
Michael P. Byrne
Theodore F. Olt III
Judith L. Herrmann
Joseph C. Judge
Jason J. O'Rourke
Mikkie R. Schiltz
Diane E. Puthoff
Wendy S. Meyer
Ian J. Russell
Benjamin J. Patterson
Douglas R. Lindstrom, Jr.
Abbey C. Furlong
Samuel J. Skorepa
Kurt P. Spurgeon
Joshua J. McIntyre
Brett R. Marshall
Timothy B. Gulbranson
Alexander C. Barnett
Eric M. Hartmann
Maegan M. Gorham^
Grace E. Mangieri
David C. Waterman
Jenny L. Juehring
Jessica Y. Kirkpatrick**
Samuel P. Cropper
Nicolas B. Yost*
Victoria L. Biggerstaff*

LANE & WATERMAN LLP
ATTORNEYS AT LAW SINCE 1854

220 North Main Street, Suite 600
Davenport, Iowa 52801-1953
Telephone (563) 324-3246
Fax (563) 324-1616

Writer's Direct Dial: (563) 333-6630
E-Mail Address: bmarshall@l-wlaw.com
www.L-WLaw.com

February 15, 2024

VIA EMAIL

Jonathan L. McGehee±±

Registered Patent Attorney
Kathryn E. Cox±*

Of Counsel

Thomas N. Kamp*
C. Dana Waterman III*
James A. Mezvinsky*
David A. Dettmann*
Terry M. Giebelstein
Robert V. P. Waterman, Jr.
R. Scott Van Vooren
Edmund H. Carroll
Diane M. Reinsch*
Jeffrey B. Lang

Admitted in Iowa and Illinois

* Only Admitted in Iowa
** Admitted in California
± Admitted in Florida
±± Only Admitted in Illinois
^ Admitted in Missouri

Illinois Office
3551 7th Street, Suite 110
Moline, IL 61265

Rob Sand, Auditor of the State of Iowa
c/o John McCormally, Chief of Staff
Office of Auditor
State Capitol Room 111
Des Moines, Iowa 50319
john.mccormally@aos.iowa.gov

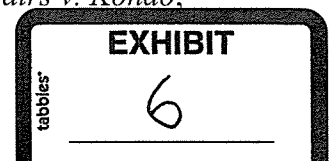
RE: City of Davenport Subpoena dated February 7, 2024

Dear Mr. McCormally:

As you know, our firm represents the City of Davenport. I want to thank you for your courtesy in extending the City's response date to February 16, 2024.

I am writing to reiterate that the City desires to fully cooperate in the audit and provide the information requested in the subpoena. However, you have asked to review recordings and minutes of the City's closed sessions with its attorneys and other documents, which contain attorney-client privileged communications and attorney work product and are protected from disclosure. *See Tausz v. Clarion-Goldfield Community School Dist.*, 569 N.W.2d 125, 129 (Iowa 1997). Additionally, the subpoena does not otherwise exclude attorney-client privileged communications or attorney work product. The City hereby objects to providing this information.

Iowa Code Chapter 11 does not grant the auditor's office express authority to demand disclosure of privileged information. While it does state the auditor must keep any information it receives confidential, it does not address our concern – that granting your office access to these closed session recordings will constitute a subject matter waiver of the attorney-client and work product privileges. *See Miller v. Continental Ins. Co.*, 392 N.W.2d 500, 504-05 (Iowa 1986) (stating that "disclosure of the content of a privileged communication constitutes a waiver as to all other communications on the same subject"); *see also Office of Hawaiian Affairs v. Kondo*,



LANE & WATERMAN LLP
ATTORNEYS AT LAW SINCE 1854

Mr. John McCormally
February 15, 2024
Page 2

528 P.3d 243 (Hawai'i 2023) (holding disclosure of confidential communications during state audit without a court order waives the attorney-client privilege). Chapter 11 does not address privileged information, and you have not provided us with any authority that supports your assertion that granting access would *not* constitute a waiver.

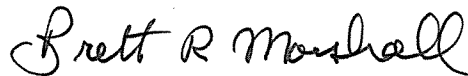
The City is currently engrossed in numerous pending and threatened lawsuits. These pending and threatened lawsuits, including the City's entire defense strategies, have been discussed with its attorneys at its closed session meetings. As I'm sure you would agree, a waiver of the City's privileges with regard to these closed sessions would be disastrous and irreparably harm the City in its ability to defend itself in these lawsuits.

To demonstrate the City's good faith intent to cooperate with your audit, we are enclosing with this letter all non-privileged documents responsive to your subpoena with the exception of some emails that the City is still working on reviewing. These will be provided as soon as the City's review is complete.

Again, thank you for helping us work through this important issue. Please contact me with questions.

Sincerely,

LANE & WATERMAN LLP

By 
Brett R. Marshall

BRM:mlc
Enclosures