

**WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM**

Date: 10/24/2023

Weekly Agenda Date: 10/31/2023

**ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN:** Supervisors K. Radig/J. Taylor

**WORDING FOR AGENDA ITEM:**

Hiring of Outside Legal Counsel Authorizing the Chairman to Sign Letter of Engagement with Whitfield and Eddy Law, John A. Templar, Jr.

**ACTION REQUIRED:**

Approve Ordinance

Approve Resolution

Approve Motion

Public Hearing

Other: Informational

Attachments

**EXECUTIVE SUMMARY:**

We have been advised that the Board of Supervisors should retain outside legal counsel and Jodie McDougal of Fredrikson, Byron, P.A. has let us know given some of the concerns shared at the 10-17-2023 that joint counsel is not advisable. This leaves us to rely upon outside legal counsel. John A. Templar, Jr. is widely regarded as one of the best construction law attorneys in the state (see resume, prospectus). He knows and has worked with Jodie McDougal on a variety of manners.

**BACKGROUND:**

We are asking that the Board of Supervisors receive an opinion from outside legal counsel in review of all contracts and any damages that may be due the county due to the loss of revenue from the LEC Authority opening past the 9-14-2023 original substantial completion date.

Additionally, our hardworking county attorney's office has suggested that outside legal counsel is appropriate given the vast range of specific construction law issues; however, Jodie McDougal of Fredrikson, Byron, P.A. has been counsel for The Baker Group in many matters and is currently retained by the LEC Authority. While our interests may align (and trust us, we have no reason to imagine litigating against the Authority but to work in a concurrent and cooperative matter to resolve any issues), it is necessary given the complexity of the issues to include standing, independent reviews, etc.

The goal would be to render an independent opinion (we have no preconceived one ourselves) but to have a third-party whose legal guidance we can rely upon. This alleviates ourselves of the appearance of impropriety and concerns shared by taxpayers.

We hope for representation in closed sessions that cooperatively works with the Authority's attorney to make sure taxpayer interests are protected. We want to understand better the claims of damages due the county in lost revenue, limitations on our capacity to exceed the bond referendum, and legalities concerning the binding of future boards to a certain levy for monies outside of the control of a taxing body. We hope and expect both counsels to work in a spirit of cooperation where our interests and the LEC Authorities align and engage preferably in mediation as regards damages.

**FINANCIAL IMPACT:**

See attached.

Whitfield will examine the possibility of recovery of losses due to the late completion of the Project, including lost revenue from federal prisoner participation in the LEC.

b. Whitfield will examine the potential liability of any party which is or may be responsible for the alleged failure of the plans and specifications to provide adequate fire protection systems, including a fire damper system that complies with engineering standards and all applicable codes.

c. Whitfield will examine the issue of which party (the Board, the Authority, or both) has standing to pursue remedies to recoup losses.

d. Whitfield will examine the issue of the impact of the potential cost overruns on the Project on the existing bond issue limits.

e. Whitfield will examine the issue and propriety of maintenance fees.

f. Whitfield will examine potential sources of recovery for losses incurred by the County due to late completion of the Project, including, but not limited to, loss of revenue from federal prisoner placement sources.

**IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?**

Yes  No

**RECOMMENDATION:**

Hiring of Outside Legal Counsel Authorizing the Chairman to Sign Letter of Engagement with Whitfield and Eddy Law, John A. Templar, Jr.

**ACTION REQUIRED / PROPOSED MOTION:**

Hiring of Outside Legal Counsel Authorizing the Chairman to Sign Letter of Engagement with Whitfield and Eddy Law, John A. Templar, Jr.



## John A. Templer, Jr.

*Attorney at Law*

t: 515-558-0116

f: 515-246-1474

templer@whitfieldlaw.com



John Templer's experience as an advocate covers a multitude of project types including commercial, industrial and residential buildings, and often he is called upon to apply his expertise in insurance law pertaining to construction projects. He has represented his construction clients before many different forums, and in a variety of venues around the country. This includes bench and jury trials in Iowa and other states for complex construction disputes. In Chambers USA 2021 edition Litigation: General Commercial - Iowa, John is described as "preeminent in construction law."

### PRACTICE AREAS

---

Alternative Dispute  
Resolution

Construction Arbitration and  
Mediation

Construction Business and  
Litigation

Construction Litigation  
Litigation

## CONSTRUCTION ARBITRATION AND MEDIATION

---

He has also developed a strong reputation as an expert arbitrator and mediator in construction disputes, and is a Fellow of the College of Commercial Arbitrators, a distinguished group of arbitrators whose expertise in this field of Alternative Dispute Resolution is recognized world-wide. For over twenty years he has served on American Arbitration Association (AAA) panels, both as panelist and chair, in large complex arbitrations involving high-rise hotel/office buildings, sports domes, schools, and industrial projects.

## CONSTRUCTION TRADE ASSOCIATION LEADERSHIP

---

He regularly counsels construction trade associations on issues including case law, ethics, and arbitration, conducts seminars and provides assistance in producing trade associations' publications. During Iowa legislative sessions John assists in drafting legislation impacting their members.

John was one of the original members of Construction Law Section Council of the Iowa State Bar Association and served as Chair of that organization in 2015–2016. For many years he also served as Chair of Whitfield & Eddy's Construction and Surety Law group.

## CONSTRUCTION INDUSTRY CLIENTS

---

- General Contractors

## EDUCATION

---

University of Iowa College of Law, J.D., with high distinction

University of Iowa, B.A.

- Copy Editor and Features Editor: *The Daily Iowan*

## ADMISSIONS

---

Iowa

U.S. District Court - Southern District of Iowa

U.S. District Court - Northern District of Iowa

U.S. Court of Appeals - Eighth Circuit

- Subcontractors
- Owners, both private and public
- Design Professionals
- Construction Industry Associations

## NOTABLE WORK

---

- Co-counsel in a multi-party, multi-million dollar arbitration involving the Louisiana Superdome, resulting in a favorable outcome for his Iowa-based client;
- Lead counsel for a national general contractor involving the construction of a high-rise retirement community in Florida in which he successfully defended his client against defective construction claims;
- Successfully defended his subcontractor clients in numerous cases involving curtain-wall construction and masonry;
- Successfully defended a national geotechnical company in cases involving tower construction, bridge construction, building failures, and other matters in involving expansive soils;
- Lead counsel for a large public owner in Iowa in numerous matters, including parking ramp construction, industrial excavation and major utility projects;

- Represented a major steel fabricator who provided services on a large Corps of Engineers dam project on Table Rock Lake in Missouri and obtained a large arbitration award for his client against a major international general contractor;
- Co-counsel defending a national general contractor against claims of faulty construction involving a large sports arena which was resolved favorably for his client through mediation;
- Author of a significant publication on public construction law written for the Master Builders of Iowa;
- Drafted major legislation benefitting the construction industry which was adopted by the Iowa Legislature in 2017.

## EXPERIENCE

---

- Past Chair, Whitfield & Eddy, P.L.C. Construction and Surety Law Practice Group

## ACTIVITIES AND AFFILIATIONS

---

- Fellow, College of Commercial Arbitrators (Committees: Construction Arbitration, Judicial Education)
- American Arbitration Association (Construction Panel Arbitrator)
- American Bar Association (Sections: Litigation; Forum on the Construction Industry)
- Associated General Contractors of America

- Construction Specifications Institute (Iowa Chapter Board of Directors)
- Iowa State Bar Association (Chair: Construction Law Section Council, 2015–2016; Chair: Construction Law Council Section Legislative Sub-Committee, 2014–2015; Member since inception)
- Master Builders of Iowa (Legislative Committee)
- Mechanical Contractors of Iowa
- National Arbitration Forum
- Polk County Bar Association

## SEMINARS

---

- Construction Superconference, Las Vegas, Nevada, December 2022
- Master Builders of Iowa Annual Winter Conference, February 2022
- Master Builders of Iowa Annual Winter Conference, February 2019
- College of Commercial Arbitrators 18th Annual Meeting, Atlanta, GA, October 2018
- American Bar Association Section of Dispute Resolution Spring Conference, Washington, D.C., April, 2018
- Master Builders of Iowa Annual Winter Conference, February 2018

- Construction Superconference, Las Vegas, Nevada, December 2017
- Iowa State Bar Association Construction Law Seminar, April 2017
- Master Builders of Iowa Annual Winter Conference, Altoona, Iowa, February 2017
- Construction Superconference, Las Vegas, Nevada, December 2016
- College of Commercial Arbitrators 15th Annual Meeting, New York, New York, October 2015
- ABA Forum on the Construction Industry, Boca Raton, Florida, April 2015

## NEWS

---

- Best Lawyers in America 2024 Announced  
*Best Lawyers in America*, 08.22.2023
- *Chambers USA* Recognizes Whitfield & Eddy Law Attorneys and Practice Group  
*Chambers USA*, 08.10.2023
- Attorney Service Anniversaries Celebrated  
01.25.2023
- Best Lawyers in America 2023 Announced  
*Best Lawyers in America*, 08.30.2022
- Attorneys Recognized in 2022 Great Plains Super Lawyers and 2022 Great Plains Rising Stars



*Great Plains Super Lawyers*, 08.30.2022

Chambers and Partners Ranks Whitfield & Eddy Law Attorneys and Practice Group

*Chambers and Partners USA Guide, 2022*, 06.13.2022

Best Lawyers in America 2022 Announced

*Best Lawyers in America*, 08.19.2021

Attorneys Recognized in 2021 Great Plains Super Lawyers and 2021 Great Plains Rising Stars  
07.16.2021

Attorneys Recognized by Peers in Chambers USA

*Chambers USA*, 05.20.2021

Whitfield & Eddy Recognized by Best Lawyers in America 2021

*Best Lawyers In America*, 08.20.2020

Whitfield & Eddy Attorneys Recognized by Great Plains Super Lawyers 2020

07.17.2020

John Templer Co-authors Update to Master Builders of Iowa Public Owners' Guide to Legal Issues

01.21.2019

## EVENTS & SPEAKING ENGAGEMENTS

---

- John Templer Presents Construction Industry Ethics to ASPE Regional Membership  
Des Moines, Iowa, 05.09.2023
- John Templer Presents Construction Manager at Risk for Public Owners in Iowa  
West Des Moines, Iowa, 04.26.2023

## HONORS & RECOGNITIONS

---

- AV rated by Martindale-Hubbell
- Selected for inclusion in *Chambers USA: America's Leading Lawyers for Business* as a Leading Individual Lawyer in General Commercial Litigation (2021–2023)
- Selected by *Best Lawyers in America* as the Des Moines area's “Lawyer of the Year” by in the area of Construction Law (2013, 2021)
- Selected for inclusion in the *Best Lawyers in America* as a top-ranked attorney in Construction Law, Mediation, and Litigation - Construction (2003–2024)
- Selected for inclusion in the *Great Plains Super Lawyers* in the area of Construction Litigation (2007–2022)

## CASES & PRESENTATIONS

---

### PUBLISHED CASE

---

- *Weitz Co., LLC v. Lloyd's of London*, 574 F.3d 885 (8th Cir. 2009)

### SELECTED PRESENTATIONS

---

- Presenter, "Construction Industry Ethics, Bid Peddling and Bid Shopping," American Society of Professional Estimators Regional Meeting, April 2023
- Presenter, "Construction Ethics," American Society of Professional Estimators," April 2023
- Presenter, "Construction Manager at Risk for Public Owners in Iowa," Central Iowa Construction Specification Institute," April 2023
- Presenter, "Ethics, Bid Peddling and Bid Shopping," American Society of Professional Estimators, February 2023
- Presenter, "The New AIA A201 General Conditions," Master Builders of Iowa Webinar, September 2017
- Co-Presenter, "Construction Case Law Update," Iowa State Bar Association Construction Law Seminar, April 2017
- Co-Presenter, "Understanding Construction Arbitration," Master Builders of Iowa Annual Seminar, Altoona, Iowa, February 2017

- Presenter, "Construction Ethics" Iowa State Bar Association Construction Law Seminar, February, 2016
- Presenter, "Construction Law and Killer Contract Clauses" Master Builders of Iowa, December 2015
- Presenter, "Construction Essentials" Master Builders of Iowa, December 2015
- Presenter, "State of Art Construction Contracts" Iowa Chapter of American Society of Professional Estimators, November 2015
- Presenter, "Construction Ethics" CLE presentation for Nebraska State Bar Association, November 2015
- Presenter, "Construction Industry Business Ethics," American Society of Professional Estimators, March 2015
- Presenter, "Iowa Construction Law," Master Builders of Iowa Cornerstone Academy, February 2015
- Presenter, "Iowa Construction Law," Master Builders of Iowa MB "Eye" on the Future, December 2013, February 2014, January 2015



JOHN A. TEMPLER, JR.  
699 WALNUT STREET, SUITE 2000  
DES MOINES, IOWA 50309

whitfieldlaw.com

515-288-6041 P 515-246-1474 F

515-558-0116 D  
templer@whitfieldlaw.com

October 17, 2023

Woodbury County Board of Supervisors  
Woodbury County Courthouse  
620 Douglas Street, Room 104  
Sioux City, Iowa 51101

Re: Woodbury County Law Enforcement Center

Dear Supervisors:

I understand you may wish to retain me and my firm to represent the interests of the Board and County with respect to several issues that have arisen in conjunction with the construction of the Woodbury County Law Enforcement Center. To that end, I am enclosing a Proposal for Legal Services for your review.

Note that this Proposal identifies only the Board as our client, not the Woodbury County Law Enforcement Center Authority; however, it would be my intention if engaged that I and the Board work closely with the Authority to resolve any current or unresolved issues pertaining to the Project.

Because there may be differences of opinion between the Board and the Authority with respect to certain courses of action that could or should be taken to protect the interests of the taxpayers of Woodbury County, I don't believe it would be proper for me to represent both parties. The Authority is, itself, a corporation organized under the laws of the State of Iowa and, since its interests may at some point diverge from those of the Board and it has the legal authority to do so, it may wish to retain its own separate legal counsel. If this occurs, I see no reason why the Board and Authority and their respective counsel cannot work together to bring about results that are satisfactory to both parties.

In addition to my proposed Engagement Proposal, I am also enclosing a copy of my resume.

Sincerely,

WHITFIELD & EDDY, PLC

/s/

John A. Templer, Jr.

## Whitfield & Eddy, PLC Proposal for Legal Services

**Project: Woodbury County Law Enforcement Center**  
**Client: Board of Supervisors, Woodbury County, Iowa**

**Date: 17 Oct 2023**

Whitfield & Eddy, PLC, (or “the Firm”), offers the following proposal for provision of legal services with respect to the above Project.

1. Scope of Engagement:

- a. Whitfield will examine the possibility of recovery of losses due to the late completion of the Project, including lost revenue from federal prisoner participation in the LEC.
- b. Whitfield will examine the potential liability of any party which is or may be responsible for the alleged failure of the plans and specifications to provide adequate fire protection systems, including a fire damper system that complies with engineering standards and all applicable codes.
- c. Whitfield will examine the issue of which party (the Board, the Authority, or both) has standing to pursue remedies to recoup losses.
- d. Whitfield will examine the issue of the impact of the potential cost overruns on the Project on the existing bond issue limits.
- e. Whitfield will examine the issue and propriety of maintenance fees.

- f. Whitfield will examine potential sources of recovery for losses incurred by the County due to late completion of the Project, including, but not limited to, loss of revenue from federal prisoner placement sources.
2. This Proposal is based on information as to the Project provided to us by parties familiar with the Project, and our review of documents posted on the LEC's website. It is understood that the scope of the engagement may change from time as more information is obtained.
3. Whitfield's Fees and Expenses
  - a. Fees: Whitfield will bill Clients for its fees on the basis of tenths of an hour. John Templer's hourly rate is \$525. Whitfield may also employ the services of partner Sean Corpstein. Sean Corpstein's rate is \$375. Other Whitfield legal personnel such as Associates, Legal Assistants, and Law Clerks may perform work on the project as needed. The services performed by such other Whitfield personnel will be billed at the standard hourly rate for the services. Our hourly rates for the services rendered pursuant to this contract may increase slightly beginning in the next calendar year. You will be notified of and agree to pay any updated rates.
  - b. Expenses. We do not bill for usual copying tasks, long-distance phone calls (with the exception of any conference calls or "Zoom" calls for which a fee is charged.) We will bill for any travel outside of Polk County at the current IRS mileage rate. We will also bill travel time outside of Polk County at the regular hourly rate of the involved Whitfield personnel.
  - c. Our fees and expenses are billed monthly and we expect payment to be made within thirty days of the mailing date of the invoice.

- d. Due to the open-ended nature of the Project and unexpected issues that may arise with respect to the project and/or changes to Iowa law, we are unable to predict the total fees and expenses which may be billed to the Project.
4. Termination: Either Client or Whitfield may terminate Whitfield's representation at any time for any reason, subject, on our part, to the applicable Rules of Professional Conduct. Unless terminated earlier, our representation will terminate automatically upon completion of the work for which you have engaged the Firm.
5. This Proposal shall remain open for 30 days from the date set out below.

WHITFIELD & EDDY, PLC

/s/ John A. Templer, Jr.

ACCEPTED BY:

Woodbury County Board  
of Supervisors

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date