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June 6, 2016

Waiver approved until 12/31/2018  
s/Janet E. Phipps/  
06/06/2016

**VIA EMAIL AND LOCAL MAIL**

Janet Phipps, Director  
Iowa Department of Administrative Services  
Hoover State Office building  
LOCAL

Re: Request for Waiver pursuant to 11 Iowa Admin. Code 118.16

Dear Director Phipps:

I am general counsel to the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board ("Fund Board"), and am writing on behalf of the Fund Board to request an order waiving the six-year limitation for service contracts (11 Iowa Admin Code. 118.11(3)) regarding its contract with Aon Risk Solutions ("Aon"), the administrator of the UST Fund. On May 16, 2016, Governor Branstad signed legislation eliminating allocations to the UST Fund effective December 31, 2016. Also on December 31, 2016, the final extension of Aon's January 1, 2011 contract will expire – exhausting the maximum duration for service contracts contained in section 118.11(3). Under the circumstances, the UST Fund Board believes good cause is established for waiving the six-year limitation in the rule to allow Aon to continue as administrator for the UST Fund as the Board prepares and implements a plan for terminating the UST Fund program.

The UST Fund was created by the Iowa Legislature in 1989 to assist owners and operators of petroleum underground storage tanks to comply with technical and financial responsibility requirements contained in federal and state regulations. (Iowa Code ch. 455G). The Fund Board accomplishes this function primarily by providing eligible UST owners and operators with funding for the cleanup of past releases from USTs. The Board has accomplished this task through a \$14 million allocation from the State Treasurer each fiscal year. To date, the Fund Board has spent in excess of \$300 million performing its statutory mandate.

While the funding mechanism for the UST Fund is somewhat complicated, it is correlated with a \$0.01 per gallon environmental protection charge ("EPC") on gasoline that was set to expire at the end of FY 2016. Although the EPC was set to expire, the \$14 million allocation to the UST Fund was to continue. With the EPC expiring, Governor Branstad voiced

his support in the latest legislative session to end the UST Fund Board. Ultimately, HF 2464 was passed by the Iowa Legislature and signed by the Governor on May 16, 2016. (Attachment 1). The legislation extended the EPC to December 31, 2016, and discontinued funding the UST Fund effective the beginning of the third quarter of FY 2017. Without any funding after December 31, 2016, the Fund Board is currently tasked with winding down its business with a goal to eventually terminate the program. While no timetable has been developed for closing the program, it is estimated the process may take one to two years to accomplish.

The enabling legislation for the UST Fund provides the Board may retain a person to act as the administrator of the Fund. (Iowa Code § 455G.5). Since the creation of the UST Fund, the Board has contracted with a third-party administrator to run the day-to-day operations of the program. Through a competitive bidding process in 1999, Aon was selected as the administrator of the UST Fund. Aon opened an office in W. Des Moines to administer the Fund and dedicated personnel and resources specifically for that purpose. Through competitive bidding processes in 2004 and 2010, Aon was retained as the UST Fund Administrator. Aon has currently administered the UST Fund for almost 17 years, has developed significant specialized knowledge of the program and maintains a dedicated computer database for the program. The 4<sup>th</sup> extension of the 2011 contract with Aon is set to expire December 31, 2016 -- exhausting the maximum duration for service contracts contained in section 118.11(3). (Attachments 2 and 3).

With prior legislation scheduling the sunset of the EPC in 2016, it has been anticipated for several years the Iowa Legislature would likely defund or otherwise terminate the UST Fund when the EPC expired. Aon and the Fund Board, therefore, began a process in 2014 of engaging stakeholders to discuss and develop ways to successfully end the UST Fund if necessary when the EPC was discontinued. Aon and the Fund Board have worked closely for the past two years to prepare for the eventual termination of the UST Fund. With the Governor's signature on HF 2464 in May, the Fund Board and Aon plan to conduct strategic planning sessions to wind down the UST Fund.

It is the position of the Fund Board that Aon is the only service provider with the specialized knowledge, expertise and experience to wind down the UST Fund. Furthermore, Aon and the Fund Board have been preparing for the eventual termination of the program for over two years, and by virtue of this teamwork and Aon's experience and specialized knowledge of the program, no other service provider could perform this service as effectively or efficiently as Aon. To delay the work being performed by Aon to prepare to shut down the UST Fund in order to seek competitive bids will increase operational costs for the Fund, create uncertainty about the administration of the Fund at a critical time, and will stall necessary actions required to progress toward closure. It is also unlikely any other entity would be willing to invest the substantial resources necessary to administer the UST Fund when the Fund has no source of revenue and is winding down its business.

Janet Phipps, Director  
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Because waiving the six-year duration for service contracts under the circumstances is more practical, economical and efficient than the alternatives, the Fund Board requests a waiver of the application of 11 Iowa Admin. Code 118.11 to its contract with Aon to allow Aon to remain the administrator of the UST Fund while the Fund Board prepares to terminate its operations. Please contact me if you have any questions or require additional information.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Steward", with a stylized, flowing script.

DAVID S. STEWARD  
Assistant Attorney General

Enclosures