



BOARD OF COMMISSIONERS AGENDA
August 30, 2022
5:30PM – COMMISSION ROOM – 116 W CENTER ST

Please join the Zoom meeting from your computer, tablet or smartphone.
<https://us06web.zoom.us/j/87588937841>

CALL TO ORDER

You can also dial in using your phone.
+1 312 626 6799

PLEDGE OF ALLEGIANCE

ROLL CALL

Meeting ID: 875 8893 7841

ADOPT AGENDA

APPEARANCES/ACKNOWLEDGEMENTS

CONSENT CALENDAR

OLD BUSINESS

NEW BUSINESS

- 1) 1st Reading on Ordinance No. 1650 - Property Tax Levy
- 2) Authorize Mayor to Sign Club Automation 3-year service agreement

PUBLIC COMMENT

ANNOUNCEMENTS

- 1) Next Commission Meeting – Regular Meeting Tuesday, Sept 6, 2022 at 5:30pm

EXECUTIVE SESSION

ADJOURN

Anyone wishing to speak to an item on the agenda must be acknowledged by the chair and come to the podium to address the Mayor and City Commission. Addressing other audience members will not be permitted.

Supplementary agenda information may be accessed at www.cityofmadisonsd.com
AGENDAS – CITY COMMISSION

If special accommodations are necessary to attend any Board of Commissioners meeting, please contact the Finance Office at (605) 256-7500 at least 24 hours before meeting time. All attempts shall be made to accommodate a request.

ORDINANCE NO. 1650

AN ORDINANCE TO APPROVE & CERTIFY PROPERTY TAX LEVIES TO LAKE COUNTY

WHEREAS, The City Commission of the City of Madison, South Dakota approved Ordinance 1634 to move the deadline for introducing the annual budget, and

WHEREAS, a Municipality may enact an ordinance not in conflict with SDCL 9-21-34 and SDCL 9-21-34.1, effective July 1, 2021, and

WHEREAS, the publication, readings, and passage follow the SDLC 9-19-7 and 9-19-7.1, and

WHEREAS, the Finance Officer must certify the tax levies to the Lake County Auditor on or before October 1st;

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MADISON, SOUTH DAKOTA:

That the Finance Officer is hereby directed and authorized to certify the said tax levy to the County Auditor of the County of Lake, State of South Dakota, to the end that the same be spread and assessed as provided by law:

For General Purposes	<u>\$ 2,157,894</u>
Total Tax Levy	\$ 2,157,894

Dated this 6th day of September, 2022.

CITY OF MADISON

Mayor

ATTEST: _____
Finance Officer

1st Reading: August 30, 2022
2nd Reading: September 6, 2022
Published: September 8, 2022
Effective: September 28, 2022

CUSTOMER		COMPANY	
Legal Customer Name:	Madison Community Center	Club Automation	
Contact Name:	Gene Wockenfuss	Attn: Legal Department	
Contact Title:	Director	2275 Half Day Road, #182	
Street Address:	500 11th St NE, Madison, South Dakota, 57042	Bannockburn, IL 60015	
		Account ID: 1032833	

This order form (the “Order Form”) is entered into and effective as of the date of the last signature (the “Effective Date”) by the authorized representatives of each of the parties by and between Daxko, LLC d/b/a Club Automation (“Club Automation” or “Company”) and the above-named organization (the “Customer”) and hereby expressly incorporates by reference the Club Automation Master Service Agreement available at <https://www.clubautomation.com/master-service-agreement> (“Service Agreement”), together with all additional terms and conditions for the services selected below, which are incorporated by reference as if included herein (collectively, the “Agreement”). Customer acknowledges that it has reviewed the terms of the Service Agreement and acknowledges that it is an integral part of the Agreement. Defined terms in this Order Form and in the Service Agreement shall have the same meaning in both documents. In consideration of the mutual promises made and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Company and Customer agree as follows:

1. **License(s) to Customer.** Subject to the terms, conditions, and restrictions set forth in this Agreement, and in consideration of the performance by Customer of the obligations and conditions of the Agreement, Company hereby grants to Customer for the Term of this Agreement a non-exclusive, non-transferable, revocable, limited license to use the Services listed in this Order Form. Such licenses are all specific to the authorized users of Customer to access and use, for Customer’s internal business purposes.
2. **Description of Services.** The following, selected Services are licensed pursuant to the terms and conditions of the Agreement (the “Services”):

	Services
X	ACH Processing
X	Club Automation Software
X	Mobile - Branded
X	SMS Services
X	Gains Full-Service Billing
X	Gains Payment Processing

3. **Term.** The initial term of all selected services will commence on the Launch Date and shall continue 36 months from the Launch Date of the first selected service unless terminated as provided herein (the “Initial Term”). After the expiration of the Initial Term and each renewal term thereafter, this Agreement will be automatically renewed at the then-current standard Company pricing for successive renewal terms, each with a duration equal to the duration of the Initial Term, unless either party gives written notice to the other party of its intent not to renew at least 60 days prior to the expiration of the then current term (the Initial Term and each renewal term are collectively the “Term”).

In no event shall the Term of any selected service exceed the term of the underlying software. Customer agrees that as a condition of transitioning from one Company-affiliated software to another, Customer must, within six (6) months of the Effective Date of this Agreement, launch Gains Payment Processing on its current Company-affiliated software platform before beginning implementation under

this Agreement. Customer acknowledges that the Gains Payment Processing pricing quoted under this Agreement shall only become effective upon the Launch Date of the Company-affiliated software.

4. **Launch Date.** Company will use commercially reasonable efforts to perform the system configuration services necessary for Customer to begin using one or more of the Services on a date (“Launch Date”) mutually agreed upon by Customer and Company. Customer agrees to cooperate with Company and provide all required information and documentation on or before the Launch Date. Unless otherwise agreed, Customer agrees to launch all of the selected Services within 6 months from the Effective Date. If Customer is currently using any of the listed products, then the Launch Date and the Effective Date for such services shall be identical unless otherwise set forth in the preceding paragraph.

If due to no substantial fault of Company, and unless otherwise specified, Customer does not timely launch each of the selected services then Customer’s Launch Date for any remaining selected services will be deemed to be the date that is 6 months from the Effective Date, and all fees will be charged accordingly.

5. **Fees.**

a. Up Front Implementation Fees: For all selected Services, Customer will be charged one-time, non-refundable fees, due on the Effective Date, for system configuration services, data conversion, training services, and other professional services as set forth in Exhibit B, exclusive of travel time. All additional professional services will be billed at Company’s then-current rates.

b. Fees: In exchange for the license to the selected Service(s), Customer agrees to pay the license fees set forth in Exhibit B. For the avoidance of doubt, any late fees incurred by Customer will not be used to offset any retroactive adjustment of invoiced amounts.

c. Transaction Fees: Customer will pay Company the following transaction fees listed in Exhibit B, if any.

d. Fee Increases. After the Initial Term, unless otherwise indicated, the fees quoted for any products in this Order Form may be increased by Company, provided that the percentage increase in any twelve (12) month period shall not exceed the percentage increase in the Consumer Price Index plus three percent (3%) during the period between rate changes. The Consumer Price Index means the Consumer Price Index- All Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics at www.bls.gov for the immediately preceding calendar year. The foregoing limitation does not apply to: (a) transaction fees, training fees, installation fees, or any reimbursable expenses - all of which will be available at then-current rates or, (b) services no longer offered for license or sale, or (c) when any third-party provider increases the fees it charges to Company beyond the limitation provided herein, in which case Company reserves the right to pass such additional fees on to Customer.

e. Auto-Debit Authorization: Customer hereby authorizes Company to debit Customer’s designated bank account to be identified to Company via separate documentation, which is due to Company at the time of the execution of this Order Form for the full amount of all fees, expenses and reimbursements then due under this Agreement. Customer’s failure to maintain sufficient funds in its designated bank account to cover all invoiced fees and costs shall constitute a default for the failure to pay all such amounts. Within thirty (30) days after execution of this Agreement, if paying by debit, Customer shall complete and submit to Company an auto debit authorization form together with a voided check from Customer’s designated bank account, with the necessary information for Company to debit, when they become due, the full amount of all fees, expense and reimbursements under this Agreement. Customer shall provide an updated authorization form to Company promptly upon any relevant changes to the information set forth therein. Customer is responsible for reimbursing Company for any fees or penalties incurred by Company in connection with debiting from the account designated by Customer. Company does not accept payment by check.



6. **Prior Agreements.** If Customer has entered into any previous agreements with Company for the selected products and services (“Prior Contracts”), this Agreement entirely replaces and supersedes all conflicting provisions of such Prior Contracts.
7. **Gains Payment Processing**
- a. Credit Card and ACH Processing Services:** Customer agrees that within fifteen (15) days of the Effective Date, the Customer shall, if it has not already, enter into one or more valid merchant processing agreements (each an “MPA”) (one MPA for each merchant account is required) with a Company-approved third party service provider, and Customer agrees to launch Gains within thirty (30) days after Customer’s account approval pursuant to one or more of the MPAs, or by such other date as is mutually agreed upon. For the sake of clarity, Company shall have no obligation to provide Gains to Customer until such time as Customer has met its obligation to enter into the MPAs with a Company-approved service provider. Failure to sign the MPAs by this date, or failure to promptly launch after approval, will result in a no launch fee per month until launch.
- b. Pricing:** Customer agrees that the initial pricing under this Agreement will be as set forth in the Customer’s MPAs, which initial pricing will be as provided in Exhibit B (or such pricing which is otherwise agreed to in the MPAs). Additionally, prior to the launch of the Services (if Services are not already launched), Customer may also choose to purchase credit card terminals subject to separate payment and invoicing. All such fees and costs are subject to price increases in accordance with the terms of the MPA. In the event of a conflict between this section and any MPA, the provisions of the MPA shall control. Early termination of Gains will result in an Early Termination Fee due immediately upon notice of such early termination.
- c. Transaction Gateway Fees:** Customer will pay Company the credit card transaction fees in support of Gains as listed in Exhibit B. In the event that Customer fails to launch Gains or cancels Gains prior to the end of the Term, the fees stated in this subsection are subject to alternative pricing in Company’s sole discretion.
8. **Mobile - Branded**
- a. Development.** Company has developed a mobile device application that allows mobile phone or similar internet capable handheld device users (specifically users of devices operating on the iPhone or Droid platforms) to view Customer programs and events online through a Customer-branded application (such software, together with all associated iterations thereof, code, components, media, printed materials, and online or electronic documentation collectively referred to as the “Software”) using a website template that allows Customer to control access to Software and perform various other functions (the “Admin Website,” as further defined hereafter). Customer has requested that Company develop and make the Software and Admin Website available to Customer via the Apple platform. Customer acknowledges that such service is contingent upon Customer opening and maintenance of an Apple Developer Account. Customer acknowledges that it is solely responsible direct payment to Apple for any and all annual or monthly fees associated with opening and maintaining an Apple Developer Account. Company shall make available for download the Software to License and Customer’s branch members (each a “Member”). Company shall make and attempt to make the Software available at iPhone and Droid mobile phone application stores so that Customer’s Members may download it from such vendors; provided, however, downloading the Software from such store shall be subject to any terms, conditions, and restrictions imposed by such vendor. Company shall not be liable for any election by any vendor not to offer or carry the Software or for any failure by any vendor, temporary or permanent, to offer the Software for sale or other acquisition to Customer or to Customer’s Members.
- b. Pricing.** Company shall charge Customer a monthly service fee following the Launch Date as provided

in Exhibit B. Company may restrict Customer's access to the Admin Website or terminate this Agreement by providing notice to Customer if any undisputed amounts required to be paid hereunder are not paid by the date which is thirty (30) days past the due date thereof. Customer shall be directly responsible for paying to Apple during the Term of this Agreement any Apple Developer Account fees.

c. Launch Date. The term of this Agreement shall begin on the Effective Date, provided however, that Company will not begin billing for the Services discussed in this section until the date the Software is approved by Apple or Google as "Ready for Sale" in the Apple or Google app store ("Launch Date").

9. **SMS Services**

a. SMS Services. This Order Form expressly incorporates by reference the Terms of Use available at <https://www.clubautomation.com/sms-messaging-terms-of-use> ("Text Messaging Service Agreement").

b. Description of Services: Company will provide English language, outbound text messaging services to Customer's members and at Customer's control and direction through Customer's account (the "Services"). The Services may, upon written agreement of the parties, be expanded to include inbound text messaging services. Customer acknowledges that the Services are provided solely under Customer's direction and control. Customer is solely responsible for properly documenting all consumer opt-out requests and shall indemnify and hold Company harmless against any claims brought by a Consumer regarding failure to process any such requests to suspend text messaging to a consumer phone number.

c. Pricing. Company shall charge Customer a monthly service fee following the Launch Date in accordance with Exhibit B.

10. **Gains Full-Service Billing**

a. Full Service Billing Services. This Order Form expressly incorporates by reference the Full Service Billing Master Service Agreement available at www.daxko.com/fsb-terms ("FSB Service Agreement") and is **hereby expressly incorporated by reference**, together with all additional terms and conditions for the services selected below, which are incorporated by reference as if included herein.

b. Fees. Customer agrees to pay the fees as stated in Exhibit B and as set forth in the FSB Service Agreement. Customer must launch the Full Service Billing Services within thirty (30) days of the Effective Date of this Agreement or, if not already launched on Gains Payment Processing, within thirty (30) days of the launch of Gains Payment Processing. If Customer does not launch the Full Service Billing Service within the aforementioned period then Customer will be charged the No Launch Fee stated in Exhibit B. If Customer has selected resubmission services, Customer agrees to execute the return fee authorization form attached here as Exhibit C.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE REVIEWED THIS ORDER FORM, THE CLUB AUTOMATION MASTER SERVICE AGREEMENT AND ALL OTHER TERMS EXPRESSLY REFERENCED HEREIN AND WHICH ARE EXPRESSLY INCORPORATED BY REFERENCE, WHICH THE PARTIES AGREE ARE ESSENTIAL TO THE PARTIES' AGREEMENT. To the extent that there are conflicts between the Order Form, the Service Agreement, and/or any associated terms or agreements, this Order Form shall control. By signing below, customer represents and warrants that it has the requisite power and authority to execute, deliver, and perform its obligations under this agreement. Customer has been duly authorized by all necessary corporate or organizational action by customer to execute this agreement. The parties express their acceptance of all of the terms and conditions of this agreement. This Agreement may be executed in multiple counterparts, with .pdf or electronic signatures, and each party waives any rights or

requirements under any law or regulation that requires an original, non-electronic signature or the delivery or maintenance of a non-electronic record.

CUSTOMER	COMPANY
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:



Exhibit A
Licensed Locations/Branches Under This Agreement

Location Name	Street	City	State	Zip Code
Madison Community Center	500 11th St NE	Madison	SD	57042



Exhibit B -- Pricing

Monthly Software License Fee

Service Year	Monthly Managed Service Fee
Service Year 1	\$1,474.32
Service Year 2	\$1,684.32
Service Year 3	\$1,894.32

Training / Implementation / Professional Services

Billing Element	Fee
Training and Implementation	\$0.00

Branded Mobile App Fees

Name	Rate	Billing Element
Monthly License Fee	\$150.00	Per Location

SMS Fees

Name	Rate	Billing Element
Monthly SMS Text Messaging (Includes 5,000 SMS messages)	\$60.00	Per Location
Excess Text Message Fee	\$.01	Per Processed SMS message over the monthly maximum per location

Software Transaction Fees

Software Billing Element	Fee	Payable
Credit Card Gateway Monthly	\$64.58	Per Location/Monthly

Gains ACH Processing Fees

Billing Element	Fee	Payable
ACH Application / Setup Fee	\$0.00	One-Time
ACH Transaction Fee	\$0.35	Per Transaction
ACH Monthly Fee	\$35.00	Per Location/Monthly
ACH Return Fee	\$6.00	Per Transaction

Gains Payment Processing Fees

Billing Element	Fee	Payable
Credit Card Authorization Fee	\$0.15	Per Transaction



Discount Rate	2.95%	Per Volume
Application / Setup Fee	\$0.00	One Time / MID

Gains Full-Service Billing

Billing Element	Fee	Payable
Credit Card Return Fee	\$25.00	Per Transaction
Account Holder Return Fee	\$25.00	Per Transaction
No Launch Fee	\$787.50	Monthly
FSB Monthly Recurring Fee	\$0	Monthly

Exhibit C – Resubmission Return Fee Authorization Form

Customer designates Daxko to resubmit all credit card, debit card, and/or ACH transactions that are declined. Customer agrees that Daxko will charge a Card Holder a Return fee of \$25.00 and Account Holder a Return Fee of \$25.00.

The signatory below certifies the information provided to Daxko is accurate and confirms that the Customer will comply with all obligations of Customer under the Daxko Resubmission Services Agreement, including without limitation by:

- (a) obtaining all legally required authorizations and consents from all Account Holders and Card Holders; and
- (b) providing all legally required notifications and disclosures to all Account Holders and Card Holders.

CUSTOMER	COMPANY
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date: