

**CITY OF STORM LAKE
REGULAR COUNCIL MEETING, CITY HALL
COUNCIL CHAMBERS
MARCH 16, 2015
5:00 PM**



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

AGENDA

1. Hear the Public
2. Consent Agenda
 - A. Approve Consent Agenda
 - B. Buy Local Information
3. Update on Iowa Lakes Corridor Corporation
4. Public Hearing On HWY 7 Water Main Project
5. Resolution No. 99-R-2015-2016 Approving Plans, Specifications, & Form Of Contract On HWY 7 Water Main Project
6. Motion To Approve The Contract With Certified Testing Services For The Widening Of HWY 7 From Barton Street To Northwestern Drive
7. Resolution No. 100-R-2014-2015 Approving the Bids For The Paving Of Howard Road
8. Resolution No. 101-R-2014-2015 Assessing Property Owners For Sidewalk Repairs
9. Resolution No. 102 -R-2014-2015 Setting Public Hearing For Not To Exceed \$4,000,000 General Obligation Urban Renewal Refunding Capital Loan Notes
10. Public Hearing For FY 2015 Budget Amendment
11. Resolution No. 103-R-2014-2015 Adopting FY 2014-2015 Budget Amendment
12. Motion Approving Being Fiscal Agent For Buena Vista County Community Foundation Grant Request
13. Resolution No. 104-R-2014-2015 Approving Change Order Number 1 To Housing Rehabilitation Project #2014-2
14. Motion To Approve The Purchase Agreement For The Purchase Of OMG Midwest (American Concrete) Property With Temporary Easement
15. Resolution No. 105-R-2014-2015 Setting A Public Hearing On The Intent To Acquire Property For Sanitary Sewer Improvements And Authorize Acquisition Of The Necessary Property Interests From Various Property Owners For The Sanitary Sewer Mitigation Project By Gift, Negotiation Or Eminent Domain
16. Resolution No. 106-R-2014-2015 To Approve The Contract For The Lake Avenue Recreational Trail Project
17. Resolution 107-R-2014-2015 Approving Change Order #5 To FEMA Contract Number 3 - Sanitary Sewer And Force Main - North Area
18. Motion Approving Engineer Agreement With Veenstra & Kimm To Evaluate The Wastewater Treatment Plant HVAC

19. **Motion Approving Purchase Contract With Fishpipe USA For A Fishpipe Ride At Kings Pointe**

20. Adjourn

Meeting Protocol

If you wish to speak today, please:

1. To speak on an agenda item please approach the podium when that agenda item is called and upon recognition by the Mayor identify yourself by stating your name and address.
2. If your issue is not a topic on the agenda please approach the podium under the "Hear the Public" agenda item and upon recognition by the Mayor identify yourself by stating your name and address.
3. Please keep your remarks to three (3) minutes or less.
4. If you require accommodation for this meeting including but not limited to translation services, hearing assistance, or accessibility please contact the City Clerk at least four (4) hours prior to the start of the meeting.

**If you have concerns about any of the items on the consent agenda, they may be separated from the consent agenda and voted on individually.*

***Ordinances may be read at three consecutive meetings or readings may be waived and ordinances may be passed at only one or two meetings.*



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Staff Summary

3/16/2015

Agenda Item # A.



City of Storm Lake
PO Box 1086
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REPORT TO: Honorable Mayor and City Council

FROM: Sue Vossberg, Deputy Clerk

SUBJECT: **Approve Consent Agenda**

BACKGROUND: The Consent Agenda Includes:

- List of bills for approval
- King's Pointe disbursements for approval
- Minutes of the March 2, 2015 council meeting
- Liquor license renewals for Sunrise Pointe Golf Course, and King's Pointe Resort (subject to dram shop)

FISCAL IMPACT: The City will pay the following expenditures:

- List of Bills - \$614,981.26
- King's Pointe Bills - \$164,938.75
- Sunrise Pointe Golf Course Bills - \$1,772.34

The City will receive the following revenues:

- Liquor license renewal - \$1690.00

RECOMMENDATION: Approve Consent Agenda

ATTACHMENTS:

Description	Type
☐ List of Bills	List of Bills
☐ List of Bills - King's Pointe & Sunrise Pointe	List of Bills
☐ Minutes - March 2, 2015	Minutes
☐ King's Pointe Liquor Report	Contract
☐ Sunrise Pointe Liquor Report	Contract

City of Storm Lake
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Checks for Approval Report

From: 03/03/15 To 03/16/15
User: jane.hill

UNAVAILABLE

AFLAC	PR Batch 00551.03.2015 Aflac Pretax	536.60
AFLAC	PR Batch 00551.03.2015 Aflac After tax	143.28
AFLAC	PR Batch 00552.03.2015 Aflac Pretax	50.17
AFLAC	PR Batch 00552.03.2015 Aflac After tax	54.06
City of Storm Lake	PR Batch 00552.03.2015 Dental insurance employee c	2.18
City of Storm Lake	PR Batch 00552.03.2015 Dental employee/spouse	11.15
City of Storm Lake	PR Batch 00552.03.2015 Dental insurance family	28.32
City of Storm Lake	PR Batch 00552.03.2015 125 Flexible Benefits	207.91
City of Storm Lake	PR Batch 00552.03.2015 Health Insurance Family	596.50
City of Storm Lake	PR Batch 00552.03.2015 Health Insurance Single	48.12
City of Storm Lake	PR Batch 00551.03.2015 Dental employee/child	5.78
City of Storm Lake	PR Batch 00551.03.2015 Dental insurance employee c	20.00
City of Storm Lake	PR Batch 00551.03.2015 Dental employee/spouse	18.54
City of Storm Lake	PR Batch 00551.03.2015 Dental insurance family	82.84
City of Storm Lake	PR Batch 00551.03.2015 125 Flexible Benefits	920.83
City of Storm Lake	PR Batch 00551.03.2015 Flex- Child Care	173.09
City of Storm Lake	PR Batch 00551.03.2015 Health Insurance Family	1,761.92
City of Storm Lake	PR Batch 00551.03.2015 Health Insurance Single	444.20
Collection Services Center	PR Batch 00551.03.2015 Child Support Payments to I	222.00
Collection Services Center	PR Batch 00552.03.2015 Child Support Payments to I	325.00
Conseco Health Insurance Co	PR Batch 00551.03.2015 Cancer Pre Tax Insurance	41.04
EFTPS	PR Batch 00551.03.2015 Federal Income Tax	8,629.09
EFTPS	PR Batch 00551.03.2015 FICA Employee Portion	3,413.69
EFTPS	PR Batch 00551.03.2015 FICA Employer Portion	3,413.69
EFTPS	PR Batch 00551.03.2015 Medicare Employee Portion	1,280.85
EFTPS	PR Batch 00551.03.2015 Medicare Employer Portion	1,280.85
EFTPS	PR Batch 00552.03.2015 Federal Income Tax	4,240.32
EFTPS	PR Batch 00552.03.2015 FICA Employee Portion	1,866.49
EFTPS	PR Batch 00552.03.2015 FICA Employer Portion	1,866.49
EFTPS	PR Batch 00552.03.2015 Medicare Employee Portion	527.20
EFTPS	PR Batch 00552.03.2015 Medicare Employer Portion	527.20
ICMA Retirement Trust 457	PR Batch 00552.03.2015 ICMA	1,100.00
ICMA Retirement Trust 457	PR Batch 00552.03.2015 ICMA City Paid	583.35
ICMA Retirement Trust 457	PR Batch 00552.03.2015 ICMA City paid for Police	432.81
ICMA Retirement Trust 457	PR Batch 00551.03.2015 ICMA	1,035.00
Iowa Public Employees	PR Batch 00551.03.2015 IPERS	3,410.61
Iowa Public Employees	PR Batch 00551.03.2015 IPERS City Share	5,118.62
Iowa Public Employees	PR Batch 00552.03.2015 IPERS	1,503.94
Iowa Public Employees	PR Batch 00552.03.2015 IPERS City Share	2,257.17
ITT Hartford AMS RPVA	PR Batch 00552.03.2015 457 Hartford	100.00
ITT Hartford AMS RPVA	PR Batch 00551.03.2015 457 Hartford	225.00
Muni Fire/Police Retire	PR Batch 00551.03.2015 Muni Police/Fire Pension	3,105.95
Muni Fire/Police Retire	PR Batch 00551.03.2015 Muni Police/Fire Pension Ci	10,048.02
Muni Fire/Police Retire	PR Batch 00552.03.2015 Muni Police/Fire Pension	534.26
Muni Fire/Police Retire	PR Batch 00552.03.2015 Muni Police/Fire Pension Ci	1,728.39
Teamsters Local Union 554	PR Batch 00551.03.2015 Union Dues	305.50
Treasurer State Of Iowa	PR Batch 00551.03.2015 State Income Tax	3,352.64
Treasurer State Of Iowa	PR Batch 00552.03.2015 State Income Tax	1,818.12

UNAVAILABLE

Department Total = 69,398.78

Police Department

Alliant Energy	Gas service January-February 2015	500.83
Buena Vista Stationery & Print Inc	Copy Paper	640.00
Buena Vista Stationery & Print Inc	Office Supplies	71.33
Buena Vista Stationery & Print Inc	Highlighters	6.48

City of Storm Lake
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From: 03/03/15 To 03/16/15
User: jane.hill

Buena Vista Stationery & Print Inc	Folders	6.30
Custodian of Petty Cash	SLPD Postage	9.40
Custodian of Petty Cash	SLPD Postage	11.95
Evertex Inc	New iPhones (2)	900.00
Evertex Inc	Cell Phone Service Mar 2015	350.78
Galls Inc	Gas Mask Filters (12)	698.50
Genesis Development	Cleaning February Police Station	600.00
Iowa Lakes Electric Cooperative	Electric service February 15	48.08
KB Contracting LLC	Replaced Entry Door in Garage	2,486.60
Mangold Environmental Testing	Shipping	21.50
Neuroth Kevin	Garbage Service February 2015	23.00
NW Ia Youth Emergency Services	Transportation of HF & JD	100.50
Star Energy, LLC	Fuel February 2015	2,872.00
Storm Lake Bakery	Meeting Supplies	47.52
Wide Open West	Phone service March 2015	290.49

Police Department **Department Total =** 9,685.26

Park Ranger

Storm Lake Times The	February 2015 Publications (Seasonal Postion)	37.35
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Park Ranger **Department Total =** 37.35

Fire Department

Alliant Energy	Gas service January-February 2015	678.13
Evertex Inc	Cell Phone Service Mar 2015	51.28
Evertex Inc	New iPhones (2)	900.00
Iowa Fire Chiefs Assoc	2015 Membership- Jones	25.00
Keller Ken	Repaired Urinal	80.64
KSL Convenience LLC	Kerosene- No Tax	26.36
National Fire Protection Association	2015 Membership- Jones	165.00
Neuroth Kevin	Garbage Service February 2015	52.00
Star Energy, LLC	Fuel February 2015	107.68
Wide Open West	Phone service March 2015	50.76

Fire Department **Department Total =** 2,136.85

Building Official

Arnold Motor Supply, LLP	Windshield Wiper Blades	17.98
Evertex Inc	Cell Phone Service Mar 2015	27.52
Evertex Inc	New iPhones (2)	900.00
Foundation Analytical Laboratory Inc	E. Coli/BOD Testing- Tyson Spill	212.00
Havens & Havens	February 2015 Legal Services	29.17
National Fire Protection Association	2015 Membership- Olesen	165.00
Star Energy, LLC	Fuel February 2015	36.71
Wide Open West	Phone service March 2015	76.14

Building Official **Department Total =** 1,464.52

Crime Prevention

USPCA Region 21	2015 Region 21 Trial Membership	50.00
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Crime Prevention **Department Total =** 50.00

Roadway Maintenance

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Alliant Energy	Gas service January-February 2015	1,252.81
Bolton & Menk, Inc	Engineering Services through 2/16/2015	237.00
Bolton & Menk, Inc	Engineering Services through 2/17/2015	260.00
Bolton & Menk, Inc	Engineering Services through 2/17/2015	543.00
Central Iowa Distributing, Inc	Cleaning Supplies	116.25
City of Storm Lake	Replaced Battery #135	114.45
CNH Industrial America LLC	Ignition & Wire	136.17
Evertex Inc	Cell Phone Service Mar 2015	13.76
Grovhac Inc	Repair Kit	95.97
Havens & Havens	February 2015 Legal Services	87.50
Neuroth Kevin	Garbage Service February 2015	119.25
Star Energy, LLC	Fuel February 2015	4,644.92
Steffen Inc	Sprocket for Chainsaw	54.38
Storm Lake Hydraulics Co Inc	Snow Plow Cylinder Repairs	381.07
Storm Lake Times The	February 2015 Publications	6.20
Storm Lake Times The	February 2015 Publications	7.00
Storm Lake Times The	February 2015 Publications	47.20
Wide Open West	Phone service March 2015	54.61
Zee Medical Inc	First Aid Supplies	98.25

Roadway Maintenance	Department Total =	8,269.79
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Airport

Buena Vista Co Treasurer	Property Tax- Pickhinke Prop	158.00
Buena Vista Co Treasurer	Property Tax- Foell Prop	272.00
Havens & Havens	February 2015 Legal Services	262.50
Rohr Manufacturing Services, Ltd	Fire extinguisher inspections	32.00

Airport	Department Total =	724.50
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Library

Alliant Energy	Gas service January-February 2015	737.22
Genesis Development	Cleaning February Library	600.00
Neuroth Kevin	Garbage Service February 2015	35.25
Wide Open West	Phone service March 2015	134.47

Library	Department Total =	1,506.94
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Parks Department

Alliant Energy	Gas service January-February 2015	152.56
Arnold Motor Supply, LLP	Oil Filters for #136 & 200	12.79
Arnold Motor Supply, LLP	Brake Clean	6.87
Buena Vista Co Treasurer	Property Tax- Prichard Prop	2,173.00
Central Iowa Distributing, Inc	Cleaning Supplies	342.00
Evertex Inc	New iPhone	450.00
Evertex Inc	Cell Phone Service Mar 2015	13.76
Graham Tire	Tire Repairs	21.80
Neuroth Kevin	Garbage Service February 2015	68.50
Star Energy, LLC	Fuel February 2015	318.20
Storm Lake Ace Hardware Inc	Wire & Wall Heater- Boys Scout RR	126.98
Storm Lake Times The	February 2015 Publications (Seasonal Postion)	130.74
Wide Open West	Phone service March 2015	39.37

Parks Department	Department Total =	3,856.57
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Golf Course

Arnold Motor Supply, LLP	Battery	24.40
Arnold Motor Supply, LLP	Weed Eater Supplies	5.98
Arnold Motor Supply, LLP	Seeder Instapower	11.79
Fastenal Company	Supplies	2.66
Fastenal Company	Supplies	4.06
Star Energy, LLC	Fuel February 2015	89.08
Wolfe Dana	Blade Sharpening Services	1,591.00

Golf Course	Department Total =	1,728.97
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Campgrounds

Storm Lake Times The	February 2015 Publications (Seasonal Postion)	130.74
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Campgrounds	Department Total =	130.74
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UNAVAILABLE

King's Pointe Resort	February 2015- Housekeeping Cleaning	495.00
King's Pointe Resort	February 2015- Maintenance	116.50
King's Pointe Resort	February 2015- Extermination	70.00
King's Pointe Resort	February 2015- Water Park Add-On Packages	930.00
King's Pointe Resort	February 2015- Supplies	165.00
King's Pointe Resort	February 2015- Cottage Trim	158.00
King's Pointe Resort	February 2015- Cleaning Supplies	20.92
King's Pointe Resort	February 2015- Marketing Brochures	288.00
Kinseth Hospitality Corporation	February 2015 Management Fee	287.66

UNAVAILABLE	Department Total =	2,531.08
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Shelter House

Alliant Energy	Gas service January-February 2015	205.94
Buena Vista Stationery & Print Inc	Shelter House Key Envelopes	19.99

Shelter House	Department Total =	225.93
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Hotel Operations

Buena Vista Co Treasurer	Property Tax- Water Park	106,246.00
Havens & Havens	February 2015 Legal Services	43.75
Neuroth Kevin	Garbage Service February 2015	77.75
Storm Lake Times The	February 2015 Publications	23.20

UNAVAILABLE	Department Total =	106,390.70
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Economic Develop

Evertex Inc	Cell Phone Service Mar 2015	23.76
Havens & Havens	February 2015 Legal Services	14.58
Storm Lake Times The	February 2015 Publications	16.20
Wide Open West	Phone service March 2015	25.38

Economic Develop	Department Total =	79.92
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Buena Vista Co Treasurer	Property Tax- Condo Site	18,842.00
TIF		Department Total = 18,842.00

Housing Program

Buena Vista Co Recorder	Recording Fees- Lewis Mortgage	52.00
Housing Program		Department Total = 52.00

Legal Services

Ahlers & Cooney, P.C.	Call re Personnel Matter	82.50
Havens & Havens	February 2015 Legal Services	262.50
Havens & Havens	February 2015 Legal Services	379.17
Havens & Havens	1st Quarter of Services 2015	500.00
Legal Services		Department Total = 1,224.17

City Hall Building

Alliant Energy	Gas service January-February 2015	398.25
Central Iowa Distributing, Inc	Cleaning Supplies	219.22
Evertex Inc	Cell Phone Service Mar 2015	15.86
Genesis Development	Cleaning February City Hall	200.00
Julius Dennis R.	Entrance Mat Services	29.40
Julius Dennis R.	Entrance Mat Services	29.40
Neuroth Kevin	Garbage Service February 2015	27.00
Wide Open West	Phone service March 2015	88.99
City Hall Building		Department Total = 1,008.12

Other Policy & Administration

Buena Vista Co Treasurer	Property Tax- New Subdivision	48.00
Buena Vista Co Treasurer	Property Tax- RRROW New Sub	44.00
Buena Vista Co Treasurer	Property Tax- New Subdivision	42.00
Buena Vista Co Treasurer	Property Tax- RRROW N Central	9.00
Buena Vista Co Treasurer	Property Tax- New Subdivision	76.00
Buena Vista Stationery & Print Inc	Copy Paper	160.00
Buena Vista Stationery & Print Inc	Office Supplies	9.09
Buena Vista Stationery & Print Inc	Name Plates- Co Chambers	60.50
Custodian of Petty Cash	Safety Bingo 3/3/2015	13.87
Genesis Development	Shredding, February	21.64
Genesys Conferencing	Conference call	32.75
Patrick James H	NW IA Reg Planning Com- Spencer- Patrick	46.57
Patrick James H	Iowa Water Conf- Ames- Patrick	152.95
Storm Lake Times The	February 2015 Publications	29.20
Storm Lake Times The	February 2015 Publications	58.57
Storm Lake Times The	February 2015 Publications	3.60
Storm Lake Times The	February 2015 Publications	29.60
Storm Lake Times The	February 2015 Publications	38.40
Storm Lake Times The	February 2015 Publications	42.92
Storm Lake Times The	February 2015 Publications	42.34
Other Policy & Administration		Department Total = 961.00

Water Administration

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Buena Vista Stationery & Print Inc	Office Supplies	9.10
Buena Vista Stationery & Print Inc	Copy Paper	160.00
Evertex Inc	Cell Phone Service Mar 2015	15.62
Genesis Development	Cleaning February City Hall	200.00
Iowa Office Supply Inc	Paper	12.09
Qualified Presort Service, LLC	ACH Final Bills	1.12
Qualified Presort Service, LLC	Final Bills	7.42
Qualified Presort Service, LLC	Past Due Notices	69.21
Springbrook Software, Inc	February 2015 IVR	17.00
Wide Open West	Phone service March 2015	75.91

Water Administration

Department Total = 567.47

Water Plant

Alliant Energy	Gas service January-February 2015	1,237.17
Buena Vista Co Recorder	Recording Fees- Brecher Easement	27.00
Buena Vista Co Treasurer	Property Tax- Well #20	65.00
Builders Sharpening & Service	Skidloader Weight Kit	654.00
Certified Testing Services, Inc	Concrete Testing	510.00
Evertex Inc	New iPhones (5)	2,250.00
Evertex Inc	Cell Phone Service Mar 2015	118.80
Fastenal Company	Water, Bandages	249.93
FL Smidth, Inc	Lime Silo Filter Bags	2,007.50
Foundation Analytical Laboratory Inc	February 2015 Testing- Coliforms	120.00
Foundation Analytical Laboratory Inc	February 2015 Testing- Metals	60.00
Foundation Analytical Laboratory Inc	February 2015 Testing- Nitrite	30.00
Foundation Analytical Laboratory Inc	February 2015 Testing- Fluoride	15.00
Foundation Analytical Laboratory Inc	February 2015 Testing- Chlorite	192.00
Graham Tire	Bedliner, Wheel Well Guards	409.40
Grundman Hicks Const Co LLC	Payment #7 of Lime Storage Improvements	294,373.65
Havens & Havens	February 2015 Legal Services	43.75
Iowa Association of Municipal Utilities	CCR Workshop- Allen & Davis	80.00
Iowa Office Supply Inc	Office Chair	745.64
Mike's Electronics Inc	Hook-Up Hypo Pump	772.26
Mike's Electronics Inc	Filter PLC	95.00
Mike's Electronics Inc	Well #8 Repairs	65.00
Mississippi Lime Company	Lime	4,598.00
Mississippi Lime Company	Lime	4,656.90
Neuroth Kevin	Garbage Service February 2015	69.00
PraxAir inc	Carbon Dioxide	702.90
Star Energy, LLC	Fuel February 2015	91.19
Storm Lake Ace Hardware Inc	Shop Vac	59.97
Storm Lake Ace Hardware Inc	Piping & Bags	24.18
Storm Lake Ace Hardware Inc	Hose, Markers, Bags, Brushes	109.40
UPS Store The	Late Fee	1.02
UPS Store The	Late Fee	1.54
USA Blue Book	Basin Solenoid Valves	637.00
Vessco Inc	Hypo Pump/Pumphead	2,681.03
Wide Open West	Phone service March 2015	163.75

Water Plant

Department Total = 317,916.98

Water Distribution

Alliant Energy	Gas service January-February 2015	214.49
Bolton & Menk, Inc	Engineering Services through 2/17/2015	1,106.00
Buena Vista Stationery & Print Inc	Office Chair, file cabinet, time clock	2,060.01
City of Storm Lake	Serviced #137	60.74

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Evertex Inc	Cell Phone Service Mar 2015	47.52
Evertex Inc	New iPhone	450.00
Iowa Dept of Natural Resources	Construction Permit Application 3/3/2015	307.10
Stanton Electric, Inc	PVC Comm Link	2,037.60
Star Energy, LLC	Fuel February 2015	138.61
Storm Lake Ace Hardware Inc	Wall Plates, Straps, Conduit	16.24
Wide Open West	Phone service March 2015	73.36
Water Distribution	Department Total =	6,511.67
Water Meters		
Arnold Motor Supply, LLP	Windshield Wiper Blades	17.98
Evertex Inc	Cell Phone Service Mar 2015	23.76
Star Energy, LLC	Fuel February 2015	177.63
Water Meters	Department Total =	219.37
Wastewater Administration		
Buena Vista Stationery & Print Inc	Office Supplies	9.10
Buena Vista Stationery & Print Inc	Copy Paper	160.00
Evertex Inc	Cell Phone Service Mar 2015	15.61
Genesis Development	Cleaning February City Hall	200.00
Iowa Office Supply Inc	Paper	12.09
Qualified Presort Service, LLC	Final Bills	7.42
Qualified Presort Service, LLC	Past Due Notices	69.21
Wide Open West	Phone service March 2015	88.61
Wastewater Administration	Department Total =	562.04
Wastewater Treatment Plant		
Alliant Energy	Gas service January-February 2015	529.11
Buena Vista Co Treasurer	Property Tax- Sievers Prop	496.00
Buena Vista Co Treasurer	Property Tax- Farm Ground	220.00
Buena Vista Co Treasurer	Property Tax- Casino Lift	19.00
Buena Vista Co Treasurer	Property Tax- Land	8.00
Buena Vista Stationery & Print Inc	Name Plates	16.50
City of Storm Lake	Replaced Fuel Cap & Hose #59	48.15
Evertex Inc	Cell Phone Service Mar 2015	118.80
Evertex Inc	New iPhone	450.00
Fastenal Company	Supplies	8.89
Fastenal Company	Hand truck	150.42
Ferguson Enterprises Inc	Press Drain parts	13.01
Graham Tire	Service call, skid loader	117.50
Hach Chemical Company	WIMS Users	532.00
Iowa Office Supply Inc	Copier maint 01/03/15 - 02/02/15	21.98
Mike's Electronics Inc	Memorial Lift Repairs	70.00
NCL of Wisconsin Inc	Testing Supplies	304.39
Neuroth Kevin	Garbage Service February 2015	62.75
ProBuild	Lumber	12.26
Recycle Center Harold Rowley	Recycling	15.64
Recycle Center Harold Rowley	Recycling	10.58
Recycle Center Harold Rowley	Recycling	62.56
Recycle Center Harold Rowley	Recycling	20.70
Recycle Center Harold Rowley	Recycling	17.02
Reinert Michael P	Steel Materials & Fabrication	2,087.82
Star Energy, LLC	Fuel February 2015	278.44

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Storm Lake Ace Hardware Inc	Supplies & Keys	13.78
Storm Lake Ace Hardware Inc	Battery for Lab Timer	1.99
Tucker Consulting Inc	Waste water calculations for land applications	120.00
US Peroxide, LLC	March 2015 Maintenance Services	750.00

Wastewater Treatment Plant	Department Total =	6,577.29
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Wastewater Collection

Eriksen Construction Co, Inc	Pay Estimate #17 of Contract #4	7,313.10
Eriksen Construction Co, Inc	Pay Estimate #17 of Contract #4	975.08
Eriksen Construction Co, Inc	Pay Estimate #17 of Contract #4	1,462.62
Gridor Construction, Inc	Pay Estimate #23 of Contract #5	12,646.88
Gridor Construction, Inc	Pay Estimate #23 of Contract #5	1,686.25
Gridor Construction, Inc	Pay Estimate #23 of Contract #5	2,529.37
Havens & Havens	February 2015 Legal Services	41.25
Star Energy, LLC	Fuel February 2015	71.41

Wastewater Collection	Department Total =	26,725.96
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Landfill

Iowa Office Supply Inc	Paper	12.09
Qualified Presort Service, LLC	Past Due Notices	69.20

Landfill	Department Total =	81.29
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Storm Water Administration

Buena Vista Stationery & Print Inc	Copy Paper	160.00
Genesis Development	Cleaning February City Hall	200.00
Qualified Presort Service, LLC	Past Due Notices	69.21
Uline	Storm Water Education Supplies	105.29

Storm Water Administration	Department Total =	534.50
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Storm Water Collection

Ahlers & Cooney, P.C.	Legal Fees- CDBG Letter re IFA	208.00
Bolton & Menk, Inc	Engineering Services through 2/16/2015	526.00
Buena Vista Co Recorder	Recording Fees- Meridian Agreement	22.00
Buena Vista Co Treasurer	Property Tax- E Central SW	50.00
Havens & Havens	February 2015 Legal Services	14.58
Havens & Havens	February 2015 Legal Services	43.75
Havens & Havens	February 2015 Legal Services	43.75
Simmering-Cory Inc	2/25/2015- 30% of Contract Amount	3,000.00

Storm Water Collection	Department Total =	3,908.08
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Insurance

Auxiant - Claims Account	3/2/2015 Claims	7,956.99
Auxiant - Claims Account	Claims 03-09-2015	3,734.05
Auxiant - Flex Account	2/25/2015 Flex Claims	1,012.72
Auxiant - Flex Account	3/4/2015 Flex Claims	1,254.32
Havens & Havens	February 2015 Legal Services	8.75

Insurance	Department Total =	13,966.83
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City of Storm Lake
620 Erie Street PO Box 1086
Storm Lake IA, 505881086

Checks for Approval Report

From: 03/03/15 To 03/16/15
User: jane.hill

UNAVAILABLE

Johnson Kelly	February 2015 Training/Classes	374.77
Salus LLC	February 2015 Membership Dues (12)	240.00
Wellness Council of America	Spark 16 Newsletter- 1 Year/85 Copies	283.80

UNAVAILABLE

Department Total = 898.57

Vehicle Maintenance

Arnold Motor Supply, LLP	Shop Supplies	208.65
Arnold Motor Supply, LLP	Tensioner	22.94
Arnold Motor Supply, LLP	Air Filter	33.35
Arnold Motor Supply, LLP	Relay, Solenoid, Clamp, Filter	180.92
Arnold Motor Supply, LLP	Tape	55.98
Arnold Motor Supply, LLP	Electrical Tape	16.58
Arnold Motor Supply, LLP	Tune Ups (27)	204.91
Arnold Motor Supply, LLP	Battery less Core	182.90
Arnold Motor Supply, LLP	Duplex Cable	119.00
Arnold Motor Supply, LLP	Block Sealer	9.99
Grainger Inc W.W.	Belt Pulley	29.61
Grainger Inc W.W.	Coupling Sets	61.40
Storm Lake Hydraulics Co Inc	Supplies	46.43
Storm Lake Hydraulics Co Inc	Elbow & Bulkhead	44.41

Vehicle Maintenance

Department Total = 1,217.07

Technology

Havens & Havens	February 2015 Legal Services	175.00
Rebnord Technologies Inc	Contract	3,200.00
Rebnord Technologies Inc	Water Quality IT	150.00
Rebnord Technologies Inc	Water Quality Network	200.00
Rebnord Technologies Inc	2 Factor Auth	375.00
Rebnord Technologies Inc	My AntiSpam	75.00
Wide Open West	Internet service March 2015	813.95

Technology

Department Total = 4,988.95

Grand Total = 614,981.26

King's Pointe Resort
Disbursements 2/26/2015 through 3/10/2015

Vendor Name	Description	Amount
Ace Hardware Inc. (2)	supplies	230.91
Ameripride Services (2)	supplies	1,035.38
Bomgaars Supply Inc.	supplies	60.68
Bunkers Feed & Supply	supplies	1.00
Cedar Valley Bank & Trust	payment	1,056.86
City of Storm Lake	water service	1,942.83
Color-ize (2)	supplies	2,067.26
Copyworks	supplies	470.70
Copper Cottage	repairs	13,386.93
Crescent Electric Supply Co (2)	supplies	412.34
Daniels Filter Service	supplies	454.93
Elissa Doebel	reimbursement	861.33
Expedia Inc.	commission	427.68
Ferguson Enterprises, Inc. (3)	supplies	1,582.35
First National Bank Omaha (2)	credit card payments	1,026.49
Frigitec	supplies	207.50
Ganz USA LLC	supplies	455.81
Grainger	supplies	224.97
Graphic Edge Inc.	supplies	448.83
Hawk-I Electric	repairs	5,488.58
Hy-Vee Food Stores (2)	food	675.87
Iowa Dept. of Public Health	inspection	385.00
Iowa Information Inc.	supplies	299.95
J Dan Skinner.com	supplies	13.25
Julius Cleaners	mat cleaning	48.15
Kineth Hotel Corporation (2)	payroll	86,444.64
Brian Oakleaf	reimbursement	519.00
Pepsi-Cola Bottling Co	beverages	588.64
Plasticard Locktech	supplies	855.15
Revinat Inc.	supplies	45.00
Jayme Riedell	reimbursement	196.23
Sceptre Hospitality Resources	supplies	2,220.31
Continuum Retail Energy Service	utilities	4,323.14
Treasurer State of Iowa	sales tax	12,900.00
UPS (2)	shipping	48.74
US Foods (2)	food	19,008.65
Vizergy	web site maintenance	2,060.00
Whirley Industries Inc.	supplies	970.97
Al's Liquor	beverages	609.11
Doll Distributing LLC	beverages	162.05
Employees	reimbursement	316.50
Johnson Brothers/ Iowa Wine & Bev	beverages	191.04
Steve's Window Service	window cleaning	214.00
	Total	164,938.75

Sunrise Pointe Golf Course
Disbursements 2/26/2015 through 3/10/2015

Ace Hardware Inc.	supplies	63.97
Kineth Hotel Corporation	payroll	918.68
Alliant Energy	utilities	663.56
US Foods Inc.	food	126.13
	Totals	1,772.34

These are Draft Minutes Subject to Final Council Approval

REGULAR COUNCIL MEETING, CITY OF STORM LAKE, IOWA, CITY HALL, MARCH 2, 2015 5:00 P.M.

Present: Mayor Jon Kruse, Council Members Dan Anderson, Sara Huddleston, Mike Porsch, Bruce Engelmann and David Walker. Absent: None. Staff present: City Attorney Phil Havens, Public Safety Director Mark Prosser, Building Official Scott Olesen, Infrastructure Superintendent Pat Kelly, Project Manager/Community Development Director Mike Wilson, Library Director Elizabeth Huff, Water Plant Superintendent Todd Allen, Wastewater Superintendent Ron Jacobsen, and Justin Yarosevich City Clerk.

Mayor Kruse called the meeting to order at 5:00pm.

Mayor Kruse noted that Jim was not here because he was giving a presentation to the Iowa Water Conference.

Hear the Public – None

Consent Agenda – Moved by Council Member Walker to approve the consent agenda which included the list of bills, minutes from the February 16, 2015 council meeting, approve liquor license renewals for Star Video, lakeshore Café/Zimmy's, and Sichanh Liquor Store, appointment of Benjamin Maas to the Storm Water Advisory Committee, and approve tobacco acknowledgement/settlement agreement with Hy-Vee for tobacco violation. Seconded by Council Member Engelmann. Vote: All ayes. Motion carried.

FY 2015-2016 Budget – Mayor Kruse opened the public hearing on the Fiscal Year 2015-2016 Budget stating that this was the time and place for any comments. Hearing no comments the Mayor then closed the public hearing.

Moved by Council Member Porsch to adopt Resolution No. 92-R-2014-2015 adopting the Fiscal Year 2015-2016 Budget. Seconded by Council Member Engelmann. Vote: All ayes. Motion carried.

5-Year CIP – Mayor Kruse opened the public hearing on the Fiscal Year 2016-2020 5-Year Capital Improvements Plan stating that this was the time and place for any comments. Hearing no comments the Mayor then closed the public hearing.

Moved by Council Member Huddleston to adopt Resolution No. 93-R-2014-2015 adopting the Fiscal Year 2016-2020 5-Year Capital Improvements Plan. Seconded by Council Member Walker. Vote: All ayes. Motion carried.

FY 2014-2015 Budget Amendment – Moved by Council Member Huddleston to set March 16, 2015 for the date of a public hearing on the Fiscal Year 2014-2015 Budget Amendment. Seconded by Council Member Porsch. Vote: All ayes. Motion carried.

Howard Road – Mayor Kruse opened the public hearing on the plans, specifications, and form of contract for the Howard Road Paving Project stating that this was the time and place for any comments. Hearing no comments the Mayor closed the public hearing.

Moved by Council Member Anderson to adopt Resolution No. 94-R-2014-2015 approving the plans, specifications, and form of contract for the Howard Road Paving Project. Seconded by Council Member Walker. Vote: All ayes. Motion carried.

Lake Avenue Trail – Moved by Council Member Engelmann to adopt Resolution No. 95-R-2014-2015 approving the bid from Smith Concrete Service, Inc. for the Lake Avenue Trail Improvements Project. Bid amount \$575,434.60. Seconded by Council Member Huddleston. Vote: All ayes. Motion carried.

E. 10th Street – Mayor Kruse opened the public hearing on the plans, specifications, and form of contract for the E. 10th Street Reconstruction Project stating that this was the time and place for any comments. Hearing no comments the Mayor closed the public hearing.

Moved by Council Member Walker to adopt Resolution No. 96-R-2014-2015 approving the plans, specifications, and form of contract for the E. 10th Street Reconstruction Project. Seconded by Council Member Porsch. Vote: All ayes. Motion carried.

HWY 7 Water Main Project – Moved by Council Member Huddleston to set March 16, 2015 for the date of a public hearing on the plans, specifications and form of contract for the HWY 7 Water Main Project. Seconded by Council Member Porsch. Vote: All ayes. Motion carried.

City Energy Management Program – Moved by Council Member Engelmann to adopt Resolution No. 97-R-2014-2015 approving an agreement with the Iowa Economic Development Authority to participate in the City Energy Management Program. Seconded by Council Member Walker. Vote: All ayes. Motion carried.

Moved by Council Member Walker to adopt Resolution No. 98-R-2014-2015 creating the City Energy Advisory Team for involvement in the City Energy Management Program. Seconded by Council Member Huddleston. Vote: All ayes. Motion carried.

Sidewalk Assessment – Justin Yarosevich introduced a resolution to be considered on the March 16th council meeting. The resolution is for certifying a special assessment for sidewalk repairs. There was no action as action would be taken at the next Council Meeting on March 16, 2015.

Fiber Project – Moved by Council Member Walker to approve an engineering agreement with Bolton & Menk for the Fiber Project. Seconded by Council Member Porsch. Vote: All ayes. Motion carried.

Adjourn – Moved by Council Member Porsch to adjourn the meeting at 5:26pm.

Seconded by Council Member Huddleston. Vote: All ayes. Motion carried.

Jon F. Kruse, Mayor

ATTEST: Justin Yarosevich, City Clerk

M E M O R A N D U M

TO: JUSTIN YAROSEVICH

FROM: MARK PROSSER

DATE: FEBRUARY 17, 2015

REFERENCE: LIQUOR LICENSE RENEWAL
KING'S POINTE
1520 E LAKESHORE DR

Discussion: Per your request I have accessed the department computer for calls of interest to the aforementioned establishment. The calls are as follows:

	03-12-2013 to 03-12-2014	03-13-2014 to 02-14-2015
INCIDENTS		
911 Hang Up Call	2	3
Accident	5	6
Ambulance Assist	6	5
Animal Complaint	4	1
Bar Check	7	0
Bike Patrol	6	5
Burglary to Vehicle	0	1
Burglar Alarm	0	1
Burglary to Vehicle	0	1
Business Assist	4	3
Business Escort	0	1
Business Security	269	238
Citizen Assist	4	5
Citizen Complaint	0	1
City/County Department Assist	2	0
Civil Paper	1	0
Criminal Mischief	1	0
Dead Body	0	1
Disturbance	0	1
Domestic	1	2
Drug Investigaiton	0	2
Fight	1	0
Fire Department Assist	4	4
Forgery	0	1
Found Property	2	1

General Information	3	0
Harassment	5	1
Hit and Run	2	4
Interpretation	1	0
Intoxicated Driver	2	1
Intoxicated Pedestrian	2	4
Juvenile Problem	1	0
Keys Locked In Car	13	12
Lake Incident/Assist	1	0
Law Department Assist	1	0
Lost Property	0	2
Meeting	22	9
Motorist Assist	1	2
Pedestrian Stop	1	1
PR/Talk/Presentation	12	7
Reckless Driver	2	0
Station Assignment	3	7
Street Beat	17	17
Subpoena Service	1	0
Suspicious Activity	2	0
Suspicious Person	1	0
Theft	5	2
Traffic Control	0	2
Training	0	8
Trespass	1	0
Vehicle Search	1	0
Vehicle Stop	27	27
Welfare Check	2	0

ARRESTS

Child Endangerment	1	0
Disorderly Conduct	4	1
Domestic Assault	2	2
Fale Imprisonment	1	0
Possession Drug Paraphernalia	1	0
Public Intoxication	5	4

Recommendation: Approval of liquor license

M E M O R A N D U M

TO: JUSTIN YAROSEVICH

FROM: MARK PROSSER

DATE: FEBRUARY 17, 2015

REFERENCE: LIQUOR LICENSE RENEWAL
SUNRISE POINTE GOLF COURSE
1528 E LAKESHORE DR

Discussion: Per your request I have accessed the department computer for calls of interest to the aforementioned establishment. The calls are as follows:

	03-12-2013 to 03-12-2014	03-13-2014 to 02-15-2015
INCIDENTS		
Accident	0	3
Animal Complaint	0	2
Bar Check	9	8
Burglar Alarm	11	8
Business Assist	0	1
Business Security	92	79
Citizen Assist	0	1
City/Co Dept Assist	1	0
Domestic	0	1
Fire Department Assist	1	2
Keys Locked In Car	3	1
Lost Property	0	1
Open Window/Door	0	4
PR/Talk/Presentation	2	2
Reckless Driver	0	1
Registration Check	1	0
Station Assignment	1	2
Stabbing	1	0
Street Beat	3	5
Suspicious Person	0	1
Theft	0	1
Training	2	2
Vehicle Maintenance	0	7
Vehicle Stop	3	3
Wants/Warrants Check	1	0

ARRESTS

none

none

Recommendation: Approval of liquor license.

Staff Summary

3/16/2015
Agenda Item # B.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: Sue Vossberg, Deputy Clerk

SUBJECT: Buy Local Information

BACKGROUND: Early in 2011 during a Study Session discussion Council asked staff to look at putting together some analysis information regarding the amount of purchases made locally. We have pulled that information together and a provided a summary of purchases identified in the current list of bills to be approved that are purchased locally (within the City of Storm Lake), within Buena Vista County, and outside of Buena Vista County are presented here for Council's review. This information is presented for for both the City and King's Pointe's bills.

As the reader reviews the information they should note the following key notes:

- Costs associated with any major capital project (those bid under the State of Iowa Bid Law) are excluded from the calculation
- Costs associated with travel is excluded from the calculation and %
- Costs associated with payroll is excluded from the calculation and %
- In some cases there is only one vendor or an item is only available from vendors outside of the City limits and/or Buena Vista County – we have not identified these
- Some departments have fairly minor budgets and a major purchase can skew the % and or amount for a given review period (For Example: the Airport may have normally \$4,000 - \$6,000 in expenses until they purchase Jet Fuel or Av Gas which can be \$10,000 + and as a vendor who is not local this can skew the information for that review period)
- Local has been determined to be has an office front in the area and based on where the office front is located for local vs. BV County (For Example: Wal-Mart is considered local since they have a store in Storm Lake even though their headquarters is not located here)

As with all analytical data it is possible to interpret the numbers in a variety of ways and as we move forward we would be happy to provide further detail and or revise the way in which we show the data. Likewise if you have any questions or concerns please don't hesitate to contact city staff.

FISCAL IMPACT:

	Total Expenses	Calculated Expenses	Local	%	BV Co	%	Non Local	%
City	\$614,981.26	\$218,807.28	\$53,748.97	25	\$126,613.26	58	\$38,445.05	17
King's Pointe	\$164,938.75	\$76,601.65	\$7,880.99	10	\$5,488.58	7	\$63,232.08	83
Golf Course	\$1,772.34	\$1,772.34	\$63.97	3			\$1,708.37	97

RECOMMENDATION: Review Buy Local Information

Staff Summary

3/16/2015
Agenda Item # 3.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: James H. Patrick, City Manager

SUBJECT: **Update on Iowa Lakes Corridor Corporation**

BACKGROUND: During the Budget process, Council requested that the Iowa Lakes Corridor Regional Economic Development Corporation make a report on their activities, especially as they relate to Storm Lake.

Mr. Kiley Miller, the Executive Director of the Corridor is with us tonight to make a quarterly report to Council.

FISCAL IMPACT: No fiscal impact

RECOMMENDATION: Council hear the report and ask questions.

Staff Summary

3/16/2015
Agenda Item # 4.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: Todd Allen, Water Plant Superintendent

SUBJECT: **Public Hearing On HWY 7 Water Main Project**

BACKGROUND: This agenda item provides the public a chance to comment on the plans and specs for the HWY 7 water main project.

This project will consist of relocating approximately 2,600 feet of water main that currently runs underneath the road and move it to the north in the existing right-of-way. The proposed area is from 915 W. Milwaukee (Deanda Auto Sales) west to 1515 W. Milwaukee (Culligan).

Relocating this water main is being done ahead of the HWY 7 road widening project so in the event that there are problems in the future with this line, the new road would not have to be disturbed. We have also had numerous main breaks along this section of pipe that is to be replaced, so this project will be a benefit in several ways.

There will be two alternate bids included in this project. One is to extend the project approximately 325 feet west and connect to an 18" water main at the intersection of Allen St. The second is to replace a 4" water main that runs under the road and feeds several businesses on the south side of W. Milwaukee.

City Clerk has plans and specs for this project. Bid letting will be Tuesday, March 24, 2015 at 10 AM in the City Hall Council Chambers.

FISCAL IMPACT: The engineering agreement is with Bolton and Menk for a cost of \$25,000.

The engineers' estimate for construction is \$200,500.

The engineers' estimate for alternate 1 is \$36,000.

The engineers' estimate for alternate 2 is \$3,500.

Staff estimates an additional \$5,000 for legal and administration costs for a total project cost with both alternates of \$270,000.

This project will be funded with \$275,000 from water depreciation from the FY 16 budget.

RECOMMENDATION:

Open Public Hearing
Hear Comments
Close Public Hearing

Staff Summary

3/16/2015
Agenda Item # 5.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: Todd Allen, Water Plant Superintendent

SUBJECT: **Resolution No. 99-R-2015-2016 Approving Plans, Specifications, & Form Of Contract On HWY 7 Water Main Project**

BACKGROUND: This agenda item provides the public a chance to comment on the plans and specs for the HWY 7 water main project.

This project will consist of relocating approximately 2,600 feet of water main that currently runs underneath the road and move it to the north in the existing right-of-way. The proposed area is from 915 W. Milwaukee (Deanda Auto Sales) west to 1515 W. Milwaukee (Culligan).

Relocating this water main is being done ahead of the HWY 7 road widening project so in the event that there are problems in the future with this line, the new road would not have to be disturbed. We have also had numerous main breaks along this section of pipe that is to be replaced, so this project will be a benefit in several ways.

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The engineers' estimate for construction is \$200,500.

The engineers' estimate for alternate 1 is \$36,000.

The engineers' estimate for alternate 2 is \$3,500.

Staff estimates an additional \$5,000 for legal and administration costs for a total project cost with both alternates of \$270,000.

This project will be funded with \$275,000 from water depreciation from the FY 16 budget.

RECOMMENDATION: Adopt Resolution No. 99-R-2015-2016

ATTACHMENTS:

Description	Type
 Resolution No. 99-R-2014-2015	Resolution

RESOLUTION NO. 99-R-2014-2015

**RESOLUTION ADOPTING PLANS, SPECIFICATIONS, FORM OF
CONTRACT AND ESTIMATE OF COST FOR THE CITY OF STORM LAKE
HWY 7 WATER MAIN PROJECT**

WHEREAS, the plans, specifications, form of contract and estimate of cost were filed with the CITY for the construction of certain public improvements described in general as the Hwy 7 Water Main Project; and

WHEREAS, notice of hearing on plans, specifications, form of contract and estimate of cost for said public improvements was published as required by law:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STORM LAKE, IOWA;

Section 1. That the said plans, specifications, form of contract and estimate of cost are hereby approved as the plans, specifications, form of contract and estimate of cost for said public improvements, as described in the preamble of this Resolution.

PASSED AND APPROVED this 16th day of March 2015.

Jon F. Kruse, Mayor

ATTEST:

Justin Yarosevich, City Clerk

Staff Summary

3/16/2015
Agenda Item # 6.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: Pat Kelly, Infrastructure Superintendent / Public Facilities Director

SUBJECT: **Motion To Approve The Contract With Certified Testing Services For The Widening Of HWY 7 From Barton Street To Northwestern Drive**

BACKGROUND: This agenda item will approve the contract with Certified Testing Services for the widening Hwy 7 from Northwestern Street to Barton Street to 3 lanes. The contract allows CTS to provide construction materials inspection and testing services for the project. The contract is for approximately \$3,000 to \$3,500 and if any extra services are required it would be based on their unit fee schedule.

FISCAL IMPACT: Estimated project costs for this project are as follows:

Construction	\$940,000
Engineering	\$130,000
Legal/Admin	\$15,000
Land Acquisition	\$5,000
CTS contract	\$3,450
Railroad Agreement	\$50,633.67
CTS contract	\$3,500
Total	\$1,252,583.67

The City has obtained grant funding for this project from two sources including USTEP (\$400,000) and STP (\$341,000). The City's portion of the funding will come from the following sources:

Road Use Tax Funds FY 2015	\$275,000
Road Use Tax Funds FY 2016	\$150,000
Remaining West 5th Street	\$107,464

This project is currently fully funded.

RECOMMENDATION: Approve Motion

ATTACHMENTS:

Description	Type
☐ Contract with CTS	Contract



Certified Testing Services, Inc.

1330 North Michigan Street • P.O. Box 740 • Storm Lake, Iowa 50588 • Phone (712) 213-8378

March 2, 2015

City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
Attn: Mr. Justin Yarosevich

Re: Construction Materials Testing
Iowa Highway 7 Widening Project
STP-U-7422(617)- -0-11
Storm Lake, Iowa

Dear Mr. Yarosevich,

Certified Testing Services, Inc. is pleased to submit the following proposal for providing construction materials inspection and testing for the referenced project. We propose to provide testing and inspection services, on a part-time basis, as requested by your representative and in accordance with our attached Fee Schedule. Invoices will be submitted on a monthly basis and will be itemized using our unit fee schedule and attached General Conditions.

CTS is the Geotechnical Engineer of record for this project and also has a local office that is familiar with the project needs, therefore making us a valuable partner towards the successful completion of the project.

After reviewing the project specifications, CTS understands the testing requirements for this project. For the soils portion of the project, we anticipate three to four trips for observation and density testing. The HMA Portion will require density testing also, therefore we anticipate four to five trips for that portion. We anticipate PCC Plant Monitoring will require two to three trips. We also anticipate two to three sets of gradations will be required during the PCC Plant Monitoring.

Highway 7 Widening STP-U-7422(617)- -70-11
Storm Lake, Iowa
March 2, 2015

For the concrete portion of the project, we anticipate four to five trips. Two Beams per set are specified, so we expect that 8 to 10 beams will be taken. Fees include trip charges and reporting.

Based on the above quantities our fees for this project will be approximately \$3,000.00 to \$3,500.00. This is only an estimate based on the information provided to CTS, and any extra services will be in accordance with our unit Fee Schedule.

CTS realizes some overtime may be required on our part to facilitate progress of the projects. **Our hourly rates and unit fees will not increase for our overtime involvement for these projects, and costs for nuclear density testing are also included in our hourly rate.**

In addition to general liability insurance, Certified Testing Services, Inc. also provides professional liability (errors and omissions) insurance for each of its projects. Our laboratory is an Iowa Department of Transportation approved laboratory and also a member of the American Council of Independent Laboratories.

Thank you for the opportunity to submit this proposal. If you have any questions, please do not hesitate to contact our firm at (712)213-8378.

Sincerely,

CERTIFIED TESTING SERVICES, INC.



Dana R. Siefer
Assistant Division Manager
DRS/grj



Gary R. Jackson, S.E.
Division Manager

Highway 7 Widening STP-U-7422(617)- -70-11
Storm Lake, Iowa
March 2, 2015

Note: As each contractor has different means for completing a project we would ask that you review the number of trips we have estimated and notify us immediately if our estimated trips does not meet with your construction schedule so that we may avoid a conflict during the project due to variances. We can only estimate the number of trips that will be needed based on like projects which we have had experience with.

FEE SCHEDULE FOR THE HIGHWAY 7 WIDENING PROJECT

Vehicle Fee	per trip	\$ 25.00
Geotechnical Engineer	per hour	\$ 150.00
Project Manager	per hour	\$ 130.00
IDOT Concrete/Soils Technician	per hour	\$ 64.00
IDOT HMA Technician	per hour	\$ 64.00
Standard Proctor	each	\$ 140.00
Sieve Analysis	each	\$ 90.00
Flexural Strength of Concrete Beams	each	\$ 35.00
Report Preparation	per hour	\$ 20.00

AGREED TO THIS _____ DAY OF _____,

BY: _____

TITLE: _____

FIRM: _____

GENERAL CONDITIONS

TESTING AND OBSERVATION SERVICES

SECTION 1: Scope of Work

CTS shall perform the services defined in the contract and shall invoice the client for those services at the fee schedule rates. Any cost estimates stated in this contract shall not be considered as a firm figure unless otherwise specifically stated in this contract. If unexpected site conditions are discovered, the scope of work may change, even as the work is in progress. CTS will provide these additional services at the contract fee schedule rate.

Rates for work beyond the scope of this contract and not covered by the contract fee schedule can be provided. CTS can perform additional work with verbal authorization, and will provide written confirmation of fees, if requested. All costs incurred because of delays in authorizing the additional work will be billed to the client.

Fee schedules are valid for one year following the date of the contract unless otherwise noted.

SECTION 2: Personnel Responsibility

The presence of CTS field representatives will be for the purpose of providing observation and field testing. Our work does not include supervision or direction of the actual work of the contractor, his employees or agents. The contractor for this project should be so advised. The contractor should also be informed that neither the presence of our field representative nor the observation and testing by our firm shall excuse him in any way for defects discovered in his work. It is understood that our firm will not be responsible for job or site safety of the project. Job and site safety will be the sole responsibility of the contractor unless contracted to others.

SECTION 3: Meaning of "Observation"

The term "observation" implies only that we would observe the progress of the work we have agreed to be involved with and perform tests, from which to develop an opinion as to whether the work essentially complies with the job requirements.

SECTION 4: Accuracy of Test Locations and Elevations

The accuracy and proximity of provided survey control will affect the accuracy of in situ test location and elevation determinations. Unless otherwise noted, the accuracy of test locations and elevations will be commensurate only with pacing and approximate measurements or estimates.

SECTION 5: Degree of Certainty of Compliance

With any manufactured product, there are statistical variations in its uniformity, and in the accuracy of tests used to measure its qualities. As compared with other manufactured products, field construction usually has wider fluctuations in both product and test results. Thus, even with very careful observation and testing, it cannot be said that all parts of the product comply with the job requirements. Our proposal is for Scope of Services requested by our client. The degree of certainty for compliance with project specifications is much greater with full-time observation than it is with intermittent observation.

SECTION 6: Unanticipated Hazardous Materials

It shall be the duty of the owner or his representative to advise CTS of any known or suspected hazardous substances which are or may be related to the services provided; such hazardous substances including but not limited to products, materials, by-products, wastes or samples of the foregoing which CTS may be provided or obtain performing its services or which hazardous substances exist or may exist on or near any premises upon which work is to be performed by CTS's employees, agents or subcontractors.

If during the course of providing services CTS observes or suspects the existence of unanticipated hazardous materials, CTS may at its option terminate further work on the project and notify client of the condition. Services will be resumed only after a renegotiation of scope of services and fees. In the event that such renegotiation cannot occur to the satisfaction of CTS, CTS may at its option terminate this contract.

SECTION 7: Reports and Invoices

CTS will furnish three copies of the report to the client. Additional copies will be furnished at the rate specified in the fee schedule.

CTS will submit invoices to the client monthly and a final bill upon completion of services. Payment is due upon presentation of invoice and is past due thirty (30) days from the invoice date. Client agrees to pay a finance charge of one and one-half percent (1 1/2%) per month, but not exceeding the maximum rate allowed by law, on past due accounts.

SECTION 8: Ownership of Documents

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by CTS as instruments of service, shall remain the property of CTS, unless there are other contractual agreements.

SECTION 9: Confidentiality

CTS shall hold confidential all business or technical information obtained from the client or his affiliates or generated in the performance of services under this

agreement and identified in writing by the client as "confidential". CTS shall not disclose such information without the client's consent except to the extent required for 1) Performance of services under this agreement; 2) Compliance with professional standards of conduct for preservation of public safety, health, and welfare; 3) Compliance with any court order or other governmental directive and/or 4) Protection of CTS against claims or liabilities arising from performance of services under this agreement. CTS obligations hereunder shall not apply to information in the public domain or lawfully acquired on a non-confidential basis from others.

SECTION 10: Standard of Care

Services performed by CTS under this Agreement will be conducted in the manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No other warranty, express or implied, is made or intended by the proposal for consulting services or by furnishing oral or written reports of the findings made.

The client recognizes that subsurface conditions may vary from those encountered at the location where borings, surveys or explorations are made by CTS and that the data, interpretations and recommendations of CTS are based solely upon the data available to CTS. CTS will be responsible for those data, interpretations, and recommendations, but shall not be responsible for the interpretation by others of the information developed.

SECTION 11: Subpoenas

The client is responsible, after notification, for payment of time charges and expenses resulting from our required response to subpoenas issued by any party in conjunction with our work. Charges are based on fee schedules in effect at the time the subpoena is served.

SECTION 12: Limitation of Liability

The client agrees to limit CTS's liability to the owner and all construction contractors and subcontractors on the project arising from CTS's professional acts, errors, or omissions, such that the total aggregate liability of CTS to all those named shall not exceed \$50,000 or CTS's total fee for the services rendered on this project, whichever is greater. The owner further agrees to require of the contractor and his subcontractors an identical limitation of CTS's liability for damages suffered by the contractor or the subcontractor arising from CTS's professional acts, errors, or omissions. Neither the contractor nor any of his subcontractors assumes any liability for damages to others which may arise on account of CTS's professional acts, errors or omissions.

SECTION 13: Insurance and Indemnity

CTS represents that it and its staff are protected by worker's compensation insurance and that CTS has such coverage under public liability and property damage insurance policies with CTS deems to be adequate. It is the policy of CTS to require certificates of insurance from all consultants or subcontractors employed by CTS. Certificates for all such policies of insurance will be provided to client upon request in writing. Within the limits and conditions of such insurance, CTS agrees to indemnify and save client harmless from and against any loss, damage, injury or liability arising from any negligent acts of CTS or its employees. CTS shall not be responsible for any loss, damage or liability beyond the amounts, limits and conditions of such insurance. CTS shall not be responsible for any loss damage or liability arising from any acts by a client, its agents, staff or other consultants employed by others.

SECTION 14: Termination

This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, CTS shall be paid for services performed to the termination notice date plus reasonable termination expenses. Expenses of termination or suspension shall include all direct costs of CTS required to complete analyses and records necessary to complete its files and may also include a report on the services performed to the date of notice of termination or suspension.

SECTION 15: Precedence

These Standards, Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding CTS's services.



Certified Testing Services, Inc.

419 W. 6th Street
P.O. Box 1193
Sioux City, Iowa 51102

Staff Summary

3/16/2015
Agenda Item # 7.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: Pat Kelly, Infrastructure Superintendent / Public Facilities Director

SUBJECT: **Resolution No. 100-R-2014-2015 Approving the Bids For The Paving Of Howard Road**

BACKGROUND: This project will construct a concrete road at the south end of the Emerald Park subdivision. The existing road is gravel and continually needs maintenance due to washouts from heavy rains.

In 2012 the City signed a Development Agreement with the developers of the Woodland Creek subdivision and as part of that agreement the City agreed to pave Howard Road by the end of August 2015. Moving forward with this project will fulfill the City's portion of the Development Agreement.

The bid letting for this project was March 12, 2015 at 10am. There was 1 bid received from Smith Concrete for \$166,319.85. The engineers estimate is \$175,865.90.

FISCAL IMPACT: Projected Construction Cost is \$166,319.85
Legal/Admin \$5,000
Land Aquisition \$1,000
Contingencies \$17,586.59

Projected Total Cost of Project \$189,906.44

This project is in the current budget and will be funded by \$220,000 of Franchise Fees in FY 2015 and FY 2016.

RECOMMENDATION: Approve Resolution No. 100-R-2014-2015

ATTACHMENTS:

Description	Type
Bid Tab	Backup Material
Resolution No. 100-R-2014-2015	Resolution

BID TABULATION

City of Storm Lake

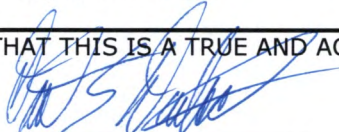
2015 PC Concrete Street Improvement Project - Howard Road



Project Number: 12-14872

Bid Letting Time & Date: 10:00 a.m. - Thursday, March 12, 2015

Bid Letting Location: City of Storm Lake

I HEREBY CERTIFY THAT THIS IS A TRUE AND ACCURATE ACCOUNT OF BIDS RECEIVED.  DATE: March 12, 2015 LICENSED NUMBER: 22543				SMITH CONCRETE SERVICE, INC. STORM LAKE, IA		Engineer's Estimate	
Item No.	Construction Item	Unit	Quantity	Unit Price	Amount	Unit Price	Amount
BASE BID							
1	PC Concrete Pavement, 6"	SY	2,212.2	\$ 38.00	\$ 84,063.60	\$ 40.00	\$ 88,488.00
2	Modified Subbase	CY	414.3	\$ 37.00	\$ 15,329.10	\$ 38.00	\$ 15,743.40
3	Subgrade Preparation	SY	2,485.8	\$ 2.25	\$ 5,593.05	\$ 2.50	\$ 6,214.50
4	Unclassified Excavation	CY	674.0	\$ 7.50	\$ 5,055.00	\$ 10.00	\$ 6,740.00
5	Pavement Removal	SY	109.3	\$ 10.00	\$ 1,093.00	\$ 20.00	\$ 2,186.00
6	Removal of Pipe, Culvert and Conduit	LF	56.0	\$ 15.00	\$ 840.00	\$ 15.00	\$ 840.00
7	Removal of Intake	EA	1	\$ 600.00	\$ 600.00	\$ 500.00	\$ 500.00
8	Single Open Throat Intake, Large Box (SW-508)	EA	2	\$ 3,850.00	\$ 7,700.00	\$ 4,250.00	\$ 8,500.00
9	12" Storm Sewer, RCP	LF	60.0	\$ 50.00	\$ 3,000.00	\$ 60.00	\$ 3,600.00
10	18" Storm Sewer, RCP	LF	12.0	\$ 83.50	\$ 1,002.00	\$ 65.00	\$ 780.00
11	18" Culvert, RCP	LF	24.0	\$ 90.00	\$ 2,160.00	\$ 80.00	\$ 1,920.00
12	18" Apron, RCP	EA	3	\$ 650.00	\$ 1,950.00	\$ 1,250.00	\$ 3,750.00
13	Subdrain, 6", Corrugated PE	LF	602.0	\$ 13.30	\$ 8,006.60	\$ 12.00	\$ 7,224.00
14	Subdrain Cleanouts	EA	2	\$ 280.00	\$ 560.00	\$ 500.00	\$ 1,000.00
15	Seeding and Fertilizing and Mulching (Hydraulic Seeding)	LS	1	\$ 2,000.00	\$ 2,000.00	\$ 2,500.00	\$ 2,500.00
16	Installation, Maintenance and Removal of Silt Fence	LF	590.0	\$ 3.25	\$ 1,917.50	\$ 7.00	\$ 4,130.00
17	Installation, Maintenance and Removal of Wattles	LF	75.0	\$ 5.00	\$ 375.00	\$ 10.00	\$ 750.00
18	Traffic Control	LS	1	\$ 2,575.00	\$ 2,575.00	\$ 2,500.00	\$ 2,500.00
19	Mobilization	LS	1	\$ 20,000.00	\$ 20,000.00	\$ 15,000.00	\$ 15,000.00
20	Testing--Subgrade, Subbase, Structures, Pavement	LS	1	\$ 2,500.00	\$ 2,500.00	\$ 3,500.00	\$ 3,500.00
BASE BID TOTAL					\$ 166,319.85		\$ 175,865.90

RESOLUTION NO. 100-R-2014-2015

RESOLUTION ACCEPTING AND AWARING BID FOR THE CITY OF STORM LAKE HOWARD ROAD PAVING PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STORM LAKE, IOWA:

Section 1. That the following bid for the construction of certain public improvements described in general as the City of Storm Lake Howard Road Paving Project, described in the plans and specifications heretofore adopted by this Council on March 2, 2015 be and is hereby accepted, the same being the lowest responsible bid received for said work, as follows:

Contractor:	Smith Concrete Service, Inc., Storm Lake, Iowa
Amount of bid:	\$166,319.85
Portion of bid:	All

Section 2. That the Mayor and Clerk are hereby directed to execute contract with the contractor for the construction of said public improvements, said contract not to be binding on the City until approved by this Council.

PASSED AND APPROVED this 16th day of March, 2015.

Jon F. Kruse, Mayor

ATTEST:

Justin Yarosevich, City Clerk

Staff Summary

3/16/2015
Agenda Item # 8.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: Justin Yarosevich, Assistant City Manager / City Clerk

SUBJECT: **Resolution No. 101-R-2014-2015 Assessing Property Owners For Sidewalk Repairs**

BACKGROUND: The attached resolution was introduced at the meeting on March 2nd, 2015 as required by Iowa Law. The resolution will direct the implementation of a special assessment on five properties in Storm Lake for the cost of repairs to the sidewalk as part of the City's ongoing sidewalk assessment program.

All the property owners have been given an opportunity to appeal the found deficiencies and the assessment amount. One individual that is included on the list did appeal the assessment amount and per the direction of the City Council staff delayed the passage of this resolution to allow this individual time to make payment prior to the assessment. No payment has been received and so he is included on the assessment listing.

FISCAL IMPACT: The assessment will provide an opportunity for the property owners to make payment over a two year period of time with a 4% interest rate. The special assessment cost is the cost of repairs plus an administrative fee.

RECOMMENDATION: Adopt Resolution No. 101-R-2014-2015

ATTACHMENTS:

Description	Type
☐ Resolution 101-R-2014-2015	Resolution

RESOLUTION NO. 101-R-2014-2015

A RESOLUTION PURSUANT TO SECTION 10-1-5 OF THE CITY CODE OF STORM LAKE, IOWA CERTIFYING A SPECIAL TAX AGAINST CERTAIN PROPERTIES WITHIN THE CITY LIMITS OF THE CITY OF STORM LAKE, IOWA FOR SIDEWALK REPAIR

WHEREAS, pursuant to Section 364.12(2)(c) of the Iowa Code and Section 10-1-7 of the City Code, owners of lots and lands have a duty to keep in repair all sidewalks in front of or abutting any property owned by them;

WHEREAS, pursuant to Section 10-1-8 of the City Code, in the spring of 2014, the City of Storm Lake gave notice to certain property owners of repairs required to sidewalks abutting the owners' properties as a part of the City's sidewalk inspection program;

WHEREAS, some property owners failed to repair the sidewalks for which they are responsible within the sixty day period allowed by Section 10-1-9 of the City Code and allowed by the terms of the notice given the owners by the City;

WHEREAS, pursuant to Section 10-1-10 of the City Code, the City Manager caused to be repaired the sidewalks of those property owners who failed to have repaired the sidewalks for which they are responsible;

WHEREAS, pursuant to Section 364.12 of the Code of Iowa and Sections 10-1-10, 10-1-3, 10-1-4, and 10-1-5 of the City Code, the City's cost of repairing such sidewalks may be assessed against the property owners who failed to have repaired the sidewalks for which they are responsible and against the real estate they own abutting those sidewalks;

WHEREAS, on September 15, 2014, the City of Storm Lake gave notice of assessments to the property owners who failed to have repaired the sidewalks for which they are responsible;

WHEREAS, no property owner appealed the notice requiring the property owner to repair or replace sidewalk abutting the owner's property and no property owner, except Larry Wells, appealed the notice of assessment in accordance with the provisions Section 10-1-11 of the City Code or the terms of the notice of assessment;

WHEREAS, Larry Well's appeal of the assessment against him and his property was heard by the City Council January 19, 2015, following notice of the hearing mailed to him December 29, 2014;

WHEREAS, although Larry Wells personally appeared at the January 19, 2015 hearing and presented his argument opposing the assessment, the City Council voted unanimously to affirm the assessment of \$318.00 (\$288.00 for sidewalk repairs plus a \$30.00 administrative fee) against Larry Wells and his property;

WHEREAS, each property owner identified below is one of the property owners failing to repair the sidewalk for which they were responsible and each real estate parcel described opposite the owner's name is a parcel abutting a sidewalk for which the owner was responsible and which the City caused to be repaired when the owner failed to repair the sidewalk;

WHEREAS, each such property owner as well as the real estate parcel described opposite the owner's name should be assessed the cost for such sidewalk repair, administrative costs associated therewith, and interest thereon as provided by Sections 10-1-10 and 10-1-5 of the City Code; and

WHEREAS, this Resolution shall be introduced at the City Council's regular meeting March 2, 2015, and acted upon at its regular meeting March 16, 2015, to satisfy the requirements of Section 10-1-5 of the City Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STORM LAKE, IOWA AS FOLLOWS:

1. Pursuant to Section 364.12 of the Code of Iowa and Sections 10-1-10, 10-1-3, 10-1-4, and 10-1-5 of the City Code of the City of Storm Lake, Iowa, each property owner whose name appears in the chart below and the real estate parcel described opposite the property owner's name are assessed a special tax shown opposite the property owner's name for the cost of the repair to the sidewalk abutting such property, the administrative cost associated therewith, and interest at the rate of 4% per annum on such tax and costs accruing from and after the date of this Resolution.

Name(s) of Property Owner(s)	Street Address of Assessed Property in Storm Lake, Iowa	Parcel Number of Assessed Property	Total Amount of Special Tax Assessed (including cost of sidewalk repair and \$30.00 administrative cost)
Roderick Alderton and Janice Alderton	900 E. 1 st Street	1402352001	\$534.00 plus 4% per annum interest
Larry Wells	307 E. 6 th Street	1403206015	\$318.00 plus 4% per annum interest
Javier Valasquez and Rosa Valasquez	115 E. 7 th Street	1403201005	\$426.00 plus 4% per annum interest
Buena Vista Abstract & Mortgage Company	716 Russell Street	1403231011	\$696.00 plus 4% per annum interest

2. Pursuant to Section 10-1-10 of the City Code, each of the property owners identified above may pay the assessment over a two-year period.

3. Pursuant to Section 10-1-5 of the City Code, the total amount of the Special Tax, including the cost of sidewalk repair, the administrative cost, and the interest thereon, shall be a lien against the parcel assessed until paid.

4. The above-described Special Taxes are hereby certified to the Auditor of Buena Vista County, Iowa for collection along with other City of Storm Lake, Iowa taxes.

Passed and approved this 16th day of March, 2015.

Jon F. Kruse, Mayor

ATTEST:

Justin Yarosevich, City Clerk

Staff Summary

3/16/2015
Agenda Item # 9.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: Jennifer Movall, Finance Department Manager

SUBJECT: **Resolution No. 102 -R-2014-2015 Setting Public Hearing For Not To Exceed \$4,000,000 General Obligation Urban Renewal Refunding Capital Loan Notes**

BACKGROUND: This agenda item will set the public hearing for not to exceed \$4,000,000 General Obligation Urban Renewal Refunding Capital Loan Notes for April 6, 2015. This is for the refinancing of the \$5,400,000 Local Option Sales Tax Annual Appropriation Bond. This bond was callable on 12/1/2014.

With the refinancing this bond will remain Annual Appropriation and stay with the same payment schedule. The only change is that this will become a taxable bond.

Setting and holding the public hearing will enable the City to start the process of refinancing the debt.

FISCAL IMPACT: The fiscal impact is the cost of the publication for the Public Hearing which is approximately \$100.

RECOMMENDATION: Adopt Resolution No. 102-R-2014-2015

ATTACHMENTS:

Description	Type
☐ Resolution No. 102-R-2014-2015	Resolution

RESOLUTION NO. 102-R-2014-2015

RESOLUTION FIXING DATE FOR A MEETING ON THE AUTHORIZATION OF A LOAN AGREEMENT AND THE ISSUANCE OF NOT TO EXCEED \$4,000,000 GENERAL OBLIGATION URBAN RENEWAL REFUNDING CAPITAL LOAN NOTES OF THE CITY OF STORM LAKE, STATE OF IOWA (FOR ESSENTIAL CORPORATE URBAN RENEWAL PURPOSES), AND PROVIDING FOR PUBLICATION OF NOTICE THEREOF

WHEREAS, by Resolution No. 33-R-91-92, adopted September 16, 1991, amended by Resolution No. 25-R-2004-2005, adopted October 18, 2004, amended by Resolution No. 07-R-2010-2011, adopted July 19, 2010, amended by Resolution No. 36-R-2013-2014, adopted November 18, 2013, this Council found and determined that certain areas located within the City are eligible and should be designated as an urban renewal area under Iowa law, and approved and adopted the Storm Lake Industrial Park Urban Renewal Plan (the "Plan") for the Storm Lake Industrial Park Urban Renewal Plan Area (the "Area" or "Urban Renewal Area") described therein, which Plan is on file in the office of the Recorder of Buena Vista County; and

WHEREAS, it is deemed necessary and advisable that the City of Storm Lake, State of Iowa, should provide for the authorization of a Loan Agreement and issuance of General Obligation Urban Renewal Refunding Capital Loan Notes, to the amount of not to exceed \$4,000,000, as authorized by Sections 384.24A, 384.25 and 403.12, of the Code of Iowa, for the purpose of providing funds to pay costs of carrying out essential corporate urban renewal purpose project(s) as hereinafter described; and

WHEREAS, the Loan Agreement and Notes shall be payable from the Debt Service Fund; and

WHEREAS, before a Loan Agreement may be authorized and General Obligation Urban Renewal Refunding Capital Loan Notes, issued to evidence the obligation of the City thereunder, it is necessary to comply with the provisions of the Code of Iowa, as amended, and to publish a notice of the proposal and of the time and place of the meeting at which the Council proposes to take action for the authorization of the Loan Agreement and Notes and to receive oral and/or written objections from any resident or property owner of the City to such action; and

WHEREAS, before notes may be issued, it is necessary to comply with the procedural requirements of Chapters 384 and 403 of the Code of Iowa, and to publish a notice of the proposal to issue such notes and the right to petition for an election.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF CITY OF STORM LAKE, STATE OF IOWA:

That this Council meet in the Council Chambers, City Hall, 620 Erie Street, Storm Lake, Iowa, at 5:00 P.M., on the 6th day of April, 2015, for the purpose of taking action on the matter

of the authorization of a Loan Agreement and issuance of not to exceed \$4,000,000 General Obligation Urban Renewal Refunding Capital Loan Notes, for essential corporate urban renewal purposes, the proceeds of which notes will be used to provide funds to pay the costs of refunding existing City indebtedness, including the Annual Appropriation Urban Renewal General Obligation Bonds, Series 2006.

To the extent any of the projects or activities described in this resolution may be reasonably construed to be included in more than one classification under Division III of Chapter 384 of the Code of Iowa, the Council hereby elects the "essential corporate purpose" classification and procedure with respect to each such project or activity, pursuant to Section 384.28 of the Code of Iowa.

The Clerk is authorized and directed to proceed on behalf of the City with the negotiation of terms of a Loan Agreement and the issuance of General Obligation Urban Renewal Refunding Capital Loan Notes, evidencing the City's obligations to a principal amount of not to exceed \$4,000,000, to select a date for the final approval thereof, to cause to be prepared such notice and sale information as may appear appropriate, to publish and distribute the same on behalf of the City and this Council and otherwise to take all action necessary to permit the completion of a loan on a basis favorable to the City and acceptable to the Council.

That the Clerk is hereby directed to cause at least one publication to be made of a notice of the meeting, in a legal newspaper, printed wholly in the English language, published at least once weekly, and having general circulation in the City. The publication to be not less than ten clear days nor more than twenty days before the date of the public meeting on the issuance of the Notes.

The notice of the proposed action to issue notes shall be in substantially the following form:

(To be published on or before: March 24th)

NOTICE OF MEETING OF THE CITY COUNCIL OF THE
CITY OF STORM LAKE, STATE OF IOWA, ON THE
MATTER OF THE PROPOSED AUTHORIZATION OF A
LOAN AGREEMENT AND THE ISSUANCE OF NOT TO
EXCEED \$4,000,000 GENERAL OBLIGATION URBAN
RENEWAL REFUNDING CAPITAL LOAN NOTES OF THE
CITY (FOR ESSENTIAL CORPORATE URBAN RENEWAL
PURPOSES), AND THE HEARING ON THE ISSUANCE
THEREOF

PUBLIC NOTICE is hereby given that the City Council of the City of Storm Lake, State of Iowa, will hold a public hearing on the 6th day of April, 2015, at 5:00 P.M., in the Council Chambers, City Hall, 620 Erie Street, Storm Lake, Iowa, at which meeting the Council proposes to take additional action for the authorization of a Loan Agreement and the issuance of not to exceed \$4,000,000 General Obligation Urban Renewal Refunding Capital Loan Notes, for essential corporate urban renewal purposes, to provide funds to pay the costs of refunding

existing City indebtedness, including the Annual Appropriation Urban Renewal General Obligation Bonds, Series 2006. Principal and interest on the proposed Loan Agreement will be payable from the Debt Service Fund.

At any time before the date of the meeting, a petition, asking that the question of issuing such Notes be submitted to the legal voters of the City, may be filed with the Clerk of the City in the manner provided by Section 362.4 of the Code of Iowa, pursuant to the provisions of Sections 384.24(3)(q), 384.24A, 384.25 and 403.12 of the Code of Iowa.

At the above meeting the Council shall receive oral or written objections from any resident or property owner of the City to the above action. After all objections have been received and considered, the Council will at the meeting or at any adjournment thereof, take additional action for the authorization of a Loan Agreement and the issuance of the Notes to evidence the obligation of the City thereunder or will abandon the proposal to issue said Notes.

This notice is given by order of the City Council of the City of Storm Lake, State of Iowa, as provided by Chapters 384 and 403 of the Code of Iowa.

Dated this 16th day of March, 2015.

City Clerk, City of Storm Lake, State of Iowa

(End of Notice)

PASSED AND APPROVED this 16th day of March, 2015.

Jon F. Kruse, Mayor

ATTEST:

Justin Yarosevich, City Clerk

Staff Summary

3/16/2015
Agenda Item # 10.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: Jennifer Movall, Finance Department Manager

SUBJECT: **Public Hearing For FY 2015 Budget Amendment**

BACKGROUND: The City of Storm Lake is required to hold a public hearing on any new amendments to its current fiscal year budget. As such, notice has been published in the newspaper as required by Iowa law.

This amendment to the FY 2015 Budget is specifically for the Community and Economic Development program expenses to account for the cost of the utility installation in the 3rd Addition Sub-division.

FISCAL IMPACT: The fiscal impact of the budget amendment is an increase in revenue of \$4,651,786 and an increase in expenses of \$4,838,736. The increase in revenues and expenses includes \$4,331,736 each for transfers in and out of operating funds.

RECOMMENDATION: Open the Public Hearing
Hear Comments
Close the Public Hearing

Staff Summary

3/16/2015
Agenda Item # 11.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: Jennifer Movall, Finance Department Manager

SUBJECT: **Resolution No. 103-R-2014-2015 Adopting FY 2014-2015 Budget Amendment**

BACKGROUND: During the City's monthly review of the finances it was determined that an amendment needs to be made to the Community & Economic Development program expenses to account for the cost of utility installation in the 3rd Addition Sub-division.

Staff will continue to monitor budgets and expenses to ensure that savings are realized where possible. It is likely that an additional budget amendment will be done in April/May before the state deadline of May 31, 2015.

FISCAL IMPACT: The fiscal impact of the budget amendment is an increase in revenue of \$4,651,786 and an increase in expenses of \$4,838,736. The increase in revenues and expenses includes \$4,331,736 each for transfers in and out of operating funds.

RECOMMENDATION: Adopt Resolution No. 103-R-2014-2015

ATTACHMENTS:

Description	Type
☐ Resolution No. 103-R-2014-2015	Resolution

RESOLUTION NO. 103-R-2014-2015

A RESOLUTION AMENDING THE CURRENT BUDGET FOR THE FISCAL YEAR ENDING JUNE 30, 2015

Be it Resolved by the Council of the City of Storm Lake:

Section 1. Following notice published March 4, 2015 and the public hearing held, March 16, 2015 the current budget is amended as set out herein and in the detail by fund type and activity that supports this resolution which was considered at that hearing:

		Total Budget as certified or last amended	Current Amendment	Total Budget after Current Amendment
Revenues & Other Financing Sources				
Taxes Levied on Property	1	3,698,697	0	3,698,697
Less: Uncollected Property Taxes-Levy Year	2	0	0	0
Net Current Property Taxes	3	3,698,697	0	3,698,697
Delinquent Property Taxes	4	0	0	0
TIF Revenues	5	677,061	0	677,061
Other City Taxes	6	1,506,198	0	1,506,198
Licenses & Permits	7	581,200	0	581,200
Use of Money and Property	8	152,018	0	152,018
Intergovernmental	9	7,538,918	0	7,538,918
Charges for Services	0	12,419,223	0	12,419,223
Special Assessments	1	0	0	0
Miscellaneous	2	905,800	320,050	1,225,850
Other Financing Sources	3	7,194,472	4,331,736	11,526,208
Total Revenues and Other Sources	4	34,673,587	4,651,786	39,325,373
Expenditures & Other Financing Uses				
Public Safety	5	2,864,993	0	2,864,993
Public Works	6	1,268,025	0	1,268,025
Health and Social Services	7	10,500	0	10,500
Culture and Recreation	8	1,679,413	0	1,679,413
Community and Economic Development	9	633,611	507,000	1,140,611
General Government	0	423,308	0	423,308
Debt Service	1	1,979,462	0	1,979,462

	2			
Capital Projects	2	2,229,380	0	2,229,380
	2			
Total Government Activities Expenditures	3	11,088,692	507,000	11,595,692
	2			
Business Type / Enterprises	4	18,864,227	0	18,864,227
Total Gov Activities & Business Expenditures	2 5	29,952,919	507,000	30,459,919
	2			
Transfers Out	6	6,592,444	4,331,736	10,924,180
	2			
Total Expenditures/Transfers Out	7	36,545,363	4,838,736	41,384,099
Excess Revenues & Other Sources Over (Under) Expenditures/Transfers Out Fiscal Year	2 8	-1,871,776	-186,950	-2,058,726
	2			
Beginning Fund Balance July 1	9	15,178,698	0	15,178,698
	3			
Ending Fund Balance June 30	0	13,306,922	-186,950	13,119,972

NOW THEREFORE be it resolved by the City Council of the City of Storm Lake, Iowa, to approve the above said budget amendment for the 2014-2015 Fiscal Year.

PASSED AND APPROVED this 16th day of March, 2015.

Jon F. Kruse, Mayor

ATTEST:

Justin Yarosevich, City Clerk

Staff Summary

3/16/2015
Agenda Item # 12.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: Justin Yarosevich, Assistant City Manager / City Clerk

SUBJECT: **Motion Approving Being Fiscal Agent For Buena Vista County Community Foundation Grant Request**

BACKGROUND: The City has been approached by the Santa's Castle Board to be their Fiscal Sponsor for an application to the Buena Vista County Community Foundation Spring 2015 Grant Cycle. The Santa's Castle group is not a 501.C.3 which is required and thus has to use a Fiscal Sponsor of which the City meets the requirements.

They are applying for a grant of \$5,000 to combine with funds from their reserves and money that the City of Storm Lake set aside several years ago to make the Castle building more ADA Accessible. They are planning to install two chair lifts on the two stairs inside the building and a lift near the front entrance.

The City acting as the Fiscal Sponsor will not hurt the City's chances at any applications they may want to apply for during the Spring 2015 grant cycle. Being the Fiscal Sponsor will mean that the City will receive the funding and will have to cash and then write a check to the Santa's Castle group so that they can do the project. The Santa's Castle Board will be in charge of the project.

FISCAL IMPACT: Their is no fiscal impact to the City other than the process of turning around the grant award to the agency. The City would be committing to the requested matching funds from the money set aside by the Council a few years back and in which the City gave the group until June 2015 to use or it would revert to other projects.

RECOMMENDATION: Approve the Motion

ATTACHMENTS:

Description	Type
☐ Santa's Castle Request	Letter



SANTA'S CASTLE

PO BOX 212
Storm Lake, Iowa 50588
712-749-9247

santascastlestormlake@yahoo.com

TO THE ATTENTION OF: JAMES PATRICK *CITY MANAGER CITY OF STORM LAKE*

Santa's Castle is requesting the use of the City of Storm Lake as its fiscal agent for a BV County Community Grant.

Our goal for the grant funding would be used to make the Castle handicapped accessible through a series of indoor chair lifts and a wheel chair lift on the left front side of Santa's Castle.

\$7,400.00 Cost for the indoor installment (2 lifts) Model 1000 Stair Ride

\$8,950.00 Cost for the exterior platform lift

These sums are based on a quote from Wheel Chair Dynamics Sheldon, Iowa

\$500.00 Pour cement sidewalk to connect main sidewalk to exterior lift

\$700.00 Electrical connections

This is an opportunity for Santa's Castle to meet the needs of every individual both young and old.

Sincerely,

Ron Stevenson Director Santa's Castle

Staff Summary

3/16/2015

Agenda Item # 13.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: Justin Yarosevich, Assistant City Manager / City Clerk

SUBJECT: **Resolution No. 104-R-2014-2015 Approving Change Order Number 1 To Housing Rehabilitation Project #2014-2**

BACKGROUND: As the first housing project gets started the property owner has decided to have the contractor install siding with some color in it. The bid was set out to have white siding and thus the homeowner can elect to do a color instead of white but would have to pay for the difference in cost.

The contractor is ok with the change, as is the inspector. The homeowner has made the required payment to the City.

FISCAL IMPACT: The cost of the change order is \$525.00 bringing the total contract cost to \$25,496.91.

RECOMMENDATION: Adopt Resolution No.104-R-2014-2015

ATTACHMENTS:

Description	Type
☐ Resolution No. 104-R-2014-2015	Resolution
☐ Change Order 1	Change Order

RESOLUTION NO. 104-R-2014-2015

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STORM
LAKE, IOWA:**

To approve Change Order #1 to the contract with K & M Construction for the Housing Rehabilitation Project #2014-2 with the following changes:

- An addition of \$525.00 for owner requested change of siding color. Owner deposited \$525.00 with City.

Total cost of change order #1 is an addition of \$525.00 to the contract. Total contract cost after change order #1 is \$25,496.91.

PASSED AND APPROVED this 16th day of March 2014.

Jon F. Kruse, Mayor

ATTEST:

Justin Yarosevich, City Clerk

REQUEST FOR CHANGE ORDER - NO. 1

PROJECT _____

Owner: _____	Contractor: _____
Address: _____	Address: _____
Storm Lake IA 50588	Storm Lake IA 50588

_____ TYPE OF REQUEST _____

X	CHANGE IN SPECS	
X	INCREASE IN CONTRACT AMOUNT	\$525.00

REASON FOR REQUEST: Owner opted to pay for colored siding in lieu of white siding. Owner deposited \$525.00 with City.

Original Contract Amount	\$ 24,971.91
Increase Amount	\$ 525.00
Adjusted Contract Amount	\$ 25,496.91

Inspector's Signature:_____ Date:_____

Contractor's Signature: _____ Date: _____

Owner's Signature: _____ Date: _____

City Signature: _____ Date: _____

Staff Summary

3/16/2015

Agenda Item # 14.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: James H. Patrick, City Manager

SUBJECT: **Motion To Approve The Purchase Agreement For The Purchase Of OMG Midwest (American Concrete) Property With Temporary Easement**

BACKGROUND: The City has been working on obtaining the necessary property and easements for the construction of the Expansion Storm Water Project. This is the last property that is needed for the project.

OMG Midwest, American Concrete, wishes to sell the needed property instead of offering a permanent easement. The purchase agreement is for approximately 2.66 acres at a purchase price of \$35,000.

The agreement also contains provisions for a temporary one year construction easement. Council will approve the temporary easement if this motion is adopted.

FISCAL IMPACT: The cost of \$35,000 will be part of the overall project cost of \$1,665,699.60. Cost of the temporary easement is \$10.00.

RECOMMENDATION: Council Move To Approve the purchase agreement to purchase 2.66 acres from OMG Midwest as well as the temporary easement.

ATTACHMENTS:

Description	Type
 Purchase Agreement	Backup Material
 Plat of Property	Backup Material
 Temporary Construction Ageement	Backup Material

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this “**Agreement**”), dated as of March __, 2015 (the “**Effective Date**”), is entered into between OMG MIDWEST, INC., a Delaware corporation d/b/a American Concrete Products (“**Seller**”) having an address of 2401 SE Tones Drive, Ankeny, Iowa 50021 and the CITY OF STORM LAKE, IOWA, an Iowa municipal corporation (“**Buyer**”) having an address of 620 Erie Street, P.O. Box 1086, Storm Lake, Iowa 50588.

RECITALS

WHEREAS, Seller is the owner of the land, which is more particularly described in Exhibit A attached to this Agreement and made a part hereof (the “**Property**”).

WHEREAS, subject to the terms and conditions hereof, Seller desires to sell to Buyer the Property and Buyer desires to purchase the Property from Seller.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

ACCESS AND INSPECTION; EXAMINATION BY BUYER

Section 1.01 **Buyer Access to Property**. Between the date of this Agreement and the Closing, Buyer and Buyer’s agents, employees, contractors, representatives and other designees (hereinafter collectively called “**Buyer’s Designees**”) shall have the right to enter the Property for the purposes of inspecting the Property, conducting soil tests, conducting surveys, mechanical and structural engineering studies, and conducting any other investigations, examinations, tests and inspections as Buyer may reasonably require to assess the condition of the Property; *provided however*; that

(a) any activities by or on behalf of Buyer, including, without limitation, the entry by Buyer or Buyer’s Designees onto the Property, or the other activities of Buyer or Buyer’s Designees with respect to the Property (hereinafter called “**Buyer’s Activities**”) shall not damage the Property in any manner whatsoever;

(b) in the event the Property is altered or damaged in any manner in connection with any Buyer’s Activities, Buyer shall immediately return the Property to the condition existing prior to Buyer’s Activities; and

(c) Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims, liabilities, damages, losses, costs and expenses of any kind or nature

whatsoever (including, without limitation, attorneys' fees and expenses and court costs) suffered, incurred or sustained by Seller as a result of, by reason of, or in connection with any Buyer's Activities. Notwithstanding any provision of this Agreement to the contrary, Buyer shall not have the right to undertake any environmental studies or testing beyond the scope of a standard "Phase I" evaluation without the prior written consent of Seller.

Section 1.02 **Due Diligence Date.** Buyer shall have until the date that is thirty (30) days after the Effective Date (herein called the "***Due Diligence Date***"), to perform such investigations, examinations, tests and inspections as Buyer shall deem necessary or desirable to determine whether the Property is suitable and satisfactory to Buyer. In the event Buyer shall determine that the Property is not suitable and satisfactory to Buyer, Buyer shall have the right to terminate this Agreement by giving written notice to Seller on or before the Due Diligence Date ("***Termination Notice***"). In the event Buyer delivers the Termination Notice to Seller, all rights and obligations of the parties under this Agreement shall terminate (except those indemnity and insurance obligations set forth in this Article), and Buyer's Deposit shall be forthwith returned to Buyer. If Buyer does not deliver, or fails to timely deliver the Termination Notice in accordance with this **Section 1.02**, Buyer shall have no further right to terminate this Agreement pursuant to this **Section 1.02**. In the event that the Closing Date occurs prior to the Due Diligence Date, and Buyer elects to continue with Closing in the absence of any Termination Notice or other objection required at or prior to the Due Diligence Date, or in the event that Buyer has delivered objections to Seller which remain uncured and Buyer nonetheless elects to proceed with Closing, Buyer shall be deemed to have waived its right to terminate this Agreement or receive any response to any objections that remain uncured as of Closing, all of the same thereafter being deemed forever barred after the Closing.

Section 1.03 **Liability Insurance.** Prior to any entry by Buyer or any of Buyer's Designees onto the Property, Buyer shall:

(a) if Buyer does not then have such a policy in force, procure a policy of commercial general liability insurance, issued by an insurer reasonably satisfactory to Seller, covering all Buyer's Activities, with a single limit of liability (per occurrence and aggregate) of not less than **\$2,000,000.00**; and

(b) deliver to Seller a Certificate of Insurance, evidencing that such insurance is in force and effect, and evidencing that Seller has been named as an additional insured thereunder with respect to any Buyer's Activities (such Certificate of Insurance shall be delivered to Seller, at the address for notices set forth below Seller's execution of this Agreement). Such insurance shall be written on an "occurrence" basis, and shall be maintained in force until the earlier of:

(i) the termination of this Agreement and the conclusion of all Buyer's Activities, or;

(ii) Closing.

(c) Such insurance shall waive all rights of subrogation against the Seller, or Seller's officers, directors, employees, representatives and affiliates.

ARTICLE II

CONVEYANCE OF THE PROPERTY

Section 2.01 **Subject of Conveyance.** Subject to the terms and conditions of this Agreement, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property, including without limitation, all of Seller's right, title and interest in:

(a) all rights appurtenant to the Land, if any, including without limitation, any strips and gores abutting the Land, and any land lying in the bed of any street, road or avenue in front of, or adjoining the Land, to the center line thereof;

(b) all other rights, privileges, easements, licenses, appurtenances and hereditaments relating to the Property; and

(c) the fixtures, building equipment and personal property owned by Seller and used in connection with the Improvements or the Land.

Section 2.02 **"As-Is", "Where Is" Conveyance.**

(a) Subject to this Agreement, Buyer acknowledges that Buyer has made (or will make during the due diligence period) thorough inspections and investigations of the Property and Buyer agrees to take title to the Property "AS-IS" and in the condition existing as of the date of this Agreement, subject to reasonable use, ordinary wear and tear and without any reduction in or abatement of the Purchase Price.

(b) Neither party to this Agreement is relying on any statement or representation not expressly stated in this Agreement. Buyer specifically confirms and acknowledges that in entering into this Agreement, Buyer has not been induced by, and has not relied upon, whether express or implied, warranties, guaranties, promises, statements, inducements, representations or information pertaining to the Property or its uses, the physical condition, environmental condition, state of title, income, expenses or operation of the Property, or any other matter or thing with respect thereto, written or unwritten, whether made by Seller or any agent, employee or other representative of Seller, or any broker or any other person representing (or purporting to represent) Seller, which are not expressly set forth in this Agreement. Seller shall not be liable for or bound by any written or unwritten statements, representations, warranties, brokers' statements or other information pertaining to the Property furnished by Seller, any broker, any agent, employee or other actual (or purported) representative of Seller, or any person, unless and only to the extent the same are expressly set forth in this Agreement.

ARTICLE III PURCHASE PRICE

Section 3.01 **Purchase Price and Deposit.** The purchase price to be paid by Buyer to Seller for the Property is \$35,000.00 (the “***Purchase Price***”). The Purchase Price shall be payable as follows:

- (a) the amount of \$2,500.00 (the “***Deposit***”) is due and payable upon the execution and delivery of this Agreement; and
- (b) the balance of the Purchase Price is due and payable on the Closing Date, subject to any credits or apportionments as provided for under this Agreement.

Section 3.02 **Payments.** The Deposit may be paid by Buyer’s certified check or official bank check, subject to collection, and it shall be made payable to Havens and Havens, 716 Lake Avenue, Storm Lake, Iowa 50588, Attention: Philip E. Havens, as escrow agent (“***Escrow Agent***”). The Escrow Agent agrees to hold the Deposit in escrow pursuant to the terms of this Agreement. The balance of the Purchase Price shall be paid, at Seller’s election, either by certified or official bank checks or by one or more wire transfers of immediately available federal funds to an account, or accounts, designated in writing by Seller no later than one (1) day prior to the Closing Date.

ARTICLE IV CLOSING

Section 4.01 **Closing Date.** Unless previously terminated pursuant to an express written ability of a party to do so as provided herein, closing of the transaction contemplated by this Agreement (the “***Closing***”) shall take place at 10:00 a.m. on April 1, 2015 or on such other date and time as may be mutually agreed by and among the Buyer and the Seller (the “***Closing Date***”) at the offices of Havens and Havens, located at 716 Lake Avenue, Storm Lake, Iowa 50588, *provided however* that in connection with the preparation of the documentation for Closing, Buyer shall be responsible for such preparation, and shall cause Buyer’s counsel and the closing agent to prepare such documents sufficiently in advance so that all closing documents may be executed by the authorized representatives of Seller at Seller’s offices in advance of Closing, and attendance by the authorized representatives of Seller at Closing will not be necessary.

Section 4.02 **Seller’s Closing Deliverables.** At the Closing, Seller shall deliver or cause to be delivered to Buyer, the items listed in this **Section 4.02**, executed, certified and acknowledged by Seller, as appropriate.

- (a) Seller shall deliver to Buyer a limited warranty deed, executed with the appropriate acknowledgement form and otherwise in proper form for recording so as to convey title to the Property as required by this Agreement. The delivery of the deed by

Seller, and the acceptance by Buyer, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed pursuant to this Agreement, except those obligations of Seller which are expressly stated in this Agreement to survive the Closing.

(b) Seller shall execute and deliver to Buyer a temporary construction easement in substantially the form of Exhibit C attached hereto, and upon the terms and conditions set forth therein.

(c) Seller shall execute and deliver to Buyer counterparts of any required transfer tax returns, or in each instance and if available, an electronic filing of such returns, together with the required payment of applicable transfer taxes, pursuant to the requirements of the applicable state and local taxing authorities; notwithstanding the foregoing, however, at Seller's option, Seller may elect to allow Buyer a credit against the Purchase Price for the amount of transfer taxes due and payable by Seller and to have Buyer make the timely payment directly to the taxing authorities or provide payment for such amounts through the Escrow Agent or Buyer's Title Insurance Company and Buyer shall provide Seller with proof of payment at the Closing.

(d) A certification that Seller is not a "foreign person" as such term is defined in Section 1445 of the Internal Revenue Code of 1984, as amended and the regulations thereunder, which certification shall be signed under penalty of perjury.

(e) With respect to Buyer's Title Insurance Company (as hereafter defined), Seller shall deliver: (i) an original affidavit of title to the Guaranty Division of the Iowa Finance Authority in customary form and reasonably acceptable to Seller, stating, among other things, that there are no unpaid bills or claims (except for bills or expenses to be prorated pursuant to this Agreement as of the date immediately preceding the Closing Date) for labor performed or materials furnished in connection with the Property; and (ii) such evidence as the title company may reasonably require as to the authority of the person, or persons, executing document on behalf of Seller and a certificate of good standing for Seller.

(f) A settlement statement setting forth the distribution of the Purchase Price at the Closing, and the payments of the expenses and prorations of the real property taxes as provided in this Agreement.

Section 4.03 **Buyer's Closing Deliverables.** At the Closing, Buyer shall deliver or cause to be delivered to Seller, the items listed in this **Section 4.03**, executed, certified and acknowledged by Buyer, as appropriate.

(a) Buyer shall pay the balance of the Purchase Price to Seller on the Closing Date.

(b) Buyer shall pay all costs and expenses agreed to be paid by Buyer in **Section 4.04** of this Agreement.

(c) Buyer shall, where applicable, join with Seller in the execution and delivery of the closing documents and instruments required under **Section 4.02** of this Agreement to which Buyer is a party.

(d) Documents or minutes of council meetings establishing that Buyer has complied with all provisions of Iowa law regarding a municipal corporation's acquisition of real property.

(e) Such other documents or instruments as may be reasonably requested by the Seller (provided that such other documents do not conflict with the terms expressly set forth in this Agreement) to consummate the transaction contemplated by this Agreement.

Section 4.04 **Costs.**

(a) Seller and Buyer shall each pay the fees and expenses of its own counsel in connection with the preparation and negotiation of this Agreement. The deed and other agreements and instruments related to the transaction contemplated by this Agreement and such legal costs shall not be part of the closing costs; *provided, however*, that if any legal action is instituted under this Agreement, if the Seller prevails in such legal action, the Seller shall be entitled to recover from the Buyer reasonable attorneys' fees and costs related to such legal action, including reasonable attorneys' fees and costs in all trial, appellate, post-judgment and bankruptcy proceedings.

(b) Seller shall pay all transfer taxes and sales taxes for the State of Iowa and the County of Buena Vista, payable in connection with the transaction contemplated by this Agreement.

(c) Buyer shall pay:

(i) the costs charged in relation to Buyer's title opinion and/or Buyer's Title Policy (as hereafter defined), including, without limitation, costs related to any title commitment, guaranty, any premiums, title endorsements and affirmative insurance;

(ii) the costs related to the Survey and any other survey or survey update;

(iii) any other fees or costs related to Buyer's due diligence reviews;
and

(iv) all costs related to the recording fees payable in connection with the recording of the deed.

Section 4.05 **Apportionments.** All matters listed in this **Section 4.05** shall be apportioned as of 11:59 p.m. of the date immediately preceding the Closing Date, unless expressly provided for otherwise.

(a) All real estate taxes based on the fiscal year for which they are assessed and assessments. If the Property shall be, or have been, affected by any assessments or special assessments payable in a lump sum or which are, or may become, payable in installments, of which the first installment is then a charge or lien, or has already been paid, then at the Closing such amounts will be paid or apportioned, as the case may be in the following manner:

(i) any such assessments or installments, or portion thereof, payable on or after the Closing Date shall be the responsibility of Buyer; and

(ii) any such assessments or installments, or portion thereof, payable prior to the Closing Date shall be the responsibility of Seller.

(b) Any other items which are customarily prorated in connection with the purchase and sale of properties similar to the Property shall be prorated as of the Closing.

ARTICLE V

TITLE MATTERS AND VIOLATIONS

Section 5.01 **Acceptable Title.** Seller shall convey and Buyer shall accept fee simple title to the Property in accordance with the terms and conditions of this Agreement, and subject to the Permitted Exceptions (as hereafter defined).

Section 5.02 **Permitted Exceptions.** For the purposes of this Agreement, “good and marketable fee simple title” shall mean such title as is in conformity with this Agreement, Iowa law, and title standards of the Iowa State Bar Association. The Property is to be conveyed subject to the following matters (collectively, the “***Permitted Exceptions***”):

(a) any and all laws, statutes, ordinances, codes, rules, regulations, requirements or executive mandates, as the same may be amended subsequent to the date of this Agreement, affecting the Property;

(b) the standard or printed exclusions in the form of owner’s Title Policy (as hereafter defined), if any;

(c) encroachments, if any, on any street or highway;

(d) such matters as would be disclosed by a current and accurate survey prepared by a surveyor licensed in the state of Iowa to conduct surveys (the “***Survey***”) or inspection of the Property, whether or not Buyer actually conducts any inspection or Survey of the Property;

(e) real estate taxes, assessments and water and sewer charges, that are not due and payable prior to the Closing Date, subject to any apportionments as provided for in this Agreement;

(f) such other matters as any reputable title insurer licensed to do business in the state of Iowa would be willing, without special premium, to omit as exceptions to title insurance coverage; and

(g) the matters set forth on Exhibit B attached to this Agreement.

Section 5.03 **Title Opinion, Title Guaranty and Objections.**

(a) Seller will convey to Buyer at Closing good and marketable indefeasible fee simple title to the Property free and clear of any encumbrances, except for Permitted Exceptions (as previously defined). The Seller, at Seller's expense, has delivered an abstract of title continued through at least March 3, 2015 (the "***Continuation Date***"), for the Property to Buyer (the "***Abstract***"), and the Abstract shall show (as of both the Continuation Date and the Closing) marketable title in Buyer in conformity with this Agreement, Iowa law, and title standards of the Iowa State Bar Association, as reflected in a title opinion to be obtained by Buyer from an attorney licensed in the state of Iowa to provide such opinions (the "***Title Opinion***"). Seller shall make reasonable effort to promptly perfect title in conformity with this Agreement, and will take such actions, execute such documents and provide such items as may reasonably be requested by Buyer to allow Buyer to obtain a title guaranty policy from Guaranty Division of the Iowa Finance Authority (the "***Title Policy***"). Since the Property is a portion of the Seller's larger property, the Abstract shall be used to create a new abstract for the Property being purchased by Buyer, and such newly created abstract shall become the property of Buyer at Closing. The premium for the Title Policy, if any, with standard endorsement and special endorsements, shall be paid by Buyer.

(b) Buyer shall deliver to Seller any objections to the exceptions to title set forth in the Title Opinion, the commitment for the Title Policy, or Buyer's Survey, other than the Permitted Exceptions (collectively, "***Buyer's Objections***"), by no later than the Due Diligence Date.

(c) Seller shall thereafter have a period of 5 days during which time Seller shall have the right, but not the obligation, to cure Buyer's Objections. Seller shall not be required to take any action, to institute any proceeding or to incur any expense in order to remedy Buyer's Objections. If Seller shall elect not to take any action, institute any proceeding or incur any expense to remedy Buyer's Objections, Seller shall be deemed unable to convey the Property in accordance with the terms of this Agreement. Seller shall, by no later than 2 days after Seller's receipt of Buyer's Objections, send a response notice to Buyer and Buyer shall thereafter, by no later than 2 days after Buyer's receipt of Seller's response notice elect to either: (A) accept such title to the Property, in accordance with **Section 5.03** of this Agreement; or (B) terminate this Agreement in accordance with **Section 9.01(b)**.

Section 5.04 **Seller's Inability to Convey**. In the event Seller is unable to convey title to the Property in accordance with this Agreement, then notwithstanding Buyer's remedies in **Section 9.01(b)** of this Agreement, Buyer shall also have the right to accept such title to the Property as Seller can convey, in which event Seller shall make the deliveries provided for in this Agreement to Buyer at the Closing, to the extent Seller is able to do so, and there shall be no reduction or credit against the Purchase Price, except as otherwise provided for in this Agreement.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES; CERTAIN DISCLAIMERS

Section 6.01 **Seller's Representations and Warranties**. Seller represents and warrants to Buyer the following:

(a) The Seller has the requisite power and authority to execute, deliver, and perform its obligations under this Agreement and related instruments to which it is a party. This Agreement and all other agreements to be executed in connection herewith or therewith (a) have been duly authorized, executed, and delivered by the Seller and (b) are valid, binding, and enforceable against the Seller

(b) The Seller is a corporation duly formed, validly existing, and in good standing under the laws of the State of Delaware and authorized to conduct business in the state of Iowa.

(c) The execution, delivery, and performance of this Agreement and the related instruments and the consummation of the transaction contemplated hereby do not (a) violate any provision of the Seller's articles of incorporation or other document governing the Seller's existence or (b) conflict with any order, arbitration award, judgment, or decree to which such Seller is a party.

(d) Seller is not a "foreign person" as such term is defined in Section 1445 of the Internal Revenue Code or any related regulations, as amended.

(e) No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transaction contemplated hereby based upon arrangements made by or on behalf of Seller.

(f) To Seller's knowledge, there is no pending or threatened litigation or condemnation action against the Property or against Seller with respect to the Property as of the date of this Agreement.

Section 6.02 **Disclaimer of All of Representations and Warranties of Seller**. SELLER DOES NOT, BY THE EXECUTION AND DELIVERY OF THIS AGREEMENT, AND SELLER SHALL NOT, BY THE EXECUTION AND DELIVERY OF ANY DOCUMENT OR INSTRUMENT EXECUTED AND DELIVERED IN CONNECTION WITH CLOSING, MAKE ANY REPRESENTATION

OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR NATURE WHATSOEVER, WITH RESPECT TO THE PROPERTY, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER MAKES, AND SHALL MAKE, NO EXPRESS OR IMPLIED WARRANTY AS TO MATTERS OF TITLE (OTHER THAN SELLER'S WARRANTY OF TITLE SET FORTH IN THE SPECIAL WARRANTY DEED TO BE DELIVERED AT CLOSING), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITION (INCLUDING, WITHOUT LIMITATION, LAWS, RULES, REGULATIONS, ORDERS AND REQUIREMENTS PERTAINING TO THE USE, HANDLING, GENERATION, TREATMENT, STORAGE OR DISPOSAL OF ANY TOXIC OR HAZARDOUS WASTE OR TOXIC, HAZARDOUS OR REGULATED SUBSTANCE), VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, (HEREINAFTER COLLECTIVELY CALLED THE "**DISCLAIMED MATTERS**"). BUYER AGREES THAT, WITH RESPECT TO THE PROPERTY, BUYER HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF SELLER, BUYER WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITION THEREOF) AND RELY UPON SAME AND, UPON CLOSING, SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, THE DISCLAIMED MATTERS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INSPECTIONS AND INVESTIGATIONS. SUCH INSPECTIONS AND INVESTIGATIONS OF BUYER SHALL BE DEEMED TO INCLUDE AN ENVIRONMENTAL AUDIT OF THE PROPERTY, AN INSPECTION OF THE PHYSICAL COMPONENTS AND GENERAL CONDITION OF ALL PORTIONS OF THE PROPERTY, SUCH STATE OF FACTS AS AN ACCURATE SURVEY AND INSPECTION OF THE PROPERTY WOULD SHOW, PRESENT AND FUTURE ZONING AND LAND USE ORDINANCES, RESOLUTIONS AND REGULATIONS OF THE CITY, COUNTY AND STATE WHERE THE PROPERTY IS LOCATED AND THE VALUE AND MARKETABILITY OF THE PROPERTY. SELLER SHALL SELL AND CONVEY TO BUYER, AND BUYER SHALL ACCEPT, THE PROPERTY "AS IS", "WHERE IS", AND WITH ALL FAULTS, AND THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY SELLER OR ANY THIRD PARTY. WITHOUT IN ANY WAY LIMITING ANY PROVISION OF THIS **SECTION 5.02** BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT HEREBY WAIVES, RELEASES AND DISCHARGES ANY CLAIM IT HAS, MIGHT HAVE HAD OR MAY HAVE AGAINST SELLER WITH RESPECT TO (i) THE DISCLAIMED MATTERS, (ii) THE CONDITION OF THE PROPERTY, EITHER PATENT OR LATENT, (iii) THE PAST, PRESENT OR FUTURE CONDITION OR COMPLIANCE OF THE PROPERTY WITH REGARD TO ANY

ENVIRONMENTAL PROTECTION, POLLUTION CONTROL OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, CERCLA, AND (iv) ANY OTHER STATE OF FACTS THAT EXISTS WITH RESPECT TO THE PROPERTY. THE TERMS AND CONDITIONS OF THIS **SECTION 6.02** SHALL EXPRESSLY SURVIVE THE CONSUMMATION OF THE PURCHASE AND SALE OF THE PROPERTY ON THE CLOSING, THE DELIVERY OF THE DEED AND THE PAYMENT OF THE PURCHASE PRICE, WITHOUT REGARD TO ANY LIMITATIONS UPON SURVIVAL SET FORTH IN THIS AGREEMENT.

Section 6.03 **Buyer's Representations and Warranties.** Buyer represents and warrants to Seller on and as of the date of this Agreement and on and as of the Closing Date as follows:

(a) The Buyer has the requisite power and authority to execute, deliver, and perform its obligations under this Agreement and related instruments to which it is a party. This Agreement and all other agreements to be executed in connection herewith or therewith (a) have been duly authorized, executed, and delivered by the Seller and (b) are valid, binding, and enforceable against the Seller.

(b) The Buyer is a municipal corporation duly formed, validly existing, and in good standing under the laws of the State of Iowa.

(c) The execution, delivery, and performance of this Agreement and the related instruments and the consummation of the transaction contemplated hereby do not (a) violate any provision of any charter or other document, ordinance or law governing the Buyer's existence or (b) conflict with any order, arbitration award, judgment, or decree to which such Seller is a party.

(d) No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transaction contemplated hereby based upon arrangements made by or on behalf of Buyer.

(e) Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the closing on the Closing Date.

(f) Immediately after giving effect to the transaction contemplated hereby, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due; (b) own assets that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (c) have adequate capital to carry on its business. No transfer of Property is being or will be made and no obligation is being incurred in connection with the contemplated transaction with the intent to hinder, delay or defraud either the Seller or present or future creditors of Buyer. In connection with the transaction contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

(g) There are no actions, suits, claims, investigations or other legal proceedings pending or threatened against or by Buyer or any affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the consummation of the contemplated transaction.

(h) Buyer has conducted its own independent investigation, review and analysis of the Property, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, and records, and other documents and data of Seller for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transaction contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Seller set in **Section 5** of this Agreement; and (b) neither Seller nor any other person has made any representation or warranty as to Seller or the Property, except as expressly set forth in **Section 5** of this Agreement.

ARTICLE VII

RISK OF LOSS

Section 7.01 **Risk of Loss.** If any portion of the Improvements are damaged or destroyed by casualty prior to Closing Date, and the cost of repair of such damage or destruction is reasonably estimated to exceed \$5,000.00, Buyer shall have the right, at Buyer's option, to terminate this Agreement by giving written notice to Seller on or before the date ten (10) days after the date upon which Seller gives Buyer written notice of such casualty, in which event the Deposit shall be refunded to Buyer promptly upon request, all rights and obligations of the parties under this Agreement shall terminate, and this Agreement shall become null and void. In the event of lesser damage or destruction prior to the Closing Date, Buyer shall have no right to terminate this Agreement by reason of such damage or destruction, nor shall it be entitled to any reduction in the Purchase Price.

Section 7.02 **Casualty Insurance Proceeds.** Seller shall be under no obligation to insure the Improvements nor the Property prior to Closing, and in the event that Seller should so elect to insure the Improvements or the Property, Buyer shall not be deemed a third party beneficiary or otherwise entitled to any insurance proceeds that Seller might obtain from its insurer, if any, as a result of casualty.

ARTICLE VIII

NOTICES

Section 8.01 Notices.

(a) Any notice or other communication provided for hereunder will be in writing and may be (i) served by personal delivery, (ii) made by facsimile transmission,

or (iii) sent by overnight courier service (with all fees prepaid) to the receiving parties as follows, or to any other address which either party may hereafter designate for itself in writing:

If to Seller: OMG Midwest, Inc.
2401 SE Tones Drive
Ankeny, Iowa 50021
Attention: Derek Fredrickson, Operations Manager
Fax: (515) 263-3878

With a Copy to: Oldcastle Law Group
900 Ashwood Parkway, Suite 600
Atlanta, Georgia 30338
Attention: Kyle Jackson, Esq.
Fax: (770) 392-5305

If to Buyer: City of Storm Lake, Iowa
620 Erie Street
P.O. Box 1086
Storm Lake, Iowa 50588
Attention: Justin Yarosevich, City Clerk
Fax: (712) 732-4114

With a Copy to: Philip E. Havens, Esq.
Havens and Havens
716 Lake Avenue
P. O. Box 426
Storm Lake, Iowa 50588
Fax: (712) 732-7263

(b) Any party may, by notice given in accordance with this Article, designate a different address or person for receipt of all communications or notices.

ARTICLE IX

REMEDIES

Section 9.01 Remedies

(a) If Buyer shall default in the observance or performance of any of the terms of this Agreement, the parties stipulate and agree that actual damages may be difficult, if not impossible, to compute and the Deposit plus any accrued interest thereon, if any, shall

be paid to and retained by Seller as liquidated damages as its sole and exclusive remedy and not as a penalty.

(b) If Seller shall default in the observance or performance of any of the terms of this Agreement, the parties stipulate and agree that actual damages may be difficult, if not impossible, to compute and the Deposit plus any accrued interest thereon and Buyer's actual costs relating to the Title Commitment and Buyer's survey, if any, shall be paid to and retained by Buyer as liquidated damages as its sole and exclusive remedy and not as a penalty.

(c) Buyer and Seller waive all rights to specific performance or injunctive relief or other relief to cause either Seller or Buyer to perform its obligations under this Agreement and Buyer and Seller waive all their rights to damages in excess of the liquidated damages referenced in **Section 9.01(a)** and **Section 9.01(b)** of this Agreement.

(d) Upon the release of the Deposit, and any interest accrued thereon, to either Buyer or Seller, as the case may be, this Agreement shall be deemed null and void and no party hereto shall have any obligations to, or rights against, the other hereunder, except as expressly provided herein.

(e) The provisions of this Article shall survive the Closing or termination of this Agreement.

ARTICLE X

ESCROW

Section 10.01 Buyer's Delivery of the Deposit in Escrow.

(a) Simultaneously with the execution and delivery of this Agreement, Buyer shall deliver the Deposit to Escrow Agent. The Deposit shall be held in escrow and disposed of by Escrow Agent only in accordance with the provisions of this Article.

(b) The Deposit shall be held and released by Escrow Agent in accordance with the terms of this Agreement, or the terms of a customary written escrow agreement executed among Seller, Purchaser and Escrow Agent. The Deposit shall be applied to the Purchase Price at Closing (as hereinafter defined), and shall otherwise be held, refunded or disbursed in accordance with the terms of such escrow agreement. The Deposit shall be deposited into an account with the Escrow Agent during the pendency of this Agreement. All interest and other income from time to time earned on the Deposit shall be deemed a part of the Deposit for all purposes of this Agreement.

Section 10.02 Escrow Agent's Delivery of the Deposit.

(a) Escrow Agent shall deliver the Deposit to Seller on the Closing Date, if the Closing occurs. In no event shall any interest earned on the Deposit be applied as a credit against the Purchase Price.

(b) If, prior to the Closing, either Seller or Buyer delivers a notice to Escrow Agent with a demand for Escrow Agent's delivery of the Deposit, Escrow Agent shall promptly give notice to the other party of such demand. If a notice of objection to the proposed payment is not received from the other party within twenty-one (21) days after the receipt of notice from Escrow Agent, Escrow Agent is hereby authorized to deliver the Deposit to the party who made the demand for the Deposit. If Escrow Agent receives a notice of objection within said time period, then Escrow Agent shall continue to hold the Deposit and thereafter pay it to the party entitled to the Deposit when Escrow Agent receives: (i) a notice from the objecting party withdrawing the objection; (ii) a notice signed by both parties directing disposition of the Deposit; or (iii) a final non-appealable notice of a court of competent jurisdiction, entered in connection with a proceeding in which Seller, Buyer and the Escrow Agent are named as parties, directing the disbursement of the Deposit.

Section 10.03 **Survival**. This Article shall survive the Closing or the termination of this Agreement.

ARTICLE XI BROKERS

Section 11.01 **Brokers**. Buyer and Seller each represent and warrant to each other that they dealt with no broker in connection with, nor has any broker had any part in bringing about, this transaction. Seller and Buyer shall each indemnify, defend and hold harmless the other from and against any claim of any broker or other person for any brokerage commissions, finder's fees or other compensation in connection with this transaction if such claim is based in whole or in part by, through or on account of, any acts of the indemnifying party or its agents, employees or representatives and from all losses, liabilities, costs and expenses in connection with such claim, including without limitation, reasonable attorneys' fees, court costs and interest.

Section 11.02 **Survival**. The provisions of this Article shall survive the Closing, or the termination of this Agreement prior to the Closing.

MISCELLANEOUS

Section 11.03 **Applicable Law**. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Iowa without giving effect to any choice or conflict of law provision or rule (whether of the State of Iowa or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Iowa.

Section 11.04 **Entire Agreement.** This Agreement sets for the complete understanding and agreement of the parties with respect to the transaction that is the subject of this Agreement. No oral statements, representations or agreements other than this Agreement shall have any force or effect and Buyer and Seller agree that they will not rely on any representations or agreements other than those contained in this Agreement.

Section 11.05 **No Survival.** Except as otherwise provided in this Agreement, no representations, warranties, covenants or other obligations of Seller set forth in this Agreement shall survive the Closing and no action based thereon shall be commenced after the Closing.

Section 11.06 **Limitation of Liability.**

(a) **Disclaimer of Consequential Damages.** IN NO EVENT SHALL SELLER BE LIABLE UNDER THIS AGREEMENT TO THE BUYER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) **Cap on all other Damages.** IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL PURCHASE PRICE PAID TO THE SELLER PURSUANT TO THIS AGREEMENT.

Section 11.07 **Modifications and Amendments.** This Agreement cannot under any circumstance be modified or amended orally and no agreement shall be effective to waive, change, modify, terminate or discharge this Agreement, in whole or in part, unless such agreement is in writing and is signed by both Seller and Buyer.

Section 11.08 **Binding Effect; Assignment.** This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. No other person or entity shall acquire or have any right under, or by virtue of, this Agreement. Buyer shall not assign or transfer any right or delegate any obligation hereunder without the prior written consent of Seller, in its sole discretion. Seller may assign or transfer its

rights hereunder to any affiliate. Any purported assignment or transfer in violation of this section shall be null and void.

Section 11.09 **Severability**. Any provision of this Agreement that is found by an arbitrator or other adjudicator of competent jurisdiction to be invalid, void, or otherwise unenforceable shall in no way affect, impair, or invalidate any other provision hereof, and the remaining provisions hereof shall nevertheless remain in full force and effect. To the extent that any such provision is so found to be invalid, void, or otherwise unenforceable as written, the parties authorize the adjudicator to revise it retroactive to the effective date so that it is enforceable to the greatest extent allowed by applicable law. In the event that the adjudicator declines to exercise such authority, the parties agree to make such revision.

Section 11.10 **Further Assurances**. Each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby, provided such documents are customarily delivered in real estate transactions in Iowa and do not impose any material obligations upon any party hereunder except as set forth in this Agreement.

Section 11.11 **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 11.12 **Headings**. The headings in this Agreement are for the purposes of reference only and shall not affect or define the meanings hereof.

Section 11.13 **Waiver**. The failure of either party to insist, in any one or more instances, upon a strict performance of any of the terms and conditions of this Agreement, or to exercise or fail to exercise any option or right contained herein, shall not be construed as a waiver or a relinquishment for the future of such right or option, but the same shall continue and remain in full force and effect. The continued performance by either party of this Agreement with knowledge of the breach of any term or condition hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provision hereof, shall be deemed to have been made, or operate as estoppel, unless expressed in writing and signed by such party.

Section 11.14 **Survival**. The limitations set forth in Section 11.06 hereof shall, to the extent that they may be construed otherwise, survive the Closing, or the termination of this Agreement prior to the Closing.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute, seal and deliver this Agreement, all as of the day and year first written above.

SELLER:

**OMG MIDWEST, INC., D/B/A
AMERICAN CONCRETE PRODUCTS**, a
Delaware corporation

By: _____
Name: _____
Title: _____

BUYER:

CITY OF STORM LAKE, IOWA, an Iowa
municipal corporation

By: _____
Name: Jon Kruse
Title: Mayor

ATTEST:

Justin Yarosevich, City Clerk

Exhibit A – Legal Description of Property

A PART OF LOTS FOUR (4) AND FIVE (5) IN BLOCK TWO (2) INDUSTRIAL PARK ADDITION TO THE CITY OF STORM LAKE, BUENA VISTA COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Beginning at the Northwest (NW) corner of Lot Five (5) in said Industrial Park Addition; Thence South $76^{\circ} 55' 11''$ East, along the North line of said Lot Five (5), 150.77 feet; Thence South $13^{\circ} 04' 40''$ West, 414.52 feet to the South line of said Block Two (2); Thence North $76^{\circ} 53' 28''$ West, along said South line, 376.78 feet; Thence North $51^{\circ} 41' 40''$ East, 87.50 feet; Thence North $13^{\circ} 04' 44''$ East, 170.00 feet; Thence North $81^{\circ} 28' 40''$ East, 109.13 feet; Thence North $42^{\circ} 19' 42''$ East, 57.97 feet; Thence North $19^{\circ} 30' 20''$ East, 85.77 feet to the North line of Lot Four (4); Thence South $76^{\circ} 52' 50''$ East, along said North line, 32.00 feet to the Point of Beginning.

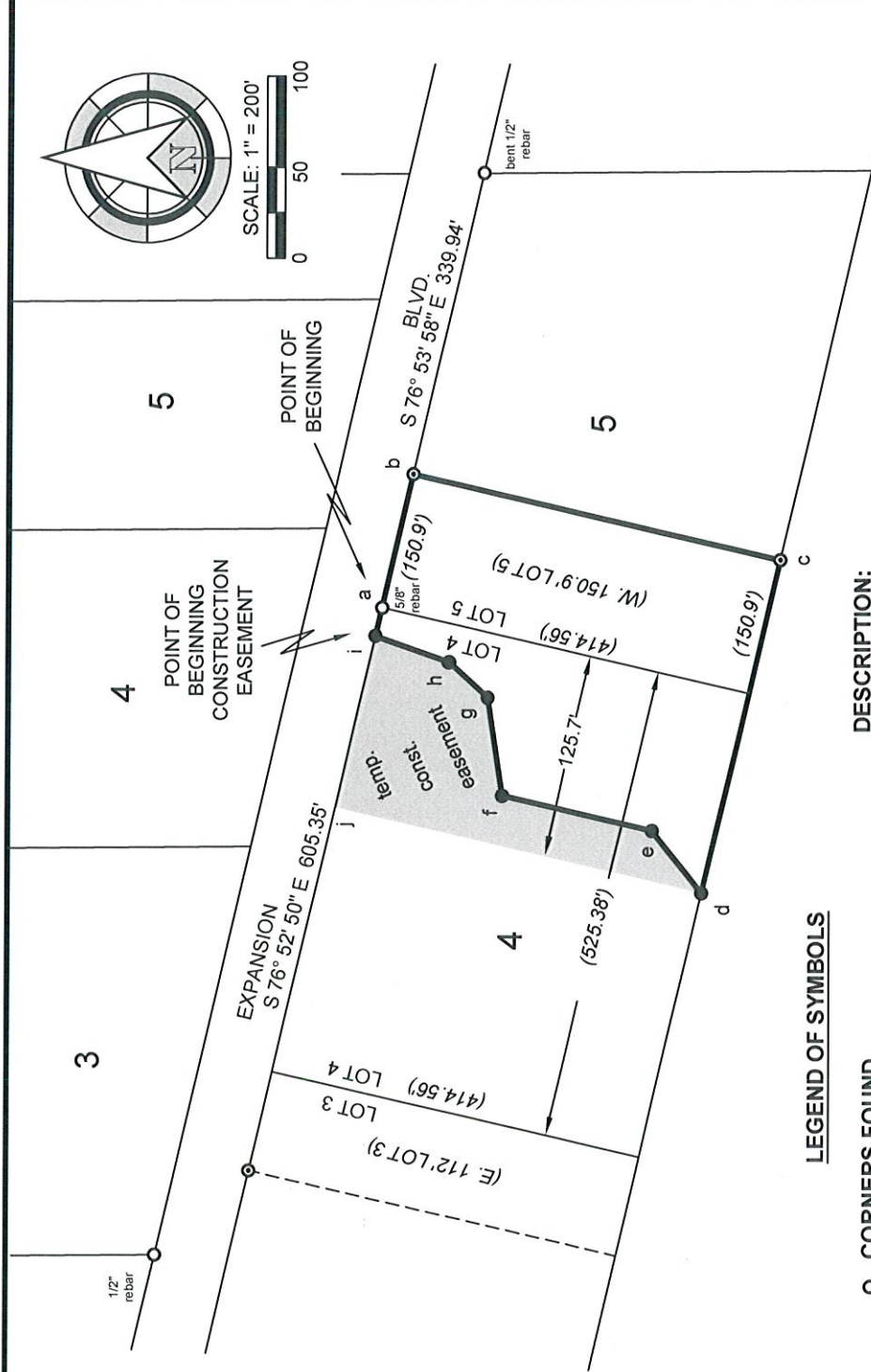
Tract contains 2.66 acres and is subject to all easements of record.

Exhibit B – Permitted Encumbrances

1. Taxes and assessments not yet due and payable.
2. Any matters that would be disclosed by a survey.
3. All such matters as filed or of record with the Buena Vista, Iowa County Recorder's Office.
4. All zoning ordinances or other land use regulations imposed by governmental units located in Iowa, including (but not limited to) the city of Storm Lake, Iowa and/or Buena Vista County, Iowa.

Exhibit C – Form of Temporary Construction Easement

PREPARED BY: J. SCOTT SHEVEL P.L.S. I&S GROUP, INC. P.O. BOX 458 1725 N. LAKE AVE. STORM LAKE, IA. 50588



LEGEND OF SYMBOLS

- CORNERS FOUND
(monuments as described on plat)
- ⊙ CORNERS FOUND
(1/2" rebar w/red plastic cap no. 11810)
- CORNERS SET
(1/2" rebar w/red plastic cap no. 11810)

100.00' MEASURED

(100.00') RECORDED AS

TEMPORARY CONSTRUCTION EASEMENT

DESCRIPTION:

A PART OF LOTS FOUR (4) AND FIVE (5) IN BLOCK TWO (2) INDUSTRIAL PARK ADDITION TO THE CITY OF STORM LAKE, BUENA VISTA COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Beginning at the Northwest (NW) corner of Lot Five (5) in said Industrial Park Addition; Thence South 76° 55' 11" East, along the North line of said Lot Five (5), 150.77 feet; Thence South 13° 04' 40" West, 414.52 feet to the South line of said Block Two (2); Thence North 76° 53' 28" West, along said South line, 376.78 feet; Thence North 51° 41' 40" East, 87.50 feet; Thence North 13° 04' 44" East, 170.00 feet; Thence North 81° 28' 40" East, 109.13 feet; Thence North 42° 19' 42" East, 57.97 feet; Thence North 19° 30' 20" East, 85.77 feet to the North line of Lot Four (4); Thence South 76° 52' 50" East, along said North line, 32.00 feet to the Point of Beginning.

Tract contains 2.66 acres and is subject to all easements of record.

DESCRIPTION CONSTRUCTION EASEMENT:

A TEMPORARY EASEMENT FOR CONSTRUCTION OF DRAINAGE IMPROVEMENTS OVER AND ACROSS PART OF LOT FOUR (4) IN BLOCK TWO (2) INDUSTRIAL PARK ADDITION TO THE CITY OF STORM LAKE, BUENA VISTA COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commencing at the Northeast (NE) corner of said Lot Four (4); Thence North 76° 52' 50" West, along the North line of said Lot Four (4), 32.00 feet to the Point of Beginning. Thence continuing along said North line, N 76° 52' 50" West, 193.70 feet; Thence South 13° 07' 08" West, 414.49 feet to the South line of said Lot Four (4); Thence Thence North 51° 41' 40" East, 87.50 feet; Thence North 13° 04' 44" East, 170.00 feet; Thence North 81° 28' 40" East, 109.13 feet; Thence North 42° 19' 42" East, 57.97 feet; Thence North 19° 30' 20" East, 85.77 feet to the Point of Beginning.

PARCEL DESC.	
a-b	S 76° 55' 11" E 150.77'
b-c	S 13° 04' 40" W 414.52'
c-d	N 76° 53' 28" W 376.78'
d-e	N 51° 41' 40" E 87.50'
e-f	N 13° 04' 44" E 170.00'
f-g	N 81° 28' 40" E 109.13'
g-h	N 42° 19' 42" E 57.97'
h-i	N 19° 30' 20" E 85.77'
i-a	S 76° 52' 50" E 32.00'
EASEMENT DESC.	
a-i	N 76° 52' 50" W 32.00'
i-j	N 76° 52' 50" W 193.70'
j-d	S 13° 07' 08" W 414.49'
d-e	N 51° 41' 40" E 87.50'
e-f	N 13° 04' 44" E 170.00'
f-g	N 81° 28' 40" E 109.13'
g-h	N 42° 19' 42" E 57.97'
h-i	N 19° 30' 20" E 85.77'

PROPRIETOR: NUCKOLL'S CONCRETE

REQUESTED BY: JIM PATRICK



I hereby certify that this land surveying document was prepared by me and the related survey work was performed by me or under my direct personal supervision and that I am a duly licensed Land Surveyor under the laws of the State of Iowa.

J. Scott Shevel 11/7/14
Date: 11/7/14
J. Scott Shevel
License Number 11810
My License renewal date is December 31, 2015
Pages covered by this seal 1

PLAT OF SURVEY
PT LOTS 4 & 5, BLOCK 2
INDUSTRIAL PARK
ADDITION TO THE CITY OF
STORM LAKE, BUENA VISTA
COUNTY, IOWA

I&S GROUP
1725 N. Lake Ave.
Storm Lake Ia. 50588
Ph: 712-732-7745
PN: 14-16475
Drawn: JSS
Sheet 1 OF 1
Surveyed by: JSS
Survey Date: 11/7/14
Revision Date: 11/7/14
Drawing Name:

**Temporary Construction Easement
Recorder's Cover Sheet**

Preparer Information: (name, address and phone number)

Kyle C. Jackson, P.O. Box 3365, Des Moines, IA 50316, Phone: (515) 422-5429

Taxpayer Information: (name and complete address)

OMG Midwest, Inc., P.O. Box 3365, Des Moines, IA 50316

Return Document To: (name and complete address)

Kyle C. Jackson, P.O. Box 3365, Des Moines, IA 50316

Grantor:

OMG Midwest, Inc.

Grantee:

City of Storm Lake, Iowa

Legal Description: See Page 5

Document or instrument number of previously recorded documents: Not applicable.

TEMPORARY CONSTRUCTION EASEMENT

STATE OF IOWA

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF _____

That OMG MIDWEST, INC., a Delaware corporation ("Grantor"), for and in consideration of the sum of TEN DOLLARS (\$10.00) cash in hand to Grantor paid by CITY OF STORM LAKE, IOWA, a municipal corporation, ("Grantee") the receipt and sufficiency of which is hereby acknowledged, does hereby GRANT AND CONVEY unto Grantee a non-exclusive temporary construction easement over Grantor's real property described in Exhibit "A" hereto (the "Easement Property") and depicted on that certain survey by J. Scott Shevel, dated November 7, 2014 attached hereto as Exhibit "B", being the gray shaded area identified as "temp. const. easement" on said survey.

The non-exclusive Temporary Construction Easement shall expire twelve months after the Effective Date hereof. Prior to the expiration of the temporary construction easement, Grantee will restore the surface of the Easement Property as close to the condition in which it was found before such work was undertaken as is reasonably practicable.

This instrument shall not be considered as a deed to the Easement Property or any part thereof. This instrument shall be binding upon, and inure to the benefit of, Grantee and Grantor, and their respective successors or assigns. Grantee agrees that this Temporary Construction easement is non-exclusive, and Grantee further agrees that it will not impede or otherwise limit or hinder the ability of Grantor, or Grantor's customers or invitees to access Grantor's property adjacent to the Easement Property, and Grantee fully agrees that it will not shut down or otherwise tear up the Grantor's driveway that runs across the Easement Property by way of which Grantor access its adjacent property.

This instrument may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

EXECUTED on the dates appearing in the acknowledgements below, however, to be effective on this ____ day of _____, 2015 (the “Effective Date”).

[Signatures appear on following page]

GRANTOR:

OMG MIDWEST, INC., a Delaware corporation

By: _____

Name:

Title:

AGREED AND ACCEPTED:

GRANTEE:

THE CITY OF STORMLAKE IOWA,
an Iowa municipal corporation

By: _____

Name:

Title:

Grantee Address:

620 Erie Street

P.O. Box 1086

Storm Lake, Iowa 50588

STATE OF IOWA §
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this day personally appeared _____, the _____ of OMG Midwest, Inc., a Delaware corporation, known to me to be the person whose name is subscribed hereto; he acknowledged to me he is the duly authorized representative of OMG Midwest, Inc. and that he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2015.

Notary Public, State of _____

My commission expires:_____

STATE OF IOWA §
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this day personally appeared _____, the _____ of the City of Storm Lake, an Iowa municipal corporation, known to me to be the person whose name is subscribed hereto; he acknowledged to me he is the duly authorized representative of the City of Storm Lake, and that he executed said instrument for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2015.

Notary Public, State of _____

My commission expires:_____

EXHIBIT A

THE EASEMENT PROPERTY

A TEMPORARY EASEMENT FOR CONSTRUCTION OF DRAINAGE IMPROVEMENTS OVER AND ACROSS PART OF LOT FOUR (4) IN BLOCK TWO (2) INDUSTRIAL PARK ADDITION TO THE CITY OF STORM LAKE, BUENA VISTA COUNTY, IOWA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commencing at the Northeast (NE) corner of said Lot Four (4); Thence North $76^{\circ} 52' 50''$ West, along the North line of said Lot Four (4), 32.00 feet to the Point of Beginning. Thence continuing along said North line, N $76^{\circ} 52' 50''$ West, 193.70 feet; Thence South $13^{\circ} 07' 08''$ West, 414.49 feet to the South line of said Lot Four (4); Thence North $51^{\circ} 41' 40''$ East, 87.50 feet; Thence North $13^{\circ} 04' 44''$ East, 170.00 feet; Thence North $81^{\circ} 28' 40''$ East, 109.13 feet; Thence North $42^{\circ} 19' 42''$ East, 57.97 feet; Thence North $19^{\circ} 30' 20''$ East, 85.77 feet to the Point of Beginning.

Staff Summary

3/16/2015

Agenda Item # 15.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: James H. Patrick, City Manager

SUBJECT: **Resolution No. 105-R-2014-2015 Setting A Public Hearing On The Intent To Acquire Property For Sanitary Sewer Improvements And Authorize Acquisition Of The Necessary Property Interests From Various Property Owners For The Sanitary Sewer Mitigation Project By Gift, Negotiation Or Eminent Domain**

BACKGROUND: Council passed a similar resolution in 2012 to acquire property for the Flood Mitigation Sanitary Sewer project. The property belonging to Drahota, Inc. and 608 Seneca, Inc. was identified as the best location for a lift station to serve Emerald Park subdivision. It was not included in the April 2012 Resolution in an attempt to reduce acquisition costs and the City attempted to locate a lift station on public property. The location explored will not work and the original property belonging to Drahota, Inc. and 608 Seneca, Inc. is needed to complete the project.

By following this procedure and having a public hearing and then adopting a Resolution to formally authorize the acquisition process will allow the City to negotiate price and as a last resort exercise the City's right to eminent domain.

This Resolution will set a public hearing for April 6, 2015 at 5:00PM in accordance with the Code of Iowa Chapter 6B.

FISCAL IMPACT: There is only the cost of publishing the Public Hearing notice.

RECOMMENDATION: Council Adopt Resolution No. 105-R-2014-2015 Setting A Public Hearing For April 6, 2015 at 5:00 PM.

ATTACHMENTS:

Description	Type
☐ Resolution No. 105-R-2014-2015	Resolution

RESOLUTION 105-R-2014-2015

RESOLUTION SETTING HEARING ON THE INTENT TO ACQUIRE PROPERTY FOR SANITARY SEWER IMPROVEMENTS AND AUTHORIZE ACQUISITION OF THE NECESSARY PROPERTY INTERESTS THEREOF FROM VARIOUS PROPERTY OWNERS FOR THE SANITARY SEWER MITIGATION PROJECT BY GIFT, NEGOTIATION, OR EMINENT DOMAIN

WHEREAS, under the provisions of 6B.2D of the Iowa Code, the acquiring agency is required to give notice of a proposed resolution, motion, or other document authorizing acquisition of property by eminent domain to each property owner, contract purchaser of record and any tenant known to be occupying the property prior to the date of the meeting at which such proposed authorization will be considered; and

WHEREAS, a plat has been prepared which shows this proposed improvement and identifies the proposed properties with any potential for any form of property acquisition activity; i.e. temporary construction easements, permanent easements, and fee simple interests; and

WHEREAS, in accordance with Section 6B.2D of the Code of Iowa before the City Council can proceed with said project, the City Council must:

- (a) Hold a public hearing, giving persons interested in the proposed project the opportunity to present their views and objections regarding the proposed acquisition of property for the project by gift, negotiation or eminent domain.
- (b) Adopt a resolution to authorize acquisition of private property for the project by eminent domain.
- (c) Mail notices as required by Iowa Code Section 6B.2D to all property owners, contract purchasers of record, and any known tenants with any potential for any form of property acquisition activity for this project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STORM LAKE, IOWA:

1. That a public hearing shall be held on April 6, 2015, at 5:00P.M. in the City Council Chambers of the Storm Lake City Hall. At that time the City Council will consider the above-described proposal and any other(s) submitted prior to or during the public hearing.

2. That the City Clerk is hereby instructed to cause notice to be mailed as required by law of the pendency of this resolution and of the time and place of the hearing at which persons interested in the proposed project may present their views and objections regarding the acquisition of private property for the project by gift, negotiation or eminent domain, said Notice of Intent to be in substantially the attached form.

PASSED AND APPROVED this 16th day of March, 2015.

Jon F. Kruse, Mayor

ATTEST:

Justin Yarosevich, City Clerk

Staff Summary

3/16/2015
Agenda Item # 16.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: Pat Kelly, Infrastructure Superintendent / Public Facilities Director

SUBJECT: **Resolution No. 106-R-2014-2015 To Approve The Contract For The Lake Avenue Recreational Trail Project**

BACKGROUND: This will approve the contract for the Lake Avenue Recreational Trail with Smith Concrete Services pending the receipt of the performance bond.

The Lake Avenue Recreational Trail will construct a walking and biking pedestrian trail along North Lake Avenue from 10th Street north to C49. The bid letting was held on February 17, 2015 through the Iowa Department of Transportation.

FISCAL IMPACT: The contract is with Smith Concrete Services for \$575,434.60. This project has two separate grants from the IA DOT in the amount of \$193,000.

Project costs are outlined as follows:

Engineering	\$49,750
Construction	\$575,434.60
Legal/Admin	\$10,000
Street Light Move	\$26,875
Land Acquisition	\$5,000

Projected Cost \$667,059.60

The remaining funds will come from funds budgeted in FY 2014-2015 from franchise fees \$199,239, road use tax \$14,000 and \$158,000 in local option sales tax funds.

RECOMMENDATION: Approve Resolution No. 106-R-2014-2015

ATTACHMENTS:

Description	Type
☐ Resolution No. 106-R-2014-2015	Resolution
☐ Smith Concrete Contract	Contract

RESOLUTION NO. 106-R-2014-2015

RESOLUTION APPROVING CONSTRUCTION CONTRACT AND BOND

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STORM LAKE, IOWA;

That the construction contract and bond executed and insurance coverage for the construction of certain public improvements described in general as Storm Lake 2015 Lake Avenue Trail Improvements Project and as described in detail in the plans and specifications heretofore approved, and which have been signed by the Mayor and Clerk on behalf of the City be and the same are hereby approved as follows:

Contractor:	Smith Concrete Service, Inc., Storm Lake, Iowa
Date of Contract:	March 16, 2015
Bond Surety:	
Date of Bond:	March 16, 2015
Portion of Project:	All

PASSED AND APPROVED this 16th day of March, 2015.

Jon F. Kruse, Mayor

ATTEST:

Justin Yarosevich, City Clerk

CONTRACT

FA96 (Form 650019)
05-13

Letting Date: February 17, 2015 Contract ID: 11-7422-616-A
County: BUENA VISTA Project Engineer: CITY OF STORM LAKE
Cost Center: 849300 Object Code: 890
Contract Work Type: PCC SIDEWALK/TRAIL

Bid Order No.: 103

DBE Commitment: \$21,575.50

This agreement made and entered by and between the CITY OF STORM LAKE CONTRACTING AUTHORITY,
AND

SMITH CONCRETE SERVICE, INC. OF STORM LAKE, IA, (SM005), CONTRACTOR

It is agreed that the notice and instructions to bidders, the proposal filed by the Contractor, the specifications, the plan, if any, for project(s) listed below, together with Contractor's performance bond, are made a part hereof and together with this instrument constitute the contract. This contract contains all of the terms and conditions agreed upon by the parties hereto. A true copy of said plan is now on file in the office of the Contracting Authority under date of 02/12/2015.

PROJECT: STP-E-7422(616)--8V-11 COUNTY: BUENA VISTA
WORK TYPE: PCC SIDEWALK/TRAIL ACCOUNTING ID: 32289
ROUTE: LAKE AVE LENGTH (MILES): 0.77
LOCATION: LAKE AVE TRAIL: ALONG LAKE AVENUE FROM 10TH ST TO COUNTY ROA
D C-49 IN THE CITY OF STORM LAKE
FEDERAL AID - PREDETERMINED WAGES ARE NOT IN EFFECT

The specifications consist of the Standard Specifications for Highway and Bridge Construction, Series 2012
of the Iowa Department of Transportation plus the following Supplemental Specifications, Special Provisions, and
addendums: FHWA-1273.05, GS-12005

Contractor, for and in considerations of \$575,434.60 payable as set forth in the specifications constituting
a part of this contract, agrees to construct various items of work and/or provide various materials or supplies in
accordance with the plans and specifications therefore, and in the locations designated in the Notice to Bidders.

Contractor certifies by signature on this contract, under pain of penalties for false certification, that the Contractor has complied with Iowa Code Section 452A.17(8) as amended, if applicable, and Iowa Code Section 91C.5 (Public Registration Number), if applicable.

In consideration of the foregoing, Contracting authority hereby agrees to pay the Contractor promptly and according to the requirements of the specifications the amounts set forth, subject to the conditions as set forth in the specifications.

It is further understood and agreed that the above work shall also be commenced or completed in accordance with Page 1B of this Contract and assigned Proposal Notes.

To accomplish the purpose herein expressed, the Contracting authority and Contractor have signed this and one other identical instrument.

For Federal-Aid contracts the Contractor certifies that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the contract.

By _____, _____ Contractor (if joint venture)

By _____ Contract Award Date

Iowa DOT Concurrence _____ Concurrence Date

For Local Agency Contracts

Letting Date: February 17, 2015 Contract ID: 11-7422-616-A Bid Order No. : 103

It is further understood and agreed that the above work shall be commenced or completed in accordance with the following schedule:

SITE NUMBER	CONTRACT PERIOD /SITE DESCRIPTION	LIQUIDATED DAMAGES
	CONTRACT LATE START DATE 07/06/2015 60 WORKING DAYS	\$1,200.00

CONTRACT NOTES

CONTRACT SCHEDULE OF PRICES

Page: 2

Vendor No.: SM005
 Contract ID No.: 11-7422-616-A
 Primary Work Type: PCC SIDEWALK/TRAIL
 Primary County: BUENA VISTA

Bid Order No.: 103
 Letting Date: February 17, 2015
 10:00 A.M.

Line No	Item Number Item Description	Item Quantity and Unit	Unit Price Dollars Cts	Bid Amount Dollars Cts
SECTION 0001 TRAIL/SIDEWALK ITEMS				
0010	2102-2710070 EXCAVATION, CLASS 10, ROADWAY AND BORROW	 4,926.000 CY	 12.50000	 61,575.00
0020	2105-8425015 TOPSOIL, STRIP, SALVAGE AND SPREAD	 1,872.000 CY	 20.00000	 37,440.00
0030	2123-7450020 SHOULDER FINISHING, EARTH	 51.510 STA	 265.00000	 13,650.15
0040	2213-6745500 REMOVAL OF CURB	 2.920 STA	 1,600.00000	 4,672.00
0050	2315-8275025 SURFACING, DRIVEWAY, CLASS A CRUSHED STONE	 22.200 TON	 35.00000	 777.00
0060	2416-0102218 APRON, LOW CLEARANCE CONCRETE, EQUIVALENT DIAMETER 18 IN.	 2.000 EACH	 1,000.00000	 2,000.00
0070	2416-1165024 CULVERT, 2000D CONCRETE ENTRANCE PIPE, 24 IN. DIA.	 8.000 LF	 75.00000	 600.00
0080	2416-1192218 CULVERT, 2000D LOW CLEARANCE CONCRETE ENTRANCE PIPE, EQUIVALENT DIAMETER 18 IN.	 40.000 LF	 80.00000	 3,200.00
0090	2435-0140148 MANHOLE, STORM SEWER, SW-401, 48 IN.	 1.000 EACH	 4,300.00000	 4,300.00
0100	2435-0251218 INTAKE, SW-512, 18 IN.	 9.000 EACH	 1,700.00000	 15,300.00

CONTRACT SCHEDULE OF PRICES

Page: 3

Vendor No.: SM005
 Contract ID No.: 11-7422-616-A
 Primary Work Type: PCC SIDEWALK/TRAIL
 Primary County: BUENA VISTA

Bid Order No.: 103
 Letting Date: February 17, 2015
 10:00 A.M.

Line No	Item Number Item Description	Item Quantity and Unit	Unit Price		Bid Amount	
			Dollars	Cts	Dollars	Cts
0110	2435-0251224 INTAKE, SW-512, 24 IN.	1.000 EACH	1,900.00000		1,900.00	
0120	2435-0600010 MANHOLE ADJUSTMENT, MINOR	3.000 EACH	150.00000		450.00	
0130	2435-0600020 MANHOLE ADJUSTMENT, MAJOR	1.000 EACH	1,500.00000		1,500.00	
0140	2435-0600120 INTAKE ADJUSTMENT, MAJOR	1.000 EACH	1,000.00000		1,000.00	
0150	2435-0700010 CONNECTION TO EXISTING MANHOLE	2.000 EACH	1,250.00000		2,500.00	
0160	2435-0700020 CONNECTION TO EXISTING INTAKE	5.000 EACH	1,250.00000		6,250.00	
0170	2502-8212306 SUBDRAIN, STANDARD, PERFORATED, 6 IN., AS PER PLAN	186.000 LF	30.00000		5,580.00	
0180	2503-0114212 STORM SEWER GRAVITY MAIN, TRENCHED, REINFORCED CONCRETE PIPE (RCP), 2000D (CLASS III), 12 IN.	153.000 LF	66.50000		10,174.50	
0190	2503-0114215 STORM SEWER GRAVITY MAIN, TRENCHED, REINFORCED CONCRETE PIPE (RCP), 2000D (CLASS III), 15 IN.	684.000 LF	70.00000		47,880.00	
0200	2503-0200036 REMOVE STORM SEWER PIPE LESS THAN OR EQUAL TO 36 IN.	260.000 LF	20.00000		5,200.00	

CONTRACT SCHEDULE OF PRICES

Page: 4

Vendor No.: SM005 Bid Order No.: 103
 Contract ID No.: 11-7422-616-A Letting Date: February 17, 2015
 Primary Work Type: PCC SIDEWALK/TRAIL 10:00 A.M.
 Primary County: BUENA VISTA

Line No	Item Number Item Description	Item Quantity and Unit	Unit Price		Bid Amount	
			Dollars	Cts	Dollars	Cts
0210	2507-3250005 ENGINEERING FABRIC	640.000 SY	5.00000		3,200.00	
0220	2511-0302400 RECREATIONAL TRAIL, PORTLAND CEMENT CONCRETE, 4 IN.	2,440.400 SY	31.00000		75,652.40	
0230	2511-0302600 RECREATIONAL TRAIL, PORTLAND CEMENT CONCRETE, 6 IN.	297.500 SY	42.50000		12,643.75	
0240	2511-0302600 RECREATIONAL TRAIL, PORTLAND CEMENT CONCRETE, 6 IN. COLORED	96.000 SY	75.00000		7,200.00	
0250	2511-0302800 RECREATIONAL TRAIL, PORTLAND CEMENT CONCRETE, 8 IN. CLASS C	525.900 SY	52.00000		27,346.80	
0260	2511-0302800 RECREATIONAL TRAIL, PORTLAND CEMENT CONCRETE, 8 IN. CLASS M	120.000 SY	65.00000		7,800.00	
0270	2511-0310100 SPECIAL COMPACTION OF SUBGRADE FOR RECREATIONAL TRAIL	37.310 STA	275.00000		10,260.25	
0280	2511-6745900 REMOVAL OF SIDEWALK	27.500 SY	20.00000		550.00	
0290	2511-7528101 DETECTABLE WARNINGS	376.000 SF	30.00000		11,280.00	
0300	2512-1725256 CURB AND GUTTER, P.C. CONCRETE, 2. 5 FT.	292.000 LF	42.00000		12,264.00	

CONTRACT SCHEDULE OF PRICES

Page: 5

Vendor No.: SM005
 Contract ID No.: 11-7422-616-A
 Primary Work Type: PCC SIDEWALK/TRAIL
 Primary County: BUENA VISTA

Bid Order No.: 103
 Letting Date: February 17, 2015
 10:00 A.M.

Line No	Item Number Item Description	Item Quantity and Unit	Unit Price Dollars Cts	Bid Amount Dollars Cts
0310	2515-2475006 DRIVEWAY, P. C. CONCRETE, 6 IN. SY	82.200	45.00000	3,699.00
0320	2515-2475008 DRIVEWAY, P. C. CONCRETE, 8 IN. CLASS C SY	650.000	56.00000	36,400.00
0330	2515-2475008 DRIVEWAY, P. C. CONCRETE, 8 IN. CLASS M SY	211.000	65.00000	13,715.00
0340	2515-6745600 REMOVAL OF PAVED DRIVEWAY SY	1,494.700	10.00000	14,947.00
0350	2524-6765010 REMOVE AND REINSTALL SIGN AS PER PLAN EACH	12.000	150.00000	1,800.00
0360	2527-9263109 PAINTED PAVEMENT MARKING, WATERBORNE OR SOLVENT-BASED STA	46.340	125.00000	5,792.50
0370	2527-9263180 PAVEMENT MARKINGS REMOVED STA	2.760	175.00000	483.00
0380	2528-8445110 TRAFFIC CONTROL LUMP		LUMP	13,500.00
0390	2533-4980005 MOBILIZATION LUMP		LUMP	30,000.00
0400	2599-9999003 ('CUBIC YARDS' ITEM) ENGINEERED SOIL MATRIX CY	234.000	50.00000	11,700.00
0410	2599-9999005 ('EACH' ITEM) RAIN GARDEN PLANTING EACH	1,160.000	19.50000	22,620.00

CONTRACT SCHEDULE OF PRICES

Page: 6

Vendor No.: SM005
 Contract ID No.: 11-7422-616-A
 Primary Work Type: PCC SIDEWALK/TRAIL
 Primary County: BUENA VISTA

Bid Order No.: 103
 Letting Date: February 17, 2015
 10:00 A.M.

Line No	Item Number Item Description	Item Quantity and Unit	Unit Price		Bid Amount	
			Dollars	Cts	Dollars	Cts
0420	2599-9999020 ('TONS' ITEM) UNDERDRAIN GRAVEL BLANKET	195.000 TON	45.00000		8,775.00	
0430	2601-2634100 MULCHING	1.500 ACRE	700.00000		1,050.00	
0440	2601-2636044 SEEDING AND FERTILIZING (URBAN)	1.500 ACRE	3,000.00000		4,500.00	
0450	2602-0000020 SILT FENCE	865.000 LF	2.15000		1,859.75	
0460	2602-0000030 SILT FENCE FOR DITCH CHECKS	375.000 LF	2.50000		937.50	
0470	2602-0000071 REMOVAL OF SILT FENCE OR SILT FENCE FOR DITCH CHECKS	1,240.000 LF	1.00000		1,240.00	
0480	2602-0000101 MAINTENANCE OF SILT FENCE OR SILT FENCE FOR DITCH CHECK	1,240.000 LF	1.00000		1,240.00	
0490	2602-0000306 PERIMETER AND SLOPE SEDIMENT CONTROL DEVICE, 6 IN. DIA.	110.000 LF	8.00000		880.00	
0500	2602-0010010 MOBILIZATIONS, EROSION CONTROL	4.000 EACH	500.00000		2,000.00	
0510	2602-0010020 MOBILIZATIONS, EMERGENCY EROSION CONTROL	1.000 EACH	1,000.00000		1,000.00	
0520	2610-0000212 MULCH, SHREDDED BARK	21.000 CY	150.00000		3,150.00	
TOTAL BID					575,434.60	

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

Staff Summary

3/16/2015

Agenda Item # 17.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: James H. Patrick, City Manager

SUBJECT: **Resolution 107-R-2014-2015 Approving Change Order #5 To FEMA Contract Number 3 - Sanitary Sewer And Force Main - North Area**

BACKGROUND: FEMA Contract # 3 is complete except for the connection of the sewer interceptor to 13th Street Lift Station. The design to hook on to 13th Street Lift Station had to be changed due to the condition of the soil and the high water table. With the new configuration, when the connection is made to the lift station the sewer interceptor had to be active. The sewer interceptor was placed on line two weeks ago. Change Order 5 incorporates three modifications to the contract.

If modifies the contract to provide for remobilization due to the delay in completing the work on Contract #4. The delay caused H&W Contracting to return to the project now, in 2015, to complete the work.

It incorporates modifications in the construction of the sewer along 13th Street extending westerly to the east end of the existing sewer. The original design intended that the new sewer to be located north of the existing east flowing sewer, to leave the existing sewer in place, and to construct the new sewer north of the existing sewer with the new sewer flowing westerly. During initial construction by Erickson Construction, Inc. on Contract #4, near the 13th Street Lift Station, it was determined that soil conditions under 13th Street were extremely poor and there was concern that it would not be possible to construct the new sewer parallel to the existing sewer without damaging the existing sewer and collapsing the 13th Street Lift Station. It was determined that the new sewer should be moved southerly to replace the existing sewer which allowed the elevation of the new sewer to be raised slightly to avoid some of the poorer soils.

The third modification blends the Contract #4 connection to the 13th Street Lift Station into Contract #3. The original design

anticipated the connection to the 13th Street lift station would be included in contract #4. During initial construction, Erickson attempted to make the completion at 13th Street. The soil conditions were so poor that it was determined that work could not be completed without risking damage to the 13th Street Lift Station. Following review the decision was made to remove the connection work from contract #4 and added to Contract #3 to allow for coordination of the final change over work and the connection to the lift station after the downstream sewer was completed. This third part adds the connection to the 13th Street Lift Station to Contract #3. Not reflected in this change order is the offsetting cost reduction from Contract #4.

This change order adds \$200,032.50 to the contract and extends the completion date from January 15, 2015 to June 1, 2015.

H&W Contracting is in town and is starting this final connection.

FISCAL IMPACT:

Original Contract Amount	\$1,319,373.00
Previously Approved Change Orders	\$ 49,082.50
Previously Adjusted Contract Price	\$1,368,455.50
This Change Order	\$ 200,032.50
Adjusted Contract	\$1,568,488.00

FEMA Grant will pay 75%, Iowa Home Land Security will pay 10% and the City will pay 15%.

RECOMMENDATION:

Council Adopt Resolution 107-R-2014-2015 Approving Change Order #5 To FEMA Contract Number 3 - Sanitary Sewer and Force Main - North Area.

ATTACHMENTS:

Description	Type
 Resolution No. 107-R-2014-2015	Resolution
 Change Order #5	Change Order

RESOLUTION NO. 107-R-2014-2015

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STORM LAKE, IOWA:

To approve Change Order No. 5 to the contract with H & W Contracting, LLC. for the Sanitary Sewer System Mitigation Project Contract 3 – Sanitary Sewer and Force Main – North Area, which includes three modifications to the contract. First modification is to provide for remobilization to complete the work on 13th Street. Second modification to contract incorporates modifications in the construction of the sewer along 13th Street extending easterly to the east end of the original contract. Third modification incorporates the connection to the 13th Street Lift Station as part of Contract 3 instead of Contract 4.

Change Order Cost

1. Mobilization and remobilization to 13th Street to reflect the delay of construction from 2014 to 2015. \$25,000
2. Modify Manhole 1-8 to accommodate the new alignment. \$6,000
3. New Manhole 1-10. \$10,000
4. Tie in sewers at new Manhole 1-10. \$2,500
5. Bypass pumping and handling of sewer for live connections. \$25,000
6. 24-inch drop connection at Manhole 1-8. \$10,000
7. 18-inch drop connection at Manhole 1-8. \$8,900
8. Price increase for PCC pavement, 930 SY @ \$6.00/SY. \$5,580.00
9. Remove existing manhole in 13th Street. \$1,000
10. New Manhole 1-9 at 13th Street Lift Station connection. \$12,500
11. Piping modifications near Manhole 1-10. \$5,000
12. Shoring for excavation adjacent to 13th Street Lift Station. \$25,000
13. Dewatering for 13th Street Lift Station connection. \$15,000
14. Excavation adjacent to 13th Street Lift Station. \$25,000
15. Bypass pumping for 13th Street Lift Station. \$850
16. 18-inch sewer, 30 LF @ \$230/LF. \$6,900
17. 12-inch sewer, 10 LF @ \$170/LF. \$1,700
18. 12-inch sewer coupling east of Manhole 1-9. \$1,000
19. 9-inch PCC pavement at adjusted base price, 225 SY @ \$62.50/SY. \$14,062.50
20. 1.16 television inspection, 40 LF @ \$1/LF. \$40.00
21. Extend completion date of contract from January 15, 2015 to June 30, 2015. \$0

Total cost of change order #5 is \$200,032.50. Total contract cost after change order #5 is \$1,568,488.00.

PASSED AND APPROVED this 16th day of March 2015.

Jon F. Kruse, Mayor

ATTEST:

Justin Yarosevich, City Clerk



March 11, 2015

CHANGE ORDER NO. 5

CITY OF STORM LAKE, IOWA
SANITARY SEWER SYSTEM MITIGATION PROJECT
CONTRACT 3 - SANITARY SEWER AND FORCE MAIN - NORTH AREA

Description

Change Order No. 5 incorporates in the construction contract three modifications to the contract. First, Change Order No. 5 modifies the contract to provide for remobilization to complete the work on 13th Street. Due to the delay in completing the work on Contract 4 it was determined the work on 13th Street, including the connection to the 13th Street Lift Station could not be completed in 2014 when the balance of the construction contract of Contract 3 was completed by H&W Contracting, LLC. The delay caused the contractor to return to the project in 2015 to complete the work along 13th Street.

Second, Change Order No. 5 incorporates modifications in the construction of the sewer along 13th Street extending easterly to the east end of the original Contract 3. The original design called for the new sewer to be located north of the existing east flowing sewer. The original design intention was to leave the existing sewer in place and to construct the new sewer north of the existing sewer with the new sewer flowing westerly.

During the initial construction by Eriksen Construction Co., Inc. near the 13th Street Lift Station it was determined soil conditions on 13th Street were extremely poor. Based on the soil conditions there was significant concern it would not be possible to construct the new sewer parallel to the existing sewer without damaging the existing sewer. Based on review it was determined the new sewer should be moved southerly to replace the existing sewer. This allows the elevation of the new sewer to be raised slightly to avoid some of the poorer soils.

The third modification incorporates the connection to the 13th Street Lift Station as part of Contract 3. The original design concept anticipated the connection would be included in Contract 3. Based on the sequencing of construction it appeared more logical to move the connection to Contract 4.

During construction of Contract 4 Eriksen Construction Co., Inc. attempted to make the completion at 13th Street. Due to the very poor soil conditions it was determined that work could not be completed without risking damage to the 13th Street Lift Station. Following review it was determined the connection work would be removed from Contract 4 and added to Contract 3. That modification allowed for coordination of the work and the connection to the 13th Street Lift Station could be completed after the downstream sewer

was available. The third part of the change order adds the connection to the 13th Street Lift Station to Contract 3. Although not reflected in the change order there is also a reduction in Contract 4 that would offset a significant portion of the cost of the connection.

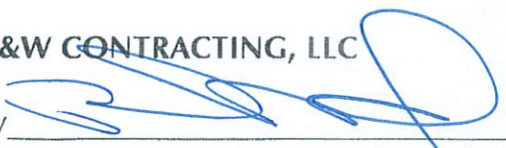
Change Order Cost

1. Mobilization and remobilization to 13 th Street to reflect the delay of construction from 2014 to 2015.	\$25,000.00
2. Modify Manhole 1-8 to accommodate the new alignment.	\$6,000.00
3. New Manhole 1-10.	\$10,000.00
4. Tie in sewers at new Manhole 1-10.	\$2,500.00
5. Bypass pumping and handling of sewer for live connections.	\$25,000.00
6. 24-inch drop connection at Manhole 1-8.	\$10,000.00
7. 18-inch drop connection at Manhole 1-8.	\$8,900.00
8. Price increase for PCC pavement, 930 SY @ \$6.00/SY	\$5,580.00
9. Remove existing manhole in 13 th Street.	\$1,000.00
10. New Manhole 1-9 at 13 th Street Lift Station connection.	\$12,500.00
11. Piping modifications near Manhole 1-10.	\$5,000.00
12. Shoring for excavation adjacent to 13 th Street Lift Station.	\$25,000.00
13. Dewatering for 13 th Street Lift Station connection.	\$15,000.00
14. Excavation adjacent to 13 th Street Lift Station.	\$25,000.00
15. Bypass pumping for 13 th Street connection.	\$850.00
16. 18-inch sewer, 30 LF @ \$230/LF.	\$6,900.00
17. 12-inch sewer, 10 LF @ \$170/LF.	\$1,700.00
18. 12-inch sewer coupling east of Manhole 1-9.	\$1,000.00
19. 9-inch PCC pavement at adjusted base price, 225 SY @ \$62.50/SY	\$14,062.50
20. 1.16 television inspection, 40 LF @ \$1/LF	\$40.00
21. Extend completion date of contract from January 15, 2015 to June 30, 2015	<u>\$0.00</u>
	TOTAL \$200,032.50

Financial Summary

Original Contract Amount	\$1,319,373.00
Previously Approved Change Orders	\$49,082.50
Previously Adjusted Contract Price	\$1,368,455.50
This Change Order	\$200,032.50
Adjusted Contract with this Change Order	\$1,568,488.00
Percentage Change this Change Order	15.16%
Accumulative Change, All Change Orders	18.88%

H&W CONTRACTING, LLC

By 

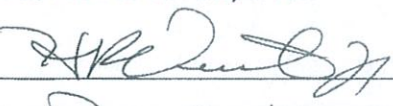
Title

Thomas Hurd - President

Date

3-12-15

VEENSTRA & KIMM, INC.

By 

Title

Pres. don t

Date

March 12, 2015

CITY OF STORM LAKE, IOWA

By _____

Title _____

Date _____

ATTEST:

By _____

Title _____

Date _____

Staff Summary

3/16/2015
Agenda Item # 18.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: James H. Patrick, City Manager

SUBJECT: **Motion Approving Engineer Agreement With Veenstra & Kimm To Evaluate The Wastewater Treatment Plant HVAC**

BACKGROUND: The heating and cooling system at the wastewater treatment plant is not working. It appears that the system is tied into a heat transfer pump that takes hot air coming from the air blowers in the winter and air from an external water evaporator in the summer. The pump is in pieces and needs to be repaired at a minimum.

Veenstra and Kimm Engineering has been a consultant to the City and has familiarity with the Wastewater Treatment Plant. They have provided a scope of work to evaluate the current HVAC system and determine the best course of action to take to repair or replace the HVAC system. This work would be completed in 45 days at a not to exceed cost of \$6,750.

FISCAL IMPACT: The cost of the services will not exceed \$6,750.00. This is not budgeted but will come out of the Wastewater Treatment Plant repair budget.

Funds are budgeted in the Fiscal Year 2015 Budget for repairs to the HVAC System which could be transferred to this evaluation. Repairs or replacement will then have to be reviewed to determine funding.

RECOMMENDATION: Council approve the services agreement with Veenstra and Kimm and authorize the City Manager to sign.

ATTACHMENTS:

Description	Type
 V & K Proposal	Letter



March 5, 2015

James H. Patrick
City Manager
City of Storm Lake
620 Erie Street
P.O. Box 1086
Storm Lake, Iowa 50588

**CITY OF STORM LAKE, IOWA
WASTEWATER TREATMENT PLANT CONTROL BUILDING
HVAC SYSTEM ANALYSIS**

In accordance with your recent request, this letter is to present Veenstra & Kimm, Inc.'s proposal to complete an analysis of the heating, ventilating and air condition (HVAC) system of the administration and control building at the wastewater treatment plant. The existing heat pump based system has deteriorated since the original construction and no longer adequately serves to heat during the winter months or cool during the summer months.

It is understood the goal of the study is to evaluate the existing system and to identify alternatives and estimated costs to upgrade or replace the existing heating, ventilating and air conditioning system. The work by Veenstra & Kimm, Inc. would be primarily undertaken by P.N. Reddy who has some familiarity with the existing systems from work on the ongoing wastewater treatment plant improvement project.

The scope of work for the evaluation and report would include the following:

1. Review of the available information on the HVAC system.
2. Site visit and review to determine the condition of the existing HVAC system.
3. Calculate the required heating and cooling loads of the building based on present and potential future uses of the building.
4. Evaluate the capacity and condition of the existing HVAC system to meet the heating and cooling loads.
5. Evaluate alternatives to upgrade or replace the existing HVAC system.

James H. Patrick
March 5, 2015
Page 2

6. Develop preliminary cost for the alternatives of upgrading or replacing the HVAC system.
7. Identify and develop recommended improvements to HVAC system, including a cost estimate.
8. Prepare a report on the evaluation and recommendations for HVAC system improvements.

Veenstra & Kimm, Inc. would propose to undertake this evaluation and preparation of the system analysis report on an hourly fee basis with a maximum not to exceed fee of \$6,750.

Veenstra & Kimm, Inc. anticipates the work on the study and report will be completed within approximately 45 days after authorization to proceed with the work.

This letter may be made an agreement by affixing the proper date and signature in the spaces below and returning one copy to this office.

If you have any questions or comments concerning the project, please contact the writer at 800-241-8000.

VEENSTRA & KIMM, INC.



H. R. Veenstra Jr.

HRVJr:dml
600-11

Accepted this _____ day of _____, 2015.

CITY OF STORM LAKE, IOWA

ATTEST:

By _____

By _____

Staff Summary

3/16/2015

Agenda Item # 19.



City of Storm Lake
PO Box 1086
Storm Lake, IA 50588
p (712) 732-8000
f (712) 732-4114

REPORT TO: Honorable Mayor and City Council

FROM: James H. Patrick, City Manager

SUBJECT: **Motion Approving Purchase Contract With Fishpipe USA For A Fishpipe Ride At Kings Pointe**

BACKGROUND: The indoor and outdoor water parks continues to provide a great attraction for local residents as well as visitors to Storm Lake. The City has been looking at a new attraction to add to the water parks. The Fishpipe is a relatively low cost investment that would bring the park back to the cutting edge in water park rides. There are only fifteen of these rides in the world with the closest ride over 1,000 miles away. The purchase and installation price will be paid for in the first year with only moderate ridership. The ride can be disassembled and moved to the indoor water park during winter months.

Bryan Oakleaf will present the product and discuss the business plan.

FISCAL IMPACT: The purchase price for the fishpipe is \$79,950. Shipping and installation will cost approximately \$8,000.

RECOMMENDATION: Approve Motion Authorizing Mayor To Sign Contract With Fishpipe USA For Purchase of A Fishpipe Ride

ATTACHMENTS:

Description	Type
 Fishpipe Purchase Contract	Contract
 Fishpipe Picture	Backup Material

**PURCHASE AND SALE AGREEMENT
FOR
EQUIPMENT
BETWEEN
Fishpipe USA
AND
The City of Storm Lake DBA King's Pointe Resort & Water Park**

THIS PURCHASE AND SALE AGREEMENT is entered into this 13th day of 2015, by and between The City of Storm Lake DBA King's Pointe Resort & Water park (hereinafter "Buyer"), and Fishpipe USA (hereinafter "Company")

RECITALS:

WHEREAS, Company is in the business of selling and servicing Fishpipe equipment;
and

WHEREAS, Buyer desires to purchase such equipment.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained therein and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, it is mutually agreed and covenanted by and between the parties to this Agreement, under seal, as follows:

1. **Sale of Equipment.** Company hereby sells to Buyer and Buyer hereby purchases from Company the equipment described as "The Fishpipe." Such Equipment shall be shipped to Installation Site (as hereinafter defined in Paragraph 6).
2. **Purchase Price.** Buyer shall pay to Company for the Equipment and for all obligations specified herein, as full and complete consideration therefore, the sum of Seventy Nine Thousand Nine Hundred Fifty Dollars (\$79,950 USD) (hereinafter "Purchase Price").
3. **Payment.** Buyer shall make payment of the Purchase Price to Company in accordance with the following schedule:
 - A. \$15,000 USD within fifteen days (15) days after the execution of this Agreement;
 - B. Remaining balance of the Purchase Upon Delivery of the Equipment (as defined in Paragraph 7 of the Agreement)

4. **Taxes.** Buyer represents that it is a tax-exempt corporation under Section 501(c)(3) of the Internal Revenue Code of the United States, as amended, and under applicable laws of the State of Iowa. The State of Iowa tax-exempt number for Buyer is _____. Company shall take all action required to cause the purchase of the Equipment hereunder to be treated as a tax-exempt transaction, and in no event shall Buyer be responsible for any sales, use, property, gross receipts, or similar taxes levied against any party to this Agreement.
5. **Site Evaluation.** Company has furnished Buyer with site preparation requirements, which include, but are not limited to, power, and operational considerations with respect to the Equipment.
6. **Site Preparation.** Buyer shall be responsible for preparing a site suitable for the installation and operation of the Equipment (hereinafter "Installation Site").
7. **Delivery.** Delivery of the Equipment to Buyer by Company, at Buyer's sole cost and expense, shall be made on or before agreed upon date approximately May 1, 2015 after receipt of a purchase order (hereinafter "Delivery Date"). "Ownership" will occur upon dispatch of equipment from storage facility. Delivery of the Equipment in an undamaged condition to Buyer's Installation Site shall constitute "Delivery" to Buyer.
8. **Installation.** Company shall install the Equipment at the Installation site and connect to the safety switches or electrical outlets to be provided and installed by Buyer. Buyer shall be responsible for all costs associated with delivery and installation of the Equipment
9. **Testing and Certification.** Upon completion of installation of the Equipment, Company shall perform prescribed tests to determine that the Equipment is operating in conformance with Company's performance specifications for the Equipment.
10. **Acceptance.** "Acceptance" of the Equipment shall be deemed to occur on the date when the equipment arrives at the installation location.
11. **Training.** Upon Delivery of the Equipment, Company shall provide, at no cost or expense to Buyer, training in operation of the Equipment for employees designated by Buyer.
12. **Equipment Warranty.** The warranty provided to Buyer by Company with respect to the Equipment is set forth in **Exhibit A** attached hereto and incorporated herein. The warranty period shall commence upon Acceptance of the Equipment.
13. **Indemnification.**
 - A. Buyer shall indemnify and hold Company its trustees, officers, employees, and agents harmless from any loss, lawsuit, liability, damage, cost and expense (including reasonable attorneys' fees) which may arise out of or result from (i) claims by third persons against Buyer that the Equipment has caused damage to property or bodily injury (including death); or (ii) the

acts or omissions of the Company, its agents or employees in connection with this Agreement; or (iii) any defects in any Equipment supplied by the Company; or (iv) any breach or default in the performance of the obligations of Company hereunder including any breach of warranty. Company's indemnification obligations hereunder shall not apply to the extent that any claim is caused by the negligence or misconduct of Buyer.

B. The invalidity, in whole or in part, of any of the foregoing paragraph will not affect the remainder of such paragraph.

14. **General.**

A. **Confidentiality.** The parties shall hold in strictest confidence any information and material which is related to either Buyer's or Company's business or is designated by either Buyer or Company as proprietary and confidential, herein or otherwise. It is understood that this confidentiality clause does not include information which: (i) is now or hereafter in the public domain through no fault of the party being provided the confidential information; (ii) prior to disclosure hereunder, is property within the rightful possession of the party being provided the confidential information; (iii) subsequent to disclosure hereunder, is lawfully received from a third party with no restriction on further disclosure; or (iv) is obligated to be produced under order of a court of competent jurisdiction, unless made the subject of a confidentiality agreement or protective order in connection with such proceeding, which the parties in all cases will attempt to obtain. Buyer and Company hereby covenant that each shall not disclose such information to any third party without prior written authorization of the other. Company further covenants not to disclose or otherwise make known to any party nor to issue or release for publication any articles or advertising or publicity matter relating to this Agreement in which the name of Buyer or any of its affiliates is mentioned or used, directly or indirectly, unless prior written consent is granted by Buyer.

B. **Notices.** All notices and other communications pertaining to this Agreement shall be in writing and shall be deemed duly to have been given if personally delivered to the other party or if sent by the United State Postal Service certified mail, return receipt requested, postage prepaid or by Federal Express, United Parcel or other nationally recognized overnight carrier. All notices or communications between Buyer and Company pertaining to this Agreement shall be addressed as follows:

If to Buyer: 1520 E Lakeshore Dr.
Storm Lake, IO 50588

If to Company: PO Box 192724
Dallas, TX 75219

Either party may change its notification address by giving written notice to that effect to the other party in the manner provided herein.

C. Waiver. Any waiver by either party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall neither be considered a waiver nor deprive that party of any right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing and signed by the party to be charged therewith.

D. Modifications. No revision or modification of this Agreement shall be effective unless in writing and executed by authorized representative of both parties.

E. Severability. If any portion of this Agreement is held invalid, such invalidity shall not affect the validity of the remaining portions of the Agreement, and the parties will substitute for any such invalid portion hereof a provision which best approximates the effect and intent of the invalid provision.

F. Construction and Jurisdiction. This Agreement shall be governed by the laws of the State of Texas (excepting any conflict of laws or provisions which would serve to defeat application of Texas substantive law). Each of the parties to this Agreement hereby irrevocably and unconditionally: (i) consents to submit to the exclusive jurisdiction of the courts of Dallas County, Texas for any proceeding arising in connection with this Agreement and each such party agrees not to commence any such proceeding except in such courts, and (ii) waives any objection to the laying of venue of any such proceeding in the courts of Dallas County, Texas.

G. Headings. The paragraph titles of this Agreement are for conveniences only and shall not define or limit any of the provisions hereof.

H. Entire Agreement. This Agreement is intended as the complete and exclusive statement of the agreement between Buyer and Company with respect to the subject matter hereof, and supersedes all prior agreements and negotiations related thereto.

Signed,

Buyer: _____ Date: _____

The City of Storm Lake DBA King's Pointe Resort & Water Park

Company: _____ Date: _____

Fishpipe USA

EXHIBIT A

Equipment Warranty

For a one (1) year period from date of Acceptance (the "Warranty Period"), Company warrants that the Equipment provided to Buyer pursuant to this Agreement shall be free from defects in manufacturing, and workmanship.

Any defect that arises due to faulty workmanship will be repaired at Seller's expense during the warranty period. This warranty does not cover accidental damage or damages caused by misuse, neglect, tampering or incorrect adjustments. Seller's obligation for defective products or workmanship, and Buyer's exclusive remedy shall be limited, at Seller's option, to the replacement or repair of any defective parts. Any alterations, additions, adjustments or repairs made by others to the equipment sold herein, unless authorized or agreed upon by this Seller, will be cause to terminate Seller's obligations under the terms of this warranty. The warranty will also expire immediately upon the resale of these products.

The Foregoing warranty is exclusive and in lieu of all other express or implied warranties from seller, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose. Seller shall not be subject to and disclaims (1) Any other obligation or liabilities arising out of breach of contract or of warranty; (2) Any obligations whatsoever arising from tort claims including negligence or product or strict liability or arising under theories of law with respect to products sold or services rendered by seller or any undertakings, acts or omissions related thereto; and (3) all consequential, incidental and contingent damages whatsoever.

