



****AMENDED AGENDA
OTTUMWA CITY COUNCIL**

REGULAR MEETING NO. 20
Council Chambers, City Hall

June 21, 2022
5:30 O'Clock P.M.

PLEDGE OF ALLEGIANCE

A. ROLL CALL: Council Member Hull, Pope, Roe, Galloway, McAntire and Mayor Johnson.

B. CONSENT AGENDA:

1. Minutes from Regular Meeting No. 18 on June 7, 2022 as presented.
2. Recommend re-appointment of Robert Snell to the Cemetery Board of Trustees, term to expire 7/1/2029.
3. Award the contract for Tree Trimming and tree and stump removal services to Bub's Tree Care for the best bid price of \$50.00 per hour for any and all services rendered, for July 1, 2022 through June 30, 2023.
4. Approve the purchase of one 2023 Ford Utility Police Interceptor Utility vehicle as an insurance replacement from Stiver's Ford of Waukee, IA in the amount of \$28,671 and the purchase of the police equipment necessary for basic police functions in the amount of \$12,000 from Racom Corp.
5. Approve a conflict of interest waiver for Ahlers & Cooney, P.C. between the City of Ottumwa and Wapello County Emergency Management Commission.
6. Resolution No. 158-2022, approving the contract, bonds and certificate of insurance for the Campground Shower and Office Facility 2022 Project.
7. Resolution No. 159-2022, approving updates to the Salary Schedule, effective July 1, 2022.
8. Resolution No. 164-2022, approving the contract, bonds and certificate of insurance for the 2022 Catch Basin Replacement Program.
9. Resolution No. 165-2022, approving the contract, bonds and certificate of insurance for the 2022 Sanitary Utility Access Program.
10. Cigarette Permit Applications for: Yesway #1012 (2508 N. Court St.), Yesway #1013 (534 Church St.), Yesway #1014 (502 W. Second St.), Yesway #1030 (1317 E. Mary St.); MAD Ave. Quik Shop (405 S. Madison Ave.).
- **11. Beer and/or liquor applications for: Mike's Pizza & Steakhouse, 2517 Northgate St.; Yesway Store #10012, 2508 N. Court; Yesway Store #10013, 534 Church St.; Yesway Store #10030, 1317 E. Mary St.; Yesway Store #10014, 502 W. Second; Red's Pub, 618 Church St., temporary outdoor service area for July 1, 2022; all applications pending final inspections.

C. APPROVAL OF AGENDA

D. ADMINISTRATORS REPORT TO COUNCIL AND CITIZENS:

1. Quarterly Report from Meet Ottumwa
2. Chief Farrington – Consideration of Reinstating K-9 Program.

All items on this agenda are subject to discussion and/or action.

E. IDENTIFICATION OF CITIZENS DESIRING TO COMMENT ON AGENDA ITEMS:

(When called upon by the Mayor, step to the microphone; state their name, address and agenda item to be addressed. The Mayor will invite you to address the Council when that topic is being discussed. Remarks will be limited to **three minutes or less**. The City Clerk shall keep the time and notify

the Mayor when the allotted time limit has been reached. Comments are to be directly germane to the agenda item being discussed; if not directly germane as determined by the Mayor will be ruled out of order.)

F. DEPARTMENTAL RECOMMENDATIONS/REPORTS:

1. Council Update on the property located at 817 Chester.

RECOMMENDATION: Receive update.

G. PUBLIC HEARING:

1. This is the time, place and date set for a public hearing approving the plans, specifications, form of contract and estimated cost for the North Market Street Façade Improvements Project.

A. Open the public hearing.

B. Close the public hearing.

C. Resolution No. 160-2022, approving the plans, specifications, form of contract and estimated cost for the North Market Street Façade Improvements Project.

RECOMMENDATION: Pass and adopt Resolution No. 160-2022.

H. RESOLUTIONS:

1. Resolution No. 122-2022, adopting the policy statements governing the operation of the City of Ottumwa's Build Ottumwa Program.

RECOMMENDATION: Pass and adopt Resolution No. 122-2022.

2. Resolution No. 161-2022, awarding the contract for the North Market Street Façade Improvements to Christner Contracting Inc., of Ottumwa, Iowa, in the amount of \$277,777.

RECOMMENDATION: Pass and adopt Resolution No. 161-2022.

3. Resolution No. 162-2022, approving the ten year lease agreement between the City of Ottumwa and the USDOT-FAA for space at the Ottumwa Regional Airport, and repealing Resolution No. 60-2022.

RECOMMENDATION: Pass and adopt Resolution No. 162-2022.

4. Resolution No. 163-2022, authorizing the City Administrator to sign a contract with GovHR for recruitment services not to exceed \$25,000 for the Director of Finance Position.

RECOMMENDATION: Pass and adopt Resolution No. 163-2022.

5. Resolution No. 166-2022, approving and authorizing Execution of an Amended and Restated Collateral Assignment related to an Agreement for Private Development with HCI52501 Investment, LLC.

RECOMMENDATION: Pass and adopt Resolution No. 166-2022.

6. Resolution No. 167-2022, approving an Agreement between the City of Ottumwa and the Greater Ottumwa Convention and Visitors Bureau, Inc.

RECOMMENDATION: Pass and adopt Resolution No. 167-2022.

7. Resolution No. 168-2022, approving an extension of the Agreement with Integrity Golf Group, LLC for the management of the Cedar Creek Golf Course.

RECOMMENDATION: Pass and adopt Resolution No. 168-2022.

8. Resolution No. 169-2022, approving a limited extension of the Agreement with Heartland Humane Society for the provision of animal care services.

RECOMMENDATION: Pass and adopt Resolution No. 169-2022.

I. ORDINANCES:

1. Ordinance No. 3197-2022, amending the zoning ordinance of the City of Ottumwa, Iowa, by conditionally rezoning property generally located at 1321 Asbury Drive in the City of Ottumwa and directing the Zoning Administrator to note the Ordinance Number and Date of this change on the official zoning map

RECOMMENDATION: Pass third consideration and adopt Ordinance No. 3197-2022.

2. Ordinance No. 3198-2022, repealing and replacing Chapter 7, Animals and Fowl, of the Municipal Code of the City of Ottumwa, Iowa.

RECOMMENATION: Pass first consideration of Ordinance No. 3198-2022.

J. PUBLIC FORUM:

The Mayor will request comments from the public on topics of city business or operations other than those listed on this agenda. Comments shall not be personalized and limited to three minutes or less. Comments not directly applicable to operations, inappropriate, or an improper utilization of meeting time, as determined by the Mayor, will be ruled out of order. When called upon by the Mayor, step to the microphone; give your name, address and topic on which to address the Council. The Council is not likely to take any action on your comments due to requirements of the Open Meetings Law. Pertinent questions, comments or suggestions may be referred to the appropriate department, city administrator or legal counsel for response, if relevant.

K. PETITIONS AND COMMUNICATIONS

ADJOURN

***** It is the goal of the City of Ottumwa that all City Council public meetings are accessible to people with disabilities. If you need assistance in participating in City Council meetings due to a disability as defined under the ADA, please call the City Clerk's Office at (641) 683-0621 at least one (1) business day prior to the scheduled meeting to request an accommodation. *****

**AMENDED – Temporary OSA was added.



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FAX COVER SHEET

City of Ottumwa

DATE: 6/17/2022 TIME: 3:20 PM NO. OF PAGES 4
(Including Cover Sheet)

TO: News Media CO: _____

FAX NO: _____

FROM: Christina Reinhard

FAX NO: 641-683-0613 PHONE NO: 641-683-0620

MEMO: AMENDED Agenda for the Regular City Council Meeting #20 to be held on 6/21/2022 at 5:30 P.M.

*** FAX MULTI TX REPORT ***

JOB NO. 1265
DEPT. ID 4717
PGS. 4

TX INCOMPLETE -----

TRANSACTION OK 96847834
916606271885
96823269
ERROR 96828482

Ottumwa Courier
KTVO
Ottumwa Waterworks
Tom FM



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JOB NO.	1265	
DEPT. ID	4717	
ST. TIME	06/17 15:19	
SHEETS	4	
FILE NAME		
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TRANSACTION OK	96847834	Ottumwa Courier
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JOB NO.	1262	
DEPT. ID	4717	
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SHEETS	4	
FILE NAME		
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TRANSACTION OK	96847834	Ottumwa Courier
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MEMO: Tentative Agenda for the Regular City Council Meeting #20 to be held on 6/21/2022 at 5:30 P.M. in Council Chambers.

OTTUMWA CITY COUNCIL MINUTES

REGULAR MEETING NO. 18
Council Chambers, City Hall

June 7, 2022
5:30 O'Clock P.M.

The meeting was called to order at 6:01 P.M.

Present were Council Member Galloway, McAntire, Hull, Pope, Roe and Mayor Johnson.

Hull moved, seconded by Roe to approve consent agent items: Mins. from Regular Mtg. No. 16 on May 17, 2022 and Special Mtg. No. 17 on May 24, 2022 as presented; Ack. April financial stmt. and pymt. of bills as submitted by Finance Dept.; Approve promotion of First Class Firefighter Raymond Covert to Master Firefighter effective July 1, 2022; Approve promotion of Master Firefighter Nathan West to Fire Captain effective July 1, 2022; Approve promotion of Fire Captain Pat Short to Asst. Fire Chief effective July 1, 2022; Approve appointment of Kurtis Stevens to Gatekeeper at Ottumwa/Wapello County Landfill on or about June 12, 2022; Approve appointment of Tyler Burns to Maint. Supv. at WPCF on or about June 12, 2022; Approve appointment of Ahillan Kumar to Seasonal Code Enforcement Inspector in Bldg. and Code Enforcement Dept. on or about June 12, 2022; Civil Service Comm. Elig. Lists for May 25, 2022: WPCF Maint. Tech Entrance and PW Equip. Operator Entrance; Alzheimer & Brain Awareness Month Proc.; Ottumwa Pride Month June 2022 Proc.; Juneteenth Proc. – June 19, 2022; Approve renewal and upgrade proposal with Neapolitan Labs to cont. hosting City Website; Approve purchase of two in-car camera systems from COBAN Tech., Inc. SF Mobile-Vision, Inc. for \$14,520; Res. No. 142-2022, Approving updates to City Personnel Policy; Res. No. 148-2022, setting June 21, 2022 as date of a public hearing on plans, specs., form of contract and est. of cost for N. Market St. Façade Improvements Project; Res. No. 152-2022, temp. assigning City Admin. as Interim Finance Dir. and Updating Auth. Signatories for City of Ottumwa; Res. No. 155-2022, accepting Proposed Engagement Letter from Bradley T. Barnes, CPA, P.C. for provision of accounting and consultation services for City of Ottumwa; Cigarette Permit Applications for: Elliot Oil Company – Albia Rd. BP (1340 Albia Rd.), N. Court BP (1301 N. Court St.), Penn & Jeff BP (1147 N. Jefferson), Richmond & Ferry BP (720 Richmond Ave.), W. Second BP (1049 W. Second), Casey's Gen. Stores - #7 (1001 E. Main), #1678 (346 Richmond Ave.), #2208 (1603 W. Second), #1886 (504 W. Mary St.), Fareway Stores #648 (1325 Albia Rd.), Smokin Hot, LLC (2604 N. Court, Suite A), Walgreens #1301 (327 W. 4th St.), Dollar Gen. #7179 (721 N. Quincy Ave.), Dollar Gen. #2898 (921 E. Main St.), Hy-Vee #2 C-Store (2547 N. Court), Hy-Vee #2 (2453 N. Court), Hy-Vee Drugstore (1140 N. Jefferson St.), Hy-Vee #1 (1025 N. Quincy), Hy-Vee #1 Gas (1027 N. Quincy), Walmart #1285 (1940 Venture Dr.), Smokin' Joe's Tobacco & Liquor Outlet #5 (1115 Albia Rd.), Fine Liquor & Tobacco (821 B Albia Rd.), Iowa Liquor & Tobacco (1021 E. Main St., Murphy USA #6945 (1939 Venture Drive), Ross Tobacco Shop, LLC (129 E. Second); Beer and/or liquor applications for: Applebee's, 1303 Vaughn Dr.; Jade Palace, 1404 Sherwood; Parkview Plaza/Hotel Ottumwa, 107 E. Second St. temp. OSA for the following dates: 6/26, 7/1, 7/8, 7/15, 7/22, 7/29/2022; The Owls Nest, 116 S. Court St. temp. OSA for 6/25-26/2022; Hy-Vee Ottumwa Area Greater Ottumwa Partners in Progress, temp. OSA at Jimmy Jones Shelter 6/30-7/2/2022; all applications pending final inspections. All ayes.

Pope moved, seconded by McAntire to approve the agenda as presented. All ayes.

City Admin. Rath presented Notice of Project Maintenance Closeout – Winger, stating job specifications were met and exceeded. He also presented on Nuisances and responsibility for abatement, as defined within our City Code, Ch. 24 ½. There's also a program called neighbors helping neighbors promoted by Ottumwa Leadership Academy through the United Way website to request help and also volunteer. Mayor Johnson inquired if there was anyone from the audience who wished to address on item on the agenda. There were none.

Hull moved, seconded by McAntire to approve the replacement of one threaded 36" rod on the slide gate at the Gateway Lift Station for \$5,390. All ayes.

This was the time, place and date set for a public hearing on Proposed Conveyance of Certain Real Property locally known as Legion Field to the Ottumwa Community School Dist. Rath discussed details on this property. Galloway questioned if it was the right thing to do by conveying a piece of our park during discussions/plans of Ottumwa Park Plan renovation. Why would we only sell this parcel for \$1? Also questioning on where the Agt. is at, did we already approve an Agt? Rath explained that the Agt. was presented when setting the PH date; there are deed restrictions for this conveyance where the City could have right of first refusal if OCSD decided to sell property and it would be sold back to us for \$1. Hull moved, seconded by McAntire to close the public hearing. All ayes.

Galloway moved, seconded by McAntire to table Res. No. 124-2022, proposal to convey certain real property locally known as Legion Field to OCSD. All ayes.

This was the time, place and date set for a public hearing on Proposed Conveyance of Certain Real Property, being a portion of the property locally known as Pickwick Park to the OCSD. Rath stated the school dist. plans to make improvements to Douma School and they need this property for said purpose. This parcel will be conveyed to OCSD for \$1. No objections were rec'd. Hull moved, seconded by McAntire to close the public hearing. All ayes.

Hull moved, seconded by Pope that Res. No. 141-2022, proposal to convey certain real property, being a portion of the property locally known as Pickwick Park to the OCSD, be passed and adopted. All ayes.

This was the time, place and date set for a public hearing on Proposed Conveyance of certain real property, Lot 1 of Ottumwa Airport Subdivision 5, to Joe Wiley. Community Development Dir. Simonson reported that Mr. Wiley owns Bridge City Truck Repair and plans on expanding his business footprint. No objections were rec'd. McAntire moved, seconded by Hull to close the public hearing. All ayes.

Hull moved, seconded by Roe that Res. No. 147-2022, approving and auth. the conveyance of certain real property, Lot 1 of Ottumwa Airport Subdivision 5, to Joe Wiley, for the sum of \$16,500, be passed and adopted. All ayes.

Roe moved, seconded by McAntire that Res. No. 119-2022, approving the DSM River Flood Protection Operation Plan, 2022, be passed and adopted. All ayes.

Hull moved, seconded by Pope that Res. No. 140-2022, award 2022 Campground Shower House and Office Bldg. project to RG Construction of Ottumwa, IA, in the amt. of \$573,872, be passed and adopted. Parks & Rec. Dir. Rathje reported three bids rec'd; budgeted \$800,000 for this project. All ayes.

Roe moved, seconded by Pope that Res. No. 143-2022, awarding contract for Catch Basin Replacement Program 2022 to DC Concrete & Construction of Douds, IA, in the amt. of \$55,187.50, be passed and adopted. PW Dir. Seals reported only one bid was rec'd for this project. All ayes.

Hull moved, seconded by Roe that Res. No. 144-2022, awarding contract for Sanitary Utility Access Program 2022 to DC Concrete & Construction of Douds, IA, in the amt. of \$56,600, be passed and adopted. Seals reported only one bid was rec'd for this project. All ayes.

Roe moved, seconded by McAntire that Res. No. 145-2022, approve purchase of Elgin Pelican Street Sweeper in the amt. of \$199,611 from MacQueen Equipment, be passed and adopted. Seals reported we currently operate two sweepers on a 5-yr replacement schedule. All ayes.

Pope moved, seconded by Hull that Res. No. 146-2022, approve purchase of Traffic Signal Microwave Detection System from MoboTrex for \$25,888 to be installed at the intersection of Hwy 149 and Rochester Ave., be passed and adopted. All ayes.

Roe moved, seconded by McAntire that Res. No. 149-2022, awarding contract for asbestos abatement and demolition of condemned property at 512 N. Green, to Weston McKee of Fairfield, IA, for total bid \$23,500, be passed and adopted. Simonson reported two abatement bids and three demo bids were received. All ayes.

Galloway moved, seconded by Hull that Res. No. 150-2022, awarding contract for asbestos abatement and demolition of condemned property at 126 N. Davis, to Dustin Smith and Dan Laursen, both of Ottumwa, IA, for total bid \$13,010, be passed and adopted. Simonson reported two abatement bids and three demo bids were received. All ayes.

Galloway moved, seconded by Roe that Res. No. 151-2022, awarding contract for asbestos abatement and demolition of condemned property at 250 S. Ward, to Dustin Smith and Dan Laursen, both of Ottumwa, IA, for total bid \$13,500, be passed and adopted. Simonson reported two abatement bids and three demo bids were received. All ayes.

Roe moved, seconded by McAntire that Res. No. 153-2022, appointing UMB Bank, N.A. of West Des Moines, IA, to serve as Paying Agent, Note Registrar, and Transfer Agent, Approving Paying Agent and Note Registrar and Transfer Agent Agt. and Auth. Execution of Agt., be passed and adopted. Rath reported this is for \$5,000,000 GO Capital Loan Notes, Series 2022A. All ayes.

Roe moved, seconded by McAntire that Res. No. 154-2022, approving and auth. a form of Loan Agt. and auth. and providing for the issuance of \$5,000,000 General Obligation Capital Loan Notes, Series 2022A, and levying a tax to pay the Notes; Approval of the Tax Exemption Cert., be passed and adopted. All ayes.

Hull moved, seconded by McAntire that Res. No. 156-2022, appointing UMB Bank, N.A. of West Des Moines, IA, to serve as Paying Agent, Note Registrar, and Transfer Agent, Approving Paying Agent and Note Registrar and Transfer Agent Agt. and Auth. Execution of Agt., be passed and adopted. Rath reported this is for \$3,000,000 Taxable GO Capital Loan Notes, Series 2022B. All ayes.

Hull moved, seconded by Roe that Res. No. 157-2022, approving and auth. a form of Loan Agt. and auth. and providing for the issuance of \$3,000,000 Taxable GO Capital Loan Notes, Series 2022B, and levying a tax to pay the Notes, be passed and adopted. All ayes.

Hull moved, seconded by Roe to pass the second consideration of Ord. No. 3197-2022, amending the zoning ordinance of the City of Ottumwa, IA, by conditionally rezoning property generally located at 1321 Asbury Dr. in the City of Ottumwa and directing the Zoning Admin. to note the Ord. No. and Date of this change on the official zoning map. All ayes.

Roe moved, seconded by Hull to pass the first consideration of Ord. No. 3199-2022, establishing a Human Rights Commission within the City of Ottumwa. Rath reported during the recent planning process to update the Comprehensive Plan – Our Ottumwa 2040 identifies celebrating diversity as one of

four overarching goals for the next twenty years. Based upon suggestions from the community to reinstate the local Human Rights Commission, it was decided that Ottumwa should be a leader in these efforts and design an advisory commission to help identify and address barriers within organizational systems, help meet the diverse needs of those individuals being served in the community and offer educational/advocacy opportunities to promote equity and inclusion. All ayes.

Hull moved, seconded by Roe to waive the second and third considerations, pass and adopt Ord. No. 3199-2022, establishing a Human Rights Commission within the City of Ottumwa. All ayes.

Rath requested to speak before moving on to the public forum, to clarify the tabled item no. G-1, Res. No. 124-2022, auth. conveyance of Legion Field to OCSD. Both the Legion Field and Pickwick Park conveyances include real estate purchase agts. Those Agt. were provided during our last mtg. when setting the PH. Adopting the conveyances tonight will also approve these agreements. The real estate purchase agt. defines a right of first refusal providing if the district should desire to sell the property at any time in the future, the district must first provide the City with opportunity to purchase property for \$1.00.

Galloway moved, seconded by McAntire to remove Item No. G-1, Res. No. 124-2022, from the table. All ayes.

Galloway moved, seconded by Pope that Res. No. 124-2022, proposal to convey certain real property locally known as Legion Field to OCSD, be passed and adopted. All ayes.

Mayor Johnson inquired if anyone from the audience wished to address an item not on the agenda. There were none.

There being no further discussion, Galloway moved, seconded by Pope that the meeting adjourn. All ayes.

Adjournment was at 7:29 P.M.

CITY OF OTTUMWA, IOWA

ATTEST:

Richard W. Johnson, Mayor

Christina Reinhard, CMC, City Clerk

Published in the Ottumwa Courier on 6/18/2022



June 21, 2022

TO: Ottumwa City Council Members

FROM: Richard W. Johnson, Mayor

SUBJECT: APPOINTMENT TO CITY BOARDS AND/OR COMMISSIONS

Recommend re-appointment to the Cemetery Board of Trustees, term to expire 07/01/2029.

Robert Snell
1929 Gladstone

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Jun 21, 2022

Park & Recreation
Department

Gene Rathje
Prepared By
Gene Rathje
Department Head



City Administrator Approval

AGENDA TITLE: **Contract for Tree Trimming and Tree and Stump removal services.**

 Public hearing required if this box is checked.

RECOMMENDATION: **Award contract to Bub's Tree Care, Ottumwa, Iowa for the price of \$50 per hour for any and all of the above services rendered.**

DISCUSSION: This contract is for removing and trimming of trees and grinding stumps on public property. This service is required by the State of Iowa Code. James Randal, owner and operator of Bub's Tree Care, has been the City of Ottumwa's contractor for tree services for the past 15 years. His bid was \$50 per hour. City staff mailed out 11 bids and only received 1 proposal. This contract will be for 1 year. It is renewable each anniversary date for 4 additional 1 year periods upon agreement of both parties and no changes in the contract.

Source of Funds: Operating budget

Budgeted Item: Budget Amendment Needed: No

CONTRACT

TREE TRIMMING, TREE REMOVAL, STUMP REMOVAL
CITY OF OTTUMWA
ALL DEPARTMENTS

WHEREAS, the City of Ottumwa issued a Request for Proposals ("RFP") on DATE, seeking a contractor to provide tree trimming and removal services for the City during the 2022-2023 season;

WHEREAS, NAME submitted a proposal in response to the City's RFP and has been determined to be the winning proposer on this solicitation.

NOW, THEREFORE, the parties agree as follows:

Section I - Description and purpose of this contract:

A. Description of Document

This document is a contract for the purpose of tree trimming and removing trees and stumps on public property in and for the City of Ottumwa, Iowa.

B. Parties

There are two parties to this contract:

1. The City of Ottumwa.
2. The Contractor is Bob's Tree Care

C. Purpose of Contract.

1. The Contractor desires to provide the services of tree trimming and tree and stump removal on public property in and for the City of Ottumwa at the agreed upon rates provided herein.
2. The City of Ottumwa desires to provide to the public, as required by the laws of the State of Iowa, the service of the removal of dead and diseased trees, limbs and branches of trees, which are located on public property, including but not limited to street right-of-ways.

D. Description of Contracted Premises.

The land served by this Contract shall include all land defined as "public property" located within the boundaries of the "City of Ottumwa," Iowa.

E. Contracted Services Description.

The services and equipment to provide to the City by the Contractor are as follows:

1. Tree removal.
2. Tree trimming.
3. Disposal of all tree parts after removal, this is to include: trunk, limbs, branches, leaves, moreover, all debris generated from tree trimming and removal. **PLEASE NOTE: the preferred method of limb and branch disposal is by "chipping".**
4. Stump removal.
5. Provide all tools, equipment and labor necessary for the performance of all work specified in this contract.

Section II - Contract Period:

This contract is for fiscal year July 1, 2022 to June 30, 2023. This agreement is renewable for four additional, one-year periods, agreeable to both parties with no change in the proposed contract.

Section III - Services provided by the City of Ottumwa:

- A. The City of Ottumwa agrees to provide the following services:
1. Receive complaints and requests regarding tree trimming and removal.
 2. Provide limited equipment and assistance in emergency cases.

Section IV -Procedure:

- A. The Park Director or Head of Department will receive calls regarding trimming and removal of trees from public property.

- B. The Park Director or Head of Department will investigate and determine the work to satisfy the complaint and fulfill the obligation of the City concerning tree trimming and removal.
- C. The Park Director or Head of Department will then notify the Contractor of the work to be done.
- D. After work is completed, the Contractor will request a final inspection. The Park Director or Head of Department will determine whether the work is satisfactory.
- E. Upon determination of satisfactory work by the Contractor, an invoice to the City to be paid within 30 days of receipt of the invoice.

Section V - Computation of Charges:

- A. Charges for services performed will be on an hourly basis, regardless of the number of Contractor employees used to perform said services.
- B. Hourly rate for services set under Section VIII - Terms of Contract.
- C. Invoices to the City will be submitted within 30 days after the work is satisfactorily performed.

Section VI - Hold Harmless Clause:

Contractor shall indemnify and hold the City of Ottumwa harmless from and against all liabilities, claims, debts, taxes, obligations, costs and expenses (including reasonable attorney's fees, court costs and costs of appeal) that the City may incur or sustain as a result of any breach of this Agreement or negligent or other wrongful conduct in the performance of this Agreement by Contractor. If a suit, action, arbitration or other proceeding is instituted by the City in connection with any controversy arising out of this Agreement or to interpret or enforce any rights under this Agreement, the City, as the prevailing party, shall be entitled to recover from the non-prevailing

party all attorney fees, costs, expert witness fees, and litigation expenses incurred by the City, including those incurred on appeal.

Section VII - Insurance Requirement:

- A. A certificate of insurance for liability, bodily injury and property damage satisfactory to the City, in the amount of \$300,000 for each person bodily injury and \$1,000,000 per occurrence of or aggregate limit, or \$1,000,000 combined single limit and \$250,000 for property damage. The City must be included as an additional insured to the certificate of insurance. Also, worker's compensation coverage in accordance with the State of Iowa statutes needs to be in force.

Section VIII – Termination:

- A. This Agreement may be terminated by either party upon fourteen (14) days written notice, without penalty, should the other party fail to perform or otherwise breach its obligations under the Agreement. This Agreement may be terminated by the City, without cause and for its convenience upon thirty (30) days written notice to the Contractor. Additionally, this Agreement may be terminated at any time upon mutual written agreement of the parties. Upon termination, Contractor shall be compensated for all services performed prior to the date of termination.

Section IX – Compliance with Laws:

- A. Contractor agrees that during the term of this Agreement and as a condition of the City's duty to perform under the terms of this Agreement that Contractor will be in compliance with all applicable federal and state laws, rules and regulations and the policies of the City.

Section X – Assignment:

- A. Contractor may not assign Contractor's rights or delegate Contractor's duties or obligations under this Agreement without the prior written consent of the City.

Section XI – Standard of Care:

- A. Services provided by Contractor under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

Section XII – Governing Law:

- A. This Agreement shall be governed by and construed pursuant to the laws of the State of Iowa and any claim or dispute which may arise out of this Agreement shall be heard in a court of competent jurisdiction in Wapello County, Iowa, unless otherwise agreed by the parties.

Section XIII – Independent Contractor Relationship:

- A. The parties intend that this Agreement create an independent contractor relationship between them. The City is interested only in the end results achieved by the Services of Contractor and that they conform to the requirements specified in this Agreement. The manner of achieving those results and the right to exercise control or direction as to the details, means and method by which the Services are completed is the responsibility of Contractor. Contractor is not an agent or employee of the City for any purpose. Neither party shall be considered to be an agent, master or servant of the other party for any purpose whatsoever, and neither has any authority to enter into any contract, assume any obligations or make any warranties or representations on behalf of the other. Contractor accordingly waives any claim to any other payment or benefit of any kind, quantity or amount on

account of performance, hereunder, except such payment as provided for in this Agreement. No workers' compensation insurance, or any other type of insurance (including, but not limited to, professional liability insurance) has been or will be obtained, by the City on account of Contractor. Contractor is responsible for all withholding taxes, social security, unemployment, workers compensation and other taxes and insurance and shall hold the City harmless for any claim for the same.

Section XIV - Miscellaneous Information:

- A. This contract relates to the budgets of all departments. When the budgeted amount for tree trimming, etc. reaches its maximum, the Contractor may have no City work until the next fiscal year. The City of Ottumwa's fiscal year runs from July 1 to June 30.
- B. The Contractor will agree to use the Ottumwa/Wapello County Landfill to dispose of all debris related to tree trimming, etc. The vehicle will need to be designed to hold and transport this kind of debris. Contractor shall be responsible for all disposal fees charged by the Ottumwa/Wapello County Landfill.

Section XV - Terms of Contract:

- A. The following rate will apply for the life of the contract as per bid of:
\$ 50.⁰⁰ per hour for services rendered regardless of the number of Contractor employees used for said services.

Section XVI – Drug Free Environment:

Contractor will ensure a drug free environment in accordance with Federal regulations.

IN WITNESS WHEREOF, this Contract executed in Triplicate on the date first herein written.

CITY OF OTTUMWA

Rick Johnson, Mayor

Chris Reinhard, City Clerk

Bub's Tree Care
Contractor

By: Bub's TREE CARE

James RANDALL JR. OWNER
Print Name and Title

7133, 120th AVE Lot 26
Address Ottumwa, IA
52501

CITY OF OTTUMWA, IOWA

PROPOSAL FOR TREE TRIMMING, TREE REMOVAL, & STUMP REMOVAL SERVICE

5/19/22

DATE

CITY OF OTTUMWA, IOWA
TO WHOM IT MAY CONCERN:

The undersigned has examined the advertisement for bid and specification for tree trimming, tree removal, and stump removal services and agrees to furnish said service in accordance with those documents.

\$50.⁰⁰

LABOR RATE PER HOUR FOR SERVICES RENDERED (regardless of the number of Contractor employees used for said services)

Bucket truck chipper chain saws

Dump Trailer stump grinder

Bobcat climbing gear

PLEASE LIST EQUIPMENT OWNED FOR THIS CONTRACT

It is understood that the City reserves the right to accept or reject any or all proposals, to disregard any informality in connection therewith, or to accept any proposal which in its opinion is to the best interest of the City. If my bid is accepted, the undersigned further agrees to enter into contract for said services according to instructions as issued by the City and at the time requested.

5/19/22
Date

Name of Company

By: Bubs Tree

JAMES RANDALL owner
Print Name and Title



[CITY OF]

OTTUMWA

PARKS AND RECREATION DEPARTMENT
101 CHURCH STREET
OTTUMWA, IOWA 52501

Jim Randall JR.
Bub's Tree care
7133 120th Ave. Lot 26
Ottumwa, IA 52501

OTTUMWA

CITY OF BRIDGES...RIVER OF OPPORTUNITY

May 19, 2022

Dear Ottumwa Area Tree Service Contractor:

The City of Ottumwa is putting out for bid the Tree Service contract for the 2022-2023 season. The contract is enclosed. If you are interested in bidding, please return your bid by 10 am, June 15, 2022, to:

Chris Rein hard

City Clerk

105 East 3rd Street

Ottumwa, Iowa 52501

The bids will be opened in the City Clerk's office at that time.

Sincerely,


Gene Rathje

Parks Director

City of Ottumwa

CITY OF OTTUMWA
Staff Summary

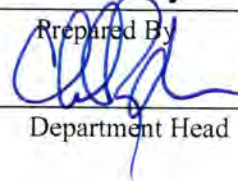
**** ACTION ITEM ****

Council Meeting of: Jun 21, 2022

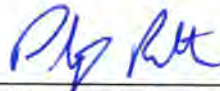
Police
Department

Lt. Mickey Hucks

Prepared By



Department Head



City Administrator Approval

AGENDA TITLE: Approve the purchase of (1) 2023 Ford Utility Police Interceptor Utility vehicle as an insurance replacement from Stiver's Ford of Waukee, IA in the amount of \$28,671.00 and the purchase of the police equipment necessary for basic police functions in the amount of \$12,000.00 from Racom Corporation.

****Public hearing required if this box is checked.****

The Board of Trustees on each Public hearing must be advised of this Staff Summary. If the Board of Trustees is not advised, the item will not be placed on the agenda.

RECOMMENDATION: Approve the purchase (1) 2023 Ford Utility Police Interceptor Utility vehicles and the purchase of the police equipment necessary for basic police functions.

DISCUSSION: The Police Department recommends replacing (1) vehicle #435, which was involved in an accident and subsequently deemed a total loss. The vehicle will be funded through insurance reimbursement and fleet funds as needed for equipment.

Stiver's Ford in Waukee, IA was awarded the state contract for the Ford Utility Police Interceptor. The new vehicles will be AWD (all wheel drive) with a V6 engine.

Ford Utility Police Interceptor AWD @ \$28,671.00
Equipment & Installation @ \$12,000.00

The cost of equipment and installation is an estimate due to not knowing what costs will be at the time of purchase. Any equipment that is transferable from an older vehicle to a new vehicle will be utilized and subtracted from the overall equipment costs.

Prepared for: , City of Ottumwa

2022 Explorer 4dr 4x4 Base (K8B)

Price Level: 255



Client Proposal

Prepared by:
Ron Reese
Office: 515-987-3697
Quote ID: 051322
Date: 05/13/2022



Prepared for:

City of Ottumwa
Prepared by: Ron Reese
05/13/2022



Stivers Ford | 1450 East Highway 6 Waukeae Iowa | 502638310

2022 Explorer 4dr 4x4 Base (K8B)

Price Level: 255 | Quote ID: 051322

Pricing Summary - Single Vehicle

MSRP

Vehicle Pricing

Base Vehicle Price	\$35,745.00
Options	\$545.00
Colors	\$0.00
Upfitting	\$0.00
Fleet Discount	\$0.00
Fuel Charge	\$0.00
Destination Charge	\$1,495.00
Subtotal	\$37,785.00

Pre-Tax Adjustments

Code	Description	MSRP
DISCOUNT	GOV DISCOUNT	-\$9,114.00
Total		\$28,671.00

Customer Signature

Acceptance Date

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.



Prepared for:

City of Ottumwa

Prepared by: Ron Reese

05/13/2022

Stivers Ford | 1450 East Highway 6 Waukee Iowa | 502638310

2022 Explorer 4dr 4x4 Base (K8B)

Price Level: 255 | Quote ID: 051322

As Configured Vehicle

Description

Base Vehicle

Base Vehicle Price (K8B)

Packages

Equipment Group 100A

Includes:

- Transmission: 10-Speed Automatic
- 3.53 Non-Limited-Slip Rear Axle Ratio
- GVWR: 6,160 lbs
- Tires: P255/65R18 AS BSW

Includes mini spare

- Wheels: 18" 5-Spoke Silver-Painted Aluminum
- Cloth Captain's Chairs

Includes 8-way power driver's seat with power function for tilt and recline, 4-way manual front passenger seat with fore/aft and recline and 2-way manually adjustable driver and front passenger head restraints.

- Radio: AM/FM Stereo

Includes MP3 capability, 6 speakers, speed-compensated volume and SiriusXM radio with a 3 month prepaid subscription. Service is not available in Alaska and Hawaii. SiriusXM audio and data services each require a subscription sold separately, or as a package, by Sirius XM radio inc. If you decide to continue service after your trial, the subscription plan you choose will automatically renew thereafter and you will be charged according to your chosen payment method at then-current rates. Fees and taxes apply. To cancel you must call SiriusXM at 1-866-635-2349. See SiriusXM customer agreement for complete terms at www.siriusxm.com. All fees and programming subject to change. Trial subscriptions not available in Alaska and Hawaii.

- FordPass Connect

Includes 4G LTE Wi-Fi hotspot connects up to 10 devices with wireless data trial that begins upon AT&T activation and expires at the end of 3 months or when 3GB of data is used, whichever comes first, but cannot extend beyond the trial subscription period for remote features. To activate, go to www.att.com/ford, remotely start, lock and unlock vehicle, schedule specific times to remotely start vehicle, locate parked vehicle and check vehicle status (FordPass Connect, the Ford Pass App., and Complimentary Connected Services are required for remote features (see FordPass terms for details). Connected Service and features depend on compatible AT&T network availability. Evolving technology/cellular networks/vehicle capability may limit functionality and prevent operation of connected features. Connected services excludes Wi-Fi hotspot.). Note: Ford Telematics and data services prep included for fleet only: FordPass Connect 4G Wi-Fi modem provides data to support telematics and data services including but not limited to vehicle location, speed, idle time, fuel, vehicle diagnostics and maintenance alerts. Device enables telematics services through Ford or authorized providers. Activate at www.fleet.ford.com or call 833-FCS-Ford. (833-327-3673).

- SYNC 3 Communications & Entertainment System

Includes enhanced voice recognition, 8" LCD capacitive touchscreen in center stack with swipe capability, AppLink, 911 Assist, Apple Car Play and Android Auto compatibility and 1 "A" and 1 "C" USB ports in the media hub.

Powertrain

Transmission: 10-Speed Automatic

3.58 Non-Limited-Slip Rear Axle Ratio

GVWR: 6,160 lbs

Wheels & Tires

Tires: P255/65R18 AS BSW

Includes mini spare.

Wheels: 18" 5-Spoke Silver-Painted Aluminum

Seats & Seat Trim

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.

Prepared for:
City of Ottumwa
Prepared by: Ron Reese
05/13/2022



Stivers Ford | 1450 East Highway 6 Waukee Iowa | 502838310

2022 Explorer 4dr 4x4 Base (K8B)

Price Level: 255 | Quote ID: 051322

As Configured Vehicle (cont'd)

Description

Cloth Captain's Chairs

Includes 3-way power driver's seat with power function for tilt and recline. 4-way manual front passenger seat with fore/aft and recline and 2-way manually adjustable driver and front passenger head restraints.

Other Options

Monotone Paint Application

119.1" Wheelbase

Radio: AM/FM Stereo

Includes MP3 capability, 6 speakers, speed-compensated volume and SiriusXM radio with a 3 month prepaid subscription. Service is not available in Alaska and Hawaii. SiriusXM audio and data services each require a subscription sold separately, or as a package, by Sirius XM radio inc. If you decide to continue service after your trial, the subscription plan you choose will automatically renew thereafter and you will be charged according to your chosen payment method at then-current rates. Fees and taxes apply. To cancel you must call SiriusXM at 1-866-635-2349. See SiriusXM customer agreement for complete terms at www.siriusxm.com. All fees and programming subject to change. Trial subscriptions not available in Alaska and Hawaii.

includes:

- FordPass Connect

Includes 4G LTE Wi-Fi hotspot connects up to 10 devices with wireless data trial that begins upon AT&T activation and expires at the end of 3 months or when 3GB of data is used, whichever comes first, but cannot extend beyond the trial subscription period for remote features. To activate, go to www.att.com/ford, remotely start, lock and unlock vehicle, schedule specific times to remotely start vehicle, locate parked vehicle and check vehicle status (FordPass Connect, the Ford Pass App., and Complimentary Connected Services are required for remote features (see FordPass terms for details). Connected Service and features depend on compatible AT&T network availability. Evolving technology/cellular networks/vehicle capability may limit functionality and prevent operation of connected features. Connected services excludes Wi-Fi hotspot.). Note: Ford Telematics and data services prep included for fleet only: FordPass Connect 4G Wi-Fi modem provides data to support telematics and data services including but not limited to vehicle location, speed, idle time, fuel, vehicle diagnostics and maintenance alerts. Device enables telematics services through Ford or authorized providers. Activate at www.fleet.ford.com or call 833-FCS-Ford. (833-327-3673).

- SYNC 3 Communications & Entertainment System

Includes enhanced voice recognition, 8" LCD capacitive touchscreen in center stack with swipe capability, AppLink, 911 Assist, Apple Car Play and Android Auto compatibility and 1 "A" and 1 "C" USB ports in the media hub.

Class IV Trailer Tow Package

Emissions

50 State Emissions System

Flexible Fuel Vehicle (FFV) system is standard equipment for vehicles with the 3.3L Ti-VCT V6 FFV engine.

Interior Color

Sandstone w/Cloth Captain's Chairs

Fleet Options

Engine: 3.3L Ti-VCT V6 FFV (Fleet)

Requires valid FIN code. Deletes standard active grille shutters.

Oxford White

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.

Prepared for:

City of Ottumwa
Prepared by: Ron Reese
05/13/2022



Stivers Ford | 1450 East Highway 6 Waukee Iowa | 502638310

2022 Explorer 4dr 4x4 Base (K8B)

Price Level: 255 | Quote ID: 051322

Warranty

Standard Warranty

Basic

Distance 36,000 miles Months 36 months

Powertrain

Distance 60,000 miles Months 60 months

Corrosion Perforation

Distance Unlimited miles Months 60 months

Roadside Assistance

Distance 60,000 miles Months 60 months

Accessories

Distance 36,000 miles Months 36 months

Prices and content availability as shown are subject to change and should be treated as estimates only. Actual base vehicle, package and option pricing may vary from this estimate because of special local pricing, availability or pricing adjustments not reflected in the dealer's computer system. See salesperson for the most current information.

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Jun 21, 2022

Philip Rath

Prepared By

Administration

Department

Department Head



City Administrator Approval

AGENDA TITLE: Approve a Conflict of Interest Waiver for Ahlers & Cooney, P.C. between the City of Ottumwa and Wapello County Emergency Management Commission.

Public hearing required if this box is checked.

RECOMMENDATION: Approve a Conflict of Interest Waiver for Ahlers & Cooney, P.C. between the City of Ottumwa and Wapello County Emergency Management Commission in order to draft an Agreement between the entities.

DISCUSSION: Tim Richmond of Wapello County Emergency Management and the city staff have been in communication regarding a mutually beneficial real estate transactions between the two parties. A structured agreement between the two entities will be needed to facilitate any such transactions. Staff contacted Attorney Sabroske to draft such an agreement. When a potential conflict of interest was identified, Sabroske forwarded the attached waiver for approval. If the parties approve the waiver A&C may proceed.

Source of Funds: N/A

Budgeted Item:

Budget Amendment Needed:



Ahlers & Cooney, P.C.
Attorneys at Law
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231
Phone: 515-243-7611
Fax: 515-243-2149
www.ahlerslaw.com
Jenna H.B. Sabroske
515.246.0328
jsabroske@ahlerslaw.com

June 10, 2022

Via email only: rathp@ottumwa.us
City of Ottumwa, Iowa
c/o Phil Rath, City Administrator
105 E. Third Street
Ottumwa, IA 52501

RE: Conflict Waiver – Sale of Property to Wapello County Emergency Management Commission

Dear Phil:

Recently, we have been asked to represent the City of Ottumwa, Iowa (“City”) in connection with a proposed real estate purchase agreement by and between the City and Wapello County Emergency Management Commission (“Commission”), pursuant to which the City proposes to sell certain real property to the Commission. As we understand it, the Commission has several member entities, including Wapello County, Iowa and the City of Eldon, Iowa. Attorneys in our firm represent Wapello County and the City of Eldon in financing matters. While Wapello County and the City of Eldon will not be direct parties to the proposed purchase agreement, their membership in the Commission creates at least an appearance of a potential conflict of interest between current clients of the firm. The purpose of this letter is to inform you that these concurrent representations by the firm present an ethical conflict of interest for our firm and to seek your consent to our representation of the City in this matter.

While we will not be asked to represent Commission on this transaction, our firm’s representation of the City in the proposed purchase agreement, opposite the Commission, is a concurrent conflict of interest under the ethical standards governing the practice of law in Iowa. From a legal perspective, a concurrent conflict of interest exists under Iowa rules if (1) *the representation of one client will be directly adverse to another client*; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer. We do not believe that there is a risk that our representation of any client would be limited under the present circumstances, but our firm’s representation of the City in this transaction would be directly adverse to Commission and they are concurrent representations, given that the firm represents member entities of the Commission in other matters.

The state’s ethical rules allow a law firm to concurrently represent two adverse parties if (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another represented

June 10, 2022

Page 2

by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing. We believe confidently that our attorneys will be able to provide competent and diligent representation to each of their affected clients as the matters being addressed are totally unrelated, the representation is not prohibited by law, and there will not be an assertion of a claim as described. The purpose of this letter is to seek the written consent of the City to proceed.

Please be aware that the Rules of Professional Conduct require that we represent all our clients with diligence and that we protect and maintain their confidences. Accordingly, we will not disclose or use any confidential information that we may have acquired about either party to the other in our prior or ongoing representation of the parties.

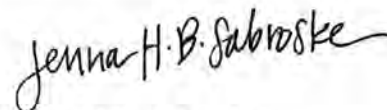
In deciding whether to consent, you should consider how our representation as described above could or may affect the City. For example, clients that are asked to waive or consent to conflicts should consider whether there is any material risk that their attorney will be less diligent on their behalf due to the conflict. Similarly, clients should consider whether there is any material risk that their confidential information or other proprietary matters will be used adversely to them due to the conflict. Although you are not required to do so, we recommend that you seek the advice of a lawyer outside of our firm if you have any questions or concerns about whether you should sign this conflict waiver.

The purpose of this letter is to seek the written consent of the City to proceed. We are also seeking consent from the Commission, Wapello County, and the City of Eldon by a separate letter like this one. Although we are asking each entity to waive this conflict of interest so that we can represent the City in connection with preparation of the purchase agreement, neither party is obligated to do so. If either party objects to the waiver, we will not undertake work on this matter.

Please feel free to contact me with any questions or concerns. If you consent to the concurrent representation, please so indicate below and return a copy of this fully executed letter to my attention. Thank you.

Very truly yours,

AHLERS & COONEY, P.C.



Jenna H.B. Sabroske

JHBS:mp

June 10, 2022

Page 3

The City Council of City of Ottumwa, Iowa hereby waives and consents to any actual, potential, or perceived conflict of interest associated with Ahlers & Cooney, P.C.'s representation of City of Ottumwa, Iowa in the above referenced transaction, despite a concurrent representation of Wapello County, Iowa and the City of Eldon, Iowa, each of which is a member of Wapello County Emergency Management Commission.

ACKNOWLEDGED AND AGREED TO BY:

CITY OF OTTUMWA, IOWA

By: _____ Dated: _____

Title: _____

*Authorized by action of the governing body, approved on _____, 2022.

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of : Jun 21, 2022

Park & Recreation
Department

Gene Rathje
Prepared By
Gene Rathje
Department Head



City Administrator Approval

AGENDA TITLE: Resolution #158-2022. Approving the contract, bonds, and certificate of insurance for the Campground Shower House project.

 Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt Resolution #158-2022.

DISCUSSION: This project involves the construction of a new shower house in the Ottumwa Park Campground.

These are the required bonds, certificate of insurance and signed contract with RG Construction of Ottumwa for the above referenced project and are now on file with the City Clerk. This project was awarded at the June 7, 2022 City Council meeting in the amount of \$573,872.

Source of Funds: FY21/22 CIP, Grants, ARPA Funds.

Budgeted Item: Budget Amendment Needed: No

RESOLUTION #158 -2022

A RESOLUTION APPROVING THE CONTRACT, BONDS, AND CERTIFICATE OF INSURANCE FOR THE OTTUMWA PARK CAMPGROUND SHOWER HOUSE PROJECT

WHEREAS, The City Council of the City of Ottumwa, Iowa accepted bids for the above referenced project and awarded the contract to RG Construction of Ottumwa, Iowa in the amount of \$573,872.

WHEREAS, All proper bonds and a certificate of insurance have been filed with the City Clerk and the contract executed.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, IOWA THAT: The contract, bond, and certificate of insurance with RG Construction of Ottumwa, Iowa for the above referenced project are hereby approved.

APPROVED, PASSED, AND ADOPTED, this 21st day of June, 2022.

CITY OF OTTUMWA, IOWA

Richard W. Johnson, Mayor

ATTEST:

Christina Reinhard, City Clerk

DOCUMENT 00501
OTTUMWA AGREEMENT FORM
CONTRACT

This contract made and entered into in triplicate at Ottumwa, IA this Twenty-first day of June 2022 by and between **CITY OF OTTUMWA, IA** hereinafter called the "OWNER" and RG Construction, Inc. hereinafter called the "CONTRACTOR".

WITNESSETH:

The Contractor hereby agrees to furnish all labor, tools, materials, transportation and equipment necessary to fulfill the contract consisting of: Campground Shower House and Office Facility

In the following location to wit: Ottumwa City Park

It is understood and agreed:

The "Owner" shall have the right to deduct said liquidated damages from any monies in its hands, otherwise due, or to become due, to said Contractor or to sue for and recover compensation for damages for no-performance of this contract.

The Contractor must comply with all Federal, State and Local Laws and Ordinances. In addition, all OSHA, NFPA and ADA regulations must be complied with.

Owner is exempt from Iowa State Sales Tax and the Local Option Tax on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Contract Price. The Owner shall issue a tax exemption certificate to the Contractor authorizing purchase of the materials for this work without payment of sales and local option tax. If any sub-contractor will be purchasing materials or equipment to be incorporated into this work, the Contractor shall request a tax exemption certificate from the Owner, which will authorize the sub-contractor to purchase such materials without paying the sales or local option taxes.

In the event any service tax is paid by the Contractor, the Contractor shall also include in the Form 35-002, aforementioned, a listing of such services furnished which become an integral part of the project under the contract.

Upon completion of said work, the Owner agrees to pay to the Contractor therefore, the prices as set out, said payment to be made upon presentation of an invoice for aforesaid improvement.

A certificate of insurance for liability, bodily injury, and property damage satisfactory to the Owner, in the amount of \$300,000. for each person bodily injury and \$1,000,000 per occurrence of or aggregate limit, or \$1,000,000 combined single limit. The Owner must be included as an additional insured to the certificate of insurance. Also, Worker's Compensation coverage in accordance with State of Iowa statutes must be provided.

Contractor hereby agrees to and shall defend, indemnify and save harmless the Owner and any jurisdiction or agency issuing permits for any work included in the improvement, their officers, agents and representatives from all suits, actions, loss, damage, expense, cost, or claims of any character or any nature brought on account of any injuries including death or damage sustained by any person or property arising out of the work done, whether such injuries to person or damage to property are due or claim to be due to any negligence of the Owner, it's employees or agents or any other person, in fulfillment of the Contract under the terms of this agreement, or on account of any act or omission by the Contractor or his agents, or from any claims or amounts arising or recovered under Worker's Compensation laws or any other law, by-laws, ordinance or order of decree.

Bid form, Request for Bids, Work Required, and Specifications. Documents and your detailed proposal automatically become a part of the contract and to the same effect as if each of them has been set forth in complete detail herein.

Contractor shall, at the option of the Owner defend the Owner with appropriate counsel and shall further bear all costs and expenses, including the expense of counsel, in defense of any suit arising hereunder.

Contractor will insure a drug free environment in accordance with Federal regulations.

IN WITNESS WHEREOF, this Contract has been executed in triplicate on the date first herein written.

CITY OF OTTUMWA

Richard W. Johnson, Mayor

ATTEST:

Chris Reinhard, City Clerk

JB Construction, LLC
Contractor
By: [Signature]
Address: 215 E. 4th St.
Ottumwa, IA 52501

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Twenty-first day of June in the year Two Thousand Twenty-two

(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

City of Ottumwa
105 East 3rd Street
Ottumwa, Iowa 52501

and the Contractor:

(Name, legal status, address and other information)

RG Construction Inc.
215 East 4th Street
Ottumwa, Iowa 52501

for the following Project:

(Name, location and detailed description)

City Campground Shower and Office Facility
Ottumwa Iowa
Construct 1367 GSF Shower House and Office Building in Ottumwa City Park

The Architect:

(Name, legal status, address and other information)

Willett Hofmann & Associates
625 32nd Ave SW
Cedar Rapids, Iowa 52404

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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User Notes:

(3B9ADA2A)

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS**
- 2 THE WORK OF THIS CONTRACT**
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- 4 CONTRACT SUM**
- 5 PAYMENTS**
- 6 DISPUTE RESOLUTION**
- 7 TERMINATION OR SUSPENSION**
- 8 MISCELLANEOUS PROVISIONS**
- 9 ENUMERATION OF CONTRACT DOCUMENTS**

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

The date of this Agreement.

A date set forth in a notice to proceed issued by the Owner.

Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

Init.

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User Notes:

(3B9ADA2A)

(Check one of the following boxes and complete the necessary information.)

Not later than () calendar days from the date of commencement of the Work.

By the following date: November 30, 2022

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Five Hundred Seventy-three Thousand Eight Hundred Seventy-two Dollars and Zero Cents (\$ 573,872.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
------	-------

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

Item	Price
------	-------

§ 4.4 Unit prices, if any: (Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.5 Liquidated damages, if any: (Insert terms and conditions for liquidated damages, if any.)

\$100/working day

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

Init.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

N/A

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 1st day of the next month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five (5%)

Init.

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§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

N/A

(Paragraphs Deleted)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

N/A

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

N/A

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

N/A %

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

N/A

init.

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User Notes:

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§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

Arbitration pursuant to Section 15.4 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

N/A

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:

(Name, address, email address, and other information)

Gene Rathje
105 East 3rd Street
Ottumwa, Iowa 52501

§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

Rod Grooms
215 E 4th Street
Ottumwa, Iowa 52501

Init.

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

N/A

§ 8.7 Other provisions:

N/A

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

.5 Drawings

Number	Title	Date
00015-see attached	List of Drawings	4/20/22

.6 Specifications

Section	Title	Date	Pages
00010-see attached	Table of Contents	4/20/22	1

.7 Addenda, if any:

Number	Date	Pages
00901-as issued	5/13/22	5

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

Init.

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

N/A] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

The Sustainability Plan:

Title	Date	Pages
-------	------	-------

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

N/A

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Richard W. Johnson, Mayor
(Printed name and title)



CONTRACTOR (Signature)

Rod Grooms, President
(Printed name and title)

Init.

Additions and Deletions Report for AIA® Document A101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:27:50 ET on 06/10/2022.

PAGE 1

AGREEMENT made as of the Twenty-first day of June in the year Two Thousand Twenty-two

...

City of Ottumwa
105 East 3rd Street
Ottumwa, Iowa 52501

...

RG Construction Inc.
215 East 4th Street
Ottumwa, Iowa 52501

...

City Campground Shower and Office Facility
Ottumwa Iowa
Construct 1367 GSF Shower House and Office Building in Ottumwa City Park

...

Willett Hofmann & Associates
625 32nd Ave SW
Cedar Rapids, Iowa 52404

PAGE 2

The date of this Agreement.

PAGE 3

By the following date: November 30, 2022

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Five Hundred Seventy-three Thousand Eight Hundred Seventy-two Dollars and Zero Cents (\$ 573,872.00), subject to additions and deductions as provided in the Contract Documents.

...

\$100/working day

PAGE 4

N/A

...

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 1st day of the next month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

...

Five (5%)

PAGE 5

N/A

...

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

...

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

...

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

...

N/A

...

N/A

...

N/A %

...

N/A

PAGE 6

Litigation in a court of competent jurisdiction

...

N/A

...

Gene Rathje
105 East 3rd Street
Ottumwa, Iowa 52501

...

Rod Grooms
215 E 4th Street
Ottumwa, Iowa 52501

PAGE 7

N/A

...

N/A

...

00015-see attached

List of Drawings

4/20/22

...

00010-see attached

Table of Contents

4/20/22

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...

00901-as issued

5/13/22

5

PAGE 8

[N/A] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:

...

N/A

...

Richard W. Johnson, Mayor

Rod Grooms, President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:27:50 ET on 06/10/2022 under Order No. 2114332711 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ - 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Bond No. 54245253

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

CONTRACTOR:

(Name, legal status and address)

R.G. Construction, Limited Liability Company
215 East 4th Street
Ottumwa, IA 52501

SURETY:

(Name, legal status and principal place of business)

United Fire & Casualty Company
P.O. Box 73909
Cedar Rapids, IA 52407-3909

Mailing Address for Notices

P.O. Box 73909
Cedar Rapids, IA 52407-3909

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:

(Name, legal status and address)

City of Ottumwa
105 E. Third St.
Ottumwa, IA 52501

CONSTRUCTION CONTRACT

Date: June 21, 2022

Amount: \$ 573,872.00 (Five Hundred Seventy-three Thousand Eight Hundred Seventy-two And No/100)

Description: City Campground Shower Shower and Office Facility, Ottumwa, IA
(Name and location)

BOND


Date: June 21, 2022

(Not earlier than Construction Contract Date)

Amount: \$ 573,872.00 (Five Hundred Seventy-three Thousand Eight Hundred Seventy-two And No/100)

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company:  (Corporate Seal)
R.G. Construction, Limited Liability Company

Signature: _____

Name: R.G. Construction
and Title: Owner

SURETY

Company:  (Corporate Seal)
United Fire & Casualty Company

Signature: _____

Name: Dione R. Young
and Title: Attorney-in-Fact

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Holmes, Murphy and Associates, LLC
2727 Grand Prairie Parkway
Waukee, IA 50263
(515) 223-6800

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)
Willett Hofmann & Associates
625 32nd Ave SW
Cedar Rapids, IA 52404

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

SURETY

Company: _____
(Corporate Seal)

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address

Bond No. 54245253

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Payment Bond

CONTRACTOR:

(Name, legal status and address)

R.G. Construction, Limited Liability Company
215 East 4th Street
Ottumwa, IA 52501

SURETY:

(Name, legal status and principal place of business)

United Fire & Casualty Company
P.O. Box 73909
Cedar Rapids, IA 52407-3909
Mailing Address for Notices
P.O. Box 73909
Cedar Rapids, IA 52407-3909

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:

(Name, legal status and address)

City of Ottumwa
105 E. Third St.
Ottumwa, IA 52501

CONSTRUCTION CONTRACT

Date: June 21, 2022

Amount: \$ 573,872.00 (Five Hundred Seventy-three Thousand Eight Hundred Seventy-two And No/100)

Description: City Campground Shower Shower and Office Facility, Ottumwa, IA
(Name and location)

BOND

Date: June 21, 2022

(Not earlier than Construction Contract Date)

Amount: \$ 573,872.00 (Five Hundred Seventy-three Thousand Eight Hundred Seventy-two And No/100)

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

R.G. Construction, Limited Liability Company

Signature: 

Name *Bob Spawms*
and Title: *Owner*

SURETY

Company: *(Corporate Seal)*

United Fire & Casualty Company

Signature: 

Name *Dione R. Young*
and Title: *Attorney-in-Fact*

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Holmes, Murphy and Associates, LLC
2727 Grand Prairie Parkway
Waukee, IA 50263
(515) 223-6800

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)
Willett Hofmann & Associates
625 32nd Ave SW
Cedar Rapids, IA 52404

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company: _____ *(Corporate Seal)*

SURETY
Company: _____ *(Corporate Seal)*

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address



UNITED FIRE & CASUALTY COMPANY, CEDAR RAPIDS, IA
 UNITED FIRE & INDEMNITY COMPANY, WEBSTER, TX
 FINANCIAL PACIFIC INSURANCE COMPANY, LOS ANGELES, CA
 CERTIFIED COPY OF POWER OF ATTORNEY
 (original on file at Home Office of Company – See Certification)

Inquiries: Surety Department
 118 Second Ave SE
 Cedar Rapids, IA 52401

KNOW ALL PERSONS BY THESE PRESENTS, That United Fire & Casualty Company, a corporation duly organized and existing under the laws of the State of Iowa; United Fire & Indemnity Company, a corporation duly organized and existing under the laws of the State of Texas; and Financial Pacific Insurance Company, a corporation duly organized and existing under the laws of the State of California (herein collectively called the Companies), and having their corporate headquarters in Cedar Rapids, State of Iowa, does make, constitute and appoint

CRAIG E. HANSEN, JAY D. FREIERMUTH, BRIAN M. DEIMERLY, CINDY BENNETT, ANNE CROWNER, TIM MCCULLOH, STACY VENN, DIONE R. YOUNG, MICHELLE GRUIS, KATHLEEN BREWER, SETH D. ROOKER, STACIE CHRISTENSEN, SHELBY GREINER, GINGER HOKE, JOHN CORD, JOE TIERNAN, JENNIFER MARINO, BEN WILLIAMS, EACH INDIVIDUALLY

their true and lawful Attorney(s)-in-Fact with power and authority hereby conferred to sign, seal and execute in its behalf all lawful bonds, undertakings and other obligatory instruments of similar nature provided that no single obligation shall exceed \$ 100,000,000.00 and to bind the Companies thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Companies and all of the acts of said Attorney, pursuant to the authority hereby given and hereby ratified and confirmed.

The Authority hereby granted is continuous and shall remain in full force and effect until revoked by United Fire & Casualty Company, United Fire & Indemnity Company, and Financial Pacific Insurance Company.

This Power of Attorney is made and executed pursuant to and by authority of the following bylaw duly adopted by the Boards of Directors of United Fire & Casualty Company, United Fire & Indemnity Company, and Financial Pacific Insurance Company.

"Article VI – Surety Bonds and Undertakings"

Section 2, Appointment of Attorney-in-Fact. "The President or any Vice President, or any other officer of the Companies may, from time to time, appoint by written certificates attorneys-in-fact to act in behalf of the Companies in the execution of policies of insurance, bonds, undertakings and other obligatory instruments of like nature. The signature of any officer authorized hereby, and the Corporate seal, may be affixed by facsimile to any power of attorney or special power of attorney or certification of either authorized hereby; such signature and seal, when so used, being adopted by the Companies as the original signature of such officer and the original seal of the Companies, to be valid and binding upon the Companies with the same force and effect as though manually affixed. Such attorneys-in-fact, subject to the limitations set of forth in their respective certificates of authority shall have full power to bind the Companies by their signature and execution of any such instruments and to attach the seal the Companies thereto. The President or any Vice President, the Board of Directors or any other officer of the Companies may at any time revoke all power and authority previously given to any attorney-in-fact

IN WITNESS WHEREOF, the COMPANIES have each caused these presents to be signed by its vice president and its corporate seal to be hereto affixed this

18th day of March, 2022



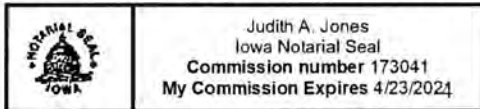
UNITED FIRE & CASUALTY COMPANY
 UNITED FIRE & INDEMNITY COMPANY
 FINANCIAL PACIFIC INSURANCE COMPANY

By: *Dennis J. Richmann*
 Vice President

State of Iowa, County of Linn, ss:

On 18th day of March, 2022, before me personally came Dennis J. Richmann

to me known, who being by me duly sworn, did depose and say; that he resides in Cedar Rapids, State of Iowa; that he is a Vice President of United Fire & Casualty Company, a Vice President of United Fire & Indemnity Company, and a Vice President of Financial Pacific Insurance Company the corporations described in and which executed the above instrument; that he knows the seal of said corporations; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporations and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporations.



Judith A. Jones
 Notary Public
 My commission expires: 4/23/2024

I, Mary A. Bertsch, Assistant Secretary of United Fire & Casualty Company and Assistant Secretary of United Fire & Indemnity Company, and Assistant Secretary of Financial Pacific Insurance Company, do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the bylaws and resolutions of said Corporations as set forth in said Power of Attorney, with the ORIGINALS ON FILE IN THE HOME OFFICE OF SAID CORPORATIONS, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

In testimony whereof I have hereunto subscribed my name and affixed the corporate seal of the said Corporations this 21st day of June, 2022.



By: *Mary A. Bertsch*
 Assistant Secretary,
 UF&C & UF&I & FPIC



RGCONST-02

THARDIE

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/13/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Rominger Insurance Agency 109 W 2nd St E Ottumwa, IA 52501	CONTACT NAME: PHONE (A/C, No, Ext): (641) 684-6575 FAX (A/C, No): E-MAIL ADDRESS: timhardie@pcsia.net
INSURER(S) AFFORDING COVERAGE NAIC #	
INSURED	INSURER A : Owners Insurance Company 32700 INSURER B : Auto-Owners Insurance Company 18988 INSURER C : INSURER D : INSURER E : INSURER F :

RG Construction LLC
215 East 4th St
Ottumwa, IA 52501

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS																					
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B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N If yes, describe under DESCRIPTION OF OPERATIONS below Y N/A			A106544246	10/28/2021	10/28/2022	<table border="0" style="width: 100%;"> <tr><td><input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER</td><td style="text-align: right;">\$</td><td></td></tr> <tr><td>E.L EACH ACCIDENT</td><td style="text-align: right;">\$</td><td style="text-align: right;">1,000,000</td></tr> <tr><td>E.L DISEASE - EA EMPLOYEE</td><td style="text-align: right;">\$</td><td style="text-align: right;">1,000,000</td></tr> <tr><td>E.L DISEASE - POLICY LIMIT</td><td style="text-align: right;">\$</td><td style="text-align: right;">1,000,000</td></tr> </table>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	\$		E.L EACH ACCIDENT	\$	1,000,000	E.L DISEASE - EA EMPLOYEE	\$	1,000,000	E.L DISEASE - POLICY LIMIT	\$	1,000,000									
<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	\$																											
E.L EACH ACCIDENT	\$	1,000,000																										
E.L DISEASE - EA EMPLOYEE	\$	1,000,000																										
E.L DISEASE - POLICY LIMIT	\$	1,000,000																										

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Rod Groom is excluded from Workers Compensation Coverage. City of Ottumwa is an Additional insured for Commercial General Liability if required in a written contract.

CERTIFICATE HOLDER City of Ottumwa 105 E 3rd St Ottumwa, IA 52501	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Jun 21, 2022

Administration
Department

Barbara Codjoe
Prepared By
Barbara Codjoe
Department Head


City Administrator Approval

AGENDA TITLE: Resolution #159 - 2022 - Approve updates to Salary Schedule

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt resolution #159 - 2022

DISCUSSION: Please see attached.

Source of Funds: N/A

Budgeted Item: Budget Amendment Needed:

Update salaries to include budgeted 2% COLA increase. Part-time, Seasonal employees, Foreman pay and Beach employees are not included in this. Most of those rates were updated earlier this year prior to our season starting.

Director of Finance salary has been omitted due to the size of the range until we have identified a candidate. That will be added back in once a candidate has been selected and salary has been negotiated within budget.

The Seasonal Concessions Supervisor position was vacated earlier this year. After review of the position, this position will be a permanent part-time position rather than seasonal. It is needed year round to schedule swim lessons and birthday parties. Reviewing the salary for this position as well, we are suggesting moving it from a range of \$12 - \$14 to a range of \$13 - \$15.

RESOLUTION NO. 159-2022

RESOLUTION APPROVING UPDATED SALARY SCHEDULE FOR FY2023

WHEREAS, the positions that are covered under our collective bargaining agreements are budgeted and planned for a 2% COLA increase effective July 1, 2022; and

WHEREAS, the positions that are not covered under our collective bargaining agreement (seasonal employees, airport line technicians, foreman pay and Beach employees except for the Beach Supervisor) were planned during the budget process to receive a similar 2% COLA increase; and

WHEREAS, the duties of the Seasonal Concessions Manager have changed with an increase demand of parties and private lessons which required this position year-round.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ottumwa, Iowa, that positions that are not covered under our collective bargaining agreement (seasonal employees, airport line technicians, foreman pay and Beach employees except for the Beach Supervisor) receive a 2% COLA increase based upon the updated salary schedule; and

BE IT FURTHER RESOLVED, the compensation adjustment would be effective beginning with the first pay period of fiscal year 2023; and

BE IT FURTHER RESOLVED, the title of Seasonal Concessions Manager is changed to Beach Supervisor, is made a permanent part-time position and the salary is increased to a range of \$13-\$15 an hour; and

BE IT FURTHER RESOLVED, by the Ottumwa City Council of the City of Ottumwa, Iowa, that the Mayor and City Clerk are hereby authorized and directed to execute said resolution.

APPROVED, PASSED AND ADOPTED, this 21st day of June, 2022.

CITY OF OTTUMWA, IOWA

Richard W. Johnson, Mayor

ATTEST:

Christina Reinhard, City Clerk

CITY OF OTTUMWA SALARY SCHEDULE
Fiscal Year 2023

The compensation schedule identified below reflects the base wage or salary for individuals in the identified non-represented¹ position. The wage or salary identified below or in the compensation schedule (grade and step) is the base pay and does not reflect an individual employee's longevity or other compensation modifiers now or in the future.

DEPARTMENT HEADS

CITY ADMINISTRATOR
\$153,026*

DIRECTOR OF PUBLIC WORKS
\$109,054*

POLICE CHIEF
\$103,022*

FIRE CHIEF
\$102,814*

DIRECTOR OF PARK, RECREATION & CEMETERY
\$90,854*

DIRECTOR OF HUMAN RESOURCES
\$88,233*

DIRECTOR OF AIRPORT SERVICES
\$83,262*

DIRECTOR OF COMMUNITY DEVELOPMENT
\$83,262*

DIRECTOR OF LIBRARY SERVICES
\$82,014.40 (updated 04/11/2022)*#

CITY CLERK
\$67,122*

ASSISTANT DIRECTOR OF LIBRARY SERVICES
\$54,600 (updated 04/11/2022)*#

*Compensation is rounded to the nearest whole dollar.

#Current compensation as established by the Board of Library Trustees

¹ Non-Represented is an employee not covered or identified under a Collective Bargaining Agreement (CBA)

GENERAL SERVICE EMPLOYEES

No one at present (02)

Secretary (04)

Administrative Assistant**

GSB1	GSB2	GSB3	GSB4	GSB5	GSB6
17.65	18.55	19.44	20.46	21.44	22.57

Zoning Technician (06)

GSC1	GSC2	GSC3	GSC4	GSC5	GSC6
18.55	19.44	20.46	21.44	22.57	23.62

No one at present (08)

GSD1	GSD2	GSD3	GSD4	GSD5	GSD6
19.44	20.46	21.44	22.57	23.62	24.59

Payroll & Benefits Manager (10)

Risk / Purchasing Manager

Grants Administrator / Accounts Receivable Accountant

GSE1	GSE2	GSE3	GSE4	GSE5	GSE6
20.46	21.44	22.57	23.62	24.59	26.09

No one at present (12)

GSF1	GSF2	GSF3	GSF4	GSF5	GSF6
21.44	22.57	23.62	24.59	26.09	27.39

Data Communications Supervisor (14)

Street Maintenance Supervisor

Park Maintenance Supervisor

Sewer Maintenance Supervisor

Traffic Maintenance Supervisor

Lab Supervisor

Landfill Supervisor

GSG1	GSG2	GSG3	GSG4	GSG5	GSG6
22.57	23.62	24.59	26.09	27.39	28.74

Recycling Coordinator (16)

Planner I

Zoning and Housing Coordinator

Garage Supervisor

GSH1	GSH2	GSH3	GSH4	GSH5	GSH6
23.62	24.59	26.09	27.39	28.74	30.17

Operations Supervisor (WPCF) (18)

Maintenance Supervisor (WPCF)

Airport Facilities Manager

Graphic Information System (GIS) Administrator

GSI1	GSI2	GSI3	GSI4	GSI5	GSI6
24.59	26.09	27.39	28.74	30.17	31.66

Accountant (20)

GSI1	GSI2	GSI3	GSI4	GSI5	GSI6
26.09	27.39	28.74	30.17	31.66	33.28

^ Police Sergeant (21)

GSS1	GSS2	GSS3	GSS4	GSS5	GSS6
28.70	29.97	31.30	32.70	34.16	35.75

Engineering Supervisor (22)

GSK1	GSK2	GSK3	GSK4	GSK5	GSK6
27.39	28.74	30.17	31.66	33.28	34.92

Deputy Fire Chief (24)

GSL1	GSL2	GSL3	GSL4	GSL5	GSL6
28.74	30.17	31.66	33.28	34.92	36.68

^ Police Lieutenant (25)

GST1	GST2	GST3	GST4	GST5	GST6
31.30	32.70	34.16	35.75	37.36	39.08

Public Works Operations Superintendent (26)

GSM1	GSM2	GSM3	GSM4	GSM5	GSM6
30.17	31.66	33.28	34.92	36.68	38.47

^ City Engineer (30)

GSN1	GSN2	GSN3	GSN4	GSN5	GSN6
41.53	43.61	45.71	48.06	50.47	52.99

^ Assistant City Engineer (28)

GSO1	GSO2	GSO3	GSO4	GSO5	GSO6
37.15	39.02	40.96	43.02	45.16	47.41

^ Senior Planner (32)

GSP1	GSP2	GSP3	GSP4	GSP5	GSP6
37.17	39.04	40.98	43.02	45.19	47.44

^ Information Technology Manager (34)

GSQ1	GSQ2	GSQ3	GSQ4	GSQ5	GSQ6
35.55	37.31	39.18	41.15	43.20	45.37

^ WPCF SUPERINTENDENT (36)						
GSR1	GSR2	GSR3	GSR4	GSR5	GSR6	
35.27	37.04	38.89	40.83	42.87	45.01	

**Administrative Assistant is also currently an HR Coordinator. An additional \$5,000 per year in 2020 (\$2.40 per hour) was provided for the HR Coordinator responsibilities.

- 2021 2% COLA - \$2.45 an hour
- 2022 2% COLA - \$2.50 an hour

^ This will not be in line with other Pay Codes – It is not the 5% above previous pay grades.

PART-TIME EMPLOYEES

AIRPORT LINE TECHNICIAN (50)

Year 1: (ALT1)	\$13.00
Year 2: (ALT2)	\$14.00
Year 3: (ALT3)	\$15.00

SEASONAL EMPLOYEES

(This includes all departments with no exceptions unless approved by the City Administrator.)

STREETS, AIRPORT, PARKS, CEMETERY & WPCF MAINTENANCE, SEASONAL CODE ENFORCEMENT (SPW) (52):

Year 1: (SPW1)	\$14.00 per hour
Year 2: (SPW2)	\$15.00 per hour

FOREMAN PAY – additional \$2 an hour

BEACH EMPLOYEES:

Seasonal Aquatics Supervisor (SAS) (54):		Beach Supervisor (55):	
Year 1: (SAS1)	\$12.00	Year 1: (SCS1)	\$13.00
Year 2: (SAS2)	\$13.00	Year 2: (SCS2)	\$14.00
Year 3: (SAS3)	\$14.00	Year 3: (SCS3)	\$15.00
Lifeguards: (58)		Water Aerobics / Swim Instructors (60)	
Year 1: (BL1)	\$11.00	Year 1: (WASI1)	\$11.00
Year 2: (BL2)	\$11.50	Year 2: (WASI2)	\$12.00
Year 3: (BL3)	\$12.00	Year 3: (WASI3)	\$13.00
Admissions: (BA1) (62)	\$10.00	Evening Janitor/Seasonal Maintenance (66):	
Concessions: (BC1) (64)	\$10.00	Year 1: (BME1)	\$9.50
		Year 2: (BME2)	\$9.75

CITY OF OTTUMWA

Staff Summary

**** ACTION ITEM ****

Council Meeting of: June 21, 2022

Engineering
Department

Alicia Bankson
Prepared By
Darryl Seals
Department Head

[Signature]
City Administrator Approval

AGENDA TITLE: Resolution #164-2022. Approving the contract, bond, and certificate of insurance for the Catch Basin Replacement Program 2022.

 ****Public hearing required if this box is checked. **** ****The Proof of Publication for each Public Hearing must be attached to this Staff Summary. If the Proof of Publication is not attached, the item will not be placed on the agenda.****

RECOMMENDATION: Pass and adopt Resolution #164-2022.

DISCUSSION: These are the required bonds, certificate of insurance and signed contract with DC Concrete and Construction of Douds, Iowa for the above referenced project and are now on file with the City Clerk. This project was awarded at the June 7, 2022 City Council Meeting in the amount of \$55,187.50.

Bid Amount: \$55,187.50

Budgeted Amount: \$50,000 Sewer Fund

RESOLUTION #164-2022

A RESOLUTION APPROVING THE CONTRACT, BOND, AND CERTIFICATE OF INSURANCE FOR THE CATCH BASIN REPLACEMENT PROGRAM 2022

WHEREAS, The City Council of the City of Ottumwa, Iowa accepted bids for the above referenced project and awarded the contract to DC Concrete and Construction of Douds, Iowa in the amount of \$55,187.50 based on total unit price and estimated quantities; and,

WHEREAS, All proper bonds and a certificate of insurance have been filed with the City Clerk and the contract executed.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, IOWA THAT: The contract, bond and certificate of insurance with DC Concrete and Construction of Douds, Iowa, for the above referenced project are hereby approved.

APPROVED, PASSED, AND ADOPTED, this 21st day of June, 2022.

CITY OF OTTUMWA, IOWA

Richard W. Johnson, Mayor

ATTEST:

Christina Reinhard, City Clerk

SECTION 00500
CONTRACT

THIS AGREEMENT, made and entered into this **June 21, 2022**, by and between the **City of Ottumwa, Wapello County, Iowa**, the party of the first part, hereinafter called the OWNER and **DC Concrete and Construction LLC of Douds, Iowa**, the party of the second part, hereinafter called the CONTRACTOR.

WITNESSETH, the Contractor and the Owner for the consideration hereinafter named agree as follow:

ARTICLE I

SCOPE OF WORK. The Contractor shall furnish all materials and perform all work shown on the Plans and described in the Specifications entitled: **“Catch Basin Replacement Program 2022 - Ottumwa, Iowa”** prepared by the City Engineering Department of Ottumwa, Iowa, acting as and in these documents entitled, the ENGINEER, and shall do everything required by this Agreement, the General Conditions of the Contract, the Specifications and the Plans.

ARTICLE II

TIME OF COMPLETION. The work performed under this Contract shall be commenced on or before the date specified in the “Notice to Proceed” and shall be completed by **May 1, 2023** and in accordance with any special timeframes as indicated on construction documents. The time of commencing and completing said work is the essence of this Contract.

ARTICLE III

THE CONTRACT SUM. The Owner shall pay the Contractor the sum of **\$55,187.50** payable as set forth in Article IV below, for the performance of the Contract subject to increases or decreases as provided in the Specifications.

ARTICLE IV

PROGRESS PAYMENTS. In consideration to the foregoing, the Owner agrees to make payments according and subject to the conditions set forth in the Official Notice and Specifications.

ARTICLE V

CONTRACTOR’S RESPONSIBILITY: The Contractor assumes full responsibility for the safekeeping of all materials and equipment and for all unfinished work until final acceptance by the Owner, and if any of it be damaged or be destroyed from any cause, he shall replace it at his own expense.

The Contractor shall indemnify and hold harmless the Owner against any liens filed for nonpayment of his bills in connection with the Contract work. The Contractor shall furnish the Owner satisfactory evidence that all persons who have done work or furnished materials, equipment or service of any type under this Contract have been fully paid prior to the acceptance of the work by the Owner.

The Contractor agrees to accept full responsibility for all construction means, methods, sequences, techniques, proceedings, property and personal safety on the project site, including the same for all subcontractors, and do not expect that the Owner, Engineer or Engineer’s Representatives will assume any of these duties or responsibilities.

A certificate of insurance for liability, bodily injury and property damage satisfactory to the Owner in the amount of \$300,000 for each person bodily injury and \$1,000,000 per occurrence of or aggregate limit, or \$1,000,000 combined single limit. The Owner must be included as an additional insured to the certificate of insurance. Also, Worker's Compensation coverage in accordance with State of Iowa statutes must be provided.

The Contractor shall indemnify and hold harmless the Owner, the Owner's employees, the Engineer, and the Engineer's employees from any and all liability, loss, cost, damage, and expense (including reasonable attorney's fees and court costs) resulting from, arising out of, or incurred by reason of any claims, actions, or suits based upon or alleging bodily injury, including death, or property damage rising out of or resulting from the Contractor's operations under this Contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them. The Contractor shall obtain insurance for this purpose, which shall insure the interests of the Owner and Engineer as the same may appear, and shall file with the Owner and Engineer certificates of such insurance.

ARTICLE VI

ACCEPTANCE AND FINAL PAYMENT. The manner of making final acceptance and final payment shall be as provided in the Specifications. The Owner may require the Contractor to show satisfactory evidence that all payroll, materials, bills and other indebtedness connected with the work shall have been paid before final acceptance of the work. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner other than those arising from unsettled liens and from all claims by the Contractor except those previously made and still unsettled, and except potential claims by owner against Contractor pursuant to the four (4) year warranty or guaranty period as provided for in the specifications, the Notice of Letting and the Performance Bond.

ARTICLE VII

CONTRACT DOCUMENTS. The Official Notice, the Proposal, this Contract, Detailed Plan Drawings and Specifications (including Measurement and Payment), the General Specifications, the Instruction to Bidders, the Special Conditions, the General Conditions and the Contractor's Bond and the Performance Bond form the Contract and they are as fully a part of this Agreement and Contract and to the same effect as if each of them had been set forth in complete detail herein.

IN WITNESS WHEREOF. The parties have executed this Agreement and Contract and one other of like tenor as of the day and year first above written.

CITY OF OTTUMWA, IOWA

By _____

Title Mayor _____

ATTEST:

Title City Clerk

DC Concrete & Construction, LLC
Contractor

By Budget Coff _____

Title Co-Owner _____

Address 1547G Emerald RD _____

City, State, Zip Ponds, IA 52551 _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/01/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Alex Kessel c/o FBL Financial Group Inc. 713 1st Street PO Box 69 Keosauqua, IA 52565-0069	CONTACT NAME: Alex Kessel PHONE (A/C, No, Ext): (319) 293-7101 E-MAIL ADDRESS: FAX (A/C, No):													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Farm Bureau Property & Casualty Insurance Company</td> <td>13773</td> </tr> <tr> <td>INSURER B: Scottsdale Insurance Co.</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Farm Bureau Property & Casualty Insurance Company	13773	INSURER B: Scottsdale Insurance Co.		INSURER C:		INSURER D:		INSURER E:		INSURER F:
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INSURER D:														
INSURER E:														
INSURER F:														
INSURED DC CONCRETE AND CONSTRUCTION 15476 EMERALD RD DOUDS, IA 52551-8104														

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input type="checkbox"/>	<input type="checkbox"/>	CPS3174792	05/03/2022	05/03/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	<input type="checkbox"/>	<input type="checkbox"/>	CPP0004104	02/28/2022	08/30/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 100000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	<input type="checkbox"/>	<input type="checkbox"/>	CXS0014027	05/03/2022	05/03/2023	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC 6005357	08/30/2021	08/30/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 100000 E.L. DISEASE - EA EMPLOYEE \$ 100000 E.L. DISEASE - POLICY LIMIT \$ 500000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Jon Swartz, Underwriting Vice President

SECTION 00510

**PLEASE NOTE: THIS IS A NEW FORM TO COMPLY WITH SUDAS STANDARDS.
PLEASE HAVE YOUR BONDING COMPANY USE THIS FORM.**

**PERFORMANCE, PAYMENT, AND
MAINTENANCE BOND**

PRINCIPAL <i>(Legal Name and Business Address)</i> DC Concrete and Construction, LLC 15476 Emerald Rd Douds, IA 52551-8104		STATE OF INCORPORATION IOWA	
SURETY <i>(Legal Name and Business Address)</i> West Bend Mutual Insurance Company 1900 South 18th Avenue West Bend, WI 53095	CONTRACT NO. 2520164	CONTRACT DATE 06/21/2022	
PENAL SUM OF BOND <i>(Expressed in words and numerals)</i> \$55,187.50 (Fifty-Five Thousand, One Hundred Eighty-Seven Dollars and Fifty Cents)			

KNOW ALL BY THESE PRESENTS:

That we, DC Concrete and Construction, LLC, as Principal
(hereinafter the "CONTRACTOR" or "PRINCIPAL" and
West Bend Mutual Insurance Company, as SURETY are held and firmly bound unto *the*
City of Ottumwa, Iowa, as OBLIGEE (hereinafter referred to as "the OWNER"), and to all persons who
may be injured by any breach of any of the conditions of this Bond in the penal sum of
(Fifty-Five Thousand, One Hundred Eighty-Seven Dollars and Fifty Cents)
dollars (\$ \$55,187.50), lawful money of the United States, for the payment of which sum, well
and truly to be made, we bind ourselves, our heirs, legal representatives and assigns, jointly or severally,
firmly by these presents.

The conditions of the above obligations are such that whereas said CONTRACTOR entered into a contract
with the OWNER, bearing date the 16th day of June, 2022 wherein said
CONTRACTOR undertakes and agrees to construct the following described improvements:

Project Name: **Catch Basin Replacement Program 2022**

Project Location: **City of Ottumwa, Iowa**

The Work generally consists of:

**Reconstruct and raise catch basins with new grates as indicated on plans and specifications.
Basins are located on various streets within the City of Ottumwa.**

which said contract and associated contract documents, including any present or future amendment
thereto, is incorporated herein by reference and is hereinafter referred to as the "Contract."

SECTION 00510

(CON'T – PERFORMANCE, PAYMENT, AND MAINTENANCE BOND)

and to faithfully perform all the terms and requirements of said Contract within the time therein specified, in a good and workmanlike manner, and in accordance with the Contract Documents.

It is expressly understood and agreed by the CONTRACTOR and SURETY in this bond that the following provisions are a part of this Bond and are binding upon said CONTRACTOR and SURETY, to-wit:

1. **PERFORMANCE:** The CONTRACTOR shall well and faithfully observe, perform, fulfill, and abide by each and every covenant, condition, and part of said Contract and Contract Documents, by reference made a part hereof, for the above referenced improvements, and shall indemnify and save harmless the OWNER from all outlay and expense incurred by the OWNER by reason of the CONTRACTOR's default of failure to perform as required. The CONTRACTOR shall also be responsible for the default or failure to perform as required under the Contract and Contract Documents by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.
2. **PAYMENT:** The CONTRACTOR and the SURETY on this Bond hereby agreed to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract on account of which this Bond is given, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment, and tools, consumed or used by the CONTRACTOR or any subcontractor, wherein the same are not satisfied out of the portion of the contract price the OWNER is required to retain until completion of the improvement, but the CONTRACTOR and SURETY shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portion of the contract price shall have been established as provided by law. The CONTRACTOR and SURETY hereby bind themselves to the obligations and conditions set forth in Chapter 573 of the Iowa Code, which by this reference is made a part hereof as though fully set out herein.
3. **MAINTENANCE:** The CONTRACTOR and the SURETY on this Bond hereby agree, at their own expense:
 - A. To remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of four (4) years from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of said work;
 - B. To keep all work in continuous good repair; and
 - C. To pay the OWNER's reasonable costs of monitoring and inspection to assure that any defects are remedied, and to repay the OWNER all outlay and expense incurred as a result of CONTRACTOR's and SURETY's failure to remedy any defect as required by this section.

SECTION 00510

(CON'T— PERFORMANCE, PAYMENT, AND MAINTENANCE BOND)

4. GENERAL: Every SURETY on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:
- A. To consent without notice to any extension of time to the CONTRACTOR in which to perform the Contract;
 - B. To consent without notice to any change in the Contract or Contract Documents, which thereby increases the total contract price and the penal sum of this bond, provided that all such changes do not, in the aggregate, involve an increase of more than 20% of the total contract price, and that this bond shall then be released as to such excess increase; and
 - C. To consent without notice that this Bond shall remain in full force and effect until the Contract is completed, whether completed within the specified contract period, within an extension thereof, or within a period of time after the contract period has elapsed and the liquidated damage penalty is being charged against the CONTRACTOR.
 - D. That no provision of this Bond or of any other contract shall be valid that limits to less than four (4) years after the acceptance of the work under the Contract the right to sue on this Bond.
 - E. That as used herein, the phrase "all outlay and expense" is not to be limited in any way, but shall include the actual and reasonable costs and expenses incurred by the OWNER including interest, benefits, and overhead where applicable. Accordingly, "all outlay and expense" would include but not be limited to all contract or employee expense, all equipment usage or rental, materials, testing, outside experts, attorneys' fees (including overhead expenses of the OWNER's staff attorneys), and all costs and expenses of litigation as they are incurred by the OWNER. It is intended the CONTRACTOR and SURETY will defend and indemnify the OWNER on all claims made against the OWNER on account of CONTRACTOR's failure to perform as required in the Contract and Contract Documents, that all agreements and promises set forth in the Contract and Contract Documents, in approved change orders, and in this Bond will be fulfilled, and that the OWNER will be fully indemnified so that it will be put into the position it would have been in had the Contract been performed in the first instance as required.

In the event the OWNER incurs any "outlay and expense" in defending itself against any claim as to which the CONTRACTOR or SURETY should have provided the defense, or in the enforcement of the promises given by the CONTRACTOR in the Contract, Contract Documents, or approved change orders, or in the enforcement of the promises given by the CONTRACTOR and SURETY in this Bond, the CONTRACTOR and SURETY agree that they will make the OWNER whole for all such outlay and expense, provided that the SURETY's obligation under this bond shall not exceed 125% of the penal sum of this bond.

SECTION 00510

(CON'T – PERFORMANCE, PAYMENT AND MAINTENANCE BOND)

In the event that any actions or proceedings are initiated regarding this Bond, the parties agree that the venue thereof shall be in either the Iowa District Court in Wapello County, Iowa or the United States District Court for the Southern District of Iowa in Des Moines. If legal action is required by the OWNER to enforce the provisions of this Bond or to collect the monetary obligation incurring to the benefit of the OWNER, the CONTRACTOR and the SURETY agree, jointly, and severally, to pay the OWNER all outlay and expense incurred therefor by the OWNER. All rights, powers, and remedies of the OWNER hereunder shall be cumulative and not alternative and shall be in addition to all rights, powers, and remedies given to the OWNER, by law. The OWNER may proceed against SURETY for any amount guaranteed hereunder whether action is brought against the CONTRACTOR or whether CONTRACTOR is joined in any such action(s) or not.

NOW THEREFORE, the condition of this obligation is such that if said Principal shall faithfully perform all the promises of the Principal, as set forth and provided in the Contract, in the Contract Documents, and in this Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

When a work, term, or phrase is used in this Bond, it shall be interpreted or construed first as defined in this Bond, the Contract, or the Contract Documents; second, if not defined in the Bond, Contract, or Contract Documents, it shall be interpreted or construed as defined in applicable provisions of the Iowa Code; third, if not defined in the Iowa Code, it shall be interpreted or construed according to its generally accepted meaning in the construction industry; and fourth, if it has no generally accepted meaning in the construction industry, it shall be interpreted or construed according to its common or customary usage.

Failure to specify or particularize shall not exclude terms or provisions not mentioned and shall not limit liability hereunder. The Contract and Contract Documents are hereby made a part of this Bond.

(CON'T – PERFORMANCE, PAYMENT, AND MAINTENANCE BOND) Project No. _____

Witness our hands, in triplicate, this 16 day of June, 2022.

Surety Countersigned By:

Ray Vens
Signature of Agent

Ray Vens
Printed Name of Agent

Gamrath Doyle and Associates
Company Name

112 W Briggs
Company Address

Fairfield, IA 52556
City, State, Zip Code

(641)472-2141
Company Telephone Number

PRINCIPAL:

DC Concrete & Construction
Contractor

By: Bryant Bell
Signature
Co-Owner
Title

SURETY:

West Bend Mutual Insurance Company
Surety Company

By: Ray Vens
Signature Attorney-in-Fact Officer

Ray Vens
Printed Name of Attorney-in-Fact Officer

West Bend Mutual Insurance Company
Company Name

1900 South 18th Avenue
Company Address

West Bend, WI 53095
City, State, Zip Code

(608)410-3410
Company Telephone Number

NOTE:

1. All signatures on this performance, payment, and maintenance bond must be original signatures in ink; copies, facsimile, or electronic signatures will not be accepted.
2. This bond must be sealed with the Surety's raised, embossing seal.
3. The Certificate or Power of Attorney accompanying this bond must be valid on its face and sealed with the Surety's raised, embossing seal.
4. The name and signature of the Surety's Attorney-in-Fact/Officer entered on this bond must be exactly as listed on the Certificate or Power of Attorney accompanying this bond.

POWER OF ATTORNEY

Know all men by these Presents, That West Bend Mutual Insurance Company, a corporation having its principal office in the City of West Bend, Wisconsin does make, constitute and appoint:

Ray Vens

lawful Attorney(s)-in-fact, to make, execute, seal and deliver for and on its behalf as surety and as its act and deed any and all bonds, undertakings and contracts of suretyship, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of:

Ten Million Dollars (\$10,000,000)

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of West Bend Mutual Insurance Company at a meeting duly called and held on the 21st day of December, 1999.

Appointment of Attorney-In-Fact. The president or any vice president, or any other officer of West Bend Mutual Insurance Company may appoint by written certificate Attorneys-In-Fact to act on behalf of the company in the execution of and attesting of bonds and undertakings and other written obligatory instruments of like nature. The signature of any officer authorized hereby and the corporate seal may be affixed by facsimile to any such power of attorney or to any certificate relating therefore and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the company, and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the company in the future with respect to any bond or undertaking or other writing obligatory in nature to which it is attached. Any such appointment may be revoked, for cause, or without cause, by any said officer at any time.

In witness whereof, the West Bend Mutual Insurance Company has caused these presents to be signed by its president undersigned and its corporate seal to be hereto duly attested by its secretary this 17th day of August, 2021.

Attest Christopher C. Zwygart
Christopher C. Zwygart
Secretary



Kevin A. Steiner
Kevin A. Steiner
Chief Executive Officer/President

State of Wisconsin
County of Washington

On the 17th day of August, 2021, before me personally came Kevin A. Steiner, to me known being by duly sworn, did depose and say that he resides in the County of Washington, State of Wisconsin; that he is the President of West Bend Mutual Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.



Matthew E. Carlton
Matthew E. Carlton
Senior Corporate Attorney
Notary Public, Washington Co., WI
My Commission is Permanent

The undersigned, duly elected to the office stated below, now the incumbent in West Bend Mutual Insurance Company, a Wisconsin corporation authorized to make this certificate, Do Hereby Certify that the foregoing attached Power of Attorney remains in full force effect and has not been revoked and that the Resolution of the Board of Directors, set forth in the Power of Attorney is now in force.

Signed and sealed at West Bend, Wisconsin this 25th day of May, 2022.



Heather A. Dunn
Heather Dunn
Vice President – Chief Financial Officer

Notice: Any questions concerning this Power of Attorney may be directed to the Bond Manager at West Bend Mutual Insurance Company.

Item No. B.-9.

CITY OF OTTUMWA

Staff Summary

**** ACTION ITEM ****

Council Meeting of: June 21, 2022

Engineering Department
Department

Alicia Bankson
Prepared By
Danny Seale
Department Head

[Signature]
City Administrator Approval

AGENDA TITLE: Resolution #165-2022. Approving the contract, bond, and certificate of insurance for the Sanitary Utility Access Program 2022.

 ****Public hearing required if this box is checked. **** ****The Proof of Publication for each Public Hearing must be attached to this Staff Summary. If the Proof of Publication is not attached, the item will not be placed on the agenda.****

RECOMMENDATION: Pass and adopt Resolution #165-2022.

DISCUSSION: These are the required bonds, certificate of insurance and signed contract with DC Concrete and Construction of Douds, Iowa for the above referenced project and are now on file with the City Clerk. This project was awarded at the June 7, 2022 City Council Meeting in the amount of \$56,600.00.

Bid Amount: \$56,600.00

Budgeted amount: \$50,000 Sewer Fund

Source of Funds: Sewer Fund

Budgeted Item: Yes

Budget Amendment Needed: No

RESOLUTION #165-2022

A RESOLUTION APPROVING THE CONTRACT, BOND, AND CERTIFICATE OF INSURANCE FOR THE SANITARY UTILITY ACCESS PROGRAM 2022

WHEREAS, The City Council of the City of Ottumwa, Iowa accepted bids for the above referenced project and awarded the contract to DC Concrete and Construction of Douds, Iowa in the amount of \$56,600.00 based on total unit price and estimated quantities; and,

WHEREAS, All proper bonds and a certificate of insurance have been filed with the City Clerk and the contract executed.

NOW, THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, IOWA THAT: The contract, bond and certificate of insurance with DC Concrete and Construction of Douds, Iowa, for the above referenced project are hereby approved.

APPROVED, PASSED, AND ADOPTED, this 21st day of June, 2022.

CITY OF OTTUMWA, IOWA

Richard W. Johnson, Mayor

ATTEST:

Christina Reinhard, City Clerk

SECTION 00500
CONTRACT

THIS AGREEMENT, made and entered into this **June 21, 2022**, by and between the **City of Ottumwa, Wapello County, Iowa**, the party of the first part, hereinafter called the OWNER and **DC Concrete and Construction, LLC, Douds, Iowa**, the party of the second part, hereinafter called the CONTRACTOR.

WITNESSETH, the Contractor and the Owner for the consideration hereinafter named agree as follow:

ARTICLE I

SCOPE OF WORK. The Contractor shall furnish all materials and perform all work shown on the Plans and described in the Specifications entitled: **"Sanitary Utility Access Program 2022 - Ottumwa, Iowa"** prepared by the City Engineering Department of Ottumwa, Iowa, acting as and in these documents entitled, the ENGINEER, and shall do everything required by this Agreement, the General Conditions of the Contract, the Specifications and the Plans.

ARTICLE II

TIME OF COMPLETION. The work performed under this Contract shall be commenced on or before the date specified in the "Notice to Proceed" and shall be completed by **May 1, 2023** and in accordance with any special timeframes as indicated on construction documents. The time of commencing and completing said work is the essence of this Contract.

ARTICLE III

THE CONTRACT SUM. The Owner shall pay the Contractor the sum of **\$56,600.00** payable as set forth in Article IV below, for the performance of the Contract subject to increases or decreases as provided in the Specifications.

ARTICLE IV

PROGRESS PAYMENTS. In consideration to the foregoing, the Owner agrees to make payments according and subject to the conditions set forth in the Official Notice and Specifications.

ARTICLE V

CONTRACTOR'S RESPONSIBILITY: The Contractor assumes full responsibility for the safekeeping of all materials and equipment and for all unfinished work until final acceptance by the Owner, and if any of it be damaged or be destroyed from any cause, he shall replace it at his own expense.

The Contractor shall indemnify and hold harmless the Owner against any liens filed for nonpayment of his bills in connection with the Contract work. The Contractor shall furnish the Owner satisfactory evidence that all persons who have done work or furnished materials, equipment or service of any type under this Contract have been fully paid prior to the acceptance of the work by the Owner.

The Contractor agrees to accept full responsibility for all construction means, methods, sequences, techniques, proceedings, property and personal safety on the project site, including the same for all subcontractors, and do not expect that the Owner, Engineer or Engineer's Representatives will assume any of these duties or responsibilities.

A certificate of insurance for liability, bodily injury and property damage satisfactory to the Owner in the amount of **\$300,000** for each person bodily injury and **\$1,000,000** per occurrence of or aggregate limit, or **\$1,000,000** combined single limit. The Owner must be included as an additional insured to the certificate of insurance. Also, Worker's Compensation coverage in accordance with State of Iowa statutes must be provided.

The Contractor shall indemnify and hold harmless the Owner, the Owner's employees, the Engineer, and the Engineer's employees from any and all liability, loss, cost, damage, and expense (including reasonable attorney's fees and court costs) resulting from, arising out of, or incurred by reason of any claims, actions, or suits based upon or alleging bodily injury, including death, or property damage rising out of or resulting from the Contractor's operations under this Contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them. The Contractor shall obtain insurance for this purpose, which shall insure the interests of the Owner and Engineer as the same may appear, and shall file with the Owner and Engineer certificates of such insurance.

ARTICLE VI

ACCEPTANCE AND FINAL PAYMENT. The manner of making final acceptance and final payment shall be as provided in the Specifications. The Owner may require the Contractor to show satisfactory evidence that all payroll, materials, bills and other indebtedness connected with the work shall have been paid before final acceptance of the work. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner other than those arising from unsettled liens and from all claims by the Contractor except those previously made and still unsettled, and except potential claims by owner against Contractor pursuant to the four (4) year warranty or guaranty period as provided for in the specifications, the Notice of Letting and the Performance Bond.

ARTICLE VII

CONTRACT DOCUMENTS. The Official Notice, the Proposal, this Contract, Detailed Plan Drawings and Specifications (including Measurement and Payment), the General Specifications, the Instruction to Bidders, the Special Conditions, the General Conditions and the Contractor's Bond and the Performance Bond form the Contract and they are as fully a part of this Agreement and Contract and to the same effect as if each of them had been set forth in complete detail herein.

IN WITNESS WHEREOF. The parties have executed this Agreement and Contract and one other of like tenor as of the day and year first above written.

CITY OF OTTUMWA, IOWA

By _____

Title Mayor

ATTEST:

Title City Clerk

DC Concrete & Construction, LLC
Contractor

By Budget Coff

Title Co-Owner

Address 15476 Emerald RD

City, State, Zip Dows, IA 52551



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/01/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Alex Kessel c/o FBL Financial Group Inc. 713 1st Street PO Box 69 Keosauqua, IA 52565-0069	CONTACT NAME: Alex Kessel PHONE (A/C, No, Ext): (319) 293-7101 E-MAIL ADDRESS: FAX (A/C, No):																				
	<table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Farm Bureau Property & Casualty Insurance Company</td> <td></td> <td>13773</td> </tr> <tr> <td>INSURER B: Scottsdale Insurance Co.</td> <td></td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A: Farm Bureau Property & Casualty Insurance Company		13773	INSURER B: Scottsdale Insurance Co.			INSURER C:			INSURER D:			INSURER E:			INSURER F:	
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INSURER F:																					
INSURED DC CONCRETE AND CONSTRUCTION 15476 EMERALD RD DOUDS, IA 52551-8104																					

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input type="checkbox"/> <input type="checkbox"/>	CPS3174792	05/03/2022	05/03/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY	<input type="checkbox"/> <input type="checkbox"/>	CPP0004104	02/28/2022	08/30/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 100000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$	<input type="checkbox"/> <input type="checkbox"/>	CXS0014027	05/03/2022	05/03/2023	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> Y <input checked="" type="checkbox"/> N N/A <input type="checkbox"/>	WC 6005357	08/30/2021	08/30/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 100000 E.L. DISEASE - EA EMPLOYEE \$ 100000 E.L. DISEASE - POLICY LIMIT \$ 500000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Jon Swartz, Underwriting Vice President 

SECTION 00510

**PLEASE NOTE: THIS IS A NEW FORM TO COMPLY WITH SUDAS STANDARDS.
PLEASE HAVE YOUR BONDING COMPANY USE THIS FORM.**

**PERFORMANCE, PAYMENT, AND
MAINTENANCE BOND**

PRINCIPAL (Legal Name and Business Address) DC Concrete and Construction, LLC 15476 Emerald Rd Douds, IA 52551-8104		STATE OF INCORPORATION IOWA	
SURETY (Legal Name and Business Address) West Bend Mutual Insurance Company 1900 South 18th Avenue West Bend, WI 53095		CONTRACT NO. 2521888	CONTRACT DATE 06/21/2022
PENAL SUM OF BOND (Expressed in words and numerals) \$56,600.00 (Fifty-Six Thousand, six hundred dollars and zero cents)			

KNOW ALL BY THESE PRESENTS:

That we, DC Concrete and Construction, LLC, as Principal
(hereinafter the "CONTRACTOR" or "PRINCIPAL" and
West Bend Mutual Insurance Company, as SURETY are held and firmly bound unto *the*
City of Ottumwa, Iowa, as OBLIGEE (hereinafter referred to as "the OWNER"), and to all persons who
may be injured by any breach of any of the conditions of this Bond in the penal sum of
Fifty-Six Thousand, Six hundred Dollars and Zero Cents
dollars (\$ \$56,600.00), lawful money of the United States, for the payment of which sum, well
and truly to be made, we bind ourselves, our heirs, legal representatives and assigns, jointly or severally,
firmly by these presents.

The conditions of the above obligations are such that whereas said CONTRACTOR entered into a contract
with the OWNER, bearing date the 16 day of June, 2022, wherein said
CONTRACTOR undertakes and agrees to construct the following described improvements:

Project Name: Sanitary Utility Access Program 2022

Project Location: City of Ottumwa, Iowa

The Work generally consists of:

**Place sanitary sewer utility access over existing sanitary sewer lines, restoring sub
base and full depth patch.**

which said contract and associated contract documents, including any present or future amendment
thereto, is incorporated herein by reference and is hereinafter referred to as the "Contract."

SECTION 00510

(CON'T - PERFORMANCE, PAYMENT, AND MAINTENANCE BOND)

and to faithfully perform all the terms and requirements of said Contract within the time therein specified, in a good and workmanlike manner, and in accordance with the Contract Documents.

It is expressly understood and agreed by the CONTRACTOR and SURETY in this bond that the following provisions are a part of this Bond and are binding upon said CONTRACTOR and SURETY, to-wit:

1. **PERFORMANCE:** The CONTRACTOR shall well and faithfully observe, perform, fulfill, and abide by each and every covenant, condition, and part of said Contract and Contract Documents, by reference made a part hereof, for the above referenced improvements, and shall indemnify and save harmless the OWNER from all outlay and expense incurred by the OWNER by reason of the CONTRACTOR's default of failure to perform as required. The CONTRACTOR shall also be responsible for the default or failure to perform as required under the Contract and Contract Documents by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.
2. **PAYMENT:** The CONTRACTOR and the SURETY on this Bond hereby agreed to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract on account of which this Bond is given, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment, and tools, consumed or used by the CONTRACTOR or any subcontractor, wherein the same are not satisfied out of the portion of the contract price the OWNER is required to retain until completion of the improvement, but the CONTRACTOR and SURETY shall not be liable to said persons, firms, or corporations unless the claims of said claimants against said portion of the contract price shall have been established as provided by law. The CONTRACTOR and SURETY hereby bind themselves to the obligations and conditions set forth in Chapter 573 of the Iowa Code, which by this reference is made a part hereof as though fully set out herein.
3. **MAINTENANCE:** The CONTRACTOR and the SURETY on this Bond hereby agree, at their own expense:
 - A. To remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of four (4) years from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of said work;
 - B. To keep all work in continuous good repair; and
 - C. To pay the OWNER's reasonable costs of monitoring and inspection to assure that any defects are remedied, and to repay the OWNER all outlay and expense incurred as a result of CONTRACTOR's and SURETY's failure to remedy any defect as required by this section.

SECTION 00510

(CON'T – PERFORMANCE, PAYMENT, AND MAINTENANCE BOND)

4. GENERAL: Every SURETY on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:

- A. To consent without notice to any extension of time to the CONTRACTOR in which to perform the Contract;
- B. To consent without notice to any change in the Contract or Contract Documents, which thereby increases the total contract price and the penal sum of this bond, provided that all such changes do not, in the aggregate, involve an increase of more than 20% of the total contract price, and that this bond shall then be released as to such excess increase; and
- C. To consent without notice that this Bond shall remain in full force and effect until the Contract is completed, whether completed within the specified contract period, within an extension thereof, or within a period of time after the contract period has elapsed and the liquidated damage penalty is being charged against the CONTRACTOR.
- D. That no provision of this Bond or of any other contract shall be valid that limits to less than four (4) years after the acceptance of the work under the Contract the right to sue on this Bond.
- E. That as used herein, the phrase "all outlay and expense" is not to be limited in any way, but shall include the actual and reasonable costs and expenses incurred by the OWNER including interest, benefits, and overhead where applicable. Accordingly, "all outlay and expense" would include but not be limited to all contract or employee expense, all equipment usage or rental, materials, testing, outside experts, attorneys' fees (including overhead expenses of the OWNER's staff attorneys), and all costs and expenses of litigation as they are incurred by the OWNER. It is intended the CONTRACTOR and SURETY will defend and indemnify the OWNER on all claims made against the OWNER on account of CONTRACTOR's failure to perform as required in the Contract and Contract Documents, that all agreements and promises set forth in the Contract and Contract Documents, in approved change orders, and in this Bond will be fulfilled, and that the OWNER will be fully indemnified so that it will be put into the position it would have been in had the Contract been performed in the first instance as required.

In the event the OWNER incurs any "outlay and expense" in defending itself against any claim as to which the CONTRACTOR or SURETY should have provided the defense, or in the enforcement of the promises given by the CONTRACTOR in the Contract, Contract Documents, or approved change orders, or in the enforcement of the promises given by the CONTRACTOR and SURETY in this Bond, the CONTRACTOR and SURETY agree that they will make the OWNER whole for all such outlay and expense, provided that the SURETY's obligation under this bond shall not exceed 125% of the penal sum of this bond.

SECTION 00510

(CON'T - PERFORMANCE, PAYMENT AND MAINTENANCE BOND)

In the event that any actions or proceedings are initiated regarding this Bond, the parties agree that the venue thereof shall be in either the Iowa District Court in Wapello County, Iowa or the United States District Court for the Southern District of Iowa in Des Moines. If legal action is required by the OWNER to enforce the provisions of this Bond or to collect the monetary obligation incurring to the benefit of the OWNER, the CONTRACTOR and the SURETY agree, jointly, and severally, to pay the OWNER all outlay and expense incurred therefor by the OWNER. All rights, powers, and remedies of the OWNER hereunder shall be cumulative and not alternative and shall be in addition to all rights, powers, and remedies given to the OWNER, by law. The OWNER may proceed against SURETY for any amount guaranteed hereunder whether action is brought against the CONTRACTOR or whether CONTRACTOR is joined in any such action(s) or not.

NOW THEREFORE, the condition of this obligation is such that if said Principal shall faithfully perform all the promises of the Principal, as set forth and provided in the Contract, in the Contract Documents, and in this Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

When a work, term, or phrase is used in this Bond, it shall be interpreted or construed first as defined in this Bond, the Contract, or the Contract Documents; second, if not defined in the Bond, Contract, or Contract Documents, it shall be interpreted or construed as defined in applicable provisions of the Iowa Code; third, if not defined in the Iowa Code, it shall be interpreted or construed according to its generally accepted meaning in the construction industry; and fourth, if it has no generally accepted meaning in the construction industry, it shall be interpreted or construed according to its common or customary usage.

Failure to specify or particularize shall not exclude terms or provisions not mentioned and shall not limit liability hereunder. The Contract and Contract Documents are hereby made a part of this Bond.

(CON'T – PERFORMANCE, PAYMENT, AND MAINTENANCE BOND) Project No. _____

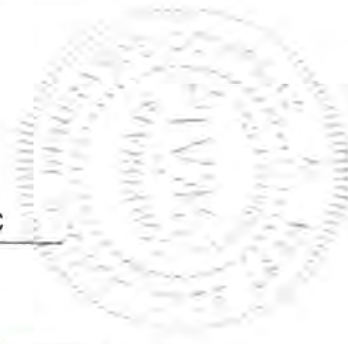
Witness our hands, in triplicate, this 16th day of June, 2022.

Surety Countersigned By:

Ray Vens
Signature of Agent

PRINCIPAL:

DC Concrete & Construction, LLC
Contractor



RAY VENS
Printed Name of Agent

By: Budget Coff
Signature
Co-Owner
Title

Gamrath Doyle & Associates
Company Name

SURETY:

West Bend Mutual Insurance Company
Surety Company

112 W. Briggs
Company Address

By: Ray Vens
Signature Attorney-in-Fact Officer

Fairfield, IA 52556
City, State, Zip Code

Ray Vens
Printed Name of Attorney-in-Fact Officer

1(641)472-2141
Company Telephone Number

West Bend Mutual Insurance Company
Company Name

1900 South 18th Avenue
Company Address

West Bend, WI 53095
City, State, Zip Code

(608) 410-3410
Company Telephone Number

NOTE:

1. All signatures on this performance, payment, and maintenance bond must be original signatures in ink; copies, facsimile, or electronic signatures will not be accepted.
2. This bond must be sealed with the Surety's raised, embossing seal.
3. The Certificate or Power of Attorney accompanying this bond must be valid on its face and sealed with the Surety's raised, embossing seal.
4. The name and signature of the Surety's Attorney-in-Fact/Officer entered on this bond must be exactly as listed on the Certificate or Power of Attorney accompanying this bond.

POWER OF ATTORNEY

Know all men by these Presents, That West Bend Mutual Insurance Company, a corporation having its principal office in the City of West Bend, Wisconsin does make, constitute and appoint:

Ray Vens

lawful Attorney(s)-in-fact, to make, execute, seal and deliver for and on its behalf as surety and as its act and deed any and all bonds, undertakings and contracts of suretyship, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of:

Ten Million Dollars (\$10,000,000)

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of West Bend Mutual Insurance Company at a meeting duly called and held on the 21st day of December, 1999.

Appointment of Attorney-In-Fact. The president or any vice president, or any other officer of West Bend Mutual Insurance Company may appoint by written certificate Attorneys-In-Fact to act on behalf of the company in the execution of and attesting of bonds and undertakings and other written obligatory instruments of like nature. The signature of any officer authorized hereby and the corporate seal may be affixed by facsimile to any such power of attorney or to any certificate relating therefore and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the company, and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the company in the future with respect to any bond or undertaking or other writing obligatory in nature to which it is attached. Any such appointment may be revoked, for cause, or without cause, by any said officer at any time.

In witness whereof, the West Bend Mutual Insurance Company has caused these presents to be signed by its president undersigned and its corporate seal to be hereto duly attested by its secretary this 17th day of August, 2021.

Attest Christopher C. Zwygart
Christopher C. Zwygart
Secretary



Kevin A. Steiner
Kevin A. Steiner
Chief Executive Officer/President

State of Wisconsin
County of Washington

On the 17th day of August, 2021, before me personally came Kevin A. Steiner, to me known being by duly sworn, did depose and say that he resides in the County of Washington, State of Wisconsin; that he is the President of West Bend Mutual Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.



Matthew E. Carlton
Matthew E. Carlton
Senior Corporate Attorney
Notary Public, Washington Co., WI
My Commission is Permanent

The undersigned, duly elected to the office stated below, now the incumbent in West Bend Mutual Insurance Company, a Wisconsin corporation authorized to make this certificate, Do Hereby Certify that the foregoing attached Power of Attorney remains in full force effect and has not been revoked and that the Resolution of the Board of Directors, set forth in the Power of Attorney is now in force.

Signed and sealed at West Bend, Wisconsin this 25th day of May, 2022.



Heather A. Dunn
Heather Dunn
Vice President – Chief Financial Officer

Notice: Any questions concerning this Power of Attorney may be directed to the Bond Manager at West Bend Mutual Insurance Company.

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Jun 21, 2022

Planning & Development
Department

Zach Simonson
Prepared By
Zach Simonson
Department Head



City Administrator Approval

AGENDA TITLE: Council update on the property located at 817 Chester.

Public hearing required if this box is checked.

RECOMMENDATION: Receive update.

DISCUSSION: This item is to provide an update on the disposition of the property at 817 Chester which was brought up during the public hearing portion of a previous Council meeting.

The property at 817 Chester was acquired by the City in October 2018. In July 2019 the Rushmans submitted a petition seeking to purchase the property. A timeline for that petition is included with the packet.

Source of Funds:

Budgeted Item: Budget Amendment Needed:

Most important to the timeline, a resolution to set a public hearing for consideration of the petition was pulled from the April 7, 2020 Council consent agenda and tabled. The Council had concerns with allowing a property which is suitable for development in a strong and vibrant neighborhood to be sold for greenspace when it could be used for housing. The Council adopted a moratorium on the sale of city own lots at the May 5, 2020 meeting.

At the time of the moratorium, the City should have refunded the Rushmans' deposit more promptly and closed the petition. That mistake is regrettable as it left the Rushmans unsure about the property. However, the sale of the property to Rippling Waters was appropriate by policy and in the best interests of the City's needs. That sale will facilitate the development of a new, owner-occupied home on the lot. The Rushmans' deposit has since been refunded and a letter was sent to the Rushmans' with additional information regarding this case.

817 Chester Timeline

1. 7/12/2019 Petition filed in City Clerk's office (#5056-2019) with purchase offer form; 817 Chester, extra yard/green space; \$250 offer with \$50 deposit.
2. 7/22/2019 Request from Jody Gates for resolution numbers for council inclusion (to set PH on 8/6/2019) and (hold the PH 8/20/2019).
3. 7/23/2019 Email correspondence Jody G./Joni K./Kevin F. – question about property with adjacent property being 813 Chester showing owned by Stephanie Shoemaker; but can they consider the “legal alley” by 316 N. Pocahontas to use as green space?
4. 7/24/2019 Email from Jody stating she called Mr. Rushman and left a message to return her call to discuss property; she added a note to the bottom of the petition.
5. 7/24/2019 Email from Jody stating Mr. Rushman returned her call; she told him that 817 Chester has been approved by all depts. to be sold. Waiting on title paperwork for his purchase of 813 Chester; once this is completed, we can begin the process with Council to dispose 817 Chester.
6. 12/23/2019 Email from City Clerk asking about petition as it is still pending; waiting on Rushman's to bring over title to 813 Chester.
7. 3/19/2020 Email from City Clerk; Jim Rushman brought over deed for 813 Chester showing ownership of parcel but Beacon still reflected previous owner b/c deed had not been recorded yet; waiting for deed to be recorded before we can proceed with disposal.
8. 3/30/2020 Email from City Clerk; deed for 813 Chester was recorded 3/19/2020; assigned Resolution Numbers to set PH on 4/7/2020 and PH for disposal of property 4/21/2020.
9. 3/30/2020 Email sent by Jody G. to legals to publish notice of public hearing on 4/10/2020.
10. 4/7/2020 Minutes from City Council mtg #11 held April 7, 2020; Council member Stevens pulled/tabled Resolution No. 61-2020, setting April 21, 2020 as the date of a public hearing on the disposition of city owned property located at 817 Chester to James & Lori Rushman for further discussion.
11. 4/8/2020 Email sent by City Clerk to Jody G. & Kevin F. stating Council member Stevens pulled this item during last night's meeting and would like more discussion on it; not in agreement for allowing the lot to go for \$250 for green space when it is a buildable lot.
12. 4/8/2020 Email correspondence between Jody G. and Courier – cancelling the PH Notice from publication on 4/10/2020; with confirmation it was cancelled.
13. 4/8/2020 Email correspondence asking for Council member Stevens reason for not wanting to dispose of property; addressing the vacant lot policy.

14. 4/9/2020 Email correspondence from Kevin F. requesting discussion of current vacant lot policy and suggestion of placing a moratorium on vacant lot disposals until resolved.
15. 4/10/2020 Email from City Clerk; the Courier published the PH notice on 4/10/2020 even though it was cancelled.
16. 4/14/2020 Email from City Clerk; inquiring on when Resolution No. 61-2020 will be discussed; any plans on presenting during the next meeting on 4/21/2020; followed by response from Jody G. stating we need to wait until Kevin determines what exactly Council wants us to do.
17. 5/5/2020 City Council Mins; Resolution No. 101-2020; placing up to a one-year Moratorium on the sale of city owned vacant lots; effective June 1, 2020.
18. 7/2/2020 Email from City Clerk to Jody G. & Kevin F. informing them that Lori Rushman called on 7/1/2020 to check on the process for this property; they have been mowing this vacant lot since they put deposit down; requested for one of them to return her call to discuss with her phone number included. Response received 7/6/2020 from Jody stating didn't Council remove this item from the agenda or refuse to approve it the last time we sent it.
19. 8/13/2020 Email to City Clerk from Cathy S. stating Lori Rushman left a voicemail about the property at 817 Chester; with response from CC asking for Kevin to reach out to her to explain the process.
20. 4/26/2021 Email from City Clerk asking Zach if he has had any discussion with Lori; do I need to request her deposit check to be refunded; response from Zach stating Rippling Waters asked to sketch a site plan for a home on that lot and he will discuss with Jody this week and return a call to Lori.
21. 1/26/2022 Email from City Clerk to Zach asking where we are at with this Petition because I'm not showing it as resolved; asking if we are able to sell 817 Chester to the Rushman's or is petition denied; and if any refund needs to be issued. Response received from Zach stating we cannot sell the lot as we need to reserve it for development.
22. 4/21/2022 Email from Sherrie J. stating the Rushman's stopped in the Clerk's office asking why there was a sign in the front yard of 817 Chester saying house coming soon; they were waiting to hear back from the department on whether they could build a garage on the property to fulfill the requirement of a "buildable lot". Response from Zach stating when he sent the email on 1/26/2022 he thought we were rejecting their offer.

Additional Correlating documents: Warranty Deed to 813 Chester, fully signed petition form, original petition form with copy of deposit check, FOIA request #805-2022 and correlating paperwork provided by Jim & Lori Rushman to the City Council on 5/17/2022.

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of : Jun 21, 2022

Planning & Development
Department

Zach Simonson
Prepared By
Zach Simonson
Department Head



City Administrator Approval

AGENDA TITLE: RESOLUTION NO. 160-2022: RESOLUTION APPROVING THE PLANS, SPECIFICATIONS, FORM OF CONTRACT AND ESTIMATE OF COST FOR THE NORTH MARKET STREET FACADE PROJECT (CDBG 20-CVN-024)

Public hearing required if this box is checked.

RECOMMENDATION: Open the public hearing,
Close the public hearing,
Pass and adopt Resolution No. 160-2022.

DISCUSSION: This project will improve 5 facades on 2 buildings in the 100 block of North Market Street in Downtown Ottumwa. The estimated cost of the project is \$375,000. Funds for the project are coming from the City of Ottumwa, the building owners and Iowa Economic Development Authority through the CDBG program. Bids for work were accepted until 2pm on June 9, 2022. The full specifications book and set of drawings are available on the City's

Source of Funds:

Budgeted Item: Budget Amendment Needed:

and were available for review by bidders and the public at City Hall.

Specifications Book: https://www.ottumwa.us/files/north_market_facade_specifications.pdf

Drawings: https://www.ottumwa.us/files/north_market_facade_drawings.pdf

RESOLUTION NO. 160-2022

RESOLUTION NO. 160-2022: RESOLUTION APPROVING THE PLANS, SPECIFICATIONS, FORM OF CONTRACT AND ESTIMATE OF COST FOR THE NORTH MARKET STREET FACADE PROJECT (CDBG 20-CVN-024)

WHEREAS, the Ottumwa City Council has conducted a public hearing on the plans, specifications, estimated cost and form of contract for the above referenced project; and

WHEREAS, no objections to said plans, specifications, estimated cost or form of contract were recieved; and

NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, IOWA THAT:

The plans, specifications, form of contract and estimated cost for the above referenced project are hereby approved and adopted.

APPROVED, PASSED, AND ADOPTED this 21st day of June 2022.

CITY OF OTTUMWA, IOWA

Richard W. Johnson, Mayor

ATTEST:

Christina Reinhard, City Clerk

NOTICE OF PUBLIC HEARING ON PROPOSED PLANS, SPECIFICATIONS, FORM OF CONTRACT AND ESTIMATE OF COST FOR THE NORTH MARKET STREET FACADE IMPROVEMENTS PROJECT CDBG #20-CVN-024 IN THE 100 BLOCK OF NORTH MARKET STREET

PUBLIC NOTICE is hereby given that the Council of the City of Ottumwa in the State of Iowa, will hold a public hearing on June 21, 2022, at 5:30 p.m. in the Council Chambers, City Hall, 105 E. Third St., Ottumwa, Iowa, at which meeting the Council proposes to consider plans, specifications, form of contract and estimate of cost for the North Market Street Facade Improvements Project CDBG #20-CVN-024 in the 100 block of North Market Street.

Plans, specifications, form of contract and estimate of cost are officially on file in the Planning and Development Office for inspection and use by interested persons, and said documents are hereby made a part of this Official Publication by this reference.

That said public hearing will be conducted on June 21, 2022 at 5:30 p.m. in the City Council Chambers, Second Floor, City Hall, 105 E. Third St., Ottumwa, Iowa. At said time and place, any person or persons may appear and offer objections if they so desire.

Dated this 7th day of June, 2022.

Chris Reinhard

City Clerk, City of Ottumwa in the State of Iowa

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Jun 21, 2022

Planning & Development
Department

Zach Simonson
Prepared By
Zach Simonson
Department Head



City Administrator Approval

AGENDA TITLE: RESOLUITON NO. 122-2022: A RESOLUTION ADOPTING THE
POLICY STATEMENTS GOVERNING THE OPERATION OF THE CITY
OF OTTUMWA'S BUILD OTTUMWA PROGRAM

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt Resolution No. 122-2022.

DISCUSSION: This resolution establishes the Build Ottumwa program. Build Ottumwa will provide \$10,000 economic development grants for the construction of new single-family and duplex dwelling units. These types of grants have been successful in communities such as Newton and Marshalltown.

Source of Funds:

Budgeted Item: Budget Amendment Needed:

The 2022 Ottumwa Housing Plan identified a need to construct 500 new units of housing before 2030. This program is one of several efforts to put the recommendations of the study into practice by providing gap financing to make new home projects more viable. Grant funds will be released at the time a certificate of occupancy is issued for the property and will be available for projects with a value greater than \$125 thousand per unit.

The Legacy Foundation has matched the \$150 thousand which the City allocated for this program in the CIP. That \$300 thousand will be available only for single family projects which will be awarded on a first-come, first-served basis. Additional funds would need to be allocated for duplex projects as appropriate.

RESOLUTION NO. 122-2022

**A RESOLUTION ADOPTING THE POLICY STATEMENTS GOVERNING THE OPERATION
OF THE CITY OF OTTUMWA'S BUILD OTTUMWA PROGRAM**

WHEREAS, the *2202 Ottumwa Housing Plan* identified a need for 500 units of housing before 2030 and identified gap financing as a tool for addressing housing needs; and

WHEREAS, the Build Ottumwa Program will provide \$10,000 economic development grants for the construction of new single family and duplex-dwelling units; and

NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, IOWA THAT:

The Policy Statements Governing the Operation of the City of Ottumwa's Build Ottumwa Program are hereby adopted.

APPROVED, PASSED, AND ADOPTED this 15th day of June 2022.

CITY OF OTTUMWA, IOWA

Richard W. Johnson, Mayor

ATTEST:

Christina Reinhard, City Clerk

June 21, 2022

**Policy Statements Governing the Operation of the City of Ottumwa's
Build Ottumwa Program**

GENERAL CONDITIONS:

The City of Ottumwa shall administer a program to provide direct economic development grants for the construction of new single-family and duplex housing. This program will advance the goal of provided the gap financing necessary to start new housing development as identified in the *2022 Ottumwa Housing Plan*. The Build Ottumwa Program ("Program") shall operate in compliance with the following policy statements:

POLICY STATEMENTS:

1. Financial assistance is subject to available funds budgeted for the programs.
2. The Planning and Development Department shall act as the administrative agency as provided in Chapter 2 of the Municipal Code of the City of Ottumwa and shall be responsible for the implementation of the programs.
3. Improvements under any program must be approved by the Planning and Development Department prior to start of work. All funded projects shall be consistent with City of Ottumwa Municipal Code and any applicable state codes.
4. Projects funded shall be new single family homes and duplex units with a value greater than \$125 thousand per unit. Value may be determined using the Building Valuation Data used to calculate Building Permit Fees, by assessment or by appraisal.
5. Funds provided by the Legacy Foundation or provided by the City as match for funds provided by the Legacy Foundation shall only be applied to single-family home projects. Funding for duplex projects shall be separately allocated.
6. The *Build Ottumwa Program* will provide at \$10,000 economic development grant at the time a Certificate of Occupancy is issued for a new single-family or duplex unit.
7. The Planning and Development Department shall formalize an application, guidelines and procedures consistent with these policy statements. The guidelines may be amended by the Planning and Development Department so long as they are consistent with the Policy Statements governing the operation of the Build Ottumwa Program.
8. The City Administrator shall hear and decide upon any appeal to decisions of the Planning Department regarding the Build Ottumwa Program.



Planning and Development
Room 200, City Hall
105 East Third Street
Ottumwa, IA 52501

9. New residential units constructed under the Build Ottumwa Program shall be eligible for tax abatement in accordance with the Amended and Restated Ottumwa Urban Revitalization Plan.
10. Property owners and developers will be required to consent to allow project photographs to be used for marketing purposes.

Resolution No. 122-2022 approving and adopting these policy statements was approved June 21, 2022 by the Ottumwa City Council.

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Jun 21, 2022

Planning & Development
Department

Zach Simonson
Prepared By
Zach Simonson
Department Head



City Administrator Approval

AGENDA TITLE: RESOLUTION NO. 161-2022: RESOLUTION AWARDING THE
CONTRACT FOR THE NORTH MARKET STREET FACADE PROJECT
(CDBG 20-CVN-024)

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt Resolution No. 161-2022.

DISCUSSION: Bids were received for this project until 2pm on June 9, 2022. Two bids were received. Christner Contracting, Inc. had the winning bid in the amount of \$277,777. An itemized account of the bid was sent to the architect for review and has been approved. The bid is \$97,223 less than the cost estimate. Staff recommends awarding CCI the contract.

Source of Funds:

Budgeted Item: Budget Amendment Needed:

RESOLUTION NO. 161-2022

**RESOLUTION AWARDDING THE CONTRACT FOR THE NORTH MARKET STREET
FACADE PROJECT (CDBG 20-CVN-024)**

WHEREAS, the Ottumwa City Council accepted bids for the above referenced project until 2pm on June 9; and

WHEREAS, the lowest qualified bid was from Christner Contracting, Inc. for the sum of \$277,777; and

NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, IOWA THAT:

Christner Contract, Inc. be awarded the contract for the North Market Street Facade Project in the amount of \$277,777.

APPROVED, PASSED, AND ADOPTED this 21st day of June 2022.

CITY OF OTTUMWA, IOWA

Richard W. Johnson, Mayor

ATTEST:

Christina Reinhard, City Clerk

SECTION 00 41 00

BID FORM

Pursuant to & in compliance w/ the Bidding Documents relating to the Building Contract for:

North Market Façade Improvements

Including Addenda Nos. 1, 2, the undersigned, having become thoroughly familiar with the terms and conditions of the proposed Contract Documents prepared by Curtis Architecture & Design, with local conditions affecting performance and costs of the Work at the place where the Work is to be completed, and having fully inspected the site in all particulars, hereby proposes and agrees to fully perform the Work in strict accord with the proposed Contract Documents, including furnishing all labor and materials, and to do all the work required to construct and complete said Work in accordance with the Contract Documents, for the consideration of the sum of money stated below.

BASE BID: \$ 277,777 (including all Allowances)

Two hundred seventy-seven thousand
DOLLARS seven hundred seventy-seven and 00/100

ESTIMATED CONSTRUCTION TIMELINE May 31st, 2023

We understand the Owner reserves the right to reject this bid, or to negotiate with the Bidder, when such is deemed by the Owner to be in his best interest, but that this bid shall remain open and not be withdrawn for a period of thirty days from the date prescribed for its opening. If written notice of the acceptance of this bid is mailed, faxed, or delivered to the undersigned within thirty days after the date set for the opening of this bid, or at any time thereafter before it is withdrawn, the undersigned will sign and return the Contract Agreement; prepared in accord with the Bidding Documents and this bid as accepted.

Notice of acceptance, or request for additional information, may be addressed to the undersigned at the address set forth below.

Name of Contractor: Christner Contracting Inc. Date: 06/09/2022

Signature of Bidder: 

Typed / hand printed name of signer: Anthony Christner

Note: If bidder is a corporation, set forth the legal name of the corporation together with the signature of the officer, officers, or agent authorized to sign contracts on behalf of the corporation. If bidder is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership.

Business address: 17587 Hwy 34 Ottumwa, IA 52501

Email address: info@christnercontracting.com

Telephone #: 641.684.0648 Federal Tax ID #: 20-8955145

INTENT TO COMPLY WITH SECTION 3 REQUIREMENTS
(Conforms to 2021 IEDA CDBG Management Guide)

This form shall be provided with procurement documents and returned with all submitted bids.

Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 75] is HUD's legislative directive for ensuring that economic opportunities resulting from HUD financial assistance, including employment, job training, and contracting are, to the greatest extent feasible, directed to low- and very low-income persons, and the businesses that employ these individuals, are notified about the expenditure of HUD funds in their community and encouraged to seek opportunities, if created.

A Section 3 Worker is defined as any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

1. The worker's income for the previous annualized calendar year is below the applicable income limit established by HUD;
2. The worker is employed by a Section 3 business concern; or
3. The worker is a YouthBuild participant.

A Targeted Section 3 Worker is defined as a Section 3 worker who fits one of the following categories:

1. A worker is employed by a Section 3 business concern; or
2. A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - a. Living within one mile of the project, or if fewer than 5,000 people live within one mile of the project, within a circle centered on the project that is sufficient to encompass a population of 5,000 people; or
 - b. The worker is a YouthBuild participant.

A Section 3 Business is defined as a business in which:

1. At least 51% owned by low- or very low-income persons;
2. Over 75% of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
3. At least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-assisted living.

Note: If your business meets the definition of a Section 3 business, you may register as a Section 3 Business through HUD's Business Registry here: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/RegisterBusiness>

Businesses who self-certify that they meet one of the regulatory definitions of a Section 3 business will be included in a searchable online database. The database can be used by agencies that receive HUD funds, developers, contractors, and others to facilitate the award of covered construction and non-construction contracts to Section 3 businesses.

Please complete the following:

1. If awarded a contract for this CDBG funded project, do you anticipate being able to determine employees' hourly wages and addresses?

Yes No

If yes, please estimate the number of hours to be completed on the project by all workers: 2500

2. Is your business a Section 3 Business?

Yes No

3. Is the bidder willing to consider hiring Section 3 Workers for future employment opportunities that are a direct result of this CDBG funded project?

Yes No


4. Is the bidder willing to consider subcontracting with Section 3 Businesses for this project?

Yes No

5. Is the bidder willing to provide information on hours worked by Section 3 Workers and Targeted Section 3 Workers on this project?

Yes No

I understand that this contracting opportunity is subject to HUD Section 3 requirements [24 CFR Part 75]. I have read and understand the Section 3 requirements as generally described above and presented in the Section 3 contract language included in the procurement documents for this project. If awarded a contract, the business commits to following Section 3 requirements, as they apply to this project. If awarded a contract for this project, the business agrees to provide reports to the City of Ottumwa on Section 3 efforts and accomplishments.

Christner Contracting Inc.	17587 Hwy 34 Ottumwa, IA 52501
Name of Contractor/Subcontractor	Address
Anthony Christner	CEO
Print Name	Title
	06/09/2022
Signature	Date

END OF SECTION 00 41 00

Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

Bid Bond

CONTRACTOR:

(Name, legal status and address)

Christner Contracting, Inc.
17587 Highway 34 West
Ottumwa, IA 52501

SURETY:

(Name, legal status and principal place of business)

Employers Mutual Casualty Company
P.O. Box 712
Des Moines, IA 50306

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:

(Name, legal status and address)

City of Ottumwa
105 E. Third St.
Ottumwa, IA 52501

BOND AMOUNT: \$ Five Percent (5%) of the Total Amount Bid

PROJECT:

(Name, location or address, and Project number, if any)

North Market Façade Improvements, Ottumwa, IA

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 6th day of June 2022

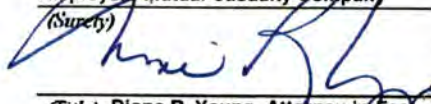

(Witness) Deneill Christner

Christner Contracting, Inc.
(Principal) (Seal)


(Title) Anthony Christner CEO


(Witness) Sara Huston

Employers Mutual Casualty Company
(Surety) (Seal)


(Title) Dione R. Young, Attorney-in-Fact



POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

- 1. Employers Mutual Casualty Company, an Iowa Corporation
- 2. EMCASCO Insurance Company, an Iowa Corporation
- 3. Union Insurance Company of Providence, an Iowa Corporation

- 4. Illinois EMCASCO Insurance Company, an Iowa Corporation
- 5. Dakota Fire Insurance Company, a North Dakota Corporation
- 6. EMC Property & Casualty Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

CRAIG E. HANSEN, BRIAN M. DEIMERLY, JAY D. FREIERMUTH, TIM MCCULLOH, CINDY BENNETT, ANNE CROWNER, STACY VENN, DIONE R. YOUNG, SHIRLEY S BARTENHAGEN

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the Surety Bond:

In an amount not exceeding Ten Million Dollars\$10,000,000.00

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

The authority hereby granted shall expire October 10th, 2022, unless sooner revoked.

AUTHORITY FOR POWER OF ATTORNEY

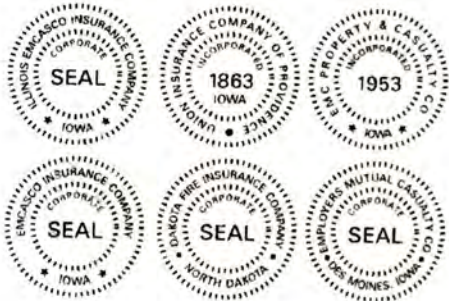
This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

RESOLVED: The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 30th day of March, 2020.

Scott R. Jean
Scott R. Jean, President & CEO
of Company 1; Chairman, President
& CEO of Companies 2, 3, 4, 5 & 6

Todd Strother
Todd Strother, Executive Vice President
Chief Legal Officer & Secretary of
Companies 1, 2, 3, 4, 5 & 6



On this 30th day of March, 2020 before me a Notary Public in and for the State of Iowa, personally appeared Scott R. Jean and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the CEO, Chairman, President, Executive Vice President, Chief Legal Officer and/or Secretary, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Scott R. Jean and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2022.

Kathy Loveridge
Kathy Loveridge
Notary Public in and for the State of Iowa



CERTIFICATE

I, James D. Clough, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 30th day of March, 2020, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 6th day of June, 2022.

J D Clough
Vice President



Christner Contracting Inc
17587 Highway 34
Ottumwa, IA 52501
641-684-0648
License #C101530

TO: The City of Ottumwa
105 E. Third St.
Ottumwa, IA 52501

BID SECURITY:
NORTH MARKET FAÇADE IMPROVEMENTS



Christner Contracting Inc
17587 Highway 34
Ottumwa, IA 52501
641-684-0648

TO: The City of Ottumwa
105 E. Third St.
Ottumwa, IA 52501

SEALED BID:
NORTH MARKET FAÇADE IMPROVEMENTS

SECTION 00 41 00

BID FORM

Pursuant to & in compliance w/ the Bidding Documents relating to the Building Contract for:

North Market Façade Improvements

Including Addenda Nos. 1 2, the undersigned, having become thoroughly familiar with the terms and conditions of the proposed Contract Documents prepared by Curtis Architecture & Design, with local conditions affecting performance and costs of the Work at the place where the Work is to be completed, and having fully inspected the site in all particulars, hereby proposes and agrees to fully perform the Work in strict accord with the proposed Contract Documents, including furnishing all labor and materials, and to do all the work required to construct and complete said Work in accordance with the Contract Documents, for the consideration of the sum of money stated below.

BASE BID: \$ 338,312 (including all Allowances)

Three hundred thirty eight thousand three hundred twelve
DOLLARS

ESTIMATED CONSTRUCTION TIMELINE

Completed by May 31st 2023

We understand the Owner reserves the right to reject this bid, or to negotiate with the Bidder, when such is deemed by the Owner to be in his best interest, but that this bid shall remain open and not be withdrawn for a period of thirty days from the date prescribed for its opening. If written notice of the acceptance of this bid is mailed, faxed, or delivered to the undersigned within thirty days after the date set for the opening of this bid, or at any time thereafter before it is withdrawn, the undersigned will sign and return the Contract Agreement; prepared in accord with the Bidding Documents and this bid as accepted.

Notice of acceptance, or request for additional information, may be addressed to the undersigned at the address set forth below.

Name of Contractor: RC Construction, LLC Date: 6/9/2022

Signature of Bidder: [Signature]

Typed / hand printed name of signer: Red Grooms

Note: If bidder is a corporation, set forth the legal name of the corporation together with the signature of the officer, officers, or agent authorized to sign contracts on behalf of the corporation. If bidder is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership.

Business address: 215 E. 4th St. Ottumwa, IA 52501

Email address: red@rcconstructioncompany.com

Telephone #: 641-954-9898 Federal Tax ID #: 90-0761373

INTENT TO COMPLY WITH SECTION 3 REQUIREMENTS
(Conforms to 2021 IEDA CDBG Management Guide)

This form shall be provided with procurement documents and returned with all submitted bids.

Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 75] is HUD's legislative directive for ensuring that economic opportunities resulting from HUD financial assistance, including employment, job training, and contracting are, to the greatest extent feasible, directed to low- and very low-income persons, and the businesses that employ these individuals, are notified about the expenditure of HUD funds in their community and encouraged to seek opportunities, if created.

A Section 3 Worker is defined as any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

1. The worker's income for the previous annualized calendar year is below the applicable income limit established by HUD;
2. The worker is employed by a Section 3 business concern; or
3. The worker is a YouthBuild participant.

A Targeted Section 3 Worker is defined as a Section 3 worker who fits one of the following categories:

1. A worker is employed by a Section 3 business concern; or
2. A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - a. Living within one mile of the project, or if fewer than 5,000 people live within one mile of the project, within a circle centered on the project that is sufficient to encompass a population of 5,000 people; or
 - b. The worker is a YouthBuild participant.

A Section 3 Business is defined as a business in which:

1. At least 51% owned by low- or very low-income persons;
2. Over 75% of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
3. At least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-assisted living.

Note: If your business meets the definition of a Section 3 business, you may register as a Section 3 Business through HUD's Business Registry here: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/RegisterBusiness>

Businesses who self-certify that they meet one of the regulatory definitions of a Section 3 business will be included in a searchable online database. The database can be used by agencies that receive HUD funds, developers, contractors, and others to facilitate the award of covered construction and non-construction contracts to Section 3 businesses.

Please complete the following:

1. If awarded a contract for this CDBG funded project, do you anticipate being able to determine employees' hourly wages and addresses?

Yes No

If yes, please estimate the number of hours to be completed on the project by all workers: TBD

2. Is your business a Section 3 Business?

Yes No

3. Is the bidder willing to consider hiring Section 3 Workers for future employment opportunities that are a direct result of this CDBG funded project?

Yes No

4. Is the bidder willing to consider subcontracting with Section 3 Businesses for this project?

Yes No

5. Is the bidder willing to provide information on hours worked by Section 3 Workers and Targeted Section 3 Workers on this project?

Yes No

I understand that this contracting opportunity is subject to HUD Section 3 requirements [24 CFR Part 75]. I have read and understand the Section 3 requirements as generally described above and presented in the Section 3 contract language included in the procurement documents for this project. If awarded a contract, the business commits to following Section 3 requirements, as they apply to this project. If awarded a contract for this project, the business agrees to provide reports to the City of Ottumwa on Section 3 efforts and accomplishments.

P.B. Construction, LLC 215 E. 4th St. Ottumwa, IA 52501
Name of Contractor/Subcontractor Address

Bob Grooms Owner
Print Name Title

[Signature] 6/9/2022
Signature Date

END OF SECTION 00 41 00

Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

Bid Bond

CONTRACTOR:

(Name, legal status and address)

R.G. Construction, Limited Liability Company
215 East 4th Street
Ottumwa, IA 52501

SURETY:

(Name, legal status and principal place of business)

United Fire & Casualty Company
P.O. Box 73909
Cedar Rapids, IA 52407-3909

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:

(Name, legal status and address)

City of Ottumwa
105 E. Third St.
Ottumwa, IA 52501

BOND AMOUNT: \$ Five Percent (5%) of the Total Amount Bid

PROJECT:

(Name, location or address, and Project number, if any)

North Market Façade Improvements, Ottumwa, IA

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.


When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 3rd day of June 2022



(Witness)

R.G. Construction, Limited Liability Company
(Principal) _____ (Seal)



(Title) Owner



(Witness) Cindy Bennett

United Fire & Casualty Company
(Surety) _____ (Seal)



(Title) Dione R. Young, Attorney-in-Fact



UNITED FIRE & CASUALTY COMPANY, CEDAR RAPIDS, IA
 UNITED FIRE & INDEMNITY COMPANY, WEBSTER, TX
 FINANCIAL PACIFIC INSURANCE COMPANY, LOS ANGELES, CA
 CERTIFIED COPY OF POWER OF ATTORNEY
 (original on file at Home Office of Company – See Certification)

Inquiries: Surety Department
 118 Second Ave SE
 Cedar Rapids, IA 52401

KNOW ALL PERSONS BY THESE PRESENTS, That United Fire & Casualty Company, a corporation duly organized and existing under the laws of the State of Iowa; United Fire & Indemnity Company, a corporation duly organized and existing under the laws of the State of Texas; and Financial Pacific Insurance Company, a corporation duly organized and existing under the laws of the State of California (herein collectively called the Companies), and having their corporate headquarters in Cedar Rapids, State of Iowa, does make, constitute and appoint

CRAIG E. HANSEN, JAY D. FREIERMUTH, BRIAN M. DEIMERLY, CINDY BENNETT, ANNE CROWNER, TIM MCCULLOH, STACY VENN, DIONE R. YOUNG, KEVIN J. KNUTSON, MICHELLE GRUIS, KATHLEEN BREWER, SETH D. ROOKER, STACIE CHRISTENSEN, SHELBY GREINER, GINGER HOKE, JOHN CORD, EACH INDIVIDUALLY

their true and lawful Attorney(s)-in-Fact with power and authority hereby conferred to sign, seal and execute in its behalf all lawful bonds, undertakings and other obligatory instruments of similar nature provided that no single obligation shall exceed \$100,000,000.00 and to bind the Companies thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Companies and all of the acts of said Attorney, pursuant to the authority hereby given and hereby ratified and confirmed.

The Authority hereby granted is continuous and shall remain in full force and effect until revoked by United Fire & Casualty Company, United Fire & Indemnity Company, and Financial Pacific Insurance Company.

This Power of Attorney is made and executed pursuant to and by authority of the following bylaw duly adopted by the Boards of Directors of United Fire & Casualty Company, United Fire & Indemnity Company, and Financial Pacific Insurance Company.

"Article VI – Surety Bonds and Undertakings"

Section 2, Appointment of Attorney-in-Fact. "The President or any Vice President, or any other officer of the Companies may, from time to time, appoint by written certificates attorneys-in-fact to act in behalf of the Companies in the execution of policies of insurance, bonds, undertakings and other obligatory instruments of like nature. The signature of any officer authorized hereby, and the Corporate seal, may be affixed by facsimile to any power of attorney or special power of attorney or certification of either authorized hereby; such signature and seal, when so used, being adopted by the Companies as the original signature of such officer and the original seal of the Companies, to be valid and binding upon the Companies with the same force and effect as though manually affixed. Such attorneys-in-fact, subject to the limitations set forth in their respective certificates of authority shall have full power to bind the Companies by their signature and execution of any such instruments and to attach the seal the Companies thereto. The President or any Vice President, the Board of Directors or any other officer of the Companies may at any time revoke all power and authority previously given to any attorney-in-fact.

IN WITNESS WHEREOF, the COMPANIES have each caused these presents to be signed by its vice president and its corporate seal to be hereto affixed this 18th day of March, 2022

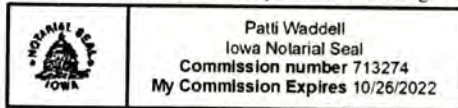


UNITED FIRE & CASUALTY COMPANY
 UNITED FIRE & INDEMNITY COMPANY
 FINANCIAL PACIFIC INSURANCE COMPANY

By: *Dennis J. Richmann*
 Vice President

State of Iowa, County of Linn, ss:

On 18th day of March, 2022, before me personally came Dennis J. Richmann to me known, who being by me duly sworn, did depose and say; that he resides in Cedar Rapids, State of Iowa; that he is a Vice President of United Fire & Casualty Company, a Vice President of United Fire & Indemnity Company, and a Vice President of Financial Pacific Insurance Company the corporations described in and which executed the above instrument; that he knows the seal of said corporations; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporations and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporations.



Patti Waddell
 Notary Public
 My commission expires: 10/26/2022

I, Mary A. Bertsch, Assistant Secretary of United Fire & Casualty Company and Assistant Secretary of United Fire & Indemnity Company, and Assistant Secretary of Financial Pacific Insurance Company, do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the bylaws and resolutions of said Corporations as set forth in said Power of Attorney, with the ORIGINALS ON FILE IN THE HOME OFFICE OF SAID CORPORATIONS, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

In testimony whereof I have hereunto subscribed my name and affixed the corporate seal of the said Corporations
 this 3rd day of June, 2022



By: *Mary A. Bertsch*
 Assistant Secretary,
 UF&C & UF&I & FPIC

From:
RG Construction, LLC
215 East 4th Street
Ottumwa, IA 52501
Ph. 641-954-9898

- BID SECURITY -

North Market Facade Improvements

From:
RG Construction, LLC
215 East 4th Street
Ottumwa, IA 52501
Ph. 641-954-9898


- SEALED BID -

North Market Facade Improvements

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Jun 21, 2022

Chris Reinhard 
Prepared By

Airport
Department

Department Head



City Administrator Approval

AGENDA TITLE: Resolution No. 162-2022 - Approving a Revised Lease Agreement between the City of Ottumwa and the US DOT - Federal Aviation Administration.

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt Resolution No. 162-2022.

DISCUSSION: The Federal Aviation Administration (FAA) has leased space from the City of Ottumwa for the purpose of operating an antenna and associated equipment at the Ottumwa Regional Airport. The prior lease with the FAA expired September 30, 2020 and the FAA requested a new lease with an expiration date of September 30, 2031. The City of Ottumwa held a public hearing and approve the new lease with FAA on March 15, 2022. The FAA has subsequently made some minor modifications to the lease and the City now wishes to approve the final revised agreement with FAA. Because the termination date of the lease, the leased premises, and the rental rate have not changed between the two versions of the Lease Agreement, a new public hearing is not required.

Source of Funds:

Budgeted Item: Budget Amendment Needed: No

Resolution No. 60-2022 and the March, 2022 draft of the Lease Agreement between the City of Ottumwa and the FAA (FAA Contract No. 697-DCM-L-00098) are hereby repealed.

The June, 2022 version of the Lease Agreement between the City of Ottumwa and the FAA (FAA Contract No. 697DCM-21-L-00098) is hereby approved and the Mayor and City Clerk are authorized and directed to execute the Lease on behalf of the City of Ottumwa.

RESOLUTION NO. 162-2022

**RESOLUTION APPROVING A REVISED LEASE AGREEMENT BETWEEN
THE CITY OF OTTUMWA AND THE US DOT – FEDERAL AVIATION
ADMINISTRATION**

WHEREAS, the City of Ottumwa has been leasing space at its airport to the Federal Aviation Administration (FAA) for the operation of an antennae and associated equipment; and

WHEREAS, the prior lease with the FAA expired on September 30, 2020, and the FAA requested a new lease with an expiration date of Sept. 30, 2031; and

WHEREAS, the City of Ottumwa held a public hearing and approved the new lease with FAA at its meeting on March 15, 2022; and

WHEREAS, the FAA has subsequently made some minor modifications to the lease and the City now wishes to approve the final revised agreement with FAA; and

WHEREAS, because the termination date of the lease, the leased premises, and the rental rate have not changed between the two versions of the Lease Agreement, a new public hearing is not required.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ottumwa, Iowa, that:

1. That Resolution No. 60-2022 and the March, 2022 draft of the Lease Agreement between the City of Ottumwa and the FAA (FAA Contract No. 697-DCM-L-00098) are hereby repealed.
2. That the June, 2022 version of the Lease Agreement between the City of Ottumwa and the FAA (FAA Contract No. 697DCM-21-L-00098) is hereby approved and the Mayor and City Clerk are authorized and directed to execute the Lease on behalf of the City of Ottumwa.

Passed and approved this 21 day of June, 2022.

Richard W. Johnson, Mayor

ATTEST:

Christina Reinhard, CMC, City Clerk



U.S. Department
of Transportation
**Federal Aviation
Administration**

Central Service Area
Real Estate Branch, AAQ-920

10101 Hillwood Parkway
Fort Worth, Texas 76177

SENT VIA EMAIL

June 09, 2022

City of Ottumwa
ATTN: Jay Wheaton
105 E. Third St.
Ottumwa, IA 52501

Dear Mr. Wheaton:

Subject: Expired Lease No. DTFASW-10-L-00255
Succeeding Lease No. 697-DCM-L-00098
(OTM) Remote Communications Outlet (RCO)
Ottumwa, IA

The Federal Aviation Administration's (FAA) Lease No. DTFASW-10-L-00255, providing space for Remote Communications Outlet (RCO) located Building No. 83, 14802 Terminal Street, Ottumwa, Iowa, expired on September 30, 2020. The FAA has an ongoing need to occupy the premises.

I have attached Succeeding Lease No. 697DCM-21-I-00098. As stated in the lease, the rental consideration will be \$2,100.00 annually beginning October 1, 2021.

Please have the lease signed by the appropriate individuals (including Public Authorization Certificate), insert applicable marks for Representations, and return the lease as a PDF document to donna.e.martinez@faa.gov. When received, a fully executed lease will be returned to you for your records.

If you require additional information, please contact me at 817-222-4458 or via email at donna.e.martinez@faa.gov.

Sincerely,

Donna E. Martinez
Realty Specialist

ANTENNA & EQUIPMENT SPACE LEASE
Between
THE UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
And
CITY OF OTTUMWA, IOWA

FAA CONTRACT NO: 697DCM-21-L-00098
ATID/FACILITY TYPE: OTM/RCO
LOCATION: OTTUMWA, IOWA

1. **Preamble (09/2021) 6.1.1** This Lease for real property is hereby entered into by and between City of Ottumwa, Iowa hereinafter referred to as the Lessor and the United States of America, acting by and through the Federal Aviation Administration, hereinafter referred to as the FAA.
2. **Definitions (09/2021) 6.1.1-1** For purposes of this document, the following definitions apply;

Contract- refers to this legal instrument used to acquire an interest in real property for the direct benefit or use by the FAA. As used herein, contract denotes the document (for example- lease, easement, memorandum of agreement, or other legally binding agreement) used to implement an agreement between a customer (buyer) and a seller (supplier).

Contractor- refers to the party(ies) receiving a direct procurement contract from the FAA and who is(are) responsible for performance of contract requirements. For purposes of this document, the contractor may also be called the Lessor, Permitter, Licensor, Grantor, Airport, or Offeror depending on the type of contract or the provision within the contract.

Government- refers to the United States of America acting by and through the Federal Aviation Administration (FAA). For purposes of this document, Government and FAA are interchangeable.

Real Estate Contracting Officer (RECO) - is a trained and warranted official who contracts for real property on behalf of the FAA. For purposes of this agreement, RECO is interchangeable with Contracting Officer (CO).

3. **Succeeding Contract (09/2021) 6.1.2** This contract succeeds DTFASW-10-L-00255 and all other previous agreements between the parties for the property described in this document.
4. **Lease Witnesseth (09/2021) 6.1.3** Witnesseth: The parties hereto, for the consideration hereinafter mentioned, covenant and agree as follows:

5. **Leased Space Description (09/2021) 6.1.4** The Lessor hereby leases to the Government the following described premises:
Approximately 206 square feet for equipment space in Building No. 83, 14802 Terminal Street, Ottumwa, Iowa and a 17 foot by 13 foot tract of land located approximately 25 feet from the Southeast corner of said Building No. 83 for an antenna tower and up to two parking spaces for FAA personnel and/or Government vehicles.
6. **Purpose (09/2021) 6.1.5** It is understood and agreed that the use of the herein described premises shall be related to FAA's activities in support of the National Airspace System (NAS).
7. **Legal Authority (09/2021) 6.2.1** This contract is entered into under the authority of 49 U.S.C. 106(l)(6) and (n), which authorizes the Administrator of the FAA to enter into contracts, acquisitions of interests in real property, agreements, and other transactions on such terms and conditions as the Administrator determines necessary.
8. **Term (09/2021) 6.2.3** To have and to hold, for the term commencing on October 01, 2020 and continuing through September 30, 2031 inclusive, provided that adequate appropriations are available from year to year for the consideration herein.
9. **Consideration (09/2021) 6.2.4**
A. The Government shall pay annual rent, payable in annual installments at the end of the government fiscal year, at the following rates:

Dates	Annual rent payments made in holdover	New negotiated annual rent payments
October 2020 - September 2021	\$927.00	
October 2021 - September 2031		\$2,100.00

- B. Payments shall be made in arrears without the submission of invoices or vouchers. Payments are due on the first business day following the end of the payment period and are subject to available appropriations. The payments shall be directly deposited in accordance with the "Payment by Electronic Funds Transfer" clause in this contract. Payments shall be considered paid on the day an electronic funds transfer is made.
- C. Payment shall be made in full to: City of Ottumwa, Iowa.
- D. The parties acknowledge that the Government has paid rent for the premises under prior Lease No. DTFASW-10-L-00255 in the total amount of \$927.00 for the time period from October 1, 2020 to September 30, 2021 while in holdover status.
10. **Termination (09/2021) 6.2.5** The Government may terminate this contract at any time, in whole or in part, if the Real Estate Contracting Officer (RECO) determines that a termination is in the best interest of the Government. The RECO shall terminate this contract by delivering a written notice specifying the effective date of the termination.

The termination notice shall be delivered at least 30 days before the effective termination date. No costs shall accrue as of the effective date of termination.

11. **Excuse (09/2021) 6.2.5-3** A. The Lessor will not be in default because of any failure to perform the requirements of this Lease under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Lessor.
- B. Permissible causes for excuse are:
- i. acts of God (e.g., fires, floods, pandemics, epidemics, unusually severe weather, etc.),
 - ii. acts of the public enemy,
 - iii. acts of the Government in either its sovereign or contractual capacity,
 - iv. pandemic, epidemic, or quarantine restrictions,
 - v. strikes, and
 - vi. freight embargoes. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Lessor.
- C. Excuse will not be granted when:
- i. the Lessor had actual or constructive knowledge prior to the Lease Award Date that he/she could not perform in accordance with the requirements of the Lease contract;
 - ii. the conditions of the property prevent performance;
 - iii. the Lessor, its employees, agents or contractors, by error or omission, fails to perform;
- or
- iv. the Lessor is unable to obtain sufficient financial resources to perform its obligations.
- D. The RECO will ascertain the facts and extent of the failure. If the RECO determines that any failure to perform is excusable, the RECO will revise the delivery schedule subject to the rights of the Government under the default and termination clauses of this contract.
12. **Binding Effect (09/2021) 6.2.6** The provisions of this contract and the conditions herein shall be binding upon, and for the benefit of, the parties and their successors and assigns. In the event of any sale or transfer of ownership of the property or any portion thereof, the Government will be deemed to have attorned to any purchaser, successor, assign, or transferee. The succeeding owner will be deemed to have assumed all rights and obligations of the contractor under this contract establishing direct privity of estate and contract between the Government and said succeeding owner, with the same force, effect, and relative priority in time and right as if the contract had initially been entered into between such succeeding owner and the Government.
13. **Holdover (09/2021) 6.2.12** If after the expiration of the Lease, the Government shall retain possession of the premises, the Lease shall continue in full force and effect on a month-to-month basis. Payment shall be made in accordance with the Consideration clause of the Lease at the rate paid during the Lease term. This period shall continue until the Government shall have signed a new lease with the Lessor, acquired the property in fee, or vacated the premises.

14. **RE Clauses Incorporated by Reference (09/2021) 6.3.0** This solicitation or contract, as applicable, incorporates by reference the provisions or clauses listed below with the same force and effect as if they were given in full text. Upon request, the RECO will make the full text available, or the full text may be obtained via internet at https://fast.faa.gov/RPF_Real_Property_Clauses.cfm.
- A. **Officials Not To Benefit (09/2021) 6.3.0-2**
 - B. **Assignment of Claims (09/2021) 6.3.0-3**
 - C. **Contracting Officer's Representative (09/2021) 6.3.0-4**
 - D. **Contingent Fees (09/2021) 6.3.0-5**
 - E. **Anti-Kickback Procedures (09/2021) 6.3.0-6**
15. **Funding Responsibility for FAA Facilities (09/2021) 6.3.6** The Contractor agrees that all Contractor requested relocation(s), replacement(s), or modification(s) of any existing or future FAA navigational aid or communication system(s) necessitated by Contractor improvements or changes will be at the expense of the Contractor. In the event that the Contractor requested changes or improvements interferes with the technical and/or operational characteristics of the FAA's facility, the Contractor will immediately correct the interference issues at the Contractor's expense. Any FAA requested relocation, replacement, or modifications shall be at the FAA's expense. In the event such relocations, replacements, or modifications are necessary due to causes not attributable to either the Contractor or the FAA, funding responsibility shall be determined by mutual agreement between the parties, and memorialized in a Supplemental Agreement.
16. **Changes (09/2021) 6.3.8**
- A. The RECO may at any time, by written order via Supplemental Agreement, make changes within the general scope of this Lease in any one or more of the following:
- i. Work or services;
 - ii. Facilities or space layout;
 - iii. Amount of space/land;
 - iv. Any other change made within the scope of this lease.
- B. If any such change causes an increase or decrease in the Lessor's cost or time required for performance under this lease, the RECO will modify this Lease to provide one or more of the following:
- i. An equitable adjustment in the rental rate;
 - ii. A lump sum equitable adjustment;
 - iii. An equitable adjustment of the annual operating costs per rentable square foot; or
 - iv. An adjustment to the delivery date.
- C. The Lessor must assert its right to an adjustment by written proposal under this clause within thirty (30) days from the date of receipt of the change order. Lessor's request must include all documentation necessary to validate his/her right to an adjustment. Failure to reach agreement on any adjustment constitutes grounds for dispute under the Contract Disputes clause.
- D. Nothing in this clause excuses the Lessor from proceeding with the change as directed.
- E. Absent written supplemental agreement the Government is not liable to the Lessor under this clause.

17. **Failure in Performance (09/2021) 6.3.16** In the event the Contractor fails to perform a service, provide an item, or satisfy a requirement under this Contract, the Government may:
 - A. perform the service, provide the item, or satisfy the requirement itself, and abate the rent by its actual costs (including administrative costs) incurred in doing so,
 - B. not correct the Contractor's performance and abate the rent by an amount reasonably calculated to approximate the decreased value of the Contract arising from the Contractor's failure to perform, or
 - C. pursue termination of the contract under the "Termination" clause(s) in this Contract.
18. **No Waiver (09/2021) 6.3.17** No failure by the Government to insist upon strict performance of any provision of this Contract or failure to exercise any right, or remedy consequent to a breach thereof, will constitute a waiver of any such breach in the future.
19. **Non-Restoration (09/2021) 6.3.18** It is hereby agreed between the parties that, upon termination of its occupancy, including any holdover period, the Government shall have no obligation to restore and/or rehabilitate, either wholly or partially, the property that is the subject of this contract. It is further agreed that the Government may abandon in place any or all of the structures and equipment installed in or located upon said property by the Government during its tenure. Such abandoned equipment shall become the property of the contractor.
20. **Quiet Enjoyment (09/2021) 6.3.25** The Contractor warrants that they have good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government's use and enjoyment of said premises against third party claims.
21. **Damage by Fire or Other Casualty or Environmental Hazards (09/2021) 6.3.26** If the premises is partially or totally destroyed or damaged by fire or other casualty or if environmentally hazardous conditions are found to exist so that the premises is untenable as determined by the Government, the Government may agree to allow restoration/reconstruction, or may elect to terminate the contract, in whole or in part, immediately by giving written notice to the contractor and no further rental will be due. The Government shall have no duty to pay rent while the premises are unoccupied.
22. **Delivery and Condition (09/2021) 6.3.27** Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit by the agreed upon occupancy date. The Government reserves the right to determine when the space is ready to occupy, and to assess damages in the event the occupancy date is not met.
23. **Interference (09/2021) 6.3.28** In the event that FAA operations interfere with the Contractor's facility, the Contractor must immediately notify the RECO. The FAA will begin assessment of interference immediately upon notification. If the Contractor or its facility interferes with the FAA's equipment and the Contractor either knows of, or is notified by the FAA, of the interference, the Contractor will immediately remediate the interference at its own cost.

Notification under this clause must include the following information, if known:

- A. type of interference,
- B. the commencement date of the interference, and
- C. the root cause of the interference.

24. **Alterations (09/2021) 6.3.29** The Government shall have the right during the term of this Lease, including any extensions thereof, to make alterations, attach fixtures, and erect structures or signs in or upon the premises hereby leased, which fixtures, alterations or structures so placed in, on, upon, or attached to the said premises shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government. The parties hereto mutually agree and understand, that no restoration rights shall accrue to the Lessor for any alterations or removal of alterations to the leased premises under this Lease, and that the Government shall have the option of abandoning alterations in place, when terminating the Lease, at no additional cost.
25. **Hold Harmless (09/2021) 6.3.30** In accordance with and subject to the conditions, limitations and exceptions set forth in the Federal Tort Claims Act, 28 U.S.C. Ch. 17, the Government will be liable to persons damaged by any personal injury, death or injury to or loss of property, which is caused by a negligent or wrongful act or omission of an employee of the Government while acting within the scope of his office or employment under circumstances where a private person would be liable in accordance with the law of the place where the act or omission occurred. The foregoing shall not be deemed to extend the Government's liability beyond that existing under the Act at the time of such act or omission or to preclude the Government from using any defense available in law or equity.
26. **Compliance with Applicable Laws (09/2021) 6.3.31** The Lessor shall comply with all federal, state and local laws applicable to the Lessor as owner or Lessor, or both, of building or premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. This Lease shall be governed by federal law.
The Government will comply with all federal, state, and local laws applicable to and enforceable against it as a tenant under this lease, provided that nothing in this lease shall be construed as a waiver of the sovereign immunity of the Government.
27. **Examination of Records (09/2021) 6.3.32** The Comptroller General of the United States, the Administrator of FAA or a duly authorized representative of either shall, until three (3) years after final payment under this contract, have access to and the right to examine any of the Lessor's directly pertinent books, documents, paper, or other records involving transactions related to this contract.
28. **Subordination, Nondisturbance and Attornment (09/2021) 6.3.33** A. The Government agrees, in consideration of the warranties and conditions set forth in this clause, that this contract is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal,

modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this contract. Based on a written demand received by the RECO, the Government will review and, if acceptable, execute such instruments as the contractor may reasonably request to evidence further the subordination of this contract to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by the contractor if such easement does not interfere with the full enjoyment of any right granted the Government under this contract.

B. No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this contract so long as the Government is not in default under this contract. Contractor will include in any future mortgage, deed of trust or other security instrument to which this contract becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Contractor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the RECO promptly upon demand.

C. In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the contractor under this contract, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the contract had initially been entered into between such purchasers or transferees and the Government; provided, further, that the RECO and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this contract, or other writings, as shall be necessary to document the foregoing relationship.

D. None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

29. **Notification of Change in Ownership or Control of Land (09/2021) 6.3.34** If the Contractor sells, dies or becomes incapacitated, or otherwise conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting the premises, the Government shall be notified in writing, of any such transfer or conveyance within 30 calendar days after completion of the change in property rights. Concurrent with the written notification, the Contractor or Contractor's heirs, representatives, assignees, or trustees shall provide the Government copies of the associated legal document(s) (acceptable to local authorities) for transferring and/or conveying the property rights.

30. **Change of Ownership/Novation (09/2021) 6.3.34-1** A. If during the term of the Lease, title to the Property is transferred or the Lessor changes its legal name, the Lessor shall notify the Government within five days of the transfer of title/change of name.
- B. The Government and the Lessor must execute a Supplemental Agreement acknowledging the transfer of title or name change.
- C. If title to the Property is transferred, the Government, the original Lessor (Transferor), and the new owner or assignee (Transferee) shall execute a Novation Agreement providing for the transfer of Transferor's rights and obligations under the Lease to the Transferee. When executed on behalf of the Government, a Novation Agreement will be made part of the Lease via Supplemental Agreement.
- D. The RECO may request additional information (e.g., copy of the deed, bill of sale, certificate of merger, contract, court decree, articles of incorporation, operation agreement, partnership certificate of good standing, etc.) from the Transferor or Transferee to verify the parties' representations regarding the transfer.
- E. If the RECO determines that recognizing the Transferee as the Lessor will not be in the Government's interest, the Transferor shall remain fully liable to the Government for the Transferee's performance of obligations under the Lease, notwithstanding the transfer. Under no condition shall the Government be obligated to release the Transferor of obligations prior to (a) the rent commencement date; and (b) any amounts due and owing to the Government under the Lease that have been paid in full or completely set off against the rental payments due under the Lease.
- F. As a condition for being recognized as the Lessor and entitlement to receiving rent, the Transferee must register in the System for Award Management (SAM) for purposes of "All Awards", and complete all required representations and certifications within SAM and the "Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment" in this contract.
- G. If title to the Property is transferred, rent shall continue to be paid to the original Lessor, subject to the Government's rights as provided for in this Lease. The Government's obligation to pay rent to the Transferee shall commence on the effective date of the Lease Amendment incorporating the Novation Agreement. The Lease Amendment will not be issued until the Government has received all information reasonably required by the RECO, the Government has determined that recognizing the Transferee as the Lessor is in the Government's interest (which determination will be prompt and not unreasonably withheld), and the Transferee has met all conditions specified in sub-paragraph F.
31. **Sublease (09/2021) 6.3.35** The Government reserves the right to sublease the space covered under this Lease to another agency or private party. In subleasing this space to another party, the Government is not relieved from its responsibilities under the terms of this Lease unless otherwise agreed upon with the Lessor.
32. **Integrated Agreement (09/2021) 6.3.36** This Contract, upon execution, contains the entire agreement of the parties, and no prior written or oral agreement, express or implied shall be admissible to contradict the provisions of this Contract.

33. **Inspection of Leased Premises (09/2021) 6.3.38** To ensure a safe and healthy work environment for government employees, agents, and assigns, and to ensure the Contractor's performance under this contract, the Government at all times and places during the term of the contract has the right to:
- A. inspect the leased premises and all other areas of the building to which access is necessary,
 - B. test all performance requirements under the contract, and
 - C. perform any necessary sampling and evaluation to ensure contract compliance.
- If inspection reveals a contractual non-conformance, then the Government may require the Contractor to perform in accordance with the contract requirements at no increase in contract amount or the Government, in its sole discretion, may perform the work itself in accordance with the "Failure in Performance" clause of this Contract.

The presence or absence of a government inspection does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the contract without the RECO's written authorization.

34. **Contract Disputes (09/2021) 6.3.39** A. All contract disputes arising under or related to this contract shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A contractor may seek review of a final FAA decision only after its administrative remedies have been exhausted.
- B. The filing of a contract dispute with the ODRA may be accomplished by mail, overnight delivery, hand delivery, or by facsimile, or if permitted by Order of the ODRA, by electronic filing. A contract dispute is considered to be filed on the date it is received by the ODRA during normal business hours. The ODRA's normal business hours are from 8:30 am to 5:00 pm Eastern Time.
 - C. Contract disputes are to be in writing and shall contain:
 - i. The contractor's name, address, telephone and fax numbers and the name, address, telephone and fax numbers of the contractor's legal representative(s) (if any) for the contract dispute;
 - ii. The contract number and the name of the Contracting Officer;
 - iii. A detailed chronological statement of the facts and of the legal grounds for the contractor's positions regarding each element or count of the contract dispute (i.e., broken down by individual claim item), citing to relevant contract provisions and documents and attaching copies of those provisions and documents;
 - iv. All information establishing that the contract dispute was timely filed;
 - v. A request for a specific remedy, and if a monetary remedy is requested, a sum certain must be specified and pertinent cost information and documentation (e.g., invoices and terminated checks) attached, broken down by individual claim item and summarized; and
 - vi. The signature of a duly authorized representative of the initiating party
 - D. Contract disputes shall be filed at the following address:
 - i. For filing by hand delivery, courier or other form of in-person delivery:

Office of Dispute Resolution for Acquisition
Federal Aviation Administration
600 Independence Avenue SW., Room 2W100
Washington, DC 20591; or

For filing by U.S. Mail:

Office of Dispute Resolution for Acquisition
Federal Aviation Administration
800 Independence Avenue SW
Washington, DC 20591
[Attention: AGC-70, Wilbur Wright Bldg. Room 2W100]; or

Telephone: (202) 267-3290
Facsimile: (202) 267-3720
Alternate Facsimile: (202) 267-1293; or

ii. Other address as specified in 14 CFR Part 17.

E. A contract dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the contract claim involved. A contract dispute by the FAA against a contractor (excluding contract disputes alleging warranty issues, fraud or latent defects) likewise shall be filed within two (2) years after the accrual of the contract claim. If an underlying contract entered into prior to the effective date of this part provides for time limitations for filing of contract disputes with the ODRA which differ from the aforesaid two (2) year period, the limitation periods in the contract shall control over the limitation period of this section. In no event will either party be permitted to file with the ODRA a contract dispute seeking an equitable adjustment or other damages after the contractor has accepted final contract payment, with the exception of FAA claims related to warranty issues, gross mistakes amounting to fraud or latent defects. FAA claims against the contractor based on warranty issues must be filed within the time specified under applicable contract warranty provisions. Any FAA claims against the contractor based on gross mistakes amounting to fraud or latent defects shall be filed with the ODRA within two (2) years of the date on which the FAA knew or should have known of the presence of the fraud or latent defect.

F. A party shall serve a copy of the contract dispute upon the other party, by means reasonably calculated to be received on the same day as the filing is to be received by the ODRA.

G. After filing the contract dispute, the contractor should seek informal resolution with the Contracting Officer.

H. The FAA requires continued performance with respect to contract disputes arising under this contract, in accordance with the provisions of the contract, pending a final FAA decision.

I. The FAA will pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the contract dispute, or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on contract

disputes shall be paid at the rate fixed by the Secretary of the Treasury that is applicable on the date the Contracting Officer receives the contract dispute and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary until payment is made. Interest will not accrue for more than one year.

J. Additional information and guidance about the ODR dispute resolution process for contract disputes can be found on the ODR website at <http://www.faa.gov>.

35. **System for Award Management - Real Property (SAM Waiver) (09/2021) 6.4.1** The System for Award Management (SAM) is the Government's required method to receive vendor information. However, you have been granted an exception to SAM and therefore must provide your initial payment information and any future changes to your payment information to the RECO on a completed and signed "Vendor Miscellaneous Payment Information" form, together with any other required notice under this lease.
36. **Payment by Electronic Funds Transfer (09/2021) 6.4.2** All payments by the Government under this Contract will be made by electronic funds transfer (EFT). The Government will make payment by EFT through the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association. The rules governing federal payments through the ACH are contained in 31 CFR Part 210. The Lessor is responsible for maintaining correct payment information with the Government. If the Lessor's EFT information is incorrect or outdated, the Government is not required to make payments to the Lessor until correct/current EFT information is submitted to the Government for payment distribution.
37. **Work Performance (09/2021) 6.5.2** All work in performance of this Lease shall be done by skilled workers or mechanics and shall be acceptable to the RECO. The RECO retains the right to reject the Lessor's workers 1) if such are either unlicensed, unskilled, or otherwise incompetent, or 2) if such have demonstrated unacceptable performance in connection with work carried out in conjunction with this Lease. In the event of such rejection, the Lessor shall offer substitute/replacement workers, subject to the approval of the RECO.
38. **Installation of Antennas, Cables & Other Appurtenances (09/2021) 6.5.18** The Government shall have the right to install, operate and maintain antennas, wires and supporting structures, including any linking wires, connecting cables and conduits atop and within buildings and structures, or at other locations, as deemed necessary by the Government. The Government will coordinate with the Lessor when installing antennas, cables, and other appurtenances.
39. **Doors (09/2021) 6.6.1** Exterior doors must be weather tight, equipped with cylinder locks and door checks, automatic door closures and open outward. The Lessor must furnish the Government at least two master keys and two keys for each lock. Interior doors must be solid cored and at least 32 by 80 inches with a minimum opening of 32 inches and be of sturdy construction. Fire doors must conform to NFPA Standard No. 80. As designated by the Government, doors must be equipped with non-removable hinge pins, and locks with 7-pin removable cores. The Government shall provide cores. Locks, locking

arrangements and latches must be in accordance with local building and fire codes, as well as OSHA 29 CFR 1910.

40. **Display Advertising (09/2021) 6.6.7** If the leased premises are solely for Government use, no advertising matter shall be constructed on or over the premises, unless authorized by the RECO.
41. **Erection of Signs (09/2021) 6.6.8** The Government shall have the right to erect on or attach to the Lessor's premises such signs as may be required to clearly identify the Government's facility. Said signs so erected will remain the property of the Government and shall be removed from the premises upon termination of the lease.
42. **Seismic Safety for Equipment (09/2021) 6.6.12** All Lessor-installed equipment, either Government provided or Lessor provided, shall be installed in strict accordance with the latest available edition of the International Building Code (IBC) at the time of execution of this contract and the DOT Specification FAA-G-2100H to ensure proper anchoring to protect personnel during a seismic event.
43. **Services, Utilities, and Maintenance of Premises (09/2021) 6.7.1** The Lessor must maintain the demised premises, including but not limited to, the building grounds, all equipment, fixtures and appurtenances furnished by the Lessor under this Lease, in a good, clean and tenantable condition. The Lessor shall maintain landscape plants, lawns, walkways, and parking areas. The Lessor shall also remove snow, ice, and any other obstructions from the entrances, walkways, and parking areas around the premises, prior to and during normal business hours set forth below.

The Lessor must provide the labor, materials, equipment and supervision necessary to ensure good repair and tenantable condition.

Utility and maintenance services supplied to space that houses technical equipment will be supplied twenty-four (24) hours per day, seven (7) days per week.

The Government will have unlimited access to the leased premises 24 hours per day, seven days per week, including, as applicable, the use of electrical services, toilets, lights, elevators, and Government office machines at no additional cost. Such access will allow the Government to service Government-owned technical equipment, or to perform other mission-critical related duties, as it determines necessary in its sole and absolute discretion.

In addition to such other services as are set forth elsewhere in this Contract, the Contractor must provide the following:

- A. Electricity,
- B. Initial and replacement lamps, tubes and ballasts
- C. HVAC for 68 – 72 degrees F

44. **Fall Protection (09/2021) 6.8.4** The Contractor must ensure proper fall protection safety systems are in place for all work areas where Government personnel are required to perform work at four feet or more above the next lowest level on fixed ladders and within access points to elevated work areas in accordance with FAA Order 3900.19, FAA Occupational Safety and Health Policy, 29 CFR 1910, Occupational Safety and Health Standards (General Industry), 29 CFR 1926 Subpart M, Safety and Health Regulations for Construction, and applicable regulatory required American National Standard Institute (ANSI) Standards. All such elevated work surfaces (platforms, catwalks, roofs, etc.) must have OSHA compliant guardrails, railings, toe boards and/or parapets where applicable to meet OSHA and ANSI requirements as referenced herein.

45. **Environmental and Occupational Safety and Health (EOSH) Requirements (09/2021) 6.8.5** The Contractor must provide space, services, equipment, and conditions that comply with the following EOSH standards:

- A. 29 CFR 1910, Occupational Safety and Health Administration (OSHA) Standards (General Industry)
- B. 29 CFR 1926, Safety and Health Standards (Construction)
- C. National Fire Protection Association (NFPA) 101, Life Safety Code
- D. FAA Order 3900.19, FAA Occupational and Health Policy
- E. FAA Standard HF-STD-001, Human Factors Design Standard
- F. National Fire Protection Association (NFPA) 70, National Electrical Code, and NFPA 70E, Electrical Safety in the Workplace
- G. Local and state EOSH regulations
- H. Local and state fire codes and building codes.

Federal, state and local EOSH (OSHA and EPA) standards and building codes must be complied with when accomplishing any cleaning, construction, renovation, remodeling, maintenance activities or testing done in or on the leased premises and areas connected to or integrated with the premises. Additionally, whenever FAA standards require work processes or precautions to be provided, the Contractor will coordinate with the FAA before and during the work so that the proper requirements are met.

Any equipment designed, installed, or used that presents a potential safety hazard shall be marked with appropriate warning labels or placards, in accordance with 29 CFR 1910.145, Specifications for Accident Prevention Signs and Tags, FAA HF-STD-001, Human Factors Design Standard, Chapter 12.16, Safety Labels and Placards, American National Standards Institute (ANSI) Standard Z535.4, Product Safety Signs and Labels, and FAA-G-2100H, Electronic Equipment, General Requirements, Section 3.3.5.4.

46. **Warranty of Space (09/2021) 6.8.13** The contractor warrants that all space leased to the Government under this contract complies with federal, state, and local regulations. The space is not limited to that set forth in this contract, but also includes space above suspended ceilings in the leased space, air plenums elsewhere in the building that service the leased space, engineering spaces in the same ventilation zone as the leased space, public spaces in the same ventilation zone as the leased space, and public spaces and common use spaces (e.g., lobbies, hallways).

47. Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (09/2021) 6.9.5 (a) Definitions. As used in this clause--

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means—

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
- (2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means—

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—
 - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - (ii) For reasons relating to regional stability or surreptitious listening.
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the

Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources. Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) Prohibitions.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13,

2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.6.4 A 16.e.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020 from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in AMS T3.6.4A.16.e. This prohibition applies to an entity that uses covered telecommunications equipment or services, including use not in support of the Government.

(c) Exceptions. This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or

interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor must report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information. For indefinite delivery contracts, the Contractor must report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order.

(2) The Contractor must report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor must describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor must insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

48. Covered Telecommunications Equipment or Services- Representations (09/2021)

6.9.5-1 a) Definitions. As used in this provision, "covered telecommunications equipment or services" has the meaning per the "Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment" clause in this contract.

(b) Procedures. The offeror must review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for covered telecommunications equipment or services.

(c) Representations.

1. The offeror represents that it _____ does, _____ does not **provide** covered

telecommunications equipment or services as part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

2. After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it _____ does, _____ does not **use** covered telecommunications equipment or services, or any equipment, system, or service that uses telecommunications equipment or services.

49. **Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (09/2021) 6.9.5-2** NOTE: The offeror must not complete the representation at paragraph (d)(1) in this provision if the offeror has represented that it does not provide covered telecommunications equipment or services as part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument in the provision "Covered Telecommunications Equipment or Services – Representation" (c)(1). Additionally, The offeror must not complete the representation at paragraph (d)(2) in this provision if the offeror has represented that it does not use covered telecommunications equipment or services, or any equipment, system, or service that uses telecommunications equipment or services in the provision "Covered Telecommunications Equipment or Services – Representation" (c)(2).

PROVISION/CLAUSE:

(a) Definitions. As used in this provision--
Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and substantial or essential component have the meanings provided in the clause AMS clause 6.9.5, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) Prohibitions.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
Nothing in this prohibition will be construed to—

- (i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020 from entering into a contract or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential part of any system or as critical technology as part of any system. This prohibition applies to any entity that uses covered telecommunications equipment or services, including uses not in support of the Government.

Nothing in this prohibition will be construed to-

- (i) Prohibit the head of the agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) Procedures: The offeror must review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from Federal awards for covered telecommunications equipment or services.

(d) Representations.

(1) The Offeror represents that it will, will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation.

(2) After conducting a reasonable inquiry for purposes of this representation, the Offeror represents that it does does not USE covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror must provide the additional disclosure information required at paragraph (e) if the Offeror indicates "does".

(e) Disclosures. Disclosure for the representation in paragraph (d) (1) of this provision- If the Offeror has responded "will" in the representation in paragraph (d) (1) of this provision, the Offeror must provide the following information as part of the offer—

(1) For covered equipment

- (i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known;
- (ii) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and
- (iii) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (1) of this provision;

(2) For covered services-

(i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

Disclosure for representation in paragraph (d) (2) of this provision. If the Offeror has responded "does" to paragraph (d)(2) of this provision, the offeror must provide the following information as part of the offer—

(3) For covered equipment

(i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known;

(ii) A description of all covered telecommunications equipment offered (include brand; model number, such as original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(iii) Explanation of the proposed use of covered telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b) (2) of this provision.

(4) For covered services-

(i) If the service is related to item maintenance, a description of all covered telecommunications services offered (include on the item being maintained: brand, model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed uses of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

50. **Notices (09/2021) 6.10.1** All notices/correspondence must be in writing, reference the Contract number, and be addressed as follows:

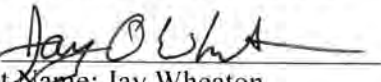
TO THE Contractor:
City Of Ottumwa
105 E Third St.
Ottumwa, IA 52501

TO THE GOVERNMENT:
Federal Aviation Administration
Real Estate Branch AAQ-900
10101 Hillwood Parkway
Fort Worth, TX 76177

FAA CONTRACT NO: 697DCM-21-L-00098
ATID/FACILITY TYPE: OTM/RCO
LOCATION: OTTUMWA, IOWA

51. **Signature Block (09/2021) 6.10.3** This Contract shall become binding when it is fully executed by both parties. In witness whereof, the parties hereto have subscribed their names as of the date shown below.

CITY OF OTTUMWA, IOWA

By: 
Print Name: Jay Wheaton
Title: Airport Facilities Manager
Date: 6-10-2022

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

By: _____
Print Name: Patti Lorensen
Title: Real Estate Contracting Officer
Date: _____

CERTIFICATE OF AUTHORIZATION

I, the undersigned, hereby certify that Jay Wheaton, who signed the contract instrument on behalf of CITY OF OTTUMWA, IOWA is in fact authorized to sign on behalf of CITY OF OTTUMWA, IOWA by authority of its governing resolution, and is within the scope of its powers.

Print Name*: _____ Print Title: _____

Signature: _____ Date: _____

*Note: the individual signing this certification cannot be the same person who signed the contract

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Jun 21, 2022

Administration
Department

Barbara Codjoe
Prepared By
Barbara Codjoe
Department Head



City Administrator Approval

AGENDA TITLE: Resolution No. 163-2022 - a resolution to contract with a recruiting firm for Director of Finance Position

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt Resolution No. 163-2022

DISCUSSION: Authorizing the City Administrator to sign a contract with GovHR for recruiting services not to exceed \$25,000.

Source of Funds: N/A

Budgeted Item: Budget Amendment Needed: Yes

The Director of Finance position was vacated effective February 15. After meetings with the department as well as Department Heads, a new job description was finalized on April 5, 2022. The position was posted the same date. This was posted on our website, Facebook, LinkedIn, Indeed, Iowa League of Cities and shared amongst HR Peers in the state of Iowa.

We received three applicants during our first round of reviews. One applicant was interviewed and offered the job. The candidate received a counter offer from their current employer and thus turned down ours. We received another qualified applicant and completed an interview. After our offer, this candidate received a substantially higher offer from a company out of town that we would not be able to match.

The position has remained posted during this entire process. It has been shared many times on social media. We have also reached out to colleges within a 300 mile radius and posted on their alumni boards and current job boards. As we were reaching out to firms to offer interim assistance, we have also inquired about recruitment services.

We have contacted a number of companies to inquire about recruitment assistance.

1) GOVHR - This is a national organization that specializes in local government and non-profit sector that offer full service executive recruitment. They follow a detailed recruitment schedule and will stay with their client until the position is filled. They offer headhunting / cold calling to candidates in different capacities based upon the package chosen. They also offer a 12 month guarantee on the candidate that is placed in the position. According to GovHR, they have only activated the guarantee in 3% of their total recruitment and have conducted over 1,000 recruitments since inception in 2009.

GovHR has placed over 32 Finance Directors in local governments across the US since 2021 (and many more between 2009 and 2021). They have placed 25 various positions in cities across Iowa since 2011.

Their price for their full scope executive recruitment would be approximately \$23,500. This price may vary slightly simply based upon sources that are selected for advertising and also background checks that are completed (they average the top 4 candidates).

2) Palmer Group - this is a local group out of Des Moines. They would have a dedicated recruiter assigned to our account. They would utilize their network to identify potential candidates. This is a firm that works to headhunt qualified candidates.

Their fee structure is contingent on the hiring of any individual Palmer Group refers, either verbally or in writing, The placement fee shall be equal to 27% (for a 90 day replacement / refund guarantee) or 30% (for a 180 day replacement / refund guarantee), which is calculated off one year's anticipated compensation, including base salary, plus applicable sales tax. Compensation shall be calculated based on a standard 2,080-hour year. We would only pay this fee if they find a candidate for us and we choose to hire them.

Their fee would be anywhere from \$24,300 - \$36,000 depending on the negotiated salary with the candidate. These numbers are based off our current salary range. If that were to change, this fee would potentially increase as well.

3) Cayler Consulting - Jeff was referred to us by the city of Grinnell. After speaking with him, he specializes in recruiting for Fire and Police Chiefs. Jeff did recommend reaching out to a number of different retired Finance Directors to see if they could help in the interim. Those names did not result in any successful candidates for interim help or helping to recruit.

4) Baker Tilly - have reached out a number of times via email and phone and had no response.

5) Elizabeth Hanson - not able to assist at this time

6) Brent Hinson / Mark Jackson - spoke with Mark. Was going to talk with Brent and get back with us. No response after follow up.

7) Kendall Consulting - not able to assist in interim placement or recruitment

RESOLUTION NO. 163-2022

**RESOLUTION APPROVING CONTRACT WITH GovHR TO PROVIDE
RECRUITING SERVICES**

WHEREAS, the position of Director of Finance has been vacated since February 15, 2022; and

WHEREAS, the posting and interview process have not produced an acceptance of a job offer; and

WHEREAS, the City of Ottumwa is looking for additional resources to help recruit to fill this position.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ottumwa, Iowa, that the City of Ottumwa chooses to enter into a recruiting contract with GovHR to provide these additional resources to help recruit to fill the position of Director of Finance; and

BE IT FURTHER RESOLVED, by the Ottumwa City Council of the City of Ottumwa, Iowa, that the Mayor and City Clerk are hereby authorized and directed to execute said resolution.

APPROVED, PASSED AND ADOPTED, this 21st day of June, 2022.

CITY OF OTTUMWA, IOWA

Richard W. Johnson, Mayor

ATTEST:

Christina Reinhard, City Clerk



City of Ottumwa, Iowa Request for Proposal Finance Director Recruitment & Selection

June 17, 2022



630 Dundee Road
Suite 225
Northbrook, IL 60062

Primary Contact Person:

Laurie Pederson
Director of Administrative Services
847-380-3198
LPederson@GovHRusa.com

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Attachments

Consultant Biography
Client List

Cover Letter

June 17, 2022

Procurement Division
111 E Maple, PO Box 1019
Independence, MO 64051-0519

To the Procurement Division of the City of Ottumwa, Iowa:

Thank you for the opportunity to provide you with a proposal for the Finance Director recruitment and selection process for the City of Ottumwa, Iowa. GovHR USA ("GovHR") prides itself on a tailored, personal approach to executive recruitment and selection, able to adapt to your specific requirements for the position.

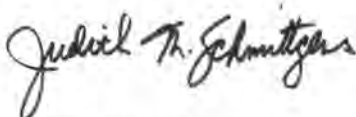
GovHR is a public management consulting firm serving municipal clients and other public-sector entities on a national basis. Our headquarters offices are in Northbrook, Illinois. We are a certified Female Business Enterprise and work exclusively in the public sector. We have 19 full-time and 7 permanent part-time employees including 6 full-time recruiters and 26 additional project consultants. Our employees and project consultants are located across the country, giving us a national presence. GovHR offers customized executive recruitment services and completes other management studies and consulting projects for communities.

GovHR Vice President Don Tripp will be responsible for your recruitment and selection process. He will be assisted by a home office Recruitment Coordinator, and a Reference Specialist. His biography can be found on the following pages attached to the proposal and his contact information is:

Don Tripp
Vice President
847-380-3240
DTripp@GovHRusa.com

We believe we have provided you with a comprehensive proposal; however, if you would like a service that you do not see, let us know. Please contact Laurie Pederson, Director of Administrative Services, 847-380-3198, if you have questions regarding our proposal or need additional information. We look forward to hearing from you and hope to have the opportunity to work with you on this important recruitment.

Sincerely,



Judith Schmittgens,
Corporate Secretary and Compliance Manager

Firm Profile

GovHR is a public management consulting firm serving local government clients and other public-sector entities across the country. The firm was originally formed as Voorhees Associates in 2009 and changed its name to GovHR USA in 2013. Our headquarters are in Northbrook, Illinois. We are a certified Female Business Enterprise in the State of Illinois and work exclusively in the public and non-profit sectors. GovHR offers customized executive recruitment services, management studies and consulting projects for local government and organizations who work with local government.



GovHR has 19 full-time and 7 permanent part-time employees including 6 full-time recruiters and 26 additional project consultants who are based in Arizona, Colorado, Florida, Georgia, Illinois, Indiana, Massachusetts, Michigan, Minnesota, Ohio, Tennessee, Texas and Wisconsin, giving us a national presence. Additionally, GovTempsUSA, GovHR's subsidiary, provides interim staffing solutions to keep operations moving during the recruitment process.

Our consultants are experienced executive recruiters who have conducted over 1,000 recruitments, working with cities, counties, special districts, and other governmental entities of all sizes throughout the country. In addition, we have held leadership positions within local government, giving us an understanding of the complexities and challenges facing today's public sector leaders.

Our Leadership



Heidi Voorhees

President

847-380-3240

HVoorhees@GovHRusa.com

Ms. Voorhees has conducted more than 400 recruitments in her management consulting career, with many of her clients being repeat clients, attesting to the high quality of work performed for them. In addition to her 17 years of executive recruitment and management consulting experience, Ms. Voorhees has 19 years of local government leadership and management service, including ten years as Village Manager for the Village of Wilmette, Illinois.



Joellen Cademartori

Chief Executive Officer

847-380-3239

JCademartori@GovHRusa.com

Ms. Cademartori is a seasoned manager, with expertise in public sector human resources management. She has held positions from Human Resources Director and Administrative Services Director to Assistant Town Manager and Assistant County Manager. Ms. Cademartori has worked in forms of government ranging from Open Town Meeting to Council-Manager and has supervised all municipal and county departments ranging from Public Safety and Public Works to Mental Health and Social Services.

Why Choose GovHR?

Unparalleled Expertise and Level of Service: We are a leader in the field of local government recruitment and selection with experience in **41 states**, in communities ranging in population from 1,000 to 3,000,000. Since our establishment in 2009, more than 40% of our clients are repeat clients showing a high level of satisfaction with our work. We encourage you to call any of our previous clients. Surveys of our clients show that 94% rate their overall experience with our firm as **Outstanding** and indicate that they plan to use our services or highly recommend us in the future.

Delivering the Best: We conduct comprehensive **due diligence** on candidates. Our state-of-the-art process, includes extensive use of **social media** for candidate outreach and video interviews with potential finalist candidates, ensure a successful recruitment for your organization. Our high quality, thorough Recruitment Brochure reflects the knowledge we will have about your community and your organization and will provide important information to potential candidates. Additionally, before we recommend a candidate to you, we will have interviewed them via video, conducted reference calls, and news media and social media searches. Our knowledge of local government ensures that we can ask probing questions that will verify their expertise.

A Partner from Start to Finish: We are your partners in this important process. You are welcome to review all the resumes we receive, and we will share our honest assessment of the candidates. Our goal is your **complete satisfaction**. We can strategize with you on a variety of approaches for meeting your recruiting needs, including evaluation of internal candidates, identification of non-traditional candidates who meet your recruitment requirements, succession planning and mentoring options. We are committed to working with you until you find the candidate that is the best fit for your position.

Services for Any Budget and Any Search: We strive to meet the specific needs of our clients. We offer several options for recruitment services to meet your needs and your budget. Our services range from Full Executive Recruitments to Virtual Recruitments and even simply Professional Outreach for those who want to reach a broader network. In the following proposal, we have provided the scope we believe that best fits your needs. However, you may find all our services [here on our website](#).

Our Team

GovHR employs a team of professionals with backgrounds in local government and the not-for-profit sector. With your staff needs in mind and due to the significance of this recruitment, we have assigned our highly knowledgeable and experienced Vice President Don Tripp. He will act as your project manager and primary point of contact for this project. He will be responsible for your recruitment and selection process. His full biography can be found as part of the Appendix and his client list is available on our website.

Project Manager & Main Point of Contact



Don Tripp

Vice President

847-380-3240

DTripp@GovHRusa.com

Proposal Inquiries



Laurie Pederson

Client Services & Administrative Director

847-380-3198

LPederson@GovHRusa.com

References

We are a proven leader in public sector consulting. **More than one-third of the organizations served by GovHR are repeat clients.** Our team provides a growing pool of highly qualified candidates who are well-suited to handle the challenges and expectations of professional positions in local government and the not-for-profit sector.

The following references can speak to the quality of service provided by GovHR.

Cottage Grove, WI

(Deputy Director of Public Works & Utilities, 2022)

(Finance Director, 2021)

Matt Giese, Village Administrator

221 E. Cottage Grove Road

Cottage Grove, WI 53527

608-839-4704

mgiese@village.cottage-grove.wi.us

JJ Larson, Deputy Village Administrator/Public Works Director

jl Larson@village.cottage-grove.wi.us

Waukesha, WI

(Finance Director, In Progress)

(Cemetery Director - Limited, 2021)

(Finance Director, 2020)

(Chief of Police, 2020)

(HR Director, 2019)

(Director of Information Technology, 2017)

(City Administrator, 2015)

Kevin Lahner, City Administrator

201 Delafield Street

Room 203

Waukesha, WI 53188

262-524-3700

klahner@waukesha-wi.gov

Glen Ellyn, IL

(Finance Director, 2022)

Mark Franz, Village Manager

535 Duane Street

Glen Ellyn, IL 60137

630-469-5000

mfranz@glenellyn.org

Emily Rodman, Assistant Village Manager

erodman@glenellyn.org

Project Approach and Methodology

A typical recruitment and selection process takes approximately 175 hours to conduct. At least 50 hours of this time is administrative, including advertisement placement, reference interviews, and due diligence on candidates. We believe our experience and ability to professionally administer your recruitment will provide you with a diverse pool of highly qualified candidates for your position search. GovHR clients are informed of the progress of their recruitment throughout the entire process. We are always available by mobile phone or email should you have a question or need information about the recruitment.

Phase I: Position Assessment, Position Announcement & Brochure

GovHR treats each executive recruitment as a transparent partnership with our client. We believe in engaging with stakeholders early in each recruitment process to fully understand the challenges and opportunities inherent in the position. Understanding the organizational culture is critical to a successful recruitment. We gain this insight and information through meetings (one on one and small groups), surveys and a review of relevant information. This information is reflected in a polished marketing piece that showcases the organization and the area it serves.

Information Gathering:

- One-on-one or group interviews with stakeholders identified by the client.
- Surveys can be used for department personnel to gather feedback.
- Conversations/interviews with department heads.

A combination of the above items can be used to fully understand community and organizational needs and expectations for the position.

Development of a **Position Announcement** to be placed on websites and social media.

Development of a thorough **Recruitment Brochure** for client review and approval.

Agreement on a detailed **Recruitment Timetable** – a typical recruitment takes between 90 to 120 days from the time you sign the contract to appointment of the finalist candidate.

Phase II: Advertising, Candidate Recruitment & Outreach

We make extensive use of social media as well as traditional outreach methods to ensure a diverse and highly qualified pool of candidates. In addition, our website is well known in the local government industry – we typically have 14,000+ visits monthly to our website and career center. Additionally, our weekly jobs listings are sent to over 7,000 subscribers.

Phase II will include the following:

- GovHR consultants will personally identify and contact potential candidates.
- Develop a database of potential candidates from across the country unique to the position and to the Client, focusing on:
 - Leadership and management skills
 - Size of organization
 - Experience in addressing challenges and opportunities also outlined in Phase I
 - The database will range from several hundred to thousands of names and an email blast will be sent to each potential candidate.

- Placement of the Position Announcement in appropriate professional online publications:
 - Public sector publications & websites (approximately 20 online sources)
 - Social media: LinkedIn (over 20,000 connections), Facebook, Instagram and Twitter
 - GovHR will provide you with a list of advertising options for approval

Phase III: Candidate Evaluation & Screening

Phase III will include the following steps:

- Review and evaluation of candidates' credentials considering the criteria outlined in the Recruitment Brochure
- Candidates will be narrowed down to those candidates that meet the qualification criteria
- Candidate evaluation process:
 - Completion of a questionnaire explaining prior work experience
 - Live Video Interview (45 minutes to 1 hour) conducted by consultant with each finalist candidate
 - References provided by the candidate are contacted
 - Internet/Social Media search conducted on each finalist candidate

All résumés will be acknowledged and inquiries from candidates will be personally handled by GovHR, ensuring that the Client's process is professional and well regarded by all who participate.

Phase IV: Presentation of Recommended Candidates

Phase IV will include the following steps:

- GovHR will prepare a Recruitment Report presenting the credentials of those candidates most qualified for the position.
- GovHR will provide an electronic recruitment portfolio which contains the candidates' materials along with a "mini" résumé for each candidate so that each candidate's credentials are presented in a uniform way.
- Client will receive a log of all applicants and may review résumés if requested.
- Report will arrive in advance of the Recruitment Report Presentation.

GovHR will spend approximately 2 hours with the Client reviewing the recruitment report and providing additional information on the candidates.

Phase V: Interviewing Process & Background Screening

Phase V will include the following steps:

GovHR will:

- Develop the first and second round interview questions for your review and comment
- Coordinate candidate travel and accommodations
- Provide you with an electronic file that includes:
 - Candidates' credentials
 - Set of questions with room for interviewers to make notes
 - Evaluation sheets to assist interviewers in assessing the candidate's skills and abilities

Background screening will be conducted along with additional references contacted:

GovHR USA Background Screening	
✓ Social Security Trace & Verification	✓ County/Statewide Criminal
✓ U.S. Federal Criminal Search	✓ Civil Search
✓ Enhanced Verified National Criminal	✓ Bankruptcy, Leans and Judgements
- National Sex Offender Registry	✓ Motor Vehicle Record
- Most Wanted Lists FBI, DEA, ATF, Interpol	✓ Education Verification – All Degrees Earned
- OFAC Terrorist Database Search	Optional: Credit Report – Transunion with score (based on position and state laws)
- OIG, GSA, SAM, FDA	Optional:
- All felonies and misdemeanors reported to the National Database	Professional License Verification
	Drug Screen
	Employment Verification

GovHR will work with you to develop an interview schedule for the candidates, coordinating travel and accommodations. GovHR consultants will be present for all the interviews, serving as a resource and facilitator.

GovHR will coordinate a 2-Step Interview process. The first round interviews will include four to five candidates. The second round interviews will include two or three candidates. GovHR will supply interview questions and an evaluation form.

In addition to a structured interview, the schedule can incorporate:

- Tour of Client facilities
- Interviews with senior staff

Phase VI: Appointment of Candidate

- GovHR will assist you as much as you request with the salary and benefit negotiations and drafting of an employment agreement, if appropriate.
- GovHR will notify all applicants of the final appointment, providing professional background information on the successful candidate.

Project Timeline

Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14
Phase I		Phase II				Phase III			Phase IV	Phase V		Phase VI	

Weeks 1 & 2

Phase 1: Interviews & Brochure Development

Weeks 3 thru 6

Phase 2: Advertising, Candidate Recruitment & Outreach

Weeks 7 thru 9

Phase 3: Candidate Evaluation & Background Screening

Week 10

Phase 4: Presentation of Recommended Candidates

Week 11 & 12

Phase 5: Interview Process & Additional Background Screening

Weeks 13 & 14

Phase 6: Appointment of Candidate

Commitment to Diversity, Equity & Inclusion in Recruitments

GovHR has a long-standing commitment to Equity, Diversity and Inclusion in all of our recruitment and selection processes. Since our firm's inception we have supported, with our time and financial resources, organizations that advance women and other underrepresented minorities in local government. These include the National Forum for Black Public Administrators, the Local Government Hispanic Network, The League of Women in Government and CivicPride.

GovHR Team Members have moderated and spoken on DEI initiatives at the International City and County Management Association conference and state conferences in Illinois, Michigan, Wisconsin, and North Carolina. Our employees and consultants have undergone Implicit Bias Training and we are frequent speakers on incorporating DEI values into recruitment and selection processes. We have a list of DEI resources on the front page of our website (<https://www.govhrusa.com/diversity-equity-and-inclusion-resources/>) that can be accessed by anyone who visits our website.

GovHR has formally partnered with the National Forum for Black Public Administrators' consulting arm, i4x, in several recruitment and selection processes throughout the country including Toledo, OH, Fort Collins, CO, Ann Arbor, MI, Oakland, MI and Arlington, TX. Our partnership reflects our mutual commitment to advancing DEI values and increasing the diversity of local government leaders at the highest levels of local government organizations.

Recruiting During the Great Resignation

The GovHR team is aware of the lasting impact that the Great Resignation has had on nearly all local government positions. Data shows annual quit rates have been at record highs the past two years. Additionally, there is a growing trend of public workers accelerating retirement plans, a drastic change from when workers were *postponing* retirement.

Our team of consultants work diligently to ensure the success of each recruitment and will be transparent upfront and throughout the process regarding any obstacles or delays they anticipate. Despite these challenging times, we have still seen a tremendous amount of success in our recruitments largely due to our consultants' outreach methods and our team's marketing strategies.

GOVHR'S RECOMMENDATIONS TO RECRUIT AND RETAIN TOP TALENT

Responsive: Roll out the Welcome Mat! Candidates may struggle with relocating for a new position as well as be concerned about the "fit" with a new team. It is important to include costs for your top candidate(s) to travel to your location for the final interview process. Our team will work with you to create a welcoming, informative experience for both you and the candidate(s).

Encouraging: Employee development is a must-have in today's market. Candidates appreciate their employer investing in them as much as they are investing themselves in the job. Consider "up and coming" candidates who may lack one or two preferred skills and assign a mentor or invest in a course to encourage their professional development. A mentor/training program will also help establish a peer-to-peer connection and make them feel more comfortable about the transition to a new job.

Competitive: Our team will guide you in offering a competitive market rate compensation and competitive benefits package attractive to today's candidates. Competitive employers must include relocation expenses and should consider signing bonuses and temporary housing.

Resourceful: Review your job description – do you need public sector experience? Are the years' experience you list essential, or can that be preferred? Consider a more resourceful approach when reviewing candidates' experience. Carefully consider requirements such as CPA, Professional Engineer and others that will limit your talent pool – consider using the word "ideally" or "preferably."

Understanding: These past few years have, without a doubt, changed the work environment. Competitive employers have recognized this and are offering flexible/hybrid/remote work options. Those positions that offer this type of flexibility consistently receive a better candidate response rate.

Innovative: Think about what is unique and attractive about your community and organization and highlight that in your recruitment efforts. Talk about organizational culture and what your values are with respect to your employees. GovHR will assist you in being as innovative as possible in your outreach.

Transparent: Some states now mandate listing salary ranges in any job advertisements or postings. More and more companies are now showing at least a salary range in their postings to promote pay transparency and equity. Post the salary range you will use for hiring – it is public information if we make it too difficult for candidates to find out the salary, they will move on to the next opportunity.

Full Scope Recruitment – Price Proposal

Summary of Costs: Full Scope	Price
Recruitment Fee:	\$19,500
Recruitment Expenses: (not to exceed) <ul style="list-style-type: none"> ➤ Expenses include candidate due diligence efforts 	\$1,500
Advertising: <i>*Advertising costs over \$2,500 will be placed only with client approval. If less than \$2,500, Client is billed only for actual cost.</i>	\$2,500*
Total:	\$23,500**

**Consultant travel expenses are not included in the price proposal. If the consultant is requested to travel to the client, travel costs will be estimated at time of request. Only actual expenses will be billed to the client for reimbursement to GovHR.

Possible in-person meetings could include:

1. Recruitment brochure interview process
2. Presentation of recommended candidates
3. Interview Process

Any additional consultant visits requested by the Client (beyond the three visits listed above) will be billed at \$125/hour; \$500 for a half day and \$950 for a full day. The additional visits may also result in an increase in the travel expenses and those expenses will be billed to the client.

This fee does not include travel and accommodations for candidates interviewed.

Payment for Fees & Services

Professional fees and expenses will be invoiced as follows:

1st Invoice upon acceptance of proposal:	40% of the Recruitment Fee
2nd Invoice upon recommendation of candidates:	40% of the Recruitment Fee
Final Invoice upon completion:	20% of the Recruitment Fee plus all expenses

Payment of invoices is due within thirty (30) days of receipt (unless the client advises that its normal payment procedures require 60 days.)

The GovHR Guarantee – Full Scope Recruitment

GovHR is committed to assisting our clients until a candidate is appointed to the position. Therefore, no additional professional fee will be incurred if the client does not make a selection from the initial group of recommended candidates and requests additional candidates be developed for interview consideration. If additional advertising beyond the Phase I advertising is requested, client will be billed for actual advertising charges. Reimbursable expenses may be incurred should the recruitment process require consultant travel to the Client.

Upon appointment of a candidate, GovHR provides the following guarantee: should the selected and appointed candidate, at the request of the Client or the employee's own determination, leave the employ of the Client within the first 12 months of appointment, we will, if desired, conduct one additional recruitment for the cost of expenses and announcements only. This request must be made within 6 months of the employee's departure.

Contract Signature Page

We believe we have provided you with a comprehensive proposal; however, if you would like a service that you do not see in our proposal, please let us know. We can most likely accommodate your request.

This proposal will remain in effect for a period of six months from the date of the proposal. We look forward to working with you on this recruitment and selection process!

City of Ottumwa, Iowa agrees to retain GovHR USA, LLC ("GovHR") to conduct a Finance Director Recruitment in accordance with its proposal dated June 17, 2022. The terms of the proposal are incorporated herein and shall become a part of this contract.

ACCEPTED:

City of Ottumwa, Iowa

By: _____

Title: _____

Date: _____

Billing Contact: _____

Billing Contact Email: _____

GovHR USA, LLC

By: _____

Title: _____

Date: _____

Optional Services

GovTemps USA

Need an Interim? GovTempsUSA, a subsidiary of GovHR USA, specializes in the temporary placement of positions in local government. The firm offers short-term assignments, in addition to long-term and outsourced arrangements. Our placement professionals at GovTempsUSA have typically enjoyed distinguished careers in local government and displayed a commitment to public service throughout their career.

Recorded One-Way Video Interview of Candidates

Candidates we recommend for your consideration can complete a one-way video interview with 3 to 5 questions that will be recorded and which you can review electronically at your convenience. This can occur prior to making your decision on which candidates to invite for an interview. Cost \$100 per candidate.

Leadership/Personality Testing

GovHR has experience working with a wide variety of leadership and personality assessment tools, depending on the qualities and experiences the client is seeking in their candidates. These include but are not limited to Luminaspark, Caliper, DISC and others. Depending on the evaluation type selected fees can range between \$100 to \$500 per candidate.

360° Evaluation

As a service to the Client, we offer the option to provide you with a proposal for a 360° performance evaluation for the appointed position at six months into his or her employment. This evaluation will include seeking feedback from both elected officials and department directors, along with any other stakeholder the Client feels would be relevant and beneficial. This input will be obtained on a confidential basis with comments known only to the consultant. If you are interested in this option, GovHR will prepare a proposal for this service.



DONALD M. TRIPP



Don Tripp has over 40 years of experience in local government with most of that time spent as a City Manager or Department Director. His diverse experience varies from a small town to central, capital city with work in Iowa, Michigan, and Colorado. Don's visionary leadership and abilities to attract and support a team have contributed to award winning success in service to hundreds of thousands of local government customers.

Mr. Tripp's experiences are of value in GovHR USA Executive searches, GovTemps USA and strategic support of professionals and elected officials of local government. His background offers extensive and successful lessons in Community and Economic Development; examples include the renaissance of downtown Des Moines, IA and "new urban center" evolution of Westminster, CO. Public Safety and Social Justice actions taken to support first responders and all whom expect fair and equal treatment in our cities. A first adopter of diversity, equity and inclusion self-assessment and programs, Tripp's employees benefited with a more diverse workforce and specific attention to pay and promotion equity. Tripp's work has a long track record of being visionary and innovative, including creation of first ever sustainability plans, energy attentive development, all while developing improved city financial positions prove that the triple bottom line can be uniformly valued. Tripp understands that conflict between the status quo and necessary change requires Courageous Leadership that is a blend of courage, accountability and humility while having genuine compassion. Tripp's personal family values that started on his boyhood Iowa farm life have served his career well and now motivate him to continue his career by doing everything he can to help cities, that he terms, "of the most important institutions in our society".

PROFESSIONAL EDUCATION

- Bachelor of Arts, Leisure Services, Iowa State University, IA
- Certificate for Senior Executives in State and Local Government, John F. Kennedy School of Government, Harvard University, MA

MEMBERSHIPS AND AFFILIATIONS

- International City/County Management Association
- CASA of Adams County Board of Directors
- Former, National League of Cities
- Former, National Recreation and Park Association
- Former, Colorado Park and Recreation Association
- Former Board Member, Iowa Park and Recreation Association
- Former Rotary International

AWARDS

- Founding Member, Colorado Smart Cities Alliance
- 2021: CASA of Adams County Board Member of the Year
- 2021: Distinguished Budget Presentation Award, Government Finance Officers Association
- 2019: Colorado Large City of the Year, Economic Development
- 2018: 1st Place, National Digital Cities Survey Winner, Digital Government (75,000–124,999 population)
- 2017: Top 100 in United States, National Healthiest Employers Award
- 2017: 2nd Place, Cultural Diversity Award, National League of Cities (NLC) (51,000–200,000 population)

PROFESSIONAL TRAINING

- Parks Planning and Management School, National Recreation and Parks Schools
- Revenue Development School, National Recreation and Parks Schools
- Sports Management School, National Recreation and Parks Schools
- Executive Development School, National Recreation and Parks Schools
- Understanding Human Behavior, Menninger Institute
- Youth Development Seminars (KYDS), Kellogg Foundation
- NeuroLeadership Summit, NeuroLeadership Institute
- Leadership at the Peak, Center for Creative Leadership

PROFESSIONAL BACKGROUND

Over 40 Years of Local Government Experience

- City Manager, City of Westminster, CO
- Executive Director, Economic Development Authority, Westminster, CO
- Executive Director, Housing Authority, Westminster, CO
- Director of Parks, Recreation and Libraries, City of Westminster, CO
- Park and Recreation Director, City of Des Moines, IA
- Recreation Director and Recreation and Park Director, City of Battle Creek, MI
- Park and Recreation Director, Nevada, IA





Finance Client List

STATE	CLIENT	POSITION	POPULATION	YEAR
Alabama	Decatur	Asset Management Specialist (Professional Outreach)	54,844	2019
Alaska	Seward	Finance Director (Professional Outreach)	2,693	2021
	Unalaska	Finance Director	4,768	2016
		Finance Director (Virtual)	4,768	2019
California	California (Confidential)	Sr. Vice President of Revenue Enhancement	Multi	2019
Colorado	Englewood	Finance Director	34,957	2020
	Mountain Village	Finance Director	1,840	2021
	Wellington	Finance Director	11,500	2020
Florida	Pinellas County	Director of Office of Management and Budget	970,600	2021
Illinois	Addison Park District	Finance Manager (Virtual)	Multi	2022
	Barrington	Director of Financial Services	10,455	2020
	Bensenville	Finance Director (Professional Outreach)	20,703	2019
	Bloomington	Budget Manager (Professional Outreach)	78,005	2017
		Chief Accountant (Professional Outreach)	78,005	2017
	Bradley	Finance Director/Treasurer (Virtual)	15,344	2018
	Buffalo Grove	Deputy Director of Finance & General Services (Virtual)	42,909	2020
				2021
		Finance Director	42,909	2019
	Collinsville	Chief Financial Officer	25,838	2020
		Finance Director	25,838	2018
				2022
	Crest Hill	Finance Director	21,169	2021
	DeKalb Sanitary District	Assistant to the Manager/Finance	42,579	2012
	Elgin	Chief Financial Officer	108,000	2014
	Flossmoor	Assistant Finance Director (Virtual)	9,464	2021
	Glen Ellyn	Finance Director	27,000	2014
				2022
	Glencoe	Finance Director	8,900	2018
	Hanover Park	Finance Director	38,510	2015
	Hawthorn Woods	Chief Financial Officer	7,663	2020
	Highland Park	Finance Director	31,365	2012
				2014
	Hinsdale	Finance Director (Professional Outreach)	17,631	2021

	La Grange Park	Director of Finance	13,579	2013
	Lake Bluff	Finance Director	5,700	2017
	Lake County	Controller (Professional Outreach)	703,462	2021
		Deputy Finance Director	703,462	2016
	Lake Forest	Finance Director	19,375	2012
	Lincolnwood	Finance Director (Virtual)	12,590	2021
	Lisle	Finance Director	23,440	2019
	McHenry County	Assistant Finance Director	309,000	2019
		Assistant Finance Director (Professional Outreach)	309,000	2018
		Director of Finance	309,000	2019
		Director of Finance & Administration (Virtual)	309,000	2019
	Metra	Chief Financial Officer	2,700,000	2021
	Mount Vernon	Finance Director	14,600	2021
		Director of Finance & Technology (Professional Outreach)	37,000	2022
	Northbrook Park District			
	Park Forest	Finance Director	21,975	2017
	Park Ridge	Finance Director	37,496	2021
	Peoria	Finance Director	115,234	2021
	Peoria County	Chief Financial Officer	370,000	2010
				2021
		Finance Director (Professional Outreach)	13,409	2021
	Richton Park			
	River Forest	Assistant Finance Director	11,635	2015
		Director of Finance	11,635	2018
	Rockford	Finance Director	152,871	2011
	St. Charles	Finance Director	33,264	2021
		Finance Director/Treasurer (Professional Outreach)	59,984	2021
	St. Clair Shores			
	Villa Park	Finance Director (Virtual)	22,038	2021
	Wauconda	Finance Director	14,125	2014
	Westmont	Finance Director (Virtual)	24,767	2022
	Winnetka	Assistant Finance Director (Virtual)	12,417	2018
		Finance Director	12,417	2015
		Director of Finance & Administration (Virtual)	13,945	2017
Indiana	Wood Dale Park District			
	Lake County	Finance Director	496,314	2019
Iowa		Budget Manager (Professional Outreach)	30,000	2018
	Marion			
Maine	Biddeford	Finance Director (Virtual)	21,277	2021
Maryland	Westminster	Director of Finance	18,522	2022
Michigan		Finance Director (Professional Outreach)	20,676	2019
	Adrian			
	Ferndale	Finance Director (Virtual)	20,428	2021
		Financial Systems Administrator (Virtual)	200,217	2019
	Grand Rapids			
	Kent County	Director of Fiscal Services	636,369	2019

	Royal Oak	Finance Director	59,112	2022
Minnesota	Burnsville	Finance Director	60,000	2021
	Waite Park	Finance Director	7,700	2021
Nebraska	LaVista	Finance Director	18,336	2014
	Lincoln	Finance Director	290,000	2022
Ohio	Cleveland Heights	Finance Director	46,238	2019
	Monroe	Finance Director	15,412	2021
	Toledo	Director of Finance	272,780	2021
Pennsylvania	Centre County	Chief Financial Officer	158,172	2021
Texas	Garland	Managing Director of Finance	233,206	2011
Virginia	Chesapeake	Controller of Debt & Strategy Planning (Virtual)	245,000	2020
Washington	Issaquah	Chief Financial Officer	39,378	2021
West Virginia	Bridgeport	Finance Director	8,582	2021
Wisconsin	Beloit (City)	Finance & Administrative Services Director	36,966	2014
	Calumet County	Finance Director	50,100	2021
	Cottage Grove	Finance Director	7,663	2021
	Dunn County	Chief Financial Officer	44,806	2021
	Janesville	Clerk-Treasurer	63,588	2021
	Jefferson County	Finance Director (Virtual)	84,395	2017
	La Crosse	Director of Finance	52,680	2022
	Middleton	Finance Director	17,422	2015
	Milton	Finance Director/Treasurer	5,546	2014
	Oak Creek	Assistant City Administrator/Comptroller	35,243	2020
		Assistant Comptroller (Professional Outreach)	35,243	2019
	Oshkosh	Assistant Finance Director	66,700	2018
		Finance Director	66,700	2013
	Portage	Finance Director/Treasurer (Professional Outreach)	10,500	2021
	Rib Mountain	Clerk/Treasurer	6,825	2014
	Sheboygan	Finance Director	48,327	2021
	Waukesha	Finance Director	72,489	2020
				2022
	Wauwatosa	Director of Finance	47,000	2010

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Jun 21, 2022

Planning & Development
Department

Zach Simonson
Prepared By
Zach Simonson
Department Head



City Administrator Approval

AGENDA TITLE: RESOLUTION NO. 166-2022: RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF AN AMENDED AND RESTATED COLLATERAL ASSIGNMENT RELATED TO AN AGREEMENT FOR PRIVATE DEVELOPMENT WITH HCI52501 INVESTMENT, LLC

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt Resolution No. 166-2022.

DISCUSSION: The development agreement with HCI52501 for the Bonita project permits the developer to assign right, title and interest in the economic development grants provided by the city to a lender. An original collateral assignment was completed on May 23, 2022, but the lender did seek additional representations, warranties and commitments related to the Development agreement from the City.

Source of Funds:

Budgeted Item: Budget Amendment Needed:

This amended and restated version of the collateral assignment has been reviewed by the City's attorneys and protects the City's interests while providing the mechanism necessary to allow the developer to reassign these grants to the lender and successfully finance the project.

ITEM TO INCLUDE ON AGENDA

CITY OF OTTUMWA, IOWA

June 21, 2022

5:30 P.M.

- Resolution approving and authorizing execution of an Amended and Restated Collateral Assignment related to an Agreement for Private Development with HCI52501 Investment, LLC

IMPORTANT INFORMATION

1. The above agenda items should be included, along with any other agenda items, in the meeting agenda. The agenda should be posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting. If no such office exists, the notice must be posted at the building in which the meeting is to be held.
2. If you do not now have a bulletin board designated as above mentioned, designate one and establish a uniform policy of posting your notices of meeting and tentative agenda.
3. Notice and tentative agenda must be posted at least 24 hours prior to the commencement of the meeting.

NOTICE MUST BE GIVEN PURSUANT TO IOWA CODE
CHAPTER 21 AND THE LOCAL RULES OF THE CITY.

June 21, 2022

The City Council of the City of Ottumwa, State of Iowa, met in _____ session, in the Council Chambers, City Hall, 105 East Third Street, Ottumwa, Iowa, at 5:30 P.M., on the above date. There were present Mayor _____, in the chair, and the following named Council Members:

Absent: _____

* * * * *

Council Member _____ introduced and delivered to the Clerk the Resolution hereinafter set out entitled "RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF AN AMENDED AND RESTATED COLLATERAL ASSIGNMENT RELATED TO AN AGREEMENT FOR PRIVATE DEVELOPMENT WITH HCI52501 INVESTMENT, LLC", and moved:

- that the Resolution be adopted.
- to defer action on the Resolution and the proposal to the meeting to be held at _____ .M. on the _____ day of _____, 2022, at this place.

Council Member _____ seconded the motion. The roll was called, and the vote was:

AYES: _____

NAYS: _____

Whereupon, the Mayor declared the measure duly adopted.

RESOLUTION NO. 166-2022

RESOLUTION APPROVING AND AUTHORIZING
EXECUTION OF AN AMENDED AND RESTATED
COLLATERAL ASSIGNMENT RELATED TO AN
AGREEMENT FOR PRIVATE DEVELOPMENT WITH
HCI52501 INVESTMENT, LLC

WHEREAS, on December 7, 2021, the City of Ottumwa, Iowa (the "City") and HCI52501 Investment LLC ("Developer") entered into an Agreement for Private Development ("Development Agreement"), pursuant to which the Developer agreed to undertake a development project on certain property located in the City's Bonita Urban Renewal Area; and

WHEREAS, in exchange for the Developer's obligations under the Development Agreement, the City agreed to provide the Developer with economic development incentives referred to in the Development Agreement as "Economic Development Grants" under the terms and conditions set forth in the Development Agreement; and

WHEREAS, the City previously received a request from the Developer and GreenState Credit Union ("Lender") to provide written consent to the Developer's assignment of all of its right, title, and interest to receive the Economic Development Grants to the Lender, in connection with Developer's financing for the project, which request was in the form of a Collateral Assignment of Agreement for Private Development ("Original Assignment Agreement"); and

WHEREAS, the Development Agreement permits the Developer to collaterally assign its right to receive the Economic Development Grants; and

WHEREAS, in connection with carrying out actions related to the provisions of the Development Agreement, on May 23, 2022, the Mayor and City Clerk executed the Original Assignment Agreement on behalf of the City to evidence that the assignment was permissible under the Development Agreement's terms; and

WHEREAS, the Original Assignment Agreement was agreed to in order for Developer's loan closing to proceed on the scheduled closing date of May 23, 2022, but the Lender desires for the City to provide additional representations, warranties, and commitments related to the Development Agreement as part of a proposed Amended and Restated Collateral Assignment of Agreement for Private (the "Amended and Restated Assignment Agreement") by and between the Developer, Lender, and City, which Amended and Restated Assignment Agreement would amend and restate the provisions of the Original Assignment Agreement; and

WHEREAS, the City is willing to agree to the proposed Amended and Restated Assignment Agreement that is now before this Council.

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

Section 1. That the form and content of the Amended and Restated Assignment Agreement, the provisions of which are incorporated herein by reference, be and the same hereby are in all respects authorized, approved and confirmed, and the Mayor and the City Clerk be and they hereby are authorized, empowered and directed to execute, attest, seal and deliver the Amended and Restated Assignment Agreement for and on behalf of the City in substantially the form and content now before this meeting, but with such changes, modifications, additions or deletions therein as shall be approved by such officers, and that from and after the execution and delivery of the Amended and Restated Assignment Agreement, the Mayor and the City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Amended and Restated Assignment Agreement as executed.

PASSED AND APPROVED this 21st day of June, 2022.

Mayor

ATTEST:

City Clerk

CERTIFICATE

STATE OF IOWA

)

) SS

COUNTY OF WAPELLO

)

I, the undersigned City Clerk of the City of Ottumwa, Iowa, do hereby certify that attached is a true and complete copy of the portion of the corporate records of said Municipality showing proceedings of the Council, and the same is a true and complete copy of the action taken by said Council with respect to said matter at the meeting held on the date indicated in the attachment, which proceedings remain in full force and effect, and have not been amended or rescinded in any way; that meeting and all action thereat was duly and publicly held in accordance with a notice of meeting and tentative agenda, a copy of which was timely served on each member of the Council and posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the Council (a copy of the face sheet of said agenda being attached hereto) pursuant to the local rules of the Council and the provisions of Chapter 21, Code of Iowa, upon reasonable advance notice to the public and media at least twenty-four hours prior to the commencement of the meeting as required by said law and with members of the public present in attendance; I further certify that the individuals named therein were on the date thereof duly and lawfully possessed of their respective city offices as indicated therein, that no Council vacancy existed except as may be stated in said proceedings, and that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization, existence or boundaries of the City or the right of the individuals named therein as officers to their respective positions.

WITNESS my hand and the seal of the Council hereto affixed this _____ day of _____, 2022.

City Clerk, City of Ottumwa, State of Iowa

(SEAL)

Prepared by and after recording return to:

Ryan J. Prahm
Pugh Hagan Prahm PLC

425 E. Oakdale Blvd, Suite 201
Coralville, Iowa

(319) 351-2028
facsimile (319) 351-1102

**AMENDED AND RESTATED COLLATERAL ASSIGNMENT OF AGREEMENT FOR
PRIVATE DEVELOPMENT**

THIS AMENDED AND RESTATED COLLATERAL ASSIGNMENT OF AGREEMENT FOR PRIVATE DEVELOPMENT (referred to herein as “Agreement”) entered into as of _____, 2022, by HCI52501 Investment LLC, an Iowa limited liability company, whose principal business and mailing address is P.O. Box 891, Gretna, NE 68028 (“Developer”) in favor of GreenState Credit Union, an Iowa state-chartered credit union, whose principal business address is 2355 Landon Rd, P.O. Box 800, North Liberty, IA 52317 (“Lender”) amends and restates in its entirety the Collateral Assignment of Agreement for Private Redevelopment dated May 23, 2022 previously executed by Developer, Lender, and City (“Original Assignment”) and is being made to provide security to Lender in consideration of providing a loan to Developer and is acknowledged and agreed to by the City of Ottumwa, Iowa, a municipal corporation, whose principal business address is 105 E 3rd Street, Ottumwa, IA 52501 Attn: Chris Reinhard, City Clerk (“City”). The parties hereto agree that this Agreement shall be effective as of the date of the Original Assignment, May 23, 2022.

RECITALS

A. Developer entered into that certain Agreement for Private Development (the “Development Agreement”) dated December 7, 2021, with the City.

B. Developer entered into a Construction Loan Agreement (“Loan Agreement”) dated May 23, 2022, with Lender, for the purpose of providing financing for the construction and development of certain property legally described on Exhibit “A” (the “Property”).

C. The loan is evidenced by two promissory notes of even date therewith (collectively the “Notes”).

D. Developer's obligations to Lender under the Notes are secured by that certain Mortgage, Security Agreement and Assignment of Rents and Profits dated as of May 23, 2022 (the "Mortgage"), executed by Developer in favor of Lender, encumbering the Property.

E. The Developer desires to collaterally assign all of its right, title, and interest to receive the Economic Development Grants (as that term is defined in the Development Agreement) pursuant to the terms of the Development Agreement ("Payments") to Lender as security for the obligations owed to Lender under the Loan Agreement and Notes.

AGREEMENT

For good and valuable consideration, the parties hereto agree as follows:

1. Assignment. For valuable consideration received, the adequacy and sufficiency of which is duly acknowledged by Developer, Developer does hereby collaterally assign, transfer, set over, deliver and convey to Lender as security for the obligations under the Loan Agreement and Notes owed to Lender, all of its rights, titles, and interest in the Payments under and pursuant to the Development Agreement. Said assignment is to automatically become a present, unconditional assignment, at Lender's option, in the event of a default by Developer under the Loan Agreement and Notes and the failure of Developer to cure such default within any applicable grace period.

2. City Consent. The City hereby consents and agrees to the terms and conditions of this Agreement and agrees that the Mortgage and this Assignment are permitted transfers under the Development Agreement. The City further represents and warrants to Lender that the Development Agreement is a valid agreement enforceable in accordance with its terms, that City is not in default under the Development Agreement and that all of the City's covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date thereof. To the best knowledge of the City, (a) Developer is not in default under the Development Agreement and (b) all of Developer's covenants, conditions and agreements have been performed as required therein. The City agrees to provide Lender with copies of any notice of default given to Developer under the Development Agreement. Lender shall have the right, but not the obligation, to cure such default within the time period set forth in the Development Agreement. Except as otherwise set forth in paragraph 3 of this Agreement, Payments made pursuant to the Development Agreement shall be made payable jointly to Developer and GreenState Credit Union but shall be provided solely to Developer at the address set forth the Development Agreement. To the extent any Payments are paid to the Lender under this Agreement, Developer agrees that the City shall have no further liability to the Developer for the same, and the Developer releases the City from any claims related to or arising out of the City's payment of such Payments to the Lender as described in this Agreement. Lender hereby acknowledges and agrees that Lender's right to receive Payments pursuant to the Development Agreement is wholly contingent upon Developer's compliance with, and as applicable, fulfillment of, the terms and conditions of the Development Agreement, or upon Lender's compliance with and fulfillment of the terms and conditions of the Development Agreement to the extent that Lender has assumed Developer's duties or obligations under the Development Agreement as described in this Agreement. In no case shall Lender's rights to the Payments under the Development Agreement be greater than Developer's rights to the same.

3. Attorney-in-Fact. Upon the occurrence of a default or event of default under either of the Notes or the Loan Agreement (a “**Default**”), without affecting any of Lender’s rights or remedies against Developer under any other instrument, Developer shall be deemed to have irrevocably appointed Lender as Developer’s attorney in fact to exercise any or all of Developer’s rights in, to and under the Development Agreement with respect to the receipt of the Payments and to negotiate checks, give appropriate receipts, releases and satisfactions on behalf of Developer in connection with the performance by any party to the Development Agreement and to do any or all other acts in Developer’s name or in Lender’s own name that Developer could do under the Development Agreement with the same force and effect as if this Assignment had not been made. Upon written notice of a Default by Lender to the City, with a copy thereof provided by Lender to Developer, the City shall make any Payments due under the terms of the Development Agreement directly and solely to Lender at the address noted above until the City receives written notice from the Lender and Developer that any future Payments should no longer be made to Lender. In addition, Lender shall have the right to exercise and enforce any and all rights and remedies available after a default to a secured party under the Uniform Commercial Code as adopted in the State of Iowa. If notice to Developer of any intended disposition of collateral or of any intended action as required by law in any particular instance, such notice shall be deemed commercially reasonable if given in writing at least ten (10) days prior to the intended disposition or other action. Developer hereby authorizes Lender to deliver a copy of this Assignment to any other party to the Development Agreement to verify the rights granted to Lender hereunder. All other parties under the Development Agreement are authorized and directed by Developer to tender performance of its obligations under the Development Agreement to Lender upon presentation of a copy of this Assignment

4. Termination. At such time as the Indebtedness (as defined in the Loan Agreement between Lender and Developer) has been paid in full this Agreement and all of Lender’s right, title and interest hereunder with respect to the Development Agreement shall terminate.

5. Financing Statements: Failure to Perfect. Developer authorizes Lender to file a UCC financing statement, a copy of this Agreement, as well as continuation statements, to perfect and maintain perfection of Lender’s security interest with the Wapello County Recorder’s Office and the Iowa Secretary of State’s Office. Failure of Lender to protect, preserve, maintain or continue any security interest shall not in any way diminish, waive, release, restrict, limit, bar or estop enforcement of Lender’s rights under this Agreement, as against Developer, or applicable law, nor give rise to any defense with respect thereto (including but not limited to mitigation of damages).

6. Developer’s Covenants. Developer hereby covenants with Lender that during the term of the Development Agreement: (a) Developer shall not transfer the responsibility for development to any other person or entity without prior written notification to Lender and the prior written consent of Lender, which consent may be withheld by Lender in Lender’s sole discretion; b) Developer shall not terminate or amend any of the terms or provisions of the Development Agreement without the prior written consent of Lender, which consent may be withheld by Lender in Lender’s sole but reasonable discretion; and (c) Developer shall not grant a security interest in the Development Agreement to any third-party.

7. Developer's Representations and Warranties. With respect to the Development Agreement, Developer acknowledges, agrees, represents, warrants and promises to Lender that:

a) Developer shall promptly take whatever actions are reasonably requested by Lender to effect attachment of, to perfect and continue attachment and perfection of Lender's security interest in the Payments under the Development Agreement to the extent of the rights assigned herein. Upon request of Lender, Developer will promptly deliver to Lender any and all of the documents evidencing or constituting the Development Agreement, and Developer will note Lender's interest upon any and all chattel paper and instruments if not delivered to Lender for possession by Lender.

b) The execution and delivery of this Agreement will not violate any law or agreement governing Developer or to which Developer is a party, and its certificate or articles of incorporation and bylaws, or certificate or articles of organization and operating agreement, do not prohibit any term or condition of this Agreement.

c) Developer has not assigned its rights under the Development Agreement to any other person or entity.

d) There are no setoffs or counterclaims against any of the Development Agreement, and no agreement has been made under which any deductions or discounts may be claimed concerning the Development Agreement.

8. Default. Each of the following shall constitute an Default under this Agreement:

a) Payment Default. Developer fails to make any payment, in full, when due under the Loan Agreement or Notes, subject to any applicable notice or cure rights.

b) Non-Payment Defaults. Developer fails to observe, comply with or perform any other term, obligation, covenant or condition contained in this Agreement, the Development Agreement, Loan Agreement or Notes.

9. Rights and Remedies on Default. If a Default occurs, Lender shall provide notice of such Default to the City in writing, and thereafter Developer shall not interfere with Lender's exercise of all rights, titles and interest of Developer to receive Payments under the terms of the Development Agreement. Prior to any Default the Developer shall have the right to exercise all rights to solely receive all Payments under the terms of the Development Agreement.

10. Lender's Obligations/Indemnity. The Lender shall have no obligation to perform or satisfy any duty or obligation of Developer under the Development Agreement. Developer shall and does hereby agree to indemnify, defend and hold the Lender harmless from and against and in respect of any and all actions, causes of action, suits, claims, demands, judgments, proceedings and investigations (or any appeal thereof or relative thereto or other review thereof) of any kind or nature whatsoever, arising out of, by reason of, as a result of or in connection with the Development Agreement, and any and all liabilities, damages, losses, costs, expenses (including the reasonable fees of counsel and expenses and disbursements of counsel), amounts of judgment, assessments, fines or penalties, and amounts paid in compromise or settlement, suffered, incurred or sustained

by Lender as a result of, or reason of or in connection with any of the matters above, except for Lender's gross negligence, willful misconduct, or any acts or omissions with respect to the Development Agreement by Lender or any other party after Developer no longer owns the Property.

11. Governing Law. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the state of Iowa. Developer and Lender consent to jurisdiction and venue of the appropriate state or Federal Court for Wapello County, Iowa for any matter arising out of this Agreement.

12. Notices. All notices required or permitted hereunder shall be given to the addresses set forth on the first page of this Agreement.

13. No Oral Change. This Agreement, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Developer or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

14. Liability; No Assumption. This Agreement shall be binding upon and inure to the benefit of Developer and Lender and their respective successors and assigns forever and shall run with the land subject to the Development Agreement. Nothing in this Agreement shall release the Developer from any of its obligations under the Development Agreement, Loan Agreement or Notes. It is understood and agreed that the Lender does not assume any of the obligations or duties of the Developer concerning the Development Agreement. No provision of this Agreement shall be deemed or construed to alter, amend, or modify, in any way, the terms of the Minimum Assessment Agreement executed by the City and the Developer in connection with the Development Agreement, which Minimum Assessment Agreement is hereby acknowledged and consented to by the Lender.

15. Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

16. Interpretation. Any ambiguity in or dispute regarding the interpretation of this Agreement shall not be resolved by rule of interpretation providing for interpretation against Lender.

17. Headings. The headings and captions of various paragraphs of this Agreement are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

18. Attorneys' Fees; Expenses. Developer shall be responsible for and shall immediately pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees, in connection with the enforcement of this Agreement and protection and enforcement of Lender's rights hereunder or in connection herewith, without regard to approval or confirmation of such amounts by a court. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys'

fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction, appeals, and any anticipated post-judgment collection services). Developer also shall pay all court costs and such additional fees as may be directed by a court. All amounts owed hereunder shall become additional Indebtedness under the Loan Agreement.

19. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

20. Counterparts. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

21. Miscellaneous. The granting of the assignment hereunder authorizes the City to communicate directly with Lender and upon written receipt of a notice of a Default from Lender to make Payments under the Development Agreement directly to Lender, subject to the terms and conditions of the Development Agreement and this Agreement.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

(SIGNATURES ON NEXT PAGES)

GreenState Credit Union
an Iowa state-chartered credit union

By: _____
Name: _____
Title: _____

STATE OF _____, COUNTY OF _____, ss:

This instrument was acknowledged before me on the ____ day of May 2022, by
_____ as _____ of GreenState Credit Union.

Notary Public

City of Ottumwa, Iowa,
a municipal corporation

By: _____
Name: _____
Title: Mayor

Approved as to form and attested by:

City Clerk

STATE OF IOWA)
) ss
COUNTY OF WAPELLO)

On this ____ day of May 2022, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared _____ to me personally known, and who, being by me duly sworn did state that he is the Mayor of the City of Ottumwa, Iowa, a municipal corporation; that the instrument was signed on behalf of City of Ottumwa, Iowa, by authority of its City Council, and that _____ acknowledged and attested to the execution of the instrument to be the voluntary act and deed of City of Ottumwa, Iowa, by it and by them voluntarily executed.

Notary Public in the State of Iowa

Exhibit A

Part of the Northwest Quarter of Section 7, Township 72 North, Range 13 West of the 5th P.M., Wapello County, Iowa, more particularly described as follows, to-wit: Beginning at a point 233 feet East and 233 feet South of the Northwest corner of the Northwest Quarter of Section 7, thence East parallel to the centerline of Rochester Road, 422.58 feet; thence South 996.1 feet parallel with the centerline of North Court Road to a point 200 feet North of Bonita Avenue; thence West parallel to the North line of Bonita Avenue, 179.08 feet; thence South parallel with the centerline of North Court Road, 200 feet to the North line of Bonita Avenue; thence West 50 feet along the North line of Bonita Avenue; thence North parallel with the centerline of North Court Road, 200 feet; thence West parallel with the North line of Bonita Avenue, 176.50 feet; thence North parallel with the centerline of North Court Road 495.9 feet; thence West parallel to Bonita Avenue, 17 feet; thence North parallel with the centerline of North Court Road, 500 feet to the place of beginning.

02062209-1\10981-092

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Jun 21, 2022

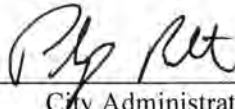
Philip Rath

Prepared By

Administration

Department

Department Head



City Administrator Approval

AGENDA TITLE: Resolution No. 167-2022 - Approving an Agreement between the City of Ottumwa and the Greater Ottumwa Convention and Visitors Bureau, Inc.

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt Resolution 167-2022.

DISCUSSION: The current agreement with Greater Ottumwa Convention and Visitors Bureau, Inc d/b/a Meet Ottumwa for the provision of marketing and tourism activities is scheduled to expire on June 30, 2022. That agreement was a two-year agreement with a two-year extension. As part of that agreement, Meet Ottumwa received 35% of the hotel / motel tax collected by the City.

The proposed agreement increase the percentage allocated to Meet Ottumwa to 40% of the funding received by the City. Additionally, the agreement moves to a three-year term with the possibility of a one-year extension.

Source of Funds: Hotel / motel tax revenue

Budgeted Item: Budget Amendment Needed:

RESOLUTION NO. 167-2022

**RESOLUTION APPROVING AN AGREEMENT WITH
GREATER OTTUMWA CONVENTION AND VISITORS BUREAU, INC FOR
PROVISION OF MARKETING AND TOURISM SERVICES**

WHEREAS, the City Council is desirous of promoting convention and tourism activities in the City of Ottumwa; and

WHEREAS, the current agreement with the Greater Ottumwa Convention and Visitors Bureau, Inc d/b/a Meet Ottumwa as related to marketing and tourism support terminates on June 30, 2022; and

WHEREAS, the City desires to continue the relationship for marketing and tourism services provided by Meet Ottumwa; and

WHEREAS, the City receives a hotel / motel tax which may be utilized for such services.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ottumwa, Iowa, that the proposed Agreement between the City of Ottumwa, Iowa and the Greater Ottumwa Convention and Visitors Bureau, Inc. is approved; and

BE IT FURTHER RESOLVED, by the Ottumwa City Council of the City of Ottumwa, Iowa, that the Mayor and City Clerk are hereby authorized and directed to execute said resolution and the attached Agreement.

APPROVED, PASSED AND ADOPTED, this 21st day of June, 2022.

CITY OF OTTUMWA, IOWA

Richard W. Johnson, Mayor

ATTEST:

Christina Reinhard, City Clerk

AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2022, by and between the City of Ottumwa, Iowa, hereinafter referred to as "City", and the Greater Ottumwa Convention & Visitor's Bureau, Inc., hereinafter referred to as "CVB".

WITNESSETH:

WHEREAS, City is an incorporated local government organized under the laws of the State of Iowa located in Wapello County, Iowa; and

WHEREAS, the Greater Ottumwa Convention and Visitors Bureau, Inc. has been incorporated and is currently known as Meet Ottumwa, a non-profit corporation eligible to directly receive the allocated proceeds of the Hotel/Motel Tax; and

WHEREAS, City receives Hotel/Motel Tax and desires to improve and increase tourism activity in Ottumwa; and

WHEREAS, CVB was created as an entity to promote tourism and tourist opportunities including, but not limited to, The Bridge View Center, Beach Ottumwa, parks, campgrounds, trails, Cedar Creek Golf Course, and community events utilizing a schedule of events, brochures, publications, marketing and public information; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and payments, heretofore and hereinafter made, recited and paid, it is agreed by and between the City and CVB, as follows:

1. **TERM.** The term of this Agreement shall be from July 1, 2022 through June 30, 2024 and shall be automatically renewed for another year unless otherwise amended, revoked or terminated and shall be extended by action of each party.
2. **SCOPE OF SERVICES.** That CVB in exchange for the payments determined by this Agreement, will utilize those funds to provide Convention and Visitors Bureau services and marketing and tourism activities for the benefit of City. The marketing and tourism services to be provided by CVB to the City include, but are not limited to:
 - a. Marketing efforts that will enhance and facilitate tourism within the City.
 - b. Cooperating with local organizations, economic development agencies and regional planning commissions in attracting events to the City or region.
 - c. Coordinating and collaborating with the activities of companion organizations (i.e., Bridge View Center, Inc., Main Street Ottumwa and CVB). This would include activities such as fundraising, marketing, promotion, and community events.

- d. Submit an annual report to the City Council by April 1 of each of the years during the term of this Agreement, commencing April 1, 2023.
 - e. Provide quarterly updates to the city administrator regarding the activities, finances, and successes of CVB. Share other relevant data such as the annual budget, audit, and strategic plans for CVB.
 - f. That the City shall have two representatives on the CVB Board as appointed by the Mayor of the City and approved by the City Council.
 - g. That CVB shall submit a budget annually prior to July 1st of each year for the fiscal year beginning July 1st.
 - h. That an annual independent audit by a Certified Public Accountant firm shall be submitted to the City within six months of the end of the initial agreement period.
 - i. The financial records of CVB shall be made available for inspection by representatives of the City upon request.
3. **NO AGENCY.** The City shall neither have nor exercise any control or direction over the methods and practices of CVB staff, except as set forth herein. The decision to hire, supervise and direct the staff of CVB shall be solely the responsibility of the Board of Directors of CVB and their internal policies and procedures. The City reserves the right to give performance information to the Board of Directors of CVB (as requested) to aid in their management of staff.
4. **PRIVATE INVESTMENT.** Both entities understand the importance of private sector dollars for the advancement of marketing and tourism. To that end, CVB shall actively seek new and retain existing investors and partnerships to the extent possible. Further, CVB shall accept project grant funds from any person, firm, or corporation otherwise eligible according to the by-laws of CVB.
5. **FUNDING FOR MARKETING AND TOURISM SERVICES.** In exchange for CVB's provision of the Marketing and Tourism Services described herein, the City agrees, subject to CVB being and remaining in compliance with the terms of this Agreement, and subject to the terms and conditions of this Agreement, to provide CVB with a portion of the hotel/motel tax received by the City. In accordance with the formula for disbursement of hotel and motel tax revenue for tourism activities, City agrees to pay forty percent (40%) of the hotel/motel tax revenue – currently calculated at seven percent (7%) to CVB for the services identified in this Agreement. Funds shall be disbursed by the City as received from the State of Iowa.
6. **WAIVER OF WARRANTY.** CVB warrants and represents only that staff will work diligently to perform the Marketing and Tourism Services required by this agreement. CVB makes no warranty or representation that the Marketing and Tourism Services performed pursuant to this Agreement will produce results desired by the City.

7. **INDEMNIFICATION AND INSURANCE.** CVB shall provide adequate coverage to insure its operations. Further, CVB shall hold harmless, and indemnify the City, its elected officials, officers, directors, employees and agents from any and all claims, suits, actions, costs and fees, including but not limited to attorney's fees, interest and expenses growing out of or connected with the performance of this Agreement, or because of any act or omission, neglect, or misconduct of CVB, its officers, directors, employees, agents, volunteers, sub-recipients, independent contractors, or subcontractors. To the extent permitted by law, the City shall hold harmless CVB and its officials, officers, directors, employees and agents from any and all claims, suits, and actions growing out of or connected with the performance of this Agreement, except to the extent related to neglect or misconduct of CVB, its officers, directors, employees, agents, volunteers, sub-recipients, independent contractors, or subcontractors.
8. **CONFLICT OF INTEREST.** CVB shall establish and follow policies prohibiting its officers, directors, agents, and employees from using City funds for their own private use. No City employee may be hired or paid with funds derived directly or indirectly through this Agreement.
9. **GOVERNING LAW.** This Agreement shall be governed and construed by the laws of the State of Iowa both as to interpretation and performance.
10. **REQUIRED NOTICES OR REPORTS.** Any notices, reports, records, or documents required under the terms of this Agreement shall be deemed sufficiently delivered if made in writing and sent by first class mail or personal service to:

FOR THE CITY

City of Ottumwa
Attn: City Administrator
105 East Third Street
Ottumwa, IA 52501

FOR CVB

Convention and Visitor's Bureau, Inc.
Attn: Executive Director
102 Church Street
Ottumwa, IA 52501

11. **TERMINATION.** Either party, upon ninety (90) days written notice to the other, may terminate this Agreement. Upon termination, if no default under this Agreement has occurred, the City agrees to pay CVB a prorated amount for all services performed pursuant to this Agreement prior to the effective date of termination. In the event the City has paid for services in advance, which were not rendered before the effective date of termination, then CVB shall return to the City the prorated portion of the advance payment for services not rendered before the termination. In the event CVB dissolves its corporate status during the term of this Agreement, the payments in accordance with paragraph 5 shall be made as permitted by law.

12. POSSESSION, USE AND DISCLOSURE OF INFORMATION.

- a. CVB acknowledges that during the engagement, staff will have access to and become acquainted with information, records and specifications owned by the City or used by the City in connection with the operation of its affairs including, without limitation, the City's processes, methods and procedures. CVB shall not cause or permit to be divulged to any person, corporation or other entity information gained by CVB staff in the performance of the Marketing and Tourism Services for the City, unless such information has been independently released to the public by the City. CVB requests the same courtesy regarding information disclosed by its staff to the City of Ottumwa, subject to the requirements of Iowa Code Chapter 22 (the "Open Records Law").
- b. The City shall provide notice to CVB of any request received by the City under the Open Records Law that may concern or include documents or information provided by CVB related to this Agreement. Following such notification to the CVB, the City shall allow at least ten (10) calendar days prior to responding to such request, within which period CVB may file an action in Wapello County District Court seeking the entry of a declaratory order or injunction to protect and keep confidential such documents or information that CVB believes should be confidential and excluded from disclosure under the Open Records Law. Absent such action and the entry of a court order declaring a portion or portions of the information confidential, the documents responsive to the Open Records Law request will be released by the City for examination to the extent required by Iowa Code Chapter 22. CVB shall indemnify the City for any fines, attorney's fees and court costs the City may incur or that may be awarded against the City as a result of complying with the CVB's request for confidentiality.
- c. All files, records, documents, information, letters, notes, media lists, original artwork, creative, notebooks, and similar items relating to the business of the City, whether prepared by CVB or otherwise coming into CVB's possession, shall remain the exclusive property of the City. Upon termination of this Agreement, or whenever requested by the City, CVB shall immediately deliver to the City all such files, records, documents, information, and other items in the possession of or under the control of CVB.

13. SUCCESSORS AND ASSIGNS. Each party, and their respective successors, executors, administrators and assigns, shall be bound by the terms of this Agreement. Neither party shall assign nor transfer any interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of either party hereto nor shall it be construed as giving any rights or benefits hereunder to anyone other than the parties to this agreement.

14. AMENDMENTS. This agreement may not be amended or modified except by written agreement of the City and CVB.

15. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement between the parties and supersedes all previous communications or understandings, whether oral or written.

16. **SAVINGS CLAUSE.** If any provision of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions or results, the remaining parts or portions of this Agreement shall remain in full force and effect.

City of Ottumwa

Greater Ottumwa Convention &
Visitors Bureau, Inc.

Richard W. Johnson, MAYOR

PRESIDENT

ATTEST:

Christina Reinhard, CITY CLERK

TREASURER or VICE PRESIDENT

Dated this _____ day of
_____, 2022.

Dated this _____ day of
_____, 2022.

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of : Jun 21, 2022

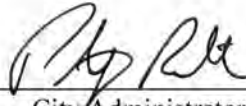
Philip Rath

Prepared By

Administration

Department

Department Head



City Administrator Approval

AGENDA TITLE: Resolution No. 168-2022 - a resolution approving an extension of the Agreement with Integrity Golf Group, LLC for the management of the Cedar Creek Golf Course

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt Resolution 168-2022

DISCUSSION: Cedar Creek Golf Course is currently under management by Integrity Golf Group, LLC per an agreement with the City. The original Agreement began on Jan. 1, 2019 and is set to expire on Dec. 31, 2023. The agreement allows for a five-year extension of the agreement upon concurrence of both parties. Recently the management group was faced with a costly repair to the irrigation system when a pump aged out and needed to be replaced. Due to the significant cost of this repair, Integrity is requesting certainty of operations to recover these costs over time and has requested the extension of the current agreement through Dec. 31, 2028.

Source of Funds:

Budgeted Item: Budget Amendment Needed:

RESOLUTION NO. 168-2022

**RESOLUTION APPROVING AN EXTENSION OF THE AGREEMENT
WITH INTEGRITY GOLF GROUP, LLC FOR
THE MANAGEMENT OF THE CEDAR CREEK GOLF COURSE**

WHEREAS, the City of Ottumwa, Iowa desires to approve a five-year extension of the Operating Agreement for the Cedar Creek Golf Course with Greg Wilson, PGA, d/b/a Integrity Golf Group, LLC; and

WHEREAS, the City of Ottumwa desires to extend the original Agreement for the operation of the City's Public Golf Course from January 1, 2024 through December 31, 2028.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Ottumwa, Iowa, that the proposed extension Agreement between the City of Ottumwa, Iowa and Greg Wilson, PGA, d/b/a Integrity Golf Group, LLC is hereby approved thereby extending the Agreement for the additional five-year period.

BE IT FURTHER RESOLVED, by the City Council of the City of Ottumwa, Iowa, that the Mayor and City Clerk are hereby authorized and directed to execute said resolution and the Extension Agreement upon receipt of the final signed document from Greg Wilson.

APPROVED, PASSED AND ADOPTED, this 21st day of June, 2022.

CITY OF OTTUMWA, IOWA

Richard W. Johnson, Mayor

ATTEST:

Christina Reinhard, City Clerk

**AMENDED
OPERATING AGREEMENT**

BY AND BETWEEN

CITY OF OTTUMWA, IOWA

AND

**GREG WILSON, PGA
D/B/A INTEGRITY GOLF GROUP, L.L.C.**

DATED AS OF 1/1/2019

OPERATING AGREEMENT

THIS AMENDED OPERATING AGREEMENT (Agreement) is made and entered into this _____ day of December, 2018, to be effective as of the 1st day of January, 2019, by and between the City of Ottumwa, Iowa (City) and Greg Wilson, PGA, D/B/A Integrity Golf Group, L.L.C. (the Contractor).

WITNESSETH

WHEREAS, the City owns certain improved real estate in Wapello County, Ottumwa, Iowa, which is used and maintained as a municipal golf course and is commonly known as Cedar Creek Golf Course, located at 13120 Angle Road.

WHEREAS, the City has determined that it is in the best interest of the citizens of the City of Ottumwa (City) to procure the services of the Contractor to manage and operate the Golf Course on behalf of the City; and

WHEREAS, the City had entered into a prior agreement with Contractor dated the 25th day of November, 2008, which was then amended the 15th day of December, 2008, and said Agreement provided that it could be renewed for an additional five-year period upon the concurrence of both parties; and

WHEREAS, the City and Contractor wish to renew said Agreement as previously amended, under the same explicit terms as set out in the November 25, 2018 Agreement as amended, with the following specific exceptions, to-wit:

ARTICLE I

DEFINITIONS

“Capital Improvements,” going forward with this Operating Agreement extension, is defined to mean a physical improvement that results in or becomes a part of a physical asset. This capital asset will have a useful service life of more than one year and have an estimated cost of at least \$5,000.00. Equipment replacement and repair, seeding, fertilizing, tree planting, tree cleaning and tree removal are not capital improvements, but are maintenance expenses to be borne by the Contractor.

“City Administrator/Designee” means the City Administrator or the person designated by the City Administrator to oversee this agreement, which is currently the Parks Director; and for Capital Improvements will be the Public Works Director.

“Contractor” means the entity, Integrity Golf Group, L.L.C.

ARTICLE II

TERM

Section 2.01. Term. Subject to and upon the conditions set forth herein, the term of this Agreement shall commence on January 1, 2019 and terminate on December 31, 2023, unless terminated earlier pursuant to the provisions continued herein (the “Term”).

Section 2.02. Renewal Options – Upon concurrence of both parties, this agreement may be renewed for one additional five-year period. The Contractor shall notify the City of his (Contractor’s) intent to renew by September 1, 2023 for this renewal request. The City will acknowledge the renewal request in writing by October 1, 2023 or notify the Contractor of its (City’s) intent not to renew.

ARTICLE IV

OPERATIONS

Section 4.01(d) – Said Section 4.01(d), as amended by the December 15, 2008 Amendment, is specifically deleted from this Operating Agreement.

Section 4.06. Operation of the Concessions Area. The Contractor shall be responsible for all concessions sold in the Clubhouse and on the Golf course during the Term. The contractor shall maintain the kitchen and food and drink concession areas in a clean and sanitary condition, and shall comply with all applicable codes and other City, State and Federal regulations. The contractor shall provide all concession-related equipment, adequate staffing of concessions, appropriate hours of operation, and be responsible for the cleanliness and quality of food service.

ARTICLE VI

CAPITAL IMPROVEMENTS

Section 6.01. Additional Facilities. The Contractor has full intentions to have designed, constructed and/or installed the Capital Improvements at the Golf Course as shown on the attached Exhibit “A”. The necessity of a capital improvement project shall be jointly approved

by the City Administrator and his designees, the Parks Department Director and the Public Works Director. Any and all plans for the design, construction and installation of the Capital Improvements, meeting the definitions as set out in Article I by the Contractor, shall be approved by the City's Public Works Director. The City will review the Contractor's proposal for a Capital Improvement, determine the necessity, and the estimated cost up front and review the expenses upon completion. The Contractor will provide a budget for the project and all invoices associated with the project at its completion and the Public Works Director will review and approve. The Contractor shall bear the total cost associated with such design, construction and installation of the Capital Improvements. The Contractor shall be responsible for obtaining all necessary permits and licenses and shall be submitted to the Public Works Director upon receipt by the Contractor. All construction shall be done in accordance with applicable federal, state and local laws and ordinances. The Contractor shall commence and proceed with due diligence to complete the Capital Improvements to the Golf Facilities in accordance with the timetable set forth on the attached Exhibit "A". The attached Exhibit "A" has been mutually agreed upon by the City and the Contractor. Said list is a suggested list and may be modified with City concurrence. The Contractor shall use its best efforts to minimize the disruption to the Golf Course during the construction of the Capital Improvements. Contractor agrees to obtain City approval of the project, the projected costs and the final completion expenses. The Contractor's failure to do so may result in the declination of the City to include the project as part of a Termination/Expiration payment as set out in Section 12.07. Equipment replacement or repair, seeding, fertilizing, tree planting, tree cleaning and tree removal are not capital improvements, but are maintenance expenses to be borne by the Contractor.

Section 6.07. City Capital Improvements. The City may determine that a capital improvement needs to be done that may not appear on the attached Exhibit "A" due to but not limited to safety needs and other issues that may arise at the golf course from time to time. The City may decide to proceed to develop, design, construct and install the capital improvement at its expense, with the concurrence of the Contractor. Contractor shall cooperate with the City in the development of said capital improvement.

Section 6.08. Dedication of Funds to Capital Improvements. To ensure that golf course funds are dedicated to the satisfaction of the proposed list of Capital Improvements set out on the attached Exhibit "A", Contractor shall have funds available in a capital improvement fund with at least the sum of Fifty Cents (.50) out of the Contractor's charge for each round of golf played at the City's Golf Course, to be utilized to help fund capital improvements at the Cedar Creek Golf Course. Contractor may set aside more than that amount so specified. This Article

6.08 does not limit in any way Contractor's full intention to pursue and complete the suggested, potential capital improvement projects outlined in the attached Exhibit "A".

ARTICLE IX
LIABILITY AND INSURANCE

Section 9.03. Insurance Coverage.

E. **Miscellaneous Insurance Provisions.** The City and the Contractor acknowledge and agree that the Contractor shall be solely responsible for all supplies and equipment maintained on the Premises and on or within the Golf Facilities. Any insurance on any Golf Supplies, Golf Shop Inventory, Golf Equipment or fixtures owned by the Contractor or supplies in the Contractor's possession for sale shall be covered by the Contractor's own property insurance policy and the Contractor agrees not to make any claim against the City for any losses to any such Golf Supplies, Golf Shop Inventory, Golf Equipment or fixtures, except if caused by any negligent or willful acts or omissions of the City, its agents or employees. The City will be responsible for providing insurance on the equipment set out in the attached Exhibit "B". The parties acknowledge that these items of equipment set out in Exhibit "B" are owned by the City. However, the Contractor and its agents or employees will be utilizing said equipment for the operation of the golf course. The Contractor shall maintain said equipment in a good and neat order, condition and repair. This includes routine maintenance, predictive maintenance and preventative maintenance throughout its useful life and shall indemnify and hold the city harmless from any damages or loss to property or injury to individuals through the improper use of said equipment or the negligent use of said equipment by the Contractor and its agents or employees. In the event the necessary repair of said equipment outweighs the value, Contractor shall promptly notify the City.

ARTICLE XII
TERMINATION

Section 12.06. Capital Improvements. The City and the Contractor acknowledge that a significant investment may be made to the Premises and the Golf Facilities and such value may extend beyond the Term. The parties each agree that all improvements made to the Golf Facilities shall become and remain a part of the Premises and the Golf Facilities and be included in the definition thereof. Each party further acknowledges that disagreements may occur and litigation to resolve any such disagreement may be costly. At the termination or expiration of

this Agreement made to the Premises and Golf Facilities shall be the property of the City, free and clear of all liens and encumbrances, except for the purchase of golf inventory and supplies.


Section 12.07. Termination/Expiration Payment.

(a) Upon termination/expiration of this Agreement under the terms and conditions of Article XII, the City shall pay to the Contractor or its permitted successors or assigns a Termination Payment within sixty (60) days of the final termination of this Agreement. Said Termination payment will be mutually agreed upon by the City and the Contractor.

(b) Upon the termination/expiration of this Renewal Agreement, to the extent those Capital Improvements have been approved and written documentation of the project, its budget and expenses properly reviewed by the City, the parties shall mutually agree to a Termination/Expiration Payment based upon the fair market value of the improvement as determined by an appraisal obtained by both parties. To ensure a Termination Payment pursuant to this Section 12.07, Contractor will provide proper written documentation confirming approval by the city and the receipt of proper written documentation of the capital improvement project prior to the completion of said project.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives as of the date first written above.

CONTRACTOR

By: 


Greg Wilson
D/B/A Integrity Golf Group, L.L.C.

CITY OF OTTUMWA

By: 

Tom X. Lazio
Mayor

ATTEST:



Christina Reinhard, City Clerk

EXHIBIT A
PROPOSED CAPITAL IMPROVEMENT PROJECTS
1/1/2009 – 12/31/2023

See attached suggested list provided by Contractor.

EXHIBIT B
CITY EQUIPMENT AS OF 1/1/2019

See attached list of equipment currently at the Golf Course as of 10/25/18.

Exhibit A
 CCGC
 Lease Extension
 -Suggested List of Cap. Imp.-

A

Item #:	Suggested list of potential Capital Improvements for CCGC Lease extension:	Approx. cost:
Yr #1	1 Ongoing dedication to create new cart paths (each hole)	\$ 12,000.00
"	2 Enlarge and contour practice putting green	\$ 2,500.00
"	3 Continuation of professionally landscaped t-boxes and clubhouse area (annual \$\$)	\$ 5,500.00
"	4 Finish drainage issues on hole #9	\$ 4,000.00
	Total	\$ 24,000.00
Yr #2	1 Ongoing dedication to create new cart paths (each hole)	\$ 12,000.00
"	2 Annual tree replacement and removal	\$ 3,000.00
"	3 Install privacy fencing around fuel pump and dumpster	\$ 3,000.00
"	4 Continuation of professionally landscaped t-boxes and clubhouse area (annual \$\$)	\$ 5,550.00
	Total	\$ 23,550.00
Yr #3	1 Ongoing dedication to create new cart paths (each hole)	\$ 12,000.00
"	2 Resurface Maint. Bldg entrance driveway	\$ 10,000.00
"	3 Continuation of professionally landscaped t-boxes and clubhouse area (annual \$\$)	\$ 5,500.00
	Total	\$ 27,500.00
Yr #4	1 Ongoing dedication to create new cart paths (each hole)	\$ 12,000.00
"	2 Continuation of professionally landscaped t-boxes and clubhouse area (annual \$\$)	\$ 5,500.00
"	3 Resurface Maint. Bldg parking area	\$ 10,000.00
	Total	\$ 27,500.00
Yr #5	1 Ongoing dedication to create new cart paths (each hole)	\$ 12,000.00
"	2 Continuation of professionally landscaped t-boxes and clubhouse area (annual \$\$)	\$ 5,500.00
"	3 Enhance Clubhouse, create more formal entrance	\$ 15,000.00
	Total	\$ 32,500.00
	Total	\$ 135,050.00

Exhibit B
440 - Golf Course - Golf Course Fund

Veh. #	Vehicle Description	Purchase Date	Cost	Repl Schedule	NOTES
11	2006 Smithco Bunker Rake	Jul-06	\$9,805	7 years	
199	2003 JD Wide Area Mower from Parks	Apr-03	\$36,326	No Replcmt	transferred back to Parks - auction
600	2007 Kawasaki Mule	Aug-06	\$8,000	7 years	
601	2007 Cushman Truckster	Mar-07	\$18,143	10 years	
603	1998 Ryan Greensaire Aerflter	Sep-98	\$8,250	10 years	
604	1999 JD 2500 Greens Mower	Jul-99	\$13,900	10 years	
606	2002 Toro Grounds Master Mower	Apr-02	\$14,651	9 years	transferred to The Beach 2011
607	2002 Jacobsen LF2500 Mower	May-02	\$22,100	7 years	auction 2014
608	2003 Chevy 1/2 Ton Pickup	Apr-03	\$12,257	10 years	transferred to The Beach 2009
610	2003 Kawasaki Mule KAF300	Feb-03	\$6,095	7 years	
611	1989 Ryans Green Aerator GA-24	Sep-89	\$7,500	No Replcmt	
612	2007 John Deere Triplex Mower	Apr-07	\$21,973	7 years	
616	2003 JD Turbo 1600 Mower	Apr-03	\$36,326	7 years	burnt in fire
617	2003 Wiedeman Aerflter	Aug-03	\$15,900	10 years	
619	1992 John Deere Tractor 2155	Apr-92	\$14,289	20 years	
623	2001 Cushman 658 Truckster	Apr-01	\$16,448	10 years	transferred to campground 2015
626	2002 John Deere Sprayer	Jun-02	\$14,900	10 years	
642	2004 Greensking IV Mower	1-Mar	\$15,800	10 years	auction 2014
643	2000 Skidloader Bobcat	Jun-05	\$13,500	10 years	
653	2000 Greensking IV Plus	Sep-00	\$14,200	7 years	
654	2000 JD 3215B Fairway Mower	Oct-00	\$22,500	7 years	auction 2014

Non-Fleet, City Owned Equipment	
5' Brush Cutter attachment	
Ground Disc attachment	
Ryan Sod Cutter attachment	
Hopper Spreader (pull behind)	

OPERATING AGREEMENT

By and Between

CITY OF OTTUMWA, IOWA

and

**Greg Wilson, PGA
d/b/a Integrity Golf Group, L.L.C.**

Dated as of 11/25/08

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OPERATING AGREEMENT

THIS OPERATING AGREEMENT (Agreement") is made and entered into this 25th Day of November, 2008, to be effective as of the 1st day of January, 2009 by and between the City of Ottumwa, Iowa (City) and (the "Contractor").

WITNESSETH

WHEREAS, The City owns certain improved real estate in Wapello County, Ottumwa, Iowa, which is used and maintained as a municipal golf course and is commonly known as Cedar Creek Golf Course, located at 13120 Angle Road.

WHEREAS, The City has determined that it is in the best interest of the citizens of the City of Ottumwa (City) to procure the services of the Contractor to manage and operate the Golf Course on behalf of the City; and

WHEREAS, pursuant to the terms and conditions of this Agreement, City hereby grants to the Contractor the authority to manage and operate the Golf Facilities and the Contractor hereby agrees to furnish the services desired by the City;

NOW, THEREFORE, in consideration of the Premises and the mutual promises and covenants contained in this Agreement, the sufficiency of which is hereby acknowledged by the parties, the parties hereto agree as follows:

AGREEMENT

ARTICLE I.
DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings (such meanings applicable to both the singular and plural forms of the terms defined):

"IBD" means the Iowa Alcoholic Beverage Division.

"Agreement" means this Agreement, to be effective as of the Effective Date, by and between the City and the Contractor, which may be amended, modified or supplemented from time to time.

"Buildings" means the clubhouse, golf cart storage building, shelters, parking areas, maintenance facilities, and all other structures and fixtures attached thereto which are located on the Premises.

"Capital Improvements" means the additional facilities and equipment described on Exhibit C attached hereto.

"Cart Paths" means all paved and non-paved paths and bridges for use by golf carts provided on the Premises.

“City” means the City of Ottumwa, Iowa.

“Clubhouse” means the clubhouse located on the Premises.

“Deficit” has the meaning set forth in Section 3.01.

“Disability” means when the Contractor is deemed permanently disabled in accordance with the permanent disability policy of the city in effect at the time of the illness or injury causing the permanent disability or, in the event no disability policy is then in effect, in accordance with the opinion of a licensed physician selected jointly by the City and the Contractor.

“Effective Date” means January 1, 2009.

“Event of Default” shall have the meaning set forth in Section 11.01 of this Agreement.

“Expiration” when referring to the expiration of this Agreement means the termination of this Agreement on December 31, 2018, unless this Agreement is otherwise amended or modified in accordance with the provisions set forth herein.

“Golf Course” means the tees, greens, bunkers, rough and all other areas of the Premises on which the game of golf may be played and all signs or materials attached thereto or situated thereon.

“Golf Course Fees” has the meaning set forth in Section 3.01.

“Golf Equipment” means all golf carts, mowers, and all other equipment used at or on the Golf Course.

“Golf Facilities” means collectively the Golf Course, buildings, Irrigation Systems, Cart Paths, Utilities, Golf Supplies and all site improvements and other existing improvements and future improvements made to the Premises.

“Golf Professional” has the meaning set forth in Section 5.01 of this Agreement.

“Golf Shop Inventory” means all products purchased by the Contractor for resale at or on the Golf Facilities.

“City Administrator/Designee” means the City Administrator or the person designated by the City Administrator to oversee golf operations, which is currently the Director of Finance.

“Golf Supplies” means all furniture, fixtures, or equipment purchased by the Contractor and necessary to operate or maintain the Golf Facilities.

“Irrigation Systems” means all ponds, pumps, water lines and all other equipment or fixtures located on the Premises for the purpose of providing irrigation for the Golf Course.

“Minimum Payment” means the amount to be paid to the City in accordance with this Agreement each year during the Term.

"PGA" means the Professional Golfers Association of America.

"Premises" means the real property located at Angle Road, Ottumwa, Iowa, on which Golf Facilities are situated and any improvements made thereto from time to time by the City or the Contractor during the term.

"Quality Standards" means the quality standards set forth on Exhibit B attached hereto.

"Term" has the meaning set forth in Section 2.01 of this Agreement.

"Termination" when referring to the termination of this Agreement means the termination of this Agreement prior to the expiration of the Term.

"Termination Payment" means the amounts set forth on Exhibit E which shall be paid to the Contractor by the City upon the termination of this Agreement by the City prior to the expiration of the Term in accordance with the provisions of Section 12.07.

"Utilities" means water, electric, gas and telephone service and other public utilities of every kind of furnished to the Premises and the equipment associated therewith.

ARTICLE II. TERM

Section 2.01. Term. Subject to and upon the conditions set forth herein, the term of this Agreement shall commence on January 1, 2009 and terminate on December 31, 2018, unless terminated earlier pursuant to the provisions contained herein (the "Term").

Section 2.02. Renewal Options – Upon concurrence of both parties, this agreement may be renewed for two additional five-year periods. The Contractor shall notify the City of his/her (Contractor's) intent to renew by September 1, 2018, and by September 1, 2023 for each renewal request. The City will acknowledge the renewal request in writing by October 1, 2018, and October 1, 2023 or notify the Contractor of their (City's) intent not to renew.

ARTICLE III. GOLF COURSE FEES

Section 3.01. Payment of Golf Course Fees to the City. During each year of the term, the Contractor shall submit his minimum annual payments to the City on or before May 15 and August 15 of each year.

ARTICLE IV. OPERATIONS

Section 4.01. General Responsibilities of the Contractor.

(a) The Contractor shall be responsible to the City and the general public for rendering, on a full-time basis, golf-related services and conducting its business on or about the Golf Facilities in a manner generally accepted and established by the PGA.

(b) The hours and dates for the operation of the Golf Course and driving range (if applicable) shall be set by the Contractor.

(c) The Contractor shall operate the Golf Course in an orderly manner and not annoy, disturb or be offensive to customers, patrons, or others in the immediate vicinity of such operations. The operation of the Golf Facilities shall be conducted in a manner acceptable to the City in its reasonable determination and in substantial compliance with the Quality Standards.

(d) The Contractor will meet monthly with the Golf Course Advisory Committee during the golf season to address issues and concerns of this committee. The Advisory Committee will continue to be elected in the manner prescribed by City policy. Copies of minutes will be forwarded to the City Administrator/Designee.

Section 4.02. Operation of the Clubhouse. The Contractor shall operate the Clubhouse at its own cost and expense and monitor the sales and concession areas therein which shall both be open during the times that the Golf Course is open for play.

Section 4.02 (1) Maintenance of the Clubhouse. The Contractor shall be responsible for the day-to-day maintenance of the Clubhouse, which shall include, but is not limited to, minor repairs, normal cleaning, replacement and upkeep of all furniture and fixtures, and providing necessary supplies and materials.

The Contractor shall maintain the Clubhouse, cart storage area and grounds in a neat, clean, and organized fashion. See Exhibit B for comprehensive quality standards.

Section 4.03. Staffing. At all times when the Golf Course is open for play, the Golf Professional or one of his designated employees shall be on duty in the Clubhouse. The Contractor shall see that an adequate staff is on duty at all times between March 1 and October 30 of each year of the Term. During the remaining months, the Contractor may make personnel adjustments based on weather and playing conditions of the Golf Course. The Contractor shall have and retain full control over the employment and discharge of all persons assisting in the performance of its services hereunder. The Contractor shall be solely responsible for all matters relating to wages, hours of work, working conditions, and payment of employees, including compliance with social security, all payroll taxes and withholdings, unemployment compensation, workers' compensation and all other related requirements. The Contractor shall be responsible for its own acts and those of its subordinates, employees, and any and all subcontractors.

Section 4.04. Merchandise. The Contractor shall maintain a supply of merchandise in the Clubhouse similar to merchandise customarily maintained at comparable municipal golf courses. The Contractor shall order and be responsible for payment of all golf equipment, golf merchandise and supplies, sportswear and other similar items, offered for sale and all sales tax and other taxes that might be due and payable. All City, State and other licenses required for the appropriate operation of the golf shop must be obtained by the Contractor at the Contractor's expense. The Contractor will purchase the City's golf merchandise inventory at a discounted cost (estimated at \$15,000) upon signing the contract. The purchase price will be 75% of cost. The City will purchase the Contractor's inventory on the same terms (75% of cost) upon termination/expiration of the agreement.

Section 4.05. Licenses and Permit. The Contractor shall obtain all necessary licenses and permits for the operation of the Clubhouse and food and drink concessions and shall furnish

copies of such licenses to the City. Any permit from the City shall be obtained by the Contractor or its designee at its sole expense and such permit will be assigned to the City or the Contractor's appointed successor at the end of this Agreement or any extensions thereof without any cost whatsoever to be paid by the City or the Contractor's successor except for any transfer fee assessed by the City and the pro-rata amount of the City annual renewal fee. In addition, the Contractor agrees to obtain liquor liability insurance in the amount specified in Section 9.03 of this Agreement.

Section 4.06. Operation of the Concessions Area. The Contractor shall be responsible for all concessions sold in the Clubhouse and on the Golf course during the Term. The contractor shall maintain the kitchen and food and drink concession areas in a clean and sanitary condition, and shall comply with all applicable codes and other regulations of the City. The contractor shall provide all concession-related equipment, adequate staffing of concessions, appropriate hours of operation, and be responsible for the cleanliness and quality of food service.

Section 4.07. Control of Play. The Golf Professional/Ranger shall tour the Golf course to observe and control play, making an effort to ensure that all players abide by the applicable rules, and that all carts are kept a minimum of thirty feet from tees and greens or on cart paths.

Section 4.08. Operation of the Golf Carts. The Contractor shall provide and maintain an adequate number of riding and pull carts as may be necessary to satisfy the reasonable demands of the public. The golf carts shall be maintained in good operating conditions by the Contractor and the Contractor shall provide any necessary re-powering and refueling. The City shall have the right at all reasonable times to inspect the golf carts to insure that the maintenance, performance, safety and appearance of the golf carts are reasonably acceptable. Individuals may have their own golf carts on the premises, subject to storage fees and trail fees.

Section 4.09. Signs. The Contractor shall prominently display a sign in the Golf Shop, at all times, stating the following information: (i) all green fee prices, (ii) range balls, (iii) all golf cart rental fees, (iv) pull cart rental fees, (v) dress code, (vi) rain check policy, (vii) tee time policy and (viii) refund policy.

Section 4.10. Compliance with Rules and Regulations.

(a) The Contractor shall not use the Premises for any unlawful purpose or act and shall comply with and obey all laws, regulations (including zoning and sign regulations) or orders of any governmental authority or agency. The Contractor shall not use, or permit the Premises (or any part thereof) to be used for any purpose or purposes other than as a municipal golf course. The Contractor shall not commit, or suffer to be committed, any waste on or about the Premises, or create any nuisance.

(b) The Contractor agrees that its operation of the Golf Course will be in accordance with all rules, regulations, procedures, conditions and terms of the City now in effect or as may hereafter be adopted by the City. Any rules, regulations procedures, conditions or terms adopted by the City after the date of this Agreement which are

inconsistent with the provisions of this Agreement shall not be binding on the Contractor, unless the Contractor shall agree to the same in writing.

(c) The Contractor shall not conduct any business or activity not specifically authorized by this Agreement, unless approved in writing in advance by the City.

(d) The Contractor shall comply with all applicable Federal laws and regulations, state statutes and City-County ordinances and regulations relative to the operation of the Golf Course and this Agreement.

Section 4.11. Utilities.

(a) The City will keep the utilities in the City's name and invoice the Contractor monthly for utilities paid by the City. The Contractor may pay the utilities directly at his/her option.

(b) The Contractor shall pay for all water, gas, electric, telephone and other public utilities of every kind furnished to the Premises for the exclusive use by the Contractor throughout the Term and all other costs and expenses of every kind whatsoever of, or in connection with the use, operation and maintenance of the Premises and all activities conducted thereon and to indemnify and hold harmless the City from any liability resulting from any nonpayment of any such services.

(c) The Contractor shall maintain all utilities at the Golf Course, including, but not limited to, drains, sewer pipes, air conditioning, plumbing and electrical lines, services, outlets, meters to monitor utility usage, except as otherwise set forth herein or as maintained by the electric, gas and water utility companies. Further, the Contractor shall be responsible for maintenance, repair and restoration of its property within all utility easements.

Section 4.12. Maintenance of the Golf Facilities. The Contractor shall, at its sole cost and expense, keep and maintain the Premises, Golf Facilities and Golf Equipment and all appurtenances thereto in good and neat order, condition and repair. This includes, without limitation, routine maintenance, predictive maintenance and preventative maintenance (except as specifically provided herein) of the Premises, Golf Facilities and Golf Equipment. The Premises, Golf Facilities and Equipment shall be maintained in at least as good of condition as present on the Effective Date. The City shall be responsible for repairs and replacements of the Golf Facilities resulting from casualty losses, unless the casualty loss is the result of the Contractor's negligence; in which case the Contractor shall be responsible for all such repairs and/or replacements.

Section 4.13. Environmental Matters. In the event a violation of any environmental law, statute, rule or regulation is alleged to exist at the Premises and the Golf Facilities which violation existed, in whole or in part, prior to the date the Contractor obtained control and possession of the Premises and the Golf Facilities (whether pursuant to this Agreement or a previous agreement), the

City shall cure such matter at no cost or expense to Contractor, unless the same was caused by the acts or omissions of the Contractor.

Section 4.14. Golf Supplies. All Golf Supplies shall be identified by the Contractor and submitted in writing to the City prior to the Effective Date. Upon the termination or expiration of this Agreement, the Contractor and the City shall jointly identify and inventory all existing Golf Supplies.

Section 4.15. Marketing.

(a) The Contractor shall promote the game of golf and actively seek and administer golf leagues, outings, golf clinics, youth golf and other programs which will be in the best interest of the public as outlined in the Contractor's proposal.

(b) The Contractor will assist and cooperate with the U.S.G.A. or any other golf governing body as may be identified from time to time by the City in the scheduling of golf tournaments at the Golf Course as long as the Contractor receives its reasonable customary compensation for the use of the Golf Course.

Section 4.16 Golf Cart Lease – The City has one year remaining on a lease with Wells Fargo Financial Leasing, Inc. The lease is for forty-five (45) golf carts in the amount of \$11,070 annually (\$246 per golf cart). The City will allow the Contractor to use these carts for the remainder of the lease expiring December 10, 2009. The City will invoice the Contractor \$1,845 monthly from May through October for 2009. If the Contractor chooses not to use the forty-five (45) golf carts being leased by the City, the City will add \$11,070 to the minimum annual payment required by the Contractor. The Contractor may pay the lease payment directly at his/her option.

Section 4.17 Fueling Tank and Fuel – The Contractor will be allowed to purchase fuel from the City at cost based on the City tank wagon delivery. All fuel must be used directly in Golf Course operations.

Section 4.18 Equipment and Supplies - Upon the execution of this agreement the Contractor will assume ownership of the supplies listed in Exhibit F. Upon the termination/expiration of the agreement, the Contractor will return similar supplies of like value to the City.

Section 4.19 High School/IHCC Golf Teams – In the interest of our local educational systems and the promotions of golf in Ottumwa, it is required that the local high school golf teams be permitted access and use of the Cedar Creek Golf Course facility for their practice at a reduced fee and competitions at no charge and that the IHCC golf teams be permitted access and use of the Cedar Creek Golf Course facility for their practice and competitions at a reduced fee.

ARTICLE V.
PERSONNEL

Section 5.01. Class A-1 Professional. The Contractor or principal owner shall be an experienced PGA golf professional for the operations at the Golf Facilities and must be a

licensed Class "A-1" member of the PGA (the "Golf Professional").

Section 5.02. Other Employees. The Contractor will employ, manage and supervise all employees and be ultimately responsible for the efficient operation of the Golf Course, including, but not limited to: (i) rental of pull carts, golf clubs and golf carts, (ii) the operation of the driving range, including the purchasing and selling of range balls (if applicable), (iii) all janitorial services, and (iv) the monitoring and policing of the parking area and Clubhouse grounds, thereby providing a safe environment and quality service throughout the Golf Course.

Section 5.03. Employee Conduct. The Contractor shall control the conduct, demeanor and appearance of its officers, members, employees, agents and representatives. The City may raise concerns to the Contractor regarding the conduct, demeanor, and/or appearance of the Contractor's staff. The Contractor shall at its discretion take all necessary steps it deems appropriate to address the City's concerns. The Contractor's employees in contact with the public shall perform their duties as directed by the Contractor in an efficient and courteous manner, as prescribed by the Quality Standards.

Section 5.04. Restrictions on Subcontracting. The parties agree that the Contractor shall not subcontract, assign or delegate all or substantially all of its duties, obligations or services to be performed under this Agreement without prior written approval of the City. In the event that the City approves of any such subcontracting, assignment or delegation, the Contractor shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. The City shall have no obligation whatsoever toward such persons. The Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this Section 5.04 shall not be construed to relieve the Contractor of any responsibility for performing its obligations under this Agreement.

Section 5.05. Nondiscrimination.

- (a) It shall be unlawful, unfair and/or discriminatory practice for any owner, proprietor, manager or superintendent of any public accommodation or any agent or employee thereof: to refuse or deny to any person because of race, sex, creed, color, national origin, religion, marital status, age, disability, or sexual orientation the accommodations, advantages, facilities, service or privileges thereof, or otherwise to discriminate against any person because of race, sex, creed, color, national origin, religion, marital status, age, disability, or sexual orientation in the furnishing of said accommodations, advantages, facilities, services, or privileges. It shall be unlawful, unfair and/or discriminatory practice to hire, accept, register, classify or refer for employment, or discharge any employee, or to otherwise discriminate in any employment against any applicant for employment or any employee because of the age, race, creed, color, sex, national origin, religion, disability, sexual orientation of such applicant or employee, unless based upon the nature of the occupation. If a disabled person is qualified to perform a particular occupation, by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminating practices prohibited.

(b) The Contractor shall incorporate the requirements contained in subparagraph (a) above in all subcontracts entered into with suppliers of services in accordance with Section 5.04, and all labor organizations furnishing skilled and unskilled labor, or who may perform any such labor or services in connection with this Agreement.

Section 5.06. The City not Employer. Nothing in this Agreement shall be construed to place the City in the relationship of the employer of, or to grant the City the right to direct or control, employees of the Contractor.

ARTICLE VI. CAPITAL IMPROVEMENTS

Section 6.01. Additional Facilities. The Contractor agrees to have designed, constructed and/or installed the Capital Improvements at the Golf Course. Any and all plans for the design, construction and installation of the Capital Improvements by the Contractor shall be approved by the City. The Contractor shall bear the total cost associated with such design, construction and installation of the Capital Improvements. The Contractor shall be responsible for obtaining all necessary permits and licenses shall be submitted to the City Administrator/Designee upon receipt by the Contractor. All construction shall be done in accordance with applicable federal, state and local law and ordinances. The Contractor shall commence and proceed with due diligence to complete the Capital Improvements to the Golf Facilities in accordance with the timetable set forth on Exhibit C attached hereto. The Contractor shall use its best efforts to minimize the disruption to the Golf Course during the construction of the Capital Improvements.

Section 6.02. Inspection. The City may inspect the Golf Facilities and Improvements being made thereto at any time during customary operating hours of the Golf Course.

Section 6.03. Project Completion. Upon completion of the Capital Improvements, the Contractor shall submit a report to the City Administrator/Designee showing the project budget and the amount of expenses incurred by the Contractor on the Capital Improvements project.

Section 6.04. Equipment and Furnishings. All equipment, furnishings, signs and advertising installed by the Contractor shall be in keeping with the appropriate standards of décor at the Golf Facilities and consistent with the Quality Standards and Project Plans. The Contractor agrees that all equipment, furnishings and improvements provided shall meet the requirements of all applicable building, fire, pollution, and other related codes.

Section 6.05. Property of the City. The Capital Improvements made to the Golf Facilities shall immediately become the property of the City upon completion.

Section 6.06. Necessary Improvements. The Contractor shall be responsible for any other capital improvements which are reasonably necessary to maintain the Premises, Golf Facilities and Equipment in at least their condition as of the Effective Date.

ARTICLE VII. REPORTS AND TAXES

Section 7.01. Reports. The Contractor shall provide on a report at least annually on the

number of rounds of golf played to the City.

Section 7.02. Taxes. The contractor shall pay and discharge when due all taxes and charges imposed upon the conduct of its business on or about the Golf Facilities and all property taxes, if any, imposed upon its fixtures, equipment, merchandise and other personal property on or about the Golf Facilities. The Contractor shall not rely on or utilize the City's tax exempt status when purchasing equipment or supplies for the Golf Facilities. The Contractor shall not be responsible for any real estate taxes or assessments on the Premises or the improvements thereon.

ARTICLE VIII **OTHER AGREEMENTS**

Section 8.01. Golf Facilities Evaluation

(a) As set forth throughout this Agreement, the Contractor has agreed to operate and manage the Golf facilities by providing quality, reasonably priced golf services to youths and adults. The Contractor understands the importance of maintaining and providing top quality service to the public. The Contractor shall maintain the highest standards in adhering to these goals. The City reserves the right to conduct any reasonable surveys, questionnaires or inspections in order to determine how the public or other third parties view various aspects of the golf facilities within the parameters set forth in the Quality Standards.

(b) If the surveys, questionnaires or inspections recognize material shortcomings or deficiencies in any aspect of services and/or facilities as required by the Quality Standards, the City Administrator/designee will notify the Contractor in writing of such deficiencies.

Section 8.02. Evaluation of the Contractor The City shall supply to the Contractor an annual evaluation of the Contractor's performance by April 1st of each year of the Term. The City Administrator/Designee may meet with the Contractor to discuss the evaluation and may furnish to the contractor recommendations for the Contractor and the Golf facilities.

Section 8.03. Security The Contractor shall maintain fire and theft security equipment in good operating order and use such equipment at all customary and appropriate times. Any additional security deemed appropriate in the Contractor's sole determination shall be provided at the Contractor's sole expense. The City makes no warranties as to any obligation to provide security for the Golf Facilities.

Section 8.04. Liens The Contractor shall keep all of the Premises and Golf Facilities and every part thereof free and clear of any and all mechanic's, material men's and other liens for or arising out of or in connection with work or labor done, service performed, or material or appliances used or furnished for or in connection with any operations of the Contractor, any alteration, improvement, or repairs or additions which permit or cause to be made, or any work or construction by, for or permitted by the Contractor on or about the Premises, or any obligation of any kind incurred by the Contractor, and at all times promptly and fully to pay and discharge any and all claims of liens and suits of other proceedings pertaining thereto. If the Contractor desires

to contest any such lien, it shall notify the City of its intention to do so within ten (10) days after receipt of the filing of such lien. In such case, the Contractor shall, on demand, protect the City by a surety bond or other security reasonably acceptable to the City against such lien and any cost liability, or damage arising out of such contest. The Contractor shall not be considered in default hereunder until thirty (30) days after the final determination of the validity of such lien(s), within which time the Contractor shall satisfy and discharge such lien(s) to the extent held valid. In the event of such contest, the Contractor shall protect and indemnify the City against all loss, expense and damage resulting from the Contractor's actions or failure to act.

Section 8.05. Litigation and Claim Protocol Immediately upon its receipt of the same, the Contractor shall provide the City with written notice of the commencement of any litigation or the receipt of any material claim which relates to the execution or performance of this Agreement. The contractor shall promptly refer any such matter(s) to the appropriate insurance company, if applicable. If the matter is not or may not be adequately covered by insurance, the Contractor shall promptly submit to the City a written plan for the litigation and/or claim, including recommended counsel to defend such matter(s). In the event both the City and the Contractor are parties to the litigation and/or claim, each may employ its own counsel, but at its own expense. All decisions regarding settlement by the City with respect to matter(s) to which the City is a party shall rest with the City.

ARTICLE IX. LIABILITY AND INSURANCE

Section 9.01. Liability for Damage or Injury The City shall not be liable for any damage or injury which may be sustained by any party or persons on the Premises other than the damage or injury caused by the negligent or intentional actions of the City, its agents and employees while in the course of City business.

Section 9.02. Damage or Destruction to Golf Facilities. The damage, destruction or partial destruction of a building or improvements to the Premises which is a part of the Golf Facilities shall not release the Contractor from any obligation hereunder, except as hereinafter expressly provided, and in case of damage to or destruction of any such building or improvement, the City shall, at its sole expense, promptly repair and restore the same to a condition as good as, or better than that which existed prior to such damage or destruction, unless it is determined that the Contractor's negligence is responsible for such destruction or partial destruction, in which case the Contractor shall be responsible for any such repairs or restoration deemed necessary.

Section 9.03. Insurance Coverage The Contractor agrees to furnish to the City no later than January 31st of each year of the Term, satisfactory proof of the Contractor's purchase and continuing coverage (past and future) of the following types and amounts of insurance:

A. Workers Compensation Insurance. A policy with a City-approved insurance carrier in the State of Iowa covering statutory obligations of the Contractor as an employer under the provisions of the Iowa Worker's Compensation Act.

B. Commercial General Liability Insurance. A liability insurance policy for bodily injury, personal injury and property damage in the coverage amounts set forth on Exhibit D attached hereto for all damages arising out of any accident, occurrence or incident on the

Premises or on or within the Golf Facilities. Such insurance policies as required by this paragraph shall specifically include broad form liability and contractual liability coverage as applicable to an indemnification provision in this Agreement, including, but not limited to, injury or damage to persons riding in golf carts.

C. Products Liability Insurance. The Contractor shall also maintain in effect at all times a policy providing products liability insurance in the coverage amounts set forth on Exhibit D attached hereto for all sales of food, beverages, equipment and supplies. This coverage may be attached to and included in the commercial general liability insurance policy maintained by the Contractor as set forth above.

D. Liquor Liability Insurance. The Contractor shall maintain in effect at all times a policy providing liquor liability insurance for all sales and serving of alcoholic beverages in the coverage amounts set forth on Exhibit D attached hereto.

E. Miscellaneous Insurance Provisions The City and the Contractor acknowledge and agree that the Contractor shall be solely responsible for all supplies and equipment maintained on the Premises and on or within the Golf Facilities. Any insurance on any Golf Supplies, Golf Shop Inventory, Golf Equipment or fixtures owned by the Contractor or supplies in the Contractor's possession for sale shall be covered by the Contractor's own property insurance policy and the Contractor agrees not to make any claim against the City for any losses to any such Golf supplies, Golf Shop Inventory, Golf Equipment or fixtures, except if caused by any negligent or willful acts or omissions of the City, its agents or employees.

Section 9.04. Insurance Language The insurance policies must be maintained in full force and effect at the Contractor's sole expense throughout the Term and any policy or policies concerning subparagraphs B, C and D of Section 9.03 above must contain the following provisions:

"The City of Ottumwa is additional insured for all coverage provided by this policy and shall be fully and completely protected by the policy for risks and for every injury, death, damage or loss of any sort sustained by any person, organization, or corporation in connection with the Contractor's acts or omissions, the acts or omissions of the Contractor's employees, agents, servants and invitees while upon or during their use or occupation of the Golf Facilities, as well as any activity performed by the Contractor, his employees, agents, servants and invitees by virtue of the rights granted to the Contractor by an Agreement with the City of Ottumwa, by and through the City".

"The coverage provided by this policy to the Contractor, the City of Ottumwa or any other named insured shall not be terminated, reduced or otherwise changed in any respect without providing at least thirty (30) days written notice to the City of Ottumwa at the following address:
105 E. Third Street, Ottumwa, IA 52501".

ARTICLE X.
INDEMNIFICATION

Section 10.01 Indemnification of the City The Contractor shall indemnify, defend, exculpate, and hold harmless the City and their respective officials, employees, representatives or agents from any and all liability due to loss, damage, injury or other casualties of whatsoever kind or by whosoever caused to the person or property of anyone on or about the Premises or Golf Facilities or resulting from the performance or breach of any of the terms of this Agreement or from the installation, existence, use, maintenance, condition repairs, alterations or removal of any equipment or material, arising out of, or relating to, any and all acts or omissions of the Contractor or its employees, contractors, agents, and invitees. It is specifically agreed by and between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to establish the public or any member thereof, as a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

ARTICLE XI.
DEFAULT AND REMEDIES FOR DEFAULT

Section 11.01. Events of Default Each of the following shall be deemed a default by the Contractor under this Agreement (an "Event of Default"):

- (a) The failure of the Contractor to perform or observe any of the covenants, terms, conditions or agreements contained in this Agreement to be performed or observed by the Contractor and such failure continues for thirty (30) days after written notice thereof is given to the Contractor.
- (b) Abandonment of the Premises and Golf Facilities by the Contractor.
- (c) The filing, execution or occurrence of:
 - (i) A voluntary petition in bankruptcy by the Contractor or an involuntary petition in bankruptcy against the Contractor, and the failure of the Contractor, in good faith, to promptly commence and diligently pursue action to dismiss the petition; or
 - (ii) A petition against the Contractor seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or other relief of the same or different kind under any provision of the Bankruptcy Act, and the failure of the Contractor in good faith to promptly commence and diligently pursue action to dismiss the petition; or
 - (iii) A general assignment for the benefit of creditors by the Contractor.

Section 11.02. Notice When any Event of Default has occurred, the Contractor shall

give written notice thereof to the City as soon as possible after obtaining knowledge of that Event of Default.

Section 11.03. Remedies and Survival Following the occurrence of an Event of Default, the City shall have every remedy now or hereafter existing at law or in equity or by statute or otherwise which may be available to the City. The Contractor also agrees to pay all reasonable expenses and attorneys' fees incurred by or imposed on the City or any of their respective officials, agents or employees in connection herewith in the event that the Contractor shall default under the provisions of this Agreement.

ARTICLE XII. **TERMINATION**

Section 12.01. Termination This Agreement may be terminated by the City, pursuant to **Section 12.02** of this Agreement, for (i) any Event of Default set forth in **Section 11.01**, (ii) the death or disability of a majority shareholder of the Contractor or a substantial change in ownership of the Contractor pursuant to **Section 12.06**, or (iii) any of the following actions of the Contractor which shall constitute a breach of this Agreement, including, but not limited to: (A) incompetence, (B) gross inefficiency, (C) dishonesty, (D) drunkenness, (E) immoral conduct, (F) discourteous treatment of the public, (G) neglect of duty, (H) violations of the laws, ordinances, regulations and policies, or (I) any other acts of misfeasance, malfeasance or nonfeasance of the Contractor under this Agreement or conduct of the golf operations in such a manner as to bring significant discredit upon the City.

Section 12.02. Notice of Termination In order to terminate this Agreement, the City shall provide thirty (30) days written notice to the Contractor of such termination. The notice of termination shall detail the reasons therefore and unless the Contractor has cured such conduct or reason for termination within thirty (30) days of receipt of such notice or taken reasonable steps that are reasonably acceptable to the City to cure such conduct or reason for termination, this Agreement shall be deemed terminated and the City may enter upon the Premises and the Golf Facilities, with or without process of law, and take possession thereof. All payments due to the Contractor subsequent to the termination shall be made within thirty (30) days after the date of termination.

Section 12.03. Purchase of Golf Shop Inventory Upon termination/expiration of this Agreement by the City, the City shall purchase or cause to be purchased any existing Golf Shop Inventory at 75% of wholesale cost.

Section 12.04. Damages Upon the termination of this Agreement, the damages recoverable by the City from the Contractor shall be an amount equal to the cost and expenses paid or incurred by the City in connection with (i) obtaining possession of the Premises, (ii) removal and storage of the Contractor's or other occupant's property of (iii) any other damages suffered by the City as a result of an Event of Default or breach of this Agreement by the Contractor.

Section 12.05. Vacation of the Premises Upon the termination or expiration of this Agreement, the Contractor shall vacate the Premises and the Golf Facilities, leaving the Premises and Golf Facilities and all Capital Improvements thereto in good condition and working order and all Golf Shop Inventory and Golf Supplies that are purchased pursuant to **Section 12.03**.

Section 12.06. Capital Improvements The City and the Contractor acknowledge that a significant investment will be made to the Premises and the Golf Facilities and such value may extend beyond the Term. The parties each agree that all improvements made to the Golf Facilities shall become and remain a part of the Premises and the Golf Facilities and be included in the definition thereof. Each party further acknowledges that disagreements may occur and litigation to resolve any such disagreement may be costly. At the termination or expiration of this Agreement, all capital improvements made to the Premises and Golf Facilities shall be the property of the City, free and clear of all liens and encumbrances, except for the purchase of golf inventory and supplies and the payment for capital improvements as determined by Exhibit E.

Section 12.07 Termination/Expiration Payment

(a) Upon termination/expiration of this Agreement under the terms and conditions of Article XII, the City shall pay to the Contractor or its permitted successors or assigns the Termination Payment set for on Exhibit E within sixty (60) days of the date of termination of this Agreement by the City.

(b) The amount of the Termination/Expiration Payment has been determined by the mutual agreement of the City and the Contractor based in part upon the following factors: (i) the estimated costs incurred by the Contractor during the construction of the Capital Improvements at the Golf Course; (ii) the amount of money invested by the Contractor in the construction of the Capital Improvements; and (iii) the amount of debt

incurred by the Contractor to finance the construction of the Capital Improvements. Notwithstanding the provisions of Section 12.07(a), the total amount of the Termination Payment shall in all events be adjusted to be the lesser of (1) the sum of subsection (ii) (not including any proceeds from loan agreements covered under subsection (iii)) and the outstanding amount of any debt under subsection (iii) or (2) the replacement cost of the Capital Improvements as determined by the average of two appraisals, one performed by a qualified appraiser selected by the City and one performed by a qualified appraiser selected by the Contractor; provided, however, that the Termination Payment shall not be less than the amount of outstanding debt under subsection (iii) through one year following the delivery by the Contractor of the project completion report under Section 6.04 if the debt outstanding is under an existing credit facility of the Contractor the terms of which have been provided to the City prior to commencement of construction of the Capital Improvements (so that the City will have prior knowledge of the total borrowings available under the facility). The appraiser shall be selected within fifteen (15) days of the termination date with the requirement that the appraisal be available within forty-five (45) days from the date of termination so payment can be timely made. No payment of the Termination Payment shall be made by the City under this Section 12.07 without proper written documentation by the Contractor of the foregoing.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

Section 13.01. Assignment The Contractor shall not sublet or assign this Agreement nor any portion thereof, nor any property associated with this Agreement without the prior written approval of the City. Unapproved subletting or assignment shall be an Event of Default in accordance with Section 11.01 of this Agreement and shall be grounds for termination of this

Agreement. All terms and conditions of this Agreement shall extend to and be binding on assignees and other successors as may be approved in writing by the City; provided, however, the Contractor shall be liable for acts and omissions by any subtenant or assignee affecting this Agreement. The City reserves the right to directly terminate any subtenant or assignee for any cause for which the Contractor may be terminated.

Section 13.02. Notices All notices, demands or other writings required or permitted to be given by either party under this Agreement shall be sufficient if in writing and hand-delivered (including delivery by courier) or sent by postage prepaid certified mail, return receipt requested, as follows:

If to the City, to: City of Ottumwa
105 E. Third Street
Ottumwa, IA 52501

If to the Contractor, to: Greg Wilson, PGA
d/b/a Integrity Golf Group, L.L.C.
13120 Angle Road
Ottumwa, IA 52501

The address to which any notice, demand, or other writing may be given, made or sent to any party as above provided, may be changed by written notice given by such party above provided.

Section 13.03. Amendments This Agreement may be amended, modified or supplemented only by a written instrument signed by each of the parties hereto.

Section 13.04. Attorneys' Fees If any action at law or in equity shall be brought to recover any sum due under this Agreement, or for or on account of any breach of, or to enforce or interpret any of the covenants, terms, or conditions of this Agreement, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs, reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment or decree rendered.

Section 13.05. Cooperation of the City The City hereby agrees to cooperate and assist the Contractor in obtaining all necessary governmental approvals and permits, and other reasonable requests made by the Contractor from time to time.

Section 13.06 Force Majeure In the event that the Contractor shall be delayed or hindered in or prevented from doing or performing any act or thing required in this Agreement by reason or strikes, lockouts, casualties, acts of God, labor troubles, inability to procure materials or equipment, governmental laws or regulations or other causes beyond the Contractor's reasonable control, then the Contractor shall not be liable or responsible for any such delays and the doing or performing of such act or thing shall be excused for the period of such delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

Section 13.07 Severability In the event any provision contained in this Agreement is determined invalid by a forum of appropriate jurisdiction, such provision shall be stricken and all other provisions which can be effected independently of the stricken provision shall remain in full

force and effect if and only if, all other provisions can, without the invalid provisions, be given the effect intended by the parties thereto.

Section 13.08. Relationship of Parties Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, or of joint venture, between the parties hereto.

Section 13.09. Successors in Interest The covenants, agreements, terms, conditions and warranties of this Agreement shall be binding upon and inure to the benefit of the city and the Contractor and their respective successors and assigns, but shall create no rights in any other person except as may be specifically provided for herein.

Section 13.10. Governing Law This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Iowa, without regard to principles of conflict of laws of such State.

Section 13.11. Headings The Article and Section headings used in this Agreement are inserted solely for convenient reference and shall not be deemed to affect this Agreement.

Section 13.12. Use of Pronouns All nouns, pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular and plural as the context may require.

Section 13.13. Waiver. No failure or delay by either party in exercising any rights or remedies under this Agreement shall operate as a waiver of such rights or remedies, and no waiver of any breach shall constitute a waiver of any prior, concurrent or subsequent breach. The failure of the City or the Contractor to insist upon strict compliance with any of the conditions of this Agreement or the obligations of either the City or the Contractor, as the case may be, shall not constitute a waiver of such conditions or obligations.

Section 13.14. Counterparts This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which shall constitute the same instrument.

Section 13.15. Approvals and Consents All approvals and consents required from or on behalf of the parties to this Agreement shall not be unreasonably withheld.

Section 13.16. Entire Agreement This Agreement, including the exhibits attached hereto and the proposal submitted by the Contractor as thereafter amended or supplemented, sets forth all the covenants, agreements, conditions, understandings and promises between the City and the Contractor concerning the Premises and the Golf Facilities, and there are no covenants, agreements, conditions, understandings or promises, either oral or written, between the parties other than herein set forth. In the event a conflict exists between the terms of this Agreement and those contained in the proposal submitted by the Contractor, the terms of this Agreement shall control.

Section 13.17 Interpretation. The parties acknowledge and agree that each party fully participated in the drafting of this Agreement. Accordingly, any rule of contract interpretation what provides that any ambiguities in a written contract be interpreted against the drafting party

shall have no application in the interpretation of this Agreement.

Section 13.18. Number of Days Except as expressly stated to the contrary elsewhere herein, in computing the number of days, for purposes of this Agreement, all days shall be counted, including Saturdays, Sundays, and legal holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

Section 13.19. Nonliability of Officials No official, director, officer, employee or agent of the City or the Contractor shall be charged personally by the other party, its employees or agents with any liabilities or expenses of defense or be held personally liable to the other party under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

(Remainder of page left blank intentionally)

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives as of the date first written above.

CONTRACTOR

CITY OF OTTUMWA

By: *[Signature]*
Contractor
d/b/a Emerald Golf Group LLC

By: *Dale M. Uehling*
Dale M. Uehling, Mayor

ATTEST:

By: *Ann Cullinan*
Ann Cullinan, City Clerk

EXHIBIT A

REVENUES TO BE PAID TO THE CITY

Inventory – 75% of cost (75% of estimated \$15,000) - \$11,250 upon effective date of this agreement (February 1, 2008).

<u>CALENDAR YEARS</u>	<u>GOLF CART LEASE</u>
2009 \$10,000	\$11,070
2010 \$10,000	--
2011 \$10,000	--
2012 \$10,000	--
2013 \$10,000	--
2014 \$10,000	--
2015 \$10,000	--
2016 \$10,000	--
2017 \$10,000	--
2018 \$10,000	--
 <u>RENEWAL OPTION 1</u>	
2019 \$10,000	--
2020 \$10,000	--
2021 \$10,000	--
2022 \$10,000	--
2023 \$10,000	--
 <u>RENEWAL OPTION 2</u>	
2024 \$10,000	--
2025 \$10,000	--
2026 \$10,000	--
2027 \$10,000	--
2028 \$10,000	--

EXHIBIT B
QUALITY STANDARDS

(1) **Customer Service**

- (a) Tee times are scheduled easily
- (b) Bag stand located near Clubhouse to drop clubs
- (c) Prices for all green fees, golf cart fees, pull cart fees, and range balls are prominently displayed at all times in the pro-shop
- (d) Receipts are given for fees
- (e) Policies regarding tee-times, rain-checks, refunds, and dress code are prominently displayed at all times in the pro-shop
- (f) Rules and regulations are attractively displayed
- (g) Information on passes, leagues, lessons, etc., are readily available
- (h) Score cards, pencils, etc. are readily available
- (i) Hole signs with yardage, par, etc. are well placed
- (j) Ball washers are operational
- (k) Towels are available at ball washers
- (l) Benches are adequate in number and well placed
- (m) Trash containers are available on the course
- (n) Wildlife Management Areas are designated with appropriate signage
- (o) Cold water is available on the course
- (p) Pace of play is appropriately monitored
- (q) Dress code is enforced
- (r) Shoe cleaners are available at clubhouse entrance

(2) **Staff**

- (a) Professional staff is clearly identifiable
- (b) Staff consistently greets customers

EXHIBIT B (continued)

- (c) Staff members present neat and clean appearance
 - (d) Staff members are knowledgeable and communicate clearly
 - (e) Ranger is friendly and courteous, if applicable.
3. Clubhouse
- (a) Clubhouse is clean and swept
 - (b) Lighting fixtures are operational
 - (c) Rest room floors are clean and swept
 - (d) Sink and toilet fixtures are clean and without odor
 - (e) Rest room supplies are available (e.g. soap, toilet tissue, towels)
 - (f) Grounds are nicely landscaped
4. Contractor Shop
- (a) Shop is adequately stocked and merchandise is attractively displayed
 - (b) Pricing is competitive with comparable municipal golf courses
5. Snack Bar/concession Area
- (a) Concession area is clean
 - (b) Menu board is clearly visible
 - (c) Food and drink prices are clearly stated on menu board
6. Grounds
- (a) Entrance is clearly visible
 - (b) Entrance is well landscaped
 - (c) Parking lot is clean and well maintained
 - (d) Parking lot has designated handicapped slots
 - (e) Area surrounding Clubhouse is neatly groomed and landscaped

EXHIBIT B (continued)

- (f) Area surrounding maintenance building is neatly groomed and landscaped
 - (g) Maintenance building is neat and clean
 - (h) First tee is nicely landscaped and attractive in appearance
 - (i) Tee boxes are well maintained, with multiple markers where space allows
 - (j) Grounds and bunkers are maintained in a professional manner
 - (k) Greens are consistent in speed, appearance and playability
 - (l) Fairways are distinguishable from rough
- (7) Golf Carts
- (a) Adequate quantity and quality of rental golf carts and pull carts are available for the course
 - (b) Carts are clean and refueled/recharged
 - (c) Carts are undamaged (seats, body dents, etc.)
 - (d) Carts perform well at all speeds and in all directions
- (8) Driving Range (if applicable)
- (a) Hitting surfaces are well maintained
 - (b) Balls are clean and uncut
 - (c) Lighting is functional (where applicable)
 - (d) Adequate rental clubs are available
 - (e) Hitting area safety features are in place
- (9) Business Operations
- (a) Where required, employee PGA credentials are maintained in good standing
 - (b) All business provisions of contract with the City (e.g. insurance, compliance with federal, state and local laws and regulations, non-discrimination, etc.) are consistently performed.

EXHIBIT C
CAPITAL IMPROVEMENTS

During the Term, the Contractor shall state in writing his/her plan to construct golf course Improvements during the term of the contract. A suggested list is identified in this exhibit.

Refer to Proposal dated November 25, 2008.

CHANGE ORDER PROCESS:

Once a list of improvements is presented and accepted, there will be a change order process by which to amend the planned improvements. When inclement weather, significantly lower sales revenue or other good reason warrants a delay in making capital improvements identified for a specific year, the contractor may submit a written change order request to the City Administrator to propose a revised schedule for implementation of capital improvements at the golf course. The City Administrator will present the change order request to the City Council for approval or denial.

-Future Improvements-

- Starting 2010-Install new carts paths.
- 2009-2010-Install matching landscaping bricks around Clubhouse and on cart path toward #18 green and along #1 T-Box.
- 2009-Move current fuel pumps and dumpster to a new area in an effort to enhance the initial appearance of the facility from #1 T-Box.
- 2010-Work with the IHCC Horticulture Department to create and implement a plan for improved landscaping for the facility.
- 2010-2011-Re-design #7 into a Par 5 hole and adding bunkers at greenside.
- 2009-2010-Enlarge the irrigation pond for additional capacity. This will also alleviate our drainage problem on #9 fairway.
- 2009-2010-Finally finish the drainage issues on #9 fairway.
- 2012-Install a new cart path from #17 green to #18 Blue T-Box.
- 2012-Add a new Blue Tee on #6 to lengthen the hole.
- 2009-2010-Purchase a powerful fairway leaf blower to alleviate our Fall leaf issues.
- ?-Possibility of lengthening #16 into a Par 5 hole.
- 2010-The bridge on #14 needs replaced.
- 2010-Install new wider walk bridges on #3 and #17 for those who walk and use a pull cart.
- Starting 2010-Gradually overseed all the T-Boxes with Bent grass, starting with the Par 3's.
- 2010-Improve sand quality in the bunkers.
- 2011-Improve our exterior snack bar seating area with tables, chairs and possibly a roof.
- 2012-Enlarge and contour the practice putting green.
- 2010-Plant native grasses in remote areas to conserve labor costs and to enhance wildlife habitat.

EXHIBIT D
INSURANCE PROVISIONS

The Contractor shall furnish satisfactory proof to the City of the Contractor's purchase and continuing coverage of the following kinds and amounts of insurance for his respective course:

Commercial General Liability Insurance

The aggregate amount of General Liability Insurance Coverage to be carried by the Contractor during the Term shall be \$2 million which may be allocated as follows:

- (a) \$1 million primary coverage; and
- (b) \$1 million umbrella coverage

Product Liability Insurance

\$300,000/\$1,000,000

Liquor Liability Insurance

\$500,000

EXHIBIT E
TERMINATION/EXPIRATION PAYMENT

Refer to Proposal dated November 25, 2008 and Section 12.07.

See detailed list and dates on the following page.

EXHIBIT F
EQUIPMENT AND SUPPLIES

Clubhouse Equipment and Supplies

Driving Range Balls	
Emerson 17" color TV/VCR combo	5 years old
RCA 21" color TV	5 years old
4 drawer vertical metal file cabinet	at least 8 years old
2 drawer horizontal metal file cabinet	at least 8 years old
(3) Samsung 750S computers	5 years old
(1) HP 7260 series printer	5 years old
(1) HP 5510v printer/fax/scanner/copier	5 years old
(1) small computer desk	5 years old
(1) L-shaped office desk	at least 10 years old
(1) black imitation leather desk chair	at least 10 years old
(1) swivel computer chair	5 years old
(1) used couch-white fabric	at least 8 years old
(1) used couch-burgundy fabric	at least 8 years old
(1) wooden storage unit w/drawer	5 years old
(1) wooden shelving display unit	5 years old
(1) used golf ball display case	15 years old
(1) wooden "check-out" counters old	at least 10 years
(3) Avaya Merlin phones	at least 16 years old
(1) Hotpoint refrigerator	5 years old
(1) Frigidaire upright freezer	5 years old
(1) Chest freezer	at least 15 years old
(1) Used/rebuilt True "deli" refrigerator	at least 10 years old
(1) Manitowoc icemaker	4 years old
(1) GE microwave	5 years old
(1) Rival roaster	3 years old
(1) Rival hotplate	1 year old
(1) GE roaster	5 years old
(1) Pepsi beer cooler-single door	at least 12 years old
(24) Stackable chairs in snack bar	at least 12 years old
(7) Square snack bar tables	at least 12 years old
(1) Small Air Compressor	
1000 Gallon Gas and Diesel Tanks	
Foley Reel Grinder	
Bed Knife Grinder	
Back lapping compound	

Verticut Heads for Jacobsen greens mower
Aerifier Tines
1-Reel stand
Dremel Tool
2-Lawson bins with nuts and bolts
2-Lawson cabinets with Supplies
1-Craftman tool chest with tools
Screwdriver
Socket and Ratchets
Files
Standard wrenches
Metric wrenches
Pipe wrenches
Pliers
Hammers
Hand saws
Levels
Pipe threader
Pipe Cutters
Tap & Die set
5- Fire extinguishers
1-Case silicone lubricant
2-Cases of Hand soap
Cleaning Supplies
Ague Gauge
2-extention cords
Disc Grinder
Makita reciprocal saw
Makita electric drill
Tool shop cordless drill
Tool shop bench grinder
Shop vac
Car ramps
Impact air tools
5-Grease guns
1-case grease tubes
2-Cup cutters
18-Ball washers
25-Trash cans
24-Benches
8-Water coolers
2-Case of ball wash fluid
Welder
2-Welding masks
Welding Sticks
Torch
Core harvester for Cushman
Walk behind spreader
2- Mountable fertilizer spreader
4- Chain saws
Bunker water pump

2- Trash pumps for creek pump station
Portable air tank
Measuring Stick
2-Computers
7-hand held radios
3-Office desks
2-Filing cabinet
Flammable gas cabinet
5-Gas cans
Top dresser
2-10gallon electric sprayers
2-Backpack sprayers
Soil pulverize
Toro slit seeder
4-Weedeators
Extension ladder
Step Ladder
Sod cutter
Garden Tiller
Walk behind leaf vacuum and leaf blower
2-Hand held leaf blowers
3-drop seeders
Snow blower
3-Drag mats
Trailer
Floor jack
Irrigation wire
Irrigation pipe
Irrigation parts (heads and Fittings)
Oil Filters
5 Gallons of Hydraulic oil
Dewalt circular saw
2-Vises
Shovels
Rakes
Brooms
2-Rolls of rope
Rope Stacks
5- Seed boxes
4-Bags of Blue Grass Seed
25 Pounds of Bent Grass Seed
John Deere 3 Point Mower
Pull behind water tank
Spiker for Cushman
Drag behind harrow
2-Rolls of 4inch drainage tile
Flags
Flagsticks
Tee markers
Bookshelf
Computer desk

Drag broom
Pull carts
Driving range targets
Ball picker
Range ball washer
Battery charger
Bolt Cutters
Measuring wheel
Turf paint
36 Aluminum putting cups
High-pressure power washer
5-Long Table
48-Folding chairs
1-Card table
2-Work benches
1-case 8 foot light bulbs
1-case 5foot light bulbs
Fuel filters
Air filters

AMENDMENT NUMBER ONE TO
OPERATION AGREEMENT

By and Between

CITY OF OTTUMWA, IOWA

and

GREG WILSON, PGA

Dated as of 12/15/08

Amendment One to the Cedar Creek Golf Course Agreement page 2 of 2 pages

Approved this _____ day of December, 2008.

Dale M. Uehling
Dale Uehling, Mayor of Ottumwa

12-17-08
Date

ATTEST:

Ann Cullinan
Ann Cullinan, Ottumwa City Clerk

12-22-08
Date

Greg Wilson
Greg Wilson, Contractor

12/16/08
Date

AMENDMENT NUMBER ONE TO
OPERATION AGREEMENT

By and Between

CITY OF OTTUMWA, IOWA

and

GREG WILSON, PGA

Dated as of 12/15/08

Amendment One to the Cedar Creek Golf Course Agreement page 2 of 2 pages

Approved this _____ day of December, 2008.

Dale M. Uehling
Dale Uehling, Mayor of Ottumwa

12-17-08
Date

ATTEST:

Ann Cullinan
Ann Cullinan, Ottumwa City Clerk

12-22-08
Date

Greg Wilson
Greg Wilson, Contractor

12/16/08
Date

AMENDMENT TO OPERATING AGREEMENT

THIS AMENDMENT TO THE OPERATING AGREEMENT (Amendment One) is made and entered into this 15th day of December, 2008 by and between the City of Ottumwa, Iowa (City) and Greg Wilson (Contractor).

WHEREAS, in 2002 the City Council created a Golf Course Advisory Committee, made appointments and then there was no record of the committee since then. Since the City Council has contracted out the operation and maintenance of the Cedar Creek Golf Course, there is less need for a City sponsored committee over the golf course. The City Administrator/Designee will oversee the contracted service. The current members of the Golf Course Advisory Committee can serve as a non-city committee in service to the contractor;

WHEREAS, the City has adopted Resolution No. 160-2008 which abolished the City Golf Course Advisory Committee as an official City committee;

WHEREAS, the City has adopted Resolution No. 161-2008 to approve the removal of the City of Ottumwa from any connection to the Golf Course Advisory Committee by removing such language from the above mentioned Operating Agreement for Cedar Creek Golf Course;

WHEREAS, the Operating Agreement by and between the City and the Contractor dated 11/25/08 under Section 4.01 (d) requires the Contractor to meet monthly with the Golf Course Advisory Committee as a City committee.

THEREFORE, the City's governing body has approved an amendment to the Operating Agreement to amend Section 4.01 (d) of the Cedar Creek Golf Course Operating Agreement between the City of Ottumwa and Greg Wilson dated November 25, 2008 as follows:

The existing Section 4.01 (d) will be deleted with the following amended language in its place:

Section 4.01 (d)

"The Contractor will meet monthly with the Golf Course Advisory committee during the golf season to address issues and concerns of this committee. The Advisory Committee will continue to be elected in the manner prescribed by the Contractor."

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Jun 21, 2022

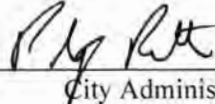
Philip Rath

Prepared By

Administration

Department

Department Head



City Administrator Approval

AGENDA TITLE: Approve Resolution 169-2022 Approving a Limited Extension of the Agreement with Heartland Humane Society for the Provision of Animal Care Services.

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt Resolution 169-2022

DISCUSSION: This is a limited extension of the agreement between the City and Heartland Humane Society to provide animal care services for the stray dogs and cats that are picked up by the City's Police Department. This extension is being requested to bridge the gap while the City and Heartland work out details of a longer term arrangement. The City will continue to work with local Veterinary Services and qualified boarding facilities for the care of those animals which are injured, deemed aggressive or designated as dangerous under the City Code.

Source of Funds: N/A

Budgeted Item:

Budget Amendment Needed:

RESOLUTION NO. 169-2022

A RESOLUTION APPROVING A LIMITED EXTENSION OF THE AGREEMENT
WITH HEARTLAND HUMANE SOCIETY
FOR THE PROVISION OF ANIMAL CARE SERVICES.

WHEREAS, the Ottumwa City Council proposes to continue to partner with Heartland Humane Society for the provision of Animal Care Services within the City of Ottumwa; and

WHEREAS, Heartland Humane Society has agreed to become the City's Animal Shelter for the placement of animals within the City of Ottumwa; and

WHEREAS, the Agreement is within the City's police powers to enter into such an agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, IOWA,

That the Mayor is hereby authorized to sign the proposed Agreement with Heartland Humane Society for the provision of animal care services on behalf of the City of Ottumwa.

PASSED, APPROVED AND ADOPTED this 21st day of June, 2022.

CITY OF OTTUMWA, IOWA

By _____
Richard W. Johnson, Mayor

ATTEST:

Christina Reinhard, City Clerk

**MEMORANDUM OF AGREEMENT
BETWEEN
THE CITY OF OTTUMWA, IOWA
AND
HEARTLAND HUMANE SOCIETY
FOR THE PROVISION OF ANIMAL CARE SERVICES**

The City of Ottumwa (hereinafter referred to as “City”) and Heartland Humane Society (hereinafter referred to as the “Heartland”), enter into this Memorandum of Agreement (hereinafter referred to as the “Agreement”) on this ____ day of June, 2022.

WHEREAS, Heartland Humane Society operates a non-profit, no-kill shelter for dogs and cats in the Ottumwa area; and

WHEREAS, Heartland provides animal care services and operates a facility for the provision of said services (“animal shelter”); and

WHEREAS, Heartland is willing to provide animal care services to the City of Ottumwa, Iowa; and

WHEREAS, the City of Ottumwa through its Community Services Officer and the Ottumwa Police Department routinely picks up and impounds unrestrained dogs and cats; and

WHEREAS, City has a need for the animal care services provided by Heartland and desires to enter into this agreement for the same.

NOW, THEREFORE, City and Heartland agree as follows:

1. Term.

This agreement shall be effective the 18th day of March, 2022 and shall remain in effect for a period through December 31, 2022, unless terminated in the manner set forth below.

2. Definitions.

“Animal care services” means housing and care in accordance with Heartland’s policies and procedures and consistent with applicable Iowa Department of Agriculture and Land Stewardship requirements as well as City Ordinances.

“City animal” means an animal found within the incorporated city limits of Ottumwa, Iowa.

“Sick or injured” means in need of immediate medical attention as determined by City.

3. Fee Schedule.

Heartland shall provide animal care services to City based on the following fee schedule:

Animal Care Services Fee: \$10 per animal per day

Animal Assessment, Parvo Vaccination and flea treatment: \$15 per animal

Rabies Vaccination if required: \$25 per animal

Heartland will notify City in writing of any proposed modifications of the fee schedule effective the following June 1 to be effective September 1. City reserves the right to terminate this agreement based on a refusal to accept any proposed modification of the fee schedule within thirty (30) days of any proposed modification. Heartland agrees to invoice City monthly for animal care sheltering fees, and City agrees to pay said invoices within thirty (30) days of receipt of the same.

Animals shall be kept a minimum of five (5) days of impoundment (mandatory stray hold period) and possibly longer depending on holidays and weekends.

In the event a City animal is reclaimed by its owner within the mandatory stray hold period, the owner will pay a reclaim fee plus any applicable board fees prior to the animal being released to the owner. Said owner shall pay said fees at the Law Enforcement Center and shall be given a receipt and release. The owner shall then take the receipt and release to Heartland, where the claimed animal will be released by Heartland to its owner. If the owner cannot provide verification of a rabies vaccination, the animal shall not be released until it has been vaccinated as required by State Statute. If the animal is not redeemed by the owner, said animal upon the termination of the redemption period, shall become the sole property of Heartland, which shall assume all liability for the animal's care and control from the date said animal was placed in the care of Heartland by the Ottumwa Police Department. Heartland shall not invoice the City for animal care services due to the fact that Heartland will no longer be required to pay a redemption fee to the City upon taking ownership of the animal.

4. Acceptance of Animals.

A. Generally.

Heartland agrees to accept any City dog or cat picked up by the Ottumwa Police Department and deemed suitable for placement with Heartland, except as noted below. Heartland shall provide an acceptable enclosed structure to house up to ten (10) dogs and ten (10) cats at any one time. The animals deposited by the City must be placed in an enclosed structure specifically approved by the City. Heartland may take additional dogs and cats if room is available and said animals can be properly isolated during the mandatory stray hold period. City has the right to inspect the facility where City animals are kept at any time without notice.

Those animals deemed suitable for release to Heartland will be deposited by the Ottumwa Police Department at Heartland, which shall make arrangements for the housing of those animals in a separate location that can be accessed by the Ottumwa Police Department during and after hours.

Heartland will ensure that said animals released to its custody shall be adequately cared for and in a secure location that is isolated from other Heartland animals. These secure locations shall meet all minimum care requirements as set forth in City Ordinances and State statutes and regulations.

Heartland shall promptly be responsible for posting photographs of the City's impounded animals and information regarding said animals on the City's Police website. City shall give a qualified Heartland designated staff member access to said website for this purpose only.

B. After Hours.

Dogs and cats deemed suitable for placement with Heartland will be deposited at Heartland by officers of the Ottumwa Police Department. Heartland shall make available to the Ottumwa Police Department Officers the ability to deposit said animals at Heartland at any time. At all times other than normal business hours, Heartland shall make available the services of at least one on-call employee who shall receive notification of after - hours deliveries of dogs or cats and be available to attend to such animals in a timely fashion if requested by City.

C. Prohibited Animals.

Animals that are prohibited by City ordinance (e.g., animals designated as dangerous) or those animals deemed aggressive or seriously injured or ill shall not be taken to Heartland, but will be taken to a Veterinary Services or qualified boarding facility in or around the City of Ottumwa. Those animals may still be claimed by their owners, depending on the circumstances, but may not be available for adoption by Heartland.

D. Ownership.

After the conclusion of the mandatory stray hold period, City shall not claim any ownership interest in any animal and shall not retrieve or remove any animal from the animal shelter without notice to Heartland. The City shall pay no fee for those animals that become the property of Heartland. Likewise, Heartland shall pay no fee to City upon becoming the owner of those abandoned animals.

E. Records.

Heartland agrees to keep records of all animals City brings to Heartland and the animal's disposition.

5. Animal Shelter.

Nothing in this agreement should be construed to provide City the right to otherwise use, control, or occupy the animal shelter, and the parties further agree that the operation, management and control of the animal center is the sole responsibility of Heartland.

6. Termination.

Either party may terminate this agreement for any reason upon thirty (30) days written notice to the other party.

7. Notice.

Notice by Heartland to City must be in writing and addressed to:
City Administrator
City of Ottumwa
105 East Third Street
Ottumwa, IA 52501

Notice by City to Heartland must be in writing and addressed to:
Manager
Heartland Humane Society
314 Fox Sauk Road
Ottumwa, IA 52501

Notice is sufficient if delivered by regular mail.

8. Indemnification/Hold Harmless.

Each party agrees to release, indemnify and hold the other party, its officers and employees harmless from and against any and all liabilities, damages, business interruptions, delays, losses, claims, judgments, of any kind whatsoever, including all costs, attorney fees, and expenses incidental thereto, that may be suffered by, or charged to, the party by reason of any loss or damage to any property or injury to or death of any person or animal arising out of or by reason of any breach, violation or non-performance by the other party or its servants, employees or agents of any covenant or condition of this agreement, or by any act or failure to act of those persons.

The parties shall not be liable for failure to perform under this agreement or for any loss, injury, damage or delay of any nature whatsoever resulting there from caused by any act of God, fire, flood, accident, strike, labor dispute, riot, insurrection, war or any other cause beyond the respective party 's control.

9. Waiver.

The waiver by either party of any covenant or condition of this agreement shall not thereafter preclude such party from demanding performance in accordance with the terms of this agreement.

10. Severability.

If a provision shall be finally declared void or illegal by any court or administrative agency having jurisdiction over the parties to this agreement, the entire agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

11. Entire Agreement.

This agreement sets forth all the covenants, promises, agreements, and conditions between Heartland and City concerning animal care services, and there are no other covenants, promises, agreements or conditions, either oral or written, between them. This agreement may not be modified or amended in any manner except by an instrument in writing executed by the parties.

Dated this _____ day of _____, 2022.

CITY OF OTTUMWA, IOWA

HEARTLAND HUMANE SOCIETY

By: Mayor Richard W. Johnson

By: Pam Ratliff, Manager

ATTEST:

ATTEST:

City Clerk Christina Reinhard

Mychelle Harvey, President,
Board of Directors

STATE OF IOWA)

) ss:

WAPELLO COUNTY)

On this ____ day of _____, 2022, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Pam Ratliff and Mychelle Harvey, to me personally known, who, being by me duly sworn, did say that they are the Manager and President of the Board of Directors, respectively, of Heartland Humane Society; and that the instrument was signed and sealed on behalf of Heartland Humane Society on the ____ day of _____, 2022; and that Pam Ratliff and Mychelle Harvey acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Jun 21, 2022

Planning & Development
Department

Zach Simonson
Prepared By
Zach Simonson
Department Head

City Administrator Approval

AGENDA TITLE: ORDINANCE NO. 3197-2022: AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF OTTUMWA, IOWA, BY CONDITIONALLY REZONING PROPERTY GENERALLY LOCATED AT 1321 ASBURY DRIVE IN THE CITY OF OTTUMWA AND DIRECTING THE ZONING ADMINISTRATOR TO NOTE THE ORDINANCE NUMBER AND DATE OF THIS CHANGE ON THE OFFICIAL ZONING MAP

Public hearing required if this box is checked.

RECOMMENDATION: Pass third consideration, pass and adopt Ordinance No. 3197-2022

DISCUSSION: Ordinance No. 3124-2017 provided conditional rezoning of property at 1321 Asbury Dr. from R-1 to R-5 for a multi-family residential development not to exceed 63 units and to begin within 5 years. The ordinance provided for extension, if the developer was able to demonstrating pursuing competition of the project. Jim Danaher, the owner of the property submitted a progress report totaling over 350 pages, the cover letter is included in the packet.

Source of Funds:

Budgeted Item: Budget Amendment Needed:

Danaher developed a project for the site for the 2021 Iowa Low Income Tax Credit application round however all but two of the awarded projects for that year were areas affected by the Derecho. He has redesigned the concept for application this year, but requires an extension of the conditional rezoning.

This Ordinance extends the current rezoning with the same terms. Ordinance No. 3124-2017 provided that an extension would be granted if the developer provided a progress report with substantive progress toward project inception. Staff believes the provided report satisfies what was described in Ordinance No. 3124-2017. Further, the developer is preparing an application for the 2022 Low Income Tax Credit application round which would advance development priorities around housing.

ORDINANCE NO. 3197-2022

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF OTTUMWA, IOWA, BY CONDITIONALLY REZONING PROPERTY GENERALLY LOCATED AT 1321 ASBURY DRIVE IN THE CITY OF OTTUMWA AND DIRECTING THE ZONING ADMINISTRATOR TO NOTE THE ORDINANCE NUMBER AND DATE OF THIS CHANGE ON THE OFFICIAL ZONING MAP

WHEREAS, Iowa Code Section 414.5 allows the City Council to impose reasonable conditions on a property owner as part of a rezoning request; and

WHEREAS, such conditions must be agreed to in writing, prior to the time of the public hearing regarding the proposed rezoning; and

WHEREAS, the Ottumwa City Council previously approved a conditional rezoning ordinance related to this property in Ordinance No. 3124-2017; and

WHEREAS, Ordinance No. 3124-2017 conditionally rezoned the property from R-1 Single Family Residential District (Low Density) to R-5 Multi-Family Residential District (High Density), and required the property owner to develop a multi-housing development project, not to exceed 63 units, on the property within five years; and

WHEREAS, the property owner is requesting an extension in which to complete the multi-housing development project and a new ordinance is therefore required; and

WHEREAS, the City Council of the City of Ottumwa finds that a conditional rezoning of this property is appropriate and reasonable to satisfy the public needs that are directly caused by the requested rezoning; and

WHEREAS, the property owner has agreed to these conditions in writing.

NOW, THEREFORE, be it enacted by the City Council of the City of Ottumwa, Iowa:

SECTION 1. ZONING AMENDMENT. The Zoning Ordinance of the City of Ottumwa, Iowa, is hereby amended by conditionally changing the zoning classification of the following described real property, from its current classification of R-1 Single Family Residential District (Low Density) to R-5 Multi-Family Residential District (High Density), to wit:

Lots No. 17, 18, 19, 20, and 21 in Block No. 2 and Lots No. 1, 2, 3, 4, 5, 6, 7, and 8 in Block No.3 of West Ottumwa, an Addition to the City of Ottumwa, Wapello County, Iowa, together with alley in Block 3 as set forth in deed dated December 12, 1972 found in Book 372 page 576, also as set out in quit Claim Deed dated December 22, 1972, and shown in Book 372 page 578, Also described as That part of the vacated Alley in Block Three (3) of West Ottumwa, an Addition to the City of Ottumwa, Iowa, lying immediately West of Lots One (1) through eight (8)

in said Block Three (3), AND that part of the West Half of the vacated Hackworth Avenue in Block Three (3) lying immediately East of said Lots One (1) through Eight (8), AND that part of said vacated Hackworth Avenue being the East Half lying immediately West of Lots Seventeen (17) through Twenty-One (21) in Block Two (2) in said West Ottumwa, an Addition to the City of Ottumwa, Wapello County, Iowa, AND that part of the West 15 feet of the East Half of the said vacated Hackworth Avenue lying immediately West of Lots Twenty-two (22) through Twenty four (24), in said Block Two (2), in West Ottumwa, an Addition to the City of Ottumwa, Wapello County, Iowa.

ALSO the West Half of the vacated Alley lying immediately East of Lots Seventeen (17) through Twenty-one (21) in Block Two (2) in said West Ottumwa, an Addition to the City of Ottumwa, Wapello County, Iowa.

This rezoning is subject to the following conditions:

1. That the multi-family housing development on property known as 1321 Asbury Avenue shall have a five-year term during which substantive progress should be made. If said development is not completed during this initial term of construction, Owner shall deliver a progress report, illustrating substantive progress toward project inception, at which time an agreement extension will be granted to Owner. Owner may receive one or more such extensions.

2. That the multi-family housing development project on said property may not exceed 63 units of multi-family housing. In the event of Owner's need to exceed this housing unit limitation, Owner must provide substantial basis for such exception and City may agree to such a change in Conditions, upon advisement of the Planning and Zoning Commission and by majority vote in a duly authorized and advertised public meeting of said body.

3. In the event the property know as 1321 Asbury Avenue is hereafter rezoned to a district classification different from that which is agreed upon herein, this agreement and the conditions herein shall be rendered null and void.

This condition is hereby agreed to by the undersigned property owner.



James Danaher
Property Owner

SECTION 2. NOTATION. The Zoning Administrator shall hereby record the ordinance number and date of passage of this ordinance on the Official Zoning Map.

SECTION 3. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. SEVERABILITY CLAUSE. If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

SECTION 5. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval, and publication as provided by law.

First Reading: May 17, 2022

Second Reading: June 7, 2022

Third Reading: _____

Passed and adopted this _____ day of _____, 2022.

Mayor

ATTEST:

City Clerk

I, Chris Reinhard, City Clerk of the City of Ottumwa, Iowa, do hereby certify that the foregoing ordinance was passed and approved by the City Council of the City of Ottumwa on the _____ day of _____, _____ and was published in the _____, a newspaper of general circulation in the said City of Ottumwa on the _____ day of _____, _____.

Chris Reinhard, City Clerk

ASBURY HEIGHTS LLC

December 23, 2021

RE: Progress Report on 1321 Asbury Ave. Multifamily Development

TO: Planning and Zoning
City of Ottumwa

Please find the required report on the progress to develop the Asbury site to apartments.

Listed below and attached for reference are the steps accomplished to further the development of the site at 1321 Asbury into housing.

Architectural plans for the site and building have been prepared and are attached for reference.

Commitments for a portion of the required financing has been approved. See attached letters from South Ottumwa Savings Bank, Central State Bank and Affordable Housing Partners, Inc. This includes the funds required from the investor, the construction loan, and the long term loan.

A market demand study has been completed to confirm the demand for the housing. See attached.

An environmental study has been completed with no finding of contamination. (See attached)

The largest portion of funds required for this development, requires approval by the Iowa Finance Authority (IFA) and to date these funds have not been approved for the project. These funds are allocated based on a minimum of a 15 year commitment to maintain rental rates within an affordable range. The state has limited amount of funds available for affordable housing projects and the projects are selected based on the IFA Board priorities. The most recent priority was to allocate affordable housing funds to counties which experienced extensive damage from Derecho. (See attached) Prior to that counties that had severe flooding were provided additional funds.

Our Ottumwa project competes with projects in the State of Iowa for a limited amount of funds.

Asbury Heights is committed to provide rental housing at affordable rents at this location on Asbury Avenue. The amenities in the surrounding area provide a convenient location for shopping with Fareway Grocery, Dollar General and Hy-Vee within several blocks as well as Goodwill, Hobby Lobby, medical offices and many other stores and amenities.

There is significant demand for affordable rental housing in Ottumwa. Our research has found that over 30% of all household in Ottumwa are Rental Households. Of the estimated 3100 Rental Households, 70% or 2170 households could benefit from the IFA housing program that we are diligently pursuing.

Some of our independent research findings are also included.

We would greatly appreciate maintaining the current zoning for apartments so that the site can meet the stringent qualification for funding with the Iowa Finance Authority. I've attached a schedule showing the minimum time required for completion of the project requirements utilizing Federal and State funding programs. This includes funding approvals, construction completion, and leasing and compliance requirements.

Thank you for considering this request to extend the zoning required to develop the property with rental apartments to serve a very large and important population in Ottumwa.

Please contact me for any additional questions.

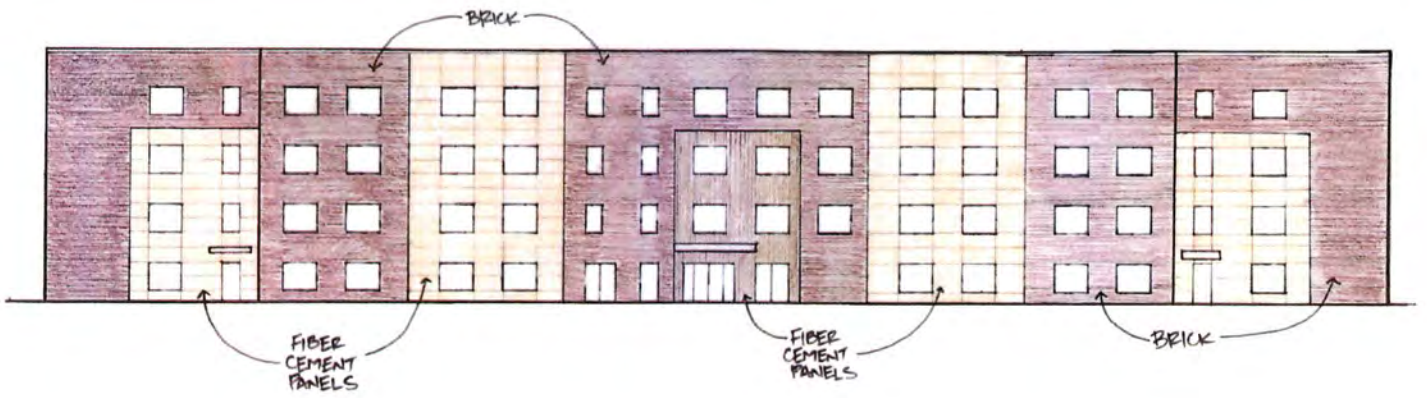
Sincerely,

A handwritten signature in blue ink that reads "Jim Danaher". The signature is written in a cursive, flowing style.

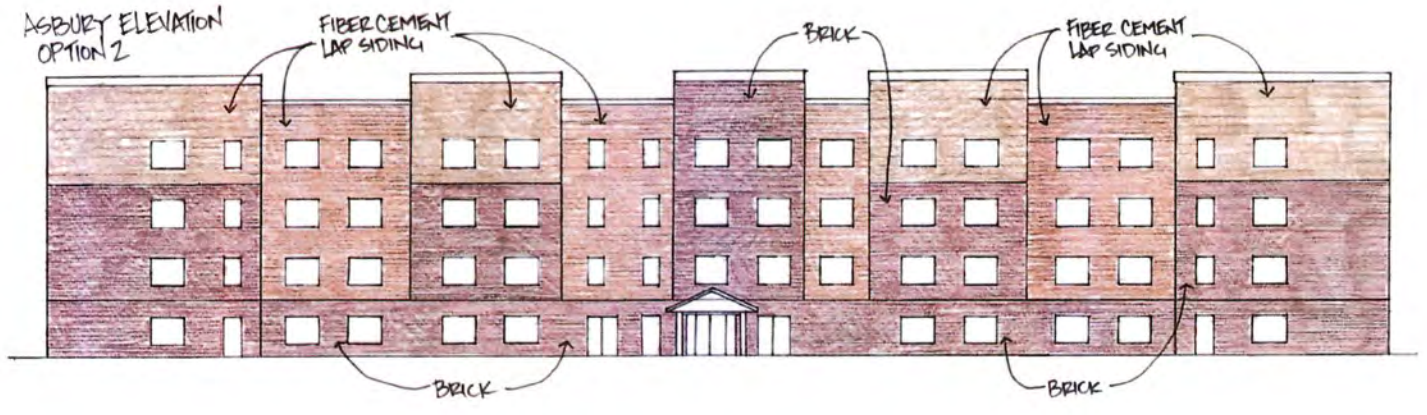
Jim Danaher
President
CBC Financial Corporation

ARCHITECT STUDIES
AND PLANS

ASBURY ELEVATION
OPTION 1



ASBURY ELEVATION
OPTION 2



PROJECT TEAM:

OWNER: **CBC FINANCIAL**
1708 S. MAIN STREET
FAIRFIELD, IOWA 52556

ARCHITECT: **EBERSOLDT + ASSOCIATES ARCHITECTURE, LLC**
1214 WASHINGTON AVENUE
ST. LOUIS, MO 63103

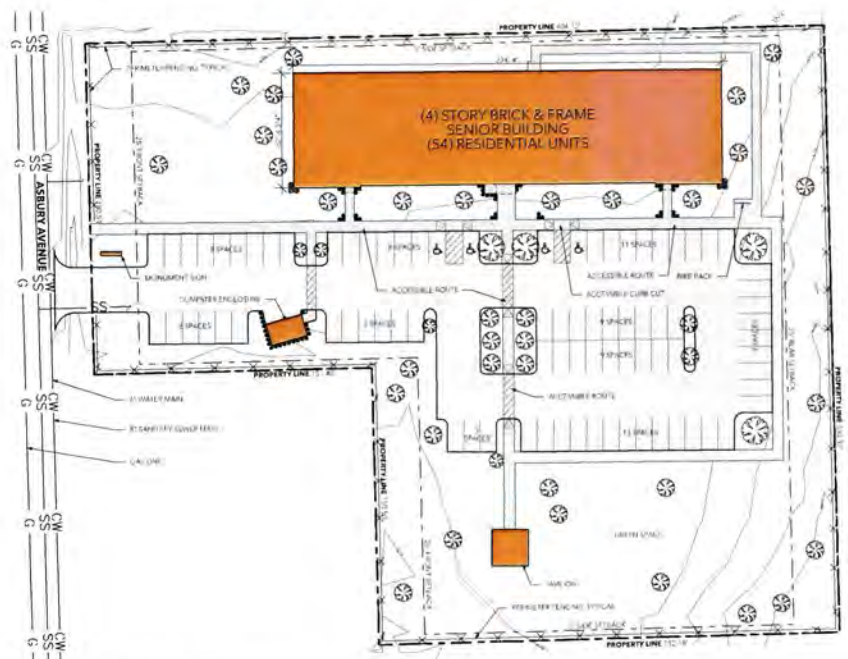
DRAWING INDEX:

0000	COVER SHEET
AS100	SITE PLAN
A100	FIRST FLOOR PLAN
A101	SECOND FLOOR PLAN
A102	THIRD FLOOR PLAN
A103	FOURTH FLOOR PLAN
A104	ROOF PLAN
A200	ENLARGED 1 BED / 1 BATH ACCESSIBLE UNIT PLAN
A201	ENLARGED 1 BED / 1 BATH TYPE-A UNIT PLAN
A202	ENLARGED 1 BED / 1 BATH TYPE-B UNIT PLAN
A203	ENLARGED 2 BED / 1 BATH ACCESSIBLE UNIT PLAN
A204	ENLARGED 2 BED / 1 BATH TYPE-A UNIT PLAN
A205	ENLARGED 2 BED / 1 BATH TYPE-B UNIT PLAN
A206	ENLARGED 2 BED / 1 BATH TYPE-B END UNIT PLAN
A400	EXTERIOR ELEVATIONS
A401	EXTERIOR ELEVATIONS



DEVELOPER _____ 3/4/20
CBC FINANCIAL
1708 S. MAIN STREET
FAIRFIELD, IA 52556-2733
P: 319.207.1553

0000 COVER
ASBURY HEIGHTS
1214 ASBURY AVENUE
OTTUMWA, IOWA 52501
IFA APPLICATION
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1 SITE PLAN

PROJECT SQUARE FOOTAGE:

FIRST FLOOR	= 14,228 NSF (14,531 GSF)
SECOND FLOOR	= 14,228 NSF (14,531 GSF)
THIRD FLOOR	= 14,228 NSF (14,531 GSF)
FOURTH FLOOR	= 14,228 NSF (14,531 GSF)
RES. BUILDING TOTAL	= 56,912 NSF (58,124 GSF)
COMMON SPACE	= 12,788 NSF (11,192 GSF)

TOTAL RESIDENTIAL SQUARE FOOTAGE:

(20) 1 BED UNITS @ 703 NSF (752 GSF)	= 14,060 NSF (15,040 GSF)
(18) 2 BED UNITS @ 896 NSF (954 GSF)	= 16,128 NSF (17,172 GSF)
(16) 2 BED END UNITS @ 871 NSF (920 GSF)	= 13,936 NSF (14,720 GSF)
(54) UNITS, TOTAL RENTABLE	= 44,124 NSF (46,932 GSF)

UNIT SUMMARY

- (2) 1 BED / 1 BATH FULLY ACCESSIBLE UNIT
- (1) 1 BED / 1 BATH ACCESSIBLE COMMUNICATION FEATURES
- (5) 1 BED / 1 BATH TYPE-A ACCESSIBLE UNIT
- (12) 1 BED / 1 BATH TYPE-B ACCESSIBLE UNIT
- (4) 2 BED / 1 BATH FULLY ACCESSIBLE UNIT
- (1) 2 BED / 1 BATH ACCESSIBLE COMMUNICATION FEATURES
- (9) 2 BED / 1 BATH TYPE-A ACCESSIBLE UNIT
- (20) 2 BED / 1 BATH TYPE-B ACCESSIBLE UNIT
- (54) TOTAL RESIDENTIAL UNITS

BUILDING CODE CLASSIFICATION: 2015 IBC

ZONING CLASSIFICATION: R-5 MULTI-FAMILY RESIDENTIAL HIGH DENSITY

SURFACE LOT PARKING SPACES:

- (3) ACCESSIBLE PARKING SPACES
- (1) VAN ACCESSIBLE PARKING SPACE
- (79) STANDARD PARKING SPACES
- (83) TOTAL SURFACE PARKING SPACES



DEVELOPER: J/A/20
 CBC FINANCIAL
 1101 S. 40th St. #101
 OMAHA, NE 68104
 402.461.1888

AS100 SITE PLAN
ASBURY HEIGHTS
 1323 ASBURY AVENUE
 OMAHA, NE 68102
IFA APPLICATION
 © COPYRIGHT 2019 EBERSOLDT + ASSOCIATES



IOWA FINANCE
AUTHORITY
ALLOCATION OF
FUNDS IN 2021

2021 IOWA HOUSING / FUNDING										
#	Project Name	City	County	TYPE	Type	LI Units	Market Rate Units	Total Units	Set Asides	DERECHO
1	Stella Ridge 2021	Grinnell	Poweshiek	Family	New	44	8	52	Derecho Disaster, Rural	YES
2	Tulip Tree Apartments	Marion	Linn	Older Persons 55	New	36	4	40	Nonprofit, Derecho Disaster	YES
3	Van Allen	Clinton	Clinton	Family	Rehab	17	2	19	Nonprofit, Derecho Disaster, Rural	YES
4	Villas at Fox Pointe Boone	Boone	Boone	Family	New	36	4	40	Derecho Disaster, Rural	YES
5	Cottage Bluff	Clinton	Clinton	Older Persons 55	New	35	4	39	Derecho Disaster, Rural	YES
6	Brookline II	DeWitt	Clinton	Family	New	32	4	36	Derecho Disaster, Rural	YES
7	Shenandoah Senior Villas	Shenandoah	Fremont	Older Persons 55	New	38	2	40	Disaster Recovery, Rural	YES
8	Johnston Crossing II	Johnston	Polk	Older Persons 55	New	45	5	50	Derecho Disaster	YES
9	Timber Ridge Senior	Marshalltown	Marshall	Older Persons 55	New	37	5	42	Derecho Disaster, Rural	YES
10	Grace Creek Senior Apartments	West Des Moines	Dallas	Older Persons 55	New	30	4	34		NO
11	Cedar Rapids Brickstone LLLP	Cedar Rapids	Linn	Family	New	43	0	43	Supportive Housing for Families	YES
12	Westown Crossing Senior Apartments	West Des Moines	Polk	Older Persons 55	New	39	5	44	Derecho Disaster	YES
13	59th Avenue Senior Lofts	Johnston	Polk	Older Persons 55	New	45	6	51	Derecho Disaster	YES
14	Graceview Courtyard Phase II	Council Bluffs	Pottawattamie	Older Persons 55	New	58	7	65	Nonprofit, Disaster Recovery	YES
15	The Reserves at Hawkeye	Boone	Boone	Family	New	43	5	48	Derecho Disaster, Rural	YES
16	Vive	Cedar Rapids	Linn	Older Persons 55	New	46	6	52	Derecho Disaster	YES
17	The Reserves at South Lake	Grinnell	Poweshiek	Family	New	43	5	48	Derecho Disaster, Rural	YES
18	Tallgrass	DeWitt	Clinton	Family	New	32	4	36	Derecho Disaster, Rural	YES

OTTUMWA
AFFORDABLE
HOUSING

OTTUMWA HOUSING STUDY

RENTER HOUSEHOLDS							
All Age Groups							
Year 2021 Estimates							
	1-Pers HH	2-Pers HH	3-Pers HH	4-Pers HH	5-Pers HH	6+-Pers HH	Total
\$0-10,000	266	72	51	8	11	11	419
\$10,000-20,000	372	135	44	14	13	5	583
\$20,000-30,000	195	157	19	41	52	40	504
\$30,000-40,000	115	146	95	57	10	4	427
\$40,000-50,000	152	39	15	15	18	9	248
\$50,000-60,000	96	33	79	14	7	3	232
\$60,000-75,000	47	47	20	20	5	3	142
\$75,000-100,000	67	24	65	27	12	2	197
\$100,000-125,000	54	15	49	27	5	1	151
\$125,000-150,000	37	15	13	19	1	0	85
\$150,000-200,000	21	20	9	9	5	1	65
\$200,000+	19	10	12	9	1	0	51
Totals	1,441	713	471	260	140	79	3,104
						Affordable Rental Households	2,181
						% of Total Rental Households	70%

AFFORDABLE
HOUSING
DEVELOPMENT
SCHEDULE

AFFORDABLE HOUSING DEVELOPMENT CYCLE

TASKS	TIME IN MONTHS	RESEARCH	BUY	ENTITLEMENTS	DESIGN & FINANCE	CONSTRUCTION	LEASE-UP
		1 2 3 4 5 6	7 8 9 10	11 12 13 14 15 16 17 18 19 20 21 22	23 24 25 26 27 28 29 30 31 32 33 34 35 36	37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52	53 54 55 56 57 58 59 60
MARKET RESEARCH	6						
PROPERTY ACQUISITION	4						
PLANNING & ZONING	12						
DESIGN	8						
FINANCIAL APPROVALS	12						
CONSTRUCTION	16						
LEASE AND COMPLIANCE	12						
		1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60					

CITY OF OTTUMWA
Staff Summary

**** ACTION ITEM ****

Council Meeting of: Jun 21, 2022

Philip Rath

Prepared By

Administration

Department

Department Head



City Administrator Approval

AGENDA TITLE: Ordinance No. 3198-2022: Proposed Ordinance to Repeal and Replace Chapter 7 of the City Code

Public hearing required if this box is checked.

RECOMMENDATION: Pass and adopt the first reading of Ordinance No. 3198-2022

DISCUSSION: On November 16, 2021 the City Council officially received a petition (Petition No. 5086-2021) to end the ban on Pit Bulls in Ottumwa, Iowa. On January 18, 2022 the City Council held a public hearing to gather input from the community at large regarding a potential revision to the ordinance as requested by the petition. Since that meeting staff and council members have continued to receive input and feedback from the community and the coalition. On February 1, 2022 the City Council authorized the city attorney along with consultation of city staff to prepare a revised ordinance inclusive of broader animal issues in the city.

Source of Funds:

Budgeted Item: Budget Amendment Needed:

Stemming from the January 18 meeting and the duration of staff review, there was a consistent theme regarding animal care and enforcement of the code in general. The revised code identifies a number of minor revisions such as definitions and clarifying language to assist in enforcement of the code. Additionally, there was a revised classification of animal from "potentially dangerous" to "high risk." Finally, language was added to incorporate procedural and appeal processes as well as language exempting service animals from some aspects of the code.

The other aspect of the code, which prompted the initial review was the petition related to removing the language in the Code that specifically defines the "pit bull terrier" as a dangerous animal by breed in addition to other animal classifications, actions of animals and the history of animal actions as a "dangerous animal." Pit bulls have been included in the definition of dangerous animals since the 1980's. Based upon a review of comments from the public and other independent research, it is my opinion that insufficient evidence exists to reverse the ban at this time. While the Code has been revised to incorporate definitions and process related to vicious, high risk, and dangerous dogs; it does not remove the pit bull terrier from the definition of a dangerous animal.

A revised version of the code was presented at the May 3 meeting of the city council. There were a number of questions and suggestions for further revision at that meeting and the item was postponed. On May 24 the city council and staff, along with the city attorney held a work session to discuss further revision to the code. Aside from minor revisions and grammatical clean-up there were a few changes of note taken from the work session. These include a revised definition of "pit bull terrier," additional restrictions regarding "tethering," clarification of violations subject to simple misdemeanors. With these additions and revisions it is presented to city council for consideration and adoption of the first reading.

ORDINANCE NO. 3198-2022

**AN ORDINANCE REPEALING AND REPLACING CHAPTER 7,
ANIMALS AND FOWL, OF THE MUNICIPAL CODE OF THE CITY OF
OTTUMWA.**

WHEREAS, the Ottumwa City Code defines pit bull terriers as dangerous animals and prohibits their keeping within the city limits; and

WHEREAS, the City of Ottumwa has not allowed pit bull terriers within the city limits since 2003; and

WHEREAS, petitions were presented to the City in 2010 and 2012 requesting removal of the ban on pit bull terriers from the City Code, and the City Council chose not to amend the ordinance at the time; and

WHEREAS, a petition was presented to the City in 2021 again requesting removal of the ban on pit bull terriers from the City Code; and

WHEREAS, the City Council has received public comment both in support and opposition of the pit bull terrier ban, the Council has held a work session on revisions to Chapter 7 of the City Code, and has carefully considered all information presented related to this item; and

WHEREAS, the City Council of the City of Ottumwa FINDS that the current ban on pit bull terriers within the City of Ottumwa should remain in place due to the following:

1. There are pit bull terriers being kept within the city limits in spite of the ban, and the City Council does not want to encourage or reward this unlawful behavior; and
2. The concerns and fears surrounding the danger that pit bull terriers pose to the community at large have not significantly changed since the ban was originally put in place; and
3. The community service officer has reported that there have been 16 pit bull terrier related charges issued in the first five months of 2022.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, IOWA, THAT:

SECTION ONE. Chapter 7, Animals and Fowl, of the municipal code of the City of Ottumwa is hereby amended by repealing Chapter 7 in its entirety and enacting the following in lieu thereof:

Chapter 7 ANIMALS AND FOWL

ARTICLE I. IN GENERAL

Sec. 7-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandon means the voluntary relinquishment of possession of an animal by the owner, with the intention of terminating ownership without vesting it in any other person. To abandon shall include any of the following:

- (a) For the owner or keeper to leave any animal without demonstrated or apparent intent to recover or to resume custody.
- (b) To leave an animal for more than twelve (12) hours without providing adequate food, water, and shelter for the duration of the absence.
- (c) To turn out or release an animal.

Adequate food means fresh, nutritious food suitable for the species provided continuously or at suitable intervals in a sanitary manner in quantities sufficient to allow for normal growth or maintain good health and body weight in an animal considering its age and condition.

Adequate protection from the elements means a protected area, in addition to a doghouse or similar structure, that provides shade from the sun and protection from wind, rain, snow, and extremes of hot and cold.

Adequate shelter means a dog house or similar structure, for each animal chained, tethered, penned or otherwise restrained or confined outdoors, suitable for the species, age, condition and size of the animal; that has solid sides, floor and top that do not leak air or moisture and a cover over the doorway which keeps the doghouse or structure dry and allows the animal unlimited access and egress from the doghouse or structure; is clean, safe, enables the animal to be clean and dry and protects the animal from injury, rain, sleet, snow, hail, direct sunlight, the adverse effects of heat or cold, physical suffering, and impairment of health; is large enough for the animal to stand up, lie down and stretch comfortably and make all other normal bodily movements in a comfortable, normal position for the animal. A carrier or crate is not adequate shelter.

Animal means any live (or dead where applicable) domestic vertebrate creature, male or female, and including dogs and cats, fowl and reptiles kept as pets except wild or dangerous animals as hereinafter defined.

Animal control shelter means a facility which is used, but is not limited to, housing or containing dogs or cats, or both and which is owned, operated, or maintained by an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or other nonprofit organization devoted to the welfare, protection, and humane treatment of such animals.

At heel means under the voice control and within fifteen (15) feet of the owner or person in custody of the animal.

At-large means any licensed or unlicensed animal found off the premises of its owner and not under the control of a person physically capable of controlling the animal, and not on a leash sixteen (16) feet or less in length.

Behavior consultation means a consultation with a professional that has expertise in dog behavior with the intent to help the owner and the dog address the aggressive behavior displayed by the dog.

Bite means any puncture, laceration, abrasion, scratch or other break in the skin of a human being, or other animal where applicable.

Cat means any male or female animal of the family Felidae, genus Felis, species catus, whether neutered or not.

Chicken (Gallus domesticus) means a domesticated fowl.

City pound or dog pound means a facility for the prevention of cruelty to animals operated by the state, a municipal corporation, or other political subdivision of the state for the purpose of impounding or harboring seized stray, homeless, abandoned, or unwanted dogs, cats, or other animals; or a facility operated for such a purpose under a contract with any municipal corporation or incorporated society.

Community service officer means a person appointed by and under the direction of the chief of police to enforce the provisions of this chapter.

Dangerous animal means and includes any animal which is not naturally tamed or gentle; or which is of a wild nature or disposition; or which is capable of killing or inflicting serious injury upon human beings and having known tendencies, individually or as a species, to do so; or which, because of its size or other characteristics, would constitute a danger to human life or property if it is not kept or maintained in a safe manner or in secure quarters, including, but not limited to, the following animals, which shall be deemed as dangerous per se:

Bears, wolves, wolf hybrid dogs, foxes, coyotes, lions, tigers, jaguars, leopards, cougars, panthers, lynxes, cheetahs, bobcats, elephants, bison, badgers, wolverines, weasels, skunks, raccoons, members of the primate family, scorpions, poisonous or venomous snakes, poisonous or venomous spiders, poisonous or venomous reptiles, and other poisonous or venomous animals, alligators, crocodiles, anacondas, pythons, boa constrictors, piranhas, sharks, pit bull terriers, any crossbreed of such animals which have similar characteristics to the animals specified herein.

Dart means the process whereby a drug of a sedative nature is delivered to and injected into an animal by means of a projectile shot from a rifle or gun, for the purpose of subduing or rendering an animal unconscious for capture.

Department shall mean the Administrative Services Department

Dog means any member of the canine species.

Domestic animal means any animal of a species that normally is bred, raised, and is accustomed to live in or about human habitation. Domesticated animals include, but are not limited to, pets such as dogs or cats. The term shall not include animals owned by the police department, animals in a zoo, or livestock.

Fowl means any of various birds of the order Galliformes, including but not limited to domesticated chickens, ducks, geese, turkeys, or pheasants.

Hearing Ear dog means any dog owned by a deaf or partially deaf person, and which has been properly trained to aid its owner.

High risk animal means any animal that satisfies one or more of the following:

- (a) Chases or approaches a person, domestic animal, fowl, or livestock in an apparent attitude of attack, or
- (b) Attacks a person, domestic animal, fowl, or livestock, or
- (c) Bites, harms, or attempts to bite or harm a person, domestic fowl, or livestock; and
- (d) Has been trained to fight other domestic animals; or
- (e) Has been trained as a guard dog for people or property.
- (f) This definition shall not apply to law enforcement canines.

An animal provoked to an attitude of self-defense, or assumes a defensive attitude in protection of its owner's property shall not summarily be proposed to be a high risk animal. The city administrator or their designee may take various factors into consideration when determining whether an animal meets this definition. These factors include, but are not limited to, whether the animal was provoked, or whether the animal was acting to protect itself, its owner, or its owner's property.

Hybrid means any offspring produced by breeding a domestic cat or domestic dog to an animal listed as a dangerous animal per se.

Identification tag means a rabies vaccination tag for cats and dogs and a city license tag for dogs.

In heat means a female animal during the active state of estrus.

Injury means any visible or documented bodily injury not constituting "Serious Injury" as defined herein.

Irresponsible animal owner means any animal owner that has:

- (a) Been convicted or pled guilty three times or more for separate incidents that occurred in any twelve (12) month period concerning:
 - (1) An animal at large;
 - (2) An animal disturbing the peace;
 - (3) An unlicensed animal;
 - (4) An excessive number of animals; or
 - (5) Unsanitary premises due to animals.
- (b) Been convicted or pled guilty two times or more for separate incidents concerning:
 - (1) Animal neglect;
 - (2) Keeping animals covered by section 7-27 without obtaining a license; or

-
- (3) An animal declared a vicious animal.
- (c) Or, been convicted of or pled guilty to:
- (1) Animal abuse; or
 - (2) Animal torture.

Kennel means any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire or training of dogs or cats and which is required to be licensed by the state for such purpose.

Licensed kennel cat and/or dog means cats and/or dogs kept or raised in a state or federal licensed kennel solely for the purpose of show, breeding, boarding or sale and kept under constant restraint.

Livestock means an animal belonging to the bovine, caprine, equine, ovine, or porcine species, ostriches, rheas, emus, farm deer or poultry.

Neutered shall mean the same as “neutered,” “altered,” and “spayed,” and refers to a procedure that has been performed by a veterinarian on an animal, male or female, that renders it incapable of bearing offspring.

Owner means any person who owns, keeps, harbors, feeds or knowingly permits an animal to remain on or about any premises owned or occupied by that person. If such person is a minor, then “owner” means the parents or custodial parent or guardian of such person.

Pit bull terrier means (1) an American Pit Bull Terrier, Staffordshire Bull Terrier, or American Staffordshire Bull Terrier breed of dog; (2) any dog displaying the majority of physical traits of any one or more of the breed of American Pit Bull Terrier, Staffordshire Bull Terrier, or American Staffordshire Bull Terrier (more so than any other breed), or (3) a dog which conforms to the standards established by the American Kennel Club or United Kennel Club for any of the above breeds. The A.K.C. and U.K.C. standards for the above breeds are on file in the office of the administrative authority.

Proper enclosure of a potentially dangerous animal means, while on the owner's property, a potentially dangerous animal is securely confined indoors, or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure shall have secure sides and secure top to prevent the animal from escaping over, under, or through the structure, and shall also provide adequate food, adequate water, adequate shelter and adequate protection from the elements.

Provocation; without provocation. See section 7-21(b) and (c).

Seeing Eye dog means any dog owned by a blind or partially blind person and which has been trained to aid its owner.

Serious injury means a bodily injury that does any of the following:

- (a) Creates a substantial risk of death;
- (b) Causes serious permanent disfigurement;
- (c) Causes protracted loss or impairment of the function of any bodily member or organ.

Service animal means a dog that is a working animal, not a pet, which is individually trained to do work or perform tasks for people with disabilities. The work or tasks a dog has been trained to provide must be directly related to the person's disability. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being or companionship do not constitute work or tasks for the purposes of this definition.

Stray means any animal at-large.

Threatened animal means an animal that is abused as provided in section 7-4.

Vicious animal means and includes any animal which bites or harms:

- (a) A person or persons and the bite or harm causes bleeding or noticeable and documented injury to the person; or
- (b) A domestic animal, fowl, or livestock such that the domestic animal, fowl, or livestock is significantly injured, requires medical attention, is maimed, or killed.

An animal provoked to an attitude of self-defense, or assumes a defensive attitude in protection of its owner's property shall not summarily be proposed to be a vicious animal. The city administrator or their designee may take various factors into consideration when determining whether an animal meets this definition. These factors include, but are not limited to, whether the animal was provoked, or whether the animal was acting to protect itself, its owner, or its owner's property.

Wild animal means any live (or dead where applicable) vertebrate creature, male or female, not defined as an "animal" above or "dangerous animal" above.

Sec. 7-2. Enforcement of chapter.

The chief of police shall be responsible for the enforcement of the provisions of this chapter. However:

- (a) The city council may contract with another governmental entity or a nonprofit or not for pecuniary profit organization to operate the city pound for the purpose of impounding animals as required by this chapter, which said contract may provide for the delegation of such of the powers and duties herein granted to the chief of police as the city council deems necessary to carry out the purposes of this chapter.
- (b) The chief of police may appoint community service officers who shall assist in enforcing the provisions of this chapter and perform such other duties as is required. A community service officer shall have police powers necessary to discharge the duties of this chapter and to enforce its provisions.

Sec. 7-3. Interference while performing duties.

No person shall knowingly interfere with, hinder or obstruct the chief of police, a peace officer, a community service officer, or any other person authorized to perform duties under this chapter while engaged in the performance of their duties under this chapter. A violation of this section is a simple misdemeanor resulting in a minimum fine of \$100.00.

Sec. 7-4. Cruelty to animals.

The following acts shall constitute abuse of animals, and shall subject the owner or other person in control of the animal to the penalty provisions of state law and this Code:

- (a) Failure to provide the animal unlimited access to adequate food, adequate water and easy access to adequate shelter and adequate protection from the elements.
- (b) Beating, tormenting, overloading or overworking an animal.
- (c) Permitting or encouraging any combat between animals, or between animals and humans.
- (d) Abandoning any animal, unless to an animal control shelter as defined herein.
- (e) Exposing any known poisonous material, drug, legal or illegal, with the intent of allowing or encouraging the material to be eaten by any bird, fowl or domesticated animal.
- (f) Failure to maintain sanitary conditions where animals are kept.
- (g) Harboring or owning any sick, diseased or injured animal without procuring veterinary care for said animal.
- (h) Maintaining an animal in such conditions and hygiene that the animal is unable to walk or move normally, conduct routine bodily functions, or stay clean, and free of disease and parasites.
- (i) Leaving any animal in a standing or parked vehicle, on a vehicle, tethered or confined for a length of time that could result in danger to or death of an animal. If the community service officer determines that such an animal is in immediate danger, the community service officer or designee may remove the animal by whatever reasonable means is necessary without liability, for the purpose of taking the animal into protective custody.
- (j) Intentionally injuring, maiming, disfiguring, mutilating or destroying an animal by any means that causes pain or suffering.
- (k) Overload or overwork a domestic animal or fowl or any other animal under the person's care, custody, and/or control.

State law reference(s)—Livestock neglect, I.C.A. § 717.2; animal neglect, I.C.A. § 717B.3; animal torture, I.C.A. § 717B.3A.

Sec. 7-5. Sanitation of premises.

All structures, pens, coops or yards wherein animals, domestic or wild, are confined shall be maintained in a clean and sanitary condition at all times, devoid of vermin and free from offensive odors. The chief of police or designee may, at any time, inspect or cause to be inspected any structure or premises, and issue any such order as may be necessary to enforce the provisions of this section, and any other relevant or pertinent rule, regulation of the board of health of the city, or any health provisions of this Code. A violation of this section is a simple misdemeanor resulting in a minimum fine of \$100.00.

Sec. 7-6. Animal traps.

No person may set traps in the city for the purpose of apprehending wild or domesticated animals. This section does not prohibit:

- (a) Trapping mice, rats or other household vermin;
- (b) The setting of traps to destroy moles and other underground pests so long as the traps used may be triggered only by subsurface action; or
- (c) The setting of traps in the line of duty by a community service officer, or with written permission from and supervision by a community service officer, or licensed pest control operators.

Sec. 7-7. Abandonment of animals.

No owner of an animal shall abandon such animal, unless transferred to another person, entity, or surrendered to a licensed animal control shelter.

State law reference(s)—Abandonment of cats and dogs - penalties, I.C.A. § 717B.8.

Sec. 7-8. Injury to animals.

- (a) The operator of any vehicle which strikes a domestic animal shall stop at once and render such assistance as may be possible and shall immediately report such injury or death to the animal's owner; in the event the owner cannot be ascertained or located, the report shall be made to the police department.
- (b) All employees within the departments of public works, building and code enforcement, water pollution control, parks, fire and police are responsible for picking up dead animals, whether domestic or wild, found by that employee on streets, on public rights-of-way, and found at large in parks or on other public property. The police department will be notified of any injured animals found and will be responsible for taking such action as deemed necessary to protect or dispose of said animal. In the event a dead animal found on city property is wearing any type of identifying tag, the police department will be notified to attempt contact with the owner. City employees are not responsible for picking up dead animals on private property.

Sec. 7-9. Domesticated farm animals prohibited.

- (a) No horse, jack, mule, donkey, burro, pony, cow, bull, calf, steer, goat, sheep, lama, swine, turkey, ducks, geese, roosters or other livestock shall be kept on any city lot or in any dwelling or part thereof, or pastured or enclosed on the same lot or premises with a dwelling. However, no more than six adult rabbits and six adult female chickens (hens) may be kept within the city limits pursuant to all permit rules and regulations which shall be approved by resolution of the city council and/or by city ordinance.
- (b) Subsection (a) of this section shall not apply to property annexed to the city, if said conditions contrary to subsection (a) of this section existed on said property at that time, except that said prohibited conditions may not be expanded and when they cease to exist

they shall not be renewed. Said subsection (a) of this section shall not apply to property meeting the definition of "farm" as set out in the city's zoning regulations.

- (c) Furthermore, if the conditions on the property as a result of animals being kept are declared a nuisance by a court, they shall cease to exist and be removed. Subsection (a) of this section shall also not apply to dogs, cats, and household pets.
- (d) Urban chicken and rabbit permits.
 - (1) No person shall raise, harbor or keep chickens or rabbits without an urban chicken or rabbit permit, issued by the city.
 - (2) The term "chicken" means a member of the subspecies of Gallus domesticus, a domesticated chicken.
 - (3) The term "rabbit" means a member of the subspecies of lagomorpha leporidae, a domesticated rabbit.
 - (4) To obtain an urban chicken or rabbit permit, an applicant must submit a completed application on a form provided by the city accompanied by the permit fee.
 - (5) Within 30 days of submission of the application, the police chief or designee shall issue the urban chicken or rabbit permit if the applicant meets the requirements of this provision and the policy adopted by city council resolution or deny the application. If the application is denied, the police chief or designee shall state the reasons in writing.
 - (6) The urban chicken or rabbit permit shall be valid for three years and may not be sold, transferred or assigned.
 - (7) The police chief or designee may revoke a chicken or rabbit permit as provided in the policy adopted by council resolution.
 - (8) Appeals of the decision to deny or revoke a permit under this section are to the city administrator or designee and must be filed within ten days of the decision.
 - (9) Additional requirements, including permit fees, shall be adopted by resolution.
 - (10) Violation of this subsection or the terms of the urban chicken or rabbit permit are punishable by a municipal infraction with a civil penalty of \$250.00 for first violation, \$500.00 for the second violation and \$750.00 for third and subsequent violations.

Sec. 7-10. Hogpens.

- (a) No person shall keep or maintain within the city any hogpen or enclosures wherein swine are kept and fed by the owner, lessee or occupant of any property therein, save and except such pens as may be used for the purpose of commerce only. All such pens shall be kept clean; and the owner, lessee, or manager thereof shall see that the same do not become a nuisance in any respect.
- (b) Subsection (a) of this section shall not apply to property annexed to the city on February 13, 1975, if said conditions contrary to subsection (a) of this section existed on said property at that time, except that said prohibited conditions may not be expanded and when they cease to exist they shall not be renewed. Furthermore, if said prohibited conditions are declared a nuisance by a court, they shall cease to exist and be removed.

Sec. 7-11. Restraint of animals.

All animals shall be kept at heel or restrained by the owners thereof from running at-large. Dogs shall be restrained in city park ground, in cemeteries, on city rights-of-way, city levee ground and on any public property.

Sec. 7-12. Enabling animals to leave premises of owner.

It shall be unlawful for any person, except the owner or his agent, employee or immediate family to open any gate or door on any premises or otherwise entice or enable any animal to leave said premises.

Sec. 7-13. Hitching animals.

(a) It shall be unlawful for any person, without the consent of the owner or occupant of the premises, to fasten any horse or other animal to any fence or tree or to any boxing placed around any tree or to any fire hydrant, lamppost, fence, parking meter or sign within the city.

(b) It shall be unlawful for any person to tether an animal in the following manner:

(1) Using a tether that is less than ten feet (10') or more than fifty (50') feet in length;

(2) Using a tether that does not have swivels on both ends as to prevent twisting and tangling;

(3) Using a tether that contains chain links more than one-quarter of an inch thick or that has weights attached;

(4) Using a tether that exceeds one-eighth (1/8) of the dog's weight; or with a collar made of metal or chain, excluding the buckle, or using a collar, even if made of cloth, designed to continue to tighten, such as a slip lead or noose, when pulled tightly.

(5) No person shall allow an animal to be tethered between the hours of 10 p.m. and 6 a.m.

(6) No person shall allow an animal to have access to a public sidewalk or street while tethered.

(7) No person shall allow an animal to be tethered to a utility pole, parking meter, building, structure, fence, sign, tree, bush, bench, newspaper or advertising rack or other object on public property.

(8) No person shall allow an animal to be tethered in extreme weather or in an unsafe location. An unsafe location includes, but is not limited to, near a fence whereby the animal could asphyxiate itself if it jumped over the fence or on a deck whereby the animal could asphyxiate itself if it jumped off of the deck.

(9) No person shall allow an animal to be tethered in a manner that allows it to become entangled with another tethered animal.

Sec. 7-14. Animals on sidewalks, grassed areas.

No person shall, while leading, riding or driving any animal, including but not limited to horses, any team or any beast of any kind through the city, permit the same to go upon private property without the owner or occupant's permission or upon any sidewalk or parked margin (commonly called "the parking") of any street or upon any public improved ground, park or grassplot, upon the city trail system, the city park pedestrian and bicycle trail system, the levee

system, city cemeteries or any pedestrian bridge without the express permission of the city. This section shall not apply to dogs and cats.

Sec. 7-15. Animals in food establishment.

No owner shall permit or allow his animal to be in any building, store, restaurant or tavern where food or food products are sold, prepared or dispensed to people other than the owners of said establishments.

Sec. 7-16. Exceptions to sections 7-14, and 7-15.

The provisions of sections 7-14 and 7-15 shall not apply to Seeing Eye dogs, Hearing Ear dogs or service animals as defined by section 7-1, and as required by state and federal law.

Sec. 7-17. Animals not permitted to damage or defile premises.

No owner shall allow or permit his animal to damage or defile public property or the private property of another. Solid waste deposited by an animal on the surfaced portion of public streets and on sidewalks, or other public grounds, and private property shall be immediately removed by the owner of the animal.

Sec. 7-18. Noisy animals.

- (a) No owner shall permit or allow his animal to annoy or disturb reasonable persons by excessive or continuous barking, whining, howling, yelping, braying or the emitting of other loud noises. For purposes of this section, "continuous" shall mean a period of twenty minutes or longer.
- (b) The burden is upon the owner of such animal to maintain quiet.
- (c) Exceptions to this section are farm animals in permitted zones, commercial pet facilities, animal welfare facilities, veterinary hospitals, or grooming parlors otherwise in compliance with this Code, including, but not limited to those who can substantiate that such animal noise was caused by an injury or illness of the animal or by willful trespass, torment, or abuse of the animal on its property by others.

Sec. 7-19. Number of animals restricted.

No person shall keep dogs, cats or other animals in such numbers or in such a manner that their presence shall disturb the peace and comfort of any reasonable person or cause a nuisance, unsanitary premises, a menace or detriment to public health; or the owner is unable or unwilling to provide proper care for the animals as required by this chapter.

Sec. 7-20. Chasing of vehicles.

No owner shall allow or permit his animal to run after or chase persons, bicycles, automobiles or other vehicles.

Sec. 7-21. Animals which bite.

- (a) No animal shall attack, bite, attempt to bite or belligerently pursue any person or other animal without provocation.

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- (b) Provocation shall include the:
- (1) Defense of the property of the owner.
 - (2) Defense of the person of the owner or his immediate family.
 - (3) Defense of the animal itself where subjected to attacks, torture, torment, mishandling or other actions that could reasonably cause such a violent reaction by the animal.
- (c) Provocation shall not include:
- (1) The mere act of entering the premises or dwelling, other buildings or other property of the owner or occupant thereof with either actual or implied consent of the owner or occupant thereof to so enter.
 - (2) Any other action by a person or animal that would not be reasonably deemed to cause such a violent reaction.
- (d) A violation of this section is a simple misdemeanor resulting in a minimum fine of \$100.00.

Sec. 7-22. Confining dogs.

(a) *Shelter.*

- (1) All dogs shall have continuous access to a structurally sound, moisture-proof and windproof shelter large enough to keep the dog reasonably clean and dry.
- (2) A shelter which does not protect the dog from temperature extremes or precipitation, or which does not provide adequate ventilation or drainage, shall not comply with this section.
- (3) A dog's shelter and bedding and other accessible space shall be maintained in a manner which minimizes the risk of the dog contracting disease, being injured or becoming infested with parasites.
- (4) No animal, excluding livestock, shall be kept or confined on property that does not have on it an occupied dwelling or structure, except a person may keep an animal on property contiguous to property having on it an occupied dwelling or structure if such properties are owned or controlled by the same person; however, a person may keep an animal on the premises of an unoccupied business for safety and security purposes.
- (5) No animal shall be kept or confined in or at a placarded property as defined by section 20-3 of this Code.

(b) *Nutrition.*

- (1) It shall be unlawful for any person keeping or harboring any dog to fail, refuse or neglect to provide such dog with clean, fresh, potable water adequate for the dog's size, age, and physical condition. This water supply shall be either free flowing or provided in a removable receptacle that is weighted or secured to prevent tipping.
- (2) It shall be unlawful for any person keeping or harboring any dog to fail, refuse or neglect to provide such dog with wholesome foodstuff suitable for the dog's physical condition and age and in sufficient quantities to maintain an adequate level of nutrition for the dog.

(c) *Exercise.*

- (1) The enclosure or confinement area for dog shall encompass sufficient usable space to keep the animal in good condition.
- (2) When a dog is confined by means of a tether and cable run, the trolley system shall be configured to allow access to the maximum available exercise area; however, no tether and cable run shall be placed in such a location as will permit the dog to pass onto, over or across any of the public sidewalks, streets or alleys within the incorporated limits of the city.
- (3) When a dog is confined outside by means of an enclosure or an electronic containment device, the following minimum space requirement shall be met:
 - a. *Large dog.* For a dog that is larger than 20 inches at the withers or that weighs more than 50 pounds, the minimum confinement area per dog is 100 square feet.
 - b. *Medium dog.* For a dog that is larger than 12 inches at the withers and up to 20 inches at the withers or that weighs over 20 pounds and up to 50 pounds, the minimum confinement area per dog is 80 square feet.
 - c. *Small dog.* For a dog that is 12 inches or less at the withers or that weighs 20 pounds or less, the minimum confinement area is 50 square feet.

(d) *Penalty.*

- (1) A violation of this section is a simple misdemeanor resulting in a minimum fine of \$100.00.

ARTICLE II. IMPOUNDMENT AND DISTRAINT

Sec. 7-23. Persons finding animals at-large.

It shall be lawful for any person who finds an animal at-large on public or private property to seize and hold the animal. Any persons so seizing and holding an animal may restrain the animal on their premises by an adequate protective fence or by leash, cord or chain that does not allow the animal to go beyond their real property line. The person seizing and holding the animal shall immediately notify the police department and shall be responsible for the humane treatment of the animal while it is under that person's custody until picked up by the community service officer. If the animal is unclaimed by its owner after five days, the person who found the animal may claim the animal after paying the appropriate fees.

Sec. 7-24. Impoundment generally.

- (a) The chief of police or community service officer, in their stead, will impound animals found running at-large.
- (b) Any dog or cat or other animal at-large in the city shall be taken by the community service officer and impounded at the animal control shelter and there confined in a humane manner.

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- (c) Upon the impounding of any animal, the owner, if known, shall be notified of such impoundment by telephone or by a door tag or by a letter mailed to the known owner at his last known address. Registry of impounded dogs shall be available for inspection during reasonable hours by the public, which said registry shall show date and manner of notice, if any. Notice shall be deemed given upon telephone contact with owner or attaching a door tag to the owner's residence or by depositing the notice in the U.S. mail.
- (d) With proper identification, the owner, their agent, employee or member of their immediate family, of an impounded animal shall be entitled to resume possession of such animal, before the lapse of the five-day time limit set out in subsection (e) of this section unless the animal is required to be kept for the ten-day period as set out in section 7-25(e), on the following conditions:
- (1) The owner shall present proof of purchase of current city dog license tag if reclaiming a dog and show proof of current rabies vaccination if reclaiming a dog or cat, or the owner must obtain such vaccination; and
 - (2) The owner must pay the impoundment fee and all veterinary fees reasonably incurred by the city for the care of his animal. Fees for impoundment and care of an impounded animal shall be set by city council resolution and may be revised as necessary.
- (e) It shall be the duty of the animal control shelter to keep all such animals so impounded for a period of five days after the owner has been notified as provided in subsection (c) of this section unless the owner redeems and reclaims said animal before the lapse of five days. If after five days following notice to the owner of the impounding of the owner's animal, or if the owner is unknown, then five days after the impoundment of such animal, the animal has not been claimed and redeemed as provided in this section, the animal control shelter shall update the city of the status of the animal. Following this period, said unclaimed animal shall become the property of the city and may be given by the city to an organization or governmental entity operating an animal control shelter, if the city is not operating the shelter, and may be humanely destroyed or placed for adoption.
- (f) Any animal which appears to be suffering from rabies or other disease communicable to humans when impounded shall be confined in the animal control shelter or a veterinary hospital or clinic for a period of not less than ten days from impoundment, and said animal, or its carcass if it dies, shall be subject to such reasonable medical or pathological tests as the veterinarian or community service officer shall recommend, which tests, if any, shall be conducted at the expense of the owner. If an animal is determined to be infected with rabies, it shall be destroyed or disposed of as directed by the chief of police or the community service officer; if not so infected with rabies, it may be reclaimed by the owner and if not shall become city property and said organization or governmental entity operating the animal control shelter may place it for adoption, or it may be disposed of by humane means.
- (g) No person may claim or redeem any animal as provided in subsection (d) of this section or section 7-25 until the fees and charges as required by subsection (d)(2) of this section are paid and the animal is currently licensed and vaccinated as required herein.
- (h) From time to time there may be established by resolution of the city council, a schedule of fees to defray the costs of caring for impounded animals. Failure or refusal by the owner of an impounded animal to pay such fees shall constitute a violation of this section.

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- (i) This section shall not apply to high risk, dangerous, or vicious animals as provided in this chapter.

Sec. 7-25. Impoundment of infected animals.

- (a) It shall be the duty of the owner of any animal or any person having knowledge of such animal having rabies or attacking, belligerently pursuing, or biting any person in the city to promptly report such fact to the community service officer.
- (b) It shall be the duty of every veterinarian in the city to report to the community service officer any diagnosis of rabies in an animal made by the community service officer or under their supervision.
- (c) It shall be the duty of every physician or nurse to immediately inform the community service officer of the name and address of any person treated for bites inflicted by an animal, together with such other information as will assist in the prevention of rabies or other disease, and the identification and apprehension of the biting animal.
- (d) The community service officer shall report all instances reported to them pursuant to the requirements of subsections (a) and (b) of this section to the chief of police of the city.
- (e) Upon demand by a peace officer or the community service officer, the owner shall forthwith surrender any animal which has bitten, attacked or belligerently pursued any person for supervised quarantine in the animal control shelter or veterinary hospital or clinic at the expense of the owner. The animal shall remain confined for a minimum period of ten days under the observation of a licensed veterinarian.
- (f) When evidence is presented that such animal is currently inoculated against rabies, the community service officer, at their discretion, may give written order to confine the animal in the home of its owner, or in such a manner so as to prohibit the animal from coming into contact with or biting any other person or animal, for a minimum of ten days; provided, however, that the owner is willing to comply with the terms of the order, and the owner has the means to adequately confine said animal. The owner shall comply with said order until written release from the required quarantine is obtained from the community service officer.
- (g) Any animal which has bitten, attacked or belligerently pursued any person if deemed necessary by a peace officer or the community service officer shall be examined by a licensed veterinarian, and a written report of the animal's clinical condition shall be forwarded to the community service officer within 24 hours.
- (h) At the end of the confinement period, the veterinarian shall reexamine the animal and submit to the community service officer a written report of the animal's final clinical condition, recommending whether or not the quarantine should be terminated.
- (i) No owner of any animal known to have bitten or caused a skin abrasion upon any person shall euthanize, sell, give away, or transport from this city or otherwise dispose of such animal, until written release from the required quarantine for such animal is obtained from the community service officer.

Sec. 7-26. Control of disease outbreak.

Whenever it becomes necessary to safeguard the public from the dangers of hydrophobia or rabies, the mayor, if they deem it necessary, shall issue a proclamation ordering every owner of an animal to confine the same securely on the owner's premises at all times, for such period as deemed necessary.

State law reference(s)—City may provide additional measures for restriction of dogs for control of rabies, I.C.A. § 351.41.

ARTICLE III. LICENSING AND VACCINATION

Sec. 7-27. License required.

The owner of any dog four months old or over, except dogs kept in kennels for the purpose of breeding and sale or in shelter care facilities licensed by the state, shall be responsible for applying for and acquiring a license for such dog as of January 1 of each year.

Sec. 7-28. Application.

- (a) The owner of any dog for which a license is required shall, on or before January 31 of each year, apply in writing on forms provided by the city clerk for a license for each dog owned by the applicant, which application form shall be signed by the owner. The application shall show the breed, sex, age, color, approximate weight, markings, whether the dog is spayed or neutered, and name of the dog and the address and telephone number of the owner.
- (b) Applications for a license for dogs over which ownership is acquired after January 31 or which dog has reached the age of four months shall be made within one month from the date of acquisition, or within one month after the dog reaches the age of four months.
- (c) No dog shall be licensed hereunder unless there is submitted by the owner evidence that the dog has a current rabies vaccination certificate as required by section 7-34 and the certificate of vaccination has been signed by a licensed veterinarian.

Sec. 7-29. Exemptions.

- (a) The license fees hereinafter provided shall not apply to dogs owned by nonresidents temporarily within the city for a period of not more than 30 days, but shall apply to the dogs of any owner becoming a resident of the city within 30 days after establishing such residence.

Sec. 7-30. License fee.

An individual dog license fee per calendar year or fraction thereof shall be adopted by council resolution. The head of the family shall be liable for payment of the license fee on any dog owned, harbored or kept by any member of the family. A penalty, as set by council resolution, shall be added to the license fee if not paid prior to February.

Sec. 7-31. Issuance of tags.

When a dog is registered for licensing, a record of the breed, color, name of dog and name of owner, together with the number of the license issued, shall be made of record in the city clerk's office. The city clerk, police department, animal control shelter, or veterinarians shall issue a license tag for each dog licensed, and such license tag shall be securely fixed to a suitable collar or harness on each dog licensed and worn by such dog at all times. A list of issued licenses shall be turned into the city clerk monthly to be compiled into an inclusive list of licensed dogs.

Sec. 7-32. Tag not transferable.

The dog tags required by this article shall not be transferable from one dog to another, and no refund shall be made on any dog license fee because of the death of the dog or by reason of the owner leaving the city before the expiration of the license period.

Sec. 7-33. Duplicate tag.

Upon the filing of an affidavit that the license tag has been lost or destroyed, the owner may obtain another tag on the payment of \$1.00. The city clerk shall keep a proper record of the issuance of duplicate tags.

Sec. 7-34. Rabies vaccination required for dogs and cats.

The owner of all dogs and cats four months old or older shall obtain a current rabies vaccination for such animal from a licensed veterinarian and obtain a tag evidencing the same. Said vaccination tag shall be attached to a substantial collar or harness on the animal by the owner and shall at all times be kept on the animal for which the vaccination was given.

Sec. 7-35. Revocation of License.

Every license shall be subject to revocation for any violation of the provisions of this chapter or of any other pertinent ordinance of the city, or of any statute or regulation of the state of Iowa pertaining hereto. Notice of such revocation shall be given in writing, delivered personally or by regular mail to the holder of such permit.

Sec. 7-36. Appeal.

The city administrator may hear and determine any matter pertaining to the issuance or revocation of a license, as herein provided, upon application or request to so do by the applicant or license holder. An appeal under this article shall be filed with the city clerk in writing within twenty days of the denial or revocation of a license.

Sec. 7-37. Removal of Animals.

If animals or fowl are found being kept without a permit or license having been issued, the community service officer shall be authorized to immediately impound the animals or fowl. The owner of the impounded animals or fowl shall be responsible for all impound and boarding fees. In the event of the revocation of any permit or license, as herein provided, the holder of

such permit shall remove all animals or fowl from the premises concerned within fifteen days after receipt of notice or revocation, as by this chapter provided; subject to the condition, however; that in the event application shall be made to the city administrator for determination as to the matter of revocation of any such permit, the period of time for removal of such animals or fowl shall be extended until ten days after affirmation of the revocation by the city administrator if such affirmation be granted.

ARTICLE IV. ANIMAL CONTROL

Sec. 7-38. Disposition of Vicious or High Risk Animals.

- (a) Any animal suspected of being or previously determined to be vicious or high risk shall be seized by a community service officer and impounded in the animal shelter. In the event the animal cannot be caught by a community service officer without exposing the officer or citizens to danger or personal injury, a peace officer or community service officer is authorized to humanely destroy the animal. This section shall not apply to a vicious animal which is housed or otherwise kept outside the limits of the city, which is brought into the city for the sole purpose of receiving medical care in a bona fide, licensed veterinarian hospital or clinic for treatment.
- (b) An animal suspected of being high risk may be reclaimed by the owner of the animal upon payment of impounding and boarding fees, and presentation of proof to the chief of police or their designee of compliance with the requirements of this article, with the exception of the spay and neuter requirement.
- (c) An animal suspected of being vicious may be reclaimed by the owner of the animal upon:
 - (1) Payment of impounding fees,
 - (2) Presenting proof to the chief of police that the animal shall be relocated outside the corporate limits of Ottumwa, and
 - (3) Signing an agreement with the city that authorizes seizure and immediate disposition of the animal in accordance with law and without further notice, in the event the animal, while considered vicious, is subsequently returned to any place within the corporate limits of Ottumwa.
- (d) If an owner refuses the community service officer entry upon property to view or seize an animal suspected of being vicious or high risk, the officer may request a search warrant through the city attorney or their designee from a judge or magistrate. Such requests shall detail the reason why the warrant is necessary and why the community service officer has reason to believe a violation of this article exists.
- (e) Any animal previously determined to be a vicious animal which is seized or impounded within the city shall be disposed of in accordance with law without any further notice to the owner, if any.

Sec. 7-39. Determination of a High Risk or Vicious Animal.

The determination of a high risk or vicious animal shall be in accordance with the following procedures:

- (a) The community service officer or peace officer, upon investigation of an incident alleging a bite or attack in violation of Section 7-21 may deem the animal(s) involved in the violation high risk or vicious. The chief of police or their designee shall issue a written notice to the owner that the owner's animal has been deemed high risk or vicious, as applicable. The owner of the animal deemed high risk or vicious may appeal the decision within ten days, as provided below.
- (b) The owner of the animal may redeem the animal as provided in this chapter, as applicable. The animal shall be considered high risk or vicious (as applicable), pending the outcome of an administrative appeal as provided herein.
- (c) Appeal. The owner whose animal is deemed to be high risk or vicious may appeal the determination to the city administrator within ten days from the date of the decision. The city administrator shall schedule a hearing within seven days from the receipt of the notice. The appeal shall stay the decision of the chief of police or their designee unless the city administrator directs otherwise. At the public hearing, the city administrator or their designee shall serve as hearing officer. The applicant shall have the opportunity to present evidence or arguments the applicant may have as to why the decision of chief of police or their designee appealed from should not be approved by the city administrator. The city administrator shall render a written decision on the appeal within seven days after the hearing. The findings of the city administrator or the city administrator's designee as hearing officer shall be conclusive. The parties may extend the time limits set forth herein by mutual agreement.
- (d) The determination of an animal to be high risk or vicious shall become permanent if no administrative appeal is sought, or if administrative appeal proceeding results in affirming the high risk or viscous determination.

Sec. 7-40. High Risk Animals.

It shall be unlawful for any person to own, keep, or harbor a high risk animal within the city limits unless the high risk animal is kept in accordance with this article. A violation of this section is a simple misdemeanor resulting in a minimum fine of \$100.00.

Sec. 7-41. Regulation of Keeping High Risk Animals.

- (a) All owners of high risk animals, as defined in subsection 7-1, whether licensed or unlicensed, are required to keep such animal:
 - (1) From running at large;
 - (2) From going into the streets and other public or private place within the city unless muzzled, on a leash six (6) feet or less in length, and under the control of an individual eighteen (18) years of age or older;
 - (3) From being leashed to an inanimate object such as trees, posts, and buildings;

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- (4) Under control as to prevent such animal from attacking or injuring persons, domestic animals, fowl, or livestock lawfully on the premises of the owner.
- (b) While on the owner's property a high risk animal must be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the high risk animal from escaping. Such pen or structure must have minimum dimensions of five feet by ten feet (5' x 10') with height of six feet (6'), and must have secure sides and be capped if need be. The enclosure must also provide the high risk animal protection from the elements. Warning signs must be placed on all sides of the property and at least two feet (2') from any entrance to the property. The warning signs must say "Dangerous Dog" or similar language adequate to warn those approaching.
- (c) If the high risk animal owner lives in rental property, the high risk animal owner must obtain the landlord's written permission to keep a high risk animal on the premises.
- (d) A community service officer or peace officer may, in his or her discretion, prior to the high risk animal's authorized use, inspect the securely enclosed locked pens, signage, and structures.
- (e) A high risk animal's owner must receive an annual certificate of registration or license from the Police Department of the City of Ottumwa. The certificate or license will be issued upon the owner establishing to the satisfaction of the Department that it has met the following criteria:
- (1) The owner or caretaker of the high risk animal must be eighteen (18) years of age or older and has the physical ability to control the animal.
 - (2) The owner presents a certificate of insurance issued by an insurance company licensed to do business in the State of Iowa providing personal liability insurance as in a homeowner's policy, with a minimum liability amount of \$100,000.00 for the injury or death of any person, for damage to property of others and for acts of negligence by the owner or his or her agents. The certificate shall require notice to the city, in conformity with general city standards for certificates of insurance, if the underlying policy of insurance is cancelled for any reason. In lieu of such a certificate, a copy of a current homeowner's policy designating these requirements shall be sufficient proof of insurance for purposes of this subsection. If a certificate of insurance or policy is not immediately available, a binder indicating the coverage may be accepted for up to thirty (30) days subsequent to the determination that a dog is high risk; however, if after thirty (30) days a certificate of insurance or a policy has not been submitted or the insurance coverage is cancelled, the animal shall be deemed unregistered or unlicensed and subject to immediate impoundment or removal from the corporate limits of the city.
 - (3) The high risk animal has a current rabies vaccination at the owner's expense.
 - (4) The high risk animal has been spayed or neutered by a veterinarian at the owner's expense.
 - (5) The high risk animal has been microchipped by a veterinarian at the owner's expense. The data attached to the microchip must be kept current.

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- (6) The high risk animal has been photographed for identification purposes.
 - (7) If the high risk animal is a dog, a current license issued through the city.
 - (8) The owner has a proper enclosure to prevent the entry of any person or animal and the escape of said high risk animal.
- (f) The owner of a high risk animal, as defined in subsection 7-1, shall have ten (10) days to comply with the provisions of this section once said animal satisfies the elements of subsection 7-1.
 - (g) The owner or caretaker of a high risk dog shall immediately notify the Police Department if the dog is on the loose, is unconfined, has attacked another animal, has attacked a human being, has died or has been sold or given away. If a high risk dog has been sold or given away, the former owner or caretaker shall immediately notify the Police Department of the identity and address of the new owner or caretaker.
 - (h) The owner of the high risk dog shall be required to successfully complete a Behavior Consultation at the owner's expense within sixty (60) days after receiving notification declaring the dog "high risk." The owner shall be required to provide written documentation proving successful completion of the Behavior Consultation to the Police Department including a certification or receipt bearing the name of the consultant and the dates of the consultation.
 - (i) An owner or caretaker of any dog declared high risk found to be in violation of this code, is willfully in violation or is unable to meet the requirements of this chapter, shall be automatically escalated to a classification of a dangerous dog and ordered to confine the animal according to the provisions of 7-43. Failure to abide by this section shall result in an additional order in writing to safely remove the dog from the city or humanely destroy the animal within ten (10) days.
 - (j) The owner of a high risk dog shall be denied a permit for the dog to enter any public park or park designated as a dog park in the City of Ottumwa.
 - (k) The owner of a high risk dog may request to have the declaration reconsidered by the city administrator and police chief after a minimum of one year. If it is determined that there have been no further violations of this chapter, confinement precautions have been taken, and proper training has occurred, the declaration of high risk may be removed.

Sec. 7-42. Impoundment of High Risk Animals.

- (a) The community service officer or their designee shall immediately seize and impound any high risk animal if:
 - (1) The animal is not licensed as required by section 7-41; or
 - (2) The owner does not secure the animal in a proper enclosure; or
 - (3) The animal is outside the proper enclosure and not under physical restraint of a responsible person eighteen (18) years or older by a leash no longer than six (6) feet or not muzzled.
- (b) Impoundment and Disposition

First Offense: The first time a high risk animal is seized under this section it may be reclaimed by the owner of the animal upon payment of impoundment and boarding fees, and presentation of proof to the community service officer that the requirements of this chapter have been met. An animal not reclaimed within five (5) days may be disposed of as provided under section 7-24, and the owner is liable to the city for costs incurred in confining and disposing of the animal.

Second Offense: The second time a high risk animal is seized under this section it may be reclaimed by the owner upon payment of impounding and boarding fees, and presentation of proof, which shall include a signed affidavit from the person taking custody of the animal, to the community service officer that the animal will be removed from the City. An animal not reclaimed within five (5) days may be disposed of as provided under section 7-24, and the owner is liable to the city for costs incurred in confining and disposing of the animal.

Third Offense: The third time a high risk animal is seized under this section it shall be euthanized and the owner shall be liable to the city for the costs incurred in confining and disposing of the animal.

- (c) Any animal believed by the police chief, the chief's designee, or the community service officer to be a high risk animal shall be impounded, at the owner's expense, until such time as a final resolution is reached or until such time the animal is reclaimed by the owner of the animal upon payment of impounding and boarding fees, and presentation of proof to the community service officer that the requirements of this chapter will have been met.

Sec. 7-43. Keeping of Dangerous Animals Prohibited – Exceptions and Regulations.

- (a) It shall be unlawful for any person to keep, shelter, or harbor for any purpose within the city a dangerous animal or dangerous animal hybrid, as defined in section 7-1, except for the following:
 - (1) Service animals as defined by section 7-1, and as required by state and federal law.
 - (2) in a public zoo, bona fide educational or medical institution, museum, or other place where they are kept as live specimens for the public to view, or for the purpose of instruction or study;
 - (3) for exhibition to the public by circus, carnival, exhibit, show or pet shop;
 - (4) in a bona fide, licensed veterinarian hospital for treatment;
 - (5) at an animal control center where such animals have been impounded and until such animals may be removed from the city limits in a safe manner or humanely disposed of in accordance with any applicable law.
- (b) Every person, firm, or corporation owning, keeping, sheltering, or harboring a dangerous animal in accordance with this section shall report such fact to the Ottumwa Police Department and to the community service officer, along with the following information:
 - (1) The name of the species of any such animal;

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- (2) The number of any such animals kept on the premises.
 - (3) A physical description of any such animal, including any pet name to which it might respond;
 - (4) The location of any such animal or animals within the city, including the location of the cage or place of confinement upon in said premises wherein said animal or animals are kept;
 - (5) In the case of dangerous animals that are poisonous or venomous, the location of the nearest source of anti-venom for that species.
- (c) Every person, firm, or corporation owning, keeping, sheltering, or harboring a dangerous animal shall at all times keep such animals securely confined within a cage or other enclosure as defined in Section 7-41(b).
 - (d) No person, firm, or corporation owning, keeping, sheltering, or harboring a dangerous animal shall permit or allow such animal to enter upon or traverse any public property, park property, public right-of-way, or the property of another, except when such animal is being transported while caged or confined.
 - (e) In the event that a dangerous animal is found at large and unattended upon public property, park property, public right-of-way, or the property of someone other than its owner, such animal may, in the discretion of the city administrator or the city administrator's designee, or the chief of police, be destroyed if it cannot be confined or captured, thereby creating a hazard to life or property. The City, its officers and employees shall be under no duty to attempt to confine or capture a dangerous animal found at large, no shall it have the duty to notify the owner of such animal prior to its destruction.
 - (f) Any animal believed by the police chief, their designee, or the community service officer to be a dangerous animal shall be impounded, at the owner's expense, until the dangerous determination becomes final resulting from administrative procedures as provided herein or until the animal is reclaimed by the owner of the animal in accordance with the provisions of this chapter.
 - (g) Appeal. The owner whose animal is deemed to be dangerous may appeal the determination to the city administrator within ten days from the date of the decision. The city administrator shall schedule a hearing within seven days from the receipt of the notice. The appeal shall stay the decision of the city employee unless the city administrator directs otherwise. At the public hearing, the applicant shall have the opportunity to present evidence or arguments the applicant may have as to why the action of employee appealed from should not be approved by the city administrator. The city administrator shall render a written decision on the appeal within seven days after the hearing. The findings of the city administrator or the city administrator's designee as hearing officer shall be conclusive. The parties may extend the time limits set forth herein by mutual agreement.
 - (h) The determination of an animal to be dangerous shall become permanent if no administrative appeal is sought, or if administrative appeal proceeding results in affirming the dangerous determination.

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- (i) A violation of this section is a simple misdemeanor resulting in a minimum fine of \$100.00.

Sec. 7-44. Vicious Animals - Duty of Owner.

- (a) It shall be unlawful for any person to own, keep, or harbor a vicious animal within the city. All owners of vicious animals, whether licensed or unlicensed, as defined in subsection 7-1 are required to microchip and remove the animal from the city limits within ten (10) days of the determination of the community service officer or community service officer's designee that the animal is vicious. Alternatively, the owner may authorize the euthanasia of the animal. If the owner refuses to remove the animal from the city or authorize the euthanasia of the animal, the City shall euthanize the animal at the owner's expense. This chapter shall not apply to dogs owned by a law enforcement agency or other federal, state, or local government agencies.
- (b) The police chief, their designee, or the community service officer, may cause the animal to be impounded and destroyed without notice to the owner if the animal has previously been removed from the city as a vicious animal and is found within the city. If the animal has actually bitten or attacked a person, a domestic animal, fowl, or livestock the community service officer may send the head of the animal to an appropriate facility for the purpose of determining if it was rabid. The cost of the transportation and the report shall become an obligation of the owner and the City may seek reimbursement in any lawful manner.
- (c) Subsequent to the summary destruction of any animal, the community service officer shall make a reasonable effort to determine whether persons have had any contact with the destroyed animal and, where appropriate, advise them of any unfavorable report concerning the animal's condition.
- (d) Any animal believed by the police chief, their designee, or the community service officer to be a vicious animal shall be impounded, at the owner's expense, until the vicious determination becomes the final resulting from administrative procedures as provided herein or until the animal is reclaimed by the owner of the animal in accordance with the provisions of this chapter.
- (e) A violation of this section is a simple misdemeanor resulting in a minimum fine of \$100.00.

Sec. 7-45. Community Service Officer Notification.

- (a) Owners or caretakers of high risk or vicious animals shall notify the Ottumwa Police Department, and the community service officer of the following:
 - (1) Immediate notification upon the escape of a high-risk or vicious animal, if the animal is on the loose, or if the animal is unconfined;
 - (2) Immediate notification if a high risk or vicious animal has attacked a human being, domestic animal, fowl, or livestock.

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- (3) Notification within twenty-four (24) hours if the animal has been sold or has been given away and the owner or caretaker shall also provide the community service officer of the community service officer's designee with the name, address, and telephone number of the new owner or caretaker of the high risk or vicious animal;
 - (4) Notification within five (5) business days if the animal has died or been euthanized.
- (b) Failure to comply with the provisions of this section shall be unlawful. A violation of this section is a simple misdemeanor resulting in a minimum fine of \$100.00.

Sec. 7-46. Irresponsible Animal Owners.

- (a) The determination of an "irresponsible animal owner" shall be in accordance with the following procedures:
- (1) The police chief, their designee, or the community service officer, upon being satisfied that an owner is an irresponsible animal owner, shall cause to be served upon the owner a written notice of said determination.
 - (2) The written notice shall contain:
 - a. A finding that the owner is an irresponsible animal owner;
 - b. A description of the acts relied upon in determining the owner is an irresponsible animal owner;
 - c. A copy of this section of the municipal code and the definition of "irresponsible animal owner" under section 7-1; and
 - d. A statement advising the owner of the right to request a hearing as provided by subsection (4) within a stated time which shall be reasonable under the circumstances.
 - (3) Notice. Notice shall be by personal service or by certified mail to the owner.
 - (4) Request for hearing and appeal. Any owner advised that the owner is declared an irresponsible animal owner may have, upon request, a hearing before the city administrator and with the officials making said determination as to whether the owner is an irresponsible animal owner. A request for a hearing must be made in writing and delivered to the office of the city administrator or the city administrator's designee within the time stated in the notice or it will be conclusively presumed that the owner is an irresponsible animal owner.
- (b) The city administrator or the city administrator's designee will act as the hearing officer. At the conclusion of the hearing or within three (3) days thereafter, the hearing officer shall render a written decision as to whether the owner is an irresponsible animal owner. An appeal from this decision may be had by filing a written notice with the hearing officer. This appeal will be heard before the city council at a time and place fixed by the council. The findings of the council shall be conclusive.

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- (c) If an owner is declared to be an irresponsible animal owner the owner shall be banned from having animals within the city limits of the City of Ottumwa. A violation of this section is a simple misdemeanor resulting in a minimum fine of \$100.00.
 - (d) The police chief, their designee, or the community service officer shall cause any animal to be impounded if an owner has been declared an irresponsible animal owner and is found to have an animal within the city.
 - (e) The police chief or the community service officer may order the destruction or adoption of any animals impounded under this section.
 - (f) A person who has been declared to be an irresponsible animal owner may request to have the declaration reconsidered by the city administrator and police chief after a minimum of five years. If the person can demonstrate that they are able to appropriately care for an animal, the declaration of irresponsible animal owner may be removed.

ARTICLE V. ENFORCEMENT

Sec. 7-47. Failure to license or vaccinate.

Any person who fails to license or vaccinate any animal as required by this chapter shall be guilty of a municipal infraction and shall be subject to a fine not to exceed that amount allowed by section 1-53.

Sec. 7-48. Penalties.

Except where hereinabove provided otherwise, the violation of any provision of this chapter shall be charged as a municipal infraction with a civil penalty of \$250.00 for first violation, \$500.00 for the second violation and \$750.00 for third and subsequent violations. Each day any violation of any provision of this chapter shall continue shall be considered a separate offense.

Sec. 7-49. Duty to Investigate.

The community service officer or their designee shall promptly investigate all reported cases of neglect, injury, or cruelty and shall take action as necessary, provided a violation of the Ottumwa City Municipal Code or state law is present.

Sec. 7-50. Entry onto Property.

The following steps may be taken to make entry onto or gain entry into private property for the purposes of enforcement of this code:

- (a) If the animal is located outside the residence, the animal shall be removed and impounded if the animal is in imminent danger or further injury may occur. A search warrant shall be obtained pursuant to 7-38 unless exigent circumstances exist including but not limited to the degree of imminent danger to the animal, i.e. whether in the opinion of the veterinarian the animal will suffer serious injury or death if care or

treatment are delayed and there is insufficient time to secure consent from the owner or caretaker or to obtain a search warrant. Notification of impoundment shall be given to the owner or caretaker in person or in writing upon removal of the animal.

- (b) If the animal is located outside the residence, but is not in imminent danger or further injury will not occur to the animal, corrective measures may be placed upon the owner or caretaker. Failure to comply with the corrective measures shall result in the animal being removed from the residence and impounded at the animal shelter or veterinarian. Notification of impoundment shall be given to the caretaker in person or in writing upon removing the animal.
- (c) If the animal is located within the residence, a search warrant shall be obtained to gain legal entry into the residence and the animal shall be removed and impounded at the animal shelter or veterinarian if the animal is in imminent danger or further injury may occur. Notification of impoundment shall be given to the owner or caretaker in person or in writing upon removal of the animal.
- (d) If the animal is located within the residence, a search warrant shall be obtained to gain legal entry into the residence. If said animal is found not to be in imminent danger or further injury will not occur to the animal, corrective measures may be placed upon the owner or caretaker. Failure to comply with said corrective measures shall result in the animal being removed from the residence and impounded at the animal shelter or veterinarian upon service of an additional search warrant. Notification of impoundment shall be given to the owner or caretaker in person or in writing upon removing said animal.

SECTION TWO. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion hereof.

SECTION THREE. Repealer. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION FOUR. Effective. This Ordinance shall be in full force and effect, from and after its passage, adoption, and approval and publication as required by law, unless a subsequent effective date is set out hereinabove.

SECTION FIVE. When this ordinance is in effect, it shall automatically supplement, amend, and become a part of the said Code of Ordinance (Municipal Code) of the City of Ottumwa, Iowa.

PASSED on its first consideration the _____ day of _____, 2022.

PASSED on its second consideration the _____ day of _____, 2022.

Requirement of consideration and vote at two (2) prior Council meetings suspended the _____ day of _____, 2022.

APPROVED this _____ day of _____, 2022.

CITY OF OTTUMWA, IOWA

By: _____

Richard W. Johnson, Mayor

_____ No action taken by Mayor.

_____ Vetoed this _____ day of _____, 2022

Richard W. Johnson, Mayor

_____ Repassed and adopted over the veto this _____ day of _____, 2022.

_____ Veto affirmed this _____ day of _____, 2022 by failure of vote taken to repass.

_____ Veto affirmed no timely vote taken to repass over veto.

ATTEST:

Chris Reinhard, City Clerk