

The Cresco City Council met in special session on April 6, 2015, at 5:30 pm at City Hall. Council Members Carman, Bouska, McGee and McCarville were present. Loveless was absent.

The worksession was called to order to discuss an offer from Skyline Construction regarding changes to the contract for the Granger Road Project. Engineers Bill Angerman and Daren Sikkink from WHKS, Mayor Bohle, PWD Freidhof and City Clerk Girolamo were also present.

Bill Angerman explained that the original contract for the Granger Road project had a completion date of October 31, 2014 and that liquidated damages of \$1,500 per day would be charged for each day that it was late. There is a winter period during which no construction could be completed so liquidated damages cannot accrue. The liquidated damages were calculated to be \$148,500 from November 1 through December 2, 2014 and April 1 through June 6, 2015.

The Public Works Committee met March 31st with Keith Bruening, Jesse Delaney and Brian Balk of Skyline Construction. Skyline submitted a calendar outlining the proposed work and the dates the work will be done. The proposed new completion date would be June 6, 2015. Keith Bruening stated that he thought the liquidated damages were an excessive amount. He pointed out that court cases have ruled that liquidated can only be collected for the amount that can be proven as actual costs to the City due to the delay in the project. He offered to settle with the City by paying \$25,000 and putting a \$25,000 credit on account for the City to use.

Girolamo informed the Council that she had consulted Attorney James Wainwright of Ahlers & Cooney (the City's attorney for the street assessment project). The legal advice he quoted from Iowa court cases stated that Courts will not enforce a liquidated damage provision that amounts to a penalty. Liquidated damages must compensate for loss rather than punish for breach of contract. There should be a reasonable relation to the actual damages incurred.

Council discussed the many complaints that everyone has been dealing with due to project not being completed on time and that it wasn't started on time. They discussed actual expenses incurred such as lost interest, extra staff time, and additional engineering and legal fees etc.

The Council instructed Angerman to offer to do a change order for the contract at the regular Council meeting. The change order would accept June 6, 2015 as the revised completion date and would reduce the contract amount by \$75,000 with an additional credit on account of \$25,000. The consensus was that if the offer was refused by Skyline that the Mayor, PWD and City Clerk should meet with Skyline to work out the details.

Carman moved to adjourn at 6:08 pm. Bouska seconded and it passed all ayes. The next regular Cresco City Council meeting will be at 7:00 pm on April 6, 2015 at Cresco City Hall.

Mayor Mark Bohle

City Clerk Michelle Girolamo