

NOTICE AND CALL OF PUBLIC MEETING

GOVERNMENTAL BODY: THE CITY COUNCIL OF CRESCO, IOWA

DATE OF MEETING: SEPTEMBER 5, 2012

TIME AND PLACE OF MEETING: 7:00 P.M. AT CRESCO CITY HALL

PUBLIC NOTICE IS HEREBY GIVEN THAT THE ABOVE MENTIONED GOVERNMENTAL BODY WILL MEET AT THE DATE, TIME AND PLACE SET OUT ABOVE. THE TENTATIVE AGENDA FOR SAID MEETING IS AS FOLLOWS:

ROLL CALL: CARMAN, BOUSKA, McGEE, McCARVILLE, LOVELESS

ACT ON THE CONSENT AGENDA: All items listed under the consent agenda will be enacted by one motion. There will be no separate discussion of these items unless a request is made prior to the time council votes on the motion.

1. Approval of the Agenda
2. Approval of the Claims
3. Approval of Minutes from August 20, 2012
4. Approval of Class C Liquor License (LC) (Commercial) with Sunday Sales to Teluwut 2 LLC d/b/a Teluwut Grille House & Pub
5. Approval of Special Class C Liquor License (BW) (Beer/Wine) with Outdoor Service to Cresco Chamber of Commerce d/b/a Norman Borlaug Harvest Fest
6. Approval of Excavator's License for Irvin Holub d/b/a Holub Nursery
7. Approval of Parade Permit September 21, 2012 for the Homecoming Parade

STAFF REPORTS: There may be action taken on each of the items listed below.

1. Public Works
2. Police
3. Administration

BUSINESS: There may be action taken on each of the items listed below.

1. Public Hearing for City Budget Amendment for Fiscal Year Ending 6/30/13
2. Resolution Amending the Current Budget for the Fiscal Year Ending 6/30/13
3. Resolution Proclaiming September 17 – 23, 2012 as Constitution Week
4. Resolution Authorizing the Mayor to Enter into a Professional Services Agreement with WHKS & Co.
5. Resolution Adopting a Standard Rule Regarding the Effect of a Council Member's Abstention when not Required by a Conflict of Interest
6. Resolution to Approve and Adopt the Annual City Street Financial Report from July 1, 2011 to June 30, 2012
7. Resolution to Approve the Motion to Accept the WWTP Biosolids Handling and Storage Improvements Project
8. Resolution Changing Speed Zones on Certain City Streets
9. Request for City to Install Street Light on Royal Oaks Drive
10. Update Code Of Ordinances
 - Chapter 63 Speed Regulations (63.10, 63.11 & 63.12)

COMMENTS FROM AUDIENCE:

ADJOURN:

THIS NOTICE IS GIVEN AT THE DIRECTION OF THE MAYOR PURSUANT TO CHAPTER 28A, CODE OF IOWA AND THE LOCAL RULES OF SAID GOVERNMENTAL BODY. POSTED AUGUST 31, 2012.

**NOTICE OF PUBLIC HEARING
AMENDMENT OF CURRENT CITY BUDGET**

The City Council of Cresco in HOWARD County, Iowa

will meet at City Hall

at 7:00 pm on September 5, 2012

, for the purpose of amending the current budget of the city for the fiscal year ending June 30, 2013

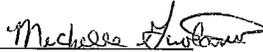
by changing estimates of revenue and expenditure appropriations in the following functions for the reasons given. Additional detail is available at the city clerk's office showing revenues and expenditures by fund type and by activity.

		Total Budget as certified or last amended	Current Amendment	Total Budget after Current Amendment
Revenues & Other Financing Sources				
Taxes Levied on Property	1	1,742,244		1,742,244
Less: Uncollected Property Taxes-Levy Year	2			0
Net Current Property Taxes	3	1,742,244	0	1,742,244
Delinquent Property Taxes	4			0
TIF Revenues	5			0
Other City Taxes	6	491,328		491,328
Licenses & Permits	7	12,565		12,565
Use of Money and Property	8	63,783		63,783
Intergovernmental	9	528,805	42,500	571,305
Charges for Services	10	2,152,200		2,152,200
Special Assessments	11			0
Miscellaneous	12	151,629	39,500	191,129
Other Financing Sources	13	1,171,500	151,000	1,322,500
Total Revenues and Other Sources	14	6,314,054	233,000	6,547,054
Expenditures & Other Financing Uses				
Public Safety	15	840,920	50,000	890,920
Public Works	16	1,306,275	54,600	1,360,875
Health and Social Services	17	4,000		4,000
Culture and Recreation	18	1,031,814	43,000	1,074,814
Community and Economic Development	19	199,700	25,000	224,700
General Government	20	375,005	3,000	378,005
Debt Service	21	340,600		340,600
Capital Projects	22	255,000	161,000	416,000
Total Government Activities Expenditures	23	4,353,314	336,600	4,689,914
Business Type / Enterprises	24	1,173,150	54,000	1,227,150
Total Gov Activities & Business Expenditures	25	5,526,464	390,600	5,917,064
Transfers Out	26	1,169,500	110,000	1,279,500
Total Expenditures/Transfers Out	27	6,695,964	500,600	7,196,564
Excess Revenues & Other Sources Over (Under) Expenditures/Transfers Out Fiscal Year	28	-381,910	-267,600	-649,510
	29			
Beginning Fund Balance July 1	30	4,946,612	689,226	5,635,838
Ending Fund Balance June 30	31	4,564,702	421,626	4,986,328

Explanation of increases or decreases in revenue estimates, appropriations, or available cash:

Revenue increased for Airport grant, loan advance & insurance claims while the corresponding expenses also increased. Expenses not originally budgeted include nuisance house expenses, pumper downpayment, engineering for feasibility study & looping projects, siren upgrade, chlorine room door, tower control repairs, scene shop roof repair, Theatre tuckpointing & floor repairs. Expenses under-budgeted were police cars, loader & group health insurance premiums. Sludge storage project was not completed last year & watermain loop will be done.

There will be no increase in tax levies to be paid in the current fiscal year named above. Any increase in expenditures set out above will be met from the increased non-property tax revenues and cash balances not budgeted or considered in this current budget. This will provide for a balanced budget.

Michelle Girolamo 
City Clerk/ Finance Officer Name

1. Budget Amendment – Please see my summary of budget amendment items. Again, we are using many of our reserves instead of borrowing at this time.
2. PSA – Agreement hiring WHKS for the feasibility study on the East side of town
3. Abstaining from Vote - Last meeting posed an interesting situation in which a council member abstained. Had the others tied in the vote, I would not have known how to proceed. Luckily, I had a majority so was not put on the spot. However, I did some research afterwards and the Iowa Code does not address it very well but recommended implementing a resolution such as the one Iowa City prepared. I used theirs as an example and wrote the attached resolution so everybody knows the effect of abstaining.
4. Street Finance Report – An annual report required to be filed in order to receive tax monies. This is only reporting for the street department and associated trusts and street projects.
5. Resolution Accepting Sludge Storage Project – This project was approved on July 16th by a motion. However, in filing the final paperwork for the SRF loan we received, I discovered that it needed to be by resolution and not just a motion. Therefore, we are “formally” accepting the project that was “officially” accepted on July 16th. Sorry for the confusion.
6. Speed Zones – See Rod’s letter explaining the changes. Note that he also listed 6th Ave W, however that is already in our Ordinance under special 25 mph zones. Signs were never updated so signs will be installed to correctly reflect the speed limits to be consistent going both directions.
7. Ordinance Ch 63 – Due to the above speed changes, we need to remove 12th Ave from the special 35 mph section. We also need to correct the name of Cargill Street to Valley Avenue. I enclosed chapter 60 for definition purposes and the entire chapter 63 for review purposes.
8. Parade Permit & Liquor License – I am waiting for paperwork from the Homecoming Parade committee and from the Chamber’s Dram Shop Insurance for Norman Borlaug Fest. Both should be here before the meeting and will be forwarded when I get them.

It has been a crazy week so we have been blaming the full moon. I hope you all have a great Holiday weekend and will see you Wednesday night.

Michelle

9. Speed Zones Resolution – After reviewing the definition of a residence district, I really think that 12th Avenue does not qualify from 8th Street West to N Elm Street. So to avoid future issues, I changed the resolution and removed the 12th Avenue from the list of residential district streets. I am proposing we change the Ordinance and just move the 12th Avenue reference from the special 35 mph zone to the special 25 mph zone. This way it is recorded as part of the ordinance to make it legal to be zoned 25 mph.

10. Street Light Request – We have been received a petition signed by a group of neighbors requesting a street light to be installed. It is on Royal Oaks Drive. Rod has been in contact with Tim Walton of Alliant Energy and they have located the easiest and cheapest location to be on the opposite side of the street from where the petition requested. It will cost us about \$891 for the pole to be installed and \$6.01 per month fee. The first 80 feet of trenching is free and Tim estimates it would be about 75 feet. If the pole is installed where the petition is requesting across the street, it would cost about an additional \$1,000. We are recommending putting the pole where Tim proposes for a cost to the City of about \$1,000 and if the petitioners want to pay the additional \$1,000 then we could put it across the street.

Michelle

The Cresco City Council met August 20, 2012, at 7:00 pm at City Hall. Council members Carman, Bouska, McGee and Loveless were present. McCarville arrived at 7:02 pm. No council members were absent.

Mayor Bohle informed the audience that there was a correction on the agenda in item #7 for possible sale of three police cars instead of two. Loveless moved to approve the consent agenda which included approval of the: corrected agenda; claims; August 6, 2012 minutes; Class C Liquor License (LC) with Sunday sales to Chris Ator dba Cresco Lanes Sports Bar & Grill; pay request #2 for Skyline Construction Inc for 2nd Avenue East Reconstruction Project for \$95,937.70; pay request #2 (final) to Jirak Construction for Housing Rehab Project for \$16,370.20. McGee seconded and it passed all ayes.

Public Works Director Rod Freidhof reported: (a) Skyline replaced a portion of concrete on 2nd Avenue and WHKS will be completing the punch list soon to finish the project; (b) Street Dept has been cutting down trees and will start manhole rehab; (c) Water & Sewer will start the combined weekend schedule Sept 1st; (d) WHKS has provided maps for each department to update to transfer to the GIS mapping system; (e) had the first variance for the year and are working on more; (f) September 19th John Deere will start building the loader and Rod, John and Pat will tour the facility and watch it being built.

Police Chief Tim Ruroden reported that National Night Out went great with a good turnout. They will try to make it an annual event. The speed trailer was set up on various streets and they received positive feedback. The cost of a speed trailer would be about \$6500 but there is a Jammer that could be purchased for about \$3800 that would be similar. Council Member McGee mentioned that the Granger road has a discrepancy in speed limits on the north end. Ruroden said there are a few places that have issues so signs need to be replaced and speed limits should be changed on Yankee and 12th Avenue.

City Clerk Michelle Girolamo reported: (a) Mediacom will be going digital in October so customers need to request a converter box by calling Mediacom or picking them up at Kessel Lodge on September 10th; (b) Pat Schwamman is contacting engineering firms to get quotes for the Airport Long-Term Plan; (c) Upper Explorerland conducted a Safe Routes to School study and results are on their website; (d) City Hall air conditioners are installed; (e) Theatre Commission is working on the lease agreement for the Theatre and will add the requirement for tax returns to be submitted for review.

Mayor Bohle opened a public hearing for Ordinance 440 for an Electric Franchise Agreement with ITC Midwest LLC. There were no comments so the public hearing was closed. Mayor Bohle conducted the first reading of Ordinance 440. Carman made the motion to approve the first reading. Bouska seconded and it passed all ayes. Loveless moved to approve a resolution waiving the 2nd and 3rd readings and considerations of Ordinance 440. McGee seconded and it passed all ayes. Bouska moved to approve Ordinance 440. Carman seconded and it passed all ayes.

Willie Hendrickson and Kelli Best requested that surcharges be reduced for Cresco Food Technologies. Surcharges were caused by a spill that entered the sanitary sewer system. Employee training has been implemented and procedures are in place to minimize the chance of a spill occurring like this again. McGee declared that she would be willing to waive up to 25% of the surcharge but no higher. Consensus of Council was that fees would not be waived in the future if a spill happened again. Bouska made the motion to waive 50% of the current surcharge and to keep communicating with the City. Carman seconded and Bouska, Carman and Loveless voted aye. McGee vote nay and McCarville abstained. Motion was passed by majority vote.

Bouska made the motion to approve a resolution authorizing the Mayor and City Clerk to enter into an agreement with Cresco Food Technologies LLC. Loveless seconded and it passed all ayes.

Bids were opened for the sale of three police cars. The bids for the 2001 Chevy Impala were \$574, \$252, \$650, \$850 and \$107. The bids for the 2002 Chevy Impala were \$1,397, \$301.99, \$1,050, \$800 and \$507. The bids for the 1997 Lumina were \$400, \$850, \$1000.50, \$307, \$977, \$352.99, \$501 and \$917.75. Loveless made the motion to approve the sale of the cars to each of the highest bidders. The 2001 Impala was sold to Paul Alexander for \$850. The 2002 Impala was sold to Donald Knutson for \$1,397. The 1997 Lumina was sold to Dennis Meyer for \$1,000.50. Bouska seconded and it passed all ayes.

Loveless made the motion to set the next council meeting for Wednesday September 5, 2012 due to the Labor Day Holiday. Carman seconded and it passed all ayes.

Loveless made the motion to set the public hearing for the budget amendment for September 5, 2012. Bouska seconded and it passed all ayes.

Loveless made the motion to accept the recommendation of the Theatre Commission to appoint Alex Fortune to the Theatre Commission for a term expiring 6/30/2015. Bouska seconded and it passed all ayes. Loveless and all of Council extended a thank you to Ken Becker for his many years he devoted to the Theatre Commission.

Freidhof explained that a new water salesman at the waterworks building would cost over \$4500 which at the current rate of consumption would take over 11 years to pay for. Our existing water salesman has been turned down so they are getting a little less than a hundred gallons for a quarter which is about the rate of the middle tier of our water rate system. Consensus was to keep the existing water salesman and try to turn it down even more.

Girolamo updated Council on the status of the projects identified in the Strategic Plan. All Action Plans are either being worked on or have been completed as scheduled except the grease trap project. Bohle, Freidhof and Girolamo are preparing an article for the newspaper explaining how the property tax is used and future plans of the City.

Ordinance changes were discussed as part of the updating of the Code of Ordinances. It was moved by Loveless to remove Chapter 77 Bicycle Licensing from the Code. Bouska seconded and it passed all ayes.

Chapter 5 of the Code remained unchanged.

Bouska made the motion to change the wording of Chapter 35.02 regarding the Fire Department to allow up to 20% of the volunteer firemen to live outside the City limits but within 8 road miles of the fire station. The reference to working outside the City was removed. It will be left to the Fire Chief's discretion. Loveless seconded and it passed all ayes.

Carman made the motion to update Chapters 90-92 of the Code of Ordinances regarding Water Service. A copy of the changes will be available at City Hall. McGee seconded and it passed all ayes.

Mayor asked if there were any comments from the audience and there were none.

Carman moved to adjourn at 8:10 pm. McGee seconded and it passed all ayes. The next regular Cresco City Council meeting will be Wednesday September 5, 2012, at 7:00 pm at Cresco City Hall.

Mayor Mark Bohle

City Clerk Michelle Girolamo

Following is a list of claims approved for payment:		
ADVANC SYS	MAINT	56.20
AIR FILTER SALES	SUPP	693.12
ALLIANT	ELEC	1,576.55
BAKER&TAYLOR	BOOKS	968.54
BECCA PICKAR	DEP REFUND	39.62
BILL CALLAHAN	MEALS RELOCATE	50.00
BLACK HILLS	NAT GAS	214.73
BC / BS	INSUR	24,153.75
BODENSTEINER	SUPP	2.16
BRIDGET STRAND	DEP REFUND	53.04
BROWN SUPP	SUPP	310.46
BRUENING'S	ST CHIPS	1,349.82
CARDMEMBER	SUPP	342.29
CARQUEST	SUPP	8.76
CITY OF CRES	UTIL, REF	309.77
CITY OF CRES	INSUR	3,061.03
COLORADO TIME SYS	SUPP	123.25
CRES BICYCLES	PATROL BIKE	460.00
CRES FIRE SAFETY	SRVC	276.26
CRES HEAT & VENT	SRVC	36.25
DEMCO	SUPP	102.45
ELECTRIC PUMP	SRVC	2,228.69
FAREWAY	SUPP	25.96
FENCO	SUPP	224.02
GOSCH'S	SRVC	1,125.00
GROUP SRVC	FEE	348.50
GRUBE LAWN	SUPP	24.88
HACH	SUPP	203.50
HANSON TIRE	SRVC	1,202.15
HAWKEYE REC	ELEC	8,719.04
HAWKEYE SAN	SRVC	158.61
HIGHSMITH	SUPP	341.60
HO CO TREAS	PROP TAX	221.00
HYDRITE CHEM	SUPP	2,266.80
IA ONE	SRVC	36.00
JIM HENRY	SRVC	68.40
JIM'S AUTO	RPRS	57.00
JIRAK CONST	REHAB PAY	16,370.20
KEYSTONE LAB	ANYLS	243.45
MATT PARROTT	SUPP	44.00
MC2	SUPP	734.68
MIDLAND SCIEN	SUPP	297.28
MOSS ROOF	RPRS	15,449.00
NELSON HERSHBERGER	DEP REFUND	44.76
NE IA SRVC	RPRS	274.00
NE IA TELE	SRVC	915.00
O'HENRY'S	SUPP	24.49
PAYROLL		62,342.17
PETTY CASH	POSTAGE	96.99
POOL TECH	SUPP	148.43
POSTMASTER	POSTAGE	100.00
RICOH	COPIES	43.98
RILEY'S	SUPP	183.81
RUPPERT	SUPP	391.06
SANDRY FIRE	SUPP	126.91
SCHUMACHER	MAINT	132.52
SIGNS &DESIGNS	SRVC	510.25
SIMS TV	RPRS	70.00
SKYLINE CONST	SRVC	95,937.70
SPORTSMITH	SUPP	121.48
ST LIB OF IA	SUBSRIPT	218.40
TASC	FEE	197.20
TPD	SUBSRIPT	69.90
US CELLULAR	PHONE	138.87

US POSTAL	SUPP	2,163.60
WEBER PAPER	SUPP	194.64
WHKS	ENGINEERING	4,575.00
WINDRIDGE	SUPP	40.42
ZARNOTH BRUSH	SUPP	51.60
	General Fund	42,445.37
	Road Use Tax	8,680.14
	Emp Benefits	24,975.11
	Local Option Tax	17,285.72
	Nuisance House	221.00
	Cresco Telecom	653.08
	Rehab / Housing	16,420.20
	Street 2nd Ave	95,937.70
	Water Utility	15,837.46
	Water Deposits	400.00
	Water utility repair	4,575.00
	MSSU Operation	24,706.75
	Water & Sewer C.I.	448.85
	Yard Waste	1,104.61
	EXPENDITURES	253,690.99
	Revenues 08/07 to 08/20/12	128,344.44

License Application (LC0035666)

Applicant

Name of Applicant:	<u>Teluwut 2 LLC</u>		
Name of Business (DBA):	<u>Teluwut Grille House & Pub</u>		
Address of Premises:	<u>104 N Elm Street</u>		
City: <u>Cresco</u>	County: <u>Howard</u>	Zip: <u>52136</u>	
Business Phone:	<u>(641) 832-3300</u>		
Mailing Address:	<u>104 N Elm Street</u>		
City: <u>Cresco</u>	State: <u>IA</u>	Zip: <u>52136</u>	

Contact Person

Name:	<u>Troy Krahenbuhl</u>		
Phone:	<u>(641) 583-1465</u>	Email Address:	<u>troydeank@hotmail.com</u>

Classification: Class C Liquor License (LC) (Commercial)

Term: 12 months

Effective Date: 10/01/2012

Expiration Date: 09/30/2013

Privileges:

Class C Liquor License (LC) (Commercial)
Sunday Sales

Status of Business

BusinessType:	<u>Limited Liability Company</u>		
Corporate ID Number:	<u>346189</u>	Federal Employer ID #	<u>26-0182020</u>

Ownership

Rebecca Wagner

First Name: Rebecca

Last Name: Wagner

City: Osage

State: Iowa

Zip: 50461

Position President

% of Ownership 50.00 %

U.S. Citizen

troy krahenbuhl

First Name: troy

Last Name: krahenbuhl

City: osage

State: Iowa

Zip: 50461

Position owner

% of Ownership 50.00 %

U.S. Citizen

Insurance Company Information

Insurance Company: United Fire & Casualty Company

Policy Effective Date: 10/01/2012

Policy Expiration Date: 10/01/2013

Bond Effective Continuously:

Dram Cancel Date:

Outdoor Service Effective Date:

Outdoor Service Expiration Date:

Temp Transfer Effective Date:

Temp Transfer Expiration Date:

STREET CLOSING/PARADE PERMIT

DATE 8/31/12
 NAME Crestwood HS Homecoming Parade Tim Elderman
 PERMISSION TO CLOSE: 3rd Ave E from HS to Main St (Elm)
Elm street from 3rd Ave to Short St. (1st Ave E)

REASON FOR CLOSURE: Homecoming Parade

DATE: 9/21/12
 TIME: (from) 1:45 (to) 3:15ish

APPROVED: _____ SIGNATURE _____

PLEASE INCLUDE A MAP MARKING THE STREET OR STREETS YOU WISH TO HAVE CLOSED. PARADE REGULATIONS ARE LISTED BELOW.

60.09 PARADES REGULATED. No person shall conduct or cause any parade on any street except as provided herein:

1. "Parade" Defined. "Parade" means any march or procession of persons or vehicles organized for marching or moving on the streets in an organized fashion or manner or any march or procession of persons or vehicles represented or advertised to the public as a parade.
2. Permit Required. No parade shall be conducted without first obtaining a written permit from the City Council. Such permit shall state the time and date for the parade to be held and the streets or general route therefor. Such written permit granted to the person organizing or sponsoring the parade shall be permission for all participants therein to parade when such participants have been invited by the permittee to participate therein. No fee shall be required for such permit. Permit forms are available at City Hall. (Ord. 289)
3. Parade Not A Street Obstruction. Any parade for which a permit has been issued as herein required, and the persons lawfully participating therein, shall not be deemed an obstruction of the streets notwithstanding the provisions of any other ordinance to the contrary.
4. Control By Police and Fire Fighters. Persons participating in any parade shall at all times be subject to the lawful orders and directions in the performance of their duties of law enforcement personnel and members of the fire department.

City of Cresco

Proposed Budget Amendment #1 Descriptions

For Fiscal Year 2012/2013

Revenue Fund	Fund Description	Reason	Revenue	Expense	Fund Description	Expense Fund	Line Item Changes
001	General - Airport	Airport Grant - Long-Term Master Plan	42,500	50,000	General - Airport	001	
001	General - Police	2 Police cars damaged (Ins covered)	5,500	5,500	General Police	001	
183	FC Equip Trust	Fitness Ctr - A/C compressor (Ins covered)	8,000	8,000	FC Equip Trust	183	
306	Sludge Storage Proj	Project not completed last fiscal year	41,000	51,000	Sludge Storage Project	306	
600	Water	Water - well motor & electrical (Lightning-Ins co)	15,000	15,000	Water	600	
610	Sewer Revenue	Sewer - Repair blower (Ins covered)	11,000	11,000	Sewer	612	
TOTALS			123,000	140,500			
317	Watermain Looping	Transfer for 5th Ave watermain looping project	110,000	110,000	Cap Improvement- W&S	620	Transfers
TOTALS			110,000	110,000			
Increased Expense		Police - Purchased 2 cars instead of 1		4,000	General & Emergency	001, 119	Adjustments to Budget - Expenses
		Emergency Sirens - narrowbanding & battery backup		1,500	General - Civil Defense	001	
		Fire - Purchase new pumper		35,000	General, LOST, Fire Trust	001, 122, 188	
		Group Health Ins - underestimated HI increase		10,000	Employee Benefits	112	
		Engineering - East Feasibility study		15,000	Local Opt Tax - Econ Dev	122	
		Theatre - Scene shop roof, tuckpointing, floor		32,000	Local Opt Tax - Theatre	122	
		Street - Increased cost of loader over budget		9,600	LOST, St trust, Water, Sewer, YW	122, 191, 600, 613, 670	
		Engineering - Watermain Loop 5th Ave & Campsite		25,000	LOST, Water	122, 602	
		Nuisance House - new fund (estimated expenses)		5,000	Nuisance House	165	
		5th Ave Watermain Looping Project		110,000	Watermain Looping Project	317	
		Water - Door to Chlorine room not billed last year		2,000	Water Trust	602	
		Water - Repair water tower controls		1,000	Water Trust	602	
TOTALS				250,100			
Increased Revenue							Adjustments to Budget - Revenues
TOTALS			0	Total Revenue over (under) Exp		(267,600)	

WHEREAS: September 17, 2012, marks the two hundred twenty-fifth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS: It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary; and to the patriotic celebrations which will commemorate the occasion; and

WHEREAS: Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week,

NOW, THEREFORE I, _____ by virtue of the authority vested in me as Mayor of the City of _____ do hereby proclaim the week of September 17 through 23 as

CONSTITUTION WEEK

AND ask our citizens to reaffirm the ideals of the Framers of the constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the

City to be affixed this _____ day of _____ of the year of our

Lord two thousand _____.

Signed _____

SEAL Attest _____

RESOLUTION NUMBER 091203

RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO
A PROFESSIONAL SERVICES AGREEMENT WITH WHKS & CO.

The City Council of the City of Cresco met in regular session on September 5, 2012, at 7:00 P.M. Council members _____ were present. Council members _____ were absent.

Council member _____ moved the adoption of the foregoing Resolution Authorizing the Mayor to enter into a PROFESSIONAL SERVICES AGREEMENT with WHKS & Co. for professional services relating to the project described as Engineer's Report for the East Industrial Park. Council member _____ seconded said motion. A roll call vote was requested by the Mayor and said roll call vote resulted as follows:

Ayes: _____
Nays: _____
Absent: _____

Thereupon, the Mayor declared said Resolution duly passed and announced that the agreement dated September 5, 2012, between the City of Cresco and WHKS & Co. is approved and that the Mayor is authorized to execute the agreement on behalf of the City of Cresco.

PASSED AND APPROVED THIS 5TH DAY OF SEPTEMBER, 2012.

BY: _____
Mayor Mark Bohle

ATTEST: _____
City Clerk Michelle Girolamo

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, by and between City of Cresco, hereinafter referred to as the "Client" and WHKS & Co., hereinafter referred to as "WHKS", is made as follows:

WHEREAS, the Client has a need for certain professional services relating to the project described as Engineer's Report for the East Industrial Park and,

WHEREAS, WHKS proposes to furnish the professional services required by the Client for said project,

NOW THEREFORE, the Client hereby agrees to retain and compensate WHKS to perform the professional services in accordance with the terms and conditions of this Agreement and the attached Standard Terms and Conditions.

Scope of Services

WHKS shall perform the following described services for the Client:

1. Evaluate utility options for the creation of an industrial park on the east side of the City of Cresco. The project area is generally bounded by Yankee Avenue and the Webster's Addition on the west, Iowa Highway 9 on the south, Iowa Highway 139 on the east, and 90th Street (extension of 12th Ave E) on the north. Utility options to include trunk sanitary sewer and watermain only. Utility options also include watermain looping options to provide adequate pressure and minimize water quality concerns. If a segment of the project area requires a lift station to pump sewage back into the City system, the area will be mapped but will not be considered for development. Further evaluation will be required when an area is platted. Further evaluation generally includes street layout, lot layouts, storm sewer, ponds, and site specific water and sewer extensions to individual lots.
2. Collect and review available information including plans, maps and other studies relating to the proposed trunk utility extension.
3. Collect and review information relating to private property descriptions, easements and right-of-way in the project area. Prepare project map with parcel ID numbers obtained from Howard County GIS records.
4. Obtain two foot LIDAR contour data and general topographic maps from the Iowa DNR.
5. Review and update adjacent utility mapping based on a meeting with City staff and show in report exhibits.
6. Estimate sanitary sewer flows for the proposed area.
7. Prepare an Engineer's Report and associated construction costs for the proposed trunk utilities.
8. Present the Engineer's Report at a joint Economic Development and City Council meeting.

9. Provide 8 bound copies of the report.

Services to be provided by the Client.

1. Fiscal Consultant and legal services.

The Following services are excluded from the scope or are to be completed under a future agreement:

1. Soil borings/geotechnical evaluation.
2. Topographical survey.
3. Preliminary and final street and utility design, plans, specifications and construction services for the proposed improvements.
4. Preliminary and Final assessment assistance, including final plat and schedule preparation, and meetings.
5. Water modeling for pressure, flow and quality.
6. Utility Rate study.
7. Preliminary or Final Platting.
8. Sanitary sewer flow metering.

Basis of Compensation

For the services described above, the Client shall remunerate WHKS as follows:

Billed Hourly with an estimated fee of \$10,400.00 including expenses.

Executed this _____ day of _____, 2012.

City of Cresco

WHKS & CO.

By: _____

By: _____
William Angerman, P.E.

Title: Mayor

Title: Vice President

STANDARD TERMS AND CONDITIONS FOR PUBLIC SECTOR PROJECTS

1. Scope of Services

Client and WHKS have agreed to a list of services WHKS will provide to Client as listed on the Professional Services Agreement Form.

2. Governing Law

The laws of the State of Iowa will govern this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in the courts of that State.

3. Standard of Care

Services provided by WHKS under this Agreement will 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 and locality.

4. Integration

This Agreement comprises the final and complete agreement between Client and WHKS. It supersedes all prior communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. Execution of this Agreement signifies that each party has read the document thoroughly. Amendments to this Agreement shall not be binding unless made in writing and signed by both Client and WHKS.

5. Guarantees and Warranties

WHKS shall not be required to sign any documents, no matter by whom requested, that would result in WHKS having to guarantee or warrant the existence of conditions whose existence WHKS cannot ascertain. Client also agrees not to make resolution of any dispute with WHKS or payment of any amount due to WHKS in any way contingent upon WHKS signing any such guarantee or warranty.

6. Indemnification

WHKS agrees, to the extent permitted by law, to indemnify and hold Client harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by WHKS' negligent acts, errors or omissions in the performance of professional services

under this Agreement and those of its subconsultants or anyone for whom WHKS is legally liable.

Client agrees, to the extent permitted by law, to indemnify and hold WHKS harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by Client's negligent acts, errors or omissions and those of Client's contractors, subcontractors or consultants or anyone for whom Client is legally liable.

Neither WHKS nor Client shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

7. Billing and Payment Provisions

Invoices shall be submitted by WHKS monthly and are due upon presentation and shall be considered PAST DUE if not paid within thirty (30) calendar days of the invoice date.

If payment is not received by WHKS within thirty (30) calendar days of the invoice date, Client shall pay an interest an additional charge of one and one-quarter percent (1.25%) of the PAST DUE amount per month. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

If Client fails to make payments within sixty (60) days from the date of an invoice or otherwise is in breach of this Agreement, WHKS may, at its option, suspend performance of services upon five (5) calendar days' notice to Client. WHKS shall have no liability whatsoever to Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by Client. If Client fails to make payment to WHKS in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination by WHKS.

In the event legal action is necessary to enforce the payment provisions of this Agreement, WHKS shall be entitled to collect from Client any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by WHKS in connection therewith and, in addition, the reasonable value of WHKS personnel time and expenses spent in connection with such collection action,

computed at WHKS current fee schedule and expense policies.

Payment of invoices is in no case subject to unilateral discounting or set-offs by Client, and payment is due regardless of suspension or termination of this Agreement by either party.

8. Ownership of Records

All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by WHKS as instruments of service shall remain the property of WHKS.

Client shall be permitted to retain copies, including reproducible copies, of the plans and specifications for information and reference in connection with Client's use of the completed project. The plans and specifications shall not be used by Client or by others on other similar projects except by agreement in writing by WHKS.

9. Delivery of Electronic Files

In accepting and utilizing any drawings, reports and data on any form of electronic media generated and provided by WHKS, Client covenants and agrees that all such electronic files are instruments of service of WHKS, who shall be deemed the author, and who shall retain all rights under common and statutory laws, and other rights, including copyrights. Client is aware that differences may exist between the electronic files delivered and the respective construction documents due to addenda, change orders or other revisions. In the event of a conflict between the signed construction documents prepared by WHKS and electronic files, the signed construction documents shall govern. Client and WHKS agree that the electronic files prepared by WHKS shall conform to the current CADD software in use by WHKS or to other mutually agreeable CADD specifications defined in the Agreement. Any changes to the CADD specifications by either Client or WHKS are subject to review and acceptance by the other party. Additional efforts by WHKS

made necessary by a change to the CADD specifications or other software shall be compensated for as Additional Services.

The electronic files provided by WHKS to Client are submitted for an acceptance period of 60 days. Any defects Client discovers during this period will be reported to WHKS and will be corrected as part of the Scope of Services. Correction of defects detected and reported after the acceptance period will be compensated for as Additional Services.

Client agrees not to reuse the electronic files, in whole or in part, for any purpose or project other than the project that is the subject of this Agreement. Client agrees not to transfer the electronic files to others without the prior written consent of WHKS, except as required by law. In addition, Client agrees, to the extent permitted by law, to indemnify and hold WHKS harmless from any damage, liability or cost, including reasonable attorney's fees and costs of defense, arising from any changes made by anyone other than WHKS or from any reuse of the electronic files without the prior written consent of WHKS.

Under no circumstance shall delivery of the electronic files for use by Client be deemed a sale by WHKS and WHKS makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall WHKS be liable for any loss of profit or any consequential damages.

10. Changed Conditions

Client shall rely on the judgment of WHKS as to the continued adequacy of this agreement in light of occurrences or discoveries that were not originally contemplated by or known to WHKS. Should WHKS call for contract renegotiation, WHKS shall identify the changed conditions necessitating renegotiation and WHKS and Client shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.

11. Permits and Approvals

WHKS shall assist Client in applying for those permits and approvals typically required by law for projects similar to the one for which WHKS services are being engaged. This assistance consists of completing and submitting forms as to the results of

certain work included in the Scope of Services.

12. Suspension of Services

If the project is suspended for more than thirty (30) calendar days in the aggregate, WHKS shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment in the project schedule based on the delay caused by the suspension. If the project is suspended for more than ninety (90) calendar days in the aggregate, WHKS may, at its option, terminate this Agreement upon giving notice in writing to Client.

13. Termination

Either Client or WHKS may terminate this Agreement at any time with or without cause upon giving the other party seven (7) calendar days prior written notice. Client shall within thirty (30) calendar days of termination pay WHKS for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of the Agreement.

14. Unauthorized Changes

In the event Client, Client's contractors or subcontractors or anyone for whom Client is legally liable makes or permits to be made any changes to any reports, plans, specifications or other contract documents prepared by WHKS without obtaining WHKS' prior written consent, Client shall assume full responsibility for the results of such changes. Therefore, Client agrees to waive any claim against WHKS and to release WHKS from any liability arising directly or indirectly from such changes.

Client also agrees, to the extent permitted by laws, to indemnify and hold WHKS harmless from any damage, liability or cost, including reasonable attorneys' fees and costs of defense, arising from such changes.

15. Jobsite Safety

Neither the professional activities of WHKS nor the presence of WHKS or its employees and subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the construction work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. WHKS and its personnel

have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions.

16. Additional Services

Services which are requested by Client or are required as part of the Project, but are not included in the Scope of Services, are considered Additional Services.

WHKS will notify Client in writing when Additional Services will be needed. WHKS and Client will agree on the extent of the Additional Service(s) required and will agree on the method and amount of the compensation for performance of said agreed upon Additional Services.

WHKS will not perform Additional Services which will result in additional cost to Client without documented verbal or written authority of Client.

In the event WHKS is requested or required to participate in any dispute resolution procedure which involves any aspect of the Project, Client agrees to compensate WHKS for the reasonable value of WHKS' personnel time and expenses spent in connection with such procedures computed at WHKS' then current fee schedule and expense policies.

17. Dispute Resolution

In an effort to resolve any conflicts that arise, Client and WHKS agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

18. Third Party Beneficiaries

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Client or WHKS. WHKS' services under this Agreement are being performed solely for Client's benefit, and no other entity shall have any claim against WHKS because of this Agreement or the performance or nonperformance of services hereunder.

19. Extension of Protection

Client agrees to extend any and all liability limitations and indemnifications provided by Client to WHKS to those individuals and entities WHKS retains for performance of the services under this Agreement, including but not limited to WHKS officers and employees and their heirs and assigns, as well as WHKS subconsultants and their officers, employees, heirs and assigns.

20. Timeliness of Performance

WHKS will perform the services described in the Scope of Services with due and reasonable diligence consistent with sound professional practices.

21. Delays

WHKS is not responsible for delays caused by factors beyond WHKS' reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of Client to furnish timely information or approve or disapprove of WHKS' services or work product promptly, or delays caused by faulty performance by Client or by contractors of any level. When such delays beyond WHKS' reasonable control occur, Client agrees WHKS is not responsible for damages, nor shall WHKS be deemed to be in default of this Agreement.

22. Right to Retain Subconsultants

WHKS may use the services of subconsultants when, in the sole opinion of WHKS, it is appropriate and customary to do so. Such persons and entities include, but are not limited to, aerial mapping specialists, geotechnical consultants and testing laboratories. WHKS' use of other consultants for additional services shall not be unreasonably restricted by Client provided WHKS notifies Client in advance.

23. Assignment

Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

24. Severability and Survival

Any provision of this Agreement later held to be unenforceable for any reasons shall be deemed void, and all remaining provisions shall continue in full force and effect.

25. Hazardous Materials

It is acknowledged by both parties that WHKS' Scope of Services does not include any services related to asbestos or hazardous or toxic materials. In the event WHKS or any other party encounters asbestos or hazardous or toxic materials at the jobsite, or should it become known in any way that such materials may be present at the jobsite or any adjacent areas that may affect the performance of WHKS services, WHKS may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until Client retains appropriate specialist consultants(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrant that the jobsite is in full compliance with applicable laws and regulations.

26. Joint Participation The parties have participated jointly in the negotiation and preparation of all agreements between the parties. Each party has had an opportunity to obtain the advice of legal counsel and to review and comment upon this instrument. Accordingly, no rule of construction shall apply against any party or in favor of any party. This instrument shall be construed as if the parties jointly prepared it and any uncertainty or ambiguity shall not be interpreted against one party and in favor of another.

27. Record Documents If required in the Professional Services Agreement, WHKS shall, upon completion of the Work, compile for and deliver to the Client a reproducible set of Record Documents that are based upon the marked-up record drawings, addenda, change orders and other data furnished by the Contractor or other third parties. These Record Documents may show certain significant changes from the original design made during construction. Because these Record Documents are based on unverified information provided by other parties, which the Consultant is entitled to assume as reliable, the Consultant does not warrant their accuracy.

Revised 02/23/07
Revised: 04/29/09