

**NOTICE AND CALL OF PUBLIC MEETING**

GOVERNMENTAL BODY: THE CITY COUNCIL OF CRESCO, IOWA

DATE OF MEETING: FEBRUARY 1, 2016

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, BRENNON

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 January 18, 2016
4. Approval of Minutes from January 18, 2016 Budget Worksession
5. Approval of Special Class C Liquor License (BW) (Beer/Wine) with Sunday Sales to Mad Cam Inc d/b/a Mables Pizza
6. Approval of Tree Surgeon License for Total Tree Care LLC

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

1. Public Works
2. Police
3. Administration
4. Committee Updates

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

1. Discuss LTD Broadband Request to Place Antennas on Water Tower for Wireless High Speed Internet
2. Resolution Authorizing Mayor to Enter into a Tower Lease Agreement
3. Resolution Authorizing Mayor to Enter into a Professional Services Agreement
4. Request from Culligan for Credit on Sewer Charges for Water not Entering the Sanitary Sewer
5. Discuss Solar Power Purchase Agreement Opportunities & Risks
6. Motion to Proceed with the Solar Project and Authorize the City Clerk to Sign Applications including, but not limited to, an Interconnection Agreement

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 JANUARY 29, 2016.

Notes for February 1, 2016 Meeting

Jan 29, 2016

Antenna for Internet – after the last meeting we had some questions about the internet service. I have enclosed the list of questions that were sent to Corey Hauer, owner of LTD Broadband. He called me and went through each question. He thought they were good questions and talked a lot on each issue. After talking with him, I have a better feeling of dealing with a local company who will address any issues that come up. The fact that the City can have an uncapped service (guaranteed minimum of 10 Mbps) should make for a better service than we are paying for currently. We can try a few sites before switching them all.

WHKS Agreement – This professional services agreement is for the Sump Pump Inspection Project that will be done in the summer of 2016. There will be a Council Kickoff Meeting at which WHKS will explain the program in more detail. There will be public informational meetings scheduled as well before the actual inspections begin.

Culligan Credit – Please read the enclosed email for Council. They had a water leak for the in-floor heat system. This water did not enter the sanitary sewer system.

Solar -- Amy has summarized the Pros & Cons that Attorney Paulson, Amy, Rod and myself have identified regarding the proposed solar project. We now need the council to determine if we should proceed with the solar project. If we do proceed, we have just a few items to work out in the PPA and lease agreement before presenting it to council for approval. Those two contracts need to be signed to make everything official with the investor. That will be done at a future council meeting after you have had time to review the contracts. If consensus is to proceed with the solar project, we need to apply for an interconnection agreement with Alliant Energy. If they come back with ridiculous demands, we can still back out of the whole project. Because it costs money for the investor/developer, they want a commitment that the Council supports going the next steps. There will also be engineering studies on the roofs to make sure they can withstand the panels mounted on them.

Have a good weekend.

Michelle

Mayor Bohle called the Cresco City Council meeting to order on January 18, 2016, at 7:00 pm at City Hall. Council Members Carman, Bouska, McGee, McCarville and Brenno were present. No council members were absent.

Brenno made the motion to approve the consent agenda which included approval of the: agenda; claims; minutes of the January 4, 2016 meeting; class C Liquor License (LC) (commercial) with catering privileges and Sunday sales to Michael McAllister d/b/a McAllister Catering; class C Beer Permit (BC) with Class B Wine Permit and Sunday sales to DOLGENCORP, LLC d/b/a Dollar General Store #2400; change of ownership from DOLGENCORP INC. to DOLGENCORP, LLC and change of officers in reference to License BC0029888. Carman seconded and it passed all ayes.

Public Works Director Rod Freidhof reported (a) busy getting caught up on repairs and hauling snow; (b) we got rid of almost all of the chip grindings and hauled them for a farmer; (c) repaired a watermain break today on Vernon Road which caused a big mess; (d) Ron, Michelle and I have been working on the NPDES permit for the WWTP; (e) Ron Steve will be in town this week trying to locate the watermain break; (f) all public works employees will be attending a safety meeting in Decorah on Tuesday.

Police Chief Ruroden had nothing to report.

City Clerk Girolamo reported (a) the financial statements were included in the packet. We are right on budget at midyear with revenues at 53% and expenses at 48% of the budget; (b) working on next year's budget; (c) W-2's have been issued and working on 1099's now.

Mayor Bohle and Brenno attended a meeting at the Law Enforcement Center regarding a potential new LEC and jail. There was an evaluation of the current facility and will come up with an engineering cost for the next meeting next month. The jail is in really poor condition and it appears it really needs to be upgraded. They are looking at going from 10 beds currently to 23 beds with the potential to add on if necessary. They would go to a pod system to allow expansion at a low cost. The Mayor and Brenno believe that it probably needs to be done. Building the new facility may be done in two parts and would require shipping out Howard County inmates during the construction period. This will require a special election to be able to proceed after the plans are developed. The City Police Department may move back in to the LEC if there is room.

Jeff Holmstrom, owner of CPU, introduced Becky Severson from LTD Broadband LLC. LTD Broadband was formed in 2010 to bring wireless internet service to rural areas. They are currently serving Northern Iowa and Southern Minnesota. They mount antennas on grain bins and water towers and have about 400 structures. In exchange for the City to allow them to put an antenna on the water tower, they would supply uncapped internet services to City owned buildings. CPU would sell wireless internet services to residents of Cresco and the surrounding rural area as well. Packages will be available for 3, 6 or 10 Mbps. Customers would need a clear path from a dish on their property to the antenna. Freidhof checked with five cities that were using their services at their City buildings. Three reported no issues and were very satisfied. One reported a few issues but overall was satisfied. One reported connection problems and was not happy with it. McCarville made a motion to lease space on the water tower in exchange for internet services at City buildings. Bouska seconded and it passed all ayes. A lease agreement will be written up and approved at a future council meeting.

Alex Fortune, Theatre Commission Member, reported that as Riehle Decorating was painting and repairing the east wall, they discovered some issues with the ceiling. There was some areas where there was no insulation and therefore will install a reflective, R16 insulation in between the roof and sheetrock on the ceiling. The marquee also had problems with water leaking in during a hard rain in the last few months. Both the roofing company and the sign company inspected the marquee. They will both come back in the spring and try

to figure out how the water is getting into the marquee. Cresco Community Theatre is installing the floor on the stage and updating the lighting system. Alex pointed out that operating income (excluding utilities) during the first 6 months of the fiscal year is \$27,000 compared to the annual rent of \$7,200 that had been received in the past. The building maintenance issues were not all anticipated but they need to be done while the Theatre is shut down and the scaffolding is set up. Bouska requested that they look at trying to blow more insulation in the attic to make the building more energy efficient. Riehle's suggested some color changes while they are painting and the Commission agreed with their recommendations. Due to additional work being done, the Theatre is anticipated to be closed until March 1, 2016.

McCarville made a motion to appoint Amy Bouska as Mayor Pro Tem if Mayor Bohle is absent. Carman seconded and it passed all ayes.

Mayor asked if Council had conflicts with the February 1<sup>st</sup> meeting since that night is also the Iowa Caucus. There were no conflicts.

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

Carman moved to adjourn at 7:25 pm. Bouska seconded and it passed all ayes. The next regular Cresco City Council meeting will be February 1, 2016 at 7:00 pm at Cresco City Hall.

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Mayor Mark Bohle

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City Clerk Michelle Girolamo

Following is a list of claims approved for payment:

ALEXIS FIRE EQUIP	Rprs	103.79
ALLIANT	Elect	594.15
BAKER&TAYLOR	Bks&audios	437.54
BC/BS	Insur	27,684.02
BOB'S ELECT	Street lights	504.13
BROWN SUPP	Supp	122.50
BRUENING ROCK	Rock/srvc	2,115.08
CAFFREY, MIKE	Subscript	75.00
CARDMEMBER	DVDs	85.29
CARQUEST AUTO	Supp	45.55
CITY OF CRESCO	Util,insur	2,657.79
CPU	Supp	72.98
COURTNEY SRVCS	Srvc	710.00
CRESCO SHOPPER	Advrt	380.50
CRESCO TPD	Advrt	506.73
DALCO	Supp	715.81
DECORAH GLASS	Equip	634.20
ELWOOD,O'DON,BRAU	Srvc	1,758.25
ENVIRON RES	Srvc	120.83
FENCO	Rprs	60.00
FOLEY'S CONST	Rprs	96.45
FURNITURE RE-DO	Supp	30.00
GRUBE CONST	Rprs	255.00
GRUBE LAWN/GARDEN	Supp	173.00
H & S MOTORS	Rprs	67.60
HANSON TIRE	Rprs,tires	2,783.95
HAWKEYE REC	Elect	6,238.50
HAWKEYE SAN	Grbg/Rcyl	46,127.98
IA MUNICIPAL UTIL	Dues	1,043.29
JIM'S AUTO	Supp	38.47
K & H COOP	LP	91.82
KWIK TRIP	Gas	2,799.24
LICKTEIG, STEVE	Srvc	175.00
LT MECHANICAL	Srvc	265.00
MICHAEL'S TRUCK	Supp	285.21
MID-STATES ORG	Dues	100.00
MOHAWK ELECTRIC	Equip	141.85
MOUDRY ELECTRIC	Rprs	119.02
NE IA MOTORS	Rprs	430.38
O'HENRY'S	Supp	266.10
OMNISITE	Srvc	1,380.00
PAULSON LAW	Srvc	715.00
PAYROLL		61,678.33
PEPSI-COLA	Concessions	256.85
PETTY CASH	Postage	25.34
POSTMASTER	Postage	75.00
RICOH	Supp	122.48
RILEY'S	Supp	29.80
RUPPERT	Supp/postage	596.40
SPORTSMITH	Supp	638.50
STATE HYG LABS	Analys	109.00
STOREY KEN	Supp	171.59
TREAS, ST OF IA	Sales tax	6,634.00
WARNER BROS	Movie rent	1,844.26
WEBER PAPER	Supp	89.94
WHKS	Engrng srvc	105.00
WILTGEN CONST	Rock	921.31

WINDRIDGE IMPL	Rprs	171.67
WINDSTREAM	Phone	127.07
	GENERAL	114,750.83
	LOST PROJECT	634.20
	NUISANCE HSE	645.75
	FIRE BUILDING	119.02
	MEDIACOM	720.14
	DRUG DOG	55.13
	CRESCO COMM FIRE	594.50
	ROAD USE	16,688.36
	EMPLOYEE BEN	6,030.34
	WATER	13,582.87
	SEWER	21,553.24
	CAP IMPROVE	2.09
	YARDWASTE	1,227.07
	EXPENDITURES	176,603.54
	Revenues 1/5 to 1/18/16	232,713.99

The Cresco City Council met in special session on January 18, 2016, at 5:30 pm at City Hall. Council Members Carman, Bouska, McGee, McCarville and Brenno were present. No council members were absent. Also in attendance were Mayor Bohle, PWD Freidhof, City Clerk Girolamo, and Deputy Clerk Murphy.

The proposed budget for Fiscal Year 2016/2017 is projecting a loss of \$483,381. Council discussed various options to try to get a balanced budget. Some items were eliminated from the budget to be considered in future years. The Local Option Sales Tax Fund was evaluated and recurring expenses were removed from that fund. It will only be used for projects and equipment. There were many discussions on the requests and prioritizing the requests. Council asked that Department Heads get quotes for some of the equipment requested so the numbers will be closer to actual. The City Clerk will make the adjustments and run new budget worksheets for a worksession on February 1, 2016 at 5:30 pm.

Carman moved to adjourn at 6:48 pm. Bouska seconded and it passed all ayes. The next regular Cresco City Council meeting will be February 1, 2016 at 7:00 pm at Cresco City Hall.

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Mayor Mark Bohle

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City Clerk Michelle Girolamo

License Application ( BW0092016 )

Name of Applicant:	<u>Mad Cam, Inc.</u>		
Name of Business (DBA):	<u>Mabes Pizza</u>		
Address of Premises:	<u>119 N Elm St</u>		
City	<u>Cresco</u>	County:	<u>Howard</u> Zip: <u>52136</u>
Business	<u>(563) 547-5707</u>		
Mailing	<u>2038 Grandview Road</u>		
City	<u>Decorah</u>	State	<u>IA</u> Zip: <u>52101</u>

Contact Person

Name	<u>Steve</u>		
Phone:	<u>(563) 547-5707</u>	Email	<u>thewhites873@msn.com</u>

Classification Special Class C Liquor License (BW) (Beer/Wine)

Term: 12 months

Effective Date: 03/15/2016

Expiration Date: 03/14/2017

Privileges:

Special Class C Liquor License (BW) (Beer/Wine)

Sunday Sales

Status of Business

BusinessType:	<u>Privately Held Corporation</u>		
Corporate ID Number:	<u>249641</u>	Federal Employer ID	<u>421514947</u>

Ownership

Steve White

First Name: Steve Last Name: White  
City: Decorah State: Iowa Zip: 52101  
Position: Owner  
% of Ownership: 50.00% U.S. Citizen: Yes

Connie White

First Name: Connie Last Name: White  
City: Decorah State: Iowa Zip: 52110  
Position: Owner  
% of Ownership: 50.00% U.S. Citizen: Yes

**Insurance Company Information****Insurance Company:** Scottsdale Insurance Company**Policy Effective Date:** 03/15/2016**Policy Expiration** 03/15/2017**Bond Effective****Dram Cancel Date:****Outdoor Service Effective****Outdoor Service Expiration****Temp Transfer Effective****Temp Transfer Expiration Date:**

RESOLUTION NUMBER \_\_\_\_\_

RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO  
A TOWER LEASE AGREEMENT

Council member \_\_\_\_\_ moved the adoption of the foregoing Resolution Authorizing the Mayor to enter into a TOWER LEASE AGREEMENT with LTD Broadband LLC. 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 \_\_\_\_\_, 2016, between the City of Cresco and LTD Broadband LLC is approved and that the Mayor is authorized to execute the agreement on behalf of the City of Cresco.

PASSED AND APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2016.

BY: \_\_\_\_\_  
Mayor Mark Bohle

ATTEST: \_\_\_\_\_  
City Clerk Michelle Girolamo

# Tower Lease Agreement

This agreement is made this 1st day of February, 2016 between LTD Broadband LLC (known hereafter as the Lessee) and City of Cresco (known hereafter as the Lessor). This document contains the entire agreement between Lessor and Lessee.

Lessee is an Internet Service Provider (ISP) in southern Minnesota with offices located at 69 Tea House St, Las Vegas, NV 89138.

Lessor is City of Cresco with offices located at 130 N Park Place, Cresco, IA 52136.

WHEREAS, Lessee proposes to furnish communications services in and around Cresco, specifically wireless internet service, and desires to place and maintain aerial antennas, cables, wires, and other equipment ("Equipment") on certain Lessor towers; and

WHEREAS, Lessee is in the business of constructing, maintaining and operating, at retail, wireless telecommunications networks; and

WHEREAS, Lessor is willing to permit, subject to the terms and conditions set forth herein, attachment of Lessee's equipment to certain Lessor owned towers, where such use will not interfere with Lessor's own primary service requirements, or the primary service requirements of others authorized to use Lessor's towers.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties do hereby mutually covenant and agree as follows:

## I. Primary Agreement

- a. Lessor agrees to allow Lessee to place antennas and all required mounting hardware, cables, hardware cabinets and other equipment deemed necessary by Lessee, at its own discretion, on the water towers owned by Lessor located in Cresco, IA.

## II. Rent

- a. In exchange for the space provided by Lessor, Lessee agrees to provide free internet service (uncapped service in excess of 10 Mbps) to the city of Cresco sites as required by the city including City Hall, Maintenance Garage, Sewer and Water Dept., Fire Dept, Fitness Center, Police, Theatre, Library, Kessel Lodge, Kessel Well, Evans Well, and both water towers.
- b. No further rents shall apply for the use of this tower.

### III. Indemnity

- a. Lessee shall carry insurance for all equipment maintained by Lessee. Lessor is in no way responsible for losses to such equipment for any reason beyond damages caused by its own climbers or contractors hired by Lessor.
- b. Lessor shall indemnify, hold harmless and defend Lessee and its employees and agents from and against all claims, damages, losses and expenses, including attorneys' fees, resulting from any negligent act, misconduct or omission on the part of Lessor, its employees, agents, assigns or contractors.
- c. Lessee shall indemnify, hold harmless and defend Lessor and its employees and agents from and against all claims, damages, losses and expenses, including attorneys' fees, resulting from any negligent act, misconduct or omission on the part of Lessee, its employees, agents, assigns or contractors.

### IV. Location Requirements

- a. Lessor shall provide electricity for lessee's equipment at the tower site.
- b. Lessee requires daylight hours access to its equipment for maintenance and troubleshooting.

### V. Interference

- a. Lessee shall maintain its equipment in such a way as to prevent interference to any other entity currently utilizing the tower.
- b. If Lessor contracts with any other entity for space on this same tower, such contract must include a non-interference clause.
- c. Any entity that places equipment on the tower must agree to allow Lessee to coordinate frequency plans.
- d. If Lessee equipment conflicts with other frequencies in use by the City of Cresco, lessor reserves the right to ask for removal of equipment and the contract will become null and void.

### VI. Term

- a. The term of this agreement shall be a period of five (5) years, commencing on the date of its execution and shall remain in force until terminated by 90 days written notice by either party.

### VII. Equipment Removal

- a. Upon termination of this Agreement in its entirety, Lessee shall remove at its expense, its equipment from Lessor's facilities. Lessee shall be allowed 90 days after the final termination date to remove its equipment.

VIII. Amendments

- a. From time to time, this agreement may be amended. Such amendments, when signed by both parties and attached to this contract, shall be considered as part of this agreement.

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Signed

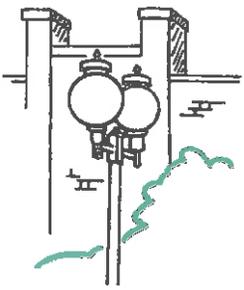
City of Cresco  
130 N Park Place  
Cresco, IA 52136



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Signed

Printed Name: Corey Hauer / Owner  
LTD Broadband LLC  
69 Tea House St  
Las Vegas NV 89138



THE CITY OF  
**Cresco**  
I O W A

130 N. Park Place Cresco, IA 52136  
(563) 547-3101 FAX (563) 547-4525  
www.cityofcresco.com

January 21, 2016

Questions that have arisen regarding the Water Tower Lease Agreement:

1. What equipment would a customer (including the City) need to purchase at each location to utilize the wireless internet from your antenna?
  - a. Dish/Routers/Modems/Wiring? *NO cost at all*
  - b. Estimated cost of installations in buildings and computer setup? *- They supply router if needed or program existing routers*
2. Will a study be conducted prior to installation for each site to determine if there will be connectivity issues? *Their software program will show clear lanes or if obstructions exist before installation*
3. Are there issues during inclement weather that makes the wireless connection not work? Are there other circumstances that may make the connection not work especially during an emergency? *Virtually No issues - unlike satellite dishes. Power outages would affect it*
4. If the City determines that they don't want to take advantage of the free internet service, can we write in an option to decline the service and that an annual rental fee would be implemented at the same rate as other antenna agreements? (currently they pay \$320.97 lease plus \$192.60 electricity for a total of \$513.57 with a 3% increase annually) *Would not pay cash rent - even if only few sites use service it would save City money*
5. There are currently 14 sites with internet for the City of Cresco buildings. We may want to convert them over at different times after we have tested it out to make sure it is working properly. *may do one at a time to test it. Speed will not be capped for City, so always more than 10 Mbps*
6. Who will customers contact regarding issues they are having with their internet? *CPU local sales - Corey@LTD does all maint with employees from IA + MN*
7. LTD Broadband headquarters is in Las Vegas and was formed in 2010. What if this company goes out of business or decides to discontinue services to Cresco? *Corey is the owner and based in Blooming Prairie MN and is growing business with intentions of long-term commitment*
8. Are you currently only asking for permission to put an antenna on one water tower or do you think you will need to put one on each? The lease says on the water towers owned by the City with no addresses or indication as to which one(s). *Both Towers - this will help with providing service to the whole town*

## Michelle Girolamo

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**From:** Wayne Kerian <Wayne@kerianwaterstore.com>  
**Sent:** Wednesday, January 27, 2016 9:43 AM  
**To:** Michelle Girolamo <cityhall3@iowatelecom.net> (cityhall3@iowatelecom.net)  
**Subject:** Culligan Water Leak

Dear Cresco City Council, I am requesting an adjustment to our water bill due to a broken in floor heat pipe. This leak caused an excessive use of water. I have no problem with the water use, however I am requesting the adjustment for the sewer as this water did not enter the sanitary sewer. The water ran out the side of the building and into the street.

Thank you

Wayne Kerian  
Cresco, Iowa

ACCOUNT NUMBER 7129001 STATUS Active  
 NAME CULLIGAN (563) 547-4014  
 PROPERTY 606 2ND AVE SW

SV SERIAL # MULTIPLIER DIGITS INS DATE SERV DATE LOCATION NOTE

SE 46026892 1.00000 9 10001 D1  
 WA 46026892 1.00000 9

BILL DATE	SERV READ DATE	PRES	PREV	BILL CONS	CHARGE
2/01/2016	SE 1/20/2016	26013	5457	20556	156.23
1/01/2016	SE 12/18/2015	5457	3768	1689	12.84
12/01/2015	SE 11/20/2015	3768	2310	1458	11.40
11/01/2015	SE 10/20/2015	2310	1209	1101	11.40
10/01/2015	SE 9/21/2015	1209	1229	1229	11.40
9/01/2015	SE 8/20/2015	245356	243357	1999	15.19
8/01/2015	SE 7/20/2015	243357	242207	1150	11.40
7/01/2015	SE 6/19/2015	242207	239824	2383	18.11
6/01/2015	SE 5/20/2015	239824	238564	1260	11.25
5/01/2015	SE 4/20/2015	238564	236543	2021	15.16
4/01/2015	SE 3/20/2015	236543	234451	2092	15.69
3/01/2015	SE 2/20/2015	234451	231955	2496	18.72
2/01/2015	SE 1/20/2015	231955	230298	1657	12.43
1/01/2015	SE 12/19/2014	230298	228319	1979	14.84

0013

12.84 +  
 11.40 +  
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 15.19 +  
 11.40 +  
 18.11 +  
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 18.72 +  
 12.43 +  
 14.84 +  
 179.83 \*  
 179.83 +  
 13. =  
 13.83 \*

*File*

*0002*  
*Security*  
 156.23 +  
 13.83 +  
 142.40 \*

RESOLUTION NUMBER \_\_\_\_\_

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 February 1, 2016  
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 Sump Pump Inspections. 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 \_\_\_\_\_, 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 1<sup>ST</sup> DAY OF FEBRUARY, 2016.

BY: \_\_\_\_\_  
Mayor Mark Bohle

ATTEST: \_\_\_\_\_  
City Clerk Michelle Girolamo



1412 6th Street SW  
P.O. Box 1467  
Mason City, IA 50402-1467  
Phone: 641-423-8271

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, by and between CITY OF CRESCO, IA 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:

**SUMP PUMP INSPECTIONS**  
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

#### **Project Description:**

WHKS shall perform the following described services for the Client:

##### **1. Initial Inspections:**

Provide inspection services and documentation for individual building/house inspections. The inspections will consist of observing the discharge location and discharge pipe materials of any sump pumps and pits and the discharge locations of interior foundation drains. WHKS will photograph the interior plumbing and exterior of the home. WHKS will also record grading that is sloped towards the buildings and building roof drain/downspout locations. Inspections will not include dye tracing to determine sump pump discharge point. Inspections will not include televising of laterals. If a sump pump or roof drain discharge location cannot be determined by visual inspection, it shall be noted and the appropriate City personnel will become responsible for making the final determination. Inspections will be completed between the hours of 7:00 am and 7:00 pm, Monday through Friday. WHKS will not provide corrective plumbing services. Inspection fee is on a per-inspection basis and includes conducting inspections, travel time, receiving resident phone calls to schedule inspections, field QA/QC data checks, data entry, per diem, mileage, and expenses. WHKS will provide up to 3 mailings to each property, typically an initial notice, an initial inspection report, and a re-inspection report. Inspection fee is based on inspecting each building citywide that has a sewer connection, approximately 1,873 buildings.

##### **2. Re-Inspections:**

WHKS will provide re-inspection of failed sump pump installations after correction. Re-inspection fee is on a per-inspection basis and includes all labor and expenses. Re-inspection fee is based on providing an estimated 187 re-inspections (10%).



1412 6th Street SW  
P.O. Box 1467  
Mason City, IA 50402-1467  
Phone: 641-423-8271

**3. Project Support and Administration:**

WHKS will provide sample ordinances and sample public information handouts. We will assist the City with holding up to two public meetings, typically a Council Kickoff Meeting, and a Public Information meeting. WHKS will host a project website for the duration of the project.

Project administration services, including quality assurance / quality control of inspection data and coordination with the City.

WHKS will also provide the City with monthly reports on the progress of the program and electronic copies of the reports in a format of choice (Excel, Adobe, Word, Access). At the completion of the program, WHKS will provide a Final Report that will include statistics and maps showing the inspections passed, failed, and unresolved. The report will be provided in electronic table (Excel, Access, CSV) and GIS shapefile formats.

**Basis of Compensation**

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

- A. Base Price per property for initial inspections: 1,873 inspections @ \$49 each
- B. Base Price per property for re-inspections: 187 inspections @ \$52 each
- C. Base Price for Project Support and Administration: Lump Sum Fee of \$21,000.00

Total estimated fee is \$122,500.00

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**City of Cresco, Iowa**



By: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

By: \_\_\_\_\_  
 Printed Name: William K. Angerman, P.E.  
 Title: Executive 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 as 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 reason 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 consultant(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

# Solar Power Purchase Agreement Opportunities and Risks for Cresco

## Opportunities:

The primary opportunity for the city in pursuing a solar power purchase agreement (SPPA) is financial: Estimates based on assumptions currently believed to be reasonable indicate the possibility of savings as follows:

City Electricity Costs for SPPA Sites (undiscounted)		
	10 Years	25 Years
Without SPPA	\$631,982	\$2,188,981
With 25-Year SPPA	\$563,179	\$1,713,075
With 10-Year Buyout SPPA	\$563,179	\$1,133,009

This opportunity does not include advertising a reduction in the city's carbon footprint: The current plan is to sell some or all of the Renewable Energy Certificates (RECs) associated with the production of renewable energy to other interested parties, which will either provide a small amount of income to the city or a small reduction in the cost of the SPPA electricity.

## Risks:

There are several risks associated with entering into the SPPA, some with real costs:

1. Alliant may change or even repeal its net metering policy.

Alliant's net metering is part of its tariff agreements, which are subject to oversight by the Iowa Utility Board, and we know that Alliant intends to file new tariffs with the IUB in 2017.

When Alliant notified us of their agreement to net meter in the context of an SPPA, they included the following wording:

*To protect you as our customer, we want to remind you that the economics behind your decision to buy or lease solar generation may change. Any agreement you may sign with a supplier is based on the supplier's predictions of utility tariffs and other factors.*

*Alliant Energy electric rates, customer charges and fees are subject to change during the life of your agreement with a third-party vendor.*

If Alliant were to completely repeal net metering, it would mean that we would be paying for some electricity twice: once to the SPPA when it was generated by the solar panels and

sent back to Alliant because we weren't using it at the moment, and again to Alliant when we actually used the power, e.g., at night to run the wells.

Net metering has been attacked in several states, although, in Iowa, the IUB recently declined to implement changes to its net metering policy.

The size of this risk is unknown, but, given Alliant's historic antipathy towards SPPAs, it cannot be ruled out.

2. Alliant may substantially increase its fixed meter charge or add another fixed charge applicable only to solar customers.

Our modeling assumes that Alliant's meter charge (currently about \$13-15/month) will increase roughly with inflation. However, certain electric utility industry groups are actively advocating for increased meter or solar charges as a way to recoup revenue lost to customer-owned production facilities. One REC in Iowa recently attempted to institute a fixed monthly charge of \$85, but was forced to back down. In other states, more modest increases (e.g., \$65/month) have been enacted. Many consumer groups (e.g., AARP) are vocally opposing increased meter charges as financially damaging to those on fixed incomes, and solar activists and environmental law groups are disputing the assumptions underlying fixed solar charges.

If Alliant's meter charge (or a solar charge) were to increase to \$50/month/meter in 2018 and then increase with inflation thereafter, it would nearly erase any gains to the city from participating in the SPPA.

3. Alliant may not increase the cost of electricity at the rate included in our models (approximately 4.5%/year, consistent with average increases over the past eight years).

The SPPA contract obligates the city to purchase power at a rate increasing by 3%/year over the life of the contract. If Alliant were to have average rate increases less than this, the city could pay more for electricity under the SPPA than from Alliant.

In April 2015, the US Department of Energy released its "Annual Energy Outlook 2015 with Projections to 2040," in which they state:

*In the Reference case, prices increase from 10.1 cents/kilowatthour (kWh) in 2013 to 11.8 cents/kWh in 2040.*

This indicates an annual nationwide expected rate increase of approximately 0.6%/year.

Our legal counsel has advised us that, in Minnesota, they are using 2.75 – 3.00%/year as estimates of electricity rate increases "for the foreseeable future."

However, in October 2015, Alliant hosted a rate outlook webinar for its commercial users. At that time, they indicated that they expect rate effects as follows:

2016: +7%  
2017: +10%  
2018: +1%

If these actually occur, it would be difficult for the city to lose money by participating in the early years of the SPPA; lower-than-expected rate increases by Alliant in the outyears of the contract could be dealt with by buying out the contract as soon as possible.

4. Alliant may require the city to purchase standby generating capacity.

In some cases the utility might require renewable power installations to pay for standby capacity, i.e., the ability to generate power when renewables are not functioning. This is another version of #2 (above), i.e., a way to recover revenue lost to customer-owned generation facilities.

5. Technology may improve to the point that we require less electricity, e.g., with improved well pumps.

The SPPA agreement obligates us to buy all of the electricity produced by the solar installations, whether we need it or not, for the term of the agreement. This risk can be reduced by including a buy-out provision as early as possible in the contract, which we will do.

In estimating the required sizes of the various solar installations, we have taken two different steps in this area:

- a. We first analyzed usage at the various sites, taking into account known variations, e.g., we know that the well pumps ran approximately 10% more than usual in 2015 due to the large water leak, so we based those installations on 2014 usage.
- b. The installations are then over-sized by 5% to allow for the approximately 0.7%/year degradation in the panels' output. Modeling indicated that the greatest savings to the city would occur at over-sizing in the 25% range, but we were uncomfortable with the greater risk in this scenario and the negative cash flow in the early years of the contract.

6. The solar installations may fail to produce as much power as expected.

It is unlikely that the shortfall would be so large that we would lose money over the term of the contract, since we are required to pay only for the actual production. However, the city's savings might be less than expected.

In order to protect as much as possible against this possibility, the project will be using SolarWorld panels, which are highly rated and have a 25-year warranty.

7. There are undoubtedly unknown risks.

Power purchase agreements have been used in other states for many years. However, they only became legal in Iowa in the summer of 2014 and Alliant did not agree to net meter within SPPAs until August 2015. As a result, we are in the forefront of Iowa non-taxable entities entering into SPPAs – not the first, but we will be in the first year “class”. As a result, we cannot rule out the possibility of other risks, but, at this time, we believe that those listed above are the main ones with financial effects.