**NOTICE AND CALL OF PUBLIC MEETING**

GOVERNMENTAL BODY: THE CITY COUNCIL OF CRESCO, IOWA
DATE OF MEETING: NOVEMBER 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 October 15, 2012
4. Approval of Minutes from October 25, 2012 Worksession
5. Approval of Parade Permit for Santa's Holiday Parade on November 23, 2012
6. Approval of Pay Request #1 for $3,676.82 for S & B Construction for Housing Rehab Project

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 Adoption of the City of Cresco Comprehensive Smart Plan
2. Resolution Adopting the City of Cresco Comprehensive Smart Plan 2012
3. Karla Organist to Discuss a Grant for Healthy Iowans Initiative
4. Second Reading of Ordinance #441 Amending Chapter 106.10 Pertaining to Fees for Recyclable and Non-Recyclable Waste
5. Second Reading of Ordinance #442 Adopting an Amended Official Zoning Map
6. Discussion on Scott and Cindy Butikofer's Request for Credit on Water Bill and Results of Meter Test
7. Resolution Authorizing Mayor and City Clerk to enter into a Contract with Alexis Fire Equipment Company for a new Pumper Fire Truck
8. Resolution Accepting the Annual Financial Report and Directing the Clerk to File the Report with the Iowa Auditor of State
9. Resolution Removing a Fund within the City's Accounts and Allowing for the Transfer of Funds (Fund #306 Sewer Project)
10. Resolution Reactivating a Fund within the City's Accounts (Fund #193 – Drug Dog Fund)
11. Discussion Regarding Iowa Department of Natural Resources Required Plan of Action
12. Resolution Authorizing the Mayor to Enter into a Professional Services Agreement with WHKS & Co for Plan of Action Assistance
13. Discussion Regarding Gender Based Boards and Commissions

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 NOVEMBER 1, 2012.

## NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN:

You are hereby notified that the City Council of the City of Cresco, Iowa, will hold a public hearing at City Hall on November 5, 2012. The purpose of the hearing will be to approve the City of Cresco Comprehensive Smart Plan 2012.

This project is being funded in part through a Community Development Block Grant, provided by the Iowa Department of Economic Development, and City of Cresco funding. The Plan may be viewed on the City's website at www.cityofcresco.com.

This hearing will be conducted during a regular Cresco City Council meeting starting at 7:00 pm on November 5, 2012.

Any resident of Cresco wishing to be heard concerning the reasons for or objections to the adoption of the City of Cresco Comprehensive Smart Plan 2012 are welcome to attend this meeting or submit written comments to City Hall before the hearing.

BY ORDER OF THE CITY COUNCIL OF CRESCO, IOWA

Michelle Girolamo, City Clerk

Notes for November 5, 2012 Meeting Nov 1, 2012

Comprehensive Plan – Public hearing will be held to adopt this. Please review the final copy on the website. Hopefully all changes have been made.

Ordinance 441 & 442 – We will perform the 2nd readings of these two ordinances. The 3rd and final reading will be next meeting.

Butikofer - The test results said "This device meets or exceeds test standards". Council now needs to decide on whether to grant a credit on their water bill. We have had many comments after last meeting's front page headline of "where did the water go". I again caution you as I have in the past that any credit granted will create a precedence that will affect future and possibly past bills as well.

Fire Truck – There is a huge contract with all the specs for the new fire truck but I am just sending the first couple pages. Neal will have the whole contract available.

AFR - We have been busy reconciling with the draft of the Audit report so will hopefully have a copy for you soon.

Drug Dog Fund – I made an error last meeting and used a fund number that had been used in the past. We then discovered this fund had been set up but never used for the past drug dog. So I would like to use that fund # 193 instead.

DNR Letter – Please read the DNR letter of violations. We now need to submit a plan of action and we also need to publish the fact that we had violations. Bill Angerman & Angie Kolz from WHKS has offered to help us with this and Rod, Ron and I believe we need their help. We have already had a conference call with the 5 of us and will need to proceed quickly on it before the Dec 1st deadline.

Gender Based Boards – We will advertise and leave open positions for 3 months and if nobody with the right gender applies then we will fill the position with the other gender.

Michelle

The Cresco City Council met October 15, 2012, at 7:00 pm at City Hall. Council members Carman, Bouska, McGee, McCarville and Loveless were present. No council members were absent.

McCarville moved to approve the consent agenda which included approval of the: agenda; claims; minutes of the October 1, 2012 meeting; street closings for portion of South Park Place 11/10/12 for 5K Run/Walk and Benefit for Andy Stika; class C liquor license (LC) (commercial) with outdoor service for November 10-12, 2012 for M&M Lounge dba M&M Lounge; refund class C liquor license (LC) (commercial) of $463.13 to Chris Ator dba Cresco Lanes Sports Bar & Grill. McGee seconded and it passed all ayes.

Public Works Director Rod Freidhof reported: (a) Street Dept is picking up leaves and busy with yardwaste. Salt has been ordered and they will start hauling sand in. Three stop signs were knocked over with one stolen so the cost to the City is about $273 for this vandalism; (b) Water/Sewer Dept flushed hydrants and started hauling sludge. We got the motor back that had been hit by lightning in Well #3 but it has some vibration problems that they still need to fix; (c) Theatre tuckpointing has been completed by Karr Tuckpointing.

Engineer Bill Angerman met with Rod and Michelle last week to update projects. The East Side Feasibility Study and the Water Storage Feasibility Study reports will be presented at the Council meeting November 19th. GIS is waiting for the water, sewer and street departments to update the paper maps to input into the GIS system. Watermain looping will be reviewed in November along with replacing valves. Establishing a stormwater utility was discussed and will be discussed further during budget worksessions. A feasibility study will be done for the Granger Road to come up with estimated costs. The 2nd Avenue Project is almost done but we will retain 5% to make sure the seeding looks good in the spring. Airport Comp Plan is still waiting for proposals to be received from eligible engineering firms.

Police Chief Tim Ruroden presented his monthly report. Sheriff Miner, Deputies and City Police Officers conducted a child safety seat check last week and Hawk gave out some car seats to replace outdated ones. Advertising has started for the drug dog fundraising project. They have collected over $1,000 in donations from local businesses for safety materials from the National Child Safety Council for educating children. Grants of $4,200 were received from the Step Program to replace equipment.

City Clerk Michelle Girolamo reported (a) Financial Statements included in packet are on budget after the 1st quarter; (b) attending the IMFOA Conference in Des Moines this week; (c) attending budget workshop in November with Sue; (d) working on Annual Financial Report and a new TIF report. Both are due December 1st and need Council approval; (e) reminder of the worksession at 4:30 on October 25th. Council persons Bouska, McGee and McCarville attended a financial workshop last week that was not very useful.

Mayor Bohle opened a public hearing to amend the Code of Ordinances Chapter 106.10 pertaining to fees for recyclable and non-recyclable waste. There were no written or oral comments so the public hearing was closed. Bohle read the summarized Ordinance #441. Loveless made the motion to approve the first reading of Ordinance #441. Bouska seconded and it passed all ayes.

Mayor Bohle opened a public hearing to approve zoning changes and to amend the Code of Ordinances adopting an amended official zoning map per recommendation of the Planning and Zoning Commission. There were no written or oral comments so the public hearing was closed.

Loveless made the motion to approve Resolution 101205 rezoning real estate from "A-1" Agriculture to "M-1" Light Industrial. Bouska seconded and it passed all ayes.

Loveless made the motion to approve Resolution 101206 rezoning real estate from "A-1" Agriculture to "R-3" Residential. McGee seconded and it passed all ayes.

Bouska made the motion to approve Resolution 101207 rezoning real estate from "A-1" Agriculture to "R-1" Residential. Loveless seconded and it passed all ayes.

Loveless made the motion to approve Resolution 101208 rezoning real estate from "A-1" Agriculture to "R-2" Residential. Carman seconded and it passed all ayes.

Loveless made the motion to approve Resolution 101209 rezoning real estate from "C-1" Commercial to "M-1" Light Industrial. Carman seconded and it passed all ayes.

McGee made the motion to approve Resolution 101210 rezoning real estate from "R-4" Residential to "R-2" Residential. Loveless seconded and it passed all ayes.

Loveless made the motion to approve Resolution 101211 rezoning real estate from "C-1" Commercial to "R-3" Residential. Bouska seconded and it passed all ayes.

McCarville made the motion to approve Resolution 101212 rezoning real estate from "C-1" Commercial and "A-1" Agricultural to "R-2" Residential. Loveless seconded and it passed all ayes.

Mayor Bohle performed the first reading of Ordinance #442 adopting an Amended Official Zoning Map. Bouska made the motion to approve the first reading of Ordinance #442. Loveless seconded and it passed all ayes.

Scott and Cindy Butikofer addressed Council regarding an extraordinarily high water bill. They could not find any leaks and don't believe they used that much water. They questioned whether the meter could have malfunctioned. Water Superintendent Tim Courtney showed how the water meter worked and how the water must pass through it to cause it to turn. Council showed sympathy but felt they could not allow a credit because of the precedence that it could be setting for the future. Council agreed to have the meter tested by an independent person and will address the issue after the results are received.

Jason Passmore presented the CIDC/City Loan Committee recommendations for a RLF to be granted to Northeast Iowa Service, LLC. David Harvey described the sandblasting business they will operate in the old Campsite building. The loan will help purchase and repair the building and for operating capital. The business will bring more jobs to Cresco and fill an empty commercial building. Loveless made the motion to approve a resolution approving a loan agreement for loan of funds by CIDC/City of Cresco Revolving Loan Fund to Northeast Iowa Service, LLC. Carman seconded and it passed all ayes.

Bill Caffrey presented the fund raising project for the new sign and statue for Kessel Lodge. He also summarized last year's financial statements and listed future projects for the Fitness Center and Parks and Recreation.

Randy Rodriguez of Mediacom discussed a proposal for telephone and internet services. Council will discuss further during budget worksessions.

Loveless made the motion to approve a resolution establishing Fund #192 Drug Dog Fund within the City's Accounts. Bouska seconded and it passed all ayes.

McGee made the motion to approve a resolution establishing Fund #317 Watermain Looping Fund within the City's Accounts. Loveless seconded and it passed all ayes.

Loveless made the motion to set a public hearing for November 5, 2012 to adopt the City of Cresco Comprehensive Smart Plan 2012. Bouska seconded and it passed all ayes.

The Cresco Library Board of Trustees and the Cresco Library Foundation recommended reappointing Flossie Morrision and Karen Nance for six year terms expiring 6/30/18. Bouska did not believe it was following the law requiring gender based boards because the positions were not advertised. The clerk was instructed to check with legal counsel.

Agenda items #22 and #23 pertaining to the residency requirements were postponed.

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

Carman moved to adjourn at 8:34 pm. Bouska seconded and it passed all ayes. The next regular Cresco City Council meeting will be November 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: | | |
|---|---|---|
| ADVANCED SYS | MAINT | 56.20 |
| ALLIANT | ELECT | 1,236.66 |
| AMANDA STAGE | DEP REF | 42.64 |
| ARAMARK | SRVC | 184.78 |
| BAKER & TAYLOR | BOOKS | 1,186.37 |
| BANCARD | SUPP | 1,109.66 |
| BOB'S ELECT | SRVC | 289.49 |
| BRUENING | ROCK | 991.53 |
| CARQUEST | SUPP | 5.21 |
| CHRIS ATOR | LICS REF | 463.13 |
| CITY OF CRES | UTIL, REFS | 338.42 |
| CRES SHOPPER | ADVERT | 79.25 |
| CRESCO TIMES | ADVERT | 369.70 |
| CRICCET STREETSCAPE | STATUE | 2,790.00 |
| DECORAH GLASS | SUPP | 1,833.20 |
| DOUGH AND JOE | SUPP | 14.40 |
| EFFICIENCY PROD | SUPP | 156.51 |
| ELECTRIC PUMP | SRVC | 475.00 |
| FAREWAY | SUPP | 50.79 |
| FELD FIRE | SRVC | 334.78 |
| FENCO | SRVC | 931.19 |
| GOSCH'S | SRVC | 13.10 |
| GROUP SRVC | FEE | 348.50 |
| H & S MOTORS | SUPP | 45.80 |
| HACH | SUPP | 210.05 |
| HANNAH TIMKING | DEP REF | 80.00 |
| HANSON TIRE | SRVC | 127.25 |
| HAWKEYE REC | ELECT | 2,506.05 |
| HAWKEYE SAN | SRVC | 98.61 |
| HOGAN HANSEN | SRVC | 8,500.00 |
| HO COUNTY | SHARED LEC | 12,518.80 |
| HO WINN GENEALOG | TOURISM | 2,000.00 |
| IA WATER ENVIRO | TRAINING | 90.00 |
| IA MUNICIPAL UTI | DUES | 841.33 |
| IA TRANSPO | SUPP | 509.79 |
| IA NAT RES | FEE | 66.00 |
| IA LEAGUE | TRAINING | 60.00 |
| IA MUNICIPAL FIN | TRAINING | 50.00 |
| IA ONE | SRVC | 46.80 |
| IA PRISON IND | SUPP | 452.28 |
| JIM'S AUTO | SUPP | 340.01 |
| KARR TUCKPOINT | SRVC | 3,130.00 |
| KEVIN CARTER | DEP REF | 58.55 |
| KEYSTONE LAB | ANYLS | 1,064.35 |
| KIM BENTZ | SUPP | 89.28 |
| KRAMES STAYWELL | SUPP | 29.32 |
| KWIK TRIP INC | GAS | 2,939.72 |
| LIFEGUARD STORE | SUPP | 783.80 |
| LOUIE BALK | SUPP | 2,644.26 |
| MEDIACOM | PK REF | 75.00 |
| MEHMERT | SRVC | 6,499.80 |
| MERCHANT SRVC | FEE | 73.65 |
| MODERN MRKT | SUPP | 211.00 |
| MORSE EQUIP | SRVC | 10,724.89 |
| NE IA TELE | SRVC | 320.00 |
| NUSTEP | SUPP | 243.95 |
| O'HENRY'S | SUPP | 378.00 |
| PAYROLL | | 64,856.62 |
| PETTY CASH | POSTAGE | 25.34 |
| PHIL'S LAWN SRV | SRVC | 110.00 |
| POSTMASTER | POSTAGE | 75.00 |
| QUAM'S AUTO | SUPP | 5.00 |

| | | |
|---|---|---|
| QUARTERMASTER | SUPP | 553.54 |
| RICOH | COPIES | 27.36 |
| RILEY'S | SUPP | 166.25 |
| RUPPERT | SUPP | 283.79 |
| SANDRY FIRE | SUPP | 318.65 |
| SCHUMACHER ELEV | MAINT | 132.52 |
| SHERWIN-WILLIAMS | SUPP | 37.45 |
| SIGNS & DESIGNS | SRVC | 1,975.00 |
| SPORTSMITH | SUPP | 304.93 |
| STATE HYGIENIC | ANYLS | 959.00 |
| STOREY KEN | SUPP | 221.95 |
| TRUENORTH | INSUR | 372.40 |
| U.S. CELLULAR | PHONES | 128.41 |
| UNIFORM & ACCESS | UNIF | 81.95 |
| VINCE GEHLING | DEP REF | 15.72 |
| WEBER PAPER | SUPP | 99.22 |
| WHKS | SRVC | 7,686.05 |
| WILSON TREE | SRVC | 847.29 |
| WINDRIDGE IMPLE | SUPP | 803.91 |
| ZIMMER & FRANCES | SUPP | 273.62 |
| | | |
| | General Fund | 64,284.73 |
| | Hotel/Motel Tax | 2,000.00 |
| | Road Use Tax | 9,562.90 |
| | Emp Benefits | 11,018.02 |
| | Local Option Tax | 7,159.38 |
| | Cresco Telecom | 560.81 |
| | Equip/Repair-Fitness | 1,974.88 |
| | City Park/Trust | 2,790.00 |
| | Sewer Proj | 3,200.00 |
| | Bicycle Trail 2007 | 2,478.01 |
| | Water Utility | 11,032.28 |
| | Water Dep | 480.00 |
| | MSSU Operation | 27,126.32 |
| | Water & Sewer | 6,522.32 |
| | Yard Waste | 1,280.17 |
| | | |
| | EXPENDITURES | 151,469.82 |
| | Revenues 10/02 to 10/15/12 | 869,930.13 |

Mayor Mark Bohle called a special meeting of the Cresco City Council to order at 4:30 pm on October 25, 2012 at City Hall. Council Members Carman, Bouska, McGee, McCarville and Loveless were present. No council members were absent.

City Clerk Michelle Girolamo presented graphs explaining how the City property tax levy is 42% or $17.13127 of the total $41.01575 levy per $1,000 of taxable value. An 11 year tax levy comparison was shared showing the City levy has remained level since 2002. A comparison of refinancing options from Speer Financial and Piper Jaffray were considered. Council instructed the Clerk to contact Piper Jaffray to refinance an outstanding bond which is projected to save the City over $162,000. Council also concluded that we should borrow additional funds to pay for some projects that would have been paid out of reserves. The property tax levy would not need to be increased for the additional loan payments if the City uses reserves to make the loan payments each year.

A list of potential future projects and equipment was presented to Council to be considered when budgeting starts next month. Council requested each department to bring at least three cost and/or energy saving ideas to their budget meeting. Nuisance house issues were discussed and the need to draw people to Cresco. McCarville and Bouska will meet with Attorney Joe Braun to update the Nuisance Ordinance.

Changes to the draft Comprehensive plan were discussed. Bouska and Girolamo will contact Upper Explorerland to make the corrections.

It was moved by Carman to adjourn at 6:25 pm. The motion was seconded by McGee, and passed all ayes.

_____

Mayor Mark Bohle

_____

City Clerk Michelle Girolamo

STREET CLOSING/PARADE PERMIT

DATE 10-23-12

NAME Santa's Holiday Parade - Cresco Chamber

PERMISSION TO CLOSE: 3rd Ave from CHS to North Elm and North Elm from 3rd Ave to 1st Ave

REASON FOR CLOSURE: Parade - 30th Annual

DATE: November 23rd, 2012

TIME: (from) 2pm (to) 5pm

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.

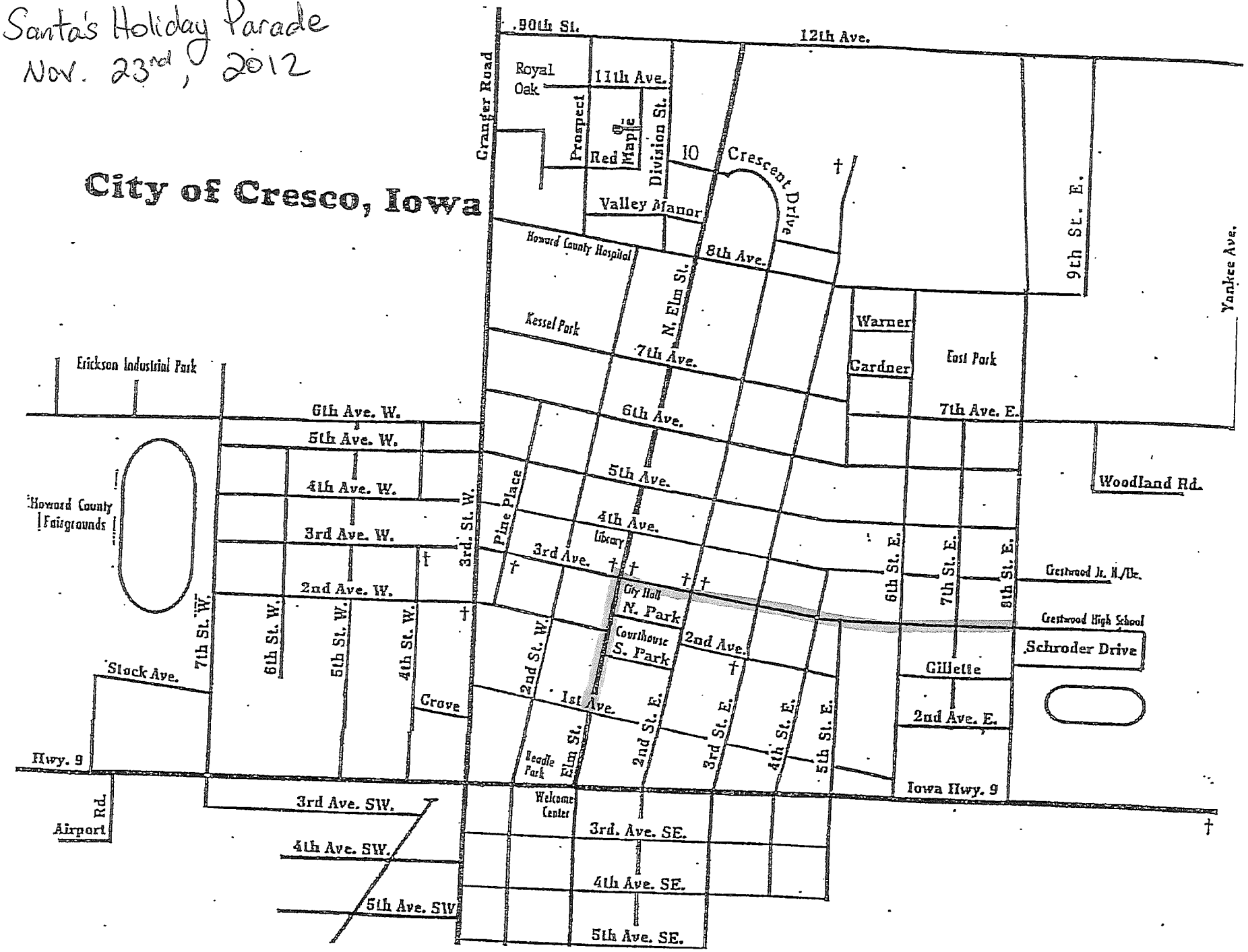
2. Permit Required. No parade shall be conducted without first obtaining a written permit from the City Council. Such permit shall state the time and date for the parade to be held and the streets or general route therefor. Such written permit granted to the person organizing or sponsoring the parade 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.

30th Annual
Santa's Holiday Parade
Nov. 23rd, 2012

# City of Cresco, Iowa



# PAY REQUEST

TO: City of Cresco

PROJECT: Bill Callahan Residence (110 W. 4th Street)

DATE: 10/30/12

PAY REQUEST NUMBER: 1

| CONTRACT BREAKDOWN | ORIGINAL CONTRACT AMOUNT | CHANGE ORDERS | ADJUSTED CONTRACT AMOUNT | % COMP. | VALUE OF WORK COMPLETED |
|---|---|---|---|---|---|
| Dirt Fill | $ 100.00 | | | | |
| Front Porch Posts | 180.00 | | | | |
| Guttering | 962.50 | | | | |
| Exterior Doors | 1,631.95 | | | | |
| Storm Doors | 403.10 | | | | |
| Replacement Windows | 2,659.62 | | | 100% | 2,659.62 |
| Remove Windows | 300.00 | | | 100% | 300.00 |
| Living Room Painting | 1,822.80 | | | 50% | 911.40 |
| Paint Interior Kitchen Windows | 125.00 | | | 100% | 125.00 |
| Bathroom Painting | 1,000.00 | | | 50% | 500.00 |
| Flooring – Kitchen/Bathroom | 1,326.80 | | | | |
| Flooring – LR, DR and Bedroom | 1,929.70 | | | | |
| Electrical | 8,234.80 | CO #1 – Add'l Elec - $1,210.00 | | | |
| Mechanical | 3,473.12 | CO #1 – Add'l Mechanical - $50.00 | | | |
| Lead-Safe Work Practices | 200.00 | | | 50% | 100.00 |
| **TOTAL** | **$24,349.39** | | | | **$ 4,596.02** |

Net Contract Amount to Date $ 25,609.39

Total Value of Work Completed $ 4,596.02

20 Retained (20% / Final-0%) $ 919.20

Value of Work Completed Less Retained $ 3,676.82

Less Total Previously Certified $ 0.00

**AMOUNT DUE THIS REQUEST** $ **3,676.82**

OWNER: Bill Callahan

CONTRACTOR: S & B Construction

APPROVED: Program Inspector

APPROVED: City of Cresco

**(CITY HALL: Please hold check until authorization received from Melanie to release. Thank you!)**

**Resolution _____**

**RESOLUTION ADOPTING THE CITY OF CRESCO COMPREHENSIVE SMART PLAN 2012**

WHEREAS, the City Council of the City of Cresco is responsible for the preparation and adoption of the City of Cresco Comprehensive Smart Plan; and

WHEREAS, the City's existing comprehensive plan had not been thoroughly updated in many years and does not reflect the community's current goals and specific initiatives to help achieve those goals; and

WHEREAS, the City desired to have a plan for the community to refer to when addressing potential uses and the development of property in the City; and

WHEREAS, the City desired to be proactive in dealing with regional and inter-municipal issues, protecting its resources, and planning for community and/or service needs; and

WHEREAS, the City Council of the City of Cresco, the Comprehensive Plan Steering Committee and its planning consultants undertook a comprehensive study of the historic and existing conditions in the City, the surrounding vicinity and the rest of the County; identified issues and opportunities; analyzed numerous topics and potential options; and consulted with various boards including the Planning and Zoning Board, committees and other representatives, County departments/agencies and officials, surrounding municipalities, business groups, environmental and civic groups, as well as various Federal, State and regional organizations; and developed goals, strategies and action recommendations and implementation strategies which resulted in the City of Cresco Comprehensive Smart Plan; and

WHEREAS, the City of Cresco Comprehensive Smart Plan 2012 is a long-range document which identifies the important positive attributes and components which provides a blueprint for the future; and

WHEREAS, the City of Cresco Comprehensive Smart Plan 2012 will provide guidance to decision makers, residents, property owners and organizations through its goals, strategies and actions relevant to the Iowa Smart Planning Elements of: Public Participation; Community Character; Land Use; Housing; Public Infrastructure and Utilities; Transportation; Economic Development; Agricultural and Natural Resources; Community Facilities; Hazards; Intergovernmental Collaboration; and Implementation; and

WHEREAS, there has been public participation throughout the process, including public workshops and a public hearing held on November 5 and review of background documents and drafts of the City of Cresco Comprehensive Smart Plan 2012;

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Cresco, Iowa, that the City of Cresco Comprehensive Smart Plan 2012 is hereby approved.

Passed and approved this 5th day of November, 2012 by the City Council of the City of Cresco, Iowa.

_____

Mark Bohle, Mayor

ATTEST:

_____

Michelle Girolamo, City Clerk

ORDINANCE 441

Below is a summary of ORDINANCE 441. A full copy of said Ordinance may be obtained between 8 am and 4:30 pm weekdays at City Hall, 130 North Park Place, Cresco, IA 52136 or on the City's website at www.cityofcresco.com.

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF CRESCO, IOWA, 1998, BY AMENDING CHAPTER 106.10 PERTAINING TO FEES FOR RECYCLABLE AND NON-RECYCLABLE WASTE

BE IT ENACTED by the City Council of the City of Cresco, Iowa, as follows:

SECTION 1. SECTION MODIFIED. Chapter 106.10, Subsection 1 and Subsection 2, Paragraph A of the Code of Ordinances of the City of Cresco, Iowa, 1998, are repealed and the following adopted in lieu thereof:

**Effective January 1, 2013:**

106.10 (1) RESIDENTIAL

(A) Fees for Recyclables $4.29 per month per unit.

(B) Fees for Non-recyclable Waste:

(1) Where at least one resident residing at a residential property is 65 years of age or older: $14.94 per month for each residential unit.

(2) All other persons residing at a residential property: $15.49 per month for each residential unit.

106.10 (2) COMMERCIAL

(A) Light commercial $19.26 per month.

**All rates increase by 2% on January 1st for the next four years ending December 31, 2017**

SECTION 2. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 3. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

ORDINANCE NUMBER 442

AN ORDINANCE ADOPTING AN AMENDED OFFICIAL ZONING MAP

WHEREAS, Section 165.65 of the Code of Ordinances of the City of Cresco, Iowa, 1998, provides for replacement of the official zoning map when it has become damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions; and

WHEREAS, the Zoning Administrator has revised the official zoning map to include areas that have been rezoned, a copy of which is attached hereto and made a part hereof by this reference and the map should be adopted as the new official zoning map of the City of Cresco, Iowa;

NOW, THEREFORE, BE IT ORDAINED by the City of Cresco, Iowa as follows:

1. The attached map is hereby adopted as the Official Zoning Map of the City of Cresco, Iowa

2. The Mayor and City Clerk are authorized and directed to place their signatures on the Official Zoning Map and certify on the face of the map as follows: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted December 6, 1993 as part of Ordinance Number 237 of the City of Cresco, Iowa"

3. The prior map shall be preserved, together with all available records pertaining to its adoption or amendment.

BE IT FURTHER ORDAINED that if any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, such shall not affect the validity of the remaining portion or portions of this Ordinance. The City Council of Cresco, Iowa hereby declare that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

BE IT FURTHER ORDAINED that this ordinance shall be in full force and effect from and after its final passage, approval and publication as provided by law.

PASSED AND APPROVED THIS _____ DAY OF _____ _____, 2012.

_____ Attest: _____

Mark Bohle, Mayor Michelle Girolamo, City Clerk

(SEAL)

RESOLUTION NUMBER _____

RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A CONTRACT WITH ALEXIS FIRE EQUIPMENT COMPANY

WHEREAS, the City of Cresco intends to purchase a new Alexis Custom Top Control Pumper From Alexis Fire Equipment Company; and

WHEREAS, the City of Cresco will purchase the fire truck jointly with the Cresco Community Fire Protective District (Rural Fire Department); and

WHEREAS, the cost of the pumper will be $381,426 with $140,000 already paid down on it; and

WHEREAS, the remaining $241,426 will be paid upon delivery equally by the City and Rural Fire Departments with delivery expected in November 2013; and

THEREFORE, Council Person _____ moved the adoption of the foregoing Resolution Authorizing the Mayor and City Clerk to enter into a contract with Alexis Fire Equipment Company. Council Person _____ 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 contract dated _____ between the City of Cresco and Alexis Fire Equipment Company is approved and that the Mayor and City Clerk are authorized to execute the contract on behalf of the City of Cresco.

PASSED AND APPROVED THIS _____ DAY OF _____, 2012.

BY:_____
Mayor Mark Bohle

ATTEST:_____
City Clerk Michelle Girolamo

Alexis

109 EAST BROADWAY • ALEXIS, ILLINOIS 61412 • P 800 [illegible] • F 309 [illegible] • SALES@ALEXISFIRE.COM

Cresco Fire Department
Cresco, Iowa

Gentlemen:

We hereby propose to furnish, after your acceptance, approval, and proper execution of the accompanying contract, the fire apparatus as follows:

One (1) Alexis Custom Top Control Pumper

As per specifications attached herewith.

TOTAL APPARATUS.....$ 380,998.00 *

* Does not include any applicable taxes. Any local or state tax, if applicable, must be added to the above price.

Shipment of completed apparatus shall be made within 330 calendar days after our approval of properly signed contract, subject to causes beyond our control. This proposal is made subject to your acceptance within thirty (30) days from date of same. If acceptance is delayed beyond that period, we will, upon request, advise you of any increase in said amount which may be occasioned by causes beyond our control.

Respectfully submitted,
ALEXIS FIRE EQUIPMENT COMPANY

By: _____
K. Jeffrey Morris, President

"QUALITY I [illegible] TE"

$ 381,426
50% Cty
140,000 down pd

Alexis
109 EAST BROADWAY • ALEXIS, ILLINOIS 61412 • P 309 72 2780 • F 309 382 6127 • SALES@ALEXISFIRE.COM

## PAYMENT TERMS

### OPTION 1

The chassis payment of $140,000.00 has been made.

A progress payment of shall be made within ten (10) days of invoicing, upon the initial construction of the apparatus body.

The balance of the contract plus any contract alterations shall be payable upon the delivery of the finished unit.

Upon payment, the Alexis Fire Equipment Company shall furnish the purchaser a "Statement of Origin" or the necessary validated documents required for title application.

***Additional payment terms available upon request.***

Alexis
109 EAST BROADWAY • ALEXIS, ILLINOIS 61412 • P 800.122.2283 • F 309.482.6127 • SALES@ALEXISFIRE.COM

**OPTIONS:**

Two (2) extra cartridge lay trays for the Preconnects

**ADD: $ 428.00** **YES:** _____ **NO:** _____

RESOLUTION NO. _____

A RESOLUTION ACCEPTING THE ANNUAL
FINANCIAL REPORT OF THE CITY OF CRESCO, IOWA FOR
THE FISCAL YEAR 2011-2012 AND DIRECTING THE CLERK TO FILE
THE REPORT WITH THE IOWA AUDITOR OF STATE

BE IT RESOLVED, by the City Council of the City of Cresco, Iowa:

That the Fiscal Year 2011-2012 Annual Financial Report is approved as presented to the Council.

The City Clerk is directed to forward the above report to the Iowa Auditor of State in accordance with the instructions therein and certify that the Council approved the report the day indicated below. The Clerk is directed to publish the report as required and certify that it has been published. The Clerk shall file the City's copy in the files of the Clerk's Office.

This resolution is effective upon its passage and approval in accordance with the law.

Council member_____ moved the adoption of the foregoing resolution and council member _____ seconded said motion. Thereupon the Mayor called for a roll call vote and the following council members voted in favor of the foregoing Resolution:

_____.

The following council members voted against the adoption of the foregoing resolution:

_____.

PASSED AND APPROVED THIS 5th DAY OF NOVEMBER, 2012.

_____
Mayor Mark Bohle

ATTEST: _____
City Clerk Michelle Girolamo

**RESOLUTION NUMBER _____**

**RESOLUTION REMOVING A FUND WITHIN THE CITY'S ACCOUNTS AND ALLOWING FOR THE TRANSFER OF FUNDS**
**(Fund 306 Sewer Project)**

WHEREAS, the project of installing a new sludge storage facility at the Wastewater Treatment Plant was tracked in the Sewer Project Fund 306; and

WHEREAS, the construction project has been completed and the project was accepted on July 16, 2012; and

WHEREAS, the remaining funds were derived from interest earned on the funds during the construction project and should be transferred to #610 MSSU Revenue Fund.

THEREFORE, BE IT RESOLVED, by the City Council of the City of Cresco, Iowa, that the following fund be removed:

FUND 306 – SEWER PROJECT

BE IT ALSO RESOLVED, by the City Council of the City of Cresco, Iowa, that the monies remaining in Fund 306 – Sewer Project of $93.93 be transferred to the MSSU Revenue Fund 610; and

BE IT FURTHER RESOLVED, by the City Council of the City of Cresco, Iowa, that the City Clerk be directed by the Mayor and the City Council to remove said fund and correct the books accordingly.

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

_____
Mayor Mark Bohle

ATTEST:_____
City Clerk Michelle Girolamo

**RESOLUTION NUMBER _____**

**RESOLUTION REACTIVATING A FUND WITHIN THE CITY'S ACCOUNTS**
**FUND 193 – DRUG DOG FUND**

WHEREAS, the City of Cresco will be acquiring a canine for the Police Department for the purpose of drug detection and/or patrol services; and

WHEREAS, the City of Cresco, Iowa, would like to track funds received and expended with regards to the cost of purchasing, training, certifying and maintaining the dog; and

WHEREAS, the City of Cresco, Iowa, promotes the transparency of its funds and accounting and this fund #193 – Drug Dog Fund had been established previously but never utilized.

THEREFORE, BE IT RESOLVED, by the City Council of the City of Cresco, Iowa, that the following fund be reactivated:

FUND 193– DRUG DOG FUND

BE IT FURTHER RESOLVED, by the City Council of the City of Cresco, Iowa, that the City Clerk be directed by the Mayor and the City Council to activate said fund and correct the books accordingly.

BE IT FURTHER RESOLVED, that this resolution replaces Resolution Number 101213 establishing Fund #192 for the Drug Dog Fund.

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

_____
Mayor Mark Bohle

ATTEST:_____
City Clerk Michelle Girolamo

Fields of Opportunities

# STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR
KIM REYNOLDS, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
CHUCK GIPP, DIRECTOR

October 26, 2012

City of Cresco
130 North Park Place
Cresco, IA 52136

Attention: Honorable Mayor and Council

RE: Notice of Violation of NPDES Permit #0790001
***567* IAC 64.3** Permit to Operate- Effluent Violations
Failure to Enforce Pretreatment Agreement

Dear Mayor and Council:

After reviewing the incoming NPDES reports for the period of January 2012 through September 2012, it has been determined that your facility is in significant noncompliance with the NPDES permit for your facility. During this review period there were 14 effluent violations. In addition, 42 pretreatment effluent violations of the pretreatment agreement with Cresco Foods were noted.

Data reviewed indicates that the pretreatment violations associated with Cresco Foods correlates with the recent effluent violations. It is expected that the City work with Cresco Foods to achieve compliance with the pretreatment limits listed in the NPDES permit for your facility.

Cresco Foods is considered to be in significant noncompliance with their pretreatment agreement. With this determination the City must comply with public participation requirements of 40 CFR part 25 of the Federal Code. We have attached a copy of the federal regulations that identifies when an industrial contributor is in significant noncompliance and the annual publication requirements.

Be advised that assessing fees for pretreatment violations is not considered to be adequate enforcement action. If the City can not obtain compliance with the current pretreatment agreement with Cresco Foods, additional enforcement action by this Department or USEPA may be warranted.

I have included a table that lists the effluent and pretreatment violations identified during this recent review of data that was submitted to this office as required in the NPDES permit for your wastewater facility.

By December 1, 2012 you must submit a plan of action to this office as to how your facility will meet all effluent limits and how the City will ensure that Cresco Foods complies with all pretreatment limits listed in the current NPDES permit.

If you have any questions regarding this letter please feel free to contact me at this office.

Sincerely,

**ENVIRONMENTAL SERVICES DIVISION**

Mike Wade
Environmental Specialist Senior

c: Robert Bryant, US EPA, Region VII
File –WW/Cresco
Efile –045 WW cresco 102612 nltr maw
DNR - IDNR Records Center - Des Moines – NPDES# 4515001

# Effluent Limits Violation

01/01/2012 Through 10/01/2012

**Facility:** CRESCO CITY OF STP

**Facility ID:** 4515001

**EPA ID:** IA0021334

**Location City:** CRESCO

| Outfall: 001 | 01/2012 | 02/2012 | 03/2012 | 04/2012 | 05/2012 | 06/2012 | 07/2012 | 08/2012 | 09/2012 | 10/2012 | 11/2012 | 12/2012 | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **CBOD5** | | | | | | | | | | | | | |
| 7DAY - C | | | | | | 51.0000 | | | | | | | 1 |
| (Permit Limit) | | | | | | (40.0000) | | | | | | | |
| AVERAGE - C | | | | | | 34.7143 | | | | | | | 1 |
| (Permit Limit) | | | | | | (25.0000) | | | | | | | |
| **NH3-N** | | | | | | | | | | | | | |
| AVERAGE - C | | | | 3.4050 | | 16.3375 | | | 7.5275 | | | | 3 |
| (Permit Limit) | | | | (2.9000) | | (2.9000) | | | (2.9000) | | | | |
| AVERAGE - M | | | | | | 80.8784 | | | | | | | 1 |
| (Permit Limit) | | | | | | (39.0000) | | | | | | | |
| MAXIMUM - C | | | | 6.9000 | 9.5500 | 27.4000 | 5.3200 | | 11.9000 | | | | 5 |
| (Permit Limit) | | | | (5.1000) | (5.1000) | (5.1000) | (4.5000) | | (5.1000) | | | | |
| MAXIMUM - M | | | | | | 123.0584 | | | | | | | 1 |
| (Permit Limit) | | | | | | (69.0000) | | | | | | | |
| **TSS** | | | | | | | | | | | | | |
| 7DAY - C | 57.0000 | | | | | 47.5000 | | | | | | | 2 |
| (Permit Limit) | (45.0000) | | | | | (45.0000) | | | | | | | |

**Industrial Contribtor:** CRESCO FOOD TECHNOLOGIES, LLC

# Effluent Limits Violation

01/01/2012 Through 10/01/2012

**Facility:** CRESCO CITY OF STP

**Facility ID:** 4515001

**EPA ID:** IA0021334

**Location City:** CRESCO

**Industrial Contribtor:** CRESCO FOOD TECHNOLOGIES, LLC

| **Outfall:** 001 | **01/2012** | **02/2012** | **03/2012** | **04/2012** | **05/2012** | **06/2012** | **07/2012** | **08/2012** | **09/2012** | **10/2012** | **11/2012** | **12/2012** | **Total** |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **BOD5** | | | | | | | | | | | | | |
| AVERAGE - M | | 302.8000 | 372.5000 | 366.2500 | 538.4000 | 947.5000 | 302.5000 | | 383.7500 | | | | 7 |
| (Permit Limit) | | (250.0000) | (250.0000) | (250.0000) | (250.0000) | (250.0000) | (250.0000) | | (250.0000) | | | | |
| MAXIMUM - M | | 428.0000 | 505.0000 | 414.0000 | 1,392.0000 | 1,865.0000 | 772.0000 | | 1,381.0000 | | | | 7 |
| (Permit Limit) | | (350.0000) | (350.0000) | (350.0000) | (350.0000) | (350.0000) | (350.0000) | | (350.0000) | | | | |
| **FLOW** | | | | | | | | | | | | | |
| AVERAGE - C | | 0.0678 | 0.0683 | 0.0748 | 0.0843 | 0.0765 | | | | | | | 5 |
| (Permit Limit) | | (0.0670) | (0.0670) | (0.0670) | (0.0670) | (0.0670) | | | | | | | |
| MAXIMUM - C | | | | 0.1130 | 0.1090 | 0.1030 | | | | | | | 3 |
| (Permit Limit) | | | | (0.1000) | (0.1000) | (0.1000) | | | | | | | |
| **TKN** | | | | | | | | | | | | | |
| AVERAGE - M | | 6.9900 | 29.7000 | 32.4125 | 20.9520 | 10.8525 | 6.8700 | 8.1475 | | | | | 7 |
| (Permit Limit) | | (6.7000) | (6.7000) | (6.7000) | (6.7000) | (6.7000) | (6.7000) | (6.7000) | | | | | |
| MAXIMUM - M | | 14.3900 | 48.9100 | 49.6200 | 37.1900 | 36.6900 | 19.2200 | 21.3300 | | | | | 7 |
| (Permit Limit) | | (10.0000) | (10.0000) | (10.0000) | (10.0000) | (10.0000) | (10.0000) | (10.0000) | | | | | |
| **TSS** | | | | | | | | | | | | | |
| AVERAGE - M | | | 223.7500 | | 263.4000 | | | | | | | | 2 |
| (Permit Limit) | | | (220.0000) | | (220.0000) | | | | | | | | |
| MAXIMUM - M | | | 396.0000 | | 600.0000 | 344.0000 | | 400.0000 | | | | | 4 |
| (Permit Limit) | | | (300.0000) | | (300.0000) | (300.0000) | | (300.0000) | | | | | |
| **Total For Facility** | **1** | **5** | **7** | **8** | **9** | **14** | **5** | **3** | **4** | | | | **56** |

Permit Limits are surounded by ()

(vii) Comply with the public participation requirements of 40 CFR part 25 in the enforcement of national pretreatment standards. These procedures shall include provision for at least annual public notification, in the largest daily newspaper published in the municipality in which the POTW is located, of industrial users which, at any time during the previous twelve months, were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

(A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

(B) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH.

(C) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

(D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;

(E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(F) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(G) Failure to accurately report noncompliance;

(H) Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

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 November 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 Plan of Action Assistance . 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 November 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 NOVEMBER, 2012.

BY:_____
Mayor Mark Bohle

ATTEST:_____
City Clerk Michelle Girolamo

WHKS & CO.

2905 S. Broadway
Rochester, MN 55904
(507)288-3923

# 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 Plan of Action Assistance, 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. Prepare a Plan of Action (POA) in accordance with the Iowa Department of Natural Resources (IDNR) requirements letter to the City of Cresco dated 10/26/2012.
2. Assistance with Public Notification as required by Code of Federal Regulations 40 CFR part 25.
3. Meet with City Staff and Cresco Foods to discuss POA.
4. Review wastewater treatment plant and industrial user Monthly Operating Reports (MORs).
5. Provide operational modification recommendations for the wastewater treatment plant.

The following information is to be provided by the Client:

a. Wastewater treatment plant and significant industrial user flow and loading data.

## Basis of Compensation

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

Billed hourly with an estimated fee of $5,000.00, including expenses.

Executed this _____ day of _____, 2012.

**City of Cresco, IA**

By: _____

Title: _____

**WHKS & CO.**

By: _____
William Angerman, P.E.

Title: Vice President

WHKS & CO.

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

# 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 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.

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