

**NOTICE OF REGULAR COUNCIL MEETING
CUMMING CITY COUNCIL
September 23, 2024 – 6:00 PM
Cumming City Hall, 649 N. 44th St., Cumming, IA***

ROLL CALL

APPROVAL OF AGENDA as presented and/or amended

PUBLIC COMMENT

PUBLIC HEARING

CONSENT ITEMS

- A. Minutes from the September 9, 2024 Regular Council Meeting
- B. Payment of Bills
- C. Motion to Approve Alcohol License for Lucky Wife Wine Slushies
- D. Motion to Approve Bid on Aerating and OverSeeding Mayor Tom Becker Park
- E. Motion to Approve Bid on Door and Tempered Glass for City Hall
- F. Resolution 2024-36 Termination of Participation in Central Iowa Regional Drinking Water Commssion

BUSINESS ITEMS

- A. Resolution 2024-37 for Reimbursement of RISE Funds to HyVee for 50th Avenue and Cumming Avenue Widening Project in the amount of \$329,907.52
- B. Resolution 2024-38 Amendment to McClure Engineering Agreement/Old Town Design Review

REPORTS:

- A. Mayor B. Council C. Attorney D. City Clerk E. City Administrator

CLOSED SESSION-Motion to go into Closed Session in accordance with Iowa Code Section 21.5 C, to discuss strategy with counsel in matters that are presently in litigation or where litigation is eminent where its disclosure would be likely to prejudice or disadvantage the position of the City of Cumming in that litigation

MOTION TO RETURN TO REGULAR MEETING

ADJOURN INTO WORKSESSION

WORKSESSION:

- A. Comprehensive Land Use and Capital Planning Continued from September 9, 2024 – Annexation Discussion, Continued

ADJOURNMENT

UPCOMING ITEMS

Annual Reports

*The City of Cumming welcomes public participation. If unable to attend this meeting in person, online and phone participation are available below. For questions, please contact City Hall at 649 N 44th Street, 515-981-9214 or email at nonstot@cumming.iowa.gov

Join Zoom Meeting
<https://us02web.zoom.us/j/2382663968> Meeting ID: 238 266 3968

Council Communication: Council Meeting Items for September 23, 2024

SUBMITTED BY:

Rita Conner, City Administrator

SYNOPSIS:

The information below summarizes several agenda items before Council for September 23, 2024.

CONSENT ITEMS

A. Motion to Approve Bid on Aerating and OverSeeding Mayor Tom Becker Park

Part of the City's fall park maintenance operations are proposed to include aeration and overseeding of part of Mayor Tom Becker Park. Since our taking over the park's maintenance in 2023, full coverage grass has been inconsistent in a section of the park. Some re-seeding was done in 2023, but results were not robust. Incorporating the core aeration with seeding at the best possible point in the season is proposed, to produce the best coverage. Two bids have been received and are included in your packet materials.

Fall work in the park system will also include pruning a crabapple tree, adding mulch, equipment inspection and end season weed control as warranted. Parks close November 1, at which point water shutoff occurs, and restroom access at Mayor Tom Becker Park will end for the year. We have been retaining the portable restroom at City Hall adjacent to the trail over the winter the last two seasons, due to public interest.

B. Motion to Approve Bid on Door and Tempered Glass for City Hall

This is a small project that is proposed to introduce better separation between City Hall's work area and public space. The elements are intended to help us continue to serve the public as efficiently as possible, while also having more separation for focused work. This will also help our ability to host meetings at the Council table with less impact to staff at their desks.

C. Resolution 2024-36 Termination of Participation in Central Iowa Regional Drinking Water Commission

With the final approval of the new entity, Central Iowa Water Works (CIWW) as the regional water service provider in the Metro Area, member governments are requested to approve the dissolution of the former Central Iowa Regional Drinking Water Commission (CIRDWC). This resolution provides for the City of Cumming's approval of the dissolution.

BUSINESS ITEMS

A. Resolution 2024-37 for Reimbursement of RISE (Revitalize Iowa's Sound

Economy) Funds to HyVee for 50th Avenue and Cumming Avenue Widening Project in the amount of \$329,907.52

A portion of the funds we've received from the RISE program were reimbursed to Hy Vee (Jeff Stein, P.E., Director of Site Planning, Hy Vee, Inc 5820 West Town Parkway West Des Moines, Iowa 50061) at the last Council meeting. The payment presented here will be followed by a final payment when the project is final and the retainage is released. Payments under the project agreement have been made in advance by HyVee with the reimbursement of the RISE funds coming as a condition of the development agreement.

Installation of no parking signage and the crossing beacons remain to be completed, along with final walk through and resolution of any punch list items.

B. Resolution 2024-38 Amendment to McClure Engineering Agreement/Old Town Design Review

This amendment provides for the preparation of permanent easement plats and any necessary land acquisition, and is based on the design process, engineering review, public input and Council discussion to date.

Included in your packet information is a letter received from a property owner in the project boundary who is requesting that Council look again at the proposed design before going out for bids on the project. The main element in question is not the underground sanitary sewer work, but the surface treatments and urban stormwater management elements.

The design we've moved forward this year includes curb and gutter, sidewalks, some widening of streets and stormsewer for Old Town Cumming. Currently, there is overland drainage through swales and driveway culverts, with very limited piping for stormwater. Sidewalks are narrow and not fully connected through town, and streets are at their original width.

Council's discussions have identified better stormwater management, improved streets, better abilities to manage parking with businesses and homes, and bringing the area up to urban design standards as positives for the project as designed. Alex Schlader with McClure Engineering will attend the Council meeting to address any questions from the public and Councilmembers.

REPORTS:

A. Mayor B. Council C. Attorney D. City Clerk E. City Administrator

ADJOURN INTO WORKSESSION

WORKSESSION:

A. Comprehensive Land Use and Capital Planning Continued from September 9, 2024 – Annexation Discussion, Continued

Council has worked on the subjects of long-range planning, future capital projects, growth and potential annexation boundaries at our regular meetings since June 24th.

This worksession is intended to:

- Continue work finalizing a Council preference for an annexation moratorium with the City of Norwalk
- Review draft Capital Improvement Plan inventory and prepare for setting FY priorities
- Review the projects proposed for inclusion in TIF-backed bond issuance this fall, for FY 26

**OFFICIAL PUBLICATION
CITY OF CUMMING
Regular Council Meeting 09/09/2024
To be Approved at 09/23/2024 Meeting**

The regular City Council Meeting of the City of Cumming was held at Cumming City Hall 649 N. 44th St. on September 9, 2024 at 6:00PM. The meeting was called to order at 6:00 P.M. by Mayor Brent Highfill via Zoom. Present at Roll Call: Thomas Cackler, Larry “Dino” Goode, Jr, Martin Squier, Kathie Hungerford and Charlie Ochanpaugh. Motion by Cackler, seconded by Goode, Jr to approve the agenda. Approved 5-0.

Public Comment: None

Public Hearings: None

Consent Items:

Motion made by Ochanpaugh, seconded by Hungerford to approve Consent Items; Minutes from August 26, 2024 Regular Council Meeting, Payment of Bills, July 2024 Financials, August 2024 Financials, August 2024 Sheriff’s Report and Motion to Approve Purchase of Accounting Software and Hardware for City Hall. Approved 5-0.

Payment of Bills:

Type	Date	Vendor	Memo	Amount
Check	08/26/24	Skinner Law Office PC	Invoice 35331	-1,111.25
Check	08/27/24	Veenstra & Kimm Inc.	Invoice 41235-79	-50.00
Check	08/27/24	Midamerican Energy	July Invoice	-864.91
Check	08/27/24	Veenstra & Kimm Inc.	Invoice 41233-094-8	-237.00
Check	08/27/24	N/Warren Town & County News	Minutes for Reg Council Meeting 07.22.24	-147.56
Check	08/27/24	Simmering Cory Inc	Invoice 2024-IC-0303	-450.00
Check	08/27/24	Mid-Iowa Association	Dues FY24-25	-600.00
Check	08/27/24	Elan Financial Services	August Invoice	-668.61
Check	08/31/24	Combined Systems Tech	Invoice 167103	-84.10
Check	09/04/24	City of Norwalk	Invoice 260	-767.20
Check	09/04/24	City of Norwalk	Invoice 262	-5,079.18
Check	09/04/24	Waste Solutions of Iowa	Invoice 89103	-166.00
			Total	-10,225.81

Business Items:

- A. Motion by Goode, Jr., seconded by Cackler to approve Resolution 2024-34 for Reimbursement of RISE Funds to HyVee for 50th Street and Cumming Avenue Widening Project in the amount of \$866,706.50. Approved 5-0.
- B. Motion by Hungerford, seconded by Goode, Jr. to approve Resolution 2024-35 for the City of Norwalk in Support of the City of Norwalk’s Annexation Efforts to the Southwest of Norwalk. The Council will continue discussions surrounding a moratorium agreement with the City of Norwalk. The Council is working to have this completed by the end of the calendar year. Approved 5-0.

Reports:

- A. No Report
- B. No Report
- C. No Report
- D. No Report
- E. City Administrator discussed Warren Ave and maintenance agreement with Warren and Dallas County. West Des Moines is currently maintaining the road. There is a concrete plant operating on Warren Ave. This is going to Warren County Board of Adjustments on September 12, 2024. This would be for a special use permit. The public is concerned about road conditions and traffic control. There is also a concern

regarding dust. Diligent has received their grant for the Cottages that was submitted in August. They will be submitting plans to Planning & Zoning and then these will be brought to council.

Adjourn into Worksession:

A. Motion by Cackler, seconded by Ochanpaugh to adjourn into worksession at 6:39PM. Approved 5-0.

Adjourn:

Motion by Cackler, seconded by Squier to adjourn the meeting at 6:48 PM. Approved 5-0.

NEXT CITY COUNCIL MEETING: September 23, 2024 at 6:00PM at City Hall

Brent Highfill, Mayor

Attest: Nichole Onstot, City Clerk

10:04 AM

09/19/24

City of Cumming
Claims To Be Approved
All Transactions

<u>Type</u>	<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Memo</u>	<u>Amount</u>
Check	09/16/2024		Oakland Corporation	Lasherfische Renewal	-3,100.00
Check	09/17/2024		Veenstra & Kimm Inc.	HyVee Invoices	-78,013.24
Check	09/17/2024		Mid-Iowa Planning Al...	FY24-25 Dues	-66.00
Check	09/17/2024		EO Johnson Busines...	Invoice 1530385	-683.53
Check	09/17/2024		First Net	Invoice 287321929420	-41.27
Check	09/19/2024		GCMOA	FY24-25 Dues	-50.00
Total					-81,954.04



State of Iowa

Alcoholic Beverages Division

Applicant

NAME OF LEGAL ENTITY	NAME OF BUSINESS(DBA)	BUSINESS		
GETTIN' SLUSHED SOUTH OF 35 LLC	Lucky Wife Wine Slushies	(515) 321-1759		
ADDRESS OF PREMISES	PREMISES SUITE/APT NUMBER	CITY	COUNTY	ZIP
2701 Cumming Avenue		Cumming	Warren	50061
MAILING ADDRESS	CITY	STATE	ZIP	
1610 Timber Ridge Drive	Norwalk	Iowa	50211	

Contact Person

NAME	PHONE	EMAIL
Holly Rasavong	(515) 321-1759	luckywifewineslushies7@gmail.com

License Information

LICENSE NUMBER	LICENSE/PERMIT TYPE	TERM	STATUS
	Special Class C Retail Alcohol License	5 Day	Submitted to Local Authority

EFFECTIVE DATE	EXPIRATION DATE	LAST DAY OF BUSINESS
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SUB-PERMITS

Special Class C Retail Alcohol License

PRIVILEGES



Status of Business

BUSINESS TYPE

Limited Liability Company

Ownership

• Individual Owners

NAME	CITY	STATE	ZIP	POSITION	% OF OWNERSHIP	U.S. CITIZEN
Holly Rasavong	Norwalk	Iowa	50211	owner	100.00	Yes

Insurance Company Information

INSURANCE COMPANY

Founders Insurance Company

POLICY EFFECTIVE DATE

Sep 25, 2024

POLICY EXPIRATION DATE

Sep 30, 2024

DRAM CANCEL DATE

OUTDOOR SERVICE EFFECTIVE DATE

OUTDOOR SERVICE EXPIRATION DATE

BOND EFFECTIVE DATE

TEMP TRANSFER EFFECTIVE DATE

TEMP TRANSFER EXPIRATION DATE

MCP LAWNS LLC

1339 Pointe Ct.

Cumming, IA 50061

Please see the below bid for seeding Mayor Tom Becker city park.

- **Weed kill 1-2 weeks before**
- **Regrade uneven areas**
- **Rough up existing soil**
- **Spread topsoil throughout park**
- **Plant and roll seed**

\$11,000.00

Not to Exceed \$12,000

Thank you for the opportunity!

Mike & Clayton Pedersen 402-415-4788





Estimate Form - Estimate #2606

ESTIMATE DETAILS

Estimate Date: 9/4/2024

Prepared by:

Valid Until: 10/4/2024

Phone: 515-402-2364

ACCOUNT INFORMATION

Account Name: Becker Park

Billing Address: North Brier Lane
Cumming, IA 50061

Contact: Becker Park

Job Address: North Brier Lane
Cumming, IA 50061

Cell Phone: 515-238-8056

Home Phone:

Contact Email: bhighfill@cumming.iowa.gov

Hi Becker Park,

It was pleasure to discuss the services Norwalk Seasonal Services has to offer to help you meet your outdoor needs. Below is the quote with the property enhancement services you requested.

As always, we are committed to safety, efficiency and providing a high level of customer service to all of our clients.

**Once quote is accepted your service/s will be added for scheduling.*

STATEMENT OF WORK

Service Name	Estimate Description	Quantity	Rate	Amount
Go Green Package	Go Green - Fertilization Treatment Package Rounds 5 and 6		3024.00	3024.00
Core Aeration/ Overseeding Package	Core Aeration and Overseeding Services done Spring or Fall		6500.00	6500.00
			Subtotal	\$9,524.00

Any services not listed but requested will be billed separately from this contract.

INVOICING DETAILS/TERMS

Invoice payment is due within 15 days. Please be advised that we will charge 5% interest per month on late invoices. Return check charge is \$30.00 and will be added to the account balance.

- **\$9,524.00** **Sub Total of all Services on Estimate**
- **\$666.68** **Estimated Sales Tax**
- **\$10,190.68** **Total of all Services including Sales Tax**
- **Number of Installments Agreed Upon**
- **Total Monthly Installment/Paid in Full Invoice Amount (Est. Tax Included)**

PAYMENT METHODS ACCEPTED

We accept payments via Check, ACH (at no charge) or Credit Card (with a 4% processing fee).

Payment by check can be sent to PO Box 426 Norwalk, IA 50211

DEPOSIT

If applicable to project.

SIGNATURE

By signing you agree to all the terms and conditions set forth in this estimate document. For your convenience, all annual subscriptions will renew automatically.
Please contact us if you have any questions or concerns.

We appreciate your business and the opportunity to help you create a beautiful outdoor space for you to make long lasting memories.

See Blue Box below to click and Sign Estimate! & Then Hit the Accept button!

□ **Date: 9/5/2024**

Thank you for your business!

Norwalk Seasonal Services
PO Box 426
Norwalk, IA 50211

515-402-2364 | admin@norwalkseasonalia.com

Cancellation Policy: (Example: moving from current service location) notify via email admin@norwalkseasonalia.com or via mail to PO Box 426 Norwalk, IA 50211, 30 days prior to cancellation date. All services due and administered during said 30 days will be client's responsibility to pay in full.

Our Mission:

To create beautiful outdoor spaces where community and long-lasting memories can come together.

Nichole Onstot

From: Brent Highfill <cmbhighfill@gmail.com>
Sent: Wednesday, September 18, 2024 4:42 PM
To: Nichole Onstot
Subject: Fwd: Firm BID

I told him yes, I can get him my key.
I told him, not sure why I didn't cc you, to arrange with you
Brent

----- Forwarded message -----

From: **2carpenterdon** <2carpenterdon@gmail.com>
Date: Wed, Sep 18, 2024 at 2:18 PM
Subject: Firm BID
To: Brent Highfill <cmbhighfill@gmail.com>
CC: Rita Conner <rconner@cumming.iowa.gov>

We will move the existing door from the rear room, cut it to fit. Purchase, deliver a new door jamb, cut it to fit and install in the opening between work area and council chambers. Paint the new materials to match.

Order, deliver and install tempered glass with a 2" x 14" pass through slot at bottom middle and a 4" hole to converse through in the middle. Apply oak trim, stained to match, to secure the glass.

Our firm bid is \$880.00.

NOTES - to minimize the noise, office disruption, we can do this on a Saturday.

The openings in glass are preparation for a pandemic.

Engraving is not available from my supplier. Local metalworker Knickerbocker could make a nice sign.

Thank you for the opportunity to quote.

Resolution 2024-36

Resolutions of Termination and Amendment

WHEREAS, Central Iowa Regional Drinking Water Commission (“CIRDWC”) is an entity created and existing under Ch. 28E, Iowa Code, pursuant to an “Amended and Restated 28E Agreement” (the “CIRDWC 28E Agreement”) filed with the Iowa Secretary of State as agreement M504123 and formed for the purpose of regional planning and promoting cooperation among drinking water utilities in Central Iowa;

WHEREAS, a new entity, Central Iowa Water Works, has been formed which will, among other things, serve to replace all of the functions of CIRDWC; and

WHEREAS, it is appropriate to terminate the existence of CIRDWC and to distribute its assets as provided in the CIRDWC 28E Agreement.

NOW THEREFOR IT IS HEREBY RESOLVED, that the existence of the Central Iowa Regional Drinking Water Commission shall be terminated effective as of December 31, 2024, or upon the filing of a termination agreement with the Iowa Secretary of State, whichever last occurs (the “Termination Date”), and that the CIRDWC 28E Agreement shall be deemed amended as of such date to effect such termination subject to the contingency that not less than a majority of the Members shall have previously executed and delivered to the Recording Secretary a written acceptance and approval of such termination and amendment.

FURTHER RESOLVED, that upon receipt of written acceptances and agreements of these Resolutions by at least a majority of the Members, the Recording Secretary shall execute a Statement of Termination and Amendment with respect to the CIRDWC 28E Agreement, in the form attached hereto as Exhibit 1 and file it with the Iowa Secretary of State.

FURTHER RESOLVED, that the assets of CIRDWC consist entirely of the sum of \$63,705.78 in cash, and that such sum shall be distributed to the Members pro rata in proportion to the annual dues last assessed in 2017 in the particulars as attached hereto as Exhibit 2, and that receipt and deposit of such funds by a Member shall be deemed to constitute the Member’s agreement to the termination of CIRDWC and a waiver of any and all objection thereto.

Exhibit 1

STATEMENT OF TERMINATION AND AMENDMENT
OF
28E AGREEMENT
OF
CENTRAL IOWA REGIONAL DRINKING WATER COMMISSION

Central Iowa Regional Drinking Water Commission (“CIRDWC”) is an entity created and existing under Ch. 28E, Iowa Code, pursuant to an “Amended and Restated 28E Agreement” (the “CIRDWC 28E Agreement”) filed with the Iowa Secretary of State as agreement M504123.

By authority of a majority of its Members:

1. The existence of CIRDWC shall be, and hereby is, terminated.
2. The CIRDWC 28E Agreement shall be, and hereby is, amended to effect such termination.
3. Such termination and amendment shall be effective as of December 31, 2024, or the date of filing of this Statement with the Iowa Secretary of State whichever last occurs.
4. This statement is executed by the Recording Secretary of CIRDWC pursuant to a Resolution approved by a majority of its Members.

Dated: _____, 2024

Amy Kahler, Recording Secretary

Exhibit 2

ALLOCATION OF SHARES OF THE ASSETS OF CENTRAL IOWA REGIONAL DRINKING WATER COMMISSION UPON TERMINATION

Membership Dues 2017-2018	Amount Paid	Date Paid	Date Deposited	Pro Rata %	Amount to be Distributed
Altoona	\$158.00	8/10/2017	8/17/2017	3.89%	\$ 2,475.23
Ankeny	\$300.00	8/13/2018	8/29/2018	7.38%	\$ 4,699.80
Bondurant	\$120.00	8/10/2017	8/17/2017	2.95%	\$ 1,879.92
Carlisle	\$115.00	8/22/2017	8/22/2017	2.83%	\$ 1,801.59
Clive	\$158.00	8/14/2017	8/17/2017	3.89%	\$ 2,475.23
Cumming	\$101.50	8/18/2017	8/22/2017	2.50%	\$ 1,590.10
Johnston	\$168.00	8/24/2017	9/5/2017	4.13%	\$ 2,631.89
Mitchellville	\$106.00	8/14/2017	8/17/2017	2.61%	\$ 1,660.60
New Virginia	Converted to non-voting, non dues paying member			0.00%	\$ -
Norwalk	\$136.00	8/9/2017	8/17/2017	3.34%	\$ 2,130.58
Pleasant Hill	\$131.00	8/14/2017	8/17/2017	3.22%	\$ 2,052.25
Polk City	\$117.00	8/17/2017	8/17/2017	2.88%	\$ 1,832.92
St. Charles	\$103.00	8/17/2017	8/17/2017	2.53%	\$ 1,613.60
Waukee	\$162.00	8/10/2017	8/17/2017	3.98%	\$ 2,537.89
Windsor Heights	\$121.00	8/10/2017	8/17/2017	2.98%	\$ 1,895.59
Des Moines Water Works	\$785.00	8/7/2017	8/7/2017	19.30%	\$ 12,297.81
Indianola Municipal Utilities	\$155.00	2/9/2018	2/20/2018	3.81%	\$ 2,428.23
Polk County	\$170.00	8/14/2017	8/17/2017	4.18%	\$ 2,663.22
Urbandale Water Utility	\$255.00	8/18/2017	8/22/2017	6.27%	\$ 3,994.83
Warren Rural Water	\$170.00	8/4/2017	8/7/2017	4.18%	\$ 2,663.22
West Des Moines Water Works	\$340.00	8/28/2017	9/5/2017	8.36%	\$ 5,326.44
Xenia Rural Water	\$195.00	8/7/2017	8/7/2017	4.80%	\$ 3,054.87
Total	\$4,066.50			100.00%	\$ 63,705.78

RESOLUTION 2024-37
City of Cumming

WHEREAS, on January 24, 2022 by Resolution No. 2022-14 City Council approved a development agreement with Hy Vee, Inc that included the City receiving a RISE (Rebuild Iowa's Sound Economy) Grant from the Iowa Department of Transportation to pay a portion of project infrastructure costs for work on Cumming Avenue and N. 50th Avenue (the Project);

WHEREAS, the City agreed to use the proceeds of the RISE Grant to reimburse Hy Vee, Inc. for a portion of the Infrastructure Costs paid by Hy Vee, Inc. for the Project in an amount equal to the RISE Grant received from the Iowa Department of Transportation;

WHEREAS, the City has submitted for and received cost reimbursement from the Iowa Department of Transportation for the Project in the amount of \$1,259,593.62;

WHEREAS, the City will reimburse Hy Vee for a total of \$329,907.52 in this second distribution with the retainage amount of \$62,979.68 to be released at a later date;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of Cumming, Iowa, as follows:

Reimbursement to Hy Vee, Inc. in the amount of \$329,907.52 is hereby approved.

Passed and approved this 23rd day of September, 2024.

Brent Highfill, Mayor

Attest:

Nichole Onstot, City Clerk

Mayor Brightfill, Council Members, and City Staff,
c/o Rita Conner, City Administrator,
City Hall,
649 N 44th Street,
Cumming IA 50061

September 17th, 2024

Dear Mayor Brightfill, Council Members, and City Staff

Re: Old Town Sanitary Improvement Project – Recent Update Letter

Thank you for your letter with an update on the upcoming sanitary improvements project received September 12th, 2024.

First, we'd like to say how much the upgrades to the sanitary system are welcomed. There is no doubt that the upgrading of the sanitary system and the removal of reliance on individual septic tanks is a huge improvement. Thank you for shepherding this project to achieve this improvement.

Secondly, we want to express our continued concern around the restructuring of the roadways from a rural to urban style roadway. We believe that these changes are much less well understood by the residents of Old Town and that, when understood, the proposals may be less welcomed. We raised these issues on June 1st and think that the recent letter provides little additional clarity. Specifically, we'd suggest that the following is not well understood:

1. That 44th and 43rd Steets, Callison, Dawson, Fielding Avenues, and their intersections are generally being significantly widened and lowered.
2. As a result, an area of residents' frontage yards, drives, and paths (all-be-them generally within the Public Way) will be replaced by road, curb and gutter, and regraded down to the road.
3. There will be an impact to landscaping, including the removal of some mature trees.
4. Ability to park on the shoulder will be removed and new parking arrangements have not yet been communicated.
5. And, perhaps of most significance, the character of our Old Town will change with roads moving from rural to 'urban' and the roads becoming more like the Middlebrook/Great Western Crossing developments roads.

As new residents of Old Town, we are aware that we are not up to speed on any existing road and storm water concerns that the project seeks to correct. However, we do know that the existing rural character and history is what attracted us to build and become neighbors in Old Town, rather than in Middlebrook or Great Western Crossing. We have also heard, and seen firsthand, how valued that character is by visitors and residents alike. We strongly believe that widening roads, radiuses, and 'urbanizing' Old Town roads will irreparably damage that character.

Having said the above, we acknowledge that improvement of storm water management and the roads may be a long-term need and desire. So, we'd ask if there are alternatives such as improving the existing ditch and culvert system, or considering maintaining existing road widths and radiuses while installing curb and gutter?

We look forward to hearing how plans and any possible alternatives may be better understood. We'd also welcome any information on timing please.

Sincerely,

Handwritten signature of Mark Atkinson in blue ink, with a horizontal line extending to the right.Handwritten signature of Karin Kasdorf in blue ink.

Mark Atkinson and Karin Kasdorf
4325 N Dawson Avenue
Cumming IA 50061

PS. Specifically relating to our property, we'd ask that, if the project proceeds as planned, the project take account of the needed curb cut and driveway work to match the new road profile and our planned driveway on 44th Street.

Resolution 2024-38

Amending Agreement for Professional Engineering Services with McClure Engineering for the Cumming Sanitary Improvements for Easements and Land Acquisition

AMENDMENT NO. 1 TO THE AGREEMENT FOR CONSULTING SERVICES

McCLURE ENGINEERING COMPANY
Project Name: Cumming Sanitary Improvements
Project Number: 2023000167-000
Project Manager: Alex Schlader, PE



This Amendment, is made on the ___ day of August, 2024, by and between McClure Engineering Company, of Clive, Iowa, (herein referred to as "CONSULTANT") and City of Cumming, Iowa (hereinafter referred to as "OWNER"), shall amend the AGREEMENT dated the 23rd day of May, 2023. The CONSULTANT will provide services per the terms and conditions outlined in this Amendment and in accordance with the scope and schedule presented in Exhibit 'C'. The services will be compensated for in accordance with the fees or hourly rates as presented in Exhibit 'C' Section III, for the Project described as:

Cumming Sanitary Sewer Improvements Easement Preparation and Land Acquisition

1. The **OWNER** shall provide information per the **OWNER's** responsibilities presented in Exhibit 'E' in the original AGREEMENT in a timely manner so as not to delay the services provided by the **CONSULTANT**.
2. Payment to the **CONSULTANT** shall be made within 30 days of invoice for work completed to date. The invoice will include the percentage of work complete, an estimate to complete and, a brief project status summary.
3. Past due amounts owed shall accrue interest at 1.5% per month from the 30th day. If the **OWNER** fails to make monthly payments due the **CONSULTANT**, the **CONSULTANT** may, after giving (7) days written notice to the **OWNER**, suspend services under this agreement.
4. THIS AGREEMENT IS SUBJECT TO ALL THE TERMS AND CONDITIONS ATTACHED TO THIS AGREEMENT.
5. This Agreement represents the entire and integrated agreement between the **OWNER** and the **CONSULTANT** and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the **OWNER** and the **CONSULTANT**.
6. Neither party to this AGREEMENT will be liable to the other party for unavoidable delays in performing the Scope of Services, or for the direct or indirect cost resulting from such delays, that may result from acts of God, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party. Each party will take reasonable steps to mitigate the impact of any force majeure. The **CONSULTANT** will adjust the schedule and compensation under this agreement to the extent that **CONSULTANT's** schedule and compensation are equitably adjusted by the **OWNER**.
7. The amount of the **CONSULTANT's** compensation is \$25,250.00. Refer to Section III in Exhibit C for contract type.

Unavoidable Delays means delays in performance resulting from acts or occurrences outside the reasonable control of the party claiming the delay in performance, including but not limited to storms, floods, excessive rain, hail, wind, hurricanes, tornadoes, fires, explosions or other casualty losses, unusual weather conditions, global medical pandemics, including but not limited to that certain global medical pandemic which has come to be known as "Coronavirus" or "Covid-19", national medical pandemics in the United States of America, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, or the acts, restrictions, or prohibitions of any federal, State or local governmental unit.

Attached Exhibits		Included	Not Included
Exhibit 'A'	Standard Terms and Conditions	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'B'	Hourly Rate Schedule	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit 'C'	Detailed Scope of Work	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Exhibit 'H'	Construction Item List Cost Estimate	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit 'I'	Regulatory Requirements	<input type="checkbox"/>	<input checked="" type="checkbox"/>

OWNER: City of Cumming, Iowa

CONSULTANT: McClure Engineering Company

By: _____

Signed: _____

Title: _____

Title: Project Manager

McCLURE ENGINEERING COMPANY CONSULTANT STANDARD TERMS AND CONDITIONS (Effective 1/1/2024 through 12/31/2024)



- 1.0 ACCESS TO SITE:** The Consultant shall at all times have access to the Project site.
- 2.0 INFORMATION PROVIDED BY OTHERS:** The Consultant shall be entitled to rely upon the accuracy and completeness of data provided by the Owner and shall not assume liability for such data. The Consultant does not practice law, insurance or financing, therefore, the Owner shall furnish all legal, accounting and insurance counseling services as may be necessary to protect themselves at any time during the Project. Owner shall hold Consultant harmless from damages that may arise as a result of inaccuracies of information or data supplied by Owner or others to Consultant.
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- 3.1 Owner may make and retain copies of documents for information and reference in connection with the use of the documents on the Project. Consultant grants Owner a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Consultant of full payment due and owing for all services relating to preparation of the documents, and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Consultant, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Consultant; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Consultant, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Consultant or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Consultant and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Consultant; and (4) such limited license to Owner shall not create any rights in third parties.
- 3.2 If Consultant at Owner's request verifies the suitability of the documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Consultant at an amount agreed upon by Owner and Consultant.
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- 4.1 The Owner may choose to contract separately to have extensive investigations and research conducted if the Owner feels it necessary to have more accurate location of underground utilities confirmed.
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- 5.1 The Consultant cannot warrant or guarantee that the information provided is reflective of all subsurface conditions that may be encountered, or to the extent that subsurface conditions such as soil properties, groundwater, rock, etc., may vary from location to location throughout subsurface construction.
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- 7.0 OPINIONS OF PROBABLE COST:** Consultant's opinions (if any) of probable construction costs are to be made on the basis of Consultant's experience, qualifications, and general familiarity with the construction industry. However, because Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from opinions of probable construction cost prepared by Consultant. If Owner requires greater assurance as to probable construction cost, then Owner agrees to obtain an independent, third-party cost estimate.
- 8.0 PROJECT FUNDING AND FINANCING:** It shall be the responsibility of the Owner to plan, organize, and secure funding to pay all costs associated with the project. The funding may include local financing and/or funding obtained through federal or state funding programs such as low interest loans, grants, etc. If the Consultant is retained to help apply and/or secure funding from internal or external funding agencies, the Consultant shall not be responsible for the acquisition of funding and makes no guarantee funding applications prepared by the Consultant will successfully secure funds.
- 8.1 If the Owner secures outside funding from any such programs, while the Consultant may be retained to help monitor and submit pay requests for loan or grant draws from the respective agencies, the Consultant shall not be responsible for the Owner's obligation to comply with any criteria required to use the funds, including responsibility for any funding match required by the Owner.
- 9.0 ADDITIONAL SERVICES:** It is not unusual for the Owner to request the Consultant to provide additional services or that additional work may be required to deal with a contractor during construction that was not foreseen at the time the original scope of work was agreed to when the Consultant contract was signed. The Owner recognizes the Consultant shall be entitled to additional compensation to coordinate such changes and schedules shall be adjusted accordingly. The Consultant may prepare drawings, specifications and other documents required to address the changes in the scope of work as necessary to satisfactorily complete the project.
- 10.0 BETTERMENT:** If the Consultant failed to include a component(s), or if during construction it is discovered a component(s) is required that was not in the Consultant's original plans or specifications, and that the component(s) is necessary to complete a satisfactory project, the Consultant shall not be responsible for paying the cost required to add such component(s) to the extent that such component(s) would have been required and included in the original construction documents.
- 10.1 In no event shall the Consultant be responsible for any cost or expense that provides betterment or that upgrades or enhances the value of the Owner's project if the component should have originally been included in the construction drawings and/or specifications.

- 11.0 SHOP DRAWING REVIEW:** If, as part of this Agreement Consultant reviews contractor submittals, such as shop drawings, product data, samples and other data, as required by Consultant, these reviews and approvals shall be only for the limited purpose of checking for conformance with the design concept and the information expressed in the contract documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the contractor. Consultant shall not be responsible for any deviations from the contract documents not brought to the attention of Consultant in writing by the contractor. Consultant shall not be required to review partial submissions or those for which submissions of correlated items have not been received.
- 12.0 CONSTRUCTION OBSERVATION:** If, as part of this Agreement, Consultant is providing construction observation services, Consultant shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractor's or subconsultant's work and to determine if the work is proceeding in general accordance with the Contract Documents. The Consultant is not a contractor and shall not at any time supervise, direct, control, or have authority over any of the contractor's and/or subconsultant's work.
- 12.1 Consultant shall not have authority over or be responsible for the means, methods, techniques, sequences, schedule, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for the security or safety at the site, nor for any failure of a contractor to comply with laws and regulations applicable to that contractor's furnishing and performing of its work.
- 12.2 Consultant shall not be responsible for the acts or omissions of any contractor
- 12.3 Consultant neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the construction contract documents.
- 12.4 Consultant shall not be responsible for any decision made regarding the construction contract documents, or any application, interpretation, clarification, or modification of the construction contract documents, other than those made by the Consultant or its Consultants.
- 12.5 Unless otherwise specified in this Agreement, the Owner has not retained the Consultant to make detailed inspections or to provide exhaustive or continuous project review and observation services.
- 13.0 DESIGN WITHOUT CONSTRUCTION PHASE SERVICES:** If Consultant is not retained for construction observation and/or on-site resident observation services, Consultant shall have no design, shop drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of construction contract documents, review and response to contractor claims, construction contract administration, processing of change orders and submittals, revisions to the construction contract documents during construction, construction observation and review, review of contractor's payment applications, and all other necessary construction phase administrative, engineering, surveying and professional services. Owner waives all claims against the Consultant that may be connected in any way to construction phase administrative, engineering, surveying or professional services.
- 14.0 MEDIA REPRESENTATIONS:** The Consultant shall have the right to include photographic or artistic representations of the design of the Project among the Consultant's promotional and professional materials. The Consultant shall be given reasonable access to the completed Project to make such representations. However, the Consultant's materials shall not include the Owner's confidential or proprietary information. The Owner shall provide professional credit for the Consultant in the Owner's promotional materials for the Project. Notwithstanding anything to the contrary in the present agreement, the Parties' obligations outlined in this clause shall survive the termination of this Agreement for an indefinite term.
- 15.0 TERMINATION:** This Agreement may be terminated by either party upon not less than seven days written notice should the other party fail substantially to perform in accordance with the terms of the Agreement through no fault of the party initiating the termination. This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Consultant in the event the Project is permanently abandoned.
- 15.1 Failure of the Owner to make payments to the Consultant in accordance with the Agreement shall be considered substantial non-performance and cause for termination. If the Owner fails to make payment when due the Consultant for services, the Consultant may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Consultant within seven days of the date of the notice, the suspension shall take effect without further notice.
- 15.2 In the event of a suspension of services, the Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination and all termination expenses. Termination expenses are in addition to compensation for Basic and Additional Services, and include expenses which are directly attributable to termination.
- 16.0 DISPUTE RESOLUTION:** Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to mediation unless each of the parties mutually agrees otherwise. No mediation arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Consultant, and any other person or entity sought to be joined. In no event shall the demand for mediation be made after the date when the institution of legal or equitable proceedings based upon such claim would be barred by the applicable statute of limitations. The award rendered in the mediation shall be non-binding.
- 17.0 LIMITATION OF LIABILITY:** The Consultant's liability shall be limited to \$50,000.00 or the fee for the work performed, whichever is greater, or as specifically agreed to by separate agreement.
- 18.0 STANDARD OF CARE:** In providing services under this Agreement, the Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality.
- 19.0 PAYMENT:** Amounts unpaid 30 days after invoice date shall bear interest from the date payment is due at a rate of 1.5% per month compounded and shall include costs for attorney fees and other collection fees related to collecting fees for service.
- 20.0 LIEN RIGHTS:** Consultant retains all rights to mechanic's or design professional lien rights through the completion of the obligations of this agreement at the sole judgment of the Consultant.
- 21.0 WAIVERS:** The Owner and the Consultant waive all rights against each other and against the contractors, Consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction. The Owner and Consultant each shall require similar waivers from their contractors, Consultants and agents.
- 22.0 ASSIGNMENT:** The Owner and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Consultant shall assign this Agreement without the written consent of the other.
- 23.0 GOVERNING LAW:** Unless otherwise provided, the Agreement shall be governed by the laws of the State of Iowa.
- 24.0 COMPLETE AGREEMENT:** This Agreement represents the entire and integrated agreement between the Owner and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Consultant.

EXHIBIT C

McCLURE CONSULTANTING COMPANY
DETAILED SCOPE OF WORK
Cumming Sanitary Sewer Improvements
Easement Preparation and Land Acquisition



I) AMENDMENT DESCRIPTION

- A) The amended services will include the preparation of permanent easement plats and necessary land acquisition documentation.
- B) Easement documents are for installation and maintenance of proposed sanitary and storm sewer included on the PROJECT.

II) BASIC SERVICES

- A) Phase 700 – Survey Services
 - 1) Task 712 – Acquisition Plats and Legal Descriptions
 - (a) Acquisition and Permanent Easement Plats
 - (i) The CONSULTANT will provide acquisition and/or permanent easement plats in accordance with Iowa Code for the PROJECT. This includes a signed drawing for each plat at a suitable scale depicting the needs for the PROJECT along with legal descriptions. Two (2) original signed Plats will be provided to the OWNER for the recording of the document at the (County) Recorder's office. Monuments will be set at locations shown on the Acquisition Plat as required by Iowa Code. The estimated number of plats for this PROJECT are shown below:
 - 1. Acquisition (Fee Title) Plats: 0
 - 2. Permanent Easement Plats: 5
- B) Phase 950 – Subconsultants and Fees
 - 1) Task 962 – Land Acquisition [**JCG Land Services, Inc.**]
 - (a) The CONSULTANT will retain the services of JCG Land Services, Inc. (JCG) to provide Real Estate Services for the PROJECT as a subconsultant to serve as the professional representative for both the CONSULTANT and OWNER. The CONSULTANT, with the assistance of JCG, will coordinate and manage the right-of-way acquisition process as an integral part of the management and scheduling of the PROJECT. The objective is to start the acquisition process early and proceed to a timely conclusion of right-of-way acquisition. The CONSULTANT, with the assistance of JCG, will coordinate specialists and subconsultants involved in right-of-way acquisition.
 - (b) The work task to be performed by the subconsultant under Real Estate Services shall include the following:
 - (i) Record of Property Ownership and Liens Certificates
 - 1. Based on the final design of the PROJECT, JCG will perform property research to locate the most recent vesting deeds to determine ownership of four parcels with Temporary Easement impacts.
 - (ii) Public Hearing
 - 1. If applicable, the OWNER will mail the Notice of Public Hearing and a Statement of Property Owner's Rights to all property owners and contract purchasers by regular mail not less than 30 days before the date of the hearing; and publish a notice of the public hearing at least 4 but not more than 20 days before the public hearing. Upon request, JCG will participate in the Public Hearing to explain the acquisition process.
 - (iii) Compensation Valuation
 - 1. JCG will prepare offers of compensation based upon current fair market value of similar property in the vicinity of the PROJECT. To adequately determine the fair market value of right of way sought to be acquired, JCG will search public records for comparable sales data for each land use type encountered and recommend Dollars-Per-Square-Foot unit values for use in the development of Compensation Estimates. It is assumed that JCG will prepare Compensation Estimates for two (2) impacted parcels. If the proposed acquisition for any parcel is above \$10,000 and complicated or estimated to exceed \$25,000.00, JCG will recommend the services of an experienced Eminent Domain Appraiser to prepare the appraisal products for the OWNER. Should appraisal reports be

deemed necessary by the final design of the PROJECT or during negotiations, the costs for procuring appraisal and review appraisal reports for each parcel will be a pass-through, reimbursable expense as noted on JCG's project Invoices.

(i) Acquisition Process

1. Forms of easement documents and purchase agreements will be submitted to the OWNER for approval and acceptance. Where applicable, preparation of Warranty Deeds for the conveyance of fee ownership interests will be the responsibility of the Acquiring Authority's attorney, or other attorney to comply with state law.

JCG shall make a good faith effort to negotiate the purchase of the land, or interests in the land, needed for the PROJECT. JCG assumes there will be negotiations with owners of two (2) different properties. Should the number of negotiations increase based upon the final PROJECT design, JCG's project budget should increase proportionally by addendum. JCG shall make contacts with the property owners, tenants and/or their legal representative to explain the effect of the acquisition, answer questions, and make a written offer to acquire the property. Nonresident landowners shall be contacted by mail, return receipt requested if necessary. If an agreement cannot be reached with a property owner through good faith negotiations, JCG shall consider any evidence of value, or an appraisal provided by the landowner; report landowner counteroffers; and/or make a recommendation whether a settlement should be attempted at an amount other than that previously offered. No action shall be taken based on such recommendations until it has been approved by the OWNER.

Negotiations shall be considered complete upon occurrence of one of the following:

- both the owner and tenant accept the offer or an administrative settlement, or
- either the owner or tenant fails or refuses to sign the offer or administrative settlement after four in-person meetings to discuss the associated acquisition and offer, or
- in the judgment of the OWNER, negotiations have reached an impasse.

JCG may enter extended negotiations (meetings beyond four unsuccessful attempts) upon the request of the OWNER or ACQUIRING AUTHORITY. Time associated with extended negotiations will be tracked on a time and materials basis and may warrant a change order if there is a budget overage. Design changes during negotiations that necessitate duplications of efforts and/or lead to extended negotiations will also be tracked and may warrant a change order, or change orders, in the event(s) of a budget overage. For every parcel on which negotiations have reached an impasse or that cannot be acquired by negotiated agreement, JCG shall deliver as much of the file to the ACQUIRING AUTHORITY as is necessary for their Attorney to begin preparation for the condemnation of the parcel.

(ii) Closing Process

1. Upon completion of the acquisition of right of way, JCG will organize and verify data for each parcel file's closing and payment process and return the parcel file data to the OWNER for payment processing and recordation. The completed file will contain originals of all executed agreement, easement, and/or closing documents, a signed W-9 form, and, if necessary, an Allocation of Proceeds statement directing the split of payment(s) to be made.

III) FEES:

The fees for Amended Engineering Services shall be described below:

A) Basic Services:

- 1) Phase 700 – Survey Services
 - (a) Task 735 – Preliminary Design Survey..... \$ 5,000.00 LS
- 2) Phase 950 – Subconsultant and Reimbursable Fees
 - (a) Task 960 – Geotechnical Borings \$ 20,250.00 NTE

Not To Exceed (NTE)/Lump Sum (LS)..... \$ 25,250.00

**AMENDMENT NO. 1
TO THE AGREEMENT FOR CONSULTING SERVICES
McCLURE ENGINEERING COMPANY**



Project Name: Cumming Sanitary Improvements
Project Number: 2023000167-000
Project Manager: Alex Schlader, PE

This Amendment, is made on the _____ day of August, 2024, by and between McClure Engineering Company, of Clive, Iowa, (herein referred to as "CONSULTANT") and City of Cumming, Iowa (hereinafter referred to as "OWNER"), shall amend the AGREEMENT dated the 23rd day of May, 2023. The CONSULTANT will provide services per the terms and conditions outlined in this Amendment and in accordance with the scope and schedule presented in Exhibit 'C'. The services will be compensated for in accordance with the fees or hourly rates as presented in Exhibit 'C' Section III, for the Project described as:

**Cumming Sanitary Sewer Improvements
Easement Preparation and Land Acquisition**

- The OWNER shall provide information per the OWNER's responsibilities presented in Exhibit 'E' in the original AGREEMENT in a timely manner so as not to delay the services provided by the CONSULTANT.
- Payment to the CONSULTANT shall be made within 30 days of invoice for work completed to date. The invoice will include the percentage of work complete, an estimate to complete and, a brief project status summary.
- Past due amounts owed shall accrue interest at 1.5% per month from the 30th day. If the OWNER fails to make monthly payments due the CONSULTANT, the CONSULTANT may, after giving (7) days written notice to the OWNER, suspend services under this agreement.
- THIS AGREEMENT IS SUBJECT TO ALL THE TERMS AND CONDITIONS ATTACHED TO THIS AGREEMENT.
- This Agreement represents the entire and integrated agreement between the OWNER and the CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the OWNER and the CONSULTANT.
- Neither party to this AGREEMENT will be liable to the other party for unavoidable delays in performing the Scope of Services, or for the direct or indirect cost resulting from such delays, that may result from acts of God, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party. Each party will take reasonable steps to mitigate the impact of any force majeure. The CONSULTANT will adjust the schedule and compensation under this agreement to the extent that CONSULTANT's schedule and compensation are equitably adjusted by the OWNER.
- The amount of the CONSULTANT's compensation is \$25,250.00. Refer to Section III in Exhibit C for contract type.

Unavoidable Delays means delays in performance resulting from acts or occurrences outside the reasonable control of the party claiming the delay in performance, including but not limited to storms, floods, excessive rain, hail, wind, hurricanes, tornadoes, fires, explosions or other casualty losses, unusual weather conditions, global medical pandemics, including but not limited to that certain global medical pandemic which has come to be known as "Coronavirus" or "Covid-19", national medical pandemics in the United States of America, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, or the acts, restrictions, or prohibitions of any federal, State or local governmental unit.

Attached Exhibits		Included	Not Included
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Exhibit 'H'	Construction Item List Cost Estimate	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit 'I'	Regulatory Requirements	<input type="checkbox"/>	<input checked="" type="checkbox"/>

OWNER: City of Cumming, Iowa

CONSULTANT: McClure Engineering Company

By: _____

Signed: _____

Title: _____

Title: Project Manager

McCLURE ENGINEERING COMPANY CONSULTANT STANDARD TERMS AND CONDITIONS (Effective 1/1/2024 through 12/31/2024)



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- 3.0 OWNERSHIP AND REUSE OF DOCUMENTS:** All documents are instruments of service, and **Consultant** shall retain an ownership and property interested therein (including the copyright and the right of reuse at the discretion of the **Consultant**) whether or not the Project is completed.
- 3.1 **Owner** may make and retain copies of documents for information and reference in connection with the use of the documents on the Project. **Consultant** grants **Owner** a limited license to use the documents on the Project, extensions of the Project, and for related uses of the **Owner**, subject to receipt by **Consultant** of full payment due and owing for all services relating to preparation of the documents, and subject to the following limitations: (1) **Owner** acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by **Consultant**, or for use or reuse by **Owner** or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by **Consultant**; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by **Consultant**, as appropriate for the specific purpose intended, will be at **Owner's** sole risk and without liability or legal exposure to **Consultant** or to its officers, directors, members, partners, agents, employees, and **Consultants**; (3) **Owner** shall indemnify and hold harmless **Consultant** and its officers, directors, members, partners, agents, employees, and **Consultants** from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by **Consultant**; and (4) such limited license to **Owner** shall not create any rights in third parties.
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- 4.0 UNDERGROUND UTILITIES:** Due to the nature and uncertainty of the accuracy of data available for underground utilities, including drainage tile, and/or any information that may be supplied by the **Owner**, third parties, and/or research performed by the **Consultant** or its subcontractors, the **Owner** agrees to indemnify and hold harmless the **Consultant** for all claims, losses, costs and damages arising out of the location of underground utilities provided by the **Consultant** under this Agreement.
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- 6.0 HAZARDOUS MATERIALS – INDEMNIFICATION:** The **Consultant** is not in the business of making environmental site assessments for purposes of determining the presence of any toxic, hazardous or other environmental damaging substances. The purpose of this provision is to be certain that the **Owner** is aware of the potential liability if toxic, hazardous or environmental damaging substances are found on or under the property. **Consultant** makes no representations regarding an environmental site assessment, relies upon **Owner** to have fully investigated the need and/or scope of such assessment and assumes no responsibility for the determination to make an environmental site assessment on the subject property.
- 7.0 OPINIONS OF PROBABLE COST:** **Consultant's** opinions (if any) of probable construction costs are to be made on the basis of **Consultant's** experience, qualifications, and general familiarity with the construction industry. However, because **Consultant** has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, **Consultant** cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from opinions of probable construction cost prepared by **Consultant**. If **Owner** requires greater assurance as to probable construction cost, then **Owner** agrees to obtain an independent, third-party cost estimate.
- 8.0 PROJECT FUNDING AND FINANCING:** It shall be the responsibility of the **Owner** to plan, organize, and secure funding to pay all costs associated with the project. The funding may include local financing and/or funding obtained through federal or state funding programs such as low interest loans, grants, etc. If the **Consultant** is retained to help apply and/or secure funding from internal or external funding agencies, the **Consultant** shall not be responsible for the acquisition of funding and makes no guarantee funding applications prepared by the **Consultant** will successfully secure funds.
- 8.1 If the **Owner** secures outside funding from any such programs, while the **Consultant** may be retained to help monitor and submit pay requests for loan or grant draws from the respective agencies, the **Consultant** shall not be responsible for the **Owner's** obligation to comply with any criteria required to use the funds, including responsibility for any funding match required by the **Owner**.
- 9.0 ADDITIONAL SERVICES:** It is not unusual for the **Owner** to request the **Consultant** to provide additional services or that additional work may be required to deal with a contractor during construction that was not foreseen at the time the original scope of work was agreed to when the **Consultant** contract was signed. The **Owner** recognizes the **Consultant** shall be entitled to additional compensation to coordinate such changes and schedules shall be adjusted accordingly. The **Consultant** may prepare drawings, specifications and other documents required to address the changes in the scope of work as necessary to satisfactorily complete the project.
- 10.0 BETTERMENT:** If the **Consultant** failed to include a component(s), or if during construction it is discovered a component(s) is required that was not in the **Consultant's** original plans or specifications, and that the component(s) is necessary to complete a satisfactory project, the **Consultant** shall not be responsible for paying the cost required to add such component(s) to the extent that such component(s) would have been required and included in the original construction documents.
- 10.1 In no event shall the **Consultant** be responsible for any cost or expense that provides betterment or that upgrades or enhances the value of the **Owner's** project if the component should have originally been included in the construction drawings and/or specifications.

11.0 SHOP DRAWING REVIEW: If, as part of this Agreement **Consultant** reviews contractor submittals, such as shop drawings, product data, samples and other data, as required by **Consultant**, these reviews and approvals shall be only for the limited purpose of checking for conformance with the design concept and the information expressed in the contract documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the contractor. **Consultant** shall not be responsible for any deviations from the contract documents not brought to the attention of **Consultant** in writing by the contractor. **Consultant** shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

12.0 CONSTRUCTION OBSERVATION: If, as part of this Agreement, **Consultant** is providing construction observation services, **Consultant** shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractor's or subconsultant's work and to determine if the work is proceeding in general accordance with the Contract Documents. The **Consultant** is not a contractor and shall not at any time supervise, direct, control, or have authority over any of the contractor's and/or subconsultant's work.

12.1 **Consultant** shall not have authority over or be responsible for the means, methods, techniques, sequences, schedule, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for the security or safety at the site, nor for any failure of a contractor to comply with laws and regulations applicable to that contractor's furnishing and performing of its work.

12.2 **Consultant** shall not be responsible for the acts or omissions of any contractor

12.3 **Consultant** neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the construction contract documents.

12.4 **Consultant** shall not be responsible for any decision made regarding the construction contract documents, or any application, interpretation, clarification, or modification of the construction contract documents, other than those made by the **Consultant** or its **Consultants**.

12.5 Unless otherwise specified in this Agreement, the **Owner** has not retained the **Consultant** to make detailed inspections or to provide exhaustive or continuous project review and observation services.

13.0 DESIGN WITHOUT CONSTRUCTION PHASE SERVICES: If **Consultant** is not retained for construction observation and/or on-site resident observation services, **Consultant** shall have no design, shop drawing review, or other obligations during construction, and **Owner** assumes all responsibility for the application and interpretation of construction contract documents, review and response to contractor claims, construction contract administration, processing of change orders and submittals, revisions to the construction contract documents during construction, construction observation and review, review of contractor's payment applications, and all other necessary construction phase administrative, engineering, surveying and professional services. **Owner** waives all claims against the **Consultant** that may be connected in any way to construction phase administrative, engineering, surveying or professional services.

14.0 MEDIA REPRESENTATIONS: The **Consultant** shall have the right to include photographic or artistic representations of the design of the Project among the **Consultant's** promotional and professional materials. The **Consultant** shall be given reasonable access to the completed Project to make such representations. However, the **Consultant's** materials shall not include the **Owner's** confidential or proprietary information. The **Owner** shall provide professional credit for the **Consultant** in the **Owner's** promotional materials for the Project. Notwithstanding anything to the contrary in the present agreement, the Parties' obligations outlined in this clause shall survive the termination of this Agreement for an indefinite term.

15.0 TERMINATION: This Agreement may be terminated by either party upon not less than seven days written notice should the other party fail substantially to perform in accordance with the terms of the Agreement through no fault of the party initiating the termination. This Agreement may be terminated by the **Owner** upon not less than seven days' written notice to the **Consultant** in the event the Project is permanently abandoned.

15.1 Failure of the **Owner** to make payments to the **Consultant** in accordance with the Agreement shall be considered substantial non-performance and cause for termination. If the **Owner** fails to make payment when due the **Consultant** for services, the **Consultant** may,

upon seven days' written notice to the **Owner**, suspend performance of services under this Agreement. Unless payment in full is received by the **Consultant** within seven days of the date of the notice, the suspension shall take effect without further notice.

15.2 In the event of a suspension of services, the **Consultant** shall have no liability to the **Owner** for delay or damage caused the **Owner** because of such suspension of services. In the event of termination not the fault of the **Consultant**, the **Consultant** shall be compensated for services performed prior to termination and all termination expenses. Termination expenses are in addition to compensation for Basic and Additional Services, and include expenses which are directly attributable to termination.

16.0 DISPUTE RESOLUTION: Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to mediation unless each of the parties mutually agrees otherwise. No mediation arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the **Owner**, **Consultant**, and any other person or entity sought to be joined. In no event shall the demand for mediation be made after the date when the institution of legal or equitable proceedings based upon such claim would be barred by the applicable statute of limitations. The award rendered in the mediation shall be non-binding.

17.0 LIMITATION OF LIABILITY: The **Consultant's** liability shall be limited to \$50,000.00 or the fee for the work performed, whichever is greater, or as specifically agreed to by separate agreement.

18.0 STANDARD OF CARE: In providing services under this Agreement, the **Consultant** shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality.

19.0 PAYMENT: Amounts unpaid 30 days after invoice date shall bear interest from the date payment is due at a rate of 1.5% per month compounded and shall include costs for attorney fees and other collection fees related to collecting fees for service.

20.0 LIEN RIGHTS: **Consultant** retains all rights to mechanic's or design professional lien rights through the completion of the obligations of this agreement at the sole judgment of the **Consultant**.

21.0 WAIVERS: The **Owner** and the **Consultant** waive all rights against each other and against the contractors, **Consultants**, agents and employees of the other for damages, but only to the extent covered by property insurance during construction. The **Owner** and **Consultant** each shall require similar waivers from their contractors, **Consultants** and agents.

22.0 ASSIGNMENT: The **Owner** and **Consultant**, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither **Owner** nor **Consultant** shall assign this Agreement without the written consent of the other.

23.0 GOVERNING LAW: Unless otherwise provided, the Agreement shall be governed by the laws of the State of Iowa.

24.0 COMPLETE AGREEMENT: This Agreement represents the entire and integrated agreement between the **Owner** and **Consultant** and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both **Owner** and **Consultant**. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the **Owner** or **Consultant**.

McCLURE CONSULTANTING COMPANY

DETAILED SCOPE OF WORK

Cumming Sanitary Sewer Improvements

Easement Preparation and Land Acquisition



I) AMENDMENT DESCRIPTION

- A) The amended services will include the preparation of permanent easement plats and necessary land acquisition documentation.
- B) Easement documents are for installation and maintenance of proposed sanitary and storm sewer included on the PROJECT.

II) BASIC SERVICES

- A) Phase 700 – Survey Services
 - 1) Task 712 – Acquisition Plats and Legal Descriptions
 - (a) Acquisition and Permanent Easement Plats
 - (i) The CONSULTANT will provide acquisition and/or permanent easement plats in accordance with Iowa Code for the PROJECT. This includes a signed drawing for each plat at a suitable scale depicting the needs for the PROJECT along with legal descriptions. Two (2) original signed Plats will be provided to the OWNER for the recording of the document at the (County) Recorder’s office. Monuments will be set at locations shown on the Acquisition Plat as required by Iowa Code. The estimated number of plats for this PROJECT are shown below:
 - 1. Acquisition (Fee Title) Plats: 0
 - 2. Permanent Easement Plats: 5
- B) Phase 950 – Subconsultants and Fees
 - 1) Task 962 – Land Acquisition [JCG Land Services, Inc.]
 - (a) The CONSULTANT will retain the services of JCG Land Services, Inc. (JCG) to provide Real Estate Services for the PROJECT as a subconsultant to serve as the professional representative for both the CONSULTANT and OWNER. The CONSULTANT, with the assistance of JCG, will coordinate and manage the right-of-way acquisition process as an integral part of the management and scheduling of the PROJECT. The objective is to start the acquisition process early and proceed to a timely conclusion of right-of-way acquisition. The CONSULTANT, with the assistance of JCG, will coordinate specialists and subconsultants involved in right-of-way acquisition.
 - (b) The work task to be performed by the subconsultant under Real Estate Services shall include the following:
 - (i) Record of Property Ownership and Liens Certificates
 - 1. Based on the final design of the PROJECT, JCG will perform property research to locate the most recent vesting deeds to determine ownership of four parcels with Temporary Easement impacts.
 - (ii) Public Hearing
 - 1. If applicable, the OWNER will mail the Notice of Public Hearing and a Statement of Property Owner’s Rights to all property owners and contract purchasers by regular mail not less than 30 days before the date of the hearing; and publish a notice of the public hearing at least 4 but not more than 20 days before the public hearing. Upon request, JCG will participate in the Public Hearing to explain the acquisition process.
 - (iii) Compensation Valuation
 - 1. JCG will prepare offers of compensation based upon current fair market value of similar property in the vicinity of the PROJECT. To adequately determine the fair market value of right of way sought to be acquired, JCG will search public records for comparable sales data for each land use type encountered and recommend Dollars-Per-Square-Foot unit values for use in the development of Compensation Estimates. It is assumed that JCG will prepare Compensation Estimates for two (2) impacted parcels. If the proposed acquisition for any parcel is above \$10,000 and complicated or estimated to exceed \$25,000.00, JCG will recommend the services of an experienced Eminent Domain Appraiser to prepare the appraisal products for the OWNER. Should appraisal reports be

deemed necessary by the final design of the PROJECT or during negotiations, the costs for procuring appraisal and review appraisal reports for each parcel will be a pass-through, reimbursable expense as noted on JCG's project Invoices.

(iv) Acquisition Process

1. Forms of easement documents and purchase agreements will be submitted to the OWNER for approval and acceptance. Where applicable, preparation of Warranty Deeds for the conveyance of fee ownership interests will be the responsibility of the Acquiring Authority's attorney, or other attorney to comply with state law.

JCG shall make a good faith effort to negotiate the purchase of the land, or interests in the land, needed for the PROJECT. JCG assumes there will be negotiations with owners of two (2) different properties. Should the number of negotiations increase based upon the final PROJECT design, JCG's project budget should increase proportionally by addendum. JCG shall make contacts with the property owners, tenants and/or their legal representative to explain the effect of the acquisition, answer questions, and make a written offer to acquire the property. Nonresident landowners shall be contacted by mail, return receipt requested if necessary. If an agreement cannot be reached with a property owner through good faith negotiations, JCG shall consider any evidence of value, or an appraisal provided by the landowner; report landowner counteroffers; and/or make a recommendation whether a settlement should be attempted at an amount other than that previously offered. No action shall be taken based on such recommendations until it has been approved by the OWNER.

Negotiations shall be considered complete upon occurrence of one of the following:

- both the owner and tenant accept the offer or an administrative settlement, or
- either the owner or tenant fails or refuses to sign the offer or administrative settlement after four in-person meetings to discuss the associated acquisition and offer, or
- in the judgment of the OWNER, negotiations have reached an impasse.

JCG may enter extended negotiations (meetings beyond four unsuccessful attempts) upon the request of the OWNER or ACQUIRING AUTHORITY. Time associated with extended negotiations will be tracked on a time and materials basis and may warrant a change order if there is a budget overage. Design changes during negotiations that necessitate duplications of efforts and/or lead to extended negotiations will also be tracked and may warrant a change order, or change orders, in the event(s) of a budget overage. For every parcel on which negotiations have reached an impasse or that cannot be acquired by negotiated agreement, JCG shall deliver as much of the file to the ACQUIRING AUTHORITY as is necessary for their Attorney to begin preparation for the condemnation of the parcel.

(v) Closing Process

1. Upon completion of the acquisition of right of way, JCG will organize and verify data for each parcel file's closing and payment process and return the parcel file data to the OWNER for payment processing and recordation. The completed file will contain originals of all executed agreement, easement, and/or closing documents, a signed W-9 form, and, if necessary, an Allocation of Proceeds statement directing the split of payment(s) to be made.

III) FEES:

The fees for Amended Engineering Services shall be described below:

A) Basic Services:

- 1) Phase 700 – Survey Services
 - (a) Task 712 – Acquisition Plats and Legal Descriptions..... \$ 5,000.00 LS
- 2) Phase 950 – Subconsultant and Reimbursable Fees
 - (a) Task 962 – Land Acquisition (JCG Land Services, Inc.) \$ 20,250.00 NTE

Not To Exceed (NTE)/Lump Sum (LS)..... \$ 25,250.00

Resolution 2024-38

Amending Agreement for Professional Engineering Services with McClure Engineering for the Cumming Sanitary Improvements for Easements and Land Acquisition

AMENDMENT NO. 1 TO THE AGREEMENT FOR CONSULTING SERVICES

McCLURE ENGINEERING COMPANY
Project Name: Cumming Sanitary Improvements
Project Number: 2023000167-000
Project Manager: Alex Schlader, PE



This Amendment, is made on the ___ day of August, 2024, by and between McClure Engineering Company, of Clive, Iowa, (herein referred to as "CONSULTANT") and City of Cumming, Iowa (hereinafter referred to as "OWNER"), shall amend the AGREEMENT dated the 23rd day of May, 2023. The CONSULTANT will provide services per the terms and conditions outlined in this Amendment and in accordance with the scope and schedule presented in Exhibit 'C'. The services will be compensated for in accordance with the fees or hourly rates as presented in Exhibit 'C' Section III, for the Project described as:

Cumming Sanitary Sewer Improvements Easement Preparation and Land Acquisition

1. The **OWNER** shall provide information per the **OWNER's** responsibilities presented in Exhibit 'E' in the original AGREEMENT in a timely manner so as not to delay the services provided by the **CONSULTANT**.
2. Payment to the **CONSULTANT** shall be made within 30 days of invoice for work completed to date. The invoice will include the percentage of work complete, an estimate to complete and, a brief project status summary.
3. Past due amounts owed shall accrue interest at 1.5% per month from the 30th day. If the **OWNER** fails to make monthly payments due the **CONSULTANT**, the **CONSULTANT** may, after giving (7) days written notice to the **OWNER**, suspend services under this agreement.
4. THIS AGREEMENT IS SUBJECT TO ALL THE TERMS AND CONDITIONS ATTACHED TO THIS AGREEMENT.
5. This Agreement represents the entire and integrated agreement between the **OWNER** and the **CONSULTANT** and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the **OWNER** and the **CONSULTANT**.
6. Neither party to this AGREEMENT will be liable to the other party for unavoidable delays in performing the Scope of Services, or for the direct or indirect cost resulting from such delays, that may result from acts of God, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party. Each party will take reasonable steps to mitigate the impact of any force majeure. The **CONSULTANT** will adjust the schedule and compensation under this agreement to the extent that **CONSULTANT's** schedule and compensation are equitably adjusted by the **OWNER**.
7. The amount of the **CONSULTANT's** compensation is \$25,250.00. Refer to Section III in Exhibit C for contract type.

Unavoidable Delays means delays in performance resulting from acts or occurrences outside the reasonable control of the party claiming the delay in performance, including but not limited to storms, floods, excessive rain, hail, wind, hurricanes, tornadoes, fires, explosions or other casualty losses, unusual weather conditions, global medical pandemics, including but not limited to that certain global medical pandemic which has come to be known as "Coronavirus" or "Covid-19", national medical pandemics in the United States of America, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, or the acts, restrictions, or prohibitions of any federal, State or local governmental unit.

Attached Exhibits		Included	Not Included
Exhibit 'A'	Standard Terms and Conditions	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'B'	Hourly Rate Schedule	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit 'C'	Detailed Scope of Work	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'D'	Subconsultant(s) Contract	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit 'E'	Owner's Responsibilities to Consultant	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit 'F'	Duties and Responsibilities of RPR	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit 'G'	Drawing Depicting the Project	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit 'H'	Construction Item List Cost Estimate	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit 'I'	Regulatory Requirements	<input type="checkbox"/>	<input checked="" type="checkbox"/>

OWNER: City of Cumming, Iowa

CONSULTANT: McClure Engineering Company

By: _____

Signed: _____

Title: _____

Title: Project Manager _____

McCLURE ENGINEERING COMPANY CONSULTANT STANDARD TERMS AND CONDITIONS (Effective 1/1/2024 through 12/31/2024)



- 1.0 ACCESS TO SITE:** The Consultant shall at all times have access to the Project site.
- 2.0 INFORMATION PROVIDED BY OTHERS:** The Consultant shall be entitled to rely upon the accuracy and completeness of data provided by the Owner and shall not assume liability for such data. The Consultant does not practice law, insurance or financing, therefore, the Owner shall furnish all legal, accounting and insurance counseling services as may be necessary to protect themselves at any time during the Project. Owner shall hold Consultant harmless from damages that may arise as a result of inaccuracies of information or data supplied by Owner or others to Consultant.
- 3.0 OWNERSHIP AND REUSE OF DOCUMENTS:** All documents are instruments of service, and Consultant shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Consultant) whether or not the Project is completed.
- 3.1 Owner may make and retain copies of documents for information and reference in connection with the use of the documents on the Project. Consultant grants Owner a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Consultant of full payment due and owing for all services relating to preparation of the documents, and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Consultant, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Consultant; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Consultant, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Consultant or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Consultant and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Consultant; and (4) such limited license to Owner shall not create any rights in third parties.
- 3.2 If Consultant at Owner's request verifies the suitability of the documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Consultant at an amount agreed upon by Owner and Consultant.
- 4.0 UNDERGROUND UTILITIES:** Due to the nature and uncertainty of the accuracy of data available for underground utilities, including drainage tile, and/or any information that may be supplied by the Owner, third parties, and/or research performed by the Consultant or its subcontractors, the Owner agrees to indemnify and hold harmless the Consultant for all claims, losses, costs and damages arising out of the location of underground utilities provided by the Consultant under this Agreement.
- 4.1 The Owner may choose to contract separately to have extensive investigations and research conducted if the Owner feels it necessary to have more accurate location of underground utilities confirmed.
- 5.0 SUBSURFACE CONDITIONS:** The Consultant may advise the Owner to conduct soil and/or subsurface testing and analysis to provide information to the Owner, Consultant, and contractor(s) as to the subsurface conditions that may generally be encountered during subsurface construction.
- 5.1 The Consultant cannot warrant or guarantee that the information provided is reflective of all subsurface conditions that may be encountered, or to the extent that subsurface conditions such as soil properties, groundwater, rock, etc., may vary from location to location throughout subsurface construction.
- 5.2 Any unexpected change or unforeseen subsurface conditions (including those that may be caused by weather conditions) will be addressed when encountered and may result in a change in construction price and/or schedule, and the Consultant shall be held harmless from issues arising out of these unseen subsurface conditions.
- 6.0 HAZARDOUS MATERIALS – INDEMNIFICATION:** The Consultant is not in the business of making environmental site assessments for purposes of determining the presence of any toxic, hazardous or other environmental damaging substances. The purpose of this provision is to be certain that the Owner is aware of the potential liability if toxic, hazardous or environmental damaging substances are found on or under the property. Consultant makes no representations regarding an environmental site assessment, relies upon Owner to have fully investigated the need and/or scope of such assessment and assumes no responsibility for the determination to make an environmental site assessment on the subject property.
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- 10.1 In no event shall the Consultant be responsible for any cost or expense that provides betterment or that upgrades or enhances the value of the Owner's project if the component should have originally been included in the construction drawings and/or specifications.

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- 12.3 Consultant neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the construction contract documents.
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- 14.0 MEDIA REPRESENTATIONS:** The Consultant shall have the right to include photographic or artistic representations of the design of the Project among the Consultant's promotional and professional materials. The Consultant shall be given reasonable access to the completed Project to make such representations. However, the Consultant's materials shall not include the Owner's confidential or proprietary information. The Owner shall provide professional credit for the Consultant in the Owner's promotional materials for the Project. Notwithstanding anything to the contrary in the present agreement, the Parties' obligations outlined in this clause shall survive the termination of this Agreement for an indefinite term.
- 15.0 TERMINATION:** This Agreement may be terminated by either party upon not less than seven days written notice should the other party fail substantially to perform in accordance with the terms of the Agreement through no fault of the party initiating the termination. This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Consultant in the event the Project is permanently abandoned.
- 15.1 Failure of the Owner to make payments to the Consultant in accordance with the Agreement shall be considered substantial non-performance and cause for termination. If the Owner fails to make payment when due the Consultant for services, the Consultant may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Consultant within seven days of the date of the notice, the suspension shall take effect without further notice.
- 15.2 In the event of a suspension of services, the Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination and all termination expenses. Termination expenses are in addition to compensation for Basic and Additional Services, and include expenses which are directly attributable to termination.
- 16.0 DISPUTE RESOLUTION:** Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to mediation unless each of the parties mutually agrees otherwise. No mediation arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Consultant, and any other person or entity sought to be joined. In no event shall the demand for mediation be made after the date when the institution of legal or equitable proceedings based upon such claim would be barred by the applicable statute of limitations. The award rendered in the mediation shall be non-binding.
- 17.0 LIMITATION OF LIABILITY:** The Consultant's liability shall be limited to \$50,000.00 or the fee for the work performed, whichever is greater, or as specifically agreed to by separate agreement.
- 18.0 STANDARD OF CARE:** In providing services under this Agreement, the Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality.
- 19.0 PAYMENT:** Amounts unpaid 30 days after invoice date shall bear interest from the date payment is due at a rate of 1.5% per month compounded and shall include costs for attorney fees and other collection fees related to collecting fees for service.
- 20.0 LIEN RIGHTS:** Consultant retains all rights to mechanic's or design professional lien rights through the completion of the obligations of this agreement at the sole judgment of the Consultant.
- 21.0 WAIVERS:** The Owner and the Consultant waive all rights against each other and against the contractors, Consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction. The Owner and Consultant each shall require similar waivers from their contractors, Consultants and agents.
- 22.0 ASSIGNMENT:** The Owner and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Consultant shall assign this Agreement without the written consent of the other.
- 23.0 GOVERNING LAW:** Unless otherwise provided, the Agreement shall be governed by the laws of the State of Iowa.
- 24.0 COMPLETE AGREEMENT:** This Agreement represents the entire and integrated agreement between the Owner and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Consultant.

EXHIBIT C

McCLURE CONSULTANTING COMPANY
DETAILED SCOPE OF WORK
Cumming Sanitary Sewer Improvements
Easement Preparation and Land Acquisition



I) AMENDMENT DESCRIPTION

- A) The amended services will include the preparation of permanent easement plats and necessary land acquisition documentation.
- B) Easement documents are for installation and maintenance of proposed sanitary and storm sewer included on the PROJECT.

II) BASIC SERVICES

- A) Phase 700 – Survey Services
 - 1) Task 712 – Acquisition Plats and Legal Descriptions
 - (a) Acquisition and Permanent Easement Plats
 - (i) The CONSULTANT will provide acquisition and/or permanent easement plats in accordance with Iowa Code for the PROJECT. This includes a signed drawing for each plat at a suitable scale depicting the needs for the PROJECT along with legal descriptions. Two (2) original signed Plats will be provided to the OWNER for the recording of the document at the (County) Recorder's office. Monuments will be set at locations shown on the Acquisition Plat as required by Iowa Code. The estimated number of plats for this PROJECT are shown below:
 - 1. Acquisition (Fee Title) Plats: 0
 - 2. Permanent Easement Plats: 5
- B) Phase 950 – Subconsultants and Fees
 - 1) Task 962 – Land Acquisition [**JCG Land Services, Inc.**]
 - (a) The CONSULTANT will retain the services of JCG Land Services, Inc. (JCG) to provide Real Estate Services for the PROJECT as a subconsultant to serve as the professional representative for both the CONSULTANT and OWNER. The CONSULTANT, with the assistance of JCG, will coordinate and manage the right-of-way acquisition process as an integral part of the management and scheduling of the PROJECT. The objective is to start the acquisition process early and proceed to a timely conclusion of right-of-way acquisition. The CONSULTANT, with the assistance of JCG, will coordinate specialists and subconsultants involved in right-of-way acquisition.
 - (b) The work task to be performed by the subconsultant under Real Estate Services shall include the following:
 - (i) Record of Property Ownership and Liens Certificates
 - 1. Based on the final design of the PROJECT, JCG will perform property research to locate the most recent vesting deeds to determine ownership of four parcels with Temporary Easement impacts.
 - (ii) Public Hearing
 - 1. If applicable, the OWNER will mail the Notice of Public Hearing and a Statement of Property Owner's Rights to all property owners and contract purchasers by regular mail not less than 30 days before the date of the hearing; and publish a notice of the public hearing at least 4 but not more than 20 days before the public hearing. Upon request, JCG will participate in the Public Hearing to explain the acquisition process.
 - (iii) Compensation Valuation
 - 1. JCG will prepare offers of compensation based upon current fair market value of similar property in the vicinity of the PROJECT. To adequately determine the fair market value of right of way sought to be acquired, JCG will search public records for comparable sales data for each land use type encountered and recommend Dollars-Per-Square-Foot unit values for use in the development of Compensation Estimates. It is assumed that JCG will prepare Compensation Estimates for two (2) impacted parcels. If the proposed acquisition for any parcel is above \$10,000 and complicated or estimated to exceed \$25,000.00, JCG will recommend the services of an experienced Eminent Domain Appraiser to prepare the appraisal products for the OWNER. Should appraisal reports be

deemed necessary by the final design of the PROJECT or during negotiations, the costs for procuring appraisal and review appraisal reports for each parcel will be a pass-through, reimbursable expense as noted on JCG's project Invoices.

(i) Acquisition Process

1. Forms of easement documents and purchase agreements will be submitted to the OWNER for approval and acceptance. Where applicable, preparation of Warranty Deeds for the conveyance of fee ownership interests will be the responsibility of the Acquiring Authority's attorney, or other attorney to comply with state law.

JCG shall make a good faith effort to negotiate the purchase of the land, or interests in the land, needed for the PROJECT. JCG assumes there will be negotiations with owners of two (2) different properties. Should the number of negotiations increase based upon the final PROJECT design, JCG's project budget should increase proportionally by addendum. JCG shall make contacts with the property owners, tenants and/or their legal representative to explain the effect of the acquisition, answer questions, and make a written offer to acquire the property. Nonresident landowners shall be contacted by mail, return receipt requested if necessary. If an agreement cannot be reached with a property owner through good faith negotiations, JCG shall consider any evidence of value, or an appraisal provided by the landowner; report landowner counteroffers; and/or make a recommendation whether a settlement should be attempted at an amount other than that previously offered. No action shall be taken based on such recommendations until it has been approved by the OWNER.

Negotiations shall be considered complete upon occurrence of one of the following:

- both the owner and tenant accept the offer or an administrative settlement, or
- either the owner or tenant fails or refuses to sign the offer or administrative settlement after four in-person meetings to discuss the associated acquisition and offer, or
- in the judgment of the OWNER, negotiations have reached an impasse.

JCG may enter extended negotiations (meetings beyond four unsuccessful attempts) upon the request of the OWNER or ACQUIRING AUTHORITY. Time associated with extended negotiations will be tracked on a time and materials basis and may warrant a change order if there is a budget overage. Design changes during negotiations that necessitate duplications of efforts and/or lead to extended negotiations will also be tracked and may warrant a change order, or change orders, in the event(s) of a budget overage. For every parcel on which negotiations have reached an impasse or that cannot be acquired by negotiated agreement, JCG shall deliver as much of the file to the ACQUIRING AUTHORITY as is necessary for their Attorney to begin preparation for the condemnation of the parcel.

(ii) Closing Process

1. Upon completion of the acquisition of right of way, JCG will organize and verify data for each parcel file's closing and payment process and return the parcel file data to the OWNER for payment processing and recordation. The completed file will contain originals of all executed agreement, easement, and/or closing documents, a signed W-9 form, and, if necessary, an Allocation of Proceeds statement directing the split of payment(s) to be made.

III) FEES:

The fees for Amended Engineering Services shall be described below:

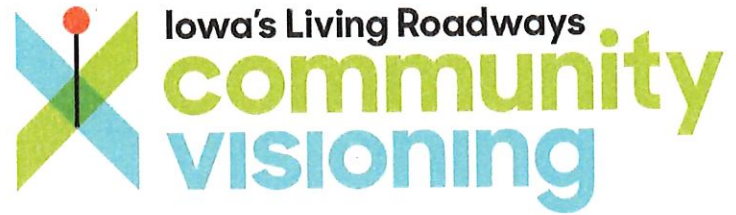
A) Basic Services:

1) Phase 700 – Survey Services			
(a) Task 735 – Preliminary Design Survey.....	\$	5,000.00	LS
2) Phase 950 – Subconsultant and Reimbursable Fees			
(a) Task 960 – Geotechnical Borings	\$	20,250.00	NTE
		<hr/>	
		Not To Exceed (NTE)/Lump Sum (LS).....	\$ 25,250.00



(319) 373-0650 • (800) 369-1269
www.treesforever.org
80 W 8th Avenue • Marion, IA 52302

September 17, 2024



Rita Conner
City Administrator, City of Cumming
649 N 44th St
Cumming, IA 50061

Dear Rita,

Congratulations! **Cumming** has been selected to participate in the 2025 Iowa's Living Roadways Community Visioning Program. As a participant in the program, Cumming will be a partner in a successful collaborative effort sponsored by the Iowa Department of Transportation, delivered and facilitate by Iowa State University, Trees Forever, and private landscape architects.

A press release (Word document) will be emailed to you in the coming days so you can share Cumming's selection for the program with local media outlets.

Trees Forever Field Coordinator, Karen Johlas-Szlkowski, has been assigned to guide your community through the Community Visioning process. She will facilitate the meetings and be your contact for all things Community Visioning. One of their first tasks will be working with the steering committee to organize a virtual kick off planned for later in October, where steering committee members will learn more about the Community Visioning program, how it can transform a town, and what to expect through the entire process.

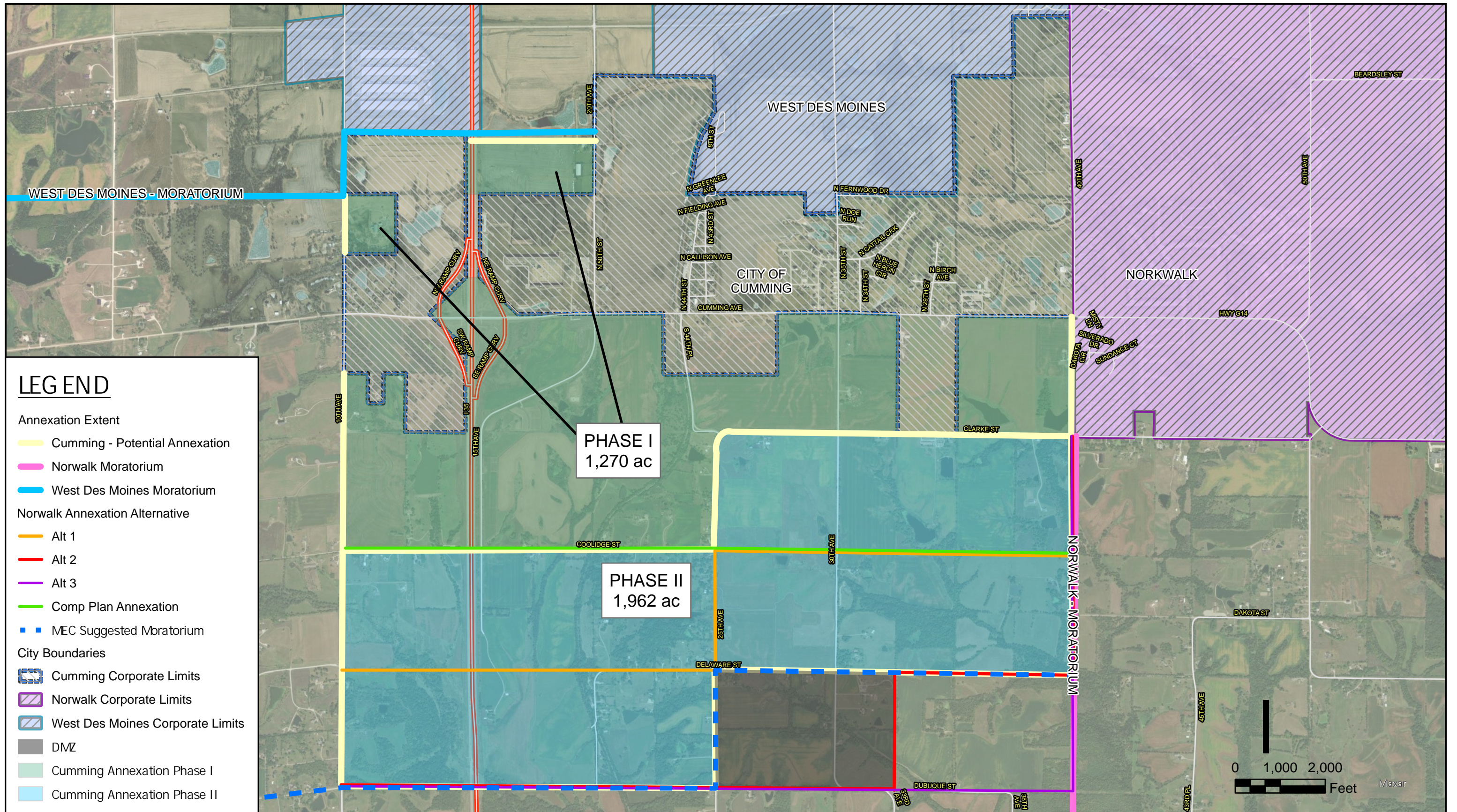
Please mark your calendars and register today for the Iowa's Living Roadways Annual Celebration held at the Gateway Center in Ames on Thursday, November 7th 2024. We'll be starting at 9 am and wrapping up around 3:30 pm. Details and a registration link can be found on the events calendar of the Trees Forever website. The direct link to register is here <https://treesforever.org/event/ilrcelebration/> We are celebrating **28 years of Community Visioning** and will highlight work done by this year's Community Visioning communities and give you the opportunity to interact with other participants and learn about their experience.

Again, congratulations on Cumming being selected as a Community Visioning participant for 2025. We look forward to working with you and your community in the coming year and plan to see you on November 7th in Ames!

Sincerely,

Brad Riphagen
Community Visioning Program Manager

Jeff Jensen
Director of Community Programs



LEGEND

Annexation Extent

- Cumming - Potential Annexation
- Norwalk Moratorium
- West Des Moines Moratorium

Norwalk Annexation Alternative

- Alt 1
- Alt 2
- Alt 3
- Comp Plan Annexation
- - - MEC Suggested Moratorium

City Boundaries

- Cumming Corporate Limits
- Norwalk Corporate Limits
- West Des Moines Corporate Limits
- DMZ
- Cumming Annexation Phase I
- Cumming Annexation Phase II

Cumming-Norwalk Annexation Review