

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

**RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT TO  
SERVE AS DISSEMINATION AGENT FOR SECONDARY MARKET DISCLOSURE  
WITH PIPER SANDLER & CO.**

WHEREAS, the City of Cresco is required to provide to the marketplace certain secondary market disclosure information with respect to outstanding bonds, in accordance with Rule 15c2-12 of the United States Securities and Exchange Commission under the Securities Exchange Act of 1934; and

WHEREAS, in the Dissemination Agreement dated February 20, 2023 Piper Sandler & Co agrees to act as the Dissemination Agent for the City of Cresco; and

NOW THEREFORE BE IT RESOLVED that the Mayor is authorized and directed to sign the Agreement to serve as Dissemination Agent for Secondary Market Disclosure with Piper Sandler & Co.

Council Person \_\_\_\_\_ moved the adoption of the foregoing Resolution and Council Person \_\_\_\_\_ seconded said Motion. Following discussion, a roll call vote was requested by Mayor and said roll call resulted as follows:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

Thereupon, the Mayor declared said Resolution duly passed and announced that the Agreement between the City of Cresco and Piper Sandler & Co., is approved and that the Mayor is authorized to execute the agreement on behalf of the City of Cresco.

PASSED AND APPROVED THIS 20<sup>th</sup> DAY OF FEBRUARY, 2023.

BY: \_\_\_\_\_  
Mayor David J Brenno

ATTEST: \_\_\_\_\_  
City Clerk Michelle Elton

DATE: February 16, 2023      FROM: Travis Squires  
TO: City of Cresco              RE: Continuing Disclosure Obligation

I am writing to discuss the disclosure obligations that will become effective after your upcoming sale of bonds. SEC's rule 15c2-12 (the "Rule") states that an underwriter cannot purchase bonds from an issuer unless the issuer has agreed to undertake to provide annual information to the market. There is a minor exemption to the rule for issuers that issue less than \$1 million per issue of securities or private placement (direct loans). You will not be able to meet this exception on the bonds you are selling now.

Because an underwriter cannot enter into an agreement to purchase the bonds without the issuer's consent to comply with the rule, an issuer must agree to provide continuing disclosure in order to sell its bonds.

For the new issue of bonds (and well as your prior 2013 and 2014 Bonds), you will agree (and have agreed) to provide annual audit as well as certain information contained in the official statement by April 15th following the end of each fiscal year until the bonds are retired. The information to be provided will be similar to the Appendix A that appears in the official statement. In addition, there are certain "material events" that require immediate notification (such as a missed payment on the bonds).

Additionally, the SEC required that all filings be made to its Electronic Municipal Market Access ("EMMA") system. While electronic filing is not new to the municipal bond industry, the new part is that all documents filed must be filed in a **word-searchable .pdf** format.

While the Rule was recently amended by the SEC, the Rule has been in effect now for two decades, during which time some issuers have already had ongoing filing responsibilities. As a normal course of business, for approximately the past ten years, we have provided "continuing disclosure dissemination" service to our clients in Iowa, and we plan to continue doing so in the future. Essentially, we will prepare all information required to be provided, with your input, and submit it to EMMA and anyone else required to receive such information. We will submit a copy of your audit at the same time.

We provide this service for an annual fee of \$1,500 per security class of bonds outstanding.

If you are interested in this service, we will be glad to contract to act as dissemination agent. I have enclosed a form of agreement for your review and comment.

## **AGREEMENT TO SERVE AS DISSEMINATION AGENT FOR SECONDARY MARKET DISCLOSURE**

This Agreement to Serve as Dissemination Agent for Secondary Market Disclosure dated February 20, 2023 (as amended from time to time, the "Agreement") is entered into between Piper Sandler & Co. ("Piper") and the City of Cresco, Iowa (the "Obligated Party"), whereby Piper will serve as dissemination agent to the Obligated Party for purposes of assisting the Obligated Party with regard to its contract to provide to the marketplace certain secondary market disclosure information (the "Dissemination Agent Services") with respect to outstanding bonds, in accordance with Rule 15c2-12 of the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time (the "Rule").

### Securities to which this Agreement Applies

This Agreement relates solely to the municipal securities described in Exhibit A hereto (collectively, the "Securities") for which the Obligated Party has undertaken to provide certain ongoing secondary market disclosures pursuant to the Rule and the Obligated Party's written undertakings identified in Exhibit A hereto in connection with the initial offer and sale of the Securities (collectively, the "Undertakings"). The Obligated Party and Piper may at any time amend this Agreement to include additional municipal securities of the Obligated Party by executing an amendment to this Agreement in the form of Exhibit B, attached hereto, which amendment will be fully incorporated herein.

This Agreement replaces all prior existing agreements between the Obligated Party and Piper with respect to the provision of dissemination agent by Piper to the Obligated Party; provided, however, that upon execution of this Agreement, Piper shall continue to provide dissemination agent services with respect to municipal securities covered by such prior agreements to the extent such securities are described on Exhibit A hereto.

### Services to be provided by Piper

Piper agrees to perform the following services for the Obligated Party:

#### With Respect to the Annual Report

- A. Notify the Obligated Party at the appropriate time each year to remind the Obligated Party of the nature and timing of its obligation under the Undertakings;
- B. To the extent available from third party sources, obtain all required content with respect to the Undertaking(s), in order to assist the Obligated Party compliance with its Undertakings;
- C. Compile and assemble the operating information as required by the Undertakings;
- D. Receive from the Obligated Party its annual financial information in form and content required by the Undertakings;
- E. Provide to the Obligated Party at least 15 days prior to the deadline for submission to the MSRB copies of the Annual Report to be disseminated;
- F. Unless otherwise directed in writing by the Obligated Party prior to the date required in the Undertakings for dissemination, disseminate the Annual Reports on or before the submission deadline date(s);
- G. Upon request of the Obligated Party, provide receipt of said dissemination; and

#### With Respect to Material Events Filings

- H. At the direction of the Obligated Party, disseminate notices of the occurrence of events (each, an "Event Notice") specified in the Undertakings.

### Responsibilities of the Obligated Party

The Obligated Party agrees to cooperate with Piper to collect and provide the Disclosure Information on a timely basis to allow Piper to disseminate the same on or before the deadlines therefor set forth in the Undertakings. For purpose of this discussion, Piper shall communicate, periodically, what "timely basis" means for that particular year, but in no event will it be less than 15 days prior to the date specified in the Undertaking for annual filing.

The Obligated Party agrees to review and sign-off on all filings, whether Annual Report or Material Event, prior to the filings being made by Piper.

The Obligated Party agrees to provide all information in order to complete the Annual Report.

The Obligated Party will provide Piper with an electronic copy, in word-searchable portal document format (PDF), of:

- A. its unaudited financial statements no later than the December 1 following the fiscal year end of June 30 of each year; and
- B. its audited financial statements, as soon as possible after receipt and approval (if applicable) thereof by the Obligated Party.

The Obligated Party will inform Piper of the occurrence of any event required to be disclosed by the Undertakings as soon as practicable after it has, or is deemed to have, knowledge thereof.

#### Fees

##### Annual Filing Obligation

The Obligated Party agrees to pay Piper an annual fee equal to \$1,500 per year per class of Securities outstanding and subject to the Rule. This fee will be payable at the time of the submission of the Obligated Party's Annual Report to the MSRB. Piper retains sole discretion to increase the annual fee for any succeeding year after the dissemination of an Annual Report for the prior year has been completed and the fees for such prior year have been paid in full to Piper. All services rendered herein shall be on a fiscal year basis.

##### Material Events Obligations

The Obligated Party agrees to pay Piper a fee equal to \$250 per material event filing, payable on demand.

#### Piper Not Acting as Municipal Advisor

The Obligated Party and Piper intend and agree that the performance of services by Piper under this Agreement does not constitute the provision of municipal advisory activities within the meaning of Rule 15Ba1-1(e) of the Act and does not create or impose a duty on Piper to advise the Obligated Party with respect to the issuance of municipal securities or municipal financial products (as defined in the Act). In providing the services described herein, Piper is not recommending any action to any person, and the services provided by Piper herein are not intended to be, and shall not be construed as, a "recommendation" or "advice" within the meaning of Section 15B of the Act and the regulations promulgated thereunder. Piper is not acting as an advisor to any person and does not owe a fiduciary duty pursuant to Section 15B of the Act and the regulations promulgated thereunder or under any state or other federal law to any person with respect to services provided by this Agreement.

#### Other Legal Obligations of the Obligated Party

The Obligated Party acknowledges and understands that other state and federal laws, rules and regulations, including but not limited to the Securities Act of 1933, as amended, and Rule 10b-5 promulgated under the Act, may apply to the Obligated Party, and that the failure of Piper to advise the Obligated Party of the Obligated Party's responsibilities under such laws, rules and regulations shall not constitute a breach by Piper of any of its duties and responsibilities under this Agreement. The Obligated Party acknowledges and understands that (i) Piper is not acting in any legal, accounting or financial capacity with the Obligated Party under this Agreement and is not providing legal, accounting or financial advice with respect to any federal or state laws, rules, or regulations; and (ii) the duties of Piper under this Agreement relate exclusively to the performance of administrative tasks set forth in Section 2 hereof on behalf of the Obligated Party. The Obligated Party should consult with its own legal, accounting and financial professionals for advice with respect to compliance with other state and federal laws, rules and regulations applicable to the Obligated Party.

#### Limitation of Liability

Piper shall have only such duties as are specifically set forth in Section 2 of this Agreement. Piper's obligation to disseminate the Disclosure Information at the times and with the content described in the Undertakings shall be limited solely to the extent the Obligated Party has provided the foregoing to Piper as required by this Agreement. Piper shall have no duty to review or verify the accuracy or completeness of any Disclosure Information provided by the Obligated Party or other sources reasonably believed by Piper to be reliable, and the Obligated Party hereby disclaims and releases Piper from any responsibility to act in a fiduciary capacity to the Obligated Party, the holders of the Securities or any other party pursuant to this Agreement. Piper shall have no responsibility for the failure of the Obligated Party to report in a timely manner to Piper a Notice Event or a duty to determine the materiality thereof. Piper shall have no duty to determine, or liability for failure to determine, whether the Obligated Party has complied with the Undertakings. Piper may rely exclusively upon certifications of the Obligated Party at all times.

TO THE EXTENT PERMITTED BY LAW, THE OBLIGATED PARTY AGREES TO INDEMNIFY AND HOLD PIPER AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS HARMLESS FROM AND AGAINST ALL LOSSES, EXPENSES, AND LIABILITIES WHICH IT OR THEY MAY INCUR ARISING OUT OF OR IN THE EXERCISE OR PERFORMANCE OF PIPER'S RIGHTS DUTIES AND OBLIGATIONS HEREUNDER INCLUDING WITHOUT LIMITATION THE COSTS AND EXPENSES (INCLUDING ATTORNEY FEES) OF DEFENDING AGAINST ANY CLAIM OF LIABILITY BUT EXCLUDING LIABILITIES ARISING AS A RESULT OF PIPER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

#### Termination

This Agreement will automatically terminate on the defeasance, refunding or total redemption of all of the Bonds subject to the Agreement, including Bonds added to this Agreement pursuant to Exhibit B. Either party may terminate this Agreement in writing upon 15 days' notice (from the receipt of the written notice) to the other party. Termination shall only occur at the end of the most recent fiscal year, after the dissemination has occurred for said fiscal year and fees associated with the dissemination have been received by Piper. All services rendered herein shall be on a fiscal year basis.

#### Governing Law

This Agreement shall be governed by the laws of the State of Iowa.

#### Consent to Jurisdiction: Service of Process

EACH OF THE PARTIES HEREBY (A) SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN DES MOINES, IOWA FOR THE RESOLUTION OF ANY CLAIM OR DISPUTE WITH RESPECT TO OR ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES (B) AGREES THAT ALL CLAIMS WITH RESPECT TO SUCH ACTIONS OR PROCEEDINGS MAY BE HEARD AND DETERMINED IN SUCH COURT, (C) WAIVES THE DEFENSE OF AN INCONVENIENT FORUM, (D) AGREES NOT TO COMMENCE ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OTHER THAN IN A STATE OR FEDERAL COURT SITTING IN DES MOINES, IOWA AND (E) AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

#### Waiver of Jury Trial

EACH OF THE PARTIES HEREBY AGREES TO WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE RELATIONSHIP BETWEEN THE PARTIES. THE PARTIES AGREE TO WAIVE CONSEQUENTIAL AND PUNITIVE DAMAGES.

#### Addresses For Notices

All notices and other communications called for hereunder shall be made in writing including via electronic mail and, unless otherwise specifically provided herein, shall be deemed to have been duly made or given when delivered by hand or mailed first class postage prepaid or, in the case of faxed, emailed or telexed notice, when transmitted, answer back received, addressed as follows:

If to Obligated Party: City of Cresco, Attn: City Clerk, 130 N Park Place, Cresco, IA 52136

If to Piper: 3900 Ingersoll Ave. Suite 110, Des Moines, Iowa, 50312, Attention: Managing Director, Public Finance

#### Arbitration

At the request of Piper or Obligated Party any claim shall be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, United States Code) (the "Act"). The Act will apply even though this Agreement provides that it is governed by the law of the State of Iowa. Arbitration proceedings will be determined in accordance with the Act, the applicable rules and procedures for the arbitration of disputes, and the terms of this Section. In the event of any inconsistency, the terms of this Section shall control.

#### Beneficiaries

This Agreement shall inure solely to the benefit of the Obligated Party and Piper, and shall create no rights in any other person or entity.

#### Miscellaneous

This Agreement embodies the entire agreement and understanding between the parties hereto and, unless otherwise indicated, supersedes all prior agreements and understandings relating to the subject matter hereof. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, such determination will not affect such provision in any other respect or any other provision of this Agreement, which will remain in full force and effect. This Agreement may not be amended or otherwise modified or waived, except by an instrument in writing signed by both Piper and the Obligated Party.

Counterparts

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Entered into on behalf of Piper by

\_\_\_\_\_ Date: \_\_\_\_\_  
Title: Managing Director

Entered into on behalf of Obligated Party by

\_\_\_\_\_ Date: \_\_\_\_\_  
Title: Mayor

## Exhibit A- Identification of Municipal Securities

Name of Issue	Date of Undertaking
<b><u>Class: General Obligation Debt</u></b>	
Series 2023, GO Bonds	06/01/2023
Series 2014, GO Bonds	07/08/2014
Series 2013, GO & Refunding Bonds	03/01/2013
<b><u>Class: Sewer Revenue Debt</u></b>	
TBD	TBD
<b><u>Class: Water Revenue Debt</u></b>	
TBD	TBD

**Exhibit B – Form of Amendment -- DO NOT SIGN**

**Amendment to Agreement to Serve as Dissemination Agent for Secondary Market Disclosure**

{Date}

{Name of Obligated Party/Borrower}  
{Address of Obligated Party}

Re: Agreement to Serve as Dissemination Agent for Secondary Market Disclosure, dated \_\_\_\_\_ (the "Dissemination Agreement") between Piper Sandler & Co. ("Piper") and \_\_\_\_\_, (the "Obligated Party" or the "Issuer")

Pursuant to the Agreement, Piper agreed to provide certain secondary market disclosure dissemination services to the Obligated Party with respect one or more contractual undertakings of the Obligated Party to disseminate certain continuing operating and financial information and notices of certain enumerated events to the MSRB. The parties to the Dissemination Agreement hereby agree to amend the Dissemination Agreement to add the following subject securities:

Name of Issue	Date of Undertaking

A copy of the Undertaking is in the final transcript with respect to the Bonds.

Insert changes in agreement here

{TBD}

The parties hereto agree that this letter amendment amends the Dissemination Agreement and is fully incorporated therein in all its terms.

Entered into on behalf of Piper by

\_\_\_\_\_ Date: \_\_\_\_\_  
Managing Director

Entered into on behalf of Obligated Party by

\_\_\_\_\_ Date: \_\_\_\_\_  
Issuer



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

**RESOLUTION AUTHORIZING THE MAYOR AND CITY COUNCIL REPRESENTATIVES TO SIGN AN AGREEMENT IN ACCORDANCE WITH THE TERMS AGREED TO IN NEGOTIATIONS BETWEEN THE CITY OF CRESCO AND LOCAL 1068 AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES AFL-CIO**

The City Council of the City of Cresco met in regular session on February 20, 2023, at 5:30 P.M.

Council member \_\_\_\_\_ moved the adoption of the foregoing Resolution Authorizing the Mayor and City Council Representatives Richard McConnell and Gary Kriener to sign Appendix B. The Agreement was agreed to in negotiations between the City of Cresco and Local 1068 American Federation of State, County, and Municipal Employees AFL-CIO. This contract is in effect from July 1, 2022 through June 30, 2026 with a wage reopener for years 2, 3, and 4 of the contract. Year 2 wages are reflected in Appendix B for Fiscal Year July 1, 2023 – June 30, 2024. Council Member \_\_\_\_\_ seconded said motion. A roll call vote was requested by the Mayor and said roll call vote resulted as follows:

Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_  
Absent: \_\_\_\_\_

Thereupon, the Mayor declared said Resolution duly passed and announced that the agreement dated July 1, 2022, as amended with Appendix B, between the City of Cresco and Local 1068 American Federation of State, County, and Municipal Employees AFL-CIO, is approved and that the Mayor and City Council Representatives are authorized to execute the agreement on behalf of the City of Cresco.

PASSED AND APPROVED THIS 20<sup>th</sup> DAY OF FEBRUARY, 2023.

BY: \_\_\_\_\_  
Mayor David J. Brenno

ATTEST: \_\_\_\_\_  
City Clerk Michelle Elton

**AGREEMENT**

**between**

**CITY OF CRESCO, IOWA**

**and**

**LOCAL 1068  
AMERICAN FEDERATION OF  
STATE, COUNTY, AND MUNICIPAL EMPLOYEES  
AFL-CIO**

**July 1, 2022 – June 30, 2026**

**WAGE REOPENER FOR JULY 1, 2023 – JUNE 30, 2024 (YEAR 2)**

**APPENDIX B (ONLY UPDATE)**

**(with another wage reopener for years 3 and 4 of the contract)**

APPENDIX B  
WAGE SCHEDULE (EFFECTIVE JULY 1, 2023 THROUGH JUNE 30, 2024)

<u>Job Classification</u>	<u>7-1-23</u>	<u>1-1-24</u>
	(3.0%)	(3.0%)

SECURITY

Assistant Chief of Police	\$30.97	\$31.90
Lieutenant	\$30.49	\$31.40
Police Sergeant	\$30.25	\$31.16
Patrol Officer	\$30.00	\$30.90

STREET

Assistant Superintendent of Streets	\$24.99	\$25.74
Street Maintenance Worker	\$24.34	\$25.07

SEWAGE TREATMENT

Assistant Sewage Superintendent	\$24.99	\$25.74
Laborer	\$24.34	\$25.07

WATERWORKS

Assistant Water Superintendent	\$24.99	\$25.74
Laborer	\$24.34	\$25.07

State Water Certification (must pass both Distribution and Treatment certifications)

Grade 1	\$0.25 per hour
Grade 2	\$0.50 per hour (this includes the Grade 1 increase)

State Wastewater Certification

Grade 1	\$0.25 per hour
Grade 2	\$0.50 per hour (this includes the Grade 1 increase)
Grade 3	\$0.75 per hour (this includes the Grade 1 & 2 increase)

The employee assigned to be the canine handler will be paid a monthly stipend of \$25.00 paid on the first paycheck of each month.

SIGNATURE PAGE FOR APPENDIX B – WAGE REOPENER FOR JULY 1, 2023 – JUNE 30, 2024

CITY OF CRESCO, IOWA

AMERICAN FEDERATION OF STATE,  
COUNTY & MUNICIPAL EMPLOYEES,  
AFL-CIO, LOCAL NO. 1068

By \_\_\_\_\_  
Mayor David J. Brenno

By \_\_\_\_\_  
Council 61 Representative Robin White

By \_\_\_\_\_  
Council Member Richard McConnell

By \_\_\_\_\_  
Street Dept – Cody Courtney

By \_\_\_\_\_  
Council Member Gary Kriener

By \_\_\_\_\_  
Water Dept – Jason Miller

By \_\_\_\_\_  
Sewer Dept – Aaron Butikofer

By \_\_\_\_\_  
Police Dept – Samuel Fotiadis

Date Signed by City: \_\_\_\_\_

Date Signed by Union: \_\_\_\_\_

Acknowledged by:

\_\_\_\_\_  
Employer Representative Aaron Hilligas  
Ahlers & Cooney P.C.

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING WAGE AGREEMENT  
FOR FULL-TIME NONUNION EMPLOYEES

WHEREAS, the Local 1068 American Federation of State, County and Municipal Employees have agreed to a one-year wage package for July 1, 2023 – June 30, 2024; and

WHEREAS, City Council of Cresco, Iowa, has stated they will make the same wage and benefit package available for full-time nonunion employees; and

WHEREAS, the nonunion personnel affected by this agreement consist of the employees in the following positions: Chief of Police, Public Works Director, Street Superintendent, Water Superintendent, Wastewater Superintendent, City Clerk, Deputy Clerk, Utility Billing Clerk, Theatre Manager/Office Assistant; and

WHEREAS, other full-time, part-time, and temporary employees' wages will be approved from time to time by respective Boards and Commissions; and

WHEREAS, the City will implement a wage increase of 3% for full-time nonunion employees, listed above, effective July 1, 2023 and 3% effective January 1, 2024.

THEREFORE, BE IT RESOLVED, that the City Council and the full-time nonunion employees, with the exception of Library staff and Fitness Center/Parks staff, agree to the wage adjustments listed above.

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.

\_\_\_\_\_  
Mayor David J. Brenno

Attest: \_\_\_\_\_  
City Clerk Michelle Elton

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING WAGE INCREASE FOR SPECIFIED  
PERMANENT PART-TIME EMPLOYEES

WHEREAS, nonunion permanent part-time positions affected by this agreement consists of the employees in the following positions: City Hall/Library/Kessel Lodge Custodian; Airport Manager; and Fire Chief; and

WHEREAS, the City Council of Cresco, Iowa understands the value of these individuals serving in these capacities.

THEREFORE, BE IT RESOLVED, that the rate of pay will be increased 3% effective July 1, 2023 and 3% effective January 1, 2024 for the above-mentioned positions.

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.

\_\_\_\_\_  
Mayor David J. Brenno

Attest: \_\_\_\_\_  
City Clerk Michelle Elton

**SUMMARY OF ORDINANCE 502**

Below is a summary of ORDINANCE 502. A full copy of said Ordinance may be obtained between 8 am and 4:30 pm weekdays at City Hall, 130 North Park Place, Cresco, IA 52136 or on the City's website at [www.cityofcresco.com](http://www.cityofcresco.com).

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF CRESCO, IOWA, BY AMENDING CHAPTER 106 SECTION 106.04 AND 106.08 SUBSECTION 1 PERTAINING TO FEES FOR RECYCLABLE AND NON-RECYCLABLE WASTE COLLECTION**

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

**SECTION 1. SECTIONS MODIFIED.**

Chapter 106.04 States that all solid waste shall be collected from residential premises at least once each week and from commercial, industrial and institutional premises as frequently as may be necessary.

Chapter 106.08, Subsection 1 Lists the fees that will be charged:

Effective January 1, 2023	
Solid Waste (Residential)	\$22.21 per month per dwelling unit*
Recycling (Residential)	\$6.15 per month per dwelling unit
Solid Waste (Light Commercial)	\$27.53 per month
Recycling (Light Commercial)	\$7.63 per month
Heavy Commercial Customers	\$20.35 per cubic yard per pick up
* Where at least one resident residing in a dwelling unit is 65 years of age or older, the fee is \$21.35 per month.	

Additional fees incurred for non-compliant content or as posted on rigid containers will be billed by the collector.

Heavy Commercial Cardboard:

	<i>Heavy Commercial Customers with Existing Cardboard Dumpster</i>	<i>One-Time Stocking Fee for Placement of New (Additional) Cardboard Dumpsters</i>
1/1/23-12/31/23	2-yard dumpster - \$100/month 3-yard dumpster - \$125/month 4-yard dumpster - \$150/month 6-yard dumpster - \$200/month	2-yard dumpster - \$300 3-yard dumpster - \$375 4-yard dumpster - \$450 6-yard dumpster - \$600

Plus fees incurred for non-compliant content in dumpsters (to be billed by the Collector).

**All rates will increase by 4% on January 1<sup>st</sup> for the next four years ending December 31, 2027.**

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

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

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.

\_\_\_\_\_  
Mayor David J Brenno

ATTEST: \_\_\_\_\_  
City Clerk Michelle Elton

1<sup>st</sup> Reading 4/23/23

2<sup>nd</sup> Reading 2/6/23

3<sup>rd</sup> Reading \_\_\_\_\_

I certify that the foregoing was published as Ordinance No. 502 on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST: \_\_\_\_\_  
City Clerk Michelle Elton



## Pending Legislative Changes

February 17, 2023

1. SF 181 – this has passed and will be implemented immediately. The State is correcting an error in calculating the rollback. Therefore, all Counties need to adjust their taxable valuations and submit those to the State. This will reduce the valuations (estimated to be 1.8%) which then affects the City's budgeted revenues and tax levies for the Budget for FY24 that we are currently working on. They have extended the deadline until April 30, 2023 to approve our budgets.
  - a. Some revenues (General Levy, Emergency, Theatre) will be lower
  - b. Some tax levies will increase to keep the same budgeted revenue (Employee Benefits, Insurance, Debt)
  - c. Overall, our property tax revenue will decrease and our tax levy will increase
2. SSB 1124 – several subcommittees have met. It appears this will probably happen but could possibly be amended. This will combine several levies into a new combined general fund levy (CGFL) and is connected to assessment growth. It will eliminate the Emergency, Theatre and several other levies. Their goal is to get all cities down to a CGFL of 8.10 (ours is about 8.51). Growth will be limited to 2.5% or 3.5% per year. This bill could have drastic impacts on limiting future property tax revenues.
3. SSB 1125 this is in the discussion stage. This would be the time to reach out to legislators to stop this one for sure. The State would eliminate the local governments from collecting Local Option Sales Tax (LOST), reduce commercial & industrial property tax rollback from 90% to 80% with no talk of backfill this time. Converts the Homestead Tax Credit and Veterans Property Tax Credit to be funded by local governments instead of the State.
  - a. All three of these items will have drastically negative impacts on the city.
  - b. LOST funds all of our equipment and small projects. If this revenue source is lost, there will be no way to fund any extra items that need to be purchased. This is also used for the emergency expenses (leaking roof, furnace etc) that come up mid-year after the budget has been submitted.
  - c. The State claims they will backfill LOST however based on past experience this occurs for the first few years and then is eliminated.
  - d. Howard County allocates some of their LOST to support the Library so this could be lost.
  - e. Commercial properties had been taxed at 100% then reduced to 90% and now to 80%. When these taxable valuations decrease, the tax levies will need to increase to create the same revenue and therefore the residents will be paying much of that additional amount. Again, the capped levies will produce less revenue across the board. We will need to be looking at cutting essential services just to cover operating expenses.
  - f. Converting the credits to be funded by the City rather than the State will again lower the valuations and decreasing revenues
4. SSB 1138 – increases the Military Property Tax Credit from \$1,852 to \$4,000 valuation. Local budgets will lose about \$5.4 million of revenue across Iowa.

There are several other bills being considered by the State Legislature. Counties and Cities across Iowa are going to be impacted tremendously. Many are reporting of talking police/sheriff positions as well as other departments either being cut or services being reduced and employee positions being eliminated.

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

**RESOLUTION AUTHORIZING THE MAYOR TO SIGN A LETTER OF INTENT TO PARTICIPATE IN AN APPLICATION WITH THE IOWA ECONOMIC DEVELOPMENT AUTHORITY FOR A THEATER - COMMUNITY CATALYST BUILDING REMEDIATION PROGRAM GRANT FOR THE CRESCO THEATRE AND OPERA HOUSE**

WHEREAS, the City of Cresco d/b/a Cresco Theatre and Opera House is submitting an application to Iowa Economic Development Authority (IDEA) for a Theater - Community Catalyst Building Remediation Program Grant; and

WHEREAS, the City of Cresco supports the application; and

WHEREAS, the City of Cresco agrees to be the applicant and fiscal agent for the grant request for the City of Cresco d/b/a Cresco Theatre and Opera House.

NOW, THEREFORE, BE IT RESOLVED THAT the Mayor is authorized and directed to sign the Letter of Intent to Participate on behalf of the Cresco Theatre and Opera House.

Council Person \_\_\_\_\_ moved the adoption of the foregoing Resolution and Council Person \_\_\_\_\_ seconded said Motion. Following discussion, a roll call vote was requested by Mayor and said roll call resulted as follows:

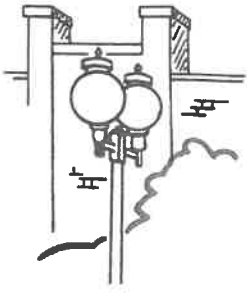
Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_  
Absent: \_\_\_\_\_

Thereupon, the Mayor declared said Resolution duly passed and announced that the Letter of Intent to Participate is approved and that the Mayor is authorized to sign the letter on behalf of the City of Cresco.

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023

BY: \_\_\_\_\_  
Mayor David J. Brenno

ATTEST: \_\_\_\_\_  
City Clerk Michelle Elton



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

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

February 20, 2023

**Letter of Intent to Participate**

The City of Cresco supports the Cresco Theatre and Opera House application to the Iowa Economic Development Authority for a Theater - Community Catalyst Building Remediation Program Grant. We further state that representatives of the City Council and local building, zoning, and/or fire code officials who may be responsible for approval and inspection of project property have reviewed the project proposal.

We further agree that all historically significant properties submitted for consideration in this application will comply with the Secretary of Interior's Standards for historic property rehabilitation.

We further commit to being the applicant and fiscal agent for grant request on behalf of the City of Cresco d/b/a Cresco Theatre and Opera House and intend to initiate qualifying tax incentives per the City of Cresco adopted policies upon origination of the project.

Thank you for your review of this vital community project.

CITY OF CRESCO:

\_\_\_\_\_  
Mayor David J. Brenno

\_\_\_\_\_  
Date

ATTEST: \_\_\_\_\_

City Clerk Michelle Elton

APPLICANT/SUB-RECIPIENT:

\_\_\_\_\_  
Cresco Theatre and Opera House  
Manager Wendy Lickeig

\_\_\_\_\_  
Date

## PROJECT ASSURANCES:

Name of Property Owner: City of Cresco

Address of Project Property: 115 2<sup>nd</sup> Avenue West

As rightful owner(s), developer(s), and/or responsible entity(s), we: *(check boxes to confirm)*

- Agree to the submission of the Iowa Economic Development Authority (IEDA) Grant application for the benefit of the above-named property/project.
- Agree to all terms and conditions defined in the IEDA Grant application.
- Agree to provide the specified cash match documented in the application.
- Understand that grant funds are made as a reimbursement and understand that we must complete the proposed scope of work for the project before receiving final reimbursement of grant funds. We understand a representative of IEDA will conduct an on-site final inspection of the project before approval of final reimbursement payment. We agree to work through the local government program for reimbursement requests.
- Agree to notify local grant recipient AND IEDA regarding changes in scope of work that may occur during construction that vary from the proposed plans submitted in the grant application.
- Understand that any significant deviation/changes from the submitted proposed designs without approval from IEDA may jeopardize the grant award.
- Agree to abide by state and federal civil rights requirements which bars discrimination against any employee, applicant for employment, or any person participating in any sponsored program on the basis of race, creed, color, national origin, religion, sex, age, physical or mental disability.
- Agree to maintain safe and sanitary working conditions and compensation for employment no less than minimum wage.
- Understand that IEDA reserves the right to use information relevant to the project in case studies, program marketing, etc.
- I am aware of the Secretary of the Interior's Standards for the Treatment of Historic Properties and it is our desire to follow best practices for preservation and rehabilitation throughout the project.
- I agree to conform with the Americans with Disability Act.
- I agree to conform with all local building codes and regulations.
- I agree to conform with all local design guidelines and design review processes (if applicable).

By signing this Project Assurances document, we certify the information presented above, and in the application and attachments, to be true and correct to the best of the entity's knowledge.

**Property Owner:**

Dave Brenno, Mayor  
Type/Print Name and Title

**City Representative (grant recipient):**

Michelle Elton, City Clerk  
Type/Print Name and Title

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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

RESOLUTION AUTHORIZING MARTIN GARDNER ARCHITECTURE  
TO PROCEED WITH PHASE II OF THE  
SCENE SHOP CONSTRUCTION PROJECT

The City Council of the City of Cresco met in regular session on February 20, 2023 at 5:30 P.M. Council Members \_\_\_\_\_ were present. Council Members \_\_\_\_\_ were absent.

Council Member \_\_\_\_\_ moved the adoption of the foregoing Resolution Authorizing Martin Gardner Architecture to proceed with professional services for phase II relating to the project described as the Scene Shop Construction Project pursuant to the Professional Services Agreement signed July 27, 2020. Council Member \_\_\_\_\_ seconded said motion. A roll call vote was requested by the Mayor and said roll call vote resulted as follows:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

Thereupon, the Mayor declared said Resolution duly passed and announced that the agreement for phase II for the Scene Shop Construction Project, between the City of Cresco and Martin Gardner Architecture is approved and that the Mayor is authorized to execute the agreement on behalf of the City of Cresco.

PASSED AND APPROVED THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2023.

BY: \_\_\_\_\_

Mayor David J Brenno

ATTEST: \_\_\_\_\_

City Clerk Michelle Elton



February 15, 2023

City of Cresco  
130 N. Park Place  
Cresco, IA 52136

**Re: Cresco Theatre and Opera House**

Dear Mrs. Lickteig and Mr. Fortune,

Thank you for the opportunity to continue to work with you and the City of Cresco on the renovation and addition to the theatre building. This is an exciting opportunity, and we look forward to being able to assist the city with this project.

Under the previous phase of work MGA was contracted for, we provided existing conditions documentation, schematic level designs of the addition and renovation work, and prepared an opinion of probable construction cost with anticipated phase II professional design fees. This cost opinion was prepared in 2021, and a lot has happened in the construction industry in the past few years. It is my understanding that you have been pre-approved to apply for a catalyst grant for the project that would potentially bring in \$100,000.00 towards the project, and if you are awarded this grant, you anticipate moving forward with the construction of the project.

To facilitate this application, MGA is proposing to move into the second phase of our project work which would include updating the cost opinion to reflect the increased construction costs over the last few years, along with providing the needed services for finishing the design of the project, public bidding, and construction administration services.

Design: I propose providing the complete phase II designs that would include the following services for a fixed fee of \$60,200.00. This fee would include the following services:

- Design development and construction document drawings for the entire facility, including mechanical, electrical, plumbing, and structural engineering designs.
- Specifications and bidding documents for a public bid.
- Required submissions to the authority having jurisdiction for any building code plan review, approvals, and permits.
- Public bidding services to facilitate bidding including plan distribution, pre-bid meeting, answering questions, and facilitation of the public bid opening.
- Construction administration services including construction observation and verification of construction of the building, meetings to review pay requests with contractors, project closeout and punch lists, shop



drawings review and other needed work as necessary to ensure the facility is constructed per the intent of the design documents.

If you have any questions regarding the contents of this proposal, please feel to reach out to me at any time. Again, it has been a pleasure to work with you on this project.

Sincerely,

Brian Stark, Senior Project Manager  
**MARTIN GARDNER ARCHITECTURE, P.C.**

RESOLUTION NUMBER 072003

RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO  
A PROFESSIONAL SERVICES AGREEMENT FOR THE  
SCENE SHOP CONSTRUCTION PROJECT

The City Council of the City of Cresco met in regular session on July 20, 2020 at 7:00 P.M. Council Members Brenno, McCarville, Fortune, Bouska, Carman were present. Council Members none were absent.

Council Member Bouska moved the adoption of the foregoing Resolution Authorizing the Mayor to enter into a PROFESSIONAL SERVICES AGREEMENT with Martin Gardner Architecture for professional services relating to the project described as the Scene Shop Construction Project. Council Member Fortune seconded said motion. A roll call vote was requested by the Mayor and said roll call vote resulted as follows:

Ayes: Fortune, Bouska, Carman

Nays: Brenno, McCarville

Absent: None

Thereupon, the Mayor declared said Resolution duly passed and announced that the agreement dated July 23 2020, between the City of Cresco and Martin Gardner Architecture is approved and that the Mayor is authorized to execute the agreement on behalf of the City of Cresco.

PASSED AND APPROVED THIS 20<sup>TH</sup> DAY OF JULY, 2020.

BY:   
Mayor Mark Bohle

ATTEST:   
City Clerk Michelle Girolamo



Contract # 12040.01, #1

Owner Name: City of Cresco

**ADDITIONAL PROVISIONS FOR LETTER AGREEMENTS FOR SERVICES BETWEEN OWNER AND ARCHITECT**  
*Where the scope of the project is based upon fixed fees.*

The following information and provisions are complementary to the information shown in the attached letter and form a continuous agreement with that document.

Date: July 23, 2020

**BASIC INFORMATION**

Owner: City of Cresco

Address: 130 N Park Place  
Cresco, IA 52136

Owner's Representative: Wendy Lickteig, Cresco Theatre and Opera House Manager

Consultants retained by the Owner: None known at this time.

Architect: Martin Gardner Architecture, P.C.  
11502 390th Street  
Strawberry Point, IA 52076  
Telephone Number: 563-933-4712  
Fax Number: 563-933-2052

Project Manager: Brian Stark  
Email: brians@martingardnerarch.com

Consultants Retained by the Architect for this Project: None known at this time.

Project Name: Cresco Theatre and Opera House  
Project Address or Location: 115 Second Avenue W, Cresco, IA 52136.

**ADDITIONAL TERMS AND CONDITIONS**

**ARTICLE ONE: ARCHITECT'S RESPONSIBILITIES**

1.1 The Architect, his employees, and consultants shall perform the agreed upon Services as efficiently as is consistent with professional skill and care and in the orderly progress of the Work, and consistent with the time frame for completion as outlined in the attached letter dated June 15, 2020.

1.2 THE SERVICES TO BE PROVIDED BY THE ARCHITECT: The total extent of services to be provided by the Architect under this agreement is described as outlined in the attached letter dated June 15, 2020.

1.3 Any other services provided by the Architect shall be charged for as requested or required for the proper execution of the above services. These services shall be considered additional services and will be billed hourly per our current Standard Hourly Rate Schedule. This shall include consultant services where applicable.

**ARTICLE TWO: OWNER'S RESPONSIBILITIES**

2.1 RIGHT TO RELY: The Owner shall furnish, at the Owner's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. The Architect may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The Architect shall not be held responsible for any errors or omission that may arise as a result of erroneous or incomplete information provided by the Owner and/or the Owner's consultants and contractors. These shall include but not be limited to room requirements, personal style preferences, site information and restrictions, and budget limitations.

2.2 If requested, the Owner shall demonstrate financial capability to satisfy the requirements of this Agreement.

2.3 The Architect will generally examine the site to ascertain the conditions affecting the proposed project. The Architect shall not have any obligation to perform any testing or surveying of the site, including but not limited to any testing for hidden conditions. If an existing site survey showing property lines, easements, utilities, grades (topography), building and other site features, and a legal description of the property is available, the Architect will use such information in the design of the building. Surveys provided by the Owner or Owner's Consultant are subject to the same terms as shown in Paragraph 2.1 "RIGHT TO RELY". If such survey is not available one of the following options must be selected for the proper execution of these services: (select one)

- The Owner will employ a surveyor and have a survey of the property prepared.
- The Architect will engage a surveyor as a part of the services of this agreement.
- Sufficient aerial photography is available for this site such that a survey is not required for this portion of the project.
- Due to the circumstances of this project no survey is required for this portion of the project.

Contract # 12040.01, #1

Owner Name: City of Cresco

**ARTICLE THREE: STANDARD OF CARE**

3.1 Architect shall perform its architectural services consistent with the professional care ordinarily used by architects under the same or similar circumstances.

**ARTICLE FOUR: INVOICES, PAYMENT, AND BILLING TERMS**

4.1 **HOURLY AGREEMENTS FOR SERVICES:** Where the method of computing charges is based upon the hours worked it is understood that all time spent working on the project is chargeable. This shall include travel time, meeting time, and time spent in completion of the required services.

4.2 **INTEREST CHARGES:** Invoices shall be due upon receipt and payable within 30 days after the invoice date. If the invoice is not paid within 60 days after the invoice date the Architect may, without waiving any claim or right against the Owner, and without liability whatsoever to the Owner, terminate the performance of the service. Accounts unpaid 30 days after the invoice date shall be subject to a monthly service charge of 1.5% on the then unpaid balance (18.0% annual rate), at the sole election of the Architect. In the event any portion or all of an account remains unpaid 90 days after the invoice date, the Owner shall pay all costs of collection and legal costs, including reasonable attorney's fees.

4.3 **REIMBURSABLE EXPENSES:** The fee amounts and hourly rates outlined do not include reimbursable expenses. Reimbursable expenses can include, but are not limited to, photo processing, computer plotting of the drawings, additional copies requested by the owner for review, facsimiles, long distance telephone calls, postage, shipping fees, mileage and other travel expenses. The need for these will vary from project to project and will be charged for as they are incurred.

4.4 **CHANGES IN INFORMATION:** This agreement for professional services is based upon the information collected from the Owner. If the Owner subsequently provides additional or different information, or if actual site conditions are different than the information provided by the Owner, the scope of services provided by the Architect may be affected. In the event that changed information substantially affects the Architect's scope of services, the Owner and Architect agree to discuss those changes and to renegotiate the scope of services and this Agreement in good faith.

4.5 **MULTIPLE CHANGES:** The amounts of time estimated are based upon our professional judgment based upon our experience with similar projects or situations. They are based upon the amounts of time which we believe that a particular task or service will require. We attempt to include a small amount of time for minor changes to the drawings. Changes that are of a significant nature, that is, changes to the scope of the project after the initial programming and planning, or that change the overall style of the project will be charged for at our hourly rates noted below unless the Owner requests an estimate of time in advance. In the case of continual minor changes, the architect reserves the right to charge for additional services.

4.5.1 The Owner agrees that the Architect is not responsible for damages arising directly or indirectly from and delays for causes beyond the Architect's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in timely manner; failure of performance by the Owner or the Owner's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

4.5.2 In addition, if the delays resulting from and such causes increase the cost or time required by the Architect to perform its services in an orderly and efficient manner, the Architect shall be entitled to a reasonable adjustment in schedule and compensation.

4.6 **DEFICIENCIES IN SERVICES:** Payment by the Owner of any invoice of the Architect without any written objection shall be interpreted to mean that the Owner is satisfied with the Architect's services reflected in the invoice and is not aware of any deficiencies in the Architect's services.

4.7 **DISPUTED INVOICES:** If the Owner objects to any portion of an invoice, the Owner shall so notify the Architect within ten (10) calendar days of the receipt of the invoice. The Owner shall identify the specific cause of the disagreement and shall pay when due that portion of the invoice not in dispute.

4.8 **COLLECTION COSTS:** In the event legal action is necessary to enforce the payment provisions of the Agreement, the Architect shall be entitled to collect from the Owner any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Architect in connection therewith and, in addition, the reasonable value of the Architect's time and expenses spent in connection with such collection action, computed at the Architect's prevailing fee schedule and expense policies.

4.9 **DEFECTS IN SERVICE:** The Owner shall promptly report to the Architect any defects or suspected defects in the Architect's work or services of which the Owner becomes aware, so that the Architect may take measures to minimize the consequences of such a defect. The Owner warrants that he or she will impose a similar notification requirement on all contractors in his or her Owner/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Failure by the Owner, and the Owner's contractors or subcontractors to notify the Architect, shall relieve the Architect of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given.

4.10 **TERMINATION OF THE CONTRACT:** If the Owner elects to not complete the project, the Owner may terminate this Agreement upon a seven (7) day notice to the Architect. The Architect shall be paid only for the work completed prior to the end of the seven (7) day said notice. If the Owner terminates this Agreement pursuant to this provision, the Owner shall return all instruments of Service relating to the project to the Architect within ten (10) days of termination. Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days written notice for any of the following reasons:

- Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

Contract # 12040.01, #1  
Owner Name: City of Cresco

- Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- Suspension of the Project or the Architect's services by the Owner for more than ninety (90) calendar days, consecutive or in the aggregate;
- Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

4.11 **TERMINATION OR SUSPENSION OF SERVICES:** In the event that the Owner fails to make payment upon any invoice within ninety (90) days of the invoice date, the Architect may suspend or terminate services at his option. The Architect also shall have no liability whatsoever to the Owner for any costs or damages as a result of such suspension or termination caused by any breach of this Agreement by the Owner and shall be entitled to termination expenses. Should the Architect agree to restart services on the project, he shall have the right to compensation for expenses incurred in the interruption and resumption of the Architect's services.

4.11.1 If the Architect's services are suspended for more than ninety (90) days, consecutive or in the aggregate, the Architect may terminate this Agreement upon giving not less than five (5) calendar days' written notice to the Owner.

4.11.2 If the Owner is in breach of the payment terms or otherwise is in material breach of this Agreement, the Architect may suspend performance of services upon five (5) calendar day's notice to the Owner. The Architect shall have no liability to the Owner, and the Owner agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this Agreement by the Owner. Upon receipt of payment in full of all outstanding sums due from the Owner, or curing of such other breach which caused the Architect to suspend services, the Architect shall resume services and there shall be an equitable adjustment to the remaining project schedule and fees as a result of suspension.

4.12 **DISPUTE RESOLUTION:** In the event of a dispute arising out of or relating to this Agreement or the services to be rendered hereunder, the Owner and the Consultant agree to attempt to resolve such disputes in the following manner: First, the parties agree to attempt to resolve such disputes through direct negotiations between the appropriate representatives of each party. Second, if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining disputes by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by the parties. Third, if the dispute or any issues remain unresolved after the above steps, the parties agree to submit the matter to litigation in a federal or state court with jurisdiction over the parties, subject matter and the location of the project.

#### **ARTICLE FIVE: SCHEDULE**

5.1 If requested by the Owner, the Architect shall provide a schedule for the completion of the Work. This schedule shall be based upon reasonable allowances of time for the performance of the Work and for the approval of the various phases of the Work by the Owner. Such schedule shall be adjusted as the project progresses given changes in the Work directed by the Owner or subject to the actual time required by outside agencies. Examples of said outside agencies may include but are not limited to state and/or federal review of the construction drawings or other agency as may be required due to the type of funding used on this project. The Owner shall fully inform the Architect of time limitations on his Work.

5.2 If delays in the project are encountered due to review by outside agencies then the terms as shown in Paragraphs 4.5.1 and 4.5.2 shall prevail.

#### **ARTICLE SIX: LIMITATION OF LIABILITY**

6.1 Cost for reimbursable expenses shall not be included in this limit of liability. In recognition of the relative risks and benefits of the project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Architect and Architects officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of the Architect and Architects officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed \$50,000 or the Architect's total fee for services rendered on this project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

#### **ARTICLE SEVEN: ELECTRONIC FILES:**

7.1 Part of the communication and information transfer is being conducted for this project in electronic form. The information and communications may include email, word processing, drawings, and other file transfers. It is acknowledged by the Owner that the information is being shared in this manner. Meetings where options and modifications are reviewed or discussed may only have information shared visually. The Architect will provide materials for this project in pdf, dwg, docx, xlsx, email, and jpg formats as is appropriate to the type of information being transmitted. Nothing in this agreement shall imply that the Architect is promising to supply computer software or hardware to the Owner or any Consultants or Contractors. If any party wishes to have files provided in paper form, they should make such request to the Architect. Due to the nature of computer generated information, it is understood that the appearance of computer files may vary from printed files. For the purposes of construction documents, the signed or sealed printed construction documents shall be controlling.

#### **ARTICLE EIGHT: MISCELLANEOUS PROVISIONS**

Provisions for Letter Agreements

Contract # 12040.01, #1

Owner Name: City of Cresco

8.1 **INDEMNIFICATION:** The Owner shall, to the fullest extent permitted by law, indemnify and hold harmless the Architect, its officers, directors, employees, agents and subconsultants from and against all damage, liability, and cost, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance of the services under this agreement, excepting only those damages, liability or costs attributable to the negligence or willful misconduct of the Architect.

8.2 **COURT APPEARANCE:** In the event, the Architect, its officers, directors, employees, agents or subconsultants are required by subpoena from any party, or are requested by Owner or Owner's attorney in the capacity of a witness or an expert witness, in a court of law, or be a consultant in any litigation as a result of our services relating to this project, fee will be on an hourly basis, plus direct expenses, the rates shall be three times those that prevail at the time services are rendered.

8.3 **INSTRUMENTS OF SERVICE:** All materials produced for this project are instruments of service by the Architect to the Owner and remain the property of the Architect. Copies of the drawings and or specifications are available to Owners whose accounts are paid in full for the cost of reproduction. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Architect from any damages, liabilities or costs, including reasonable attorneys' fees and costs of defense, arising out of the use or modification by the Owner of any reports, plans, specifications or other construction documents prepared by the Architect if such use or modification has not been explicitly approved in writing by the Architect and its subconsultants. This indemnification provision shall survive the termination of this Agreement.

8.4 **ADDITIONAL SERVICES:** No services beyond those outlined in this Agreement will be provided unless requested or authorized by the Owner. Unless otherwise agreed in advance, all additional services will be billed for at the standard hourly rate.

8.5 Unless otherwise specified, this agreement shall be governed by the laws of the State of Iowa.

8.6 **CODE COMPLIANCE:** The Architect will exercise usual and customary professional care in his or her efforts to comply with all codes, regulations, and laws in effect as of the date of submission to local building code authorities. The Owner shall inform the Architect of any codes, regulations, or laws which are applicable to this project, and for which the Owner has information not commonly available within the construction industry.

8.7 **HAZARDOUS MATERIALS:** Both parties acknowledge that the Architect's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event the Architect or any other person or entity involved in the project encounters any hazardous or toxic materials, or should it become known to the Architect that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of the Architect's services, the Architect may, at its sole option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the Owner retains appropriate qualified consultants and/or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.

#### **ARTICLE NINE: PAYMENT FOR SERVICES**

9.1 **METHOD OF COMPUTING FEES:** All services agreed upon are to be computed using a fixed fee of Six Thousand Five Hundred Dollars and Zero Cents (\$6,500.00). Hourly rates for additional services are shown below:

Principal Architect	\$185.00 per hour
Architect	\$125.00 - \$150.00 per hour
Project Manager	\$120.00 - \$160.00 per hour
Design Staff	\$115.00 - \$130.00 per hour
Business Manager	\$100.00 per hour

Upon completion of this phase the Owner and Architect will enter into a new agreement for the remainder of the project if applicable.

9.2 **SOFT COSTS & REIMBURSABLE EXPENSES:** Reimbursable expenses will be charged for as they are incurred on this project. Soft Costs for Phase 1, at Three Hundred Fifty Dollars and Zero Cents (\$350.00).

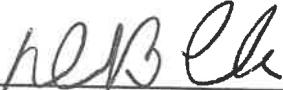
9.3 **INITIAL PAYMENT:** The Owner hereby agrees to make an initial retainer payment of Zero Dollars and Zero Cents (\$0.00). This payment will be held against and applied to final payment for all services rendered on this project. Upon final payment any funds remaining from the initial retainer payment will be refunded to the Owner.

Contract # 12040.01, #1

Owner Name: City of Cresco

**ARTICLE TEN: SIGNATURES OF AGREEMENT**

10.1 OWNER'S SIGNATURE:

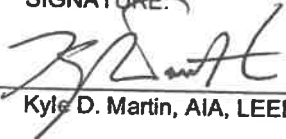


Mark Bohle, Mayor

DATE:

7/27/2020

MARTIN GARDNER ARCHITECTURE, P.C.  
SIGNATURE:



Kyle D. Martin, AIA, LEED AP, President

DATE:

8/7/2020



June 15, 2020

City of Cresco  
130 N Park Place  
Cresco, IA 52136

**Re: Cresco Theatre and Opera House**

Dear Mrs. Lickteig and Mr. Fortune,

I would like to thank you for taking the time to allow me to visit the theatre and discuss with me your ideas for demolition and construction of a new addition to replace the existing scene room. We are excited and eager to be able to assist the City of Cresco in the improvements to this beautiful building.

The following is my understanding of this project from what I was able to gather at our meeting, and the information that was sent to me by Mrs. Lickteig:

1. The City of Cresco wishes to demolish the existing scene shop addition of the 1914 Theatre Building located at 115 Second Ave W. in Cresco due to building deterioration and structural deficiencies.
2. Prior to the demolition of the entire south scene shop (former machine shop) addition, MGA would look at possible existing building components or structural foundations that may or could be utilized in the construction of the new addition.
3. Construct a new multi-level south addition to house a new scene shop, relocated green room, storage, and other support spaces, approximately 3,000 square foot in area.
4. New addition shall be energy efficient, utilizing high efficiency in floor heat and climate controls systems, upgraded electrical systems for supporting the scene workshop area, plumbing and floor drains, overhead door access, a new modern and safe lift system for transporting scenes, pianos and other items to the stage level from the workshop area.
5. Install a new OSHA approved exterior ladder access from the upper level of the new addition to the roof of the existing 1914 building.
6. Exterior and interior finishes for the addition shall be minimal and cost effective. Options for upgraded exterior finishes will be explored and budget information shall be presented for options to the City for consideration.

I propose to provide Architectural services in two phases. Under the first phase of work, MGA will provide the following services for a lump sum fee of \$6,500.00. In addition to the lump sum fee soft costs will be billed as this phase progresses. Soft costs typically include mileage, document reproduction, postage, computer software, project related expenses and company overhead. Soft costs for this portion of the project is \$350.00. The following services are included in this proposal as Phase 1:

Page 1 of 2



1. Pre-Design Analysis:
  - a. Visit the property and field verify all existing conditions, including field measurement of the building and specific site features.
  - b. Input and model the existing building in REVIT for use in this and later phases.
2. Schematic Design Services:
  - a. Develop a workable floor plan layout along with a review of the site based on Owner provided space programming.
  - b. Conduct a plan review with City representatives and discuss potential plan changes.
  - c. Revise floor plan as needed based on Owner input.
  - d. Verify that plan concepts comply with building code requirements.
  - e. Generate schematic level exterior design concepts depicting how the addition ties into the existing 1914 building.
  - f. Prepare a schematic level opinion of probable construction costs.
  - g. Present floor plan revisions, exterior design concepts and opinion of probable construction costs to City representatives.

If requested, we can provide detailed renderings of the proposed facility renovation for public relations purposes at a later time. This service is not included in the phase 1 fee.

Upon completion and acceptance of the first phase of work as listed above, we would then enter into a revised agreement for the final design of the facility, including preparation of construction documents, bidding, and construction administration services. It is anticipated that the second phase fee for services for the project would be in the range of \$36,000 to \$42,000. After completion of the services under Phase 1, this proposed fee range will be revisited, and a final fee will be determined once the scope of the project is fully defined.

MGA can meet and conduct a more formal interview in front of City Council and staff if so requested.

Please feel free to contact me with any questions you may have. Again, thank you for the opportunity to work with you and the City of Cresco on another exciting improvement project.

Sincerely,

Brian Stark  
Senior Project Manager  
**MARTIN GARDNER ARCHITECTURE, P.C.**

Federal-Aid Surface Transportation Block Grant (STBG) funding and Swap funding (STBG funding swapped for state funding). Available through the Iowa Department of Transportation (IDOT).

Jason Passmore has been researching the application and grant awarding process that the Regional Planning Affiliation 1 (RPA-1) / Upper Explorerland Transportation Policy Board has been using for the past 30+ years to award Federal funding for roads and bridges.

Five Counties make up this region: Allamakee, Clayton, Fayette, Howard, Winneshiek

Engineers from the five counties and City Engineers from Decorah & Oelwein make up the seven members on Technical Advisory Board.

Voting Members for the review of grant applications and award of grants are the five County Supervisors and two Mayors (above).

Federal Funding for FFY 2027 (beginning 10/1/26) is estimated to be \$3.9 million

Grants are awarded to each County about every five years for large road or bridge projects. Decorah & Oelwein also receive funding every few years. Typically, it is on a rotating schedule so the Counties plan eligible projects about every 5 years.

The Federal Funding for the region is allocated to counties and some is allocated for cities over 5,000 population. That is why Decorah & Oelwein are included and their funding does not affect the Winneshiek and Fayette counties allocations. All the other small cities are to be included with their respective county.

Jason has determined that there is a balance available that could be applied for a project sooner than 2027. This balance is due to Federal funding received higher than projected for the past couple of years.

Jason determined the City of Cresco Downtown Crosswalk/Sidewalk project would be eligible for funding. The application clearly states that "infrastructure projects for pedestrians (sidewalks, crosswalks), including modifications to comply with requirements of the Americans with Disabilities Act (ADA)" are eligible on any local road/street.

Jason approached Howard County Engineer Nick Rissman to see if the City of Cresco could apply for the grant and what chance we have to be approved. I also personally called Nick to get more input from him. Nick thinks the project is a very good project however he has concerns with the impact this could have on future funding for Howard County road projects. The County (like the City) is very concerned with the uncertainty surrounding the property tax reform bills that are currently being considered in the Iowa State Legislature. The proposed changes in Local Option Sales Tax could also have devastating effects on the revenues of the counties and cities in the future.

Jason is proposing that the City should apply for \$250,000 of the proposed \$800,000 project (about 31%). The grant application allows up to 80% to be paid by the grant. Jason's reasoning for this amount is that is the projected amount of assessments being assessed to the 48 business owners



downtown. The assessments are calculated using 50% of the cost of curb & gutter and 90% of the sidewalk. He is suggesting that the Council use all of the grant proceeds to reduce the assessments.

An alternative suggestion would be that the City should apply part of the grant proceeds to the \$104,000 cost of the ADA compliant ped ramps that the City is paying for. I would also suggest that business owners need to pay the 50% assessment for the curb & gutter since that is our practice for all assessment projects. However, we could reduce the percentage of the cost of the sidewalk replacement from 90% to 50%. The City then could apply approximately \$92,000 of the grant to lower the assessments (by about 37%). That would leave about \$54,000 to apply to the City's portions of the crosswalks and the non-assessed costs.

City Staff's suggestion would be to apply for more than just the \$250,000 and ask for \$500,000. Reminder that the City is currently paying 68% or \$546,210. There will be many additional costs due to postponing the project and additional federal requirements that will be borne by the City. I would personally apply the full grant to the City's responsibility and leave the assessments as calculated. We have never been able to reduce assessments for other property owners and by doing it now for these particular property owners does not seem fair especially when the bigger assessments on 7<sup>th</sup> Street are not eligible. I believe this would also have a better chance of getting approved by other governmental representatives who are facing the same concerns with debt levies and future revenue uncertainties.

#### Benefits of Applying:

1. Grant money would lower the total cost to the City and/or Business Owners (net of additional costs incurred due to the federal funding and postponement)
2. Reduction of Debt borrowing which saves interest over 20 years & lowers bonding fees
3. Eligible Project – most projects within the City are not eligible to even apply (Farm to Market roads only or Pedestrian infrastructure)
4. City of Cresco has never been awarded any of this Federal funding in the past
5. Funding could be available in 2024

#### Disadvantages of Applying:

1. Project will need to be put on hold until the summer of 2024 at the earliest
2. Probability of Application being rejected by the Voting Board (County Supervisors and Mayors due to reduction in their future funding for their own projects)
3. Additional engineering and legal fees to change the plans and make them IDOT compatible
4. Higher costs associated with additional Federal Funds laws (possibly Davis-Bacon, Historical & Environmental Impact Studies etc) – Nick Rissman & WHKS both said at least 10% higher bids (possibly \$80,000?)
5. Small contractors will not bid on the project if Federal funding requirements are included
6. Potentially higher costs of construction as prices keep increasing (inflation)
7. We are within a few weeks of going out for bids for work to start this spring. This would be delayed at least one year

8. Bond proceeds will be received this summer so we will pay interest on those proceeds for a whole year before the project even starts
9. Preliminary Assessments have already been approved. If it is delayed, we may need to start the project over. Assessments may potentially increase if costs rise
10. Dependent on how the City applies the grant proceeds, it would reduce the assessment revenues that will be collected that we planned to pay on the next street project
11. Application Deadline of February 28<sup>th</sup> so not much time to discuss and consider the impacts
12. Not sure when the grant decision will be made. Last year they met on March 16<sup>th</sup> but the meeting has not been scheduled yet. They could possibly delay it pending all the legislative changes being discussed by the State. If we are denied, we would need to know by mid-March to have an opportunity to still get it bid out and construction done in late-summer and fall of 2023. Otherwise if the denial gets much later, it would probably need to be delayed until 2024 or possibly broken into different phases in Fall 2023 and Spring 2024.

I don't believe the City would have to determine right now how the proceeds of the grant would be applied (whether all to reduce assessments or all to the City or a percentage to each). However, I believe that we may want to use the justifications for needing the grant proceeds to boost our chances of being awarded the grant. Personally, I think the City's commitment to making the downtown ADA compliant by installing all new ped ramps and sidewalks should be the focal point of our argument. Using the grant proceeds to help another governmental entity may possibly help also since we are all faced with uncertain future funding issues due to the State Legislature. I am not sure that the argument to lower the assessment for a few businesses would be as convincing especially when we have other assessment projects in which residents and businesses are charged even higher assessments in the past and future. Especially when you look at the list of the individual downtown assessments and remember they can be paid over a ten-year period. I can't see a County Supervisor from another County voting to award the funds to help the average downtown Cresco business owner to save \$5,000 to put in a new sidewalk.

I tried to lay out the facts to help you make an informed decision before voting to postpone this project. I do have my personal opinion included which I know is not the same opinion that Jason Passmore presented as the Chamber Director fighting for the Cresco businesses. As the City Clerk of Cresco, it is my responsibility to do what is best for the City. I just want to make sure that you are thinking of all results of your decision. Especially since Wednesday night you will be potentially meeting with all the assessed owners for the Downtown Project and the 7<sup>th</sup> Street West Project at the Informational Meeting.

If the vote is affirmative to apply for the grant, then you should plan to attend the Howard County Supervisor's meeting to inform them of your intent to apply for the grant. The meeting is at 9 AM on Tuesday February 21, 2023.

Michelle Elton, City Clerk