

**WAUKEE CITY COUNCIL
SPECIAL MEETING AGENDA**

**DATE: MONDAY, JULY 12, 2021
TIME: 5:30 P.M.**

PLACE: WAUKEE CITY HALL, 230 W. HICKMAN RD., WAUKEE, IA 50263

***In-person meetings are subject to change in accordance with Iowa Code Sections 21.4 (1)(b) and 21.8, and under certain circumstances, including but not limited to higher than average participation or changes in health guidelines. If the meeting shall be held electronically only, notice shall be posted to the City website (Waukeee.org) and City social media. Questions regarding meeting format may also be directed to the City Clerk's office at 515-978-7904.**

A. CALL TO ORDER

B. ROLL CALL

C. AGENDA APPROVAL

Documents:

[07122021_AGENDA_SPECIAL.PDF](#)

D. ACTION ITEMS

- D.1. RESOLUTION: Consideration Of Approval Of A Resolution Approving And Adopting Recommendation Of Engineer Related To Notice Of Default To Priority Excavating, LLC, Of Default Under That Certain Contract For Work On The Project Known As The Little Walnut Creek North Trunk Sewer Phase 1 And Water Main Extensions And For Other Action As Provided Under The Contract And SUDAS

Documents:

[D01.PDF](#)

E. WORK SESSION

- 1) FY2020-2021 Strategic Plan: Sugar Creek Stormwater Management Plan
- 2) Waukeee Marching Band recognition
- 3) Continuity of Operations Plan (COOP)
- 4) Broderick Pond Reconstruction Project, Douglas Pkwy. Bridge and Recreation Trail Underpass – Engineering Services Amendment
- 5) Warrior Lane traffic update

- 6) Road and infrastructure project updates
- 7) Centennial Crossing utility box wrapping
- 8) Swimming pool fencing requirements
- 9) Downtown Triangle development proposal
- 10) New Pioneer Gun Club
- 11) Fireworks use

Documents:

[E01-11.PDF](#)

F. COUNCIL LIAISON REPORTS

G. COMMENTS

H. ADJOURNMENT

Pursuant to §21.4(2) of the Code of Iowa (2019), the City has the right to amend this agenda up until 24 hours before the posted meeting time.

The City of Waukee is pleased to provide accommodations to disabled individuals or groups and encourages their participation in city government. Should special accommodations be required, please contact the Clerk's office at least 48 hours in advance at 978-7904 or email bschuett@waukee.org to have reasonable accommodations provided.



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- A. CALL TO ORDER**
- B. ROLL CALL**

C. AGENDA APPROVAL

D. ACTION ITEMS:

- 1) RESOLUTION:** Consideration of approval of a resolution approving and adopting recommendation of engineer related to notice of default to Priority Excavating, LLC, of default under that certain contract for work on the project known as the Little Walnut Creek North Trunk Sewer Phase 1 and Water Main Extensions and for other action as provided under the contract and SUDAS

E. WORK SESSION:

- 1)** FY2020-2021 Strategic Plan: Sugar Creek Stormwater Management Plan
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G. COMMENTS

ADJOURNMENT

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**CITY OF WAUKEE, IOWA
CITY COUNCIL MEETING COMMUNICATION**

MEETING DATE: July 6, 2021

AGENDA ITEM: Consideration of approval of a resolution approving and adopting recommendation of Engineer Relating to Notice of Default to Priority Excavating, LLC of Default Under Certain Contract for Work on the Project Known as The Little Walnut Creek North Trunk Sewer – Phase 1 and Water Main Extensions and for other action as provided under the Contract and Iowa Statewide Urban Design and Specifications (SUDAS)

FORMAT: Resolution

SYNOPSIS INCLUDING PRO & CON: The work performed to date for the Little Walnut Creek North Trunk Sewer - Phase 1 and Water Main Extensions project by Priority Excavating, LLC has not been satisfactorily completed. The project completion date of June 30, 2021 has been exceeded and the rate of progress on completing the project has not been progressed or been performed as required under the Contract Documents.

Despite being placed on Notice of its failure to prosecute the work properly and to perform under the provisions of the Contract, for much of the contract time the Contractor did not have employees on site performing the work and has only recently restarted construction. They have repeatedly missed their own schedule deadlines, have failed to prosecute the work properly, have now missed the schedule project completion date, and have failed to perform under the provisions of the Contract. It is the Engineer's determination that, pursuant to the Contract Documents and SUDAS Section 1080.1.13, Contractor is in default of the Contract.

Following said relinquishment, the City "shall have full power and authority, without violating the contract or bond, to take over the completion of the work, to appropriate or use any or all materials and equipment at the site that may be suitable and acceptable, to enter into agreements with others for the completion of said contract according to the terms and provisions thereof, or to use such other methods as in the [City's] opinion may be required for the completion of said contract in an acceptable manner." SUDAS § 1080.1.13.B. Such action is approved by the Engineer.

FISCAL IMPACT INCLUDING COST/BENEFIT ANALYSIS:

COMMISSION/BOARD/COMMITTEE COMMENT:

STAFF REVIEW AND COMMENT:

RECOMMENDATION: Approve the Resolution.

ATTACHMENTS: I. Resolution
II. Engineer's Letter of Recommendation

PREPARED BY: Rudy Koester

REVIEWED BY: Rudy Koester **RK**

THE CITY OF WAUKEE, IOWA

RESOLUTION 2021-

RESOLUTION APPROVING AND ADOPTING RECOMMENDATION OF ENGINEER RELATING TO NOTICE OF DEFAULT TO PRIORITY EXCAVATING, LLC OF DEFAULT UNDER THAT CERTAIN CONTRACT FOR WORK ON THE PROJECT KNOWN AS THE LITTLE WALNUT CREEK NORTH TRUNK SEWER - PHASE 1 AND WATER MAIN EXTENSIONS AND FOR OTHER ACTION AS PROVIDED UNDER THE CONTRACT AND SUDAS

IN THE NAME AND BY THE AUTHORITY OF THE CITY OF WAUKEE, IOWA

WHEREAS, the City of Waukee, Dallas County, State of Iowa, is a duly organized Municipal Organization; **AND**,

WHEREAS, the City Council of the City of Waukee, Iowa entered into a contract with Priority Excavating, LLC for certain work to be performed on the Project known as the Little Walnut Creek North Trunk Sewer - Phase 1 and Water Main Extensions; **AND**

WHEREAS, the Project Engineer, Veenstra & Kimm, Inc. has informed the City Council of the City of Waukee, Iowa that Priority Excavating, LLC is in default of said contract for failure to perform the work properly, failed to perform under the provisions of the Contract, failure or refusal to comply with orders of the Engineer within a reasonable time, failure to provide sufficient workers, equipment, or materials to ensure the proper and timely completion of the work, and failure to carry on the work in an acceptable manner; **AND**

WHEREAS, the Project Engineer, Veenstra & Kimm, Inc. has recommended, certified and approved certain action related to said defaults by Priority Excavating, LLC as follows:

That the City of Waukee give notice, or direct the Engineer to give notice, to the Contractor, for the project, Priority Excavating, LLC, of default under the Contract. Should the Contractor fail to cure such defaults in the allotted time, the City should direct the Contractor to relinquish possession and control of the remaining outstanding, uncompleted and deficient work on the project as a result of Priority Excavating, LLC's defaults under the Contract including, but not limited to SUDAS Section 1080.1.13:

1. Failure by the Contractor to begin work at the time specified;
2. Failure by the Contractor to complete the work within the contract period or any extension thereof;
3. Failure or refusal by the Contractor to comply with an order of the Engineer within a reasonable time;
4. Contractor's persistent disregard of laws, ordinances, or instructions of the Engineer;

5. Contractor's repeated failure to provide sufficient workers, equipment, or materials to ensure the proper and timely completion of the work;
6. Failure or refusal by the Contractor to replace, perform anew, or correct any defective or unacceptable work;
7. Contractor's discontinuance of the work without authorization by the Jurisdiction;
8. Failure by the Contractor to carry on the work in an acceptable manner.

as provided in SUDAS 1080.1.13 as well as Section 25.1 of the General Conditions of the Project's Specifications manual. Following said relinquishment, the City "shall have full power and authority, without violating the contract or bond, to take over the completion of the work, to appropriate or use any or all materials and equipment at the site that may be suitable and acceptable, to enter into agreements with others for the completion of said contract according to the terms and provisions thereof, or to use such other methods as in the [City's] opinion may be required for the completion of said contract in an acceptable manner." SUDAS § 1080.1.13.B. Such action is approved by the Engineer.

WHEREAS, the City Council for the City of Waukee has considered and discussed the issue and believes it is in the best interest of the City of Waukee to accept and approve the recommendation of the Project Engineer, Veenstra & Kimm, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WAUKEE, IOWA:

1) The City shall, through either legal counsel, the Project Engineer, provide Notice of Default to Priority Excavating, LLC, enumerating the defaults under the contract and providing for seven days to cure such defaults.

2) If Priority Excavating, LLC fails to cure the defaults in the allotted time provided in the Notice, the City shall direct Priority Excavating, LLC to relinquish control and possession of the remaining outstanding, uncompleted and deficient work to the City of Waukee and the City of Waukee shall take over such work, including appropriating or using any or all materials and equipment at the site that may be suitable and acceptable, bidding/letting contracts, entering into contracts/agreements with others for the completion of said work/contract, and/or using such other methods as in the City's opinion may be required for completion of said contract in an acceptable manner.

3) The City Council for the City of Waukee directs legal council and/or the Project Engineer to take all further and other action as may be deemed reasonable and necessary for enforcement of Priority Excavating, LLC, and the Surety's, liability under the Contract and/or Bond that the City may suffer by reason of Priority Excavating, LLC's failure to faithfully perform the Contract.

4) This Resolution and direction is made with a full reservation of all rights and defenses the City has or may have under law, in equity, under the terms and provisions of the contracts and bonds and/or SUDAS.

Passed by the City Council of the City of Waukee, Iowa, and approved this the 12th day of July, 2021.

Courtney Clarke, Mayor

Attest:

Rebecca D. Schuett, City Clerk

RESULTS OF VOTE:	AYE	NAY	ABSENT	ABSTAIN
Anna Bergman Pierce				
R. Charles Bottenberg				
Chris Crone				
Larry R. Lyon				
Ben Sinclair				



July 8, 2021

Rudy Koester
Public Works Director
City of Waukee
805 University Avenue
Waukee, Iowa 50263

WAUKEE, IOWA
LITTLE WALNUT CREEK NORTH TRUNK SEWER - PHASE 1 AND WATER MAIN
EXTENSIONS

RECOMMENDATION FOR NOTICE TO BE GIVEN TO CONTRACTOR OF DEFAULT
AND, IF CONTRACTOR FAILS TO CURE SAID DEFAULT, TO REQUIRE CONTRACTOR
TO RELINQUISH CONTROL AND POSSESSION OF WORK, CITY TAKE OVER
COMPLETION OF WORK AND FOR OTHER ACTION AS PROVIDED IN THE
CONTRACT AND SUDAS

The work performed to date for the Little Walnut Creek North Trunk Sewer - Phase 1 and Water Main Extensions project by Priority Excavating, LLC has not been satisfactorily completed. The project completion date of June 30, 2021 has been exceeded and the rate of progress on completing the project has not been progressed or been performed as required under the Contract Documents.

Despite being placed on Notice of its failure to prosecute the work properly and to perform under the provisions of the Contract, for much of the contract time the Contractor did not have employees on site performing the work and has only recently restarted construction. They have repeatedly missed their own schedule deadlines, have failed to prosecute the work properly, have now missed the schedule project completion date, and have failed to perform under the provisions of the Contract. It is the Engineer's determination that, pursuant to the Contract Documents and SUDAS Section 1080.1.13, Contractor is in default of the Contract.

Accordingly, pursuant to the Contract Documents, including SUDAS which is incorporated into the Contract Documents, the undersigned, on behalf of the Engineer, recommends and certifies to the City the following action:

That the City of Waukee give notice, or direct the Engineer to give notice, to the Contractor, for the project, Priority Excavating, LLC, of default under the Contract. Should the Contractor fail to cure such defaults in the allotted time, the City should direct the Contractor to relinquish possession and control of the remaining outstanding, uncompleted and deficient work on the project as a result of Priority Excavating, LLC's defaults under the Contract including, but not limited to SUDAS Section 1080.1.13:

1. Failure by the Contractor to begin work at the time specified;
2. Failure by the Contractor to complete the work within the contract period or any extension thereof;
3. Failure or refusal by the Contractor to comply with an order of the Engineer within a reasonable time;
4. Contractor's persistent disregard of laws, ordinances, or instructions of the Engineer;
5. Contractor's repeated failure to provide sufficient workers, equipment, or materials to ensure the proper and timely completion of the work;
7. Failure or refusal by the Contractor to replace, perform anew, or correct any defective or unacceptable work;
8. Contractor's discontinuance of the work without authorization by the Jurisdiction;
10. Failure by the Contractor to carry on the work in an acceptable manner.

as provided in SUDAS 1080.1.13 as well as Section 25.1 of the General Conditions of the Project's Specifications manual. Following said relinquishment, the City "shall have full power and authority, without violating the contract or bond, to take over the completion of the work, to appropriate or use any or all materials and equipment at the site that may be suitable and acceptable, to enter into agreements with others for the completion of said contract according to the terms and provisions thereof, or to use such other methods as in the [City's] opinion may be required for the completion of said contract in an acceptable manner." SUDAS § 1080.1.13.B. Such action is approved by the Engineer.

Pursuant to the Contract Documents and SUDAS, the Contractor and Surety shall remain liable for all costs and damages which the City may suffer by reason of the Contractor's failure to faithfully perform the Contract including, but not limited to, all outlay and expenses incurred by the City for completing and correcting the work, liquidated damages, and the Cities attorney's fees as set forth in SUDAS § 1080.1.13 and the Contract Documents.

Nothing herein shall be deemed to relieve the Contractor or Surety from liability and requirements of the Contract Documents, the Bond, SUDAS Part 1080 1.13 and/or other relevant and governing provisions and laws.

Rudy Koester
July 8, 2021
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If you have any questions or comments, please contact us at 225-8000.

VEENSTRA & KIMM, INC.



Andy Willcuts

ARW
275331



**CITY OF WAUKEE, IOWA
CITY COUNCIL MEETING COMMUNICATION**

MEETING DATE: July 12, 2021

AGENDA ITEM: ALL ITEMS

FORMAT: Work Session

SYNOPSIS INCLUDING PRO & CON: City staff will discuss the following:

- 1) FY2020-2021 Strategic Plan: Sugar Creek Stormwater Management Plan
- 2) Waukeee Marching Band recognition
- 3) Continuity of Operations Plan (COOP)
- 4) Broderick Pond Reconstruction Project, Douglas Pkwy. Bridge and Recreation Trail Underpass – Engineering Services Amendment
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FISCAL IMPACT INCLUDING COST/BENEFIT ANALYSIS:

COMMISSION/BOARD/COMMITTEE COMMENT:

STAFF REVIEW AND COMMENT:

RECOMMENDATION:

ATTACHMENTS: Supporting materials for each work session item will be presented during the meeting.

PREPARED BY: Becky Schuett

REVIEWED BY: