



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

**MEETING DATE:** January 3, 2022

**AGENDA ITEM:** Consideration of approval of a resolution approving 28E Agreement between Urbandale Sanitary Sewer District; City of Grimes, Iowa; and the City of Waukeee, Iowa [WRA Grimes Connector]

**FORMAT:** Resolution

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**SYNOPSIS INCLUDING PRO & CON:** The purpose of this Agreement is to document the agreements of the Parties regarding design, construction, and cost allocations for: (1) interconnections between existing USSD Sewer and the new Grimes Sewer; and (2) interconnections between existing Waukeee Sewer and the new Grimes Sewer.

**FISCAL IMPACT INCLUDING COST/BENEFIT ANALYSIS:** \$319,676.00

**COMMISSION/BOARD/COMMITTEE COMMENT:**

**STAFF REVIEW AND COMMENT:**

**RECOMMENDATION:** Approve the resolution and agreement.

**ATTACHMENTS:** I. Resolution  
II. 28E Agreement  
III. WRA Grimes Connector Contract 1 Receipt of Bids Updated Cost Estimate Letter

**PREPARED BY:** Beth Richardson

**REVIEWED BY:** Rudy Koester **RK**

THE CITY OF WAUKEE, IOWA

RESOLUTION 2022-

APPROVING 28E AGREEMENT BETWEEN URBANDALE SANITARY SEWER DISTRICT, CITY OF GRIMES, IOWA, AND CITY OF WAUKEE, IOWA [WRA GRIMES CONNECTOR]

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

**WHEREAS**, the City of Waukee, Iowa is a duly organized municipality within Dallas County; **AND**,

**WHEREAS**, the Urbandale Sanitary Sewer District (“USSD”) currently possesses a sanitary sewer which serves the residents of the USSD; **AND**,

**WHEREAS**, the City of Waukee currently possesses a sanitary sewer which serves the residents of Waukee; **AND**,

**WHEREAS**, the City of Grimes has joined the regional sanitary sewer system, the Wastewater Reclamation Authority (“WRA”), and is in the planning stages of building and constructing a sanitary trunk sewer to provide service to the residents of Grimes; **AND**,

**WHEREAS**, Grimes is willing to design and size the Grimes Sewer to allow for the flow to/from certain parts of both the USSD Sewer and the Waukee Sewer into the Grimes Sewer and vice versa, through certain interconnections between the new Grimes Sewer and existing USSD Sewer, as well as certain interconnections between the new Grimes Sewer and existing Waukee Sewer; **AND**,

**WHEREAS**, the Parties desire to enter into this Agreement to set forth and to establish their agreement with respect to the design and allocation of costs of the Grimes Sewer which are designed to serve the Parties’ respective territories in the area shown on the Parties’ Joint Trunk Sewer Map, attached hereto as Exhibit A and incorporated herein by this reference.

**NOW THEREFORE BE IT RESOLVED** by the City Council of the City of Waukee approve a 28E Agreement between the Urbandale Sanitary Sewer District; City of Grimes, Iowa; and City of Waukee, Iowa [WRA Grimes Connector] is hereby approved.

Passed by the City Council of the City of Waukee, Iowa, and approved the 3<sup>rd</sup> day of January, 2022.

\_\_\_\_\_  
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

**28E AGREEMENT  
BETWEEN  
URBANDALE SANITARY SEWER DISTRICT,  
CITY OF GRIMES, IOWA, AND CITY OF WAUKEE, IOWA,  
REGARDING WRA GRIMES CONNECTOR**

THIS 28E AGREEMENT (“Agreement”), made and entered into this \_\_\_ day of December, 2021 (“Effective Date”), by and among the Urbandale Sanitary Sewer District, a sanitary sewer district organized and existing under Chapter 358 of the Iowa Code (“USSD”), the City of Grimes, Iowa, an Iowa municipal corporation (“Grimes”), and the City of Waukee, Iowa, an Iowa municipal corporation (“Waukee”) (and USSD, Grimes and Waukee together hereinafter referred to as the “Parties”).

**WITNESSETH:**

WHEREAS, the USSD currently possesses a sanitary sewer which serves the residents of the USSD (“USSD Sewer”);

WHEREAS, Waukee currently possesses a sanitary sewer which serves the residents of Waukee (“Waukee Sewer”);

WHEREAS, Grimes has joined the regional sanitary sewer system, the Wastewater Reclamation Authority (“WRA”), and is in the planning stages of building and constructing a sanitary trunk sewer (“Grimes Sewer”) to provide service to the residents of Grimes;

WHEREAS, Grimes is willing to design and size the Grimes Sewer to allow for the flow to/from certain parts of both the USSD Sewer and the Waukee Sewer into the Grimes Sewer and vice versa, through certain interconnections between the new Grimes Sewer and existing USSD Sewer, as well as certain interconnections between the new Grimes Sewer and existing Waukee Sewer; and

WHEREAS, the Parties desire to enter into this Agreement to set forth and to establish their agreement with respect to the design and allocation of costs of the Grimes Sewer which are designed to serve the Parties’ respective territories in the areas shown on the Parties’ Joint Trunk Sewer Map, attached hereto as Exhibit A and incorporated herein by this reference.

NOW, THEREFORE, it is agreed by and among the parties as follows:

1. 28E Agreement. This Agreement is entered into in accordance with the provisions of the Code of Iowa, Chapter 28E. The purpose of this Agreement is to document the agreements of the Parties regarding design, construction, and cost allocations for: (1) interconnections between existing USSD Sewer and the new Grimes Sewer; and (2) interconnections between existing Waukee Sewer and the new Grimes Sewer. This Agreement shall not be construed to create any separate legal or administrative entity. After execution by the Parties, this Agreement shall be filed with the Iowa Secretary of State in accordance with the provisions of Iowa Code § 28E.8.

2. Definitions. The following terms shall have the meanings set forth herein for the purposes of this Agreement:

(a) “Service Area” or “Service Areas” for each of the Parties are identified on Exhibit A.

(b) “Project Costs” of a particular trunk line or segment shall mean and include the cost of construction, contingency, engineering services (including design and construction), surveying and testing, administrative expenses, legal expenses and easement and right-of-way acquisition. The proposed Project Costs for each segment are set forth on Exhibit B attached hereto.

(c) “Proportional Basis” refers to an allocation of costs to the Parties in proportion to their respective assigned design flow in the particular segment of which the costs are to be allocated.

3. Completed Segments: Summary of Project Costs and Allocations.

(a) Allocations of Project Costs. The following information is also set forth in Exhibit B for each sewer: (i) the initial cost allocation for each sewer to the Parties; and (ii) the final proposed cost sharing percentage based upon the Proportional Basis calculation for the sewers to each of the Parties. The allocation of cost to each Party shall be based on the final cost of project allocated by the Parties’ percentage shares as set forth in Exhibit B.

(b) Connection, Capacity Interests and Reversionary Interests. The Parties agree that each of them shall have the right to connect their sanitary sewer systems to the Grimes Sewer. The Parties further acknowledge and agree that there will be no formal capacity allocations for the Grimes Sewer as it is the intent of the Parties that the Grimes Sewer will become a WRA sewer after its acceptance. Accordingly, in lieu of formal capacity allocations, the Parties mutually agree to request that WRA assign the Parties’ respective capacity interests and reversionary interests based on the proportional allocation of capacity as set forth in Exhibit B, and a true up of these project costs will occur among the Parties once the final project costs and proportional capacity allocations are known.

4. Process.

(a) Construction/Project Oversight. Grimes shall be the contracting party and shall ensure the contract meets the Project specifications. Upon the receipt of the bids, Grimes shall inform the USSD and Waukee of the bid amounts. In the event the bids come in more than twenty percent (20%) higher than the Engineer’s estimate for the Project, then the Parties shall discuss the bids and move forward, unless any of the Parties object to the Project Bid Costs. In this event, new bids may be obtained. In all other events, Grimes may move forward and award the Contract. In the event Contractor requests a change order, said change order will be presented to all the

Parties for review. Grimes has the prior consent of Waukee and USSD to approve all change orders unless said change order impacts the payment of either Waukee or USSD on its portion of the Project by more than five percent (5%). In that case, said affected Party must also consent to said change order before Grimes may approve.

(b) Payment Process.

The procedure for payment of partial pay estimates is as follows:

(1) Partial payment estimates must be submitted by any Contractor to Veenstra & Kimm, Inc. by noon on Monday, eight (8) days prior to the second (2<sup>nd</sup>) Tuesday of each month.

(2) Veenstra & Kimm, Inc. will submit the partial payment estimates to Grimes Waukee and the USSD by the close of business on the first (1<sup>st</sup>) Tuesday of each month.

(3) The USSD and Waukee will approve the partial payment estimate at their next regularly scheduled meeting and authorize payment to Grimes for their share of the partial pay estimate.

(4) Grimes will approve the partial pay estimate at its meeting on the second (2<sup>nd</sup>) Tuesday of each month.

(5) Grimes will make the partial payment on the day following the approval of the estimate in accordance with its normal payment procedure.

(6) USSD and Waukee will pay their respective shares of the partial pay estimate to the Grimes within five (5) days following the meeting at which the partial pay estimate is approved by their respective governing bodies.

(c) Waukee Payments. Waukee may elect to pay its portion of the estimate construction costs upfront, rather than pay monthly payments pursuant to the procedure identified in 4(b) above. If Waukee elects to pay its portion of the estimated construction costs upfront, and its actual share of the final construction costs is determined to be less than Waukee's upfront payment, Grimes will refund the difference to Waukee.

(d) Final Cost Estimate / Cost Determination. At least fourteen (14) days prior to Grimes accepting the construction project, Grimes will report the final cost and cost share to the USSD and Waukee. The USSD and Waukee will have seven (7) days to object or inquire for additional information. Payments from USSD and Waukee will be due for the final estimate and retainage in the same manner and procedures as any other pay estimate is outlined in 4(b) above.

5. Maintenance and Repairs.

(a) Maintenance and Repairs by WRA. The Parties acknowledge and agree that it is intended that the Grimes Sewer will be operated by WRA, and all maintenance and repair and other operations for the Grimes Sewer shall be performed by the WRA as it (WRA) has done in the past in similar arrangements. All costs associated therewith are to be paid by WRA, and the Parties hereto shall not be obligated by reason of this Agreement to perform maintenance or repairs or to be responsible for any costs incurred directly or in association with any of the following: (a)

reconstruction of the trunk sewer line by removing and replacing any portion of the trunk sewer lines from one manhole to the next manhole; (b) upsizing a trunk sewer line or otherwise increasing the capacity of an existing sewer line; or (c) constructing a parallel or relief trunk sewer line, unless otherwise agreed by the Parties in a separate written agreement between the Parties.

6. Term. The duration of this Agreement shall be for a period of twenty-five (25) years from and after the Effective Date of this Agreement, provided, however, that with the consent of the Parties the duration of this Agreement may be extended. This Agreement may be terminated only by unanimous written consent of the Parties.

7. Notice. Any notice or demand desired or required to be given hereunder shall be in writing and deemed given when personally delivered or when deposited in the United States mail, postage prepaid, sent certified or registered, and addressed as follows:

(a) If to USSD, to:

President, Urbandale Sanitary Sewer District  
c/o Paul A. Drey  
6701 Westown Parkway, Suite 100  
West Des Moines, Iowa 50266

Copy to:

Paul A. Drey, Attorney for USSD  
Brick Gentry P.C.  
6701 Westown Parkway, Suite 100  
West Des Moines, Iowa 50266

(b) If to Grimes, to:

City Administrator  
Grimes City Hall  
101 NE Harvey Street  
Grimes, Iowa 50111

Copy to:

Director of Public Works  
City of Grimes  
1700 SE Destination Drive  
Grimes, IA 50111

(c) If to Waukee, to:

City Administrator  
Waukee City Hall  
230 Hickman Road  
Waukee, Iowa 50263

Copy to:

Public Works Director  
City of Waukee  
805 University Ave.  
Waukee, Iowa 50263

or to such other address or person as hereafter shall be designated in writing by the applicable party.

8. Miscellaneous. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements, and understandings of the Parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed by all Parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the Parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations, or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the Parties hereto with respect to a breach hereof, the Parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain, or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, according to the context.

[Remainder of page intentionally left blank. Signature pages follow.]



IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date.

URBANDALE SANITARY SEWER DISTRICT

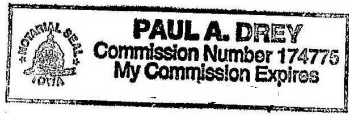
Joseph Sassatelli  
By: Joseph Sassatelli, President

ATTEST:  
William Henry  
By: William Henry, Clerk

STATE OF IOWA     )  
                                  ) ss:  
COUNTY OF POLK )

On this 14<sup>th</sup> day of December, 2021, before me, a Notary Public in and for the State of Iowa, personally appeared Joseph Sassatelli and William Henry, to me personally known, and, who being by me duly sworn, did say that they are the President and Clerk, respectively, of the Urbandale Sanitary Sewer District; and that the instrument was signed on behalf of the Urbandale Sanitary Sewer District, by authority of its Board of Directors, and that the President and Clerk acknowledged the execution of said instrument to be their voluntary act and deed and the voluntarily act and deed of the Urbandale Sanitary Sewer District, by it voluntarily executed.

Paul A. Drey  
Notary Public in and for the State of Iowa  
My commission expires: 6/15/2024



CITY OF GRIMES, IOWA

\_\_\_\_\_  
By: Scott Mikkelsen, Mayor

ATTEST:

\_\_\_\_\_  
By: Rochelle Williams, City Clerk

STATE OF IOWA    )  
                          ) ss:  
COUNTY OF POLK )

On this \_\_\_\_ day of December, 2021, before me, a Notary Public in and for the State of Iowa, personally appeared Scott Mikkelsen and Rochelle Williams, to me personally known, and, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Grimes, Iowa; and that the instrument was signed on behalf of the City of Grimes, Iowa, by authority of its City Council, as contained in Ordinance No. \_\_\_\_\_ passed (the Resolution adopted) by the City Council, under Roll Call No. \_\_\_\_\_ of the City Council on the \_\_\_\_ day of December, 2021, and that the Mayor and City Clerk acknowledged the execution of said instrument to be their voluntary act and deed and the voluntarily act and deed of the City of Grimes, Iowa, by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa  
My commission expires: \_\_\_\_\_

CITY OF WAUKEE, IOWA

\_\_\_\_\_  
By: Courtney Clarke, Mayor

ATTEST:

\_\_\_\_\_  
By: Becky Schuett, City Clerk

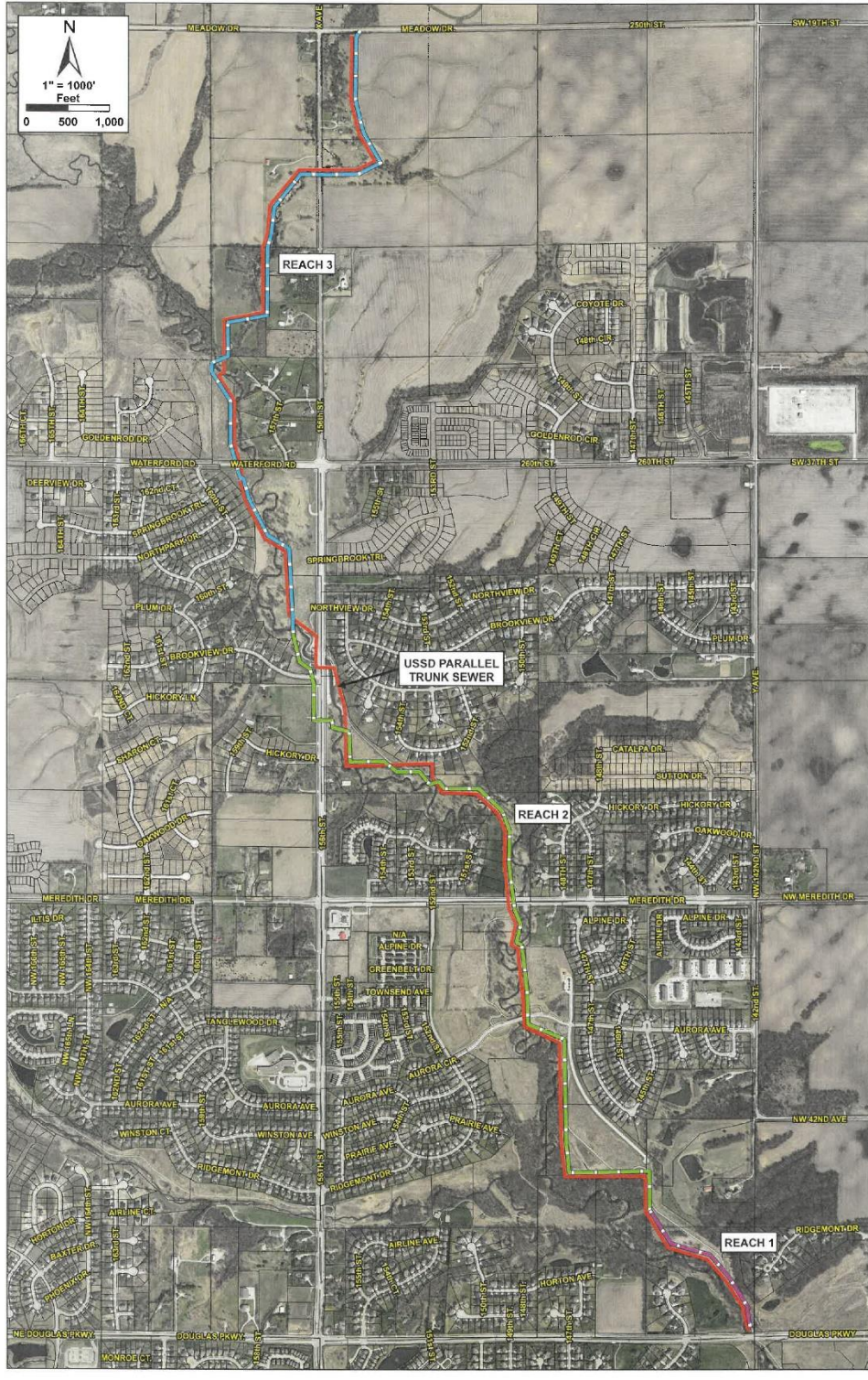
STATE OF IOWA                    )  
  ) ss:  
COUNTY OF DALLAS            )

On this \_\_\_\_ day of December, 2021, before me, a Notary Public in and for the State of Iowa, personally appeared Courtney Clarke and Becky Schuett, to me personally known, and, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Waukee, Iowa; and that the instrument was signed on behalf of the City of Waukee, Iowa, by authority of its City Council, as contained in Ordinance No. \_\_\_\_\_ passed (the Resolution adopted) by the City Council, under Roll Call No. \_\_\_\_\_ of the City Council on the \_\_\_\_ day of December, 2021, and that the Mayor and City Clerk acknowledged the execution of said instrument to be their voluntary act and deed and the voluntarily act and deed of the City of Waukee, Iowa, by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa  
My commission expires: \_\_\_\_\_

# EXHIBIT A

## WRA Grimes Connector – Parties' Joint Trunk Sewer Map (including Service Areas of the Parties)



## EXHIBIT B

### Project Costs, Initial Cost Allocations, and Proposed Cost Sharing Percentages

The cost estimate was prepared by Veenstra & Kimm, Inc. based on material quotations provided by likely suppliers during the week of October 18, 2021.

<u>Description</u>	<u>Estimated Construction</u>	<u>Engineering</u>	<u>Total</u>
Contract 1 – Reach 1	\$1,335,740	\$65,182	\$1,400,922
Contract 1 – Reach 2	\$8,062,855	\$393,454	\$8,456,309
Total	\$9,398,595	\$458,636	\$9,857,231

The costs for Reach 1 and Reach 2 constituting Contract 1 are to be allocated on a proportionate basis using the capacity allocated to each entity. For Reach 1 the cost allocation would be as follows:

Grimes	58.39%
USSD	22.15%
Waukee	19.46%

For Reach 2 the cost allocation would be as follows:

Grimes	72.50%
USSD	27.50%

The cost allocation excluding easement cost is as follows:

Description	Total Cost	Grimes		USSD		Waukee	
		%	Cost	%	Cost	%	Cost
Contract 1 - Reach 1	\$1,400,922	58.39%	\$817,999	22.15%	\$310,304	19.46%	\$272,619
Contract 1 - Reach 2	\$8,456,309	72.50%	\$6,130,824	27.50%	\$2,325,485		
Total	\$9,857,231		\$6,948,823		\$2,635,789		\$272,619



**VEENSTRA & KIMM INC.**

3000 Westown Parkway  
West Des Moines, Iowa 50266

515.225.8000 // 800.241.8000  
www.v-k.net

December 8, 2021

Paul Drey  
Brick Gentry, P.C.  
6701 Westown Parkway  
Suite 100  
West Des Moines, Iowa 50266

Rudy Koester  
City of Waukee  
230 Hickman Road  
Waukee, Iowa 50263

**WRA GRIMES CONNECTOR-CONTRACT 1  
RECEIPT OF BIDS  
UPDATED COST ESTIMATE**

The City of Grimes received bids on December 7, 2021 for the WRA Grimes Connector-Contract 1 Project. The City of Grimes received a total of five bids. The low bid was received from S. J. Lewis Construction, Inc. in the amount of \$12,675,000.

The engineer's estimate of cost for construction of the project was \$9,398,595. The low bid was approximately 34% above the engineer's estimate of cost.

Based on discussion with two of the three low bidders there was a general agreement on the factors that impacted the cost for construction of the project. The bidders indicated material costs have increased significantly over the last 30 days and continue to increase. Contractors project their labor costs for the project will be much higher than historical costs due to the difficulty in retaining qualified staff. The project will extend over approximately an eighteen month period and the bidders believe this creates a high degree of uncertainty regarding the labor cost. The bidders indicated that there were other factors that affected the project, but those factors were not as significant.

As of December 8, 2021 the City of Grimes has not determined how it will move forward with the project. However, the City does not believe rejecting bids and rebidding the project is likely to result in lower costs in the near term. The City does not believe it has sufficient time to wait for the current upward trend of costs to reset due to the overloading of the treatment plant.

The City of Grimes is currently evaluating the impact of the higher bids on this contract and what is likely to be higher costs on Contract 2, Contract 3 and Contract 4. If the City can determine there is a reasonable method to finance the project it is likely to move forward. The City Council may be requested to make that determination as early as December 14, 2021 or a decision may be deferred until January 2022.

This letter is to provide an update on the projected cost based on the bids received. The cost summary for the two reaches involving the Urbandale Sanitary Sewer District and the City of Waukee are as follows:

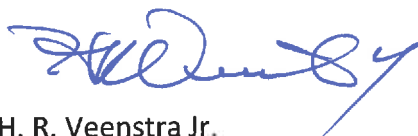
<u>Description</u>	<u>Low Bid Cost</u>	<u>Engineering</u>	<u>Total</u>
Contract 1 – Reach 1	\$1,584,398	\$58,335	\$1,642,733
Contract 1 – Reach 2	<u>\$11,090,602</u>	\$408,336	<u>\$11,498,938</u>
Total	\$12,675,000	\$466,671	\$13,141,671

The cost allocation, excluding easement costs, is updated as follows:

<u>Description</u>	<u>Total Cost</u>	<u>Grimes</u>		<u>USSD</u>		<u>Waukee</u>	
		<u>%</u>	<u>Cost</u>	<u>%</u>	<u>Cost</u>	<u>%</u>	<u>Cost</u>
Contract 1 Reach 1	\$1,642,733	58.39	\$959,192	22.15	\$363,865	19.46	\$319,676
Contract 1 Reach 2	\$11,498,938	72.50	\$8,336,730	27.50	\$3,162,208		
Total	\$13,141,671		\$9,295,922		\$3,526,073		\$319,676

If you have any questions or comments concerning the project, please contact the writer at 515-225-8000, or bveenstra@v-k.net.

VEENSTRA & KIMM, INC.



H. R. Veenstra Jr.

HRVJr:rdp  
 128107  
 Enclosure

Cc: Tom Henderson  
 Matt Ahrens  
 Alex Pfaltzgraff