

COUNCIL ACTION FORM

SUBJECT: APPROVAL OF EASEMENTS FOR THE 2010/11 DOWNTOWN STREET PAVEMENT IMPROVEMENTS PROJECT (KELLOGG AVENUE – MAIN STREET TO 7TH STREET, AND MAIN STREET – ALLAN DRIVE TO CLARK AVENUE)

BACKGROUND:

The annual Downtown Street Pavement Improvements program is for rehabilitation/reconstruction of streets within the downtown area. The 2010/11 program locations are Kellogg Avenue (Main Street to 7th Street) and Main Street (Allan Drive to Clark Avenue). On April 12, 2011, Council awarded the contract to Con-Struct, Inc. of Ames, Iowa, in the amount of \$1,446,369.00.

The Kellogg Avenue portion includes new angled parking at the United States Post Office (USPS) to increase capacity from six spaces to nine. In order to accommodate the construction of these new angled spaces, it has been found that a temporary construction easement is needed to perform the necessary construction. Additionally, due to the new configuration of parking in front of the USPS, a permanent Pedestrian Easement is also required to allow public pedestrians to use the newly constructed sidewalk on USPS property. These easements are being granted to the City at no cost and the subject area is shown on the attached sheet.

ALTERNATIVES:

1. Approve the easement agreements with the USPS.
2. Reject the easement agreements.

MANAGER'S RECOMMENDED ACTION:

By approving the easement, construction on the project in the area will continue to remain on schedule for completion. On-street parking will increase in front of the United States Post Office and public pedestrian access will continue.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving the easement agreements with the USPS.

Please return to:
City of Ames
515 Clark Avenue
Ames, Iowa 50010

2010-2011 Downtown Street Ames, Iowa Downtown Street

PUBLIC USE AND TEMPORARY CONSTRUCTION EASEMENT

THIS PERMANENT NON EXCLUSIVE PUBLIC USE EASEMENT TEMPORARY CONSTRUCTION EASEMENT, together referred to as (the Easement" is dated as of 21st day of July, 2011, by and between the United States Postal Service, an independent establishment of the Executive Branch of the United States Government (39 U.S.C. § 201), whose mailing address is 7500 E. 53rd Place Room 1104, Denver, CO 80226 ("Grantor or Owner"), and The City of **AMES**, an Iowa municipality whose address is 515 Clark Avenue, Ames, Iowa, 50010, ("Grantee or Municipality").

RECITALS

A. Grantor is the sole fee simple owner of certain real property (the "Grantor's Parcel") commonly known as the Ames, Iowa Main Office and legally described as Ames Post Office as legally described in Exhibit A attached hereto and incorporated herein.

B. Grantee desires to enter Grantor's parcel to reconfigure street parking and perform sidewalk construction for certain improvements and other construction work relating to an improvements project. Grantee has requested the Owner to provide a permanent easement for the purpose of allowing pedestrians to utilize the walkway along the Post Office frontage.

C. The portion of Grantor's Parcel that are the subject of this Easement ("Easement Areas") is also legally described as a portion of Ames Post Office Subdivision, Lot 3, plat number 2003-84, on file in the office of the Ames District Recorder, A, State of Iowa, said portion being more particularly described as follows:

Beginning at the northeast corner of said Lot 1, thence South 1°01'29" East along the ease line of said Lot 1, A distance of 22.89 feet to the point of beginning; Thence South 1°01'29" East Along the East lines of said Lots 1,2 and 3; A distance of 127.52 feet; Thence North 46° 01'29" W,

6.36 feet; Thence N 1°01'29" West, 118.52 Feet; Thence North 43° 58'31" East, 6.36 Feet to the point of Beginning and containing 0.01 Acres (554 sq. ft.).

Said Public Use Easement contains approximately 554 square feet.

See Exhibit B – Easement Plat which is attached hereto and incorporated herein.

Parcel

Parcel 1 is the permanent easement and parcel 2 is the temporary construction easement

C. Grantor and Grantee desire to set forth below their respective rights and obligations for an Easement on Grantor's Parcel.

AGREEMENTS

For the mutual benefit of both parties, and the mutual agreements that follow, Grantor and Grantee agree as follows:

1. Grantor hereby grants and conveys to Grantee, its successors, and assigns, a perpetual non exclusive public use Easement over, under, along, across, and through the Easement Area, for the purpose of use as a public walkway, with the right to license, permit or otherwise agree to the exercise of these rights by any other person, or entity.

2. The Grantor also Grants to Grantee, its successors and assigns a temporary construction easement over and across the property described as Parcel 2 on Exhibit C attached hereto by this reference made a part hereof for completion of sidewalk construction and a reconfiguration of the street parking that accommodates diagonal parking which includes but is not limited to: (i)scaffolding, (ii)replace/repair the sidewalk surface (iii) storing and operating equipment thereon, (iv) storing supplies and materials in connection with construction of the Project, and (v) other related uses and purposes as defined herein. It is also agreed that the temporary easement rights herein granted shall terminate one (1) year from the date hereof or upon completion of the above mentioned construction project, whichever is sooner.

3. Construction on USPS Property. Grantor will perform construction for the USPS in accordance with the attached drawing that All improvements are the property of the USPS.

4. Grantor further conveys to Grantee with the Easement the right of ingress and egress to and from the Easement Area during construction. Grantee shall restore for Grantor any damage to the Property caused by the exercise of such right of access by Grantee.

5. Grantee shall provide Grantor with a copy of the insurance policy of the independent contractors performing work for the Grantee demonstrating adequate insurance for personal injury and property damage that may occur on Owner's premises with the Grantee and Grantor named as an additional insured.

6. The Parties agree that Grantee, its successors and assigns shall be responsible for maintenance and repair of the Easement Areas and any and all costs related thereto. Such maintenance and repairs shall include but are not limited to repair, grading, paving and removal of all trash and debris caused by Grantee's exercise of its rights under this Easement. .

7. The Parties agree that the Grantee shall not use the Easement in a manner that unreasonably interferes with use by the Postal Service.

8. The Grantee, by acceptance of this Easement, agrees for and on behalf of itself, its agents, servants, employees, invitees, and contractors who may at anytime use, occupy, visit, or maintain said Easement herein created that the Grantor, its successors and assigns, shall not be responsible for damage or loss to property, injuries, or death which may arise from or be incident to the use and occupation of the Easement as granted herein to Grantee, its agents, servants, employees, invitees, and contractors.

9. The Grantee, by acceptance of this Easement, agrees to defend, indemnify and hold the Grantor, its successors, and assigns harmless against any and all claims, demands, damages, costs, expenses, and legal fees for any loss, injury, death, or damage to persons or property which at any time is suffered or sustained by Grantor, its employees, the public, or by any person whosoever may at any time be using, occupying, visiting, or maintaining the property that is the subject of said Easement, or be on or about the property that is the subject of said Easement, when such loss, injury, death, or damage is asserted to have been caused by any negligent act or omission or intentional misconduct of the Grantee or its agents, servants, employees, invitees, or contractors. In case of any action or proceeding brought against the Grantor, by reason of such a claim, upon notice from the Grantor, Grantee covenants to defend such action or proceeding. The Grantor shall not be liable and the Grantee waives and releases the Grantor from all claims for damage to persons or property sustained by the Grantee or its employees, agents, servants, invitees, contractors, or customers resulting by reason of the use of the Easement. .

10. Grantor reserves the right to use the Easement Area for any purpose not inconsistent with the rights herein granted. Grantee agrees throughout the duration of this Easement to provide the Grantor, its employees, customers, and the public with continual and uninterrupted access to the Postal Facility. In the event Grantee fails to provide continual and uninterrupted access to the Postal Facility, the Grantor has the option of terminating this Easement by providing written notice to the Grantee that the Easement is terminated at no cost to the Grantor. Upon receipt of said notice, Grantee has two (2) business days to remedy the situation. In the event Grantee fails to provide access to the Postal Facility within the 2 days, said notice of termination shall become final and the Easement is terminated. Upon termination of the Easement, Grantee shall restore any affected portion of the property as good or better condition that it existed prior to Grantee's access.

11. APPLICABLE LAWS. Any claim, controversy or dispute arising out of this Agreement and the construction of the Project shall be governed in accordance with the Contract Disputes Act, 42 U.S.C § 601 et seq. and applicable federal law.

12. The Grantor does not warranty that the Easement areas are suitable for the purpose of installation of said public walkway.

13. Notices shall be in writing to the following addresses:

GRANTOR

Contracting Officer
United States Postal Service
Western Facilities Service Office
7500 East 53rd Place RM 1108
Denver, CO 80266-9918

GRANTEE

City of Ames
515 Clark Avenue
Ames, Iowa 50010

IN WITNESS WHEREOF, the parties hereto have executed this Easement of the day and year first above written.

Grantor:

United States Postal Service

By: Candace S. Spive
Contracting Officer

STATE OF Colorado)
) ss
COUNTY OF Denver)

On this 21 day of July, 2011, personally appeared before me Candace S. Spive, Contracting Officer who being by me duly sworn, did say that he/she represents the United States Postal Service, and acknowledged to me that, acting under a delegation of authority duly given and evidenced by law and presently in effect, he/she executed said instrument as the act and deed of the United States Postal Service for the purposes therein mentioned.

SEAL

CYNTHIA J. ORTIZ NOTARY PUBLIC STATE OF COLORADO
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My Commission Expires 12-17-2011

[Signature]
NOTARY PUBLIC

My commission expires: _____

CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the Municipality of Ames, Project Management & Engineering Department, Grantee herein, acting by and through its Acting Director, hereby accepts for public purposes the real property, or interest therein, described in this instrument and consents to the recordation thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20____.

CITY OF AMES

_____ Date: _____
By:
Its:

STATE OF IOWA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____.

Notary Public in and for Iowa
My Commission Expires: _____

EXHIBIT 'A'

POST OFFICE\
ORIGINAL DEEDS

DEEDS TO THE UNITED STATES OF AMERICA

BOOK 63, PAGE 353

LOT TWO (2) IN BLOCK NINE (9) IN THE ORIGINAL TOWN OF AMES,
IOWA.

BOOK 63, PAGE 354

LOT ONE IN BLOCK NINE, IN THE ORIGINAL TOWN OF AMES, IOWA.

BOOK 63, PAGE 355

LOT THREE (3) IN BLOCK NINE (9) IN THE ORIGINAL TOWN OF AMES,
IOWA.

DEED TO THE CITY OF AMES

BOOK 121, PAGE 342

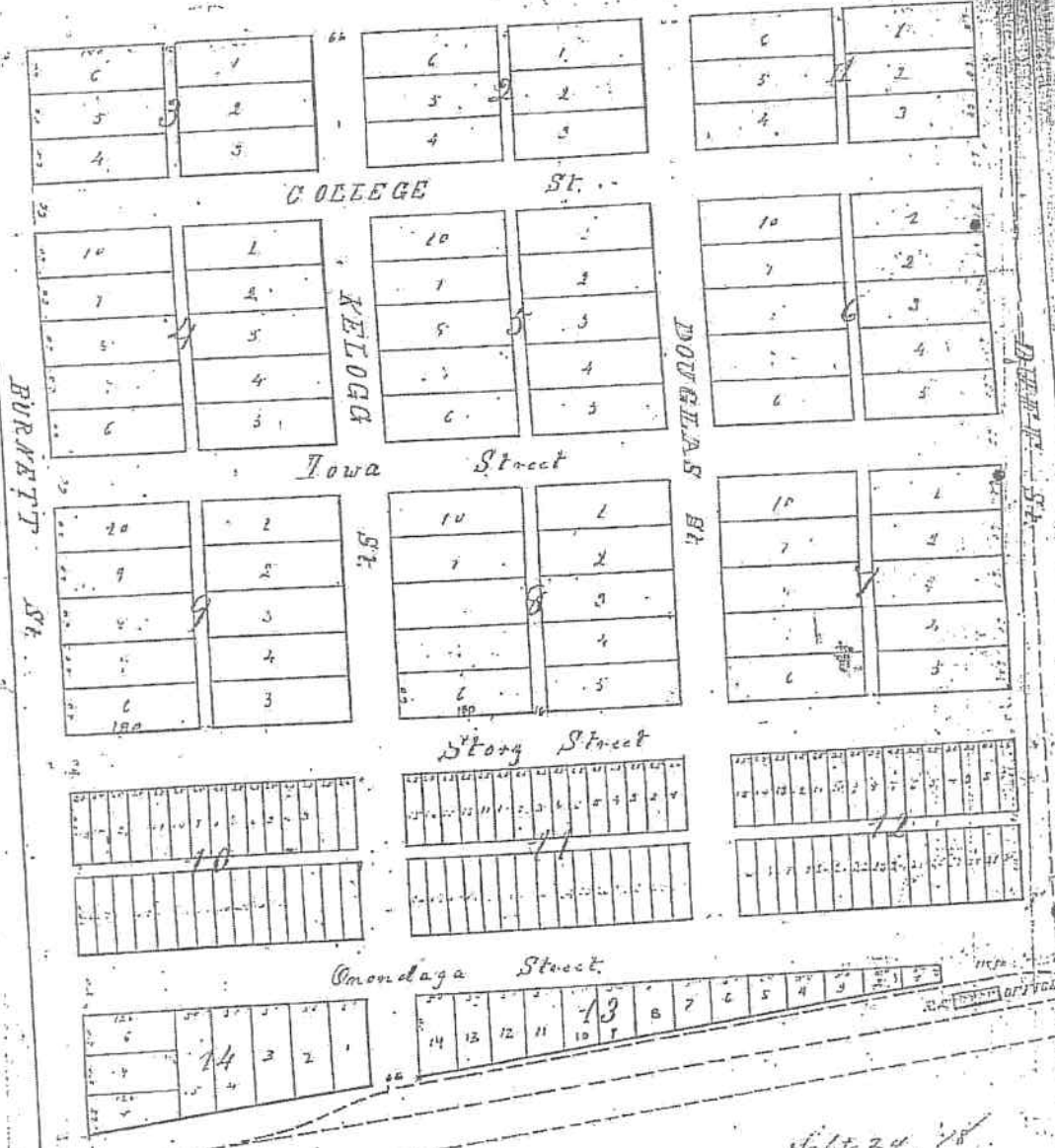
THE SOUTH TWELVE (12) FEET OF LOT THREE (3), BLOCK NINE (9)
ORIGINAL TOWN SITE OF AMES, STORY COUNTY, IOWA.

EXHIBIT 'A'

* See microfilm (with platat. 2nd of 1865)

AMES

Story Co. Iowa



Sept. 24, '18
 Marked dimensions set at front corners of lot 9 & 10 Block 4
 request of Geo. O'Brien. Was received from original owner
 J. P. Brown, Deputy Com. Sec.

Filed for Record Jan. 18, 1865
 at 12 O'clock P.M.
 Fee \$2.00 Paid

EXHIBIT B - PARCEL 1

RETURN TO: CIVIL DESIGN ADVANTAGE, 3405 SE CROSSROADS DRIVE, SUITE G, GRIMES, IA. 50111, PH: 369-4400 FAX: 369-4410

EASEMENT PLAT

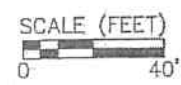
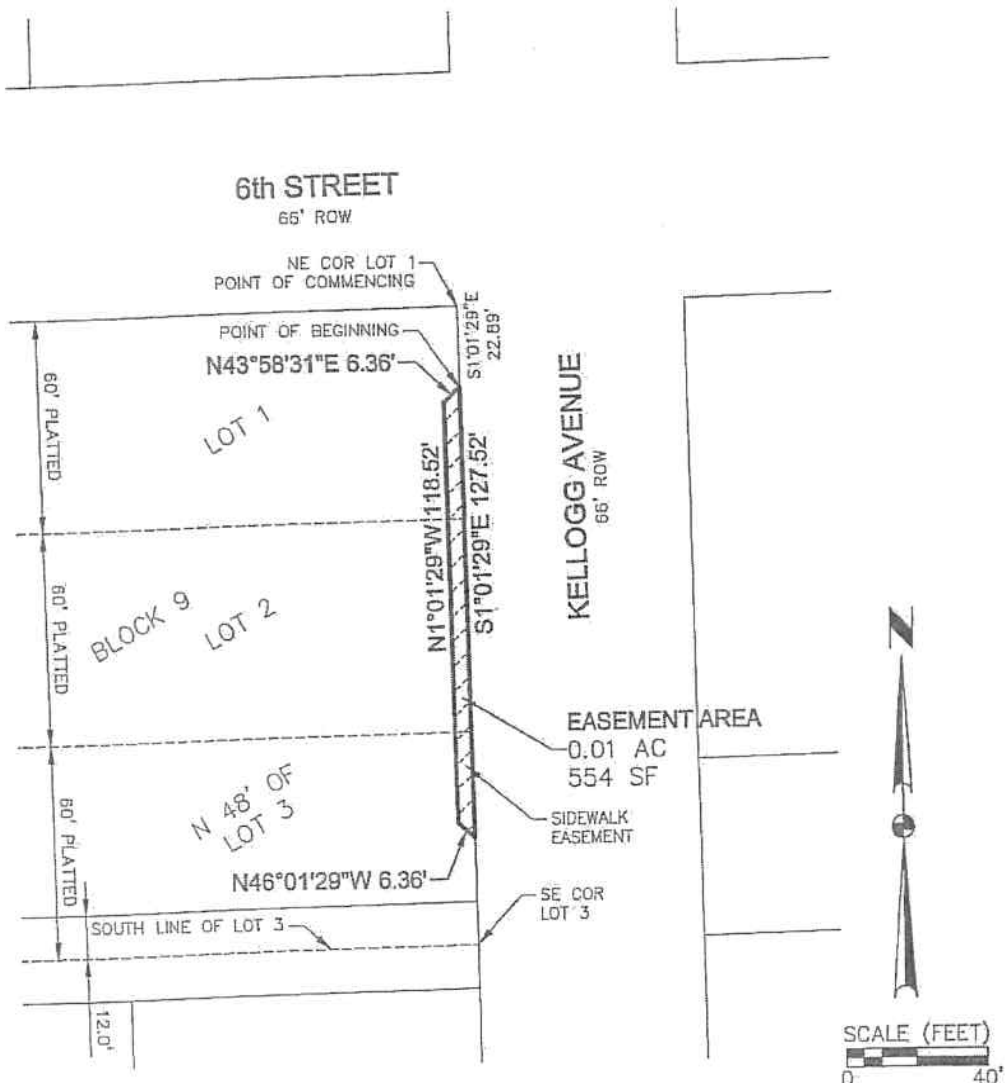
OWNER

UNITED STATES OF AMERICA

SIDEWALK EASEMENT DESCRIPTION:

A PART OF LOTS 1, 2 AND 3, OF BLOCK 9, IN THE ORIGINAL TOWN OF AMES IOWA, AN OFFICIAL PLAT IN THE CITY OF AMES, STORY COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 1°01'29" EAST ALONG THE EAST LINE OF SAID LOT 1, A DISTANCE OF 22.89 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 1°01'29" EAST ALONG THE EAST LINES OF SAID LOTS 1, 2 AND 3, A DISTANCE OF 127.52 FEET; THENCE NORTH 46°01'29" WEST, 6.36 FEET; THENCE NORTH 1°01'29" WEST, 118.52 FEET; THENCE NORTH 43°58'31" EAST, 6.36 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (554 SQUARE FEET).



10/10/2010 10:29:54 AM 10/10/2010 10:29:54 AM 10/10/2010 10:29:54 AM

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1010295

2010-11 DOWNTOWN STREET
PAVEMENT IMPROVEMENTS
EASEMENT PLAT



3405 SE CROSSROADS DRIVE, SUITE G
GRIMES, IOWA 50111
PH: (515) 369-4400 Fax: (515) 369-4410

ENGINEER: _____ TECH: _____

AMES, IOWA

EXHIBIT B - PARCEL 2

RETURN TO: CIVIL DESIGN ADVANTAGE, 3405 SE CROSSROADS DRIVE, SUITE G, GRIMES, IA, 50111, PH: 369-4400 FAX: 369-4410

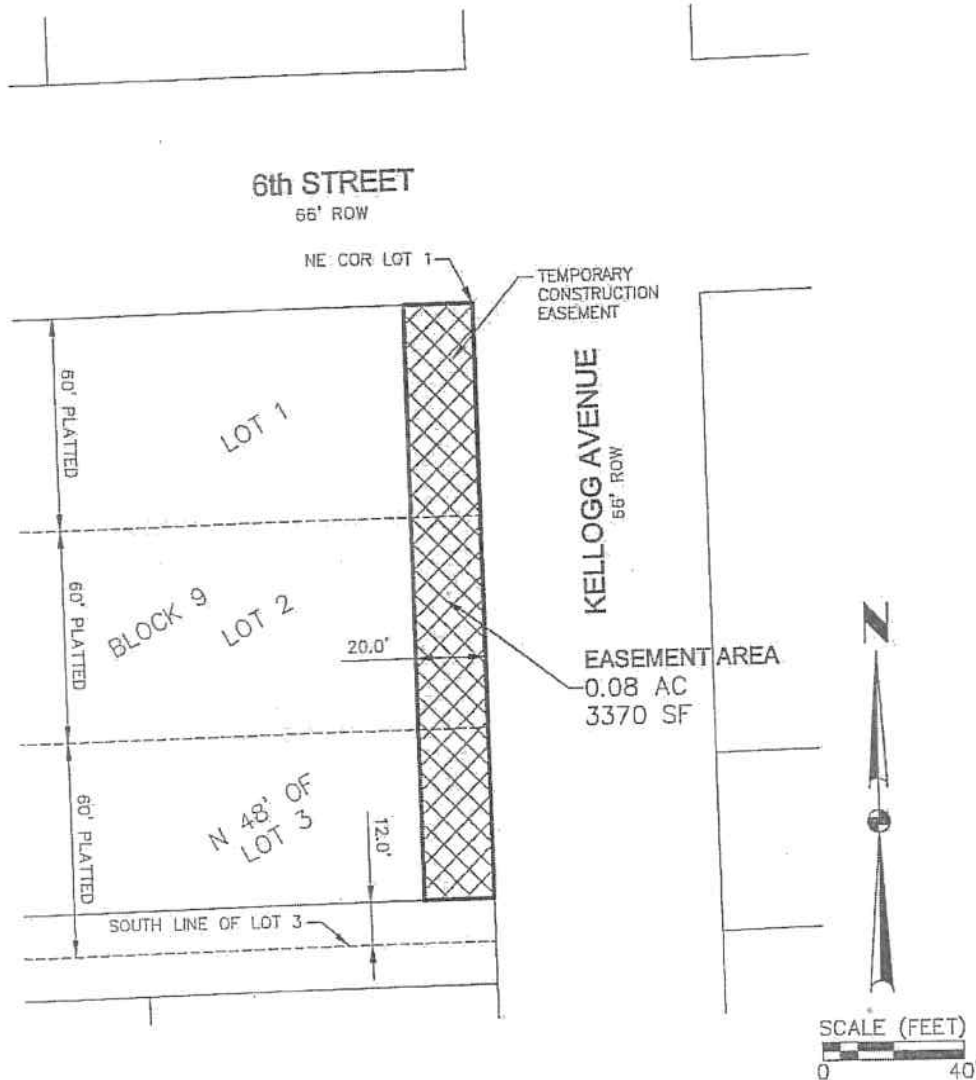
EASEMENT PLAT

OWNER

UNITED STATES OF AMERICA

TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION:

THE EAST 20 FEET OF LOTS 1, 2 AND 3, IN BLOCK 9, IN THE ORIGINAL TOWN OF AMES, STORY COUNTY, IOWA; EXCEPT THE SOUTH 12 FEET OF SAID LOT 3.



1010295-1010295-Dwelling-Easement-Plat-1.dwg, 8/27/2010 9:26:21 AM, Aedra RCP

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2010-11 DOWNTOWN STREET PAVEMENT IMPROVEMENTS EASEMENT PLAT
AMES, IOWA

GA
CIVIL DESIGN ADVANTAGE

3405 SE CROSSROADS DRIVE, SUITE G
GRIMES, IOWA 50111
PH: (515) 369-4400 Fax: (515) 369-4410

ENGINEER: TECH: