

ITEM# 26a&b
DATE: 7-12-16

COUNCIL ACTION FORM

**SUBJECT: SOUTH DUFF ACCESS AND SAFETY IMPROVEMENTS PROJECT
(DESIGN AGREEMENT AND AMENDED PROFESSIONAL SERVICE
AGREEMENT)**

BACKGROUND:

On December 22, 2015, staff provided an update to City Council on the progress of the S. Duff Access project. Work is to include a raised median along S. Duff Avenue (US 69) from S. 5th Street to the Squaw Creek Bridge (with drive-over at Howe's), a new signalized intersection at the existing Southpoint Centre drive that will connect into Walmart's parking lot, and a reconfiguring of Walmart's western parking area in order to create a westbound approach for the new intersection (see attachment).

Since that time, City staff and CGA (the City's engineering consultant) has been working with Walmart's realty department headquarters in Bentonville, Arkansas to create a cross-access easement connecting the businesses along the east side of S. Duff Avenue. Walmart provided their standard language for cross-access that is currently under review by the affected businesses along the easement route on the east side for comment. The coordination with Walmart also included developing a cost sharing agreement for design and construction between the City, Walmart, and Hunziker Development.

The City Attorney has created a cost sharing agreement for the project that was sent to Walmart realty and legal departments and also to Hunziker Development. The cost sharing agreement details a one-third split for the local match between the City, Walmart, and Hunziker. It is expected that \$850,000 in Iowa DOT grants will be applied the total estimated project cost of \$1,100,000. Therefore, the required local match is estimated to be \$250,000.

Over the Spring/Summer 2016 staff has been receiving various revisions requested by Walmart. After reviewing the final draft of the agreement, Walmart and Hunziker now fully support moving forward with the project. However, it is Walmart's desire to have the cost sharing agreement based upon actual costs and not based upon a proportional share. This would require separate agreements for project design and for construction. Hunziker has no objection to splitting the agreement into design and construction phases.

Therefore, in order to progress with final engineering design for development of plans and specification for bidding, an amendment to the professional service agreement (PSA) with CGA will be needed. Currently, CGA has been hired to facilitate stakeholder meetings, draft cross-access easements, and to develop conceptual design. The

amendment will take the project from survey through final design. CGA has provided the City a PSA amendment in an amount not to exceed \$87,873. This fee will be split three ways by the City, Walmart and Hunziker under the separate cost sharing agreement for design only.

If City Council approves this approach, the project should be able to progress with bids being received by September. By doing so, staff would also be able to work with all of the effected businesses owners to create a final design that addresses their concerns regarding access routes, wayfinding signage, and how the median is designed along S. Duff Avenue (including Howe's Welding deliveries).

ALTERNATIVES:

1. a) Approve the cost sharing agreement between the City of Ames, Walmart, and E-M Hunziker, LLC for each party paying one-third of the design contract amendment.

b) Approve the Professional Service Agreement amendment with CGA of Ames, IA in the amount not to exceed \$87,873.
2. Direct Staff to make modifications to the project.

MANAGER'S RECOMMENDATION:

Moving forward with design will allow the project to be substantially completed by the end of the calendar year. It will also provide the opportunity to work with stakeholders to address their concerns with specific solutions. As this project has progressed, not knowing specific design information has been an ongoing source of frustration to stakeholders that weren't able to be addressed through conceptual design. Staff feels that given the unique nature of this project, progressing with final design of the project will allow any issues the businesses have raised to be considered and addressed.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, as described above.

DO NOT WRITE IN THE SPACE ABOVE THIS LINE, RESERVED FOR RECORDER

Prepared By: Judy K. Parks, City of Ames Legal Department, 515 Clark Ave., Ames, Iowa 50010 (Phone: 515-239-5146)

Return Recorded Document To: Diane Voss, City Clerk, 515 Clark Avenue, Ames, Iowa 50010

**E-M HUNZIKER, LLC AND WALMART COST SHARING AGREEMENT
PERTAINING TO DESIGN OF INTERSECTION AND ROADWAY
IMPROVEMENTS AT SOUTH DUFF AND SOUTH FIFTH STREET**

THIS AGREEMENT, made and entered into this _____ day of _____, 2016, by and among the City of Ames, Iowa (hereinafter called “City”); Walmart (hereinafter individually called “Walmart”) and its successors and assigns; and E-M Hunziker, LLC (hereinafter individually called “Hunziker”) and its successors and assigns; and

WITNESSETH THAT:

WHEREAS, Walmart and Hunziker (Walmart and Hunziker hereinafter referred to collectively as “Developers”) have ongoing business developments on either side of South Duff Avenue which are located generally north of the Squaw Creek bridge on South Duff and south of the intersection of South Fifth Street and Duff Avenue, in an area depicted generally as shown on Appendix A, (hereinafter called the “Site”); and

WHEREAS, these businesses are located in the close proximity to the intersection of South Fifth Street and South Duff Avenue; and

WHEREAS, the Parties desire to ensure that their site entrances and the public streets adjacent to their businesses will have sufficient roadway capacity, traffic improvements, and infrastructure to assure safe and convenient access to their sites, and be compatible with future anticipated arterial street improvements in this vicinity; and

WHEREAS, the City desires to ensure that the proportional cost of street improvements which are attributable to the Developers are borne by them, and that the Developers have notice of what their contribution is expected to be, which is best accomplished through an agreement between the Developers and the City with respect to roadway and intersection improvements.

NOW, THEREFORE, the Parties hereto have agreed and do agree as follows:

I PURPOSE

- A. Purpose. It is the purpose of this Agreement to document, record, and give notice of a certain amount and method of payment by the Developers to the City of their proportionate share of costs associated with the design and construction of roadway and intersection improvements, including installation of a raised median, widening and improved signalization, on South Duff Avenue south of the intersection at South Fifth Street and South Duff Avenue, including Engineering Inspections fees as provided in the Ames Municipal Code, and to provide for the security of said payment pending completion of the construction.

- B. Rights Exclusive to Parties. This Agreement does not create or vest in any person or organization, other than the City, any rights or cause of action with respect to any performance, obligation, plan, schedule or undertaking stated in this Agreement with respect to the Developer. This Agreement does not prevent the City from amending, modifying, or releasing the Developer from some or all of the provisions of this Agreement. No person shall have any cause of action or recourse against the City or Developer by reason of any such amendment, modification, or release.

II DETERMINATION OF SHARE OF COSTS OF IMPROVEMENTS

- A. Method. The City, working with its consulting engineer, will design the overall plan for the comprehensive intersection improvement project planned for South Fifth Street and South Duff Avenue, from each direction but with the most extensive improvements primarily south from that intersection. This included preparation of an estimated cost, which has established that the various segments and components of the complete project will cost a total of \$1,090,000.00. It is understood that the Iowa Department of Transportation has agreed to fund \$850,000 of the cost of this project through a grant to the City, but that no grant funds may be used for the design of the project. The Developers and City agree to equal cost sharing for the portion of the project cost that remains after the DOT grant funds have been applied.

- B. Hunzikers' Share. With regard to Hunziker, its proportional contribution for this project is established as one-third of the total project cost after the grant funds are applied to the total project cost. The present estimated dollar cost of the design portion of this project is \$87,873.00, and Hunzikers's share is \$29,291.00 for the engineering and design costs.

- C. WalMart's Share. With regard to WalMart, its proportional contribution for this project is established as one-third of the total project cost after the grant funds are applied to the total project cost. The present estimated dollar cost of the design portion of this project is \$87,873.00, and WalMart's share is \$29,291.00 for the engineering and design costs.

**III
METHOD OF PAYMENT**

A. Payment. WalMart and Hunziker shall each provide to the City their one third proportional contribution of the design cost by August 12, 2016.

**IV
CITY'S REMEDIES**

Upon any Developer's failure to comply with the terms of this Agreement, the City may complete or terminate construction of the project, as it deems appropriate, initiate special assessment proceedings, or pursue debt collection or any other remedies available against that Developer.

**V
COVENANT WITH THE LAND**

This Agreement shall run with the Site and shall be binding upon the Developers, their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed effective as of the date first above written.

WALMART

By _____

By _____

STATE OF _____, _____ COUNTY,
ss:

This instrument was acknowledged before me on _____, 2016, by _____ and _____, as _____ and _____, respectively, of WalMart.

Notary Public in and for the State of _____

E-M HUNZIKER, LLC

By _____

By _____

STATE OF IOWA _____ COUNTY, ss:

This instrument was acknowledged before me on _____, 2016, by _____ and _____, as _____ and _____, respectively, of Hunziker.

Notary Public in and for the State of Iowa

CITY OF AMES, IOWA

By _____
Ann H. Campbell, Mayor

Attest _____
Diane R. Voss, City Clerk

STATE OF IOWA, STORY COUNTY, ss:

On this ____ day of _____, 2016, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, 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 Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. ____ adopted by the City Council on the ____ day of _____, 2016, and that Ann H. Campbell and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa

**EXHIBIT 1
TO
PROFESSIONAL SERVICES AGREEMENT**

Owner: City of Ames, Iowa
Engineer: Clapsaddle-Garber Associates, Inc.
Project Number: CGA# 1648

SCOPE OF SERVICES

Basic Services

Project Description: The Engineer will conduct a topographic survey within in the South Duff Right-of-Way and prepare construction plans for the construction of a raised, concrete median from S. 5th Street to the Squaw Creek Bridge along South Duff Avenue (Hwy 69), a new traffic signal at approximately 700 feet south of S. 5th Street, and reconstruction of the Walmart parking lot.

The following tasks outline the *anticipated* scope of engineering services necessary to accomplish the proposed improvements.

Task 1.0 – Preliminary and Final Design

- 1.1 **Survey and Mapping of Existing Conditions:** Establish alignment, re-establish street right-of-way, set control points, and collect topography and cross section data for development of the detailed plans for the proposed improvements. The extents of the survey shall be sufficient to develop an Existing Conditions Drawing to be used in the project. Visible inspections shall also be performed on existing sewer structures to determine condition and serviceability. The Iowa One Call Design Locate process will be utilized in an attempt to identify locations of existing underground utility facilities.
- 1.2 **Preparation of Drawings:** It is anticipated that the detailed plan drawings will consist of a cover sheet; general construction information; bid items, quantities and descriptions; typical detail sheets; typical section sheets; site topography/existing conditions; pollution prevention plan; street plan & profile sheets; utility relocation/adjustment sheet and cross section sheets. Drawings shall be developed for submittal to the City for review at the following levels of detail: Preliminary Drawings; 90% Construction Drawings; Final Construction Drawings, as well as submitted to the Iowa DOT District 1 Office for design review and approval.
- 1.3 **Construction Specifications and Contract Documents:** Prepare written specifications using the Iowa Statewide Urban Design Standards for Public Improvements (SUDAS) and any City of Ames Supplemental Specifications. Prepare contract bid documents consisting of Notice of Hearing and Letting, Information for Bidders, Form of Proposal, Form of Bid Bond, Form of Contract, Project Insurance Requirements, and Form of Performance, Payment and Maintenance Bond, and Targeted Small Business forms as required by the Iowa DOT for local letting.
- 1.4 **Permits:** Prepare and submit plans and documentation required for obtaining coverage under NPDES General Permit No. 2 from the Iowa DNR, including the initial Stormwater Pollution Prevention Plan (SWPPP) that is to be utilized during construction. Prepare and submit Iowa DOT Work in Right-of-Way Permit for performing survey and mapping operations described in 1.1 above, and submit application to Iowa DOT Maintenance Office.
- 1.5 **Meeting and Consultation:** Conduct and document meetings with City of Ames staff and City Council to communicate and coordinate preparation of the plan. Weekly progress meetings with the City Staff shall

be scheduled during the design process. Utility companies will be invited to at least one progress meeting to review preliminary plans. Two (2) design review meeting with the Iowa DOT are also included.

- 1.6 Tabulate Quantities/Opinion of Probable Cost: Based on final design plans and specifications, tabulate bid quantities for use in bidding, monitoring and payment for construction work, and prepare an opinion of probable construction costs.

Task 2.0 – Advertising/Bidding/Contract Award

- 2.1 Advertisement & Distribution of Bidding Documents: CGA shall assist the City with the advertising and distribution of the bidding documents. CGA shall prepare the Notice of Hearing and Letting utilizing the City's standard format. The City shall handle the publicizing of said Notice. CGA shall accept orders and distribute the contract documents to prospective bidders and shall maintain the plan holders list. The plan deposits shall be charged and handled in accordance with Iowa Code.
- 2.2 Bid Opening and Award: Assist the City in securing and opening of bid proposals. Provide tabulation and analysis of bids. Assist the City in preparing signatory copies of the construction contract. Coordinate review of bids submitted and corresponding documents to the Iowa DOT for review.
- 2.3 Pre-Construction Conference: Attendance at one (1) Pre-Construction Conference is included in this scope of services.

SUPPLEMENTAL SERVICES

Any work requested by the Owner that is not included in the Basic Services will be classified as Supplemental Services. Supplemental Services shall include, but are not limited to the following:

Task 3.0 – Construction Phase Engineering Services

- 3.1 Perform construction observation services necessary to the accomplishment of the project.
- 3.2 Provide construction administration services.

Task 4.0 – Soil Boring Coordination

- 4.1 CGA will request price quotations from qualified Geotechnical Engineering Firms to provide subconsultant services for the project.
- 4.2 CGA will review the proposals received for Geotechnical work and recommend to the Owner to enter into a separate agreement with a specific firm for this work. CGA will coordinate their project design and development activity directly with the selected Geotechnical firm.

Task 5.0 - Funding Administration / Project Closeout

- 5.1 CGA will coordinate project activity with the Iowa Department of Transportation (Iowa DOT) Office of Local Systems, or other departments as required by the TSIP / USTEP Funding.
- 5.2 CGA will prepare State or Federal funding requests for reimbursements and submit those to the City for review and approval. CGA will then submit those requests to the appropriate departments at the Iowa DOT for processing.

5.3 CGA will prepare required Iowa DOT project documents for formal project closeout. CGA will attend required meetings with Iowa DOT departments in preparation of project audit, and coordinate the audit with appropriate Iowa DOT personnel.

Any work requested by the Owner that is not included in the Basic Services will be classified as Supplemental Services. Supplemental Services shall include, but are not limited to the following:

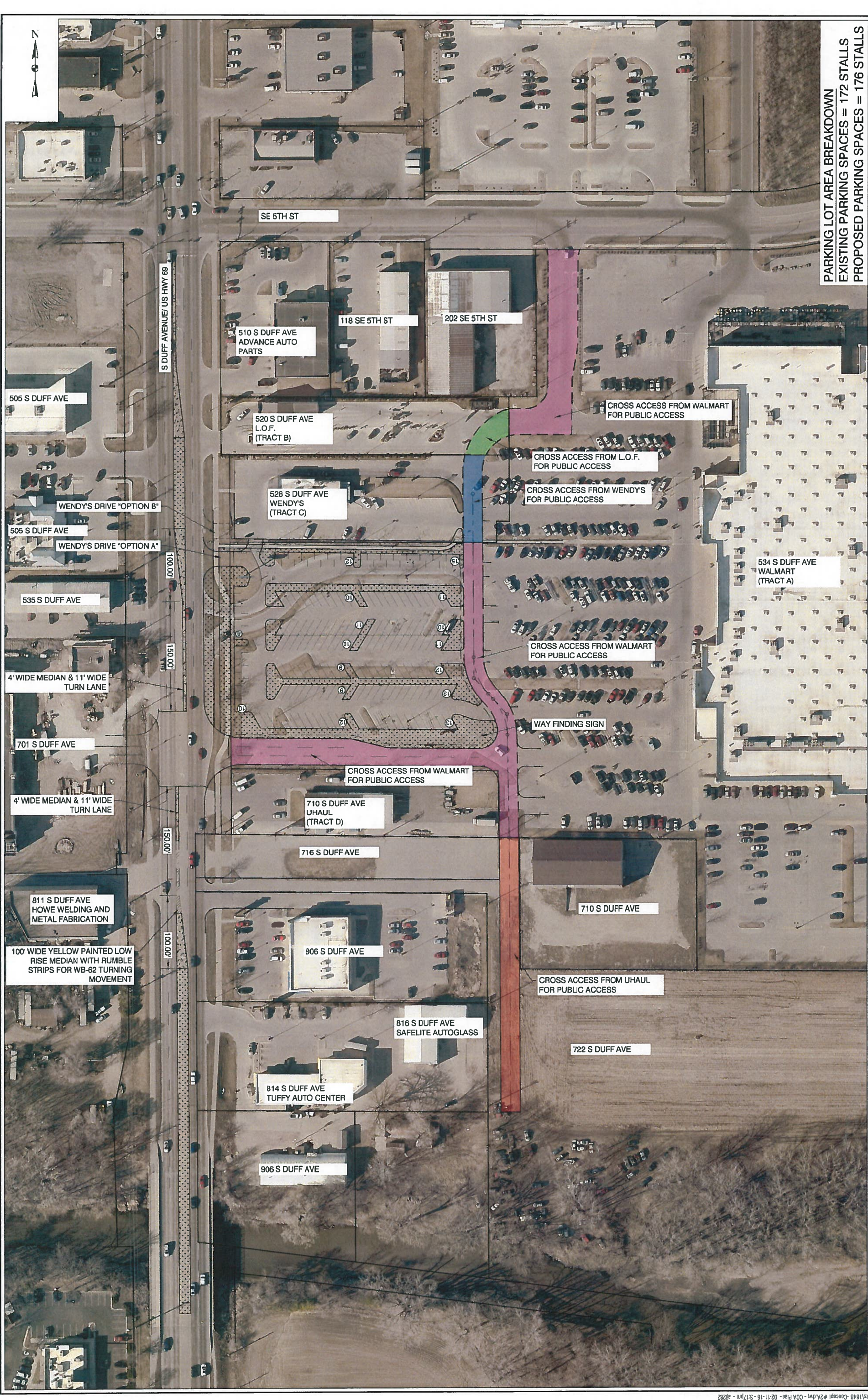
- Changes in the general scope, extent, or character of the services provided, including but not limited to changes in size, complexity, schedule, character of construction or method of financing; and revising previously accepted studies, reports, or design documents when such revisions are required by changes in laws, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies/reports/documents or designs or due to any other causes beyond the Engineer's control.

Exhibit "2"

South Duff Avenue Traffic Signal and Improvements

Consultant Compensation and Method of Payment:

The fee for the tasks described in Exhibit "1" shall be on an hourly basis as per the attached "CGA 2016 Rate Schedule" not to exceed \$87,873. The fee shall be paid on a monthly basis.



PARKING LOT AREA BREAKDOWN
 EXISTING PARKING SPACES = 172 STALLS
 PROPOSED PARKING SPACES = 176 STALLS

S DUFF INTERSECTION
 AMES, IOWA

CONCEPT #2B

DESIGNED: AJL	DATE: 2/2/16
DRAWN: AJL	DATE: 2/2/16
CHECKED: MAC	DATE:
APPROVED: MAC	DATE:

CGA
 Capital City Center Associates, Inc.
 Ames, Iowa 50010
 PH 515-282-1784
 www.cgaconsultants.com

NO.	REVISION	BY	DATE

GRAPHIC SCALE: 0 60 120 180

PROJECT NO: 16-08-04
 SHEET NO: 1 OF 1