

## Staff Report

# REFERRAL OF HUNZIKER REQUEST FOR REFUND ON S. DUFF SIGNAL PROJECT

November 13, 2018

## **BACKGROUND:**

The City of Ames partnered with Walmart Real Estate Business Trust (Walmart) and E-M Hunziker, LLC (Hunziker) for the design, construction, and construction administration for a median and traffic signal on South Duff Avenue, generally between Squaw Creek Bridge and South 5<sup>th</sup> Street. Because the roadway is also US Highway 69, the Iowa DOT awarded the City \$850,000 in grants to help facilitate construction.

The former City Attorney worked with Walmart's attorney to draft the project design agreement and the project construction and construction administration agreement. **The intent of these agreements was to equally share the IDOT grants and to equally share in the remaining local match.**

## **PROJECT FINANCING:**

At the time the project was awarded, the estimated expenses and identified revenues, as shown in the agreement, were as follows:

<b>Revenues</b>		<b>Estimated Expenses</b>	
U-STEP	\$400,000	Design	\$87,873
TSIP	\$450,000	Construction	\$1,150,026
City of Ames	\$215,968	Contingency (20%)	\$230,005
Walmart	\$215,968	Administration	\$30,000
Hunziker	\$215,968	<b>Total</b>	<b>\$1,497,904</b>
<b>Total</b>	<b>\$1,497,904</b>		

  

<b>1/3rd Share</b>		<b>Subtotals</b>	
Design	\$29,291	Design	\$87,873
Construction	\$186,677	Construction	\$1,410,031
	<b>\$215,968</b>		<b>\$1,497,904</b>

As shown above, an equal funding share was anticipated from the City, Walmart, and Hunziker. To fund construction and construction administration, Walmart and Hunziker each placed \$186,667 in escrow. However, the City agreed if the Developers' costs exceeded \$129,176, additional documentation and approval would be needed.

During construction, several cost saving measures were identified. These required a good deal of staff time for engineering these field changes. **This time for redesign in the field resulted in net savings of \$81,556 to the project.** City Council accepted the completed project on June 26, 2018, with final expenses and corresponding revenues/costs as shown, below:

**Change Orders**

CO No. 1	\$22,985
CO No. 2 - Balancing	(\$104,540)
<b>Total</b>	<b>(\$81,556)</b>

<b>Expenses</b>	<b>Estimated</b>	<b>Actual</b>	<b>Savings</b>
Design	\$87,873	\$88,048	(\$175)
Construction	\$1,150,026	\$1,068,470	\$81,556
Contingency	\$230,005	\$0	\$230,005
Engineering Insp./Admin	\$30,000	\$81,010	(\$51,010)
<b>Total</b>	<b>\$1,497,904</b>	<b>\$1,237,528</b>	<b>\$260,376</b>

<b>Revenues</b>	<b>Funding</b>	<b>Allocated Costs</b>	<b>Savings</b>
U-STEP	\$400,000	\$400,000	\$0
TSIP	\$450,000	\$450,000	\$0
RUT	\$60,000	\$60,000	\$0
G.O. Bonds	\$155,968	\$69,176	\$86,792
Walmart	\$215,968	\$129,176	\$86,792
Hunziker	\$215,968	\$129,176	\$86,792
<b>Total</b>	<b>\$1,497,904</b>	<b>\$1,237,528</b>	<b>\$260,376</b>

**As noted from the above information, the actual cost to each partner was \$86,792 less than the original estimates.**

**LETTER OF REQUEST FROM HUNZIKER:**

In preparing the final costs and billings to the Developers, the design expenses were included with the construction and administration costs so that reimbursements could be handled with one billing. When calculating an estimate of the time that professional engineering staff spent on the project (administration), it was found that the Developers' share would slightly exceed the \$129,176 threshold. Because this additional amount was nominal and to streamline the close-out process, the City minimally *decreased* the construction administration fee to stay within the \$129,176 threshold. Thus, in the letter that was referred, asserting that the City intentionally increased the construction management fee to maximize the amount authorized is not the case.

**Hunziker has requested that \$17,003 be returned because the construction administration expenses increased from the estimated \$30,000 to \$81,010. The basis for this request is that when drafting the agreement, the former City Attorney included "a construction management fee of \$30,000" rather than noting this was the estimated amount. The requested \$17,003 was derived as follows:**

	<b><u>Final Amounts</u></b>
Design	\$ 88,048
Construction	\$1,068,470
Const. Admin/Insp	30,000
<u>IDOT Grants</u>	<u>(850,000)</u>
<b>Total</b>	<b>\$336,518</b>

1/3<sup>rd</sup> Share

\$112,173 - (129,176 billed) = \$17,003 Requested Refund

**Although the construction management fee was not noted in the agreement as an estimate, all other places in the agreement contemplate and discuss an equal share of grant revenues and local match expenses between the City, Walmart, and Hunziker.** Walmart was charged the same amount as Hunziker and did not object to their billing, having paid in full.

**STAFF COMMENTS:**

While the new signal and median have provided traffic improvements in the corridor, the initial request for the signal came to City Council from Hunziker as their South Pointe retail area was being developed. This was an issue of contention for the dissenting area property owners, whom identified that the signal was being used in marketing materials before City Council ever approved the project.

**As the signal project was being contemplated, discussed, and developed, it was always part of Staff's discussions with Hunziker and Walmart that each partner would share equally in the Iowa DOT grants and in splitting expenses beyond the grant amounts.**

As previously noted, staff spent additional time designing project changes in the field that resulted in construction savings of over \$80,000. **Staff is surprised that Hunziker is taking their position regarding the construction management fee, since the extra cost here resulted in overall savings to the partners and previous discussions emphasized the parties sharing equally in the net costs of the project.**

**However, because the agreement was drafted without noting that the construction administration amount of \$30,000 was an estimate, the City Attorney has advised that the requested \$17,003 should be remitted to Hunziker.**