



Roll Call Number

Agenda Item Number

9

DATE May 18, 2020

APPROVING PRIVATE CONSTRUCTION CONTRACT BETWEEN
THE HANSEN COMPANY, INC. AND
KUM & GO, L.C.
FOR STORM SEWER IMPROVEMENTS IN 3401 UNIVERSITY AVENUE
\$41,000.00

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That the attached contract documents for a Private Construction Contract in the amount of \$41,000.00 between The Hansen Company, Inc., Craig Faber, President, 5665 Greendale Road, Suite A, Johnston, IA, 50131 - as Contractor, and Kum & Go, L.C., Kyle J. Krause, CEO, 1459 Grand Avenue, Des Moines, IA, 50309 - as Owner, for construction of Storm Sewer Improvements described as storm sewer improvements to serve Kum & Go, located at 3401 University Avenue, as shown on Plan File Numbers 609-007/009, be and the same are hereby approved, subject to receipt of contract and bond approved as to form by the Legal Department, and certificate of insurance acceptable to the Engineering Department.

BE IT FURTHER RESOLVED: That permission be and is hereby granted to the parties of said contract to construct said Storm Sewer Improvements in accordance with said contract documents and subject to receipt of contract and bond approved as to form by the Legal Department and certificate of insurance acceptable to the Engineering Department, subject to inspection and approval of the Des Moines City Engineer.



Roll Call Number

Agenda Item Number

9

DATE May 18, 2020

Activity ID: 08-2020-102

Moved by _____ to adopt.

FORM APPROVED:

s/ Kathleen Vanderpool

Kathleen Vanderpool
Deputy City Attorney

MS

Funding Source: All project costs are to be paid by the Owner(s), Kum & Go, L.C.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

I, P. Kay Cmelik, City Clerk of said City Council, hereby certify that at a meeting of the City Council, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk



PRIVATE CONSTRUCTION CONTRACT

THIS PRIVATE CONSTRUCTION CONTRACT (hereinafter "Contract"), made and entered into on the 10th day of, April 2020, by and between The Hansen Company, Inc., (hereinafter called the "Contractor"), and Kum & Go, LC (hereinafter called the "Owner").

WHEREAS, the Owner owns property in the City of Des Moines (hereinafter called the "City" or "Jurisdiction") which requires improvements, as described herein, be constructed for development of the property; and

WHEREAS, the improvements are being constructed at Owner's sole cost and expense; and

WHEREAS, the Contactor is responsible for constructing the improvements as set forth in this Contract; and

WHEREAS, this Contract is to set forth the responsibilities of the Owner and Contractor for construction of the improvements and the conditions and requirements that are to be met before the acceptance of the improvements by the City.

WITNESSETH: That the Contractor and Owner, for the consideration stated herein, agree as follows:

ARTICLE I: DESIGN

Owner represents and agrees that the improvements have been designed in accordance with the current edition of SUDAS (Statewide Urban Standard Design and Specifications) and all other applicable laws, regulations, codes, ordinances and City approved design references.

ARTICLE II: SCOPE OF WORK

The Contractor hereby agrees to complete the work comprising the below referenced improvements as specified in the Contract Documents, which are officially on file in the office of the City Engineer. This Contract includes all Contract Documents, as defined in the SUDAS Standard Specifications, 2020 Edition for the construction of the following improvements:

Storm Sewer Improvements to serve Kum & Go, located at 3401 University Avenue, as shown on Plan File Numbers 609-007/009.

In accordance with Plan File Numbers 609-007/009

The Quantity of work to be done is estimated as shown on Attachment A. The Contractor further agrees to complete the work in strict accordance with said Contract and Contract Documents, and to guarantee the work and improvements as required by law and for the time required in said Contract and Contract Documents, after its acknowledgment of completion and acceptance by the City of Des Moines, Iowa, hereinafter called the "Jurisdiction".

The improvements shall be constructed in accordance with the SUDAS Standard Specifications, 2020 Edition, which were adopted by the City of Des Moines on May 4, 2020 under Roll Call Number 20-0737¹, as further revised by the City of Des Moines General Supplemental Specifications² to the SUDAS Standard Specification, 2020 Edition, all special provisions included in said Contract Documents and all applicable laws, regulations and codes.

¹ The SUDAS Standard Specification may be viewed at the Iowa SUDAS website: <https://iowasudas.org/manuals/specifications-manual/> or can be purchased online at the Iowa SUDAS website at <https://iowasudas.org/order-the-manuals/>.

² https://www.dsm.city/document_center/Engineering%20and%20Traffic%20Forms%20and%20Documents/ENG-Publications/Notice%20to%20Contractors%20and%20Consultants%202020%20Edition.pdf?pdf=Notice%20to%20Consultants%20and%20Contractors-2020%20SUDAS&t=1588708706725

ARTICLE III: CITY IS THIRD PARTY BENEFICIARY

The Owner and Contractor expressly agree that the City is a third-party beneficiary of this Contract. Owner and Contractor acknowledge and agree that the improvements to be constructed under this Contract are intended to be conveyed to the City. As such, Owner and Contractor expressly agree that services are being indirectly provided to the City under this Contract, that the City is a third party beneficiary of this Contract with respect to the improvements which it is constructing and that the provisions of this Contract shall inure to the benefit of and shall be enforceable by the City as if it were the Owner hereunder. Owner and Contractor acknowledge and agree that they are contractually obligated to the City pursuant to this provision. All cost of construction of the improvements shall be at the sole cost and expense of the Owner and at no expense to the City.

ARTICLE IV: COMMENCEMENT AND COMPLETION OF WORK

The Contractor hereby agrees to commence the work not later than May 19th, and to fully complete the work and improvements, all punch list items and final clean up and provide applicable as built plans not later than May 29th.

ARTICLE V: APPROVAL OF PLANS AND SPECIFICATIONS

The Owner must obtain written approval of the City Engineer of the plans and specifications for the improvements. Any changes to those plans and specifications or Contract Documents once approved by the City Engineer must also be approved in writing by the City Engineer.

ARTICLE VI: MAINTENANCE REQUIREMENTS

The Contractor hereby agree, at their own expense:

- A. To remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of four (4) years from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of said work;
- B. To keep all work in continuous good repair; and
- C. To pay the Jurisdiction's reasonable costs of monitoring and inspecting to assure that any defects are remedied, and to repay the Jurisdiction all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

Contractor's agreement herein made extends to defects in workmanship or materials not discovered or known to the Jurisdiction at the time such work was accepted.

ARTICLE VII: THE CONTRACT SUM

Upon performance of this Contract by the Contractor, the Owner shall pay to the Contractor the lump sum of Forty One Thousand and 00/100 dollars (\$ 41,000), or the total amount based upon the actual quantities constructed and the unit prices listed on Attachment A, which payment shall be in full compensation and settlement for the work. Except as hereafter provided, the details regarding actual payment by the Owner to the Contractor for compensation for work completed shall be between the Owner and the Contractor. The City shall hold the Owner and Contractor responsible for the completion of the work and improvements, until final acceptance is made. Said final acceptance means a certificate of completion of the project, submitted by the Des Moines City Engineer to the Des Moines City Council with written acceptance by the Des Moines City Council by approval of a resolution accepting the improvements. Such certification, approval and acceptance shall not constitute an acceptance of any unauthorized work, and no approval, acceptance or payment shall constitute an acceptance of unauthorized or defective work or improper material.

ARTICLE VIII: GENERAL

A. ENGINEERING SERVICES AND INSPECTIONS

The Contractor agrees to comply with all procedures required by the Jurisdiction to include, but not limited to: plan check, testing, and construction inspection(s). The Jurisdiction reserves the right to inspect all work on said improvements to the same standard as if the improvement was a Jurisdiction-funded public improvement. The Owner shall hire a licensed surveyor to do all survey work needed for this Contract including an as-built survey. The surveyor shall contact the Jurisdiction regarding format and information required on the as-built survey.

B. INSPECTION COORDINATION

The Contractor shall contact the Des Moines Engineering Department at 515-283-4177 (or cellular 515-208-4177), 24-hours before beginning construction and coordinate with Des Moines Engineering Department for inspection. The Contractor shall make arrangements and accommodate inspections by the Jurisdiction. Failure to have inspections as required may result in the City requiring the Contractor to remove and replace some or all of the work or may result in the City not accepting the improvements. The Contractor shall notify the Owner and the City Engineer in writing when all construction work, including the punch list and final cleanup, is completed; so that the City Engineer can make a final inspection of the work, and the Owner can order the as-built survey if required and have the surveyor file a monument preservation certification in accordance with Iowa Code 355.11 (if applicable).

C. FEES PAID BY THE OWNER AND/OR CONTRACTOR

The Owner and/or Contractor agree to obtain all federal, state, and local permits and pay all fees necessary for the Contract work including, but not limited to, Grading and NPDES permits. The Owner agrees to pay the City's administrative, inspection, and testing fees in accordance with Section 94-321 of the Des Moines City Code, at the time the private construction Contract is submitted to the City Engineer for review and prior to presentation to City Council for approval and permission to construct the improvement. Said fees were established by the City Council on December 18, 2002, under Roll Call No. 02-3007 as follows:

Description of Service/Permit	Fee
Administrative Fee for private construction contracts	\$900.00 per contract
Inspection and Testing Fee for private Paving construction contracts	6% of the first \$30,000 of construction contract cost and 2% thereafter
Inspection and Testing Fee for private Sanitary Sewer construction contracts	8% of the first \$30,000 of construction contract cost and 3% thereafter
Inspection and Testing Fee for private Storm Sewer construction contracts	8% of the first \$30,000 of construction contract cost and 2% thereafter

Payment should be made payable to the City of Des Moines and presented with this contract

FEE CALCULATION

Enter data for this contract and calculate fees below, which is the sum of the \$900.00 administrative fee plus the inspection and testing fees based upon the contract costs. (See instructions for example calculations.)

Paving Fee: Construction Amount \$ _____

Administrative Fee: \$900.00 \$ _____

Inspection and Testing Fee:

- 6% of first \$30,000 of paving construction cost \$ _____

- 2% of the remaining paving construction cost over \$30,000 \$ _____

Total Paving Fee: \$ _____

Sanitary Sewer Fee: Construction Amount \$ _____

Administrative Fee: \$900.00 \$ _____

Inspection and Testing Fee:

- 8% of first \$30,000 of sanitary sewer construction cost \$ _____

- 3% of the remaining sanitary sewer construction cost over \$30,000 \$ _____

Total Sanitary Sewer Fee: \$ _____

Storm Sewer Fee: Construction Amount \$ 41000 _____

Administrative Fee: \$900.00 \$ 900 _____

Inspection and Testing Fee:

- 8% of first \$30,000 of storm sewer construction cost \$ 2,400 _____

- 2% of the remaining storm sewer construction cost over \$30,000 \$ 220 _____

Total Storm Sewer Fee : \$ 3,520 _____

D. BONDS, INSURANCE AND INDEMNITY

The Contractor agrees to provide the insurance required by Section 1070, Part 3 – Bonds and Insurance, of said Standard Specifications through the period of operations covered by this Contract until acknowledgment of completion and/or acceptance by the Des Moines City Council; and the Contractor shall defend, indemnify, and hold harmless the Jurisdiction and its officers, agents, and employees in accordance with Section 1070, 3.03 Contractor's Indemnity - Contractual Liability Insurance. The Contractor agrees to provide, on the form provided, a Performance, Payment and Maintenance Bond in the full amount of this Contract with the maintenance period of four years.

E. NON-DISCRIMINATION

The Contractor hereby acknowledges and agrees to comply with any and all applicable provisions of the Des Moines Human Rights Ordinance, Chapter 62 of the Des Moines Municipal Code. The Contractor specifically agrees not to discriminate against any employees or applicants for employment on the basis of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status. The Contractor further agrees to include this provision in all subcontracts for this project.

F. PUNCH LIST ITEMS AND FINAL COMPLETION

The Contractor is responsible for timely completion of the improvements in accordance with Article III, including construction of the improvements, completion of all punch list items, final cleanup and providing the as-built survey to the City that also indicates whether the surveyor was required to file a monument preservation certification in accordance with Iowa Code 355.11. **All those items must be completed by the dates set forth in Article IV, or the Contractor will be in violation of this Contract.**

G. CITY'S STANDARD FORM CONTRACT CONTROLS

The Owner and the Contractor acknowledge that this Contract has been prepared utilizing a standard City of Des Moines contract form provided by the City or downloaded from the City's website in PDF (Portable Document Format). The Owner and Contractor represent that no changes have been made to the form of this Contract other than to insert required information and text in text boxes provided for that purpose, and they agree that unauthorized changes made to the form of the contract shall not be binding on them or on the City and that the form of the contract as it appears on the City's website shall govern and be binding on the parties to this Contract.

H. SURVEY MONUMENT PRESERVATION

The Owner and Contractor are responsible to fully comply with Section 355.6A of the Iowa Code and shall hire or cause to be hired a licensed professional surveyor to determine if a monument (such as a property corner, section corner, survey control) is likely to be disturbed or removed prior to construction and provide that information to the City before construction begins. The surveyor shall locate and preserve the monuments likely to be disturbed or removed, in the manner provided in section 355.6A. In accordance with Iowa Code 355.11, United States Public Land Survey Corner Monuments shall be preserved and/or replaced.

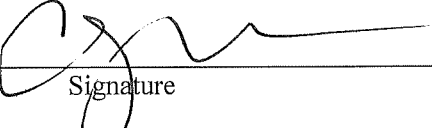
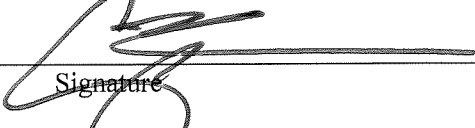
I. NPDES PERMIT AND STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS

If the work under this Contract disturbs one or more total acres, this Contract is subject to Section 402(b) of the Clean Water Act and Iowa Code Section 455B.174 and Iowa Administrative Code 567-64.4 (projects disturbing one or more total acres) and requires inclusion in the National Pollution Discharge Elimination System (NPDES) General Permit No. 2, or an individual NPDES Permit for stormwater (also storm water) discharge associated with industrial activity for construction activities. All work shall be in accordance with Section 9040 – Erosion and Sediment Control of the SUDAS Standard Specifications. The revisions to Section 9040 – Erosion and Sediment Control that are included in the City of Des Moines General Supplemental Specifications to the current SUDAS Standard Specification, as referenced above, shall not apply. The Owner, and its Contractor, shall be totally responsible for all Erosion and Sediment Control work including preparing the storm water pollution prevention plan, publications, notices, fees, fines, and all stormwater pollution prevention work.

J. TREE PROTECTION SUPPLEMENTAL SPECIFICATIONS

- A. **WORK ON PRIVATE PROPERTY:** Chapter 42, Article X, Tree Removal and mitigation, of the Municipal Code of the City of Des Moines shall apply.
- B. **WORK ON PUBLIC RIGHT OF WAY:** The City of Des Moines Supplemental Specification for Tree Protection shall apply to this private Construction Contract. The Supplemental Specification for Tree Protection is available from the City Engineer's Office and is also available at the following link: <https://www.dsm.city/TreeProtectionRegulations>

IN WITNESS WHEREOF, the Parties hereto have caused this Instrument to be executed in four (4) original counterparts as of the day and year first above written.

OWNER	CONTRACTOR
Kum & Go, LC	The Hansen Company, Inc.
Owner's Name	Contractor's Name
By 	By 
Signature	Signature
Charles Campbell	Craig Faber
Printed Name	Printed Name
General Council and Secretary, Legal	President
Title	Title
1459 Grand Ave	5665 Greendale Road, Suite A
Address	Address
Des Moines, Iowa 50309	Johnston, Iowa 50131
City, State, Zip Code	City, State, Zip Code
515-771-6776	515-229-5291
Telephone Number	Telephone Number
perry.dephillips@kumandgo.com	leeh@hansencompany.com
Email Address	Email Address
Type or print the name and title of the company's owner, president, CEO, etc. if a different person than entered above.	Type or print the name and title of the company's owner, president, CEO, etc. if a different person than entered above.
Name	Name
Title	Title

CONTRACTOR IDENTIFICATION INFORMATION To Be Provided By:

1. All Contractors: Contractor's public registration number issued by the Iowa Commissioner of Labor pursuant to Section 91C.5 of the Iowa Code: C096016.
2. Out-of-State Contractors: Contractor's Bond (State of Iowa, Division of Labor, Out-of-State Contractor Project Bond) pursuant to Section 91C.7 of the Iowa Code
Bond No: 30091873
Name of Surety: Western Surety Company

NOTE: All signatures on this contract must be original signatures in ink; copies or facsimile of any signature will not be accepted.

ATTACHMENT A

In accordance with Article II: Scope of Work, the Quantity of work to be done is estimated on this Private Construction Contract Attachment A as listed below.

In accordance with Article IV: The Contract Sum is the compensation to be paid by the Owner to the Contractor.

- If the Contractor is to be paid based upon a lump sum price, this amount should be entered on the Contract and only the Item Number, Description, and Quantity of the work as shown on the construction plans need to be listed below.
- If the Contractor is to be paid based upon the total amount of the actual quantities constructed instead of based upon a lump sum price, then the Item Number, Description, and Estimated Quantities of work as shown on the construction plans as well as the Unit Prices, and Total Prices are to be listed below, and the total contract sum should be entered in the space provided for the contract sum on the Contract.

Item No.	Description	Quantity	Unit Price	Total Price
1	Removal of existing storm sewer curb Inlet and 15" line in 31st Street and replace with 18" storm line and new Inlet structure.	1	41,000	41,000
	Approximately 38' of storm sewer. Includes street demo and patch.			
	Activity ID: 08-2020-102, Plan File Number: 609-007/009.			
TOTAL CONTRACT SUM:				41,000

OWNER'S CORPORATE ACKNOWLEDGEMENT

State of _____)
_____ County) SS

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____ and _____, to me known, who, being by me duly sworn, did say that they are the _____, and _____, respectively, of the corporation executing the foregoing instrument; that (no seal has been procured by) (the seal affixed thereto is the seal of) the corporation; that said instrument was signed (and sealed) on behalf of the corporation by authority of this Board of Directors; that _____ and _____ acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

Notary Public in and for the State of _____
My commission expires _____

OWNER'S PARTNERSHIP ACKNOWLEDGMENT

State of _____)
_____ County) SS

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____ to me personally known, who being by me duly sworn, did say that the person is one of the partners of _____, a partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.

Notary Public in and for the State of _____
My commission expires _____

OWNER'S INDIVIDUAL ACKNOWLEDGEMENT

State of _____)
_____ County) SS

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____ and _____, to me known to be the identical person(s) named in and who executed the foregoing instrument, and acknowledged that (he) (she) (they) executed the instrument as (his) (her) (their) voluntary act and deed.

Notary Public in and for the State of _____
My commission expires _____

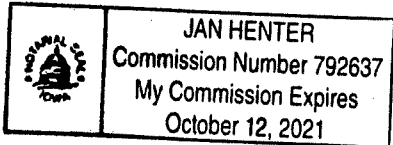
OWNER'S LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

State of Iowa)
Polk County) SS

On this 10th day of April, 2020, before me a Notary Public in and for said county, personally appeared Charles Campbell, to me personally know, who being by me duly sworn did say that person is General Counsel and Secretary of said Kum & Go, LC, that ~~(the seal affixed to said instrument is the seal of~~ said OR no seal has been procured by the said) Kum & Go, LC, and that said instrument was signed and sealed on behalf of the said Kum & Go, LC, by authority of its managers and the said Charles Campbell acknowledged the execution of said instrument to be the voluntary act and deed of said Kum & Go, LC, by it voluntarily executed.

JAN HENTER

Notary Public in and for the State of Iowa
My commission expires 10-12-2021



AMERICAN
COMMISSION ON INTER-STATE
AND DISTRICT COURTS
WASHINGTON, D. C.

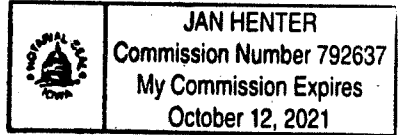


CONTRACTOR'S CORPORATE ACKNOWLEDGEMENT

State of Iowa)
) SS
Polk County)

On this 10th day of April, 2020, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Craig Faber and N/A, to me known, who, being by me duly sworn, did say that they are the President, and N/A, respectively, of the corporation executing the foregoing instrument; that (no seal has been procured by) (the seal affixed thereto is the seal of) the corporation; that said instrument was signed (and sealed) on behalf of the corporation by authority of this Board of Directors; that Craig Faber and N/A acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

[Signature]
Notary Public in and for the State of Iowa
My commission expires 10-12-2021



CONTRACTOR'S PARTNERSHIP ACKNOWLEDGMENT

State of _____)
) SS
_____ County)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____ to me personally known, who being by me duly sworn, did say that the person is one of the partners of _____, a partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.

Notary Public in and for the State of _____
My commission expires _____

CONTRACTOR'S INDIVIDUAL ACKNOWLEDGEMENT

State of _____)
) SS
_____ County)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the State of _____, personally appeared _____ and _____, to me known to be the identical person(s) named in and who executed the foregoing instrument, and acknowledged that (he) (she) (they) executed the instrument as (his) (her) (their) voluntary act and deed.

Notary Public in and for the State of _____
My commission expires _____

CONTRACTOR'S LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

State of _____)
) SS
_____ County)

On this _____ day of _____, 20____, before me a Notary Public in and for said county, personally appeared _____, to me personally known, who being by me duly sworn did say that person is _____ of said _____, that (the seal affixed to said instrument is the seal of said OR no seal has been procured by the said) _____, and that said instrument was signed and sealed on behalf of the said _____, by authority of its managers and the said _____ acknowledged the execution of said instrument to be the voluntary act and deed of said _____, by it voluntarily executed.

Notary Public in and for the State of _____
My commission expires _____

WARRANT
Commission Order 10057
My Commission Expires
October 15, 2012





PERFORMANCE, PAYMENT & MAINTENANCE BOND
FOR PRIVATE CONSTRUCTION CONTRACTS

KNOW ALL MEN BY THESE PRESENTS:

That we, The Hansen Company, Inc., as Principal (hereinafter the "Contractor" or "Principal") and Western Surety Company, as Surety are held and firmly bound unto the City of Des Moines, Iowa, as Obligee (hereinafter referred to as the "Jurisdiction"), and to all persons who may be injured by any breach of any of the conditions of this Bond in the penal sum of Forty One Thousand and 00/100 dollars (\$ 41,000.00), lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, legal representative and assigns, jointly or severally, firmly by these presents.

The conditions of the above obligations are such that whereas said Contractor entered into a Private Construction Contract with Kum & Go, LC (hereinafter the "Owner"), bearing date the 10th day of April, 20 20, (hereinafter the "Contract") wherein said Contractor undertakes and agrees to construct the following described improvements:
Storm Sewer Improvements to serve Kum & Go, located at 3401 University Avenue, as shown on Plan File Numbers 609-007/009.

with the work further described in the Contract Attachment A, and to faithfully perform all the terms and requirements of said Contract within the time therein specified, in a good and workmanlike manner, and in accordance with the Contract Documents. Principal and Surety agree that the Obligee is a third party beneficiary under the Contract and the provisions of the Contract shall inure to the benefit of and shall be enforceable by the Obligee.

It is expressly understood and agreed by the Contractor and Surety in this Bond that the following provisions are a part of this Bond and are binding upon said Contractor and Surety, to-wit:

1. **PERFORMANCE:** The Contractor shall well and faithfully observe, perform, fulfill and abide by each and every covenant, condition and part of said Contract and Contract Documents, by reference made a part hereof, for the above referenced improvements, and shall indemnify and save harmless the Jurisdiction from all outlay and expense incurred by the Jurisdiction by reason of the Contractor's default or failure to perform as required. The Contractor shall also be responsible for the default or failure to perform as required under the Contract and Contract Documents by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.
2. **PAYMENT:** The Contractor and Surety on this Bond are hereby agreed to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract on account of which this Bond is given, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used by the Contractor or any subcontractor, wherein the same are not satisfied out of the portion of the Contract price which the Owner retains until completion of the improvements.
3. **MAINTENANCE:** The Contractor and the Surety on this Bond hereby agree, at their own expense:
 - A. To remedy any and all defects that may develop in or result from work to be performed under the contract within the period of four (4) years from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of said work;
 - B. To keep all work in continuous good repair; and
 - C. To pay the Jurisdiction's reasonable costs of monitoring and inspecting to assure that any defects are remedied, and to repay the Jurisdiction all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

Contractor's and Surety's agreement herein made extends to defects in workmanship or materials not discovered or known to the Jurisdiction at the time such work was accepted.

4. **GENERAL:** Every Surety on this Bond shall be deemed and held, any contract to the contrary notwithstanding, to the following provisions:
 - A. To consent without notice to any extension of time to the Contractor in which to perform the Contract;
 - B. To consent without notice to any change in the Contract or Contract Documents, which thereby increases the total contract price and the penal sum of this bond, provided that all such changes do not, in the aggregate, involve an increase of more than twenty percent of the total contract price, and that this bond shall then be released as to such excess increase; and
 - C. To consent without notice that this Bond shall remain in full force and effect until the Contract is completed; whether completed within the specified contract period, within an extension thereof, or within a period of time after the contract period has elapsed and the liquidated damages are being charged against the Contractor.

The Contractor and every Surety on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:

- A. That no provision of this Bond or of any other contract shall be valid which limits to less than five years after the acceptance of the work under the Contract the right to sue on this Bond.
- B. That as used herein, the phrase "all outlay and expense" is not to be limited in any way, but shall include the actual and reasonable costs and expenses incurred by the Jurisdiction including interest, benefits and overhead where applicable. Accordingly, "all outlay and expense" would include but not be limited to all contract or employee expense, all equipment usage or rental, materials, testing, outside experts, attorneys fees (including overhead expenses of the Jurisdiction's staff attorneys), and all cost and expenses of litigation as they are incurred by the Jurisdiction. It is intended the Contractor and Surety will defend and indemnify the Jurisdiction on all claims made against the Jurisdiction on account of Contractor's failure to perform as required in the Contract and Contract Documents, that all agreements and promises set forth in the Contract and Contract Documents, in approved change orders, and in this Bond will be fulfilled, and that the Jurisdiction will be fully indemnified so that it will be put into the position it would have been in had the Contract been performed in the first instance as required.
- C. In the event the jurisdiction incurs any "outlay and expense" in defending itself with respect to any claim as to which the Contractor or Surety should have provided the defense, or in the enforcement of the promises given by the Contractor in the Contract, Contract Documents, or approved change orders, or in the enforcement of the promises given by the Contractor and Surety in this Bond, the Contractor and Surety agree that they will make the Jurisdiction whole for all such outlay and expense, provided that the Surety's obligation under this bond shall not exceed 125% of the penal sum of this bond.

In the event that any actions or proceedings are initiated with respect to this Bond, the parties agree that the venue thereof shall be Polk County, State of Iowa. If legal action is required by the Jurisdiction to enforce the provisions of this Bond or to collect the monetary obligation incurring to the benefit of the Jurisdiction, the Contractor and the Surety agree, jointly and severally, to pay the Jurisdiction all outlay and expense incurred therefor by the Jurisdiction. All rights, powers, and remedies of the Jurisdiction hereunder shall be cumulative and not alternative and shall be in addition to all rights, powers and remedies given to the Jurisdiction, by law. The Jurisdiction may proceed against Surety for any amount guaranteed hereunder whether action is brought against the Contractor or whether Contractor is joined in any such action or actions or not.

5. CITY'S STANDARD BOND FORM CONTROLS: The Contractor and Surety acknowledge that this bond has been prepared utilizing a standard City of Des Moines bond form provided by the City or downloaded from the City's website in PDF (Portable Document Format). The Contractor and Surety represent that no changes have been made to the form of the Bond other than to insert required information and text in text boxes provided for that purpose, and they agree that unauthorized changes made to the standard bond form shall not be binding on them or on the City and that the standard bond form as it appears on the City's website shall govern and be binding on the parties to this Bond.

NOW THEREFORE, the condition of this obligation is such that if said Principal shall faithfully perform all of the promises of the Principal, as set forth and provided in the Contract, in the Contract Documents, and in this Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

When a word, term, or phrase is used in this Bond, it shall be interpreted or construed first as defined in this Bond, the Contract, or the Contract Documents; second, if not defined in the Bond, Contract, or Contract Documents, it shall be interpreted or construed as defined in applicable provisions of the Iowa Code; third, if not defined in the Iowa Code, it shall be interpreted or construed according to its generally accepted meaning in the construction industry; and fourth, if it has no generally accepted meaning in the construction industry, it shall be interpreted or construed according to its common or customary usage.

Failure to specify or particularize shall not exclude terms or provisions not mentioned and shall not limit liability hereunder. The Contract and Contract Documents are hereby made a part of this Bond.

Witness our hands, in quadruplicate, this 10th day of April, 2020.

PRINCIPAL:
<u>The Hansen Company, Inc.</u> Contractor's Name
By <u>[Signature]</u> Signature
<u>CRIG FABER</u> Printed Name
<u>PRES</u> Title

SURETY:
<u>Western Surety Company</u> Surety Company
<u>[Signature]</u> Signature Attorney-in-Fact/Officer
<u>Dione R. Young, Attorney-in-Fact</u> Name of Attorney-in-Fact/Officer
<u>Holmes, Murphy and Associates, LLC</u> Company Name
<u>2727 Grand Prairie Parkway</u> Company Address
<u>Waukee, IA 50263</u> City, State, Zip Code
<u>(515) 223-6800</u> Company Telephone Number

FORM APPROVED BY:
<u>[Signature]</u> Signature- Attorney for Jurisdiction

NOTE:

1. All signatures on this performance, maintenance & payment bond must be original signatures in ink; copies or facsimile of any signature will not be accepted.
2. This bond must be sealed with the Surety's raised, embossing seal.
3. The Certificate of Power of Attorney accompanying this bond must be valid on its face and sealed with the Surety's raised, embossing seal.
4. The name and signature of the Surety's Attorney-in-Fact/Officer entered on this bond must be exactly as listed on the Certificate or Power of Attorney accompanying this bond.

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Dione R. Young, Craig E. Hansen, Brian M. Deimerly, Cindy Bennett, Lacey Cramblit, Anne Crowner, Stacy Venn, Shirley S. Bartenhagen, T. Mc Culloh, Jay D. Freiermuth, Individually

of West Des Moines, IA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 8th day of February, 2016.



WESTERN SURETY COMPANY

Paul T. Brufat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 8th day of February, 2016, before me personally came Paul T. Brufat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

June 23, 2021



J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this **10th** day of **April, 2020**



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.