Council Agenda Memo

Meeting Date: 5/7/2020
Section: Consent Agenda (1)
Item Number: E.1a

AGENDA ITEM TITLE:
E.1 Motion to approve Project Calendar regarding Engineering Department payments as follows:
   a. Resolution No. ___ approving Partial Payment No. 9 to Price Industrial Electric regarding the 2019 Highway 13 and Hennessey Parkway Traffic Signal and Turn Lane Improvements Project in the amount of $67,141.72. (TRANS-18-074).

ACTION REQUESTED/RECOMMENDED: Approval of Resolution

BUDGET INFORMATION:

<table>
<thead>
<tr>
<th>Was this expenditure budgeted?</th>
<th>Yes</th>
<th>Budget Status: On Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount</td>
<td>$550,000.00</td>
<td></td>
</tr>
<tr>
<td>GL Account</td>
<td>301.750.6750</td>
<td></td>
</tr>
<tr>
<td>CIP #</td>
<td>TRANS-18-074</td>
<td></td>
</tr>
</tbody>
</table>

*If multiple accounts, list below in summary

If the matter was not budgeted, explain why funding is requested?
N/A

SUMMARY/EXPLANATION:
Staff recommends approving Partial Payment No. 9.

BACKGROUND/PREVIOUS COUNCIL ACTION:
On 3.21.19 City Council approved a MOA with Squaw Creek Crossing.
On 3.21.19 City Council approved the Project Calendar for this project.
On 5.9.19 City Council held a Public Hearing and awarded a contract to Price Industrial.
On 5.23.19 City Council approved the contract with Price Industrial.
On 6.20.19 City Council approved Change Order #1
On 8.8.19 City Council approved Change Order #3

CONTACT INFORMATION:

| Original Contract: | $574,843.95 |
| Total Change Order(s): | $14,013.10 |
| Total Contract: | $588,8587.05 |

| Amount Expended to Date: | $573,416.65 |
| Percent Expended to Date: | 97.4% |

STAFF CONTACT:
Michael D. Barkalow, P.E. & L.S.I., City Engineer
319.743.6340
mbarkalow@cityofmarion.org
AGENDA ITEM TITLE:
E.1 Motion to approve Project Calendar regarding Engineering Department payments as follows:
   b. Resolution No. ___ approving Partial Payment No. 6 to Boomerang Corp. regarding the 2019 RCB Culvert Under Central Avenue North of Indian Creek Project in the amount of $35,737.96. (TRANS-18-092).

ACTION REQUESTED/RECOMMENDED: Approval of Resolution

BUDGET INFORMATION:
Was this expenditure budgeted? Yes
Budget Status: On Budget
Amount: $2,300,000.00
GL Account: 301.750.6750
CIP # TRANS-18-092

*If multiple accounts, list below in summary

If the matter was not budgeted, explain why funding is requested?
N/A

SUMMARY/EXPLANATION:
Staff recommends approving Partial Payment No. 6.

BACKGROUND/PREVIOUS COUNCIL ACTION:
On November 21, 2017, the City of Marion awarded a contract to Snyder and Associates regarding the Alburnett Road Extension –Phase I (Indian Creek Bridge) in an amount of $417,450.00. [Resolution No. 26554] [CIP Project No. TRANS-18-092]. On March 7, 2019 City Council approved a contract amendment to add an additional $46,550.00. [Resolution No. 27483]. Total contract to date is $464,000.00

On 4.4.19 City Council approved the Project Calendar for this project.
On 5.23.19 City Council held a Public Hearing and awarded a contract to Boomerang Corp.
On 6.6.19 City Council approved the contract with Boomerang Corp.

CONTRACT INFORMATION:
Original Contract: $677,777.00 Amount Expended to Date: $634,129.26
Total Change Order(s): $2,534.00 Percent Expended to Date: 93.2% [w/ CO]
Total Contract: $680,311.00

STAFF CONTACT:
Michael D. Barkalow, P.E. & L.S.I., City Engineer
mbarkalow@cityofmarion.org
AGENDA ITEM TITLE:
E.1 Motion to approve Project Calendar regarding Engineering Department payments as follows:
c. Resolution No. ___ approving Partial Payment No. 2 to Universal Field Services Inc.
   regarding the 10th & 10th Mini Roundabout Project Property Acquisition Services in the
   amount of $1380.00. (TRANS -18-089)

ACTION REQUESTED/RECOMMENDED: Approval of Resolution

BUDGET INFORMATION:
Was this expenditure budgeted? N/A  Budget Status: N/A
Budget Amt: ____________________  *If multiple accounts, list below in summary
GL Account: 301.750.6750
CIP # TRANS-18-089

If the matter was not budgeted, explain why funding is requested?
Extension of the contact with Universal Field Services for acquisition services.

SUMMARY/EXPLANATION:
Staff recommends partial payment number 2.

BACKGROUND/PREVIOUS COUNCIL ACTION:
City Council approved the original contract with Universal Field Services for acquisition services
related to the Central Corridor by Council Resolution No. 24861 on September 17, 2015.

City Council approved extending the contract with Universal Field Services for this project on 4.9.20.
[Resolution No. 28358]

CONTRACT INFORMATION:
Original Contract: ____________________  Amount Expended to Date: $2,745.45
Total Change Order(s): ____________________  Percent Expended to Date: __________
Total Contract: ____________________

STAFF CONTACT:
Michael D. Barkalow, P.E. & L.S.I., City Engineer
319.743.6340
mbarkalow@cityofmarion.org
AGENDA ITEM TITLE:
E.2 Resolution No. ___ approving permanent encroachment easement agreement with Synergy Equity Partners, LLC regarding the Irish Drive extension project. (TRANS-18-112)

ACTION REQUESTED/RECOMMENDED: Approval of Resolution

BUDGET INFORMATION:
Was this expenditure budgeted? N/A Budget Status: N/A

<table>
<thead>
<tr>
<th>Amount:</th>
<th>GL Account:</th>
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*CIf multiple accounts, list below in summary

If the matter was not budgeted, explain why funding is requested?
N/A

SUMMARY/EXPLANATION:

A driveway is being installed per the MOU that was approved by City Council on 7.2.19. A small sliver of land that is owned by the City and is not going to be Right-of-way [ROW] will be needed in order to utilize the driveway to the future development.

This encroachment agreement cleans it up so that the current or future property owner can use the driveway on City property as was intended in the MOU between the City ROW and the private property. See Encroachment Agreement that follows in the packet.
BACKGROUND/PREVIOUS COUNCIL ACTION:
On September 9, 2013 the City Council approved a developer agreement between the City, Mooney Engle Land Company and Curt and Barbra Gill. [Resolution No 23384]
On September 6, 2018 the City Council approved the purchase of the Gill property. [Resolution No. 27138]
On June 6, 2019 the City Council approved the Irish Drive Project Calendar.

CONTRACT INFORMATION:

| Original Contract: | N/A | Amount Expended to Date: | N/A |
| Total Change Order(s): | N/A | Percent Expended to Date: | N/A |
| Total Contract: | N/A |

STAFF CONTACT:

| Michael Barkalow, P.E., LSI, City Engineer |
| 743-6340 |
| mbarkalow@cityofmarion.org |
PERMANENT ENCROACHMENT EASEMENT AGREEMENT

That City of Marion, Iowa a municipal corporation (hereinafter “Grantor”), in consideration for the sum of one and no/100 dollars ($1.00) and other valuable consideration, does hereby convey unto Synergy Equity Partners, LLC (hereinafter “Grantee”) a permanent encroachment easement on the following described real estate:

PART OF PARCEL A, PLAT OF SURVEY NO 2299 AS RECORDED IN BOOK 10227, PAGE 553 IN THE OFFICE OF THE LINN COUNTY, IOWA RECORDER DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SECTION 25, TOWNSHIP 84 NORTH, RANGE 7 WEST OF THE 5TH PRINCIPAL MERIDIAN, MARION, LINN COUNTY, IOWA; THENCE S0°59'04"E 309.23 FEET ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 25 TO THE POINT OF BEGINNING; THENCE CONTINUING S0°59'04"E 44.50 FEET ALONG SAID EAST LINE; THENCE N70°20'26"W 19.55 FEET; THENCE NORTHEASTERLY 41.92 FEET ALONG THE ARC OF A 180.00 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY (CHORD BEARS N24°56'53"E 41.82 FEET) TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 373 SQ.FT. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

WHEREAS, Grantor is the fee simple title holder of the Property; and

WHEREAS, it is the understanding between the Grantor and Grantee that Grantee proposes to use the easement area for a driveway to access Grantee’s business.

NOW THEREFORE, Grantor, its heirs, successors, and assigns, by this Agreement grants to Grantee a permanent encroachment easement for the purpose of providing access to Grantee’s business, subject to the following terms and conditions:

1. Permanent Easement: Grantor hereby grants to the Grantee a permanent encroachment easement for the purpose of providing access to Grantee’s business on property more particularly described as the area on the attached Exhibit A. This Easement includes the following rights to the Grantee:

   A. The right to permit general public access by foot, bicycle, ski, motorized, or other non-motorized vehicle.
B. The right to inspect or maintain the area or allow emergency or law enforcement access via motorized or non-motorized vehicles.

C. Adequate protection thereof and also a right-of-way with right of ingress and egress thereto, over, through, and across the Easement.

D. The right to enter onto land beyond the Easement area and conduct emergency repair which may extend minimally beyond the Easement area, without obtaining a separate temporary easement. Grantee’s right to do such work shall be effective only upon Grantee’s prior notice to Grantor, and with minimal disruption of area. In the event of such emergency repair, Grantee agrees to restore said area substantially to its prior condition.

E. Grantor hereby covenants with Grantee that Grantor is lawfully seized and possessed of the real estate above described by virtue of legal and/or equitable title, and that it has good and lawful right to convey the Easement herein subject to the following mortgages, judgments, liens, and encumbrances: NA.

2. **Improvements and Obstructions:** The Grantor further agrees to erect no building, obstructions, or other improvements upon or under the Permanent Easement which would interfere with the Grantee’s rights to use the area in accordance with the rights granted herein without first obtaining written permission from the Grantee, which permission shall not be unreasonably withheld.

   Furthermore, Grantee acknowledges that the area remains part of a public right-of-way and may be utilized, entered onto, or crossed by the general public, and Grantee shall not interfere with the general public’s use without first obtaining written permission from the Grantor.

3. **Maintenance:** The Grantee agrees to be solely responsible for any and all costs and expenses of maintenance, repair, upkeep, improvement, or the like whatsoever of the Easement Area.

   Grantee shall indemnify Grantor and hold Grantor harmless from and against any and all claims, damages, causes of action, loss or expenses whatsoever, including without limitation attorney fees and expenses, arising out of or in any manner related to the Grantee’s exercise of its easement rights herein by Grantee or Grantor’s clients, employees, contractors, agents, representatives, invitees, licensees, or permittees or any member of the general public, of the easements granted herein.

4. **Crossing Easement Area:** Grantor, for itself and its successors and assigns, reserves the right to cross the area constructed by Grantee, by way of pedestrian or vehicular traffic, in a reasonable manner, at reasonable times, and at reasonable locations as may be
reasonably necessary from time to time and reasonably connected to Grantor’s use of the Property and any adjacent real estate owned by Grantor.

5. **Reciprocal grants:** Grantee, in consideration of receipt of the Easements granted herein, hereby agrees as follows:

A. Grantor and Grantee acknowledge that Grantor reserves the right to use said Easement area for purposes which will not interfere with Grantee’s full enjoyment of its rights hereby granted; provided, that Grantor shall not erect or construct any building or other structures that are permanent in nature or that cannot be moved or relocated; plant any trees; drill or operate any well; construct any reservoirs or other permanent obstructions on said Easement area; and will not diminish or add to the ground cover over said Easement area. Grantor shall not permit any other utility to be put in the Easement area without prior written consent of Grantee. In the event the Grantee must disturb or remove trees and shrubs pursuant to its easement rights described above, Grantee shall not be required to compensate Grantor for the same.

B. Grantee further agrees that nothing in this Easement agreement shall in any way preclude Grantor from causing, allowing or permitting utilities to cross the Easement area, but only upon Grantee’s approval, which approval shall not be unreasonably withheld, and only if said utilities cross the Easement area in a way as to limit the disturbance of the Easement area.

C. This agreement shall be recorded at the Linn County Recorder’s Office at the cost of the Grantor.

6. **Mutual Indemnify Clause:** The Grantor and Grantee shall indemnify and holds harmless each other, its employees, representatives and agents against all claims, liabilities, losses or damage for personal injury and/or property damage or any other damage whatsoever on account of the activity described above and/or deviation from normal regulations in the area. The Grantor and Grantee further agree to indemnify and hold harmless each other, its employees, representatives and agents against any loss, injury, death or damage to person or property and against all claims, demands, fines, suits, actions, proceedings, orders, decrees and judgments of any kind or nature and from and against any and all costs and expenses including reasonable attorney fees which at any time may be suffered or sustained by the undersigned or by any person who may, at any time, be using or occupying or visiting the premises of the “Easement” area or be in, on or about the same, when such loss, injury, death or damage shall be caused by or in any way result from or rising out of any act, omission or negligence of any of the undersigned or any occupant, visitor, or user of any portion of the premises or shall result from or be caused by any other matters or things whether the same kind, as, or of a
different kind that the matters or things above set forth.

7. **Successors in Interest:** This Easement Agreement shall be binding upon the Grantor, its heirs, beneficiaries, representatives, successors and assigns. This Easement Agreement is granted to Grantee “in Gross” and shall terminate in the event Grantee:

8. **Construction of Terms:** Words and phrases herein, including the acknowledgment hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to context.

9. **Sunset Clause:** The Grantor or Grantee may request the termination of the Easement by making a written request to the Mayor and City Council of the City of Marion to have the Easement terminated when the following conditions are met:

   A. Use of the driveway that is currently on the area is discontinued by Grantee or its clients;

   B. The Grantor has extenuating circumstances that can be justified. Neither party’s request to terminate this agreement shall be unreasonably withheld.

IN WITNESS WHEREOF I have hereunto affixed my hand this ______ day of __________________, 2020.

CITY OF MARION, IOWA, ATTEST:

___________________________________  ______________________________
Nicolas AbouAssaly, Mayor             Rachel Bolender, City Clerk
STATE OF IOWA, COUNTY OF LINN ss:

On this ______ day of ____________________, 2020 before me, the undersigned, a Notary Public in and for said County, in said State, personally appeared Nicolas AbouAssaly and Rachel Bolender, to me personally known, who being by me dully sworn, did say that they are the Mayor and City Clerk, respectively, of said municipal corporation executing the within and foregoing instrument; that the seal affixed thereto is the seal of said municipal corporation; that said instrument was signed and sealed on behalf of said municipal corporation by authority of City Council of said municipal corporation; and that the said Nicolas AbouAssaly and Rachel Bolender acknowledged the execution of said instrument to be the voluntary act and deed and said municipal corporation, by it and by them voluntarily executed.

___________________________________________
NOTARY PUBLIC