



Newton City Council Agenda

September 18, 2023 - 6:00 PM

View the City Council Meeting:

In Person

City Hall - Council Chambers
101 W 4th St S, Newton, IA 50208

Television

Mediacom Channel
12/85/121.12

Online

newtongov.org/cablecast

Pledge

Pledge of Allegiance

Call to Order

1. Roll Call

Citizen Participation

2. This is the time of the meeting that a citizen may address the Council. After being recognized by the presiding officer, each person will be given three (3) minutes to speak. Elected officials will take comments into consideration; however, this time is not intended for a discussion or entering into a dialogue. Elected officials and City staff will not answer questions or debate a citizen during the *Citizen Participation* portion of the meeting

Consent Agenda

3. September 5, 2023 Regular City Council Meeting Minutes
4. Approve Liquor Licenses for the following: La Cabana Mexican Restaurant Inc.- LC0029523, 2617 1st Ave E, Suite 5&6, Class C Retail Alcohol License, Outdoor Service; Loves Travel Stop #361, 4400 South 22nd Avenue East, Class B Retail Alcohol License
5. Designate October 2, 2023 as a public hearing date for the 1st Budget Amendment for Fiscal year 2023-2024
6. Resolution accepting a Jasper Community Foundation Grant and approving the purchase of a ballistic shield
7. Resolution awarding contract for the Newton SLF Convenience Drop-Off Expansion 2023 Project
8. Resolution authorizing the purchase of two roll-off containers for the Newton Sanitary Landfill
9. Resolution awarding contract for cleaning and inspection of 4 concrete water storage tanks, and 1 steel elevated water tower
10. Resolution approving the purchase of a replacement tarp deployment system for the Newton Sanitary Landfill
11. Approve Bills

Public Hearing

12. Public Hearing on a Resolution approving the Purchase Agreement for city-owned property, Parcel A, of Lot 3, Block B, Guthrie's Subdivision, City of Newton, Jasper County, Iowa
 - The City acquired the subject property through the court petition process under Iowa Code Section 657A.
 - The abutting property owners, Sara and Coy Penning, have offered \$7,000 for the subject property.
 - No other offers were received.
13. Resolution approving the Purchase Agreement for city-owned property, Parcel A, of Lot 3, Block B, Guthrie's Subdivision, City of Newton, Jasper County, Iowa
14. Public Hearing on a Resolution Approving the Purchase Agreement for City-owned Property at 514 South 3rd Avenue East, Newton, Jasper County, Iowa
 - The City acquired the subject property through the court petition process under Iowa Code Section 657A.
 - The abutting property owner, James & Mber D. Hutchinson, has offered \$5,000 for the subject property.
 - No other offers were received.
15. Resolution Approving the Purchase Agreement for City-owned Property at 514 South 3rd Avenue East, Newton, Jasper County, Iowa

Resolution

16. Resolution Authorizing Amended Loan Agreement with Hatch Development Group, L.L.C.
 - Hatch Development and the City of Newton originally entered into a Loan Agreement for an Iowa Finance Authority housing loan program.
 - Hatch Development has requested consideration of an amendment to the IFA Workforce Housing Loan to postpone payments to a future date.
17. Resolution awarding contract for the Arbor Estates Second Addition Construction Project
 - The City, in partnership with the Newton Housing Development Corporation (NHDC), has been working to increase residential subdivision development in northeast Newton.
 - Plans and specifications for the Arbor Estates 2nd Addition subdivision were prepared by Bolton & Menk and placed out for bid.
 - City Staff recommends that Council award a contract for the base bid work plus add-alternate A to McAnich Corp. of Des Moines, Iowa in the amount of \$2,689,109.12.

Staff Report

18. Water Pollution Control Project Updates - Jody Rhone, Utilities Director

Mayor/Council Comments

19. Mayor and Council Comments

Closed Session

20. To Discuss Strategy with Counsel in Matters that Are Presently in Litigation or Where Litigation is Imminent Where its Disclosure Would be Likely to Prejudice or Disadvantage the Position of the Governmental Body in that Litigation, Which Discussions are Exempt from the Open Meetings Law Pursuant to the Provision of Section 21.5(1)(c), Code of Iowa 2023

Return to Open Session

21. Return to Open Session

Closed Session

22. To Discuss Strategy with Counsel in Matters that Are Presently in Litigation or Where Litigation is Imminent Where its Disclosure Would be Likely to Prejudice or Disadvantage the Position of the Governmental Body in that Litigation, Which Discussions are Exempt from the Open Meetings Law Pursuant to the Provision of Section 21.5(1)(c), Code of Iowa 2023

Return to Open Session

23. Return to Open Session

Adjourn

The City of Newton is pleased to provide reasonable accommodations, in compliance with the Americans with Disabilities Act, for those individuals or groups who require assistance to be able to participate in the public meeting. Should special accommodations be required, please contact the City Clerk's Office at least 48 hours in advance of the meeting, at 641-792-2787 to arrange for accommodations to be provided.

Find us online: www.newtongov.org

NEWTON CITY COUNCIL MEETING MINUTES
SEPTEMBER 5, 2023, 6:00 PM

Pledge

Pledge of Allegiance

Mayor Pro Tem Ervin asked everyone present to join in saying the Pledge of Allegiance.

Call to Order

1. Roll Call

The City Council of Newton, Iowa met in regular session at 6:00 P.M. on the above date in the Council Chambers at 101 West 4th Street South. Mayor Pro Tem Ervin presided. Present Council Members: Hallam, Dalton, George, Ervin, Trotter, Wade. Absent: None.

Presentation

2. Utility Meter Reading Technology - Dan Ashworth, Municipal Supply

Ashworth presented the proposed automated meter reading transmitters that would be installed onto everyone's meter. This transmitter has a 2-way communication technology. This would automatically transmit readings and alert staff if there was a leak. It will also allow for staff to perform shutoffs and turn on water electronically. Over the next 5 years, 7000 transmitters will be installed throughout the city.

3. United Way of Jasper County Update - Jessica Lowe Vokes, Executive Director

Lowe Vokes, presented on all of the recent activities United Way has been involved in such as various STEM Programs, a school supply drive, they have provided over \$200,000 in grants to over 14 partner organizations. A winter wear program, a women united program, and a speaker series will be starting soon. Jessica wanted to remind everyone of the volunteering opportunities that they have available. All United Way funding stays in Jasper County.

Citizen Participation

4. Joyce Heck, 415 S 8th Ave E, spoke regarding cemetery rules.

Consent Agenda

Moved by Hallam, seconded by Dalton to approve consent agenda items 5-16. AYES: Six. NAYS: None. Consent Agenda was adopted.

5. August 21, 2023 Regular City Council Meeting Minutes

6. August 21, 2023 Workshop Minutes

7. Approve Liquor License for the following: Kwik Star #1001, Premise Street, 1910 1st Ave E, Class B Retail Alcohol License; Okoboji Grill of Newton LLC, 1425 W 19th St S, Class C Retail Alcohol License, Ownership Change, Outdoor Service, Catering, Sunday Sales

8. Resolution levying assessments for costs of nuisance abatement and providing for the payment thereof (Schedule 23-08)
Resolution 2023-234 adopted.

9. Resolution removing the Agnes Patterson Park Cropland from the 2024-2026 Growing Season Crop Lease Bidding
Resolution 2023-235 adopted.

10. Resolution authorizing payment to Northway Well Corporation for Jordan Well repair from lightning strike
Resolution 2023-236 adopted.

11. Resolution approving a Professional Services Agreement with Bolton & Menk
Resolution 2023-237 adopted.

12. Resolution approving change order #2 for the WPC Plant Improvements Project
Resolution 2023-238 adopted.

13. Resolution Setting Date for Public Hearing on Urban Renewal Plan Amendment for North Central Urban Renewal Area
Resolution 2023-239 adopted.

14. Resolution approving the purchase of equipment for the Police Department
Resolution 2023-240 adopted.

15. Resolution approving lime sludge removal contract with Jon Taylor
Resolution 2023-241 adopted.

16. Approve Bills

Public Hearing

17. Public Hearing on a Resolution Awarding Contract for the Arbor Estates Second Addition Construction Project
Mayor Pro Tem Ervin stated that this is the time and place for a Public Hearing on the above

Resolution. There were no written comments. Jennifer Cook, President of NHDC voiced concerns that the dollar amount increase would not get the results wanted. It was proposed to postpone the vote on the resolution in order to provide additional time to review options. Moved by Trotter, seconded by George to close the public hearing. AYES: Six. NAYS: None. The public hearing was closed. Moved by Wade, seconded by Hallam to postpone the Resolution. AYES: Six. NAYS: None. Resolution is postponed.

18. Resolution Awarding Contract for the Arbor Estates Second Addition Construction Project
Moved by Wade, seconded by Hallam to postpone the Resolution. AYES: Six. NAYS: None. Resolution is postponed.
19. Public hearing on a resolution awarding contract for the Aurora Park Pickleball Courts Construction Project
Mayor Pro Tem Ervin stated that this is the time and place for a Public Hearing on the above Resolution. There were no written comments. Moved by Dalton, seconded by George to close the public hearing. AYES: Six. NAYS: None. The public hearing was closed.
20. Resolution awarding contract for the Aurora Park Pickleball Courts Construction Project

Moved by Hallam, seconded by Trotter to adopt the Resolution. AYES: Six. NAYS: None. Resolution 2023-243 adopted.

21. Public Hearing on a Resolution Awarding Contract for the Maytag Pool Improvements Project
Mayor Pro Tem Ervin stated that this is the time and place for a Public Hearing on the above Resolution. There were no written comments. Moved by Hallam, seconded by Wade to close the public hearing. AYES: Six. NAYS: None. The public hearing was closed.
22. Resolution Awarding Contract for the Maytag Pool Improvements Project
Moved by Hallam, seconded by George to adopt the Resolution. AYES: Six. NAYS: None. Resolution 2023-244 adopted.
23. Public hearing on a resolution rejecting bids for the Westwood Golf Course Clubhouse Project
Mayor Pro Tem Ervin stated that this is the time and place for a Public Hearing on the above Resolution. There were no written comments. City Administrator Muckler indicated that the bid prices all came in way too high. Proposed rebidding as a different structure, staff doing the teardown, and splitting into phases for the parking lot. Moved by Wade, seconded by Hallam to close the public hearing. AYES: Six. NAYS: None. The public hearing was closed.
24. Resolution rejecting all bids for the Westwood Golf Course Clubhouse Project
Moved by Dalton, seconded by George to adopt the Resolution. AYES: Six. NAYS: None. Resolution 2023-245 adopted.
25. Public Hearing on an Ordinance Amending the City of Newton Official Zoning Map for Property Located at 1750, 1770, and 1805 South 8th Avenue East and 600 East 17th Street South from R-2: One and Two-family and R-4: Multi-Family Residential to C-A: Arterial Commercial
Mayor Pro Tem Ervin stated that this is the time and place for a Public Hearing on the above Ordinance. There were no written comments. Moved by Trotter, seconded by Wade to close the public hearing. AYES: Six. NAYS: None. The public hearing was closed.
26. First Consideration of an Ordinance Amending the City of Newton Official Zoning Map for Property Located at 1750, 1770, and 1805 South 8th Avenue East and 600 East 17th Street South from R-2: One and Two-family and R-4: Multi-Family Residential to C-A: Arterial Commercial
Moved by Hallam, seconded by George to approve the first consideration of the Ordinance. AYES: Six. NAYS: None. first Consideration of the Ordinance was approved. Moved by Hallam, seconded by George to suspend the rules and waive the second and third consideration of the Ordinance. AYES: Six. NAYS: None. Motion passed. Moved by Trotter, seconded by Hallam, to adopt the Ordinance. AYES: Six. NAYS: None. Ordinance 2437 was adopted.

Ordinance

27. First Consideration of an Ordinance Amending the Code of Ordinances, City of Newton, Iowa, 2016, Title XV Land Usage, by Rescinding Chapter 159 Commercial Business/Property Code (No Council Report)
Moved by Trotter, seconded by Hallam to approve the first consideration of the Ordinance. AYES: Six. NAYS: None. first Consideration of the Ordinance was approved. Moved by Hallam, seconded by Trotter to suspend the rules and waive the second and third consideration of the Ordinance. AYES: Six. NAYS: None. Motion passed. Moved by Hallam, seconded by Wade, to adopt the Ordinance. AYES: Six. NAYS: None. Ordinance 2438 was adopted.

Resolution

28. Resolution Authorizing Purchase of Sensus Software (Flexnet) and Equipment for Meter Reading Technology for the Utility Billing and Utilities Department from Municipal Supply Inc

Moved by Trotter, seconded by Wade to adopt the Resolution. AYES: Six. NAYS: None. Resolution 2023-246 adopted.

29. Resolution Authorizing Purchase of an Itron AMR System and Software from the Van Wert Company for Utility Billing Meter Reading

Moved by Dalton, seconded by George to adopt the Resolution. AYES: Six. NAYS: None. Resolution 2023-247 adopted.

30. Resolution Authorizing a Utility Meter Reader position in the Administration Department

Moved by George, seconded by Hallam to adopt the Resolution. AYES: Six. NAYS: None. Resolution 2023-248 adopted.

31. Resolution setting a Public Hearing for the Sale of City-owned property at 1011 and 1015 East 9th Street North, City of Newton, Jasper County, Iowa

Moved by Wade, seconded by Hallam to adopt the Resolution. AYES: Five. Dalton recused herself. NAYS: None. Resolution 2023-249 adopted.

32. Resolution approving Phase 3 of the Engineering Services Agreement for the Maytag Pool Play Features Improvement Project

Moved by George, seconded by Hallam to adopt the Resolution. AYES: Six. NAYS: None. Resolution 2023-250 adopted.

Staff Report

33. License Plate Recognition Camera Project - Rob Burdess, Police Chief

Chief Burdess presented the success of using other cameras in the community to help solve crimes. These cameras would be solar powered and only capture pictures of license plates and the back of a vehicle showing the make and model. They would only be used to assist in solving crimes. Many other cities are using the same technology and if the city were to get 10 cameras, we would be included in a shared database. If something was stolen in Newton, we could tell if that vehicle entered Altoona, Des Moines, or one of the many other shared communities. The cameras are \$3000 a piece per year.

34. Fire Department Annual Report - Jarrod Wellik, Fire Chief

Chief Wellik presented the Fire Department Annual Report.

Discussion

35. Cemetery rules

Community Services Director, Brian Laube, indicated that these are not new rules. The department is enforcing existing rules in order to maintain the cemeteries. Laube will be posting the most abused rules at the cemeteries in order to assist with communicating what can and can't be placed on memorials.

Mayor/Council Comments

36. Mayor and Council Comments

Mayor Pro Tem Ervin reminded everyone about the home football game on Friday night.

Adjourn

Moved by Trotter, seconded by Wade to adjourn the meeting at 8:06 P.M. AYES: Six. NAYS: None. Motion unanimously carried by voice vote.

Katrina Davis, City Clerk

Michael L. Hansen, Mayor

City of Newton Council Report

**Item:**

Resolution accepting a Jasper Community Foundation Grant and approving the purchase of a ballistic shield

Summary:

Accept a Jasper Community Foundation grant and purchase a new ballistic shield

Financial Impact:

\$6500.94

Report Number: 2023-1028

Date:

September 18, 2023

Lead Department:

Police

Recommendation:

Approve

Background:

The Police Department is in need of a new ballistic shield due to the old unit being expired and not capable of stopping rifled ammunition. Ballistic shields are utilized by Police Officers for high risk building entry, search warrants, active shooter events and other high risk incidents. The Police Department applied for a grant through the Jasper County Community Foundation and was graciously awarded \$3000 towards the purchase of a new shield. Quotes were received from several vendors and the lowest responsive quote was from Godfrey's Indoor Shooting and Archery Ranges, LLC of Junction City, KS in the amount of \$6500.94. The shield will be paid for through the Jasper County Community Foundation Grant, drug forfeiture funds and Police Department general funds.

Recommendation:

Staff recommends approval of this resolution.

A handwritten signature in black ink, appearing to read "Matt Muckler".

Matt Muckler, City Administrator

RESOLUTION NO. 2023 – _____

**RESOLUTION ACCEPTING A JASPER COMMUNITY FOUNDATION GRANT AND
APPROVING THE PURCHASE OF A BALLISTIC SHIELD**

WHEREAS, The Police Department is in need of a new ballistic shield due to the old unit being expired and past it's usable life; and

WHEREAS, The Police Department applied for and received a \$3000 grant from the Jasper Community Foundation to assist with the purchase of the shield, and

WHEREAS, quotes were received for the shield and the lowest responsive quote was from Godrey's Indoor Shooting and Archery Ranges, LLC of Junction City, KS; and

WHEREAS, The Police Department proposes to accept the grant and purchase the shield in the amount of \$6500.94; and

WHEREAS, The shield will be paid for through the grant funding, forfeiture funds and Police Department general funds.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newton, Iowa agrees to accept the Jasper Community Foundation grant and purchase the shield in the amount of \$6500.94.

PASSED this _____ day of _____, 2023.

APPROVED this _____ day of _____, 2023.

Michael L. Hansen, Mayor

ATTEST:

Katrina Davis, City Clerk

City of Newton Council Report

**Item:**

Resolution awarding contract for the Newton SLF Convenience Drop-Off Expansion 2023 Project

Summary:

Award contract for construction of an extension to the existing PCC customer convenience center in the Newton Sanitary Landfill

Financial Impact:

\$58,250.00 from Landfill Enterprise Funds

Report Number: 2023-1033**Date:**

September 18, 2023

Lead Department:

Public Works

Recommendation:

Approve

Background:

The original customer convenience center has grown in popularity since its original construction in 2014. The current convenience center is now undersized, causing longer lines and wait times. This extension would see four new unloading bays, doubling the capacity of bays and dumpsters. The engineer's estimate for this project was \$64,927.20.

The following submitted quotes were received and opened on Sep 7, 2023:

Company	Bid Price
TK Concrete INC.	\$58,250.00
Minturn Inc	\$103,680.00

The apparent low bidder is TK Concrete, Inc. of Pella, IA, in the amount of \$58,250. The completion date of the project is November 30, 2023. The project will be paid utilizing \$80,000 of available FY24 Landfill Enterprise Funds.

Recommendation:

Staff recommends awarding the project to the lowest responsive, responsible bidder, TK Concrete Inc. of Pella, IA, utilizing Landfill Enterprise Funds.

Matt Muckler, City Administrator

RESOLUTION NO. 2023-_____

**RESOLUTION AWARDING CONTRACT FOR THE
NEWTON SLF CONVENIENCE DROP-OFF EXPANSION 2023PROJECT**

WHEREAS, the original customer convenience center has grown in popularity since its original construction in 2014; and

WHEREAS, the current convenience center is now undersized, causing longer lines and wait times; and

WHEREAS, this extension would see four new unloading bays, doubling the capacity of bays and dumpsters; and

WHEREAS, sealed quotes were received and opened on September 7, 2023; and

WHEREAS, City staff recommends that the City of Newton award a contract to TK Concrete Inc of Pella, IA, with the lowest responsive, responsible bid received in the amount of \$58,250.00; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of Newton, Iowa, that the bid of TK Concrete Inc of Pella, IA, in the amount of Fifty-Eight Thousand Two hundred and Fifty Dollars and Zero Cents (\$58,250.00) for the Newton SLF Convenience Drop-Off Expansion 2023 Project to be paid utilizing Landfill Enterprise Funds, all as described in the plans and specifications, is hereby accepted

BE IT FURTHER RESOLVED, by the City Council of the City of Newton, Iowa, that the Contract and Bond executed by TK Concrete Inc of Pella, IA, for the Newton SLF Convenience Drop-Off Expansion 2023 Project as described by the plans and specifications filed in the office of the City Clerk, said contract to be signed by the Mayor and City Clerk on behalf of the City, be and the same are hereby approved.

PASSED this _____ day of September, 2023.

APPROVED this _____ day of September, 2023.

Michael L. Hansen, Mayor

ATTEST:

Katrina Davis, City Clerk

City of Newton Council Report

**Item:**

Resolution authorizing the purchase of two roll-off containers for the Newton Sanitary Landfill

Summary:

Approval to purchase two additional roll-off containers for the expanded customer convenience center at the landfill

Financial Impact:

\$19,594.00 of available Landfill Enterprise funds

Report Number: 2023-1044**Date:**

September 18, 2023

Lead Department:

Public Works

Recommendation:

Approve

Background:

The Newton Sanitary Landfill 28E board members approved building an extended customer convenience center in January 2023. The customer convenience center project is to be completed in the fall of 2023. Additional roll-off containers will need to be purchased for this project to be utilized by customers to deposit solid waste. The roll-off containers provide an easy method to transport the solid waste to the active landfill cell.

Staff utilized a specification bidding procedure to acquire bids for the roll-off containers. The following quote was received:

Company	Quote per container
Kelly Equipment, Fort Madison, Iowa	\$9,797.00

Kelly Equipment of Ft. Madison, Iowa, was the low bidder with a bid of \$9,797.00 per container for a total price of \$19,594.00 for two containers, including shipping.

Recommendation:

Based on the bid price, City staff recommends purchasing two roll-off containers from Kelly Equipment for a total price of \$19,594.00. The purchase of the roll-off containers will be paid by available landfill enterprise funds.

Matt Muckler, City Administrator

RESOLUTION NO. 2023-_____

**RESOLUTION AUTHORIZING THE PURCHASE OF TWO ROLL-OFF
CONTAINERS FOR THE NEWTON SANITARY LANDFILL**

WHEREAS, the extended customer convenience center project is to be completed in the fall of 2023, and roll-off containers are utilized by customers to deposit their solid waste; and

WHEREAS, roll-off containers provide an easy method to transport solid waste to the active landfill cell, and two additional roll-off containers are needed; and

WHEREAS, city staff utilized a specification bid process to purchase two 40-yard roll-off containers; and

WHEREAS, based on the desired specifications for roll-off containers, the low bid was received from Kelly Equipment of Fort Madison, Iowa, in the amount of \$19,594.00 for two (2) roll-off containers.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newton, Iowa, that the Public Works Director is authorized to purchase two 40-yard roll-off containers from Kelly Equipment of Fort Madison, Iowa in the amount of \$19,594.00. The roll-off containers will be paid utilizing available funds in the landfill enterprise fund.

PASSED this _____ day of September, 2023.

APPROVED this _____ day of September, 2023.

(SEAL)

Michael L. Hansen, Mayor

ATTEST:

Katrina Davis, City Clerk

City of Newton Council Report

**Item:**

Resolution awarding contract for cleaning and inspection of 4 concrete water storage tanks, and 1 steel elevated water tower

Summary:

Award contractor to utilize divers to inspect and clean water storage tanks

Financial Impact:

\$16,250.00 from water revenue funds

Report Number: 2023-1045**Date:**

September 18, 2023

Lead Department:

Utilities

Recommendation:

Approve

Background:

The City of Newton has 4 ground storage tanks, and 1 elevated water tower to hold treated potable water to be distributed to the City of Newton. After a period of time (3-4 years) a few inches of sediment settles to the bottom of the tanks. There is a need to hire a contractor that provides divers to enter the tanks (full) of water and utilize a vacuum system to remove sediment off the floor, and to fully inspect the floors, walls, and ceilings for any deterioration or structural damage. Based on their inspection, repairs may need to be made. If necessary, these costs would be in addition to the tank cleaning costs, as per the contract. This is a vital part of preventive maintenance, as this is the only way to ensure the integrity of the inside of our water storage tanks.

Water Treatment Staff received 3 quotes for cleaning and inspection of all 5 storage tanks. The following quotes were received:

Maguire Iron, Inc. Sioux Falls, SD.	\$ 16,250.00
MIDCO Diving and Marine Services Rapid City, SD.	\$ 19,380.00
Liquid Engineering Corp Billings, MT.	\$ 26,610.00

Recommendation:

Approve the Contract for the cleaning and inspection on 5 water storage tanks to Maguire Iron Inc. of Sioux Falls, SD for the quoted price of \$16,250.00.

Matt Muckler, City Administrator

RESOLUTION NO. 2023-_____

RESOLUTION AWARDDING CONTRACT FOR CLEANING AND INSPECTION OF 4 CONCRETE WATER STORAGE TANKS, AND 1 STEEL ELEVATED WATER TOWER.

WHEREAS, the City of Newton has 4 ground storage tanks, and 1 elevated water tower to hold treated potable water to be distributed to the City of Newton and;

WHEREAS, After a period of time (3-4 years) a few inches of residual settles to the bottom of the tanks and;

WHEREAS, there is a need to hire a contractor that provides divers to enter the tanks (full) of water and utilize a vacuum system to remove sediment off the floor, and to fully inspect the floors, walls, and ceilings for any deterioration or structural damage and;

WHEREAS, based on their inspection, repairs may need to be made, if necessary, these costs would be in addition to the tank cleaning costs, as per the contract and;

WHEREAS, this is a vital part of preventive maintenance, as this is the only way to ensure the integrity of the inside of our water storage tanks and;

WHEREAS, Waterworks staff received 3 quotes for cleaning and inspection of all 5 storage tanks with Maguire Iron Inc. of Sioux Falls, SD. Being the lowest, responsive, responsible bidder for the quoted price of \$16,250.00.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of Newton, Iowa the Mayor is authorized to enter into an agreement with Maguire Iron Inc. of Sioux Falls, SD. for cleaning and inspection of 5 storage tanks for the quoted price of \$16,250.00 utilizing water revenue funds.

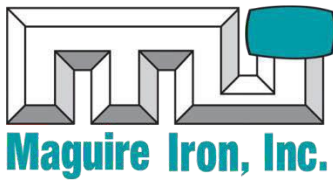
PASSED this _____day of September 2023.

APPROVED this _____ day of September 2023.

Michael L. Hansen, Mayor

ATTEST:

Katrina Davis, City Clerk



WATER TOWER EXPERTS

✉ info@maguireiron.com

📍 1610 N. Minnesota Ave
Sioux Falls, SD 57104

☎ (605) 334-9749

CONTRACT FOR SERVICES

This contract made and entered into this 12th day of September , 2023 , by and between Newton, IA- City of hereinafter called the “Owner” or “Customer” and Maguire Iron, Inc., a South Dakota Corporation with its principal office located in Sioux Falls, South Dakota, hereinafter called the “Contractor” or “Company” for and in consideration of the mutual covenants and promises hereinafter contained.

Newton, IA-City of Multiple Tanks

WITNESSETH:

Contractor agrees to make the following repairs and improvements on the Owner’s water supply tank, and to furnish the necessary equipment, labor, material, as well as Workmen’s Compensation Insurance and Contractor’s Liability Insurance, and to do the work hereinafter stated in a good and workmanlike manner.

Inspection

A written inspection report and video of the dive inspection detailing the tank’s structural, safety, sanitary, security and coatings will be provided to the Owner. Inspection procedures include, but not limited to:

Inlet / Outlet	Interior Ladders	Joints and Seams
Interior Coatings	Exterior Coatings	Telemetry
Sediment Depths	Overflow	Roof Vents
Exterior Ladder & Rails	Sumps	Internal Plumbing
Roof and Roof Hatch	Walls and Floors	Baffles / Support Walls

Cleaning

We will remove up to three inches (3”) of accumulated material from the storage tank floor using underwater vacuum procedures as needed. Material(s) that cannot be removed by normal vacuum procedures or material(s) in excess of three inches (3”) will be removed for an additional charge with an estimated price given on site. Material(s) such as sand, gravel and concrete are considered debris and will be removed by hand at an additional charge. All discharged materials, including water, are the responsibility of the Client, Owner or Owners Representative unless prior arrangements are made.

Potable Water Operations – All divers and associated in tank equipment are fully disinfected in accordance with ANSI/AWWA Standard C652-11. All system entries will be conducted in accordance with applicable OSHA regulations pertaining to Diving & Confined Space; including 1910.401 – 1910.441. Specialty equipment may include but is not limited to; appropriate OSHA climbing and personal fall protection, AWWA and ADCI approved commercial diving equipment as it relates to in-service potable water operations.

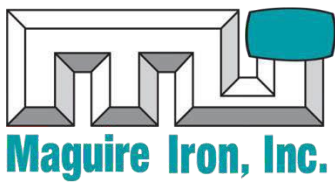
To Expedite your project please be aware of the following:

The tank(s) must be full to overflow and in-service prior to the crew’s arrival.

Access into the reservoirs must be sufficient for safe diver entry and exit. A minimum hatch size of 24”, no hatch obstructions, and unobstructed road access to the tank.

Working with our scheduling department to complete the project in a timely and proficient manner, which may require weekend and/or holiday access.

It will be the responsibility of the Client, Owner, or Owner Representative to notify antenna operator and/or owners prior to crews’ arrival for proper lockout of all antennas, RF devices (Radio Frequency Antennas) and EME sources (Electromagnetic Energy) that may interfere with dive team safety and access to the water reservoirs.



WATER TOWER EXPERTS

✉ info@maguireiron.com

📍 1610 N. Minnesota Ave
Sioux Falls, SD 57104

☎ (605) 334-9749

Owner will inspect the work as it progresses and upon completion and acceptance by Owner of the above work, the sum of **\$ 16,250.00** plus applicable sales, excise, and/or use tax shall become due and payable in full.

Tanks to be Inspected:

500MG MTL 2nd Ave West Tank
1000MG GST 2nd Ave West Tank
2000MG GST 2nd Ave West Tank
1000MG GST South 48th St Tank
170MG GST South 48th St Tank

Terms: Net 30 days from acceptance and invoicing, plus applicable sales, use, excise, transfer or similar taxes required by law. A service charge of 1½% per month (annual rate of 18%) will be charged on past due accounts. During any exterior painting, Owner shall assist in removing any vehicles in the area which might receive paint damage. Contractor will exercise reasonable care and caution to avoid, but will accept no liability for damage to antenna, communication, telemetry and/or electrical system(s) which may be attached to the structure. Removal, repair and/or replacement of the antenna, communication, telemetry and/or electrical system(s) shall be the responsibility of the Owner. Contractor may apply a temporary surcharge to amounts otherwise payable under this Agreement to reflect significant cost increases for materials, supplies, and/or fuel during high inflationary periods. Owner and the authorized agents signing this contract as such agents do hereby expressly warrant that Owner has authority to make and enter into this contract and that it becomes a party hereto pursuant to a lawful resolution duly and regularly adopted by the governing board of said Owner pursuant to the applicable statutes of this State. Customer shall reimburse Company for all travel, meal and entertainment expenses incurred by Company and its employees in connection with Company's performance under the contract. To the extent that any meal or entertainment expenses incurred by Company or its employees are subject to the limitation on deductibility under IRC Section 274(n) (1) and the Regulations thereunder, Customer shall be subject to the limitation and shall reduce its deduction accordingly. **This is included in the contract amount.**

The owner will be responsible to the Company for the cost (at current market rates) of any work that has been performed prior to termination.

HAZARDOUS MATERIAL DISCLAIMER: *In the event that hazardous materials are on the water tank and this information is not addressed in the specification or made known to Maguire Iron, Inc. prior to the price or bid being supplied by Maguire Iron, Inc., any additional means of hazardous material abatement or disposal costs will be born upon the Owner.*

This constitutes the entire contract. No verbal agreements or additions will be honored. Any amendments or additions hereto must be in writing and executed by the duly authorized agents and officers of the parties hereto.

IN WITNESS WHEREOF, we have set our hands and seals the day and year above written.

Owner: Newton, IA- City of

MAGUIRE IRON, INC.

By: _____ (Name) _____ (Title)
By: _____ (Name) _____ (Title)

Jake Dugger 9/12/2023
By: _____ (Authorized Agent) _____ (Date)

Date Accepted: _____
Upon acceptance, please provide two (2) signatures and date the agreement.

City of Newton Council Report

**Item:**

Resolution approving the purchase of a replacement tarp deployment system for the Newton Sanitary Landfill

Summary:

Approve the purchase of a replacement tarp deployment system.

Financial Impact:

\$30,725.00 from the Landfill Enterprise fund balance

Report Number: 2023-1046

Date:

September 18, 2023

Lead Department:

Public Works

Recommendation:

Approve

Background:

The Newton Sanitary Landfill must comply with the Environmental Protection Agency and the Iowa Department of Natural Resources rules for daily cover of the municipal solid waste deposited in the sanitary landfill. These rules require 6 inches of compacted soil or some other approved alternative daily cover. In 2015, The Iowa Department of Natural Resources approved a tarp system as an alternative daily cover.

The existing Tarp Armor TDS30HS deployment system was recently damaged and needs to be replaced. Staff will work with the City's insurance provider to determine if the \$30,725.00 to replace the damaged equipment can be recouped.

Staff requested a quote for a tarp deployment system, and the following bid was received:

Dealer	Brand and Model	Bid
Southwestern Sales, Rogers AR	Tarp Armor TDS HC-30HS	\$30,725.00

Recommendation:

City Staff recommends approving the purchase of the TarpArmor TDS HC-30 alternative daily cover tarp system from Southwestern Sales of Rogers, Arkansas, for the bid amount of \$30,725.00. The tarp deployment system will be paid utilizing available Newton Sanitary Landfill enterprise funds, with reimbursement being sought at a later date.

Matt Muckler, City Administrator

RESOLUTION NO. 2023-_____

**RESOLUTION APPROVING THE PURCHASE OF A REPLACEMENT
TARP DEPLOYMENT SYSTEM FOR THE NEWTON SANITARY
LANDFILL**

WHEREAS, the existing Tarp Armor TDS30HS deployment system was recently damaged and needs to be replaced; and

WHEREAS, city staff sought bids on a tarp deployment system using existing specifications; and

WHEREAS, based on the desired specifications, the lowest responsive bidder was from Southwestern Sales of Rogers, Arkansas, in an amount of \$30,725.00 for a TarpArmor TDS HC-30 tarp deployment system.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Newton, Iowa, that the Public Works Director is authorized to purchase a TarpArmor TDS HC-30 tarp deployment system from Southwestern Sales of Rogers, Arkansas, in the amount of \$30,725.00. The tarp deployment system will be paid utilizing available Newton Sanitary Landfill enterprise funds, with reimbursement being sought at a later date.

PASSED this ____ day of September, 2023.

APPROVED this ____ day of September, 2023.

Michael L. Hansen, Mayor

ATTEST:

Katrina Davis, City Clerk

City of Newton Disbursements 9-19-23

Vendor	Department	Description	Amount
Air Products and Chemicals Inc	Water Treatment Plant	Supplies	\$ 4,126.84
Alliant Energy/IPL	All	Service	\$ 115,113.38
Amazon Capital Services	All	Supplies	\$ 1,289.16
Auto-Jet Muffler Corp	City Garage	Supplies	\$ 647.05
Axon Enterprise Inc	Fire	Supplies	\$ 567.01
Banwell, Shane	Utility Billing	Refund	\$ 1,184.66
Barney's Services Inc	Fire	Service	\$ 339.00
Black Clover Enterprises LLC	Golf	Merchandise	\$ 192.50
Bolton & Menk Inc	Street	Services	\$ 7,607.50
Bound Tree Medical LLC	Fire	Supplies	\$ 517.43
Butler, Denise	Utility Billing	Refund	\$ 73.35
Caldwell Brierly & Chalupa PLLC	D&D	Services	\$ 1,112.50
Cappy's Tire & Auto Service	Street	Services	\$ 321.30
Card Services	All	Supplies	\$ 4,014.25
CDW Government Inc	Community Marketing	Supplies	\$ 90.01
Cintas	All	Service	\$ 567.94
Civic Systems LLC	Utility Billing	Service	\$ 600.00
Con-Struct Inc	Airport RESO 2020-111	Service	\$ 8,552.28
D & K Products	Cemetery/Golf/Parks	Supplies	\$ 937.00
Dell Marketing L.P.	Police	Supplies	\$ 1,840.00
DH Pace Company	Fire	Service	\$ 206.50
Dodd Trash Hauling & Recycling	All	Service	\$ 2,251.31
EZ Lease	Fire/WPC	Service	\$ 245.01
Fastenal	Parks	Supplies	\$ 314.23
Forbes Office Solutions	Fire/WPC	Service	\$ 136.44
Galls LLC	Fire/Police	Supplies	\$ 788.57
Garcia, Jose	Police	Reimbursement	\$ 125.51
Gilbert Lawn Care	City Center/Library	Service	\$ 1,748.00
Godfrey's Indoor Shooting & Archery	Police	Supplies	\$ 6,500.94
Grainger Inc	Water Pollution Control	Supplies	\$ 249.42
Gralnek-Dunitz	Parks	Supplies	\$ 37.00
Gregg Young Auto Center	City Garage/Police	Service	\$ 6,425.64
Hach Co	Water Treatment Plant	Supplies	\$ 554.26
Hawkins Water Treatment	Water Treatment Plant	Supplies	\$ 7,620.53
HLW Engineering Group	Landfill	Service	\$ 207.75
Huron Consulting Services LLC	Utility Billing	Service	\$ 6,890.00
Hy-Vee Inc	Fire	Supplies	\$ 103.35
Image Trend Inc	Fire	Service	\$ 84.00
IMFOA	Admin/Finance	Conference	\$ 450.00
Int'l Assoc of Chiefs of Police	Police	Training	\$ 500.00
Iowa Dept of Natural Resources	Landfill	Training	\$ 16.00
Iowa Inspections	Executive	Service	\$ 1,300.00
Iowa One Call	Engineering	Service	\$ 261.50
Iowa Park & Recreation Association	Parks	Training	\$ 945.00
Iowa Pond Guy LLC	Water Pollution Control	Services	\$ 4,650.00
Iowa Prison Industries	Police	Supplies	\$ 230.00
Iowa State University Registration	Admin/Finance	Training	\$ 304.00
Jasper Construction Services	Water Distribution	Supplies	\$ 337.08
Jasper County Extension	Street	Training	\$ 75.00
Jasper County Treasurer	All	Taxes	\$ 6,378.00

Johnson Aviation	Airport	Reimb	\$ 48.14
Joni's Creations	Fire	Service	\$ 52.00
Kellogg Lawn & Snow	Airport	Supplies	\$ 8.76
Key Cooperative	All	Supplies	\$ 15,380.47
Lyman, Rick	Exec/Police	Service	\$ 3,532.58
Machin, Ed	Water Pollution Control	Service	\$ 4,958.00
Magnum Automotive	Fire/Police	Service	\$ 1,404.11
Mahaska Bottling Co	Golf	Concessions	\$ 1,206.63
Maki, Ryan	Utility Billing	Refund	\$ 57.51
Manatts - D.M.	All	Supplies	\$ 5,571.04
Manfull Construction	D&D/Parks	Services	\$ 7,200.00
Martin Marietta Materials	Storm Water/Street	Supplies	\$ 2,293.70
McMaster-Carr	Water Pollution Control	Supplies	\$ 19.69
Mcroy, Richard & Irene	Utility Billing	Refund	\$ 49.59
Medicap Pharmacy	Fire	Service	\$ 34.22
MercyOne DSM Medical Ctr-Financial Ops	Fire	Supplies	\$ 565.32
MercyOne Occupational Health Clinic	Police	Service	\$ 867.00
Metering and Technology Solutions	Water Distribution	Supplies	\$ 492.84
Microbac Laboratories Inc	Water Treatment Plant/WPC	Service	\$ 4,714.25
Mid Country Machinery	City Garage/Landfill	Supplies	\$ 7,408.48
Midwest Automatic Fire	Water Treatment Plant	Supplies	\$ 845.30
Midwest Turf Support	Golf	Supplies	\$ 1,775.00
Mississippi Lime Company	Water Treatment Plant	Supplies	\$ 20,025.47
MTI Distributing Inc	Golf	Supplies	\$ 75.48
Municipal Supply Inc	Water Distribution	Supplies	\$ 1,949.13
Murphy Tractor & Equipment	Storm Water	Supplies	\$ 203.69
NAPA Auto Parts	All	Service	\$ 2,031.56
National Band & Tag	Police	Supplies	\$ 405.32
News Printing Company	All	Supplies	\$ 5,959.00
Olipas, Nikloas & Kuulei	Utility Billing	Refund	\$ 120.00
OPG-3 Inc	Administration	Service	\$ 600.00
O'Reilly Auto Parts	Water Distribution/WPC	Supplies	\$ 82.38
Per Mar Security Services	Landfill	Service	\$ 433.17
Phelps Uniform Specialists	All	Service	\$ 253.00
Premier Office Equipment	Police	Service	\$ 91.89
Quill Corporation	All	Supplies	\$ 159.84
Ray, Randy	D&D/Exec/SSMID	Services	\$ 2,475.81
Reeves Heating & Cooling	Airport	Service	\$ 351.00
Reilly Construction Co	Street RESO 2022-185	Service	\$ 486,869.02
Reliant Fire Apparatus Inc	Fire	Service	\$ 274.73
Riggs Printing Inc	All	Supplies	\$ 948.00
Rozendaal Services LLC	Parks	Service	\$ 585.00
Sandry Fire Supply LLC	Fire	Supplies	\$ 815.00
Smith Quality Rental	Parks	Supplies	\$ 60.97
Spahn & Rose Lumber Co	All	Supplies	\$ 1,125.87
State Steel of Des Moines	Water Distribution	Supplies	\$ 1,334.00
Streichers	Police	Supplies	\$ 585.99
Theisen's	All	Supplies	\$ 687.80
Thomas Bus Sales Inc	All	Equipment	\$ 2,970.00
Tompkins Industries Inc	City Garage	Supplies	\$ 464.96
Town & Country Wholesale Co	Golf	Concessions	\$ 1,351.05
True Value Hardware	All	Supplies	\$ 531.51
TruGreen Processing Center	Water Treatment Plant	Services	\$ 178.73
Two Rivers Cooperative	All	Fuel	\$ 11,133.34
United Public Safety	Police	Service	\$ 26.56

United States Cellular	All	Service	\$ 1,307.05
USABlueBook	Water Pollution Control	Supplies	\$ 126.38
Utility Equipment Co	Water Pollution Control	Supplies	\$ 871.00
Valley Enviromental Service LLC	City Garage	Supplies	\$ 30.00
Van Maanen Electric Inc	Fire/Parks	Service	\$ 605.03
Van Wall Equipment	Storm Water/Street	Supplies	\$ 1,880.19
Van Wert Company	Utility Billing	Service	\$ 8,426.25
Watts Technologies Inc	Utility Billing	Service	\$ 6,290.00
Wendling Quarries Inc	Golf	Supplies	\$ 183.70
Williams, Jerry B	Utility Billing	Refund	\$ 18.35
Witmer Public Safety Group	Fire	Supplies	\$ 693.19
Woodruff Construction LLC	2021 Sewer Rev Bonds	Service	\$ 223,529.68
Xerox Corporation	Water Treatment Plant	Srevice	\$ 13.52
YourMembership.com Inc	Police	Service	\$ 199.00
Ziegler Inc	City Garage	Supplies	\$ 32.58
Zimco Supply Company	Golf	Supplies	\$ 1,088.00
Grand Totals:			\$ 1,048,566.02

Pre-Authorized Payments

AT & T Mobility	Landfill	Utility	\$ 1,077.01
Beverage Distributors of Iowa	Golf	Concessions	\$ 326.92
Black Hills Energy	WPC	Utility	\$ 856.71
Hentsch, Carl	Housing Grant RESO 2023-231	Grant	\$ 20,001.53
Iowa Beverage Systems	Golf	Concessions	\$ 635.20
Windstream	All	Utility	\$ 106.98
Total:			\$ 23,004.35

City of Newton Council Report

**Item:**

Public Hearing on a Resolution approving the Purchase Agreement for city-owned property, Parcel A, of Lot 3, Block B, Guthrie's Subdivision, City of Newton, Jasper County, Iowa

Summary:

The City set a public hearing and advertised to receive offers on the subject property. Only one offer was received from an abutting property owner who desires to add utilize the property as additional yard space.

Financial Impact:

\$7,000 added to the D&D Fund

Report Number: 2023-971

Date:

September 18, 2023

Lead Department:

Community Development

Recommendation:

Approve

Background:

The subject property is identified by Parcel Identification Number: 1303102017. The dimensions of the property are approximately 56 feet by 78 feet.

The City of Newton acquired the property through the D&D program with the use of State of Iowa Code Section 657A.10A.

The City of Newton has on-going maintenance costs, such as mowing, for the property.

In accordance with State of Iowa Code requirements, City Council set a public hearing date/time and published notice soliciting offers. Only one offer was received.

Sara and Coy Penning, 213 South 15th Avenue West, made an offer of \$7,000 for the property. They intend to utilize the property as additional yard space.

A sale of the property will return it to the tax-base and relieve the City of on-going maintenance costs.

Recommendation:

Staff recommends approval.

Matt Muckler, City Administrator

'Parcel A' located in the 200 Block of South 16th Avenue West



RESOLUTION NO. 2023 – _____

A PUBLIC HEARING ON A RESOLUTION APPROVING THE
PURCHASE AGREEMENT FOR CITY-OWNED PROPERTY, PARCEL A,
OF LOT 3, BLOCK B, GUTHRIE'S SUBDIVISION, CITY OF NEWTON,
JASPER COUNTY, IOWA

WHEREAS, Sara and Coy Penning, 213 South 15th Avenue West, have submitted an offer to purchase real property, certain land owned by the City of Newton, Iowa, legally described as:

PARCEL A: A PARCEL OF LAND BEING THE WEST 56 FEET OF THE SOUTH HALF OF LOT 3, BLOCK 'B', GUTHRIE'S SUBDIVISION, CITY OF NEWTON, JASPER COUNTY, IOWA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 3, THENCE N00°11'01"W, 78.32 FEET ALONG THE WEST LINE THEREOF; THENCE S89°41'58"E, 56.00 FEET; THENCE S00°11'01"E, 78.15 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SOUTH 16TH AVENUE WEST; THENCE N89°52'33"W, 56 FEET ALONG SAID NORTH RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING;

WHEREAS, said real estate is not needed for public purposes, and

WHEREAS, Iowa Code Chapter 364.7 requires cities to set a public hearing before selling or disposing of real estate, and,

WHEREAS, the City has set such a hearing, given the required public notice, and held the public hearing; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of Newton, Iowa:

That the attached Purchase Agreement for Parcel A of Lot 3, Block B, Guthrie's Subdivision, City of Newton, Jasper County, Iowa be approved and accepted, subject to the restrictions in the agreement and that the signatures of the Mayor and City Clerk are obtained for the agreement.

PASSED this _____ day of September, 2023.

APPROVED this _____ day of September, 2023.

(Seal)

Michael L. Hansen, Mayor

ATTEST:

Katrina Davis, City Clerk

PURCHASE AGREEMENT

This Purchase Agreement (hereinafter "Agreement") for sale of property owned by the City of Newton, legally described as, PARCEL A: A PARCEL OF LAND BEING THE WEST 56 FEET OF THE SOUTH HALF OF LOT 3, BLOCK 'B', GUTHRIE'S SUBDIVISION, CITY OF NEWTON, JASPER COUNTY, IOWA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 3, THENCE N00°11'01"W, 78.32 FEET ALONG THE WEST LINE THEREOF; THENCE S89°41'58"E, 56.00 FEET; THENCE S00°11'01"E, 78.15 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SOUTH 16TH AVENUE WEST; THENCE N89°52'33"W, 56 FEET ALONG SAID NORTH RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING, is made on or as of the 18th day of September, 2023, by and between the City of Newton, Iowa (hereinafter "City"), and Sara Penning and Coy Penning, 213 South 15th Avenue West, (hereinafter "Buyer") and in consideration of the premises and the mutual obligations of the parties hereto, each of them does and hereby covenant and agree with the other as follows:

SECTION 1. PURCHASE PRICE. Subject to all the terms, covenants and conditions of this Agreement, the City will sell the Property to the Purchaser for, and the Purchaser will purchase the Property from the City and pay therefore, the amount of Seven Thousand Dollars (\$7,000.00) (hereinafter "Purchase Price"). The cash payment representing the full Purchase Price shall be delivered to the City simultaneously with the delivery of the deed conveying the Property to the Purchaser.

SECTION 2. TAXES. The City will prorate to the Buyer the taxes incurred under City ownership until the time of closing. All regular taxes due and payable after closing shall be the responsibility of the Developer.

SECTION 3. SPECIAL ASSESSMENTS. The City shall pay all special assessments which are a lien on the date of acceptance of this offer. None are known at this time.

SECTION 4. DESCRIPTION OF PROPERTY. All that certain parcel of land (hereinafter "Property") described as follows:

Parcel A, legally described as: A PARCEL OF LAND BEING THE WEST 56 FEET OF THE SOUTH HALF OF LOT 3, BLOCK 'B', GUTHRIE'S SUBDIVISION, CITY OF NEWTON, JASPER COUNTY, IOWA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 3, THENCE N00°11'01"W, 78.32 FEET ALONG THE WEST LINE THEREOF; THENCE S89°41'58"E, 56.00 FEET; THENCE S00°11'01"E, 78.15 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SOUTH 16TH AVENUE WEST; THENCE N89°52'33"W, 56 FEET ALONG SAID NORTH RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING

SECTION 5. CONVEYANCE OF PROPERTY.

a) Form of Deed. The City shall convey title to the Property to the Purchaser by Warranty Deed. Such conveyance and title shall be subject to all conditions, covenants and restrictions contained in this Agreement.

b) Time and Place for Closing and Delivery of Deed. The City shall deliver the Deed and possession of the Property to the Buyer no later than 60 days from the date of approval by the

Newton City Council or on such other date as the parties hereto may mutually agree in writing (hereinafter "Closing Date"). Conveyance shall be made at the office of the City of Newton's legal counsel, Caldwell, Bierly, Chalupa PLLC, 211 1st Avenue West, Newton, Iowa 50208, at which time and place Buyer shall accept such conveyance and pay to the City the Purchase Price.

c.) Abstract of Title. The Seller shall provide an abstract of Title to the Purchaser for property subject to this agreement. It will be the Seller's responsibility to have abstract(s) updated. The abstract(s) shall become the property of the Purchaser at the time of the delivery of the deed.

SECTION 6. REMEDIES. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement or any of its terms or conditions by either party, the party alleged to be in default or breach shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach within sixty (60) days after receipt of such notice. In such case, if action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.

In the event that the City does not tender conveyance or possession of the Property in the manner and condition, and by the date, provided in this Agreement, and any such failure shall not be cured within thirty (30) days after the date of written demand by the Purchaser, then this Agreement shall, at the option of the Purchaser, be terminated by written notice thereof to the City, and neither the City nor the Purchaser shall have any further rights against or liability to the other under this Agreement. All deposits, if any, shall be returned to the Purchaser.

SECTION 7. NOTICES AND DEMANDS. A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and:

a) In the case of the Buyer, is addressed or delivered personally to the Buyer at the address stated in preamble to this Agreement; and,

(b) In the case of the City, is addressed or delivered personally to the City Administrator, 101 West 4th Street South, Newton, IA 50208, or at such other address with respect to either party as that party may from time to time designate in writing and forward to the other as provided in this Section.

SECTION 8. LIMITATION ON WARRANTIES. The City makes no warranties with regard to the condition of the Property or the structure located thereon, including, without limitation, (i) environmental matters; (ii) geological conditions; (iii) drainage issues, conditions or problems; (iv) soil conditions; (v) the zoning or other land use restrictions; (vi) the availability of utilities to the property; (vii) usage of adjoining property; (viii) access to the property; (ix) the value of the property; (x) the presence of hazardous materials in or on the property; (xi) the existence or non-existence of underground storage tanks on the property; (xii) the potential for further development of the property; or (xiii) the merchantability of the property or fitness of the property for any particular purpose, unless otherwise provided herein. The Purchaser expressly acknowledges and agrees that the City, and their officials, officers, employees, or agents have not made any

representations or warranties concerning the Property or Project of any kind, including but not limited to, the rental or resale value of the Property, the economic or market conditions affecting the Project, or that the Property is suitable for the Project. The Purchaser takes title the Property "AS IS."

SECTION 9. CITY COUNCIL APPROVAL. This Agreement is subject to the approval of the Newton City Council after notice to the public and a hearing on the terms of this Agreement as required by the laws of the State of Iowa.

SECTION 10. ANTI-MERGER PROVISION. The parties specifically agree that all representations, warranties, agreement, responsibilities, obligations and comments specified herein shall survive the execution, delivery and recording of the deed required by Section 5(a) hereof, shall remain in full force and effective thereafter, and shall not be merged in or extinguished by such execution, delivery and recording of the deed.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Purchaser has caused this Agreement to be duly executed in its name, on or as of the day first above written.

(SEAL)

CITY OF NEWTON, IOWA

By: _____
Michael L. Hansen, Mayor

ATTEST:

Katrina Davis, City Clerk

PURCHASER:

By: Sara Penning

Sara Penning
213 S 15th AVE W
Newton, IA 50208

By: _____

Coy Penning
213 S 15th AVE W
Newton, IA 50208

City of Newton Council Report

**Item:**

Public Hearing on a Resolution Approving the Purchase Agreement for City-owned Property at 514 South 3rd Avenue East, Newton, Jasper County, Iowa

Summary:

The City has owned the property through the D&D program since 2021. One offer was received on the property in an amount of \$5,000, by the abutting neighbor.

Financial Impact:

\$5,000 to the D&D Fund

Report Number: 2023-973**Date:**

September 18, 2023

Lead Department:

Community Development

Recommendation:

Approve

Background:

The City of Newton acquired 514 South 3rd Avenue East through the D&D program with the use of State of Iowa Code Section 657A.10A.

The subject property has a shared drive with the abutting property owner at 508 South 3rd Avenue East. The shared driveway situation has made the property less desirable for redevelopment by a developer.

The City of Newton has on-going maintenance costs, including mowing and snow removal from the sidewalk for this property.

In accordance with State of Iowa Code requirements, City Council set a public hearing date/time and published notice soliciting offers. Only one offer was received. James and Amber D. Hutchinson, 508 South 3rd Avenue East, made an offer of \$5,000 for the property. They intend to utilize the property as additional yard space. A sale of the property will return it to the tax-base.

Recommendation:

Staff recommends approval of the sale of the property, which will relieve the City of on-going maintenance responsibilities for a lot that is less desirable for redevelopment than other city-owned redevelopment property. The offered price aligns with other recent D&D sales.

Matt Muckler, City Administrator

RESOLUTION NO. 2023 – _____

RESOLUTION APPROVING THE PURCHASE AGREEMENT FOR CITY-OWNED PROPERTY AT 514 SOUTH 3RD AVENUE EAST, NEWTON, JASPER COUNTY, IOWA

WHEREAS, James and Amber D. Hutchinson, 508 South 3rd Avenue East, have submitted an offer to purchase real property, certain land owned by the City of Newton, Iowa, located at 514 South 3rd Avenue East, legally described as:

514 South 3rd Avenue East, legally described as: LOT 57 IN BLOCK “B” SOUTHEAST ADDITION TO THE CITY OF NEWTON, JASPER COUNTY, IOWA AS SHOWN IN PLAT BOOK B AT PAGE 234 IN THE OFFICE OF THE RECORDER OF SAID COUNTY, EXCEPT THE NORTH 132 FEET THEREOF.

WHEREAS, said real estate is not needed for public purposes, and

WHEREAS, Iowa Code Chapter 364.7 requires cities to set a public hearing before selling or disposing of real estate, and,

WHEREAS, the City has set such a hearing, given the required public notice, and held the public hearing; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of Newton, Iowa:

That the attached Purchase Agreement for property at 514 South 3rd Avenue East be approved and accepted, subject to the restrictions in the agreement and that the signatures of the Mayor and City Clerk are obtained for the agreement.

PASSED this _____ day of September, 2023.

APPROVED this _____ day of September, 2023.

(Seal)

Michael L. Hansen, Mayor

ATTEST:

Katrina Davis, City Clerk

PURCHASE AGREEMENT

This Purchase Agreement (hereinafter "Agreement") for sale of property owned by the City of Newton at **514 South 3rd Avenue East**, is made on or as of the 15th day of August, 2023, by and between the City of Newton, Iowa (hereinafter "City"), and James and Amber D. Hutchinson, 508 South 3rd Avenue East, (hereinafter "Buyer") and in consideration of the premises and the mutual obligations of the parties hereto, each of them does and hereby covenant and agree with the other as follows:

SECTION 1. PURCHASE PRICE. Subject to all the terms, covenants and conditions of this Agreement, the City will sell the Property to the Purchaser for, and the Purchaser will purchase the Property from the City and pay therefore, the amount of **Five-thousand** Dollars (\$5,000.00) (hereinafter "Purchase Price"). The cash payment representing the full Purchase Price shall be delivered to the City simultaneously with the delivery of the deed conveying the Property to the Purchaser.

SECTION 2. TAXES. The City will prorate to the Buyer the taxes incurred under City ownership until the time of closing. All regular taxes due and payable after closing shall be the responsibility of the Developer.

SECTION 3. SPECIAL ASSESSMENTS. The City shall pay all special assessments which are a lien on the date of acceptance of this offer. None are known at this time.

SECTION 4. DESCRIPTION OF PROPERTY. All that certain parcel of land (hereinafter "Property") described as follows:

514 South 3rd Avenue East, legally described as: LOT 57 IN BLOCK "B" SOUTHEAST ADDITION TO THE CITY OF NEWTON, JASPER COUNTY, IOWA AS SHOWN IN PLAT BOOK B AT PAGE 234 IN THE OFFICE OF THE RECORDER OF SAID COUNTY, EXCEPT THE NORTH 132 FEET THEREOF.

SECTION 5. CONVEYANCE OF PROPERTY.

a) Form of Deed. The City shall convey title to the Property to the Purchaser by Warranty Deed. Such conveyance and title shall be subject to all conditions, covenants and restrictions contained in this Agreement.

b) Time and Place for Closing and Delivery of Deed. The City shall deliver the Deed and possession of the Property to the Buyer no later than 60 days from the date of approval by the Newton City Council or on such other date as the parties hereto may mutually agree in writing (hereinafter "Closing Date"). Conveyance shall be made at the office of the City of Newton's legal counsel, Caldwell, Bierly, Chalupa PLLC, 211 1st Avenue West, Newton, Iowa 50208, at which time and place Buyer shall accept such conveyance and pay to the City the Purchase Price.

c.) Abstract of Title. The Seller shall provide an abstract of Title to the Purchaser for property subject to this agreement. It will be the Seller's responsibility to have abstract(s) updated. The abstract(s) shall become the property of the Purchaser at the time of the delivery of the deed.

SECTION 6. REMEDIES. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement or any of its terms or conditions by either party, the party alleged to be in default or breach shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach within sixty (60) days after receipt of such notice. In such case, if action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.

In the event that the City does not tender conveyance or possession of the Property in the manner and condition, and by the date, provided in this Agreement, and any such failure shall not be cured within thirty (30) days after the date of written demand by the Purchaser, then this Agreement shall, at the option of the Purchaser, be terminated by written notice thereof to the City, and neither the City nor the Purchaser shall have any further rights against or liability to the other under this Agreement. All deposits, if any, shall be returned to the Purchaser.

SECTION 7. NOTICES AND DEMANDS. A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and:

a) In the case of the Buyer, is addressed or delivered personally to the Buyer at the address stated in preamble to this Agreement; and,

(b) In the case of the City, is addressed or delivered personally to the City Administrator, 101 West 4th Street South, Newton, IA 50208, or at such other address with respect to either party as that party may from time to time designate in writing and forward to the other as provided in this Section.

SECTION 8. LIMITATION ON WARRANTIES. The City makes no warranties with regard to the condition of the Property or the structure located thereon, including, without limitation, (i) environmental matters; (ii) geological conditions; (iii) drainage issues, conditions or problems; (iv) soil conditions; (v) the zoning or other land use restrictions; (vi) the availability of utilities to the property; (vii) usage of adjoining property; (viii) access to the property; (ix) the value of the property; (x) the presence of hazardous materials in or on the property; (xi) the existence or non-existence of underground storage tanks on the property; (xii) the potential for further development of the property; or (xiii) the merchantability of the property or fitness of the property for any particular purpose, unless otherwise provided herein. The Purchaser expressly acknowledges and agrees that the City, and their officials, officers, employees, or agents have not made any representations or warranties concerning the Property or Project of any kind, including but not limited to, the rental or resale value of the Property, the economic or market conditions affecting the Project, or that the Property is suitable for the Project. The Purchaser takes title the Property "AS IS."

SECTION 9. CITY COUNCIL APPROVAL. This Agreement is subject to the approval of the Newton City Council after notice to the public and a hearing on the terms of this Agreement as required by the laws of the State of Iowa.

SECTION 10. ANTI-MERGER PROVISION. The parties specifically agree that all representations, warranties, agreement, responsibilities, obligations and comments specified herein shall survive the execution, delivery and recording of the deed required by Section 5(a) hereof, shall remain in full force and effective thereafter, and shall not be merged in or extinguished by such execution, delivery and recording of the deed.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Purchaser has caused this Agreement to be duly executed in its name, on or as of the day first above written.

(SEAL)

CITY OF NEWTON, IOWA

By: _____
Michael L. Hansen, Mayor

ATTEST:

Katrina Davis, City Clerk

PURCHASER:

By:  _____

James Hutchinson
508 South 3rd Avenue East
Newton, IA 50208

By:  _____

Amber D. Hutchinson
508 South 3rd Avenue East
Newton, IA 50208

City of Newton Council Report

**Item:**

Resolution Authorizing Amended Loan Agreement with Hatch Development Group, L.L.C.

Summary:

An amendment to the previously approved loan agreement between the City of Newton and Hatch Development Group LLC resulting in the developer pausing loan payments to the City of Newton.

Financial Impact:

Delay in payments

Report Number: 2023-1000

Date:

September 18, 2023

Lead Department:

Administration

Recommendation:

Approve

Background:

The rehabilitation of Hotel Maytag was a significant restoration of the largest building on the Newton Downtown Square. Hatch Development Group utilized numerous tax credits, grants, and loan programs to make the complicated financing of the project possible. Without the building's rehabilitation, the degree of downtown revitalization the City has experienced would be greatly diminished.

As part of the City's support to the project, the City entered into a loan agreement with Iowa Finance Authority. Subsequently, the City entered into an agreement with Hatch Development to repay the City the loan payments due to Iowa Finance Authority.

Generally speaking, the proposed amended agreement provides the Borrower (Hatch Development Group) the ability to pause the reimbursement for loan payments to the City until such as time that the property cash flows. In the meantime, the City will continue paying the obligation to Iowa Finance Authority.

Specifically, the following provisions can be found in the amendment:

- 1.) Defines a "Pre-Cash Flow Period" for the project as the period of time beginning on the date of execution of the amended agreement and continuing until the Borrower first submits a Cash Flow Report demonstrating a cash flow for the building exceeding expenditures by 10%. (Section 3.04)
- 2.) Requires the borrower to provide semiannual Cash Flow Statements in a form satisfactory to the City. (Section 3.02)
- 3.) At the conclusion of the "Pre-Cash Flow Period", the borrower is responsible to begin paying to the city an amount equal to the principal payments. (Section 1.03)
- 4.) If the Building sells, the Borrower will pay the City an amount equal to the deferred loan re-payments made to the Iowa Finance Authority by the City. (Section 1.03)
- 5.) If the Building has not sold by December 1, 2038, the Borrower shall pay an amount equal to the deferred loan re-payments and any principal of and/or interest on the Loan. (Section 1.03)

The proposed Amendment provides a solution to and protection for the City in dealing with a situation where the developer has been challenged to make the payments.

Recommendation:

Staff recommends approval.

A handwritten signature in black ink, appearing to read "Matt Muckler". The signature is fluid and cursive, with the first name "Matt" and last name "Muckler" clearly distinguishable.

Matt Muckler, City Administrator

AUTHORIZE AMENDED LOAN
AGREEMENT

Newton, Iowa

504612-57

September 18, 2023

The City Council of the City of Newton, Iowa, met at _____ p.m., on September 18, 2023 at the _____, in the City. The meeting was called to order and there were present the Mayor in the chair, and the following named Council Members:

Present: _____

Absent: _____.

Council Member _____ introduced a proposed resolution entitled: "Resolution Authorizing Amended Loan Agreement with Hatch Development Group, L.L.C.," and moved that the said resolution be adopted, seconded by Council Member _____ and after due consideration thereof by the Council, the Mayor put the question on the motion for adoption of the said resolution and, the roll being called, the following named Council Members voted:

Ayes: _____

Nays: _____.

Whereupon, the Mayor declared the said resolution duly adopted and signed approval thereto.

* * * *

On motion and vote the meeting adjourned.

Mayor

Attest:

City Clerk

RESOLUTION NO. _____

Resolution Authorizing Amended Loan Agreement with Hatch Development Group, L.L.C.

WHEREAS, Chapter 15A of the Code of Iowa (“Chapter 15A”) declares that economic development is a public purpose for which a city may provide grants, loans, guarantees and other financial assistance to or for the benefit of private persons; and

WHEREAS, Chapter 15A requires that before public funds are used for grants, loans or other financial assistance, a city council must determine that a public purpose will reasonably be accomplished by the spending or use of those funds; and

WHEREAS, Chapter 15A requires that, in determining whether funds should be spent, a city council must consider any or all of a series of factors; and

WHEREAS, the City of Newton, Iowa (“the City”) and Hatch Development Group, L.L.C. (the “Borrower”) previously entered into a loan agreement (the “Original Loan Agreement”) with respect to loan (the “Loan”) in the amount of \$450,000 from the City to the Borrower in connection with the development of workforce housing in the City; and

WHEREAS, the Borrower has now requested that the City allow for certain modifications to the Original Loan Agreement in order to provide more flexibility to the Borrower with respect to repayment of the Loan; and

WHEREAS, an amended loan agreement (the “Amended Loan Agreement”) has been prepared to set forth the updated understanding between the City and the Borrower;

NOW, THEREFORE, IT IS RESOLVED by the City Council of the City of Newton, Iowa, as follows:

Section 1. Pursuant to the factors listed in Chapter 15A, the City Council hereby finds and reaffirms that:

- (a) The Project will add diversity and generate new opportunities for the Newton and Iowa economies;
- (b) The Project will generate public gains and benefits, particularly in the creation of new jobs and workforce housing opportunities, which are warranted in comparison to the amount of the proposed Loan.

Section 2. The City Council further finds that a public purpose will reasonably be accomplished by funding the Loan to the Borrower.

Section 3. The Amended Loan Agreement is hereby approved. The City Administrator, with advice from bond counsel to the City, is hereby authorized and directed to prepare any additional documentation and to make such changes to the Amended Loan Agreement as are deemed necessary to carry out the purposes of this Resolution. The Mayor and the City Clerk are hereby authorized to execute the Amended Loan Agreement in substantially the form as has been presented to this City Council.

Section 4. All resolutions or parts thereof in conflict herewith, are hereby repealed, to the extent of such conflict.

Passed and Approved this September 18, 2023.

Mayor

Attest:

City Clerk



September 12, 2023

Via Email

Katrina Davis
City Clerk/City Hall
Newton, Iowa

Re: Resolution Authorizing Amended Loan Agreement
Our File No. 504612-57

Dear Katrina:

Attached please find the proceedings providing for the adoption of a resolution approving the Amended Loan Agreement with Hatch Development Group in compliance with Chapter 15A of the Code of Iowa

We would appreciate receiving one fully executed copy of these proceedings and of the executed Amended Loan Agreement as soon as they are available.

Please call John Danos or me with questions.

Kind regards,

Amy Bjork

Attachment

cc: Lisa Frasier
Erin Chambers
Katrina Davis

IOWA FINANCE AUTHORITY
WORKFORCE HOUSING
LOAN PROGRAM

AMENDED LOAN AGREEMENT

between

CITY OF NEWTON, IOWA

and

HATCH DEVELOPMENT GROUP, L.L.C.

Dated as of _____, 2018
Amended as of _____, 2023

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EXHIBIT G	Automated Clearinghouse Transfer (ACH) Authorization for Loan Repayment

This AMENDED LOAN AGREEMENT is dated as of the _____ day of _____, 2018, between the CITY OF NEWTON, IOWA (the "City") and HATCH DEVELOPMENT GROUP, L.L.C. (the "Borrower").

WITNESSETH:

WHEREAS, the City and the Hotel Maytag Investors, LLC (the "Owner") are parties to that certain Agreement for Private Redevelopment dated October 2, 2017, as amended (the "Redevelopment Agreement") respecting the redevelopment of the project described in Exhibit A attached hereto (the "Project");

WHEREAS, the City is a party to that certain Loan Agreement with the Iowa Finance Authority ("Authority") dated _____ (the "IFA Loan") respecting the Workforce Housing Loan Program (the "Program") created by the Authority to provide a program of financial assistance in the form of low-interest loans to provide workforce housing in needed areas;

WHEREAS, the Borrower is a member of Hotel Maytag Investors Managing Member, LLC, which entity is a member of Borrower; and

WHEREAS, the Borrower desires to borrow monies from the City in order to assist the Owner in respect to financing a portion of the costs of the Project; and

WHEREAS, the City and the Borrower previously entered into that certain Loan Agreement, dated _____ (the "Original Loan Agreement") with respect to a loan in the amount of \$450,000 to Borrower; and

WHEREAS, Borrower has now requested that the City allow for certain modifications to the Original Loan Agreement in order to provide more flexibility to Borrower with respect to repayment of the Loan (as defined in the original Loan Agreement); and

WHEREAS, this amended loan agreement (the "Loan Agreement") has been prepared to set forth the understanding between the parties hereto, including the original terms of the Loan and the modifications contemplated herein;

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained, the Borrower and the City hereby covenant and agree as follows:

ARTICLE I

AMOUNT AND TERMS OF THE LOAN

SECTION 1.01. The Loan.

The City agrees, upon the terms and conditions hereinafter set forth, to make a Loan to the Borrower in an amount not to exceed the Principal Amount shown in Exhibit A in order to finance a portion of the costs of the Project (the "Loan"). The obligation of the Borrower hereunder to repay the Loan shall be evidenced by a promissory note of the Borrower to the City, in the form attached as Exhibit B (the "Note"), which Note is by this reference incorporated herein as though set out in full.

SECTION 1.02. Making the Loan.

Upon fulfillment of the applicable conditions set forth in Article II, the City will make the Loan available to the Borrower. Disbursements of loan proceeds may be made by the City to the Borrower, upon the receipt and approval by the City, in its sole discretion, of a written payment request from the Borrower, in the form set out in Exhibit D attached. Loan disbursements shall be made via Automated Clearinghouse Transfer (“ACH”), as authorized and described on Exhibit F, attached.

SECTION 1.03. Loan Repayment Installments.

(a) Until the principal of and interest on the Note shall have been fully paid the Borrower shall pay directly to the City, as a repayment installment of the Loan, a sum equal to the principal (whether at maturity or upon acceleration) and interest due on the Note, as provided in the Note. Provided, however, that during the Pre-Cash Flow Period (as defined in Section ____ below), upon provision of written request from Borrower, such request to be submitted not less than 30-days prior to the extant principal installment date, the City will pay an amount (each a “Principal Advance”) equal to the principal scheduled to become due on the Loan on such date. During the Pre-Cash Flow Period, Borrower shall remain responsible for interest installments on the Loan.

~~(b)~~ (b) At the conclusion of the Pre-Cash Flow Period, Borrower shall be responsible for all principal installments on the Loan without assistance from the City. To the extent that the Project is sold by Owner, Borrower agrees to remit full payment, within 15-days of closing such transaction, to the City in an amount equal to the aggregate sum of all Principal Advances made by the City on behalf of Borrower hereunder. To the extent that the Project remains unsold on December 1, 2038, Borrower shall pay to City, in addition to any principal of and/or interest on the Loan as may then be due and owing, an amount equal to the aggregate sum of all Principal Advances made by the City on behalf of the Borrower hereunder. Amounts extended as Principal Advances shall not bear interest.

(c) In the event the Borrower should fail to make any of the payments required hereunder, beyond any applicable notice and cure periods, the item or installment so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and such amount shall bear interest at the Default Rate (as defined in the Note).

SECTION 1.04. Prepayments.

The outstanding principal of the Loan may be prepaid at any time without penalty.

Any prepayment shall be applied against the installments due under the Note, and, unless otherwise provided for in the Note, in inverse order of principal maturity with no abatement or reduction in the amount of installments otherwise required to be paid under the Note.

SECTION 1.05. Time and Place of Payments.

Each payment under this Agreement and the Note shall be made not later than the day when due in immediately available funds consisting of lawful money of the United States of America to the City via ACH, as authorized and described on Exhibit G, attached.

SECTION 1.06. Payment on Non-Business Days.

Whenever any payment to be made hereunder or under the Note shall be stated to be due on a Saturday, Sunday or a public holiday or the equivalent for banks generally under the laws of the State of Iowa (any other day being a "Business Day"), such payment may be made on the next succeeding Business Day together with interest in respect of such extension.

SECTION 1.07. Use of Loan.

Borrower shall cause the Owner to use the Loan proceeds for the construction of the Project, as set forth in Exhibit A.

ARTICLE II

CONDITIONS OF LENDING

SECTION 2.01. Conditions Precedent to the Loan.

The obligation and agreement of the City to make the Loan is subject to the following conditions precedent. The City shall have received on or before the date of the Loan the following, in form and substance satisfactory to the City:

- (a) The Note executed by the Borrower;
- (b) Evidence that the Borrower has complied with any and all Special Conditions set forth in Exhibit A required to be satisfied prior to Loan closing;
- (c) A legal opinion of counsel to the Borrower to the effect that: (i) the

Borrower is duly organized and validly existing as a limited liability company with the limited liability company power to adopt and perform the resolution authorizing this Agreement and the Note; (ii) this Agreement and the Note have been duly authorized, executed and delivered by the Borrower and constitute valid and binding general obligations of Borrower, enforceable in accordance with their terms, subject to customary exceptions relating to bankruptcy and similar laws affecting creditors' rights and the exercise of judicial; and

- (d) Such other certificates, opinions, documents, and instruments which the City may reasonably request.

SECTION 2.02. Further Conditions Precedent to the Loan.

The obligation of the City to make the Loan shall be subject to the further conditions precedent that on the date of the Loan the following statements shall be true and the City shall have received a certificate signed by the Borrower, dated the date of the Loan, stating, among other things, that:

(a) The representations and warranties contained in Section 3.01 of this Agreement, the covenants contained in Section 3.02 of this Agreement, and all representations and certifications contained in the Redevelopment Agreement are correct on and as of the date of the Loan as though made on and as of such date; and

(b) No event has occurred and is continuing, or would result from the Loan, which constitutes an Event of Default but for the requirement that notice be given or time elapse, or both.

SECTION 2.03. Condition Subsequent to the Loan.

The parties hereby agree that if the Owner has not drawn at least ten percent of the Project's approved development budget within six (6) months of the date hereof the City may, in its sole discretion, terminate this Agreement upon written notice to Borrower.

ARTICLE III

REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 3.01. Representations and Warranties of the Borrower.

The Borrower represents and warrants as follows:

(a) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Borrower of this Agreement and the Note and other documents and agreements required to be delivered by the Borrower pursuant to this Agreement;

(b) This Agreement and the Note (which evidences the obligation of the Borrower hereunder) and other documents and agreements required by this Agreement when delivered hereunder are and will be legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance laws or other laws affecting the rights of creditors generally, and to general principles of equity;

(c) Neither the execution, delivery or performance of this Agreement or the Note, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction in any organizational document or any agreement or instrument to which the Borrower is now a party or by which the Borrower is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement, other than as may be created or imposed to secure the Borrower's repayment of the Loan as provided in this Agreement;

(d) The obligation of the Borrower hereunder, as evidenced by the Note, when delivered hereunder is and will be a legal, valid and binding general obligation of the Borrower under Iowa law.

(e) There is no litigation or proceeding pending or, to the knowledge of the Borrower, threatened against the Borrower affecting in any manner whatsoever the right of the Borrower to execute this Agreement or the other agreements required to be executed by the Borrower under this Agreement, or the ability of the Borrower to make the payments required hereunder and under the Note or to otherwise comply with Borrower's obligations contained herein or therein;

(f) The Borrower agrees that the City shall have no responsibility nor incur any expense for maintenance or preservation of the Project or for the payment of any taxes, assessments or other governmental charges assessed or levied with respect to the Project;

(g) The certifications and representations of the Owner and other information contained in the Redevelopment Agreement were true and correct as of the date made and are true and correct on the date hereof, except as information in the Redevelopment

Agreement may have been amended with the written approval of the City;

(h) There has been no adverse change since the date of the Redevelopment Agreement in the financial condition, organization, operation, business prospects, fixed assets, or key personnel of the Owner;

(i) No portion of the Loan proceeds shall be used for any political activity or to further the election or defeat of any candidate for public office;

(j) No payment of any bonus or commission has been made by the Borrower or Owner for the purpose of obtaining approval of the Redevelopment Agreement, or has or will be made for the purpose of obtaining approval of Redevelopment Agreements for additional assistance, or any other approval or concurrence of the City required under this Agreement; and

(k) No officer, member, or employee of the City and no members of its board, and no other public official of the governing body of the locality or localities in which the Project is situated who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Project, has participated in any decisions relating to this Agreement which affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested or has any personal or financial interest, direct or indirect, in this Agreement or the proceeds of the Loan.

SECTION 3.02. Covenants of the Borrower

The Borrower hereby covenants that during the term of the Loan, it shall:

- (a) ~~(a)~~ Provide the City with the annual audited financial statements of the Borrower and the Owner no more than 210 days after fiscal year end; and
- (b) Provide City with semiannual Cash Flow Statements of the Borrower and the Owner in a form satisfactory to the City demonstrating the cash flow position of the Owner.
- (c) ~~(b)~~ Inform the City of all changes in the Borrower's or the Owner's credit rating within ten business days of the Borrower becoming aware of such change.
- (d) ~~(e)~~ Ensure that there will be no change to the managing member of the Owner without the prior written consent of the ~~Owner~~City.

SECTION 3.03. Further Covenants of the Borrower.

The Borrower hereby covenants that:

(a) Until the later of (a) the date that is five years after the date of this Agreement or (b) Borrower's repayment in full of the Loan, Borrower shall ensure that at least nine (9) of the rental units of the Project shall be leased only to tenants whose gross annual household income at the commencement of the lease is at or below one hundred forty percent (140%) of the statewide median income as published annually by HUD;

(b) Borrower shall cause the Owner to establish appropriate reporting and compliance measures to ensure compliance with this covenant. Borrower shall report to the City annually on July 1 of each year as to the Project, including the total number of units developed and the number of units that are leased to tenants whose gross annual household income at the commencement of the lease is at or below one hundred forty percent (140%) of the statewide median income as published annually by HUD; and

(c) Borrower shall ensure that Owner does not contract with any third-party owner, developer, or manager with respect to the Project unless such third-party owner, developer, or manager agrees in writing to be bound by the covenants of this section 3.03.

Section 3.04 Pre-Cash Flow Period Defined.

For purposes of this Amended Agreement, Pre-Cash Flow Period shall mean the period of time beginning on the date of execution hereof and continuing until the Borrower first submits a Cash Flow Report demonstrating that the Owner's cash flow position with respect to the operations of the Project for the six-month period covered by such report is positive - with cash flow (not including any cash flow from borrowing) exceeding expenditures by at least 10%.

ARTICLE IV

EVENTS OF DEFAULT

SECTION 4.01. Events of Default.

Any of the following events shall constitute an "Event of Default" hereunder:

(a) Any representation or warranty made by the Borrower under or in connection with this Agreement shall prove to have been incorrect in any material respect when made; or

(b) The Borrower shall fail to pay any installment of principal of the Loan under this Agreement and the Note within thirty (30) days after it is due; or

(c) The Borrower shall fail to pay any installment of interest on the Loan under this Agreement and the Note within thirty (30) days after it is due; or

(d) The Borrower shall fail to perform or observe any other term, covenant, or agreement contained in this Agreement and any such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the Borrower by the City, or such longer period of time specified in such written notice as the City reasonably determines necessary to correct such default; or

(e) The Borrower shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of all or a substantial part of the Borrower's property, (ii) admit in writing the Borrower's inability, or be generally unable, to pay the Borrower's debts as they become due, (iii) make a general assignment for the benefit of the Borrower's creditors, (iv) commence a voluntary case under the Federal Bankruptcy Laws (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, (vi) acquiesce in writing to, or fail to controvert in a timely or appropriate manner, any petition filed against the Borrower in an involuntary case under such bankruptcy laws, or (vii) take any action for the purpose of effecting any of the foregoing;

(f) A case or other proceeding shall be commenced, without the application or consent of the Borrower, in any court of competent jurisdiction, seeking the liquidation, reorganization, dissolution, winding up, or composition or readjustment of debts, of the Borrower, the appointment of a trustee, receiver, custodian, liquidator or the like of the Borrower or of all or any substantial part of its assets, or any similar action with respect to the Borrower under any laws relating to bankruptcy, insolvency, reorganization,

winding up or composition or adjustment of debts, and such case or proceeding (other than an involuntary case under the Federal Bankruptcy Laws) shall continue undismissed, or unstayed and in effect, for a period of sixty (60) days, or in an involuntary case under the Federal Bankruptcy Laws (as now or hereinafter in effect) an order for relief against the Borrower shall be entered.

SECTION 4.02. Remedies of the City.

If any Event of Default referred to above has occurred, the City or its agent may:

(a) By notice to the Borrower declare the Loan, all interest thereon and all other amounts payable under the Note and this Agreement to be forthwith due and payable, whereupon the Loan, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower;

(b) Make no further Advances under this Agreement and the Note; and

(c) Take whatever action necessary to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement.

No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Upon the occurrence of an Event of Default and at any time thereafter, the City or its agent may, at its option, exercise any and all of the rights and remedies available to it.

SECTION 4.03 Notice and Opportunity to Cure

After the occurrence of any Event of Default, but prior to exercising the remedies provided in Section 4.02, the City or its agent shall give Borrower and Borrower's investment member simultaneous written notice of the Event of Default. Notice shall be delivered to Borrower and Borrower's investment member at the following addresses:

To Borrower:

Hatch Development Group, L.L.C.
Attn: Jack Hatch
333 East Grand Ave., Suite 101
Des Moines, IA 50309

To Owner's Investment Member:

WNC & Associates, Inc.
17782 Sky Park Circle
Irvine, CA 62614
Attn: Michael J. Gaber

If the Event of Default is a monetary default, Borrower shall have not less than ten (10) days after receipt of such notice (or such longer period of time as may be agreed to in this or a separate agreement) to cure the Event of Default. If the Event of Default is a non-monetary default, Borrower shall have not less than thirty (30) days after receipt of such notice to cure the Event of Default. However, if the Event of Default is a non-monetary default and such default is not reasonably capable of being cured within thirty (30) days, Borrower shall be deemed to have cured the Event of Default if Borrower takes corrective action to begin curing such Event of Default within the thirty (30) day period, and Borrower diligently, continually, and in good faith works to effect a cure as soon as practicable. The City agrees to accept any cure tendered by Borrower, Borrower's investment member, or any other affiliate or special member of Borrower. Compliance with the requirements of this Section 4.03 shall be a condition precedent to enforcing any remedies under this Agreement and the Note, including without limitation the remedies contained in Section 4.02.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. Waivers, Consents.

No waiver by the City of any default hereunder, nor consent to any departure by the Borrower from the provisions of this Agreement, shall in any event be effective unless the same shall be in writing and signed by the City and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given, and shall not operate as a waiver or consent with respect to any other default or departure or the same default or departure on a future occasion.

SECTION 5.02. Notices, Etc.

All notices and other communications provided for hereunder shall be in writing and emailed, mailed or delivered to the persons and addresses set forth in Exhibit C

hereto, or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties. All such notices and communications shall, when emailed or mailed, be effective when emailed or deposited in the mail.

SECTION 5.03. No Waiver; Remedies.

No failure on the part of the City to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided at equity or by law.

SECTION 5.04. Indemnity, Fees and Expenses.

(a) The Borrower will indemnify and save harmless the City and its officers and employees from and against any and all losses, by it or them while it or they are acting in good faith to carry out the transactions contemplated by this Agreement or to safeguard its or their interests or ascertain, determine or carry out its or their obligations under this Agreement, or any law or contract applicable to said transaction.

(b) The Borrower will upon demand pay to the City the amount of any and all reasonable expenses, including the reasonable fees and expenses of the City's attorneys and of any experts and agents, which the City may incur in connection with (i) the exercise or enforcement of any of the rights of the City hereunder or under the Note, (ii) the failure by the Borrower to perform or observe any of the provisions hereof, (iii) the collection of payments due under this Agreement and the Note, and (iv) any other reasonable expenses of the City related to the Project or this financing (including reasonable attorneys' fees) which are not otherwise expressly required to be paid by the Borrower under the terms of this Agreement.

(c) The Borrower agrees to pay all appraisal fees, survey fees, recording fees, license and permit fees, insurance premiums, taxes, charges, and assessments in connection with the Project.

It is the intention of the parties that the City shall not incur pecuniary liability by reason of (i) the terms of this Agreement, (ii) the undertakings required of the City hereunder, (iii) the performance of any act required of it by this Agreement, (iv) a failure on the part of the City to perform under the IFA Loan as a result of a default by the Borrower under this Agreement or (v) the performance of any act requested of it by the Borrower. Accordingly, if the City (including any person at any time employed by or serving as an officer or a member of the City, such persons hereinafter included in all references to the City in this Section) should incur any such pecuniary liability, then in

such event the Borrower shall indemnify and hold harmless the City against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon. The Borrower releases the City from, agrees that the City shall not be liable for, and agrees to indemnify and hold the City harmless from, (i) any liability for any loss or damage to property or any injury to, or death of, any person that may be occasioned by any cause whatsoever pertaining to the Project, or (ii) any liabilities, losses or damages, or claims therefore, arising out of the failure, or claimed failure of the Borrower to comply with its covenants contained in this Agreement, including, in each such case, any attorneys' fees. The Borrower agrees to indemnify and hold the City harmless to the fullest extent permitted by law from any losses, costs, charges, expenses (including attorneys' fees), judgments and liabilities incurred by it or them, as the case may be, in connection with any action, suit or proceeding instituted or threatened in connection with the transaction contemplated by this Agreement. The obligation of the Borrower under this Section shall survive the termination of this Agreement.

SECTION 5.05. Binding Effect; Governing Law; Venue.

This Agreement shall be binding upon and inure to the benefit of the Borrower and the City and their respective successors and assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the City. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Iowa. Any action arising out of, or related to, this Agreement shall be filed and maintained in the Iowa District Court for Polk County.

SECTION 5.06. Assignments.

This Agreement may not be assigned by the Borrower without the prior written consent of the City.

SECTION 5.07. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, and such counterparts shall together constitute one and the same instrument.

SECTION 5.08. Severability.

If any provision of this Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to

any extent whatever.

SECTION 5.09. Amendments, Changes and Modifications.

This Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the authorized representatives of the parties hereto. The Executive Director of the City, or his designee, is the authorized representative of the City. The Authorized Representative of the Borrower is as specified in Exhibit A.

SECTION 5.10. Term of the Agreement.

This Agreement shall be in full force and effect from the date hereof and shall continue in effect so long as the Note is outstanding and unpaid.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

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

CITY OF NEWTON, IOWA

By: _____
Name: Michael L. Hansen
Title: Mayor

Attest:

By: _____
Name: Katrina Davis
Title: City Clerk

HATCH DEVELOPMENT GROUP, L.L.C.

By.

Name: Jack Hatch

Title: President

EXHIBIT A

LOAN DATA

Project Number: WF-18-001

Name of Borrower: Hatch Development Group, L.L.C.

Date of City's Approval of Redevelopment Agreement: [DATE OF CITY RESOLUTION]

Date of Loan Agreement: _____, 2018

Date of Amended Loan Agreement: _____, 2023

Interest Rate: 1.00%

Loan Term: expiring December 1, 2038

Principal Amount of Note and Loan: Lesser of \$450,000 or \$50,000 per unit

Authorized Representative of Borrower: Jack Hatch

Description of Project:

Adaptive reuse of the historic Hotel Maytag to include nine (9) workforce housing units.

EXHIBIT B

Loan No. WF-18-001

Dated: _____, 2018

Fixed Interest Rate: 1.00%

Maturity Date: December 1, 2038

Principal Amount: \$450,000

PROMISSORY NOTE

FOR VALUE RECEIVED the undersigned, Hatch Development Group, L.L.C., an Iowa limited liability company, whose address is _____ (the "Borrower") unconditionally promises to pay to the order of the City of Newton (the "City"), or its assigns, at its principal place of business, located at _____, or at such other place as may be designated in writing from time to time by the holder of this Note, the principal sum of four hundred fifty thousand dollars and 00/100 Dollars (\$450,000), or so much thereof as has been advanced to the Borrower, together with interest to maturity at the rate of one percent (1.00%) per annum on the balance remaining from time to time unpaid; and, after either maturity or default, and beyond any applicable notice and cure periods set forth herein or in the Loan Agreement (described below) at the rate of ten percent (10%) per annum (the "Default Rate"); said principal and interest to be paid as follows:

Semi-annual payments of interest only on amounts outstanding under this Note, such interest payments due on December 1, 2019, and continuing on the first day of the months of June and December thereafter until such time as the last advance has been drawn down by the Borrower under this Note, (but in no event later than September 1, 2019), unless the City, in its sole discretion, agrees in writing to extend the deadline for drawing down the loan proceeds); and then

Equal semi-annual installments of principal and interest, based on an eighteen (18) year amortization, beginning the first day of the next succeeding June or December (as the case may be) after such final draw, and continuing on the first day of each succeeding June and December thereafter, with one final payment including all remaining principal and interest due December 1, 2038, each such payment to be applied first in payment of interest due on the unpaid principal and the remainder in reduction of the principal.

Interest on this Note shall be calculated on the basis of a 360-day year with twelve 30-day months.

This Promissory Note is the Note referred to in, and is entitled to the benefits and subject to the provisions of, and is evidence of the obligation of the Borrower to make payments under the Amended Loan Agreement dated _____, 2018 (the "Amended Loan Agreement"), between the Borrower and the City. The Amended Loan Agreement, among other things, contains provisions for acceleration of the maturity hereof upon the happening of certain stated Events of Default and also for prepayments on account of principal hereof prior to the maturity hereof upon the terms and conditions therein specified.

The Borrower hereby acknowledges and agrees to the enforceability of the provisions of Section 1.03 of the Amended Loan Agreement with respect to Principal Advances made by the City and the repayment thereof by Borrower. The Borrower shall have the right to prepay the debt evidenced by this Note without penalty and without the prior written approval of Lender.

If default be made in the payment of any sums due under this Note or (ii) Borrower is dissolved or there is a transfer of any ownership interest in the Borrower without first obtaining the written consent of the holder, then holder may, at its option, without further notice or demand, except as may otherwise be specifically provided for in the Amended Loan Agreement or by the Laws of the State of Iowa, declare the unpaid principal and accrued interest on this Note at once due and payable, foreclose all liens securing payment of this Note, pursue any and all other rights, remedies, and recourses available to holder under this Note, the Amended Loan Agreement or pursue any combination of the foregoing, all such remedies under this Note and under the Amended Loan Agreement being cumulative. Holder shall have the right, if holder so elects, to rescind any acceleration in payment of this Note for default, in which event this Note shall be construed, interpreted and enforced in the same manner as if holder had never elected to declare the unpaid principal balance and accrued interest of this Note at once due and payable.

Notwithstanding anything to the contrary contained in this Note or other documents evidencing this Loan (the "Loan Documents"), the following shall be permitted without the consent of the Lender and shall not constitute an event of default or result in any fee: (i) the transfer of any membership interest in the Borrower in accordance with the terms of Borrower's Amended and Restated Operating Agreement (the "Operating Agreement"), (ii) the removal and/or replacement of any managing member of the Borrower in accordance with the Operating Agreement, and/or (iii) an amendment of the Operating Agreement memorializing the transfers or removal described above.

The Borrower shall pay all costs of collection and the expense(s) of holder for having to invoke such remedial action(s) as may be necessary to enforce the terms of this Note, including a reasonable attorney's fee, whether or not any action shall be instituted to collect or enforce this Note. **Time is of the essence of this Note.**

Failure to exercise any of the foregoing options upon the happening of one or more of the events of default provided in this Note or in the Amended Loan Agreement shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time in respect to the same or any other event, and no single or partial exercise of any right or remedy shall preclude other or further exercise of the same or any other right or remedy. The holder of this Note shall have no duty to exercise any or all of the rights and remedies provided for, or contemplated in, this Note. The acceptance by holder of any payment under this Note that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing options at that time or at any subsequent time, or nullify any prior exercise of any such option without the express written consent of the holder.

Borrower and any endorsers or guarantors of this Note, severally waive presentment and demand for payment, notice of intent to accelerate maturity, notice of acceleration of maturity, protest or notice of protest, and non-payment, bringing to suit and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the right and properties securing payment of this Note, and consent to any and all renewals, extensions or modifications which might be made by the holder hereof as to the time of payment of this Note from time to time, and further agree that the security for this Note or any portion hereof may from time to time be modified or released in whole or in part without affecting the liability of any party liable for the payment of this Note.

This Note is to be construed according to the laws of the State of Iowa.

Should any provision or term hereof be or become in violation of any law, rule or regulation, whether local, state or federal, such provision shall be deemed automatically amended to conform, to the extent possible without total waiver of such provision, to such law, and all other provisions hereof shall remain in full force and effect. As used herein, the terms Borrower and City shall be deemed to include their respective grantees, heirs, legal representative, successors and assigns, whether voluntary by action of the parties or involuntary by operation of law, and the term holder shall be deemed to include the City as well as any future holder or holders of this Note.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER

TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

Signed as of the _____ day of _____, 2018, pursuant to due authority.

HATCH DEVELOPMENT GROUP, L.L.C.

By. _____
Name: Jack Hatch
Title: President

EXHIBIT C

ADDRESSES FOR NOTICES AND DEMANDS

City: City of Newton, Iowa
101 West 4th Street
Newton, IA 50208
(641) 792-2787
Lisaf@newtongov.org

Borrower: Hatch Development Group, L.L.C.

EXHIBIT D

PAYMENT REQUEST FORM

Borrower Name and Address: Hatch Development Group, L.L.C.

Attn: Jack Hatch

For Property Address: _____

Pursuant to, and in accordance with, the provisions of the Amended Loan Agreement dated _____, 2018 (the "Agreement"), between the City of Newton (the "City"), and Hatch Development Group, L.L.C. (the "Borrower"), the Authority is hereby requested to pay to the Borrower the sum of \$ _____ which amount is to be used as set forth in Exhibit A hereto.

IT IS HEREBY CERTIFIED THAT:

- (a) None of the items for which disbursement is requested has formed the basis for any disbursement heretofore made under the Agreement;
- (b) The obligation with respect to which this disbursement is being requested has been properly incurred in accordance with the Agreement with respect to the Project (as defined in the Agreement) and is a proper charge under the Agreement;
- (c) The Borrower has no notice of, and is not otherwise aware of, any mechanics', materialmen's, laborers', suppliers', vendors' or other liens or rights in respect thereof which should, in accordance with the Agreement, be satisfied or discharged before this disbursement is made;
- (d) This disbursement does not include any amount which the Borrower is entitled to retain pursuant to any contract or agreement providing for the retention by the Borrower of a portion of the price paid thereunder;
- (e) No Event of Default is continuing under the Agreement; and
- (f) Attached hereto are, as applicable, copies of invoices, lien waivers, and other necessary documents in connection with this Payment Request Form,

**AUTHORIZED BORROWER
REPRESENTATIVE**

Date: _____

EXHIBIT E

CLOSING CERTIFICATE OF BORROWER

The undersigned, Hatch Development Group, L.L.C. (the "Borrower"), in connection with a loan to the Borrower in the amount of \$450,000 (the "Loan") by the City of Newton, Iowa (the "City") respecting funds secured by the City under the Authority's Workforce Housing Loan Program (the "Program") hereby certifies as follows:

1. All defined terms used herein shall have the respective meanings contained in the Amended Loan Agreement dated as of _____, 2018 (the "Amended Loan Agreement"), between the Borrower and the Authority pursuant to which the Loan to the Borrower is to be made.

2. The Borrower is duly organized, legally existing and in good standing under the laws of the State of Iowa; is duly licensed or qualified in the State of Iowa and in all other states and jurisdictions wherein the nature of the business transacted by the Borrower or the nature of the property owned or leased by it makes such licensing or qualification necessary; and has full right, power and authority to conduct the business in which it is now engaged and to enter into the Loan Agreement, the Loan made pursuant thereto, and to execute such other documents and take such other action necessary for the consummation of the transactions contemplated thereby.

3. All of the proceeds of the Loan will be used for the purpose of financing a portion of the costs of the Project as set forth in Exhibit A to the Loan Agreement.

4. The execution and delivery by the Borrower of the Loan Agreement and the Borrower's Promissory Note described therein (the "Note" and, together with the Loan Agreement, the "Loan Documents") will not result in any breach of any of the terms, conditions, or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Borrower pursuant to any indenture, loan agreement, or other instrument to which the Borrower is a party or by which the Borrower may be bound, nor will such action result in any violation of the provisions of the partnership agreement of the Borrower.

5. The Borrower is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money, and to the best knowledge of the undersigned, is not in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued, and, to the best knowledge of the undersigned, no event has occurred and is continuing under the provisions of any such instrument or agreement which with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder.

6. All financial statements of the Borrower heretofore presented to the City, if any, are correct and complete and fairly present the financial condition of the Borrower as of the dates indicated and the results of the operations of the Borrower for the periods specified. There has been no material change in the condition of the Borrower, financial or otherwise, from that set forth in the aforesaid financial statements since the dates thereof.

7. There are no actions, suits or proceedings pending or to the knowledge of the Borrower threatened against or affecting the Borrower at law or in equity or before any federal, state or local governmental authority or agency challenging the validity of any of the Loan Documents, seeking to enjoin the performance of the obligations of the Borrower thereunder or challenging the acquisition, construction, improving and equipping or operation of the Project, or which, if adversely determined, would result in any material adverse change in the business, properties or assets or in the condition, financial or otherwise, of the Borrower that have not been disclosed to the City.

8. No event has occurred and is continuing, or would result from the transaction contemplated by the Loan Documents, which constitutes an Event of Default under the Loan Agreement or which would constitute such an Event of Default but for the requirement that notice be given or time elapse or both.

9. The Borrower has satisfied all conditions precedent to the Loan as set forth in Section 2.01 of the Loan Agreement.

10. The undersigned, on behalf of the Borrower, have examined executed counterparts of the Loan Agreement and all other Loan Documents, and the Borrower agrees to pay all sums owing under the Note and the Loan Agreement in accordance with the provisions of the Note and the Loan Agreement.

11. The officer of Borrower, whose signatures appear below have on the date or dates of the execution of the Loan Documents, and are on the date hereof, the duly qualified officer of Borrower, and the signatures appearing below and on the Loan Documents are the genuine signature of such Manager.

The officer whose signature appear below have heretofore been empowered to act on behalf of the Borrower in the execution of the Loan Agreement and the Note or to execute any other instrument or take any other action necessary for the consummation of the transaction contemplated in the Loan Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto affixed his official signature this _____ day of _____, 2018.

HATCH DEVELOPMENT GROUP, L.L.C.

By: _____

EXHIBIT F

HATCH DEVELOPMENT GROUP, L.L.C.

Automated Clearinghouse (ACH) Transfer Authorization for Loan Proceeds Disbursement

It is understood that each loan disbursement credit will be made only upon receipt of the necessary disbursement request form and corresponding invoices.

To begin receiving your payments via EFT, please complete and return this form:

Borrower Name: _____

Borrower Address: _____

City: _____ State: _____ Zip: _____

Federal Identification Number: _____

Remittance Contact Name: _____

Remittance Contact's E-Mail address: _____

Phone number: _____ Fax number: _____

Bank Name: _____

Bank Address: _____

City: _____ State: _____ Zip: _____

Bank Routing Number (ABA#): _____

Account Number : _____ *Up to 17 digits only*

☐ Checking

☐ Savings

Check Account Type

Authorization

I hereby authorize the City of Newton, Iowa (the "City") to credit the bank account listed above for disbursement of loan proceeds pursuant to that certain Loan Agreement dated _____.

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

Please return this form to:

City of Newton, Iowa

Attn: _____

101 West 4th Street

Newton, IA 50208

Exhibit G

City of Newtown, Iowa

Loan Agreement
Automated Clearinghouse (ACH) Transfer Authorization
for Loan Repayment

Borrower name: Hatch Development Group, L.L.C.

I hereby authorize and direct the City of Newton, Iowa (the "City") to debit the bank account designated below semi-annually to collect principal and interest amounts due as required by that certain Loan Agreement and Promissory Note dated _____. **There is no charge for an ACH transfer.**

Borrower's Bank Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Bank Account Number: _____ Checking Savings (Circle one)

Local Bank Routing Number (ABA#) _____

Account Name: _____

Authorization

Borrower name: _____ Loan Number: _____

Federal Identification Number: _____

Address: _____ Email Address _____

City: _____ State: _____ Zip Code: _____

Phone: _____ FAX: _____

Authorized Signatory's Name: _____

Signature: _____ Date: _____

Title: _____

This authorization shall remain in full force and effect until the City of Newton, Iowa has received written notice of its termination or modification.

Please return this form to:

City of Newton, Iowa
Attn: _____
101 West 4th Street
Newton, IA 50208

Document comparison by Workshare Compare on Monday, August 28, 2023
3:05:24 PM

Input:	
Document 1 ID	netdocuments://4866-5208-7932/1
Description	Original Loan Agreement (Newton 57-2023)
Document 2 ID	netdocuments://4863-1418-4316/2
Description	Amended Loan Agreement (Newton 57-2023)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	43
Deletions	19
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	62

City of Newton Council Report

**Item:**

Resolution awarding contract for the Arbor Estates Second Addition Construction Project

Summary:

Award of contract to construct the base project plus Add-Alternate A on the Arbor Estates Second Addition subdivision.

Financial Impact:

\$2,689,109.12 from a mix of ARPA funds, Housing Initiative Funds, remaining bond funds, and new GO bonds in the spring of 2024.

Report Number: 2023-1031**Date:**

September 18, 2023

Lead Department:

Community Services

Recommendation:

Approve

Background:

The City, in partnership with the Newton Housing Development Corporation (NHDC), has been working to increase residential subdivision development in northeast Newton. With sales continuing of the platted lots in the Arbor Estates Plat One subdivision, the construction of a new platted area in the remaining and adjacent NHDC property is needed.

Plans and specifications were prepared by Bolton & Menk and placed out for bid. The project includes earthwork, sanitary and storm sewer, water main, 31-foot-wide Portland cement concrete (PCC) streets, erosion control, seeding, and other related items needed to construct the Arbor Estates Phase Second Addition subdivision. The new streets to be constructed with this phase include the E 23rd St N extension to N 11th Ave E, and the E 26th St N cul-de-sac. Also included as an add-alternate is the N 10th Ave E cul-de-sac, running east from the new E 23rd St N.

The following bids were received and opened on August 22, 2023:

<u>Contractor</u>	<u>Base Bid + Add-Alt. A</u>
McAnich Corp.	\$2,689,109.12
Sandstone Management, LTD	\$2,806,271.76
On Track Construction, LLC	\$2,890,017.70
Alliance Construction Group, LLC	\$2,913,604.55
Evolution Contracting, LLC	\$2,955,732.95
Absolute Concrete Construction, Inc.	\$2,961,043.60
Vanderpool Construction, Inc	\$3,045,794.30
C.J. Moyna & Sons, LLC	\$3,287,965.12
Boomerang Corp.	\$3,359,762.67
Con-Struct, Inc.	\$3,410,656.60

The apparent low bidder is McAnich Corp. of Des Moines, Iowa. The Engineer's estimate for this project, including add-alternate A, was \$3,661,890.42. The project will be paid for using a mix of ARPA funds, Housing Initiative Funds, remaining bond funds, and new GO bonds in the spring of 2024.

Recommendation:

City Staff recommends that Council award a contract for the base bid work plus add-alternate A to McAnich Corp. of Des Moines, Iowa in the amount of \$2,689,109.12.

A handwritten signature in black ink, appearing to read "Matt Muckler". The signature is fluid and cursive, with the first name "Matt" and last name "Muckler" clearly distinguishable.

Matt Muckler, City Administrator

RESOLUTION 2023- _____

RESOLUTION AWARDING CONTRACT FOR THE ARBOR ESTATES SECOND ADDITION CONSTRUCTION PROJECT

WHEREAS, the City, in partnership with the Newton Housing Development Corporation (NHDC), has been working to increase residential subdivision development in northeast Newton; and

WHEREAS, with sales continuing of the platted lots in the Arbor Estates Plat One subdivision, the construction of a new platted area in the remaining and adjacent NHDC property is needed; and

WHEREAS, the project includes earthwork, sanitary and storm sewer, water main, 31-foot-wide Portland cement concrete (PCC) streets, erosion control, seeding, and other related items needed to construct the Arbor Estates Phase Second Addition subdivision; and

WHEREAS, the new streets to be constructed with this phase include the E 23rd St N extension to N 11th Ave E, and the E 26th St N cul-de-sac; along with an add-alternate to construct the N 10th Ave E cul-de-sac, running east from the new E 23rd St N; and

WHEREAS, plans and specifications were prepared by Bolton & Menk and placed out for bid, with the following bids received and opened on August 22, 2023:

<u>Contractor</u>	<u>Base Bid + Add-Alt. A</u>
McAnich Corp.	\$2,689,109.12
Sandstone Management, LTD	\$2,806,271.76
On Track Construction, LLC	\$2,890,017.70
Alliance Construction Group, LLC	\$2,913,604.55
Evolution Contracting, LLC	\$2,955,732.95
Absolute Concrete Construction, Inc.	\$2,961,043.60
Vanderpool Construction, Inc	\$3,045,794.30
C.J. Moyna & Sons, LLC	\$3,287,965.12
Boomerang Corp.	\$3,359,762.67
Con-Struct, Inc.	\$3,410,656.60

; and

WHEREAS, the Engineer’s estimate for this project, including add-alternate A, was \$3,661,890.42; and

WHEREAS, City Staff recommends that Council award a contract for the base bid work plus add-alternate A to McAnich Corp. of Des Moines, Iowa for the Arbor Estates Second Addition Construction Project based on the low responsive, responsible bid received in the amount of \$2,689,109.12.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of Newton, Iowa, that the base bid plus add-alternate A of McAnich Corp. of Des Moines, Iowa, in the amount of Two Million, Six Hundred Eighty-Nine Thousand, One Hundred Nine Dollars and Twelve Cents (\$2,689,109.12) for the Arbor Estates Second Addition Construction Project, all as described in the plans and specifications, is hereby accepted, the same being the lowest, responsive bid received for said project.

BE IT FURTHER RESOLVED, by the City Council of the City of Newton, Iowa, that the Contract and Bond executed by McAnich Corp. of Des Moines, Iowa for the Arbor Estates Second Addition Construction Project as described by the plans and specifications filed in the office of the City Clerk, said contract to be signed by the Mayor and City Clerk on behalf of the City, be and the same are hereby approved. The City shall utilize a mix of ARPA funds, Housing Initiative Funds, remaining bond funds, and new GO bonds in the spring of 2024.

PASSED this _____ day of September, 2023.

APPROVED this _____ day of September, 2023.

Michael L. Hansen, Mayor

ATTEST:

Katrina Davis, City Clerk