



STAFF REPORT

DATE: November 6, 2024
CONSENT

AGENDA ITEM: Approve Pay Request No. 8 (Final) for the Torre Pines Street and Utility Improvements

SUBMITTED BY: Chad Isakson, Project Engineer

REVIEWED BY: Nicole Miller, City Administrator
Sarah Sonsalla, City Attorney
Clarissa Hadler, Finance Director
Marty Powers, Public Works Director
Jack Griffin, City Engineer

ISSUE BEFORE COUNCIL: Should the City Council approve Pay Request No. 8 (Final) for the Torre Pines Street and Utility Improvements?

BACKGROUND: Jacon, LLC was awarded a construction contract on January 4, 2022 to complete the Torre Pines Street and Utility Improvements. The contractor has completed the work in accordance with the contract, plans, and specifications, including all punch list items. The warranty period has expired and final payment effectively closes out the project.

PROPOSAL DETAILS/ANALYSIS: Jacon, LLC has submitted Partial Pay Request No. 8 (Final) in the amount of \$31,138.19. Final documentation has not been provided by the contractor, which includes the consent of surety, contractor lien waivers, and IC-134s. These documents are required by the contract to release final funds. The city has received communications from the surety company demanding project funds to be held or, if released, paid to the surety. The city has also received communications from subcontractors informing the city that they have not been paid by the general contractor for their work on the project.

The city has been seeking resolution on the matter from the general contractor but has received limited communication in return. On October 2, 2024 the city attorney sent communications to the surety company to verify they will accept funds in exchange for a release from all outstanding payment claims. A formal response has not yet been received. In order for the city to seek reimbursement for all Project expenditures, it is critical that final payments be processed prior to the MPCA Grant Agreement expiration on December 31, 2024. Therefore, staff is recommending that the city council approve the final payment subject to making the payment to contractor's surety, provided that the surety accepts payment and releases the city from all outstanding claims or future payment obligations related to the Project.

FISCAL IMPACT: None. Final payment is being recommended within the authorized project scope and budget. The final total project cost is projected to be \$1,794,700 of which \$875,000 is related to street improvements, \$622,800 is public watermain improvements and \$296,900 is private water connection and well sealing costs. The project is being paid through the MPCA Grant (3M Settlement funds) and the total project costs have come in below the authorized grant amount of \$2,243,000.

RECOMMENDATION: Staff is recommending that the City Council approve, *as part of the Consent Agenda*, Pay Request No. 8 (Final) for the Torre Pines Street and Utility Improvements subject to making

the payment to contractor's surety, provided the surety accepts payment and releases the city from all outstanding claims or future payment obligations related to the Project. If removed from the consent agenda, the recommended motion for the action is as follows:

“Move to approve Pay Request No. 8 (Final) in the amount of \$31,138.19 for the Torre Pines Street and Utility Improvements subject to making the payment to contractor's surety, provided the surety accepts payment and releases the city from all outstanding claims or future payment obligations related to the Project”.

ATTACHMENTS:

1. Partial Pay Estimate No. 8 (Final).
2. Certification of Completion.
3. Surety Correspondence.

PROJECT PAY FORM

PARTIAL PAY ESTIMATE NO. <u>8 (FINAL)</u>	FOCUS ENGINEERING, inc.
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TORRE PINES STREET AND UTILITY IMPROVEMENTS PROJECT NO. 2020.122	PERIOD OF ESTIMATE FROM <u>8/1/2023</u> TO <u>4/1/2024</u>
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PROJECT OWNER: CITY OF LAKE ELMO 3880 LAVERNE AVENUE NORTH LAKE ELMO, MN 55042 ATTN: JACK GRIFFIN, CITY ENGINEER	CONTRACTOR: JACON, LLC 3900 Labore Road Vadnais Heights, MN 55110 ATTN: Dwight Johnson
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CONTRACT CHANGE ORDER SUMMARY			
No.	Approval Date	Amount	
		Additions	Deductions
CO-1	7/19/2022	\$9,927.00	\$0.00
CO-2	12/20/2022	\$0.00	\$0.00
CCO-3	4/1/2024		\$108,506.50
TOTALS		\$9,927.00	\$108,506.50
NET CHANGE		(\$98,579.50)	

PAY ESTIMATE SUMMARY	
1. Original Contract Amount	\$1,344,107.16
2. Net Change Order Sum	-\$98,579.50
3. Revised Contract (1+2)	\$1,245,527.66
4. *Work Completed	\$1,245,527.66
5. *Stored Materials	\$0.00
6. Subtotal (4+5)	\$1,245,527.66
7. Retainage* <u>0.0%</u>	\$0.00
8. Previous Payments	\$1,214,389.47
9. Amount Due (6-7-8)	\$31,138.19
*Detailed Breakdown Attached	

CONTRACT TIME			
START DATE: <u>6/1/2022</u>	ORIGINAL DAYS <u>135</u>	ON SCHEDULE	
SUBSTANTIAL COMPLETION: <u>9/2/2022</u>	REVISED DAYS <u>Per CO-2</u>	YES	<input checked="" type="checkbox"/>
FINAL COMPLETION: <u>10/14/2022</u>	REMAINING _____	NO	<input type="checkbox"/>

ENGINEER'S CERTIFICATION: The undersigned certifies that the work has been reviewed and to the best of their knowledge and belief, the quantities shown in this estimate are correct and the work has been performed in accordance with the contract documents.	FOCUS Engineering, inc. <i>Chad Isakson</i> _____ ENGINEER 4/1/2024 _____ DATE
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CONTRACTOR'S CERTIFICATION: The undersigned Contractor certifies that to the best of their knowledge, information and belief the work covered by this payment estimate has been completed in accordance with the contract documents, that all amounts have been paid by the contractor for work for which previous payment estimates was issued and payments received from the owner, and that current payment shown herein is now due.	CONTRACTOR <i>Sarah Jensen</i> _____ BY 10/10/2024 _____ DATE
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APPROVED BY OWNER: CITY OF LAKE ELMO, MINNESOTA	
_____ BY	_____ BY
_____ DATE	_____ DATE

TORRE PINES STREET AND UTILITY IMPROVEMENTS
 CITY OF LAKE ELMO, MINNESOTA
 PROJECT NO. 2020.122



ITEM	DESCRIPTION OF PAY ITEM	UNIT	CONTRACT			THIS PERIOD		TOTAL TO DATE	
			QUANTITY	UNIT PRICE	AMOUNT	QUANTITY	AMOUNT	QUANTITY	AMOUNT
BASE BID									
1	INLET PROTECTION	EA	20	\$250.00	\$5,000.00	0.00	\$0.00	20.00	\$5,000.00
2	SILT FENCE, MACHINE SLICED	LF	1,785	\$3.00	\$5,355.00	0.00	\$0.00	93.00	\$279.00
3	SEDIMENT CONTROL LOG, TYPE WOOD FIBER	LF	80	\$3.00	\$240.00	0.00	\$0.00	80.00	\$240.00
4	TEMPORARY MAILBOX	EA	23	\$200.00	\$4,600.00	0.00	\$0.00	22.00	\$4,400.00
5	CLEARING	EA	34	\$253.68	\$8,625.12	0.00	\$0.00	28.00	\$7,103.04
6	GRUBBING	EA	34	\$253.68	\$8,625.12	0.00	\$0.00	1.00	\$253.68
7	CLEAR BRUSH	SY	600	\$19.17	\$11,502.00	0.00	\$0.00	507.00	\$9,719.19
8	DITCH GRADING (AT FLARED END)	EA	4	\$500.00	\$2,000.00	0.00	\$0.00	4.00	\$2,000.00
9	DITCH GRADING	LF	40	\$120.00	\$4,800.00	0.00	\$0.00	40.00	\$4,800.00
10	16" X 8" WET TAP, INCL 8" GATE VALVE & BOX	EA	1	\$577.31	\$577.31	0.00	\$0.00	1.00	\$577.31
11	HYDRANT	EA	9	\$6,129.00	\$55,161.00	0.00	\$0.00	9.00	\$55,161.00
12	HYDRANT EXTENSION	LF	5	\$1,528.00	\$7,640.00	0.00	\$0.00	0.00	\$0.00
13	CONCRETE HYDRANT SPLASH PAD	SF	90	\$23.00	\$2,070.00	0.00	\$0.00	90.00	\$2,070.00
14	6" GATE VALVE AND BOX	EA	9	\$2,128.00	\$19,152.00	0.00	\$0.00	9.00	\$19,152.00
15	8" GATE VALVE AND BOX	EA	7	\$2,785.00	\$19,495.00	0.00	\$0.00	7.00	\$19,495.00
16	VALVE BOX EXTENSION	LF	16	\$92.00	\$1,472.00	0.00	\$0.00	5.00	\$460.00
17	1.5" CORPORATION STOP W/ SADDLE	EA	23	\$674.00	\$15,502.00	0.00	\$0.00	23.00	\$15,502.00
18	2" CORPORATION STOP	EA	1	\$633.00	\$633.00	0.00	\$0.00	1.00	\$633.00
19	1.5" CURB STOP & BOX	EA	23	\$682.00	\$15,686.00	0.00	\$0.00	23.00	\$15,686.00
20	2" CURB STOP & BOX	EA	1	\$868.00	\$868.00	0.00	\$0.00	1.00	\$868.00
21	1.5" TYPE "K" COPPER WATER SERVICE	LF	850	\$26.04	\$22,134.00	0.00	\$0.00	839.00	\$21,847.56
22	2" TYPE "K" COPPER WATER SERVICE	LF	11	\$126.70	\$1,393.70	0.00	\$0.00	16.00	\$2,027.20
23	4" DIP, CL. 52 WATERMAIN, INCL POLY WRAP	LF	12	\$134.00	\$1,608.00	0.00	\$0.00	14.00	\$1,876.00
24	6" DIP, CL. 52 WATERMAIN, INCL POLY WRAP	LF	150	\$65.00	\$9,750.00	0.00	\$0.00	122.00	\$7,930.00
25	10" HDPE WATERMAIN, DIRECTIONAL DRILL	LF	4,400	\$63.75	\$280,500.00	0.00	\$0.00	4,158.00	\$265,072.50
26	DUCTILE IRON FITTINGS	LB	2,100	\$4.28	\$8,988.00	0.00	\$0.00	1,796.00	\$7,686.88
27	10" HDPE TO 8" DIP TRANSITION FITTINGS	EA	34	\$1,417.00	\$48,178.00	0.00	\$0.00	26.00	\$36,842.00
28	4" INSULATION	SF	100	\$9.98	\$998.00	0.00	\$0.00	128.00	\$1,277.44
29	REMOVE AND DISPOSE OF EXISTING STORM SEWER PIPE	LF	35	\$44.36	\$1,552.60	0.00	\$0.00	11.00	\$487.96
30	REMOVE AND DISPOSE OF EXISTING STORM SEWER STRUCTURE	EA	1	\$1,725.00	\$1,725.00	0.00	\$0.00	1.00	\$1,725.00
31	CONNECT TO EXISTING STORM SEWER PIPE	EA	3	\$1,600.00	\$4,800.00	0.00	\$0.00	3.00	\$4,800.00
32	12" RCP STORM SEWER, CL 5	LF	24	\$195.00	\$4,680.00	0.00	\$0.00	8.00	\$1,560.00
33	15" RCP STORM SEWER, CL 5	LF	7	\$250.00	\$1,750.00	0.00	\$0.00	3.00	\$750.00
34	SALVAGE & REINSTALL 12" RCP FLARED END SECTION	EA	1	\$750.00	\$750.00	0.00	\$0.00	1.00	\$750.00
35	SALVAGE & REINSTALL 18" RCP STORM SEWER	LS	1	\$4,200.00	\$4,200.00	0.00	\$0.00	1.00	\$4,200.00
36	6' DIA CBMH WITH CASTING PER DETAIL 406	EA	1	\$11,500.00	\$11,500.00	0.00	\$0.00	1.00	\$11,500.00
37	SALVAGE AND REINSTALL CASTING WITH NEW RINGS	EA	18	\$683.31	\$12,299.58	0.00	\$0.00	18.00	\$12,299.58
38	PATCH DOGHOUSES	EA	5	\$575.00	\$2,875.00	0.00	\$0.00	5.00	\$2,875.00
39	PATCH INVERT	EA	7	\$657.14	\$4,599.98	0.00	\$0.00	7.00	\$4,599.98
40	JET AND CLEAN STORM PIPE	LF	500	\$17.48	\$8,740.00	0.00	\$0.00	500.00	\$8,740.00
41	RANDOM RIPRAP CL III WITH FABRIC	CY	40	\$150.00	\$6,000.00	0.00	\$0.00	40.00	\$6,000.00
42	REMOVE AND DISPOSE OF BITUMINOUS PAVEMENT	SY	13,200	\$10.16	\$134,112.00	0.00	\$0.00	13,200.00	\$134,112.00
43	COMMON EXCAVATION (EV) (P)	CY	2,200	\$22.41	\$49,302.00	0.00	\$0.00	2,200.00	\$49,302.00
44	SUBGRADE EXCAVATION	CY	800	\$11.00	\$8,800.00	0.00	\$0.00	185.00	\$2,035.00
45	GRANULAR BORROW (CV)	CY	800	\$23.00	\$18,400.00	0.00	\$0.00	185.00	\$4,255.00
46	AGGREGATE BASE, CLASS 6 (CV)	CY	2,550	\$20.00	\$51,000.00	0.00	\$0.00	2,300.00	\$46,000.00
47	TYPE SP 9.5 BITUMINOUS WEARING COURSE MIXTURE (2,C)	TN	1,310	\$96.85	\$126,873.50	0.00	\$0.00	1,237.71	\$119,872.21
48	TYPE SP 12.5 BITUMINOUS NON WEARING COURSE MIXTURE (2,C)	TN	1,750	\$101.74	\$178,045.00	0.00	\$0.00	1,432.88	\$145,781.21
49	BITUMINOUS MATERIAL FOR TACK COAT	GAL	970	\$2.00	\$1,940.00	0.00	\$0.00	725.00	\$1,450.00
50	CONCRETE APPROACH NOSE	EA	3	\$690.00	\$2,070.00	0.00	\$0.00	3.00	\$2,070.00
51	REMOVE SIGNS & POST	EA	7	\$51.75	\$362.25	0.00	\$0.00	7.00	\$362.25
52	SALVAGE AND REINSTALL SIGN PANEL	EA	1	\$189.75	\$189.75	0.00	\$0.00	1.00	\$189.75
53	SIGN PANELS TYPE C	SF	56	\$69.00	\$3,864.00	0.00	\$0.00	56.00	\$3,864.00
54	STREET NAME BLADE SIGN (2 BLADES)	EA	2	\$201.25	\$402.50	0.00	\$0.00	2.00	\$402.50
55	STREET NAME BLADE SIGN (2 BLADES), INCLUDING POST	EA	1	\$402.50	\$402.50	0.00	\$0.00	1.00	\$402.50
56	STREET NAME BLADE SIGN (3 BLADES)	EA	1	\$322.00	\$322.00	0.00	\$0.00	1.00	\$322.00
57	SEED MIXTURE 35-241 & EROSION CONTROL BLANKET	SY	810	\$2.85	\$2,308.50	0.00	\$0.00	496.00	\$1,413.60
58	STREET SWEEPER WITH PICK UP BROOM	HR	20	\$150.00	\$3,000.00	0.00	\$0.00	17.00	\$2,550.00
SUBTOTAL BASE BID					\$1,209,419.41	\$0.00	\$1,082,630.34		

ITEM	DESCRIPTION OF PAY ITEM	UNIT	CONTRACT			THIS PERIOD		TOTAL TO DATE	
			QUANTITY	UNIT PRICE	AMOUNT	QUANTITY	AMOUNT	QUANTITY	AMOUNT
BID ALTERNATE 2 - SPOT CURB REPLACEMENT									
74	MOBILIZATION	LS	1	\$9,000.00	\$9,000.00	0.00	\$0.00	1.00	\$9,000.00
75	TRAFFIC CONTROL	LS	1	\$5,117.50	\$5,117.50	0.00	\$0.00	1.00	\$5,117.50
76	SAWCUT BITUMINOUS PAVEMENT	LF	225	\$5.00	\$1,125.00	0.00	\$0.00	172.00	\$860.00
77	SAWCUT CONCRETE PAVEMENT	LF	50	\$8.00	\$400.00	0.00	\$0.00	50.00	\$400.00
78	REMOVE AND DISPOSE OF BITUMINOUS PAVEMENT (DRIVEWAY)	SY	80	\$10.35	\$828.00	0.00	\$0.00	90.00	\$931.50
79	REMOVE AND DISPOSE OF CONCRETE PAVEMENT (DRIVEWAY)	SY	35	\$32.00	\$1,120.00	0.00	\$0.00	0.00	\$0.00
80	REMOVE AND DISPOSE OF CONCRETE CURB & GUTTER - SPOT REPAIR	LF	2,000	\$6.18	\$12,360.00	0.00	\$0.00	2,099.00	\$12,971.82
81	BITUMINOUS DRIVEWAY PAVEMENT	SY	80	\$75.90	\$6,072.00	0.00	\$0.00	90.00	\$6,831.00
82	6" CONCRETE DRIVEWAY PAVEMENT	SY	35	\$113.85	\$3,984.75	0.00	\$0.00	0.00	\$0.00
83	B618 CONCRETE CURB & GUTTER - SPOT REPAIR	LF	2,000	\$32.49	\$64,980.00	0.00	\$0.00	2,111.00	\$68,586.39
84	TOPSOIL BORROW (LV)	CY	300	\$30.00	\$9,000.00	0.00	\$0.00	393.00	\$11,790.00
85	SEED MIXTURE 25-131 & HYDRAULIC MULCH	SY	150	\$7.67	\$1,150.50	0.00	\$0.00	1,233.00	\$9,457.11
86	SODDING, TYPE LAWN	SY	1,700	\$11.50	\$19,550.00	0.00	\$0.00	2,350.00	\$27,025.00
SUBTOTAL BID ALTERNATE 2					\$134,687.75		\$0.00		\$152,970.32

TOTALS - BASE CONTRACT

\$1,344,107.16

\$0.00

\$1,235,600.66

CHANGE ORDER NO. 1									
CO1-1	ADD TRACER WIRE FOR ALL PROJECT SERVICES AND HYDRANTS	LS	1	\$9,927.00	\$9,927.00	0.00	\$0.00	1.00	\$9,927.00
SUBTOTAL - CHANGE ORDER NO. 1					\$9,927.00		\$0.00		\$9,927.00

COMPENSATING CHANGE ORDER NO. 3									
CO 3-1	COMPENSATING CHANGE ORDER	LS	1	-\$108,506.50	-\$108,506.50	0.00	\$0.00	0.00	\$0.00
SUBTOTAL - COMPENSATING CHANGE ORDER NO. 3					-\$108,506.50		\$0.00		\$0.00

TOTALS - REVISED CONTRACT

\$1,245,527.66

\$0.00

\$1,245,527.66

CERTIFICATE OF COMPLETION

DATE OF ISSUANCE: October 29, 2024

OWNER: CITY OF LAKE ELMO, MN
CONTRACTOR: JACON LLC
PROJECT NAME: TORRE PINES STREET AND UTILITY IMPROVEMENTS
PROJECT NO.: 2020.122

- This Certification of Completion applies to all work under the Contract Documents
 This Certification of Completion applies to the following specified parts of the Contract Documents

I do hereby certify that the work to which this Certificate applies has been constructed in accordance with the Contract dated January 6, 2022. The above-mentioned improvement is hereby declared to be complete and acceptance of this work is recommended.

DATE OF COMPLETION: September 29, 2023

Chad Isakson Reg. No. 49028

Chad Isakson
FOCUS Engineering, inc.

THE WARRANTY PERIOD BEGINS September 29, 2023 AND ENDS September 29, 2024



Fifth Street Towers
150 South Fifth Street, Suite 700
Minneapolis, MN 55402
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(612) 337-9310 fax
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Affirmative Action, Equal Opportunity Employer

MICHELLE E. WEINBERG
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October 2, 2024

VIA FEDEX OVERNIGHT DELIVERY

Tim Taylor
Granite Re, Inc.
14001 Quailbrook Drive
Oklahoma City, Oklahoma 73134

**RE: Demand to Freeze Contract Funds for Torre Pines Street and Utility
Improvements Project and Whistling Valley Street Project (Project No.
2020.123)
PRINCIPAL: Jacon LLC
BOND NO. GRMN45745A**

Dear Mr. Taylor:

We represent the City of Lake Elmo ("City"), the obligee under the above-reference bond, which was provided by Jacon, LLC ("Contractor") in connection with the City's Torre Pines and Whistling Valley Street Projects. On August 24, 2023, the City received two letters from Granite Re, Inc. ("Surety") instructing the City to freeze the contract funds because the Surety had received potential bond claims. A copy of these letters are enclosed for your convenience. The City has frozen the Project funds as requested, and currently holds the following amounts: \$31,138.19 (Torre Pines) and \$74,339.16 (Whistling Valley), or a total balance of \$105,477.35. Copies of the final pay applications and change orders are also enclosed.

The City is now ready to close out the Projects. All work has been completed, but the City has been unable to obtain the final paperwork indicating that all outstanding subcontractor contracts have been paid. It is the City's understanding that the Contractor has declared bankruptcy and will not be addressing the subcontractor claims. The grant obtained by the City for these Projects requires that they be completely closed out before the end of this calendar year.

The City is prepared to transmit the remaining Project funds to the Surety in exchange for a release from all outstanding payment claims. Please contact me as soon as possible to discuss the release of funds and close-out of these Projects.

Thank you for your prompt attention to this matter.

Regards,

KENNEDY & GRAVEN, CHARTERED

/s/ Michelle E. Weinberg

Michelle E. Weinberg
Enclosures

cc: Sarah Sonsalla, City Attorney
Chad Isakson (Chad.Isakson@focusengineeringinc.com)



August 24, 2023

City of Lake Elmo
3800 Laverne Ave Ste 100
Lake Elmo, MN 55042

RE: DEMAND TO FREEZE CONTRACT FUNDS

Principal: Jacon LLC
Bond No: GRMN45745A
Obligee: City of Lake Elmo
Project: Torre Pines Street and Utility Improvements

As you are aware, Granite Re, Inc. executed payment and/or performance bonds naming Jacon LLC as bond principal, and City of Lake Elmo as bond obligee, in connection with the project identified above.

Be advised Granite Re has pending bond claims for potential amounts due from suppliers and/or subcontractors to our bond principal. As Granite Re continues to investigate these matters and determine the merits of the claims, it is necessary to maintain the integrity of remaining contract funds which serve as the resource for the faithful payment of suppliers and subcontractors of the bond principal.

Therefore, on behalf of Granite Re, Inc as surety for Jacon LLC, this letter will formally serve to advise you that Granite Re, Inc., hereby demands any and all contract funds be released as earned only to Granite Re, Inc. the contract surety for the above referenced project.

Granite Re, Inc. through its contractual agreement of indemnity with the above identified principal and by the legal right of subrogation, maintain a priority interest in all contract funds to the extent of damages occasioned by potential claims against the surety's bonds.

Therefore, we do hereby demand that any and all contract funds be released as earned only to Granite Re, Inc., contract surety. Failure to honor this request may result in releasing Granite Re, Inc. from liability under the aforementioned bonds.

Please be advised the contents of this letter and our investigation into this matter is without prejudice to the rights of all parties concerned and this correspondence is written while reserving all rights and defenses available to Granite Re, Inc. as a result of this bond undertaking without waiver, estoppel or admission of liability in whole or in part. Granite Re, Inc. continues to insist upon strict compliance with all terms and provisions of the bond and any statutes controlling its bond.

If you require any additional information please call.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Taylor', is written over a horizontal line.

Tim Taylor