

TENTATIVE AGENDA
CLEAR LAKE CITY COUNCIL
CITY HALL – 15 N. 6TH STREET
THURSDAY, OCTOBER 27, 2011
CITY HALL – COUNCIL CHAMBERS
SPECIAL MEETING
6:30 P.M.

1. Call To Order by Mayor Nelson P. Crabb.
2. Approval of Agenda.
3. Consent Agenda:
 - A. Minutes – October 17, 2011.
 - B. Liquor License: Class B Wine Permit & Class C Beer Permit with Sunday Sales, j avenue, Clear Lake.
4. Citizen's opportunity to address the Council on items not on the agenda:
 - In conformance with the City Council's Rules of Procedure, no action can occur on items presented during the Citizens Forum.
 - Please walk to the lectern, state your name (spell last name), address, and subject of your discussion.
 - Speakers are limited to a maximum of five (5) minutes per person.
5. Unfinished Business:
6. New Business:
 - A. CDBG Sanitary Sewer Collection System Improvement Project (Phase 1):
 - Update regarding change order proposal for work on US HWY 18 & 7th Avenue N. casing pipe, Jason Petersburg, P.E., Veenstra & Kimm.
 - Discussion and review of alternatives by City Council.
 - B. Surf District (400 block of North Shore Drive) Streetscape Project:
 - Review of request, Scott Flory, City Administrator.
 - **Motion** to approve **Resolution #11-82**, " A Resolution authorizing execution of an agreement between the City of Clear Lake and the Iowa Department of Transportation for the 'Surf District – North Shore Drive Streetscape Improvement Project'"
 - Discussion and consideration of **Motion** by City Council.

C. US Geological Survey Iowa Water Science Center Gaging Station Relocation Project:

- Review of proposal, Scott Flory, City Administrator.
- **Motion** to approve Right-of-Way Encroachment Agreement.
- Discussion and consideration of **Motion** by City Council.

7. Mayor's Report:

- Ventura Marsh Ribbon Cutting Ceremony – November 1st.

8. City Administrator's Report:

- Review of proposed Memorandum of Understanding between the City of Clear Lake and the Veterans Memorial Golf Club Foundation regarding a capital improvement fund.

9. City Attorney's Report:

10. Other Business:

11. Adjournment.

NEXT REGULAR MEETING – November 7, 2011

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN
THE CITY OF CLEAR LAKE AND
THE IOWA DEPARTMENT OF TRANSPORTATION FOR
THE SURF DISTRICT – NORTH SHORE DRIVE STREETScape
IMPROVEMENT PROJECT**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CLEAR LAKE,
IOWA:**

1. That the form and substance of a certain Agreement (the “Agreement”), between the City of Clear Lake (the “City”) and the Iowa Department of Transportation (the “State”), for Transportation Enhancement funding in an amount limited to a maximum of 80% of eligible costs or \$87,138, whichever is the smaller amount, as set forth in the form of Agreement submitted to this meeting with the recommendation of the City Administrator, is hereby approved.
2. That the Mayor and City Clerk are hereby respectively authorized and directed for and on behalf of the City of Clear Lake to execute, attest, seal and deliver the Agreement.
3. That the proper officials, agents and employees of the City of Clear Lake are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the City in accordance with the provisions of the Agreement.
4. That all resolutions or parts of resolutions in conflict with the provisions of the Resolution are hereby repealed.
5. That this Resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED and APPROVED this ___ day of _____, 2011.

CITY OF CLEAR LAKE, IOWA

Nelson P. Crabb, Mayor

ATTEST:

Jennifer Larsen, City Clerk



The Surf District - North Shore Drive Streetscape Improvement Project

Project Timelines updated 10/26/11

IDOT Bid Letting - Project Schedule

- Submit Concept Statement September 14, 2011
- Submit Preliminary Plans to IDOT November 22, 2011
- Submit Check Plans to IDOT January 3, 2012
- Submit Final Plans to IDOT January 24, 2012
- IDOT Bid Letting April 17, 2012
- Begin Construction May 22, 2012
- Complete Construction June 29, 2012

Local Letting - Project Schedule

- Submit Concept Statement September 14, 2011
- Submit Preliminary Plans to IDOT November 22, 2011
- Submit Check Plans to IDOT January 3, 2012
- Submit Final Plans to IDOT January 24, 2012
- Receive approval for Local Letting By January 24, 2012
- Local Bid Letting February 29, 2012
- Begin Construction April 30, 2012
- Complete Construction June 29, 2012

**IOWA DEPARTMENT OF TRANSPORTATION (DOT)
AGREEMENT FOR A
TRANSPORTATION ENHANCEMENT PROGRAM PROJECT**

PROJECT NAME: The Surf District - North Shore Drive Streetscape
Improvement Project
RECIPIENT: City of Clear Lake
PROJECT NUMBER: STP-E-1372(618)--8V-17
IOWA DOT AGREEMENT NUMBER: 12-STPE-113

This is an agreement between the City of Clear Lake, hereinafter referred to as RECIPIENT and the Iowa Department of Transportation, hereinafter referred to as the DEPARTMENT. Iowa Code Sections 306A.7 and 307.44 provide for the RECIPIENT and the DEPARTMENT to enter into agreements with each other for the purpose of financing transportation improvement projects in Iowa with Federal funds. The RECIPIENT proposes a Transportation Enhancement (TE) project for funding under Sec. 133(b)(8) and Sec. 101(a)(35) of Title 23, United States Code.

The Transportation Equity Act for the 21st Century (TEA-21), enacted in 1998, reestablished the Surface Transportation Program (STP). Federal regulations provide that STP funds for the TE program are to be administered by the DEPARTMENT.

The Office of Management and Budget (OMB) Circular A-133 requires the RECIPIENT to report the Catalog of Federal Domestic Assistance (CFDA) number and title on all Federal-Aid projects. The RECIPIENT will use CFDA #20.205 and title, "Highway Planning and Construction" for this project. This information should be reported in "The Schedule of Expenditures of Federal Awards".

Pursuant to the terms of this agreement, applicable statutes, administrative rules, and programming by the DEPARTMENT and the Northwest Iowa Planning and Development Commission, the DEPARTMENT agrees to provide funding to the RECIPIENT for the authorized and approved costs for eligible items associated with the development of the The Surf District - North Shore Drive Streetscape.

In consideration of the foregoing and the mutual promises contained in this agreement, the parties agree as follows:

1. The RECIPIENT shall be the lead organization for carrying out the provisions of this agreement.

2. All notices required under this agreement shall be made in writing to the DEPARTMENT's and/or the RECIPIENT's contact person. The DEPARTMENT's contact person shall be Jennifer Kolacia, Office of Systems Planning, 800 Lincoln Way, Ames, Iowa 50010, telephone 515-239-1788, email Jennifer.Kolacia@dot.iowa.gov. The RECIPIENT'S contact person shall be Scott Flory, 15 North 6th Street, P.O. Box 185, Clear Lake, Iowa, 50428, telephone 641-357-5267, email florys@netins.net.

3. The RECIPIENT shall be responsible for the development and completion of the following described project:

Provide streetscape improvements to North Shore Drive. The estimated total cost is \$194,238.00.

4. Eligible project costs for the project described in Section 3 of this agreement, which are incurred after the date of Federal Highway Administration (FHWA) authorization shall be paid as follows:

TE Funds	\$87,138.00
Local Contribution	<u>\$107,100.00</u>
Project Total	<u>\$194,238.00</u>

5. The local contribution stated above may include cash or non-cash contributions to the project. The RECIPIENT shall certify to the DEPARTMENT the value of any non-cash contribution to the project prior to it being incurred. For right of way contributions, the RECIPIENT shall submit an appraisal from a qualified independent appraiser. The DEPARTMENT reserves the right to review the RECIPIENT'S certificate of value and has sole authority to determine the value of the RECIPIENT'S non-cash contribution for the purposes of this agreement. If, as a result of the DEPARTMENT's determination, the RECIPIENT'S total cash and non-cash contribution is below that stated in the terms of this agreement, the RECIPIENT shall increase its cash contribution in order to complete the RECIPIENT'S local contribution, or the grant and/or loan amount associated with this project shall be reduced accordingly.

6. The portion of total project costs paid by Transportation Enhancements Program grant shall not exceed the amount stated above (\$87,138.00) or 80 percent of the total cost of the eligible items, whichever is the smaller amount. Cost overruns shall be paid solely by the applicant.

7. Project activities or costs eligible for funding include only those items set out in Exhibit A, which is attached hereto and by this reference incorporated into this agreement, and which are necessary to complete the project as described in Section 3.
8. Activities or costs ineligible for funding include, but are not limited to, those items set out in Exhibit B, which is attached hereto and by this reference incorporated into this agreement.
9. Notwithstanding any other provisions of this contract, if funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, either through the failure of the State of Iowa to appropriate funds or discontinuance or material alteration of the program for which funds were provided, the DEPARTMENT shall have the right to terminate this contract without penalty by giving not less than ninety (90) days written notice.
10. The DEPARTMENT reserves the right to delay reimbursement of funds to the RECIPIENT if necessary to maintain a positive cash flow. If such a delay is necessary and lasts more than five (5) working days, the DEPARTMENT shall so notify the RECIPIENT in writing and shall give the RECIPIENT an estimate of when reimbursement might be expected. The DEPARTMENT shall establish a system to equitably make reimbursements to all RECIPIENTS so affected.
11. The RECIPIENT shall submit to the DEPARTMENT, no later than thirty (30) days subsequent to the RECIPIENT's signature date on this agreement, a timetable outlining the project schedule. Failure to do so by the RECIPIENT may be considered a default under this agreement.
12. The RECIPIENT must have let the contract or have construction started within two (2) years of the date this project is approved by the DEPARTMENT. Approval was granted by the DEPARTMENT on October 3, 2011. If the RECIPIENT does not do this, they will be in default for which the DEPARTMENT can revoke funding commitments. This agreement may be extended for periods of up to six (6) months upon receipt of a written request from the RECIPIENT at least sixty (60) days prior to the deadline.
13. This agreement will become null and void if the project described in Section 3 drops out of the North Iowa Area Council of Governments current Transportation Improvement Program (TIP) or the DEPARTMENT approved current Statewide Transportation Improvement Program (STIP) prior to authorization of Federal funds.
14. If any part of this agreement is found to be void and unenforceable, the remaining provisions of this agreement shall remain in effect.

15. It is the intent of both parties that no third party beneficiaries be created by this agreement.
16. This agreement shall be executed and delivered in two (2) or more copies, each of which so executed and delivered shall be deemed to be an original and shall constitute but one and the same instrument.
17. This agreement is not assignable without the prior written consent of the DEPARTMENT.
18. If the project described in Section 3 of this agreement crosses a DOT primary road, then:
 - A. The RECIPIENT shall convey title to the State of Iowa, by quit claim deed, to any right of way necessary for the primary road crossing, all at no cost to the DEPARTMENT. However, the DEPARTMENT shall prepare detailed legal descriptions and plats. The general configuration of the right of way to be conveyed shall be agreed to by the RECIPIENT and the DEPARTMENT prior to the survey.
 - B. The RECIPIENT shall submit six (6) copies of plans for all primary road system crossings to the DEPARTMENT's contact person for review and approval by the District Offices for necessary permits and the Offices of Design and Maintenance with regard to crossing design and location, signing, fencing, safety, maintenance, compliance with access control policy, etc. Said approval shall be obtained before the RECIPIENT proceeds with the construction of any primary road system crossing.
 - C. The use of primary highway right of way for this project's purpose shall be subject to any rights enjoyed by any existing utility lines presently within the right of way. If excavation of a utility line over which this project has been placed is necessary for any reason, the utility shall be responsible for proper backfilling of said excavation to ground level. The RECIPIENT shall be responsible for any necessary resurfacing or restoration.
 - D. The use of primary highway right of way for this project's purpose shall be subject to any future plans for reconstruction, improvement, maintenance, and/or relocation of the highway by the DEPARTMENT. Any relocation of this project necessary because of said plans shall be at the expense of the RECIPIENT, all at no cost to the DEPARTMENT.
19. The RECIPIENT shall acquire the project right of way, whether by lease, easement or fee title and shall provide relocation assistance benefits and payments in accordance with the procedures set forth in the

DEPARTMENT's Right of Way Manual. The RECIPIENT shall contact the DEPARTMENT for assistance, as necessary, to ensure compliance with the required procedures, even if no federal funds in the right of way purchase are involved. The RECIPIENT will need to get environmental concurrence before acquiring any needed right of way. With prior approval, hardship and protective buying is possible. If the RECIPIENT requests Federal-aid participation for right of way acquisition, the RECIPIENT will need to get environmental concurrence and FHWA authorization before purchasing any needed right of way.

20. The RECIPIENT shall comply with the Policy for Accommodating Utilities on City and County Federal-aid Highways Right of Way and the Policy for Accommodating Utilities on the Primary Road System when on the DEPARTMENT's Right of Way. Certain utility relocation, alteration, adjustment, or removal costs to the RECIPIENT for the project may be eligible for Federal-aid reimbursement in accordance with the FHWA rules applicable to the type of utility involved and Iowa Code Chapter 306A.

21. The RECIPIENT shall be responsible for obtaining any permits, such as the Right to Occupy and/or Perform Work Within the Right of Way, Permit of Access, Utility Accommodation, Right to Install and Maintain Traffic Control Devices, and/or other construction permits required for the project prior to the start of construction.

In addition, the Recipient shall certify to the DEPARTMENT's contact person that all known required environmental permits have been received and that all environmental regulations have been complied with before funds are reimbursed or credited.

Neither the approval of the project application for funding nor the signing of this agreement shall be construed as approval of any required permit from the DEPARTMENT.

22. Traffic control devices, signing, or pavement markings installed within the limits of this project shall conform to the "Manual on Uniform Traffic Control Devices for Streets and Highways" per 76 Iowa Administrative Code (IAC) Chapter 130. The safety of the general public shall be assured through the use of proper protective measures and devices such as fences, barricades, signs, flood lighting, and warning lights as necessary.

23. In the event that right of way is required for the project, said right of way will be acquired in accordance with 761 IAC Chapter 111, Real Property Acquisition and Relocation Assistance, and the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

24. The project plans, specifications and cost estimate shall be prepared and certified by a professional engineer, architect and/or landscape architect, whichever applies, licensed to practice in the State of Iowa. The RECIPIENT shall submit the plans, specifications and other agreement documents to the DEPARTMENT for review. This submittal may be in divisions and in the order of preference as determined by the RECIPIENT. However, the plans, specifications and other agreement documents for each division must be submitted at least thirty (30) days prior to the project letting of each division. The DEPARTMENT shall review said submittal(s) recognizing the RECIPIENT's development schedule and shall, after satisfactory review, authorize in writing the RECIPIENT to proceed with implementation of the project. The work on this project shall be in accordance with the survey, plans, and specifications on file. Any modification of these plans and specifications must be approved by the DEPARTMENT prior to the modification being put into effect.
25. The RECIPIENT shall be responsible for the daily inspection of the project. For projects let to contract, the RECIPIENT shall compile a daily log of materials and quantities. For projects constructed with local forces, the RECIPIENT shall compile a daily log of materials, equipment and labor on the project. The DEPARTMENT reserves the right to inspect project activities and to audit claims for funding reimbursement. The purpose of the inspection or audit is to determine substantial compliance with the terms of this agreement.
26. The RECIPIENT shall maintain all books, documents, papers, accounting records, reports and other evidence pertaining to costs incurred for the project. The RECIPIENT shall make such materials available at all reasonable times during the construction period and for three (3) years from the date of final reimbursement, for inspection by the DEPARTMENT, FHWA or any authorized representatives of the Federal government. Copies of said materials shall be furnished by the RECIPIENT if requested.
27. The RECIPIENT may submit to the DEPARTMENT periodic itemized claims for reimbursement for eligible project costs. Reimbursement claims shall include certification that all eligible project costs for which reimbursement is requested have been completed in substantial compliance with the terms of this agreement.
28. The DEPARTMENT will reimburse the RECIPIENT for properly documented and certified claims for eligible project costs, less a withholding of five (5) percent of the Federal and/or State share of construction costs. Reimbursement will be made either by State warrant or by crediting other accounts from which payment was initially made. If, upon final audit or review, the DEPARTMENT determines the RECIPIENT

has been overpaid, the RECIPIENT shall reimburse the overpaid amount to the DEPARTMENT.

After the final audit or review is complete and after the RECIPIENT has provided all required paperwork, the DEPARTMENT will release the Federal or State funds withheld.

29. Upon completion of the project described in this agreement, a professional engineer, architect and/or landscape architect, whichever applies, licensed to practice in the State of Iowa shall certify in writing to the DEPARTMENT that the project activities were completed in substantial compliance with the plans and specifications set out in this agreement.

In addition, prior to final reimbursement for the project, the RECIPIENT shall furnish three (3) sets of "as-built" plans of the project to the DEPARTMENT.

Final reimbursement of funds, including retainage, shall be made only after the DEPARTMENT accepts the project as complete.

30. If, in the opinion of the RECIPIENT, the specific provisions of this agreement requiring the services of a professional engineer, architect and/or landscape architect, whichever applies, licensed to practice in the State of Iowa prove to be burdensome to the RECIPIENT or otherwise not in the public interest, and if the RECIPIENT decides that the provisions of this agreement can be otherwise complied with without endangering public safety, the RECIPIENT may request that said provisions be waived on all or specific parts of the project identified by the RECIPIENT. Such request shall be made in writing to the DEPARTMENT's contact person who shall, after consultation with other DEPARTMENT staff as necessary, make the final determination concerning said waiver. If said waiver is granted, all provisions of this agreement requiring the services of a professional engineer, architect and/or landscape architect, whichever applies, licensed to practice in the State of Iowa shall be performed by the RECIPIENT's contact person or designee.

31. The RECIPIENT agrees to indemnify, defend and hold the DEPARTMENT harmless from any action or liability arising out of the design, construction, maintenance, placement of traffic control devices, inspection or use of this project. This agreement to indemnify, defend and hold harmless applies to all aspects of the DEPARTMENT's application review and approval process, plan and construction reviews and funding participation.

32. This agreement may be declared to be in default by the DEPARTMENT if the DEPARTMENT determines that the RECIPIENT's application for funding contained inaccuracies, omissions, errors or misrepresentations,

or if the DEPARTMENT determines that the project is not developed as described in the application.

33. If the RECIPIENT fails to perform any obligation under this agreement, the DEPARTMENT shall have the right, after first giving thirty (30) days written notice to the RECIPIENT by certified mail return receipt requested, to declare any part or all of this agreement in default. The RECIPIENT shall have thirty (30) days from the date of the mailing of the notice to cure the default. If the RECIPIENT cures the default, the RECIPIENT shall notify the DEPARTMENT no later than five (5) days after the cure or before the end of said thirty (30) day period given to cure the default. Within ten (10) working days of receipt of the RECIPIENT's notice of cure, the DEPARTMENT shall issue either a notice of acceptance of cure or a notice of continued default.
34. In the event a default is not cured, the DEPARTMENT may revoke funding commitments and/or seek repayment of funds granted by this agreement. By signing this agreement the RECIPIENT agrees to repay said funding if they are found to be in default. Repayment methods must be approved by the Transportation Commission and may include cash repayment, installment repayments with negotiable interest rates, charges against the RECIPIENT's share of road use tax funds, or other methods as approved by the Commission.
35. In case of a dispute concerning the terms of this agreement, the parties shall submit the matter to arbitration pursuant to IAC 679A (2003). Either party has the right to submit the matter to arbitration after ten (10) days notice to the other party of their intent to seek arbitration. The written notice must include a precise statement of the disputed question. The DEPARTMENT and the RECIPIENT agree to be bound by the decision of the appointed arbitrator. Neither party may seek any remedy with the state or federal courts absent exhaustion of the provisions of this section for arbitration.
36. The RECIPIENT shall maintain, or cause to be maintained for the intended public use, the improvement for twenty (20) years from the completion date in a manner acceptable to the DEPARTMENT. Failure to comply with this provision may be considered a default of this agreement.
37. The RECIPIENT shall comply with all provisions of the equal employment opportunity requirements prohibiting discrimination and requiring affirmative action to assure equal employment opportunity as required by the IAC 216 (2003). No person shall, on the grounds of age, race, creed, sex, color, national origin, religion, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the RECIPIENT receives state funds from the DEPARTMENT.

38. The RECIPIENT shall conduct the project development and implementation in compliance with applicable laws, ordinances and administrative rules. For portions of the project let to bid, the RECIPIENT shall advertise for bidders, make a good faith effort to get at least three (3) bidders and hold a public letting for the project work. Prior to awarding the contract, the RECIPIENT shall provide the DEPARTMENT file copies of project letting documents within five (5) working days after the letting. The RECIPIENT must wait for DEPARTMENT concurrence before making the final award.

Additionally, for projects where federal highway funds or federal non-highway funds are used to match the project, the RECIPIENT shall also follow all administrative and contracting procedures, which would normally be used when such funds are used. The RECIPIENT shall comply with all requirements for use of said funds as outlined in Exhibit C.

39. The RECIPIENT shall include in their Notice to Bidders that Sales Tax Exemption Certificates will be issued, as provided for by Iowa Code Section 423.3, subsection 80. The RECIPIENT shall be responsible for obtaining the sales tax exemption certificates through the Iowa Department of Revenue and Finance. The RECIPIENT shall issue these certificates to the successful bidder and any subcontractors to enable them to purchase qualifying materials for the project free of sales tax.

40. This agreement, as set forth in items 1 through 40 herein, including referenced exhibits, constitutes the entire agreement between the DEPARTMENT and the RECIPIENT concerning this project. Representations made before the signing of this agreement are not binding, and neither party has relied upon conflicting representations in entering into this agreement. Any change or alteration to the terms of this agreement must be made in the form of an addendum to this agreement. Said addendum shall become effective only upon written approval of the DEPARTMENT and the RECIPIENT.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement Number 12-STPE-113 as of the date shown opposite its signature below.

RECIPIENT: City of Clear Lake

By: _____ Date: _____, 2011

Title: _____

I, _____, certify that I am the City Clerk and that _____, who signed said Agreement for and on behalf of _____ was duly authorized to execute the same by virtue of a formal Resolution duly passed and adopted by the City on the ___ day of _____, 2011

Signed _____ Date _____, 2011

City Clerk of _____, Iowa

IOWA DEPARTMENT OF TRANSPORTATION
Planning, Programming and Modal Division
800 Lincoln Way, Ames, Iowa 50010

By: _____ Date: _____, 2011

Craig Markley
Director
Office of Systems Planning

**RIGHT-OF-WAY ENCROACHMENT AGREEMENT -
WATER INFORMATION GAGING STATION**

THIS RIGHT-OF-WAY ENCROACHMENT AGREEMENT is entered into this ____ day of _____, 2011, between the US Geological Survey Iowa Water Science Center, 407 N. 5th Street, Fort Dodge, Iowa 50501, ("USGS IWSC") and the City of Clear Lake, an Iowa Municipal Corporation, with offices at 15 N. 6th Street, P.O. Box 185, Clear Lake, Iowa, 50428 ("CITY").

WHEREAS, the CITY has right-of-way interests in a public street or road designated and known locally as 15th Avenue S. (east of S. Lakeview Drive), said interests being either in fee or easement; and

WHEREAS, the City and USGS IWSC are desirous of relocating the existing USGS IWSC Lake Gaging Station (the "IMPROVEMENT PROJECT") from its current location at the end of Main Avenue to a new location within the 15th Avenue S. City right-of-way (west of S. Lakeview Drive); and

WHEREAS, the CITY has determined to allow the USGS IWSC to encroach on the CITY'S right-of-way, subject to the terms and conditions of this Agreement, for the purpose of locating a Lake Gaging Station to be used solely for water data collection purposes.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the parties agree as follows:

1. The foregoing recitals are substantive and are incorporated by reference in this paragraph 1 as though fully set forth.
2. The CITY hereby authorizes and allows the USGS IWSC to encroach into the CITY'S right-of-way by the installation/construction of a Lake Gaging Station, said construction to be in accordance with plans and specifications on file or to be on file with, and approved by the City and to have access to the site, as it reasonably deems necessary, for stream flow measuring and/or water quality sampling during the life of this Agreement.
3. The encroachment herein acknowledged does not under any circumstances abrogate or nullify the CITY's rights and interests in and to the dedicated public right-of-way.

4. USGS IWSC understands and agrees that this encroachment into the right-of-way is for a permissive use only and that the placing of the IMPROVEMENT PROJECT in the right-of-way shall not operate to create or vest any property rights.
5. The CITY shall not be responsible for any costs incurred by the USGS IWSC to repair or replace the encroachment if it is damaged or destroyed.
6. The USGS IWSC agrees to be responsible for damages to persons or property due to the negligent or wrongful acts or omissions of the USGS IWSC employees acting within the scope of their employment resulting from the USGS'S use of the right-of-way for any of its intended purposes in accordance with Federal Tort Claims Act, codified at 28 USC 2671 et seq.
7. That the USGS IWSC shall keep said IMPROVEMENT PROJECT in good repair, including painting, where appropriate, at all times at the USGS IWSC'S sole expense.
8. USGS IWSC understands that there may be conditions in the future that are unforeseeable at this time that may necessitate the CITY to compel the temporary or permanent removal of the improvements.
9. This Agreement shall become effective when fully executed and shall remain in force for one year and zero months unless terminated earlier by USGS IWSC upon 60 days advance written notice. Thereafter, this Agreement may be terminated at any time by either party upon 180 days advance written notice to the other party, addressed general mail, postage paid, to the party's address hereafter provided, at which time the USGS IWSC shall remove said improvement and restore the area to its original condition.
10. This Agreement shall inure to the benefit of and be binding upon the respective heirs, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have set their hands and seals hereto on the day and year first above written.

CITY OF CLEAR LAKE

**US GEOLOGICAL SURVEY IOWA
WATER SCIENCE CENTER**

Nelson P. Crabb, Mayor

David Conell, Center Director

Attest:

Jennifer Larsen, City Clerk

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CITY OF CLEAR LAKE, IOWA

AND

VETERANS MEMORIAL GOLF CLUB FOUNDATION INC.

RECITALS

WHEREAS, on March 7, 2011, the City Council of the City of Clear Lake approved Resolution #11-24, "A Resolution Approving an Operating Agreement between the City of Clear Lake, Iowa, and the Veterans Memorial Golf Club Foundation Inc.;" and

WHEREAS, in consultation with the City's auditor, it has been determined that additional language regarding the use and oversight of the "Golf Course Capital Improvement Trust Fund", provided for in Section 5D of the Operating Agreement, is necessary.

NOW, THEREFORE, the Parties hereto agree as follows:

AGREEMENT

I. PURPOSE. This Memorandum of Understanding (MOU) is to provide guidance, define responsibilities, and establish procedures regarding the "Golf Course Capital Improvement Trust Fund" (the "Fund").

II. EFFECTIVE DATE. This MOU becomes effective upon signature by the respective parties.

III. AMENDMENTS AND TERMINATIONS. The provisions of this MOU are continuous until such time applicable authorizations and/or responsibilities change. Amendments or revisions to this MOU may be proposed at any time by the organization having reason to recommend changes and incorporated herein on mutual consent of the MOU signatories. This agreement may be terminated by mutual consent of the MOU signatories or upon 90 days written notice by one or more parties to all parties of the MOU.

IV. SECTION CLARIFIED. The provisions of Section 5D of the Operating Agreement, which provides for the "Fund", shall be clarified as follows:

- A. The Fund established by the Operating Agreement comprises excess funds from each years operating budget and shall be used exclusively for capital improvements to preserve the golf course property and buildings.
 - B. The Fund is to be established as an interest bearing account administered and maintained by the Board of Directors of the Veterans Memorial Golf Club Foundation Inc. under its tax identification number.
 - C. The Veterans Memorial Golf Club Foundation Inc shall report annually to the City Council on the status of the Fund, but such report shall not be made before October 31st and not later than December 1st.
 - D. The Veterans Memorial Golf Club Foundation Inc shall consult with the City Council regarding the use of any excess resources of the Fund and any improvements made to preserve the golf course property utilizing excess resources of the Fund shall not be made without the reasonable concurrence of the City Council.
 - E. The Veterans Memorial Golf Club Foundation Inc shall submit to the City, on or before December 1st of each year, for the succeeding year, a proposed budget that identifies any proposed expenditures to be made from the Fund. The City shall provide its response to the proposed budget on or before December 31st of the current calendar year.
 - F. Upon the discovery of an emergency or an unforeseen need for a capital expenditure, the Veterans Memorial Golf Club Foundation Inc and the City shall work together in good faith to address the need for the capital expenditure, if it is to be paid for from the proceeds of the Fund.
 - G. Interest income generated by the Fund shall constitute part of such fund. Any funds on balance in the Fund at the expiration of the Veterans Memorial Golf Club Foundation Inc.'s occupancy agreement for the Golf Course shall belong to the City.
- V. SUCCESSORS AND ASSIGNS. This MOU shall be binding upon and shall inure to the benefit of the Parties and their respective assigns.

VI. GOVERNING LAW. This MOU shall be governed by and construed according to the laws of the State of Iowa, with venue in Cerro Gordo County, Iowa.

PASSED and APPROVED by the Clear Lake City Council & Mayor this 17th day of October, 2011.

CITY OF CLEAR LAKE, IOWA:
CLUB:

VETERANS MEMORIAL GOLF

By:

By:

Mayor

President

ATTEST:

City Clerk

Secretary