



CITY OF CLEAR LAKE

15 North 6th Street • P.O. Box 185 • Clear Lake, IA 50428
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www.cityofclearlake.com

Mayor
NELSON P.
CRABB

May 3, 2013

HONORABLE MAYOR & CITY COUNCIL MEMBERS:

City
Administrator
SCOTT
FLORY

The next meeting of the Clear Lake City Council is scheduled for Monday, **May 6, 2013**, at 6:30 p.m., in the Council Chambers, at City Hall. Please refer to the enclosed agenda for the items discussed below.

COUNCIL MEMBERS

DANA
BRANT
Ward 1

TONY J.
NELSON
Ward 2

JIM
BOEHNKE
Ward 3

MIKE
CALLANAN
At Large

TERRY
UNSWORTH
At Large

ITEM #6B. **S. 20th Street Intersections, Stormwater, & Sidewalk Improvement Project.** At its April 15th regular meeting, the Council awarded the construction contract to Yohn Excavating (Clear Lake). The amount of the contract is \$279,922.75. The City has now received the partially-executed contract, bonds (performance, payment, & maintenance), and certificate of liability insurance from the contractor. All these documents have been reviewed by City staff and the Project consultant and have been determined to be in compliance with the Project's specifications. The Project substantial completion date is August 16, 2013.

ITEM #6D. **Professional Service Agreement – City's Annual Audit.** The City has utilized McGladrey & Pullen, LLP Certified Public Accountants as its independent auditor for over 25 years. While McGladrey performed the duties of their contract well and the City has been satisfied with their work, the City Council expressed its desire during the annual Strategic Planning & Goal Setting session that the City consider issuing a Request for Proposals (RFP) for audit services on a multi-year basis (i.e., 5 years).

At its regular meeting on March 4th, the Council authorized the issuance of a competitive RFP process and invited bids from several qualifying Certified Public Accounting firms. The City received back three (3) proposals in response to its solicitation and a work committee comprised of the Mayor, a City Council Member, City Administrator, & Finance Officer conducted in-person interviews on April 22nd. The firm selected by the work group to have submitted the most competitive proposal was the Certified Public Accounting firm of Bohnsack & Frommelt, LLP.

Bohnsack & Frommelt, LLP. works almost exclusively with other municipalities and governmental entities, primarily in Iowa and Illinois. Their partners experience in providing audit services includes: Clear Lake, IA; W. Des Moines, IA; Dubuque, IA; Milan, IL; Aledo, IL; and Rock



Island, IL to name a few. Their offices are located in Taylor Ridge, IL and Overland Park, KS. The firm also makes a conscious effort to limit its practice in other areas and focus on municipal audits. Their audit strategy is tailored to municipalities and is different from the traditional approach adapted from commercial clients by general practice accounting firms.

Upon completion of the annual audit, in December, Bohnsack & Frommelt, LLP will present their findings and conclusions to the City Council in the form of an Audit Report and make themselves available to respond to questions and address issues included in the Report. The proposal from Bohnsack & Frommelt was the least costly financially by roughly \$14,000 cumulatively over the 5-year term of the Agreement.

ITEM #6E. **Pine Brooke 3rd Residential Subdivision**. The developer (Joshua Inc.) has submitted and requests Final Plat approval for Pine Brooke 3rd Residential Subdivision. The subdivision is located just north of 10th Ave N., between Buddy Holly Place and Pine Brooke Drive. The development contains nine (9) residential building lots on a roughly 2.6 acre site. The lots are all zoned RM-12 (low-density multi-family residential).

The Planning & Zoning Commission and City Council each approved the preliminary plat for Pine Brooke 3rd Addition on April 24, and May 7, 2012, respectively. On February 12, 2013, the Planning & Zoning Commission approved the Final Plat for Pine Brooke 3rd Addition.

Enclosed in your packet is a Resolution approving the Final Plat for Pine Brooke 3rd Addition. The developer has filed with the City, security in the amount equal to the estimated cost of constructing the remaining infrastructure improvements. Once those remaining work items have been completed, the City Council, at that time, may consider a Resolution to accept the public improvements and release the improvement security.

Scott Flory
City Administrator

Smart Quote: *"Three grand essentials to happiness in this life are something to do, something to love, and something to hope for."* – Joseph Addison, British essayist, poet, playwright, and politician

TENTATIVE AGENDA
CLEAR LAKE CITY COUNCIL
CITY HALL – 15 N. 6TH STREET
MONDAY, MAY 6, 2013
CITY HALL – COUNCIL CHAMBERS
6:30 P.M.

1. Call To Order by Mayor Nelson P. Crabb.
2. Approval of Agenda.
3. Consent Agenda:
 - A. Minutes – April 15, 2013.
 - B. Approval of the bills & claims.
 - C. Licenses & Permits:
 - **Liquor License**: Class C Liquor License (LC) (Commercial), **MNG Restaurant Corp dba The Island**; Class C Liquor License (LC) (Commercial with Outdoor Service and Sunday Sales, **Rumorz**; Class B Wine Permit with Sunday Sales, **Weathered Elements**; Class C Liquor License (LC) (Commercial) with Outdoor Service and Sunday Sales, **Ge-Jo's by the Lake**; (renewals).
 - **Excavator's License**: **Jennings Excavating**, Clear Lake; **Dean Snyder Construction**, Clear Lake; **Mort's Inc**, Latimer, (renewals) and **West Union Trenching**, West Union, (new).
 - **Peddler's License**: **Perry's Sweet Treats**, Clear Lake, (renewal).
 - **Tree Trimmer's License**: **Rolling Excavating**, Bancroft, (new).
 - **Cigarette Permit**: **Kum & Go #301**, **Kum & Go #302**, and **Fareway**, (renewals).
 - **Amusement License**: **Lake Front Tap**, (renewal).
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:
 - A. City Council compensation for the term(s) beginning January 1, 2014 and forward:
 - **Motion** to approve **Ordinance #807** (final reading) by City Council.
 - Discussion and consideration of **Motion** by City Council.

6. New Business:

A. Proposed Ordinance prohibiting the feeding of waterfowl at or within 300' of any City-owned and/or maintained park or other recreation area(s):

- Review by Scott Flory, City Administrator.
- Opportunity for public comment.
- **Motion** to approve Ordinance #808, "An Ordinance prohibiting the feeding of waterfowl at or within 300' of any City-owned and/or maintained park or other recreation area(s) (including City Beach and the N. Lakeview Dr, between Main Ave and 4th Ave N.) within the City of Clear Lake, Iowa, and amending the Code of Ordinances of the City of Clear Lake, Iowa, 2003." (1st reading)
- Discussion and consideration of **Motion** by City Council.

B. S. 20th Street Intersection(s), Stormwater, & Sidewalk Improvement Project:

- Introduction by Scott Flory, City Administrator.
- **Motion** to approve **Resolution #13-35**, A "Resolution approving Contract & bonds."
- Discussion and consideration of **Motion** by City Council.

C. Annual Report from Alliant Energy:

- Presentation by Jim Collins, Key Account Manager
- Discussion and questions by City Council.

D. Professional Audit Services Agreement between the City of Clear Lake and Bohnsack & Frommelt, LLP for the annual City audit for the 5 fiscal years ending June 30, 2013 through June 30, 2017:

- Review of request, Scott Flory, City Administrator.
- **Motion** to approve **Resolution #13-36**, A "Resolution of the City Council of the City of Clear Lake, Iowa, approving a Professional Audit Services Agreement between the City of Clear Lake and Bohnsack & Frommelt, LLP, and authorizing the City Administrator and City Clerk to execute the Agreement."
- Discussion and questions by City Council.

E. Pine Brooke 3rd Residential Subdivision:

- Introduction by Scott Flory, City Administrator.
- Review of proposal, John Marino, Building Official.
- **Motion** to approve **Resolution #13-37**, A "Resolution approving the Final Plat for Pine Brooke 3rd Residential Subdivision, accepting the improvement security, and authorizing the Mayor and Clerk to execute the same."

- Discussion and consideration of **Motion** by City Council.
- F. Professional Service Agreement RDG – Water Tower Site & N. Lakeview Drive (Main Ave – 1st Ave N.):
- Introduction by Scott Flory, City Administrator.
 - Review of proposal, Cory Scott, RDG.
 - **Motion** to approve Professional Services Agreement by City Council.
 - Discussion and consideration of **Motion** by City Council.
7. Chief of Police’s Report:
8. Mayor’s Report:
9. Public Works Director’s Report:
- A. Update regarding repairs/rebuild of Well #1’s pump.
 - B. US HWY 18 Water Main Improvement Project (N. 3rd to N. 9th St. W.).
10. City Administrator’s Report:
- A. Request from Lake Theater.
 - B. Position Vacancy Announcement – Water Treatment Plant/Public Works Operator & Code Enforcement Officer.
11. City Attorney’s Report:
12. Other Business:
13. Adjournment.

NEXT REGULAR MEETING – MAY 20, 2013

ORDINANCE NO.

AN ORDINANCE ESTABLISHING THE SALARY FOR THE MEMBERS OF
THE CITY COUNCIL OF THE CITY OF CLEAR LAKE, IOWA, FOR THE
TERM(S) BEGINNING JANUARY 1, 2014 FORWARD

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEAR
LAKE, IOWA, AS FOLLOWS:

Section 1. That the salary of the members of the City Council of the City of Clear Lake, Iowa, shall be and the same is hereby fixed at the sum of \$2,500 per annum.

Section 2. That in the event of absence unrelated to illness or disability from more than 25% of the total number of regularly scheduled meetings per quarter, the compensation for said quarter shall be adjusted and pro-rated accordingly.

Section 3. Effective Date. This ordinance shall become effective on January 1, 2014, and shall continue in force and effect until repealed by action of the City Council.

Section 4. Repealer. All ordinances, or parts of ordinances, heretofore adopted by the City Council of the City of Clear Lake, Iowa, which are inconsistent with the provisions of this ordinance are hereby expressly repealed to the extent of such conflict.

Section 5. Severability. The provisions of this ordinance are hereby declared severable; if any portion of this ordinance shall be held unconstitutional or otherwise invalid by a court of competent jurisdiction, such ruling shall not affect the remaining portions of this ordinance

ADOPTED this _____ day of _____, 2013.

Nelson P. Crabb, Mayor

Attest:

Jennifer Larsen, City Clerk

ORDINANCE NO. XXX

AN ORDINANCE PROHIBITING THE FEEDING OF WATERFOWL AT OR WITHIN 300' OF ANY CITY-OWNED AND MAINTAINED PARK OR OTHER RECREATION AREA (INCLUDING CITY BEACH AND N. LAKEVIEW DRIVE, BETWEEN MAIN AVE AND 4TH AVE N.) WITHIN THE CITY OF CLEAR LAKE, IOWA, AND AMENDING THE CODE OF ORDINANCES OF THE CITY OF CLEAR LAKE, IOWA, 2003

WHEREAS it is well-established in the field of wildlife biology that the feeding of waterfowl may ultimately be detrimental to the animals; and

WHEREAS the feeding of waterfowl causes a public health nuisance and safety hazard that is detrimental to the health and general welfare of the public; and

WHEREAS the problems created by waterfowl within the city limits are increasing and negatively impacting City-owned and maintained parks and other recreation areas, including City Beach, and N. Lakeview Drive, between 4th Avenue N. and Main Avenue; and

WHEREAS the City Council finds it to be in the best interests of the health, safety, and welfare of the public that the feeding of waterfowl be prohibited at or within 300' of City-owned and maintained parks and other recreation areas, including City Beach and N. Lakeview Drive, between 4th Avenue N. and Main Avenue.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Clear Lake, Iowa, that this Ordinance is hereby added to the Clear Lake Code of Ordinances, 2003, as amended, and shall read as follows:

XXX. Feeding of Waterfowl Prohibited.

- A. "Waterfowl" is any bird that frequents the water, or lives about rivers, lakes, or other bodies of water; an aquatic fowl, including, but not limited to: ducks, geese, swans, herons, and egrets.
- B. No person shall purposely or knowingly, with intent to provide such food, feed, bait, or in any manner provide access to food to any waterfowl at or within 300' of any City-owned and maintained park or other recreation areas, within the corporate limits of the City of Clear Lake, including City Beach and N. Lakeview Drive, between 4th Avenue N. and Main Avenue.
- C. No person shall purposely or knowingly leave or store any refuse, garbage, food product, pet food, forage product or supplement, salt, seed, birdseed, fruit, or grain in a manner that would constitute an attractant to any waterfowl at or within 300' of any City-owned and maintained park or recreation areas, including City Beach and N. Lakeview Drive, between 4th Avenue N. and Main Avenue.

- D. Nothing in this Section shall prohibit the actions of any agent of the State of Iowa lawfully engaged in a wildlife or waterfowl management program on any property owned by the State of Iowa or the Clear Lake Community School District.
- E. Nothing in this Section shall prohibit the actions of an agent of the City of Clear Lake authorized to implement an alternative control method set forth in any approved *community* based goose management plan and possessing a special goose management permit issued by the Iowa Department of Natural Resources.

XXX. Feeding of other songbirds and other backyard birds permitted

Feeding of other songbirds and other backyard birds shall be permitted outdoors at such times and in such numbers that: (1) Such feeding does not create an unreasonable disturbance that affects the rights of surrounding property owners and renders other persons insecure in the use of their property and; (2) Does not create an accumulation of droppings on the property and surrounding properties and; (3) Does not become an attractant for rodents or other wild animals and; (4) Bird feeders are placed at least five (5) feet above the ground.

XXX. Enforcement

- A. Each property owner shall have the duty to remove any above named materials or device placed on the owner's property in violation of this Ordinance.
- B. Failure to remove or remedy a violation of this Chapter within twenty-four (24) hours after notice from the City shall constitute a separate violation of this Ordinance.
- C. Health Department personnel, Animal Control Officers, and all Police Officers of the City of Clear Lake are hereby given full power and authority to enforce this ordinance

XXX. Penalties

- A. Any person violating any provision of this Chapter shall be liable for a fine according to the following schedule:
- B. The penalty for violation of this Ordinance shall be \$50 for the first violation, \$100 for the second infraction committed within one calendar year, and \$250 for third infraction committed within one calendar year.

Severability

Every section of this ordinance or subdivision or separate part thereof shall be considered a separate provision to the intent that if any portion shall be declared unconstitutional it shall not affect the remaining parts of this ordinance.

When Effective

This ordinance shall take effect immediately upon final passage thereof and publication thereof as provided for by law.

Council Member _____ introduced the following Resolution entitled "RESOLUTION APPROVING CONTRACT AND BOND" and moved its adoption. Council Member _____ seconded the motion to adopt. The roll was called and the vote was,

AYES: _____

NAYS: _____

Whereupon, the Mayor declared the following Resolution duly adopted:

RESOLUTION APPROVING CONTRACT AND BOND

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

That the construction contract and bond executed for the S 20th Street (Main Avenue - 2nd Avenue South) Intersection & Storm Sewer Project, Clear Lake, Iowa, as described in the plans and specifications and which have been signed by the Mayor and Clerk on behalf of the City and proof of insurance coverage be and the same are hereby approved as follows:

Contractor: _____ of _____

Date of contract: _____

Bond surety: _____

Date of Bond: _____

Portion of Project: All Construction Work

PASSED AND APPROVED this ___ day of _____, 2013.

Mayor

ATTEST:

City Clerk

SECTION 00510

AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT, made and entered into this 15th day of April, 2013, by and between the **City of Clear Lake**, Iowa, party of the first part, hereinafter referred to as the "**Owner**", and Yohn Co., DBA The Excavating Co., party of the second part, hereinafter referred to as the "**Contractor**".

WITNESSETH: THAT WHEREAS, the Owner has heretofore caused to be prepared certain specifications and bid form blanks, dated the 12th day of March 2013, for South 20th Street (Main Ave. - 2nd Ave. S.) Intersection Reconstruction and Storm Sewer Project under the terms and conditions therein fully stated and set forth, and,

WHEREAS, said specifications and bid form blanks accurately and fully describe the terms and conditions upon which the Contractor is willing to perform the work specified:

NOW, THEREFORE, IT IS AGREED:

That the Owner hereby accepts the bid of the Contractor for the work, as follows:

ARTICLE 1 - THE PROJECT

1.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

SOUTH 20TH STREET (MAIN AVE. - 2ND AVE. S.) INTERSECTION RECONSTRUCTION AND STORM SEWER PROJECT

ARTICLE 2 - WORK

2.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Project includes all labor, materials and equipment necessary to construct approximately 60 linear feet of 8" sanitary sewer main, sanitary sewer services, miscellaneous water main and service improvements, 700 linear feet of storm sewer piping, intakes, 1,200 linear feet of subdrain, 1,200 square yards of PCC pavement patching, 10,000 square feet of sidewalk, seeding and miscellaneous associated work including cleanup.

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by Veenstra & Kimm, Inc. (Engineer), who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 Time of the Essence

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Days to Achieve Substantial Completion and Final Payment

- A. Work for all storm sewer and street construction items shall be substantially completed no later than August 16, 2013. All work shall be finally completed and the project ready for final acceptance by September 20, 2013. Once Contractor begins work on the project, work shall progress in a continuous manner until all work is completed unless written approval to otherwise complete work is received from the Engineer.

4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 1.22 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$500 for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500 for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A

A. Unit Price Work

1. As provided in Article 1.04 of Section 01025 – Measurement and Payment, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Article 1.05 of Section 01025 – Measurement and Payment. Unit prices have been computed as provided in Article 1.06 of Section 01025 – Measurement and Payment.

2. For all Unit Price Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit, the total contract amount is \$279,992.75.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 1.04 of Section 01019 – Contract Considerations. Applications for Payment will be processed by Engineer as provided in Article 1.04 of Section 01019 – Contract Considerations and Article 1.31 of Section 00700 – General Conditions.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the last day of each month during performance of the Work as provided in Paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be determined based on the number of units completed:
 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Article 1.31 of Section 00700 – General Conditions:
 - a. 95 percent of Work completed (with the balance being retainage); and
 - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts as Engineer shall determine in accordance with Article 1.31 of Section 00700 - General Conditions.

6.03 Final Payment

- A. Upon receipt of the final Application for Payment accompanied by Engineer's recommendation of payment in accordance with Article 1.32 of Section 00700 - General Conditions, Owner shall pay Contractor as provided in Article 1.32 of Section 00700 - General Conditions the remainder of the Contract Price as recommended by Engineer as provided in said Article 1.32, less any sum Owner is entitled to withhold per Engineer's recommendation, including but not limited to liquidated damages.

ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 1.32 of Section 00700 - General Conditions shall bear interest at the maximum legal rate.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations, and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Contract Documents and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Contract Documents.
 - E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
 - F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
 - G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 - H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

- I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - GUARANTEE

- 9.01 Contractor guarantee's all work constructed under this agreement, regardless if said work is performed by Contractor, his subcontractors, or other third tier subcontractors retained by subcontractor's, against defective workmanship and / or materials for a period of four (4) years from the date of Final Acceptance of work by Owner.

Workmanship and / or materials shall be considered defective when a condition causing premature failure (whole or in part) which was present in the relevant part or component of work when it was constructed or installed, or comes into existence as a result of the way in which the relevant part or component of work was constructed or installed.

- 9.02 The Contractor shall faithfully perform the contract on it's part and shall fully indemnify and save harmless the Owner from all cost and damage which Owner may suffer by reason of defective workmanship and / or materials, and shall fully reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any such default.

ARTICLE 10 - CONTRACT DOCUMENTS

10.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 8, inclusive).
 - 2. Performance, Payment and Maintenance Bond (pages 1 to 2, inclusive).
 - 3. General Conditions (pages 1 to 17, inclusive).
 - 4. Special Conditions (pages 1 to 4, inclusive).
 - 5. Specifications as listed in the table of contents of the Project Manual.
 - 6. Drawings consisting of 43 sheets with each sheet bearing the following general title: **South 20th Street (Main Ave. - 2nd Ave. S.) Intersection Reconstruction and Storm Sewer Project, Clear Lake, Iowa.**
 - 7. Addenda (numbers 1 to 1, inclusive).

8. Exhibits to this Agreement (enumerated as follows):
- a. Notice of Award (pages 1 to 1, inclusive).
 - b. Contractor's Bid (pages 1 to 10, inclusive).
 - c. Documentation submitted by Contractor prior to Notice of Award including:
 1. Data requested in Proposal
 2. Bid Security (if required)

These items are NOT attached to the agreement.

9. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
- a. Notice to Proceed (pages 1 to 1, inclusive).
 - b. Work Change Directives.
 - c. Change Order(s).

- B. The documents listed in Paragraph 10.01.A are made part of this Agreement by reference; exhibits to this Agreement as listed in 10.01.A.8 are attached except as expressly noted otherwise above.
- C. There are no Contract Documents other than those listed above in this Article 10.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 1.23 of the General Conditions.

ARTICLE 11 - MISCELLANEOUS

11.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the Section 00100 – Instructions to Bidders.

11.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in

any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

11.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

11.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

11.05 Other Provisions

None

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in three copies. One counterpart each has been delivered to Owner, Contractor, and Engineer. All portions of the Contract Documents have been signed, initialed, or identified by Owner and Contractor or identified by Engineer on their behalf.

This Agreement will be effective April 16, 2013 (which is the Effective Date of the Agreement).

OWNER:

City of Clear Lake

By: _____

Title: Mayor

Attest: _____

Title: City Administrator

Designated Representatives:

Name: _____

Title: _____

Address for giving notices:

City Hall

15 North Sixth Street

Clear Lake, Iowa 50428

Phone: 641-357-5267 FAX: 641-357-8711

CONTRACTOR:

Yohn Co., DBA The Excavating Co.

By: [Signature]

Title: Vice President

Attest: [Signature]

Title: Office Mgr.

Designated Representatives:

Name: Ryan McGregor

Title: Project Manager

Address for giving notices:

309 S. 20th Street

Clear Lake, IA 50428

Phone: 641-357-4604 FAX: 641-357-6527

License No.: _____
(Where applicable)

(If Contractor is a corporation or a partnership,
attach evidence of authority to sign.)

3/12/13

Performance, Payment and Maintenance Bond

Bond No.: IAC582273

SECTION 00600

PERFORMANCE, PAYMENT AND MAINTENANCE BOND

KNOW ALL MEN: That we, Yohn Co. DBA The Excavating Company of Clear Lake, Iowa, hereinafter called the Principal, and

Merchants Bonding Company (Mutual),

hereinafter called the surety, are held and firmly bound unto the City of Clear Lake, Iowa, hereinafter called the Owner in the sum of Two Hundred Seventy Nine Thousand Nine Hundred Ninety Two and 75/100 Dollars (\$279,992.75), for the payment whereof the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by these presents.

WHEREAS, the principal has, by means of a written Agreement dated April 15, 2013, entered into a Contract with the Owner for South 20th Street (Main Ave. - 2nd Ave. S.) Intersection Reconstruction and Storm Sewer Project, which Agreement includes a guarantee of all work against defective workmanship and materials for a period of four (4) years from the date of final acceptance of the work by the Owner, a copy of which Agreement is by reference made a part hereof;

NOW, THEREFORE, the condition of this Obligation is such that, if the Principal shall faithfully perform the Contract on his part and shall fully indemnify and save harmless the Owner from all costs and damage which he may suffer by reason of failure so to do and shall fully reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any such default,

And Further, that if the Principal shall pay all persons who have contracts directly with the Principal for labor or materials, failing which such persons shall have a direct right of action against the Principal and Surety under this Obligation, subject to the Owner's priority,

Then this Obligation shall be null and void, otherwise it shall remain in full force and effect.

Provided, however, that no suit, action or proceeding by reason of any default whatever shall be brought on this Bond after five (5) years from the date of final acceptance of the work.

And Provided, that any alterations which may be made in the terms of the Contract, or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the Contract, or any other forbearance on the part of either the Owner or the Principal to the other shall not in any way release the Principal and the Surety, or either of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the Surety of any such alteration, extension or forbearance being hereby waived.

And Further Provided, the Principal and Surety on this Bond hereby agree to pay all persons, firms, or corporations having contracts directly with the Principal or with subcontractors all just claims due them for labor performed or material furnished, in the performance of the Contract on account of which this Bond is given, when the same are not satisfied out of the portion of the contract price which the Owner shall retain until

3/12/13

Performance, Payment and Maintenance Bond

completion of the improvements, but the Principal and Surety shall not be liable to said persons, firms, or corporations unless the claims of said complaints against said portions of the contract price shall have been established as provided by law.

The Surety on this Bond shall be deemed and held, any contract to the contrary notwithstanding, to consent without notice:

- a. To the extension of time to the Principal in which to perform the Contract.
- b. To changes in the plans, specifications, or Contract, when such changes do not involve an increase of more than twenty percent (20%) of the total contract price, and shall then be released only as to such excess increase.
- c. That no provision of this Bond or of any other contract shall be valid which limits to less than five (5) years from the date of final acceptance of the work the right to sue on this Bond for defects in workmanship or materials not discovered or known to the Owner at the time such work was accepted.

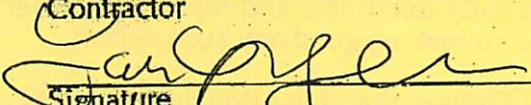
The Bond is executed in triplicate.

Signed and Sealed this 15th day of April, 2013.

PRINCIPAL:

Yohn Co. DBA The Excavating Company

Contractor


Signature

Vice President
Title

SURETY:

Merchants Bonding Company (Mutual)

Surety Company


Signature, Attorney-in-Fact

Anne Crowner

Name of Attorney-in-Fact

Holmes Murphy & Associates, Inc.

Company Name

P.O. Box 9207, Des Moines, IA 50306-9207

Company Address (Including Zip Code)

(515) 223-6800

Company Telephone Number



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/18/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Holmes Murphy & Assoc - WDM PO Box 9207 Des Moines, IA 50306-9207 Steve Probst INSURED Yohn Enterprises, Inc. P.O. Box 246 309 S. 20th Street Clear Lake, IA 50428	1-800-247-7756 CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS: <table border="1"> <thead> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A:</td> <td>Acuity</td> <td></td> </tr> <tr> <td>INSURER B:</td> <td></td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Acuity		INSURER B:			INSURER C:			INSURER D:			INSURER E:			INSURER F:		
INSURER(S) AFFORDING COVERAGE		NAIC #																				
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INSURER B:																						
INSURER C:																						
INSURER D:																						
INSURER E:																						
INSURER F:																						

COVERAGES

CERTIFICATE NUMBER: 33156820

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU Included GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC			L43008	07/01/12	07/01/13	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 250,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 3,000,000
							PRODUCTS - COMP/OP AGG	\$ 3,000,000
								\$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			L43008	07/01/12	07/01/13	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			L43008	07/01/12	07/01/13	EACH OCCURRENCE	\$ 9,000,000
							AGGREGATE	\$ 9,000,000
								\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input type="checkbox"/> N/A			L43008	07/01/12	07/01/13	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	\$ 500,000
							E.L. DISEASE - EA EMPLOYEE	\$ 500,000
							E.L. DISEASE - POLICY LIMIT	\$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Job: South 20th Street, Intersection Reconstruction & Storm Sewer project

City of Clear Lake is additional insured with respects to general liability as required by a written contract.

CERTIFICATE HOLDER**CANCELLATION**
 City of Clear Lake
 Scott Flory
 15 N 6th Street
 Clear Lake, IA 50428

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

USA

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VEENSTRA & KIMM, INC.

2800 Fourth Street SW, Suite 9 • Mason City, Iowa 50401-1596
641-421-8008 • 641-380-0313(FAX) • 877-241-8008(WATS)

NOTICE OF AWARD

To: Yohn Co., DBA The Excavating Co.
309 South 20th Street
Clear Lake, IA 50428

SOUTH 20TH STREET (MAIN AVE. - 2ND AVE. S.) INTERSECTION RECONSTRUCTION AND STORM SEWER PROJECT

Project includes all labor, materials and equipment necessary to construct approximately 60 linear feet of 8" sanitary sewer main, sanitary sewer services, miscellaneous water main and service improvements, 700 linear feet of storm sewer piping, intakes, 1,200 linear feet of subdrain, 1,200 square yards of PCC pavement patching, 10,000 square feet of sidewalk, seeding and miscellaneous associated work including cleanup.

The OWNER has considered the BID submitted by you for the above described WORK in response to its Advertisement for Bids dated March 21, 2013, and information for Bidders.

You are hereby notified that your Bid has been accepted for items in the amount of \$279,992.75. You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance, Payment and Maintenance BOND and Certificates of Insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said BONDS, within ten (10) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this 16 day of April, 2013.

Jason Petersburg, P.E.
Engineer

By Jason Petersburg

Title Project Engineer

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged

By Yohaco Lauca Yoho

this the 18 day of April, 2013.

By Yohaco Lauca Yoho
Title Vice Pres

YOHN CO dba THE EXCAVATING CO
SUBCONTRACTORS / 20TH STREET INTERSECTION RECONSTRUCTION

5/1/13

TAX ID / EIN #

NORTH IOWA TURF & IRRIGATION
ALEX BRUGGEMAN
1627 MEADOWBROOK DR
MASON CITY, IOWA 50401
641-425-2878

480-21-1268

COMPLETE CONCRETE
ERIC VORLAND
115 S. 24TH ST
CLEAR LAKE, IOWA 50428
641-425-4009

27-0233172

RESOLUTION # _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLEAR LAKE, IOWA, APPROVING A PROFESSIONAL AUDIT SERVICES AGREEMENT BETWEEN THE CITY OF CLEAR LAKE AND BOHNSACK & FROMMELT, LLP, AND AUTHORIZING THE CITY ADMINISTRATOR AND CITY CLERK TO EXECUTE THE AGREEMENT

WHEREAS, State law requires that all municipal governments prepare a complete set of financial statements presented in conformity with generally accepted accounting principles (GAAP) and audited in accordance with generally accepted auditing standards by a firm licensed as Certified Public Accountants; and

WHEREAS, Bohnsack & Frommelt, LLP meet these requirements; and

WHEREAS, the partners of Bohnsack & Frommelt, LLP have multiple years of past experience performing the City's Annual audit; and

WHEREAS, the associated fees have been determined to be reasonable and within the budget parameters previously authorized and included in the City's annual budget approved by the City Council; and

WHEREAS, the City Council of the City of Clear Lake wishes to approve a Professional Audit Services Agreement with Bohnsack & Frommelt, LLP Certified Public Accountants and authorize the City Administrator and City Clerk to execute the Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Clear Lake hereby approves a Professional Audit Services Agreement with Bohnsack & Frommelt, LLP Certified Public Accountants and authorizes the City Administrator and City Clerk to execute the Agreement.

PASSED and APPROVED this 6th day of May, 2013.

Ayes:

Noes:

Absent:

Nelson P. Crabb, Mayor

Attest: _____
Jennifer Larsen, City Clerk

Scope of Services and Proposed Project Schedule

Proposed Project Schedule

<u>Phase</u>	<u>Potential Timing</u>
Planning and meeting with City Team	May or June
Internal control documentation and testing	June
Final fieldwork and review	October
Report preparation	October - November
Delivery of report and management letters	December 1

Our goal is to exceed your expectations. Timing of any phase of the audit can be revised to best meet your needs and timeline schedule.

Fees and Compensation

At Bohnsack & Frommelt LLP our goal is to offer our clients expertise and the ability to effectively and efficiently apply the auditing standards in order to provide high-value service at a reasonable cost. Our goal is to exceed your expectations. We recognize that engaging an independent CPA Firm is an important investment. We work side by side with our clients to resolve issues as they arise and encourage our clients to contact us frequently throughout the year with any questions that they may have. We consider this time an investment in the relationship and do not bill for routine calls and questions throughout the year.

Total all-inclusive maximum fee by year is as follows:

Fiscal Year	Financial & GAS Audit	Federal Single Audit	Total All-inclusive Maximum Fee
2013	\$25,000	\$3,000	\$28,000
2014	25,500	3,250	28,750
2015	26,000	3,500	29,500
2016	26,500	3,250	29,750
2017	27,000	3,500	30,500

PROFESSIONAL SERVICES AGREEMENT
For Auditing Services
Between
CITY OF CLEAR LAKE
And
BOHNSACK & FROMMELT, LLP

THIS AGREEMENT made and entered into this ____ day of _____, 2013, by and between the City of CLEAR LAKE, IOWA, hereinafter called "City", and BOHNSACK & FROMMELT, LLP, hereinafter called "AUDITOR."

WHEREAS, the City wishes to obtain the services of the AUDITOR to perform the annual audit through the fiscal year ending June 30, 2017.

WHEREAS, the AUDITOR is equipped and staffed to assist in the above audit; and

WHEREAS, this agreement is in the public interest in fulfilling the requirements of Chapter 11 of the Code of Iowa.

ARTICLE I
SCOPE OF AUDITOR'S SERVICES

AUDITOR shall perform auditing services and duties that are set forth in SCOPE OF SERVICES submitted in response to the City's RFP solicitation. Said response proposal is hereby referenced as Exhibit "A" to this Agreement, which is attached hereto and incorporated herein by this reference. CITY shall notify AUDITOR on or before May 1st, in writing, each year of the Agreement, whether or not AUDITOR'S services shall include: (a) a single audit of federal financial assistance and/or (b) preparation of CITY'S comprehensive annual financial report (CAFR).

Notwithstanding services described above, the CITY may request and AUDITOR may agree to perform other services. The scope of such services and compensation shall be agreed to in writing, signed by both parties and shall become a part of this Agreement.

ARTICLE II
PERFORMANCE OF SERVICES

AUDITOR shall perform all services and duties pursuant to this Agreement in a professional and timely manner, at the direction of the Finance Officer, or his/her designee. All directives, instructions, or other communications from CITY to AUDITOR shall be through only the Finance Officer, or his/her designee.

**ARTICLE III
TERM**

This Agreement shall terminate on upon completion of audit services for fiscal years ending June 30, 2013 through June 30, 2017, as listed in Exhibit A. The term of this agreement may be extended to include audit services for fiscal years ending June 30, 2018 and June 30, 2019, with written authorization from the City Administrator.

**ARTICLE IV
COMPENSATION FOR SERVICES**

CITY shall pay AUDITOR for auditing services rendered and costs incurred pursuant to this Agreement in accordance with the amounts set forth in Exhibit "A". Notwithstanding any and all provisions of this Agreement, in no event shall compensation for the services exceed said amounts, unless authorized in writing by the CITY and approved by the CITY Council.

All payments due AUDITOR shall be paid to:

Sarah Bohnsack
9911 84th Street West
Taylor Ridge, IL 61284

**ARTICLE V
PERSONNEL**

AUDITOR shall provide all personnel necessary to properly perform the services and duties required under this Agreement, and shall at all times direct such personnel in the performance of such services and duties. Sarah Bohnsack shall serve as the principal liaison between CITY and AUDITOR.

**ARTICLE VI
DUTIES OF CITY**

CITY shall provide or make available to AUDITOR, without charge or expense, all information, data, records, maps, reports, plans, equipment, or other material in its possession necessary for carrying out the services and duties contemplated under this Agreement.

**ARTICLE VII
INDEMNIFICATION AND INSURANCE**

- A. Indemnification. AUDITOR will defend, indemnify and hold harmless CITY, its City Council, Boards, Commissions and its officers, employees and agents (collectively "CITY"), against any claim, loss or liability that arises because of the sole or primary negligence or willful misconduct of AUDITOR, its agents, officers or employees, in performing any of the services under this Agreement. CITY will indemnify and hold harmless AUDITOR, its agents, officers or employees against any claim, loss or liability

that arises because of the sole or primary negligence or willful misconduct of CITY personnel or its other agents or if AUDITOR is named as a party in a lawsuit simply because AUDITOR is performing work on CITY'S behalf and there is no allegation of any wrongdoing on the part of the AUDITOR.

- B. General Liability. AUDITOR shall at all times during the term of the Agreement carry, maintain, and keep in full force and effect, a policy or policies of Commercial General Liability Insurance, with minimum limits of one million dollars (\$1,000,000.00) for each occurrence and two million dollars (\$2,000,000.00) in the aggregate, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by AUDITOR.
- C. Professional Liability. AUDITOR shall at all times during the term of this Agreement, carry, maintain, and keep in full force and effect a policy or policies of professional liability insurance with a minimum limit of two million dollars (\$2,000,000.00).
- D. Automobile Liability. AUDITOR shall at all times during the term of this Agreement, carry, maintain, and keep in full force and effect a policy or policies of automobile liability insurance with a minimum limit of five-hundred thousand dollars (\$500,000.00) per accident for bodily injury and property damage.

ARTICLE VIII TERMINATION

- A. If, at any time during the term of this Agreement, CITY determines, at its sole reasonable discretion, that AUDITOR is not faithfully abiding by any term or condition contained herein, CITY may notify AUDITOR in writing of such defect or failure to perform; which notice must give AUDITOR ten (10) days to cure the defect or failure to perform. If AUDITOR has not performed the work or cured the defect to the satisfaction of CITY, CITY may terminate this Agreement immediately by written notice to the AUDITOR to said effect.
- B. If, at any time during the term of this Agreement, AUDITOR reasonably determines that CITY is not abiding by any material term or condition contained herein, AUDITOR may notify CITY in writing of such defect or failure to perform; which notice must give CITY thirty (30) days to cure the defect or failure to perform. If CITY has not performed the work or cured the defect to the satisfaction of AUDITOR, AUDITOR may terminate this Agreement immediately by written notice to the CITY to said effect.
- C. Notwithstanding the provision of the above, CITY and AUDITOR may terminate this Agreement upon completion of the services contained in Article I of this Agreement, upon providing the other party thirty (30) days written notice. Thereafter, neither party shall have any further duties, obligations, responsibilities or rights under this Agreement. In said event, AUDITOR shall be entitled to the reasonable value of its services performed from the beginning of the period in which the breach occurs up to the day of notice of termination, less any offset from such payment representing the CITY'S damages from such breach. CITY reserves the right to delay any such payment so as to permit a full and complete accounting of the cost of damages. In no event, however, shall AUDITOR be entitled to receive compensation in excess of the amount provided in this Agreement.

**ARTICLE IX
GENERAL PROVISIONS**

- A. Compliance with Applicable Law. AUDITOR and CITY shall comply with all applicable laws, ordinances and codes of the federal, state and local government.
- B. Assignment. This Agreement shall not be assignable by either party without the prior written consent of the other party. Notwithstanding the foregoing, AUDITOR may use the services of persons and entities not in its employ, when it is appropriate and customary to do so upon prior approval by CITY. AUDITOR'S use of others for CITY shall not unreasonably restrict additional services, provided AUDITOR notifies CITY in advance.
- C. Independent Contractor. AUDITOR is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of AUDITOR or any of AUDITOR'S employees, except as herein set forth. AUDITOR expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees, are in any manner the agents, servants or employees of CITY, it being distinctly understood that AUDITOR is, and shall at all times remain to CITY, a wholly independent contractor and AUDITOR'S obligations to CITY are solely such as are prescribed by this Agreement.
- D. Extent of Agreement. This Agreement and Exhibit "A" hereto represent the entire and integrated Agreement between CITY and AUDITOR and supersede all prior negotiations, representations or Agreements, written or oral. This Agreement may be modified or amended only by a subsequent written Agreement signed by both parties.

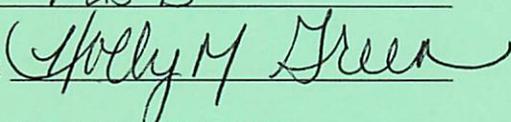
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

BOHNSACK & FROMMELT, LLP:

BY: 

TITLE: Partner

DATE: 4-25-13

ATTEST: 

CITY OF CLEAR LAKE, IOWA:

BY: _____

TITLE: _____

DATE: _____

ATTEST: _____

RESOLUTION No. _____

A RESOLUTION APPROVING THE FINAL PLAT FOR PINE BROOKE 3RD SUBDIVISION, ACCEPTING THE IMPROVEMENT SECURITY, AND AUTHORIZING THE MAYOR AND CLERK TO EXECUTE THE SAME

WHEREAS, on April 24, 2012, the Planning & Zoning Commission approved the preliminary plat for Pine Brooke 3rd Addition; and

WHEREAS, on May 7, 2012, the City Council approved the preliminary plat for Pine Brooke 3rd Addition; and

WHEREAS, on February 12, 2013, the Planning & Zoning Commission approved the Final Plat for Pine Brooke 3rd Addition; and

WHEREAS, the Developer has presented to the City and requested approval of the Final Plat prior to construction and completion of all the improvements; and

WHEREAS, the estimated value of the work to be completed is \$15,435 and the Developer has agreed to file with the City security in the form acceptable to the City in an amount equal to 110% of the costs set forth previously in this paragraph to guarantee faithful performance and completion of the remaining work items.

WHEREAS, the Developer shall file, with the City, a "Notice of Completion" of the Improvements specified herein within 6 months from the effective date of this Resolution, which shall certify that said work has been completed and request formal acceptance of the improvements by the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Clear Lake, Iowa does hereby approve the Final Plat for Pine Brooke 3rd Addition and that the offers of dedication shown thereon are hereby accepted, subject to the final acceptance of the improvements by Resolution of the City Council.

BE IT FUTHER RESOLVED that the subdivision improvement security is hereby accepted and that the Mayor and Clerk are hereby authorized to execute all such documents regarding the Final Plat and improvement security.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Clear Lake, Iowa, on May 6, 2013.

Nelson P. Crabb, Mayor

ATTEST:

Jennifer Larsen, City Clerk

Honorable Mayor and City Council

At our Planning and Zoning meeting of February 12th, 2013, the final plat of Pinebrook 3rd was approved, subject to changes made to the plat and dedication reflecting no boundary fence be permitted. These changes were made and reviewed. Also, a Letter of Credit is still on file to cover improvements not yet completed, the most significant being the milling and overlay of a portion of of the street.

These issues have been reviewed by staff and because they are covered by the Letter of Credit, the P and Z Commission recommends the acceptance of Pine Brooke 3rd.

Sincerely,



Al Penfold: Chairman

FINAL PLAT

PINE BROOKE THIRD SUBDIVISION

CLEAR LAKE, IOWA

LEGEND

- ▲ FOUND SECTION CORNER MONUMENT (AS NOTED)
- SET 1/2" REBAR WITH YELLOW PLASTIC CAP #14233
- CALCULATED POSITION NO MONUMENT SET
- OTHER MONUMENT FOUND (AS NOTED)
- () RECORD MEASUREMENT
- PROPERTY / LOT LINE
- STREET RIGHT-OF-WAY (ROW)
- STREET CENTERLINE
-  EXISTING EASEMENT AREA AS SHOWN
-  NEW EASEMENT AREA AS SHOWN
- ① LOT NUMBER
- SWFE SURFACE WATER FLOWAGE EASEMENT

5/8 Bar

UNPLATTED

366.83' (367.00') - S 00°18'19" E

APPROVED:
PLANNING & ZONING COMMISSION
CITY OF CLEAR LAKE, IOWA

BY: _____
CHAIRMAN

BY: _____
SECRETARY

APPROVED:
CITY COUNCIL
CITY OF CLEAR LAKE, IOWA

DATE: _____

BY: _____
MAYOR

PROPERTY OWNER:
Joshua, Inc.
c/o Tim Stenberg, President
5024 S. Bur Oak Place
Suite 113B
Sioux Falls, SD 57108

SUBDIVIDER:
Joshua, Inc.
c/o Tim Stenberg, President
5024 S. Bur Oak Place
Suite 113B
Sioux Falls, SD 57108

SURVEY REQUESTED BY:
Joshua, Inc.
c/o Tim Stenberg, President
5024 S. Bur Oak Place
Suite 113B
Sioux Falls, SD 57108

SURVEYOR / ENGINEER:
Andrew J. Smith, P.E. & L.S.
Veenstra & Kimm, Inc.
2800 Fourth Street SW
Suite 9
Mason City, Iowa 50401

DATE OF SURVEY:
September 2011 & February 2012

ZONING:
Current = RM-12
Proposed = RM-12

Setbacks: Sideyard 5' 1st Story,
3' additional per
additional story

Front Yard 25'

Rear Yard 20'

Corner Side Yard 25'
(Except Lot 1 is 20'
for this subdivision)

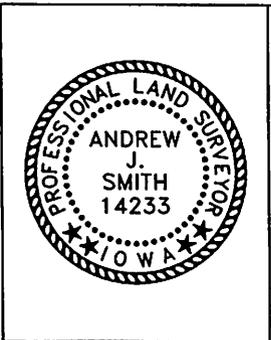
DESCRIPTION

Outlot D in Pine Brooke First Subdivision, Clear Lake, Cerro Gordo County, Iowa. Containing 2.59 acres more or less. Subject to easements recorded or unrecorded.

CURVE	ARC LENGTH (FEET)	RADIUS (FEET)	DELTA	CHORD BEARING	CHORD (FEET)	TANGENT (FEET)
C-1	39.26	50.0	44°59'12"	N 22°30'01" W	38.26	20.71
C-2	293.81	62.5	269°20'57"	N 89°40'47" E	88.89	N/A
C-2A	16.24	62.5	14°53'07"	N 37°33'08" W	16.19	8.16
C-2B	64.27	62.5	58°55'19"	N 00°38'55" W	61.48	35.30
C-2C	42.93	62.5	39°21'07"	N 48°29'18" E	42.09	22.35
C-2D	46.44	62.5	42°34'23"	N 89°27'03" E	45.38	24.35
C-2E	46.82	62.5	42°55'28"	S 47°48'01" E	45.74	24.57
C-2F	63.26	62.5	57°59'43"	S 02°39'34" W	60.60	34.64
C-2G	13.85	62.5	12°41'51"	S 38°00'21" W	13.82	6.95
C-3	39.26	50.0	44°59'12"	S 21°51'36" W	38.26	20.71

LOT	AREA (SQ FT)
1	11,113
2	8,856
3	8,409
4	12,687
5	9,786
6	13,097
7	8,064
8	8,893
9	11,113
STREETS	20,640
TOTAL	112,658
	2.59 ACRES

nd 5/8 with #10902



I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a duly licensed Land Surveyor under the laws of the State of Iowa. The unadjusted error of closure does not exceed 1:10,000 for the subdivision boundary and does not exceed 1:5,000 for any individual lot.

Signed _____ Date 9/18/12
ANDREW J. SMITH, L.S., IOWA LICENSE No. 14233

My license renewal date is December 31, 2013

Pages or sheets covered by this seal: FP.01

PINE BROOKE THIRD SUBDIVISION
JOSHUA, INC.
SW • Suite 9 • Mason City, Iowa 50401-1596
• 641-380-0313(FAX) • 877-241-8008(WATS)

FINAL PLAT

DWG. NO.
FP.01
PROJECT 435

CITY OF CLEAR LAKE, IOWA

**LETTER OF CREDIT ISSUED ON BEHALF OF JOSHUA, INC.
REGARDING PINE BROOKE THIRD SUBDIVISION, CLEAR LAKE, IOWA**

1. Background.

- A. Clear Lake Bank and Trust Company ("Bank") is informed that Joshua, Inc. ("Developer") has filed with the City of Clear Lake, Iowa ("City") a Plat of Pine Brooke Third Subdivision ("Subdivision") in accordance with the Clear Lake City Code.
- B. Bank understands the City Code and Resolutions of the City Council relating to approval of the Plat and Dedication for the Subdivision require certain improvements that may include but not be limited to the grading of lots, sanitary sewer, water main, storm sewer, streets and related appurtenances, street lights and fire hydrants, in accordance with applicable ordinances.
- C. Bank is located in Iowa and chartered under the laws of the United States and Iowa.
- D. Bank, at the request of Developer, has agreed to issue a Letter of Credit, irrevocable except as provided hereafter, in connection with the installation of improvements required in the Subdivision, as more specifically described in the document attached as Exhibit "A"

2. Terms of Letter of Credit.

- A. Bank hereby issues, in behalf of Developer, in favor of City, this Letter of Credit, irrevocable except as provided hereafter, in the amount of \$15,435.00.
- B. In the event Developer fails to complete the improvements detailed in Exhibit "A" within six months after final approval of the Plat for the Subdivision, then upon written notification by City to Bank, City may draw against this Letter of Credit in order to complete the improvements, except as provided hereafter.
- C. The amount of this Letter of Credit may be reduced in proportion to the value of the improvements completed during the six months immediately following final approval of the Plat for the subdivision, upon written certification of the Director of Public Works for City, which certification shall not be unreasonably withheld.
- D. In the event the improvements, detailed in Exhibit "A" are completed within the period of six months after final approval of the Plat for the Subdivision, this Letter of Credit shall be released and Bank and Developer fully exonerated.
- E. If Developer's failure to complete the improvements, detailed on Exhibit "A", within six months after final approval of the Plat for the Subdivision is due to no fault of Developer's own, because of fire, damage by the elements, unavoidable casualty, acts of God or delays or defaults caused by public carriers, suppliers or manufacturers which could not reasonably be foreseen or provided against by Developer or its contractors, City shall not draw on this Letter of Credit to complete the required improvements for an additional period of time to be determined by City.
- F. Notwithstanding any of the foregoing provisions, this Letter of Credit shall not be released and Developer and Bank shall not be exonerated unless:
 - i. there shall first have been provided to City a written demand for such release and exoneration; and
 - ii. 30 days shall have elapsed after service of the written notice of demand on City.

3. Notices. Notices required or permitted under this Letter of Credit shall be in writing and shall be effective when personally delivered or when sent to the last known address of a party by certified mail, return receipt requested. A failure to "receipt" shall constitute notice. In

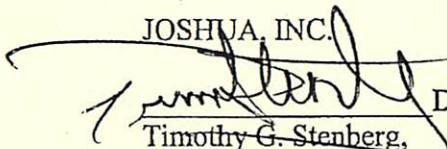
the case of City, the notice may be delivered to or sent by certified mail, return receipt requested to any of City's three agents identified below.

4. Captions. Captions are for convenience and shall not affect interpretation.
5. Governing Law. This Letter of Credit shall be governed by the laws of Iowa.

Approved and accepted by:

"DEVELOPER"

JOSHUA, INC.

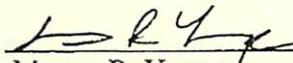

Timothy G. Stenberg,
Operating Manager

Dated: 1-10-13

5024 S Bur Oak Place; Suite 113B
Sioux Falls, IA 57108

"BANK"

CLEAR LAKE BANK & TRUST COMPANY

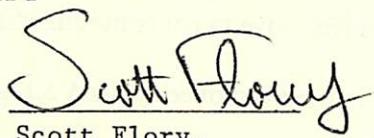

Marcus R. Younge,
Vice President

Dated: 1-14-13

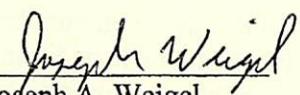
322 Main Avenue
P.O. Box 8
Clear Lake, IA 50428
Telephone: 641-357-7121

Approved and Accepted by:

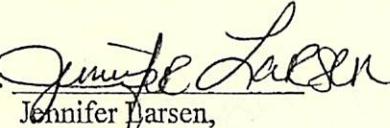
"CITY"

By: 
Scott Flory,
City Administrator

1-14-13
DATE

By: 
Joseph A. Weigel,
Public Works Director

1-14-13
DATE

By: 
Jennifer Larsen,
City Clerk

1-14-13
DATE

15 North 6th Street
Clear lake, IA 50428

EXHIBIT "A"

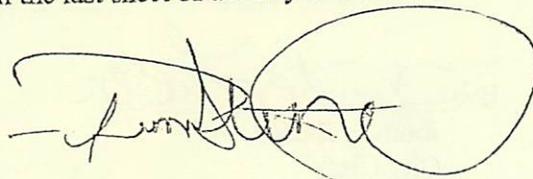
Punchlist Item #	Value of Work
5	\$750
10	\$200
15	\$400
18	\$400
22	\$0 *
27	\$0 *
28	\$100
29	\$100
31	\$885
33	\$0 *
34	\$100
<u>Total Punchlist Items</u>	<u>\$2,935</u>

* This item has been completed since the date of the punchlist

An additional \$500 is suggested to be added to the above to cover mobilization costs.

In addition, there is the \$12,000 for the HMA milling and overlay per V&K's January 4, 2013 letter.

All together, the total recommended value of work / withholdings is **\$15,435** (\$3,535 + \$500 + \$12,000-\$600). V&K is recommending that this dollar amount be used as an additional withholding / deduction from the next Pay Estimate in addition to the 5%. V&K is proposing to show all total Quantities of work being completed on the Pay Estimate and using a few line items on the last sheet of the Pay Estimate to show the \$15,435 worth of withholdings.

 1-10-13

Prepared by Jacquelyn K. Arthur, Heiny, McManigal, Duffy, Stambaugh & Anderson, PLC,
11 Fourth Street, N.E., P.O. Box 1567, Mason City, Iowa 50402-1567;
Telephone 641-423-5154; Fax 641-423-5310

Mail Tax Statements to: Joshua, Inc., 5024 S. Bur Oak Place, Ste. 113B, Sioux Falls,
SD 57108

**DEDICATION OF PLAT
OF
PINE BROOKE THIRD SUBDIVISION**

Joshua, Inc., a South Dakota corporation ("Developer"), the owner of the real estate described on the Plat attached to this Dedication, acknowledges it has caused said real estate to be surveyed and platted for the purpose of establishing and creating a Subdivision in Clear Lake, Cerro Gordo County, Iowa, to be known as "**PINE BROOKE THIRD SUBDIVISION, CLEAR LAKE, IOWA.**" The Plat is made with the full and free consent and in accordance with the wishes and desires of Developer.

The real estate described on the Plat is located within the City limits of Clear Lake. There is attached a Resolution of the City Council of Clear Lake approving the Plat.

The Lots contained within the Subdivision are to be used for only those purposes allowed or permitted under the Zoning Ordinances of the City of Clear Lake and this Dedication.

Easement is reserved and reservation is made:

- (a) in, on and through the Lots as shown on the attached Plat for the construction, placing, repair and maintenance of all necessary overhead, underground and surface utilities, public and private, including the right to conduct drainage and to trim along, on and over the areas of such easements.

- (b) in favor of the City of Clear Lake for the free and uninhibited access to all private and common areas by the fire, police and other public safety vehicles and personnel for the customary performance of their respective duties and responsibilities.
- (c) in, on and through the Lots where there exist public or private drain tiles, or private storm sewer lines, if any. Any existing tile line or private sewer line disturbed by construction activities shall be relocated, repaired or replaced at the expense of the Lot Owner causing the disturbance.

The easements are perpetual. The streets and easements are dedicated to the public use.

NOTICE:

- (a) No object shall be placed in the entire width of any easement with the exception of turf grass. No vertical obstructions shall be allowed including, but not limited to gas meters, electrical meters, heating and cooling units, building overhangs, egress windows, bay windows, fireplaces, fences, retaining walls, trees, shrubs and other landscaping. In the event any object is placed in an easement, it will be required to be removed at owner's expense. Any object located in an easement is at risk of damage and/or removal in the event of entry by the City of Clear Lake or other utility workers for repair or maintenance of the utility. Neither the City of Clear Lake nor any utility shall be held responsible for any damages that occur to objects located within an easement area.
- (b) Access to Lots 1 and 9 shall be off Nash Court only.
- (c) No on-street parking shall be permitted on Nash Court.
- (d) The City of Clear Lake will remove snow on Nash Court by dividing Nash Court in half and pushing snow into the end of driveways with access to Nash Court. Removal of snow from driveways with access to Nash Court shall be the responsibility and expense of the lot owners. Owners shall not place or caused to be placed snow from the driveways and Nash Court onto Nash Court. The City of Clear Lake shall not be responsible for repair or maintenance of any parking areas due to

snow removal operations.

- (e) Mailboxes for Lots 2 through 8, inclusive, shall be mounted on a shared post adjacent to Lot 8 south of the cul-de-sac "bulb" on Nash Court with the exact location to be approved by the United States Postal Service. The owners of Lots 2 through 8, inclusive, shall be equally responsible for the construction, maintenance, repair and replacement of the shared post. The individual owners of Lots 2 through 8, inclusive, shall be responsible for the maintenance, repair and replacement of their individual mail receptacles.
- (f) Sidewalks in conformance with City Ordinances shall be constructed adjacent to each Lot in the Subdivision at owner's expense where the Lot abuts a public street. Sidewalk construction shall be in conformance with the grades and/or elevations established as shown on the subdivision improvement plans. Sidewalk construction shall be completed the earlier of:
 - i. at the time of installation of the driveway approach to the Lot, or
 - ii. at the time 80% of the Lots within the Subdivision have been sold by Developer and have improvements which have been occupied.

In the event the owner of a Lot fails to construct sidewalks within the time prescribed, or in conformance with the improvement plans, the City of Clear Lake without notice may enter upon a Lot for the purpose of constructing adjacent sidewalks and shall thereafter assess the costs of construction against the real estate as a lien.

- (g) Lots 1 and 9 abut 10th Avenue North and Nash Court. 10th Avenue North and Nash Court are each public streets. Sidewalks on Lots 1 and 9 shall be constructed adjacent to each of these public streets.
- (h) The discharge line for each sump pit for the residence on each lot must be connected to the storm water system of the City of Clear Lake. In the event the owner of a Lot fails to provide for sump pit discharge in compliance with the foregoing, the City of Clear Lake without notice may enter upon a Lot for the purpose of making the necessary connections and shall thereafter

assess the costs against the real estate as a lien.

- (h) Surface water drainage ways shown on the attached Plat shall be maintained at owner's expense. In the event the owner of a Lot fails to maintain a surface water drainage way, the City of Clear Lake without notice may enter upon a Lot for the purpose of maintaining the surface water drainage way and shall thereafter assess the costs of maintenance against the real estate as a lien.

The following conditions, restrictions, covenants, agreements and reservations (collectively referred to as "Restrictions") are established and created as binding upon and a charge against each Lot in the Subdivision and are for the benefit of each present and future owner of any Lot in the Subdivision and in any adjacent subdivision and shall constitute covenants running with the land.

The Restrictions shall remain in full force and effect for a term of 21 years from the date this Dedication is recorded. Any person described in Iowa Code Section 614.24 may file a verified claim with the Cerro Gordo County Recorder within said 21 years extending for a further period of 21 years the time within which the restrictions shall be in full force and effect.

The recordation of a Deed conveying a Lot within the Subdivision shall constitute the filing of a verified claim as to all of the Lots and as to this Dedication of Plat in compliance with Iowa Code Section 614.24.

The restrictions may be amended by a written instrument filed with the County Recorder and bearing the signatures of no less than 80% of the then Lot owners.

The Restrictions are:

1. The Lots shall be used only one and two-family dwellings in compliance with City Ordinances. No Lot shall be used for commercial purposes including, but not limited to, an in-home business open to the public.
2. No building shall be moved onto any Lot. This shall not preclude the use of precut materials, engineered trusses, and "paneled" construction. However, no modular or "componentized" construction houses are permitted.

3. All construction shall be of a design, quality and style which enhances and complements the subdivision.
4. The building lines shall be as required by the Clear Lake Zoning Ordinances or as stated on the Plat.
5. Each Lot and the building erected thereon shall at all times be maintained in a neat condition and appearance commensurate with the character of the Subdivision.
6. No poultry or livestock shall be kept or permitted on any Lot. Dogs (except as provided below), cats, and household pets are permitted but no animals shall be permitted to run loose. No animals shall be kept, bred or maintained for any commercial purposes.

Vicious dog breeds including, but not limited to, pit bulls, doberman pinschers, rottweilers, and wolf hybrids are not permitted.

No vicious animal of any species or of any breed shall be permitted on any Lot.

7. No garbage, garbage cans, ashes, refuse, or trash receptacles shall be allowed on any Lot exposed to view other than on the day or days of collection. No outside incinerator shall be permitted. No burning of rubbish outside a residence shall be permitted.
8. No Lot shall be subdivided into smaller Lots or areas other than as originally platted. However, this Restriction shall not prevent a Lot from being divided along the center line of the common wall of a two-family dwelling, provided that such division shall not result in a Lot failing to conform to minimum zoning requirements.
9. No obnoxious or offensive trade shall be conducted upon any Lot nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.
10. No noxious weeds or plants shall be planted, grown or maintained upon any Lot.
11. No trailer, mobile home, motor home, tent, shack, garage, barn, basement house or other building shall be used as a residence either temporarily or permanently

nor shall any residence of a temporary character be permitted.

12. For each single level dwelling unit, there shall be no less than 1000 square feet of living space, excluding porches, garage and basement. For each multi-level dwelling unit, there shall be no less than 900 square feet on the main level and no less than 1500 square feet of total living space, excluding porches, garage and basement.
13. Each Lot owner shall commence construction of a dwelling unit within nine (9) months and the construction of all improvements including landscaping shall be completed within fifteen (15) months of the date the Deed to the Lot owner, or its predecessor was executed by the Developer. **IF CONSTRUCTION HAS NOT BEEN COMMENCED OR COMPLETED ON A LOT WITHIN THE TIME DESCRIBED ABOVE, THE LOT OWNER, AT DEVELOPER'S REQUEST, SHALL CONVEY THE LOT TO DEVELOPER UPON RECEIPT OF THE ORIGINAL PURCHASE PRICE FROM DEVELOPER. THERE WILL BE NO ADJUSTMENT FOR IMPROVEMENTS, TAXES, CLOSING COSTS, INTEREST OR ANY OTHER EXPENSES. DEVELOPER SHALL BE RESPONSIBLE FOR DEED PREPARATION, RECORDING FEES AND TRANSFER TAXES ONLY. UPON OCCUPANCY OF THE DWELLING, THIS RIGHT TO REPURCHASE SHALL TERMINATE AS TO THAT LOT.**
14. All homes shall have at a minimum a two-car attached garage. All garages shall have a brick or stone façade at least half-way to roof-line on both sides of the garage door(s).
15. All driveways shall be concrete.
16. No Lot owner shall throw, push, blow or otherwise place snow onto the streets.
17. All siding shall be steel, LP hardboard or cement and all structures shall be an earth-tone color approved by Developer.
18. For each dwelling and each detached structure, the pitch of the roof must be no less than 5 over 12 (5/12).
19. No building construction, partition construction, or Lot improvement, including landscaping and

architectural arrangement, shall be permitted on any Lot until after plans and specifications of the following types are submitted to and receive the written approval of Developer or Developer's designated representative or assign:

- (a) Building plans, including:
 - (1) Floor plans
 - (2) Building profiles
 - (3) Materials specifications including colors
- (b) Site plans, which indicate:
 - (1) Building, land coverage and location
 - (2) Location, size and surface type of all drives
 - (3) Location and type of all exterior lights
- (c) Landscape plans, which indicate:
 - (1) Planting types, sizes and locations
 - (2) Grading plans including existing and proposed contours
 - (3) Ground cover materials
 - (4) All other outdoor features proposed
- (d) Such other plans and information as may be requested.

If Developer or Developer's designated representative or assign does not respond within thirty (30) days after the plans and specifications have been submitted, the plans and specifications shall be deemed approved.

- 20. No boundary line fences shall be permitted. Privacy and patio partitions are permitted outside the easement areas but must be of a material complimentary to the structure and shall be placed with smooth edging facing out and posts facing the interior of the Lot.
- 21. No dwelling shall be of the "Earth Shelter" type, "A-Frame" type, or "Split-Entry" type, without the express written consent of Developer or its designated representatives(s).
- 22. Each Lot shall be suitably landscaped to promote the aesthetics of the area.
- 23. No liquid or propane gas container of any type shall be

allowed on a Lot exposed to view.

24. Permanent outside storage of trailers, campers, boats, mobile homes, motor homes, and recreational vehicles is prohibited. For purposes hereof, "Permanent" means twenty-one (21) days or more whether continuous or not, in any one twelve (12) month period.
25. Any motor vehicle placed or parked outdoors must be operative and capable of self-locomotion.
26. Each Lot owner hereby acknowledges the existence of a drainage plan prepared by the Developer and on file with the City of Clear Lake. Prior to any construction on a Lot, the Lot owner and its contractors shall review the drainage plan and shall comply with all soil elevation requirements indicated thereon. In the event a Lot owner does not comply with the drainage plan, the Lot owner shall be responsible for any costs associated with bringing the Lot into compliance with the drainage plan and shall indemnify Developer from any damages.
27. A Lot owner must keep the Lot mowed at all times. In the event an owner fails to keep a Lot mowed, the Developer or its designee shall have the right to enter upon the Lot and perform mowing after three days written notice to the Lot owner. A Lot owner shall be responsible for all mowing expenses.
28. No dirt may be removed from any Lot without the prior consent of Developer. If a Lot owner believes excess dirt exists, then Developer shall have the right to direct the Lot owner to stockpile the dirt, or selected portions of such dirt, for Developer's use on another Lot or on a parcel adjacent to the Subdivision. If Developer has no use for any portion of the dirt, the lot owner is responsible for disposing of excess dirt.
29. In the event an owner of any Lot, or his or her or its assigns, shall violate or attempt to violate any of the Restrictions, it shall be lawful for any other person or persons owning any Lot in the Subdivision or for Developer to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate such restrictions and either prevent them from so doing or recover damages for such violations.

30. Invalidation of any one of these restrictions by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Captions and headings within this Dedication are for convenience and shall not be construed to affect interpretation.

This Dedication is executed by Developer on a separate signature page which also contains the notary acknowledgment.

Attachments:

1. Signature Page of Developer
2. Certificate of County Treasurer
3. Certificate of County Auditor
4. Consent of Lender
5. Plat of Pine Brooke Third Subdivision
(1 page)
6. Surveyor's Certificate dated September 18, 2012
7. Resolution of City Council of Clear Lake
8. Attorney's Opinion

scope of services

March 28, 2013

RDG IA 2013.02.19
RDG SWB 2013.10.09

Project:

Clear Lake Water Tower Site

Client:

City of Clear Lake

Contact: Scott Flory, City Administrator

Description:

Assist the City of Clear Lake with coordination, stakeholder/public engagement, design, and potential implementation of improvements to Lakeview Drive (from Main Avenue to 1st Avenue) and the adjacent site of the Clear Lake Water Tower, currently scheduled for removal in spring, 2013. (see attachment). The purpose of this project is to:

- 1) Develop a concept plan and design for the improvement of the Water Tower site following removal of the tower, through a process that includes community involvement in considering reuse alternatives. Potential uses could include, but not limited to significant community features, outdoor interpretation, public spaces, and recreational improvements.
- 2) Develop a concept design for enhancement of Lakeview Drive, with attention given to the linkage of City Park to the lakefront and the lakefront promenade, and the integration of Lakeview Drive, City Beach, and the Water Tower site.

Services are organized into Part A and Part B. Part A tasks shown below are defined and included within this scope of service. Part B tasks will be defined at the conclusion of Part A and will result in a supplemental scope of services developed and executed at that time.

Part A (Anticipated to be completed in April-June, 2013)

Task 1: Pre-design, including public engagement

Task 2: Conceptual Design

Part B (Scope to be defined at the conclusion of Part A)

Task 3: Design Development

Task 4: Construction Documentation

Task 5: Bidding

Task 6: Construction Administration

Task 1: Pre-Design

- 1A. Base Mapping - Assemble existing survey, as-built, and aerial photography of the project area including available below and above ground features. This scope includes limited field review of

existing conditions, but does not include new topographic or investigative surveying beyond information currently available.

- 1B. Kickoff Meeting (Visit #1) - City of Clear Lake and design team meeting. Agenda for the meeting includes:
- i. General program and intent for the enhancement of the Water Tower site and Lakeview Drive, including connections and functional requirements
 - ii. City of Clear Lake site planning and building code requirements and considerations
 - iii. Significant site and underground limitations
 - iv. Details of stakeholder and public engagement process
 - v. Funding and project budget considerations
 - vi. Approval process
 - vii. Overall project schedule

- 1C. Stakeholder/Public Engagement (Visit #1) Full-day on-site to include:
- i. Discussions with key stakeholders, including downtown businesses, interest groups, and organizations who have expressed specific ideas or might be candidates to develop parts of the site
 - ii. Evening community workshop, describing the project area and its features, presenting examples of executed projects with some applicability to the project sites, and providing opportunity for participants to develop reuse ideas
 - iii. Minutes summarizing results of the engagement visit

Events will occur at a downtown location with convenient access to the project site.

Task 2: Conceptual Schematic Design

- 2A. Concept Development Workshop: (Visit #2) Two-day on-site workshop including:

- i. Development of up to three alternative site development programs with specific periods for public visits
- ii. Conceptual illustrations adequate to communicate alternative ideas, including plans, sketches, and review of relative advantages and disadvantages of each concept
- iii. Public concluding session, including brief presentation of each idea, general discussion, and open house for individual discussion and public reaction
- iv. Follow-up meeting with city project staff to review proceedings and select a preferred program/concept for further development. Preferred concept may combine elements of each idea

- 2B. Preferred Concept Refinement: Refined conceptual design and supporting narrative of preferred concept to include:
- i. Plans, elevations and/or three-dimensional drawings
 - ii. Materials and schematic level description of furnishing, lighting, art features, and other elements
 - iii. Identification of any impacts/modifications to existing adjacent facilities

- iv. Narrative and illustration of the anticipated use and programming
- v. Overall plan depicting the feature and site improvements
- vi. Preliminary opinion of probable cost

2C. Public Information and Project Team Meeting (Visit #3): Visit includes:

- i. Public presentation/open house of design concept and implementation steps
- ii. Project Team meeting to discuss implementation scenarios and "Part B" scope of services development

Professional Services Fee:

RDG Planning & Design proposes to work for a fixed fee of \$24,000 plus reimbursable expenses of \$500 (excludes meals).

Marty Shukert, FAICP - Design
Patrick Dunn, PLA, ASLA - Landscape Architect
David Dahlquist - RDG Artisan
Travis Rice or Jen Cross - Illustrator/Designer
Cory Scott, AICP - Project Coordination

Project Schedule:

Project to be complete within 3 months from the notice-to-proceed, or otherwise instructed by the City of Clear Lake.

END SCOPE OF SERVICES

May 6, 2013

TO: CLEAR LAKE CITY COUNCIL

Please examine the following list of necessary expenditures related to the continued operation of the Lake Theatre.

These areas of concern need to be administered in order to safely and effectively conduct business in a professional manner.

Estimated expenses are as follows:

Rewire marquee	\$ 700
Repaint front of building	750
New awnings for front	650
Additional electrical work in building	800
Add security system	400
Additional insulation and weather stripping	800
Finish new roof	300
Rebuild heat exchanger	1,800
Rebuild boiler	5,000
Energy-efficient front doors	3,000
Basement plumbing work	800
New soft water unit	<u>400</u>
Total	\$15,400

These above items all need to be implemented over the next few years to ensure the Lake Theatre continues to operate as the quality venue our patrons have come to expect. This most generous program the City is offering the Lake Theatre will be very helpful to achieving that goal.

According to our estimates, the approximately \$15,400 in tax rebates over a five-year term will allow for these improvements to be completed.

Should further information be required, do not hesitate to call me at 641-583-1884 or email bobshermanfilm@yahoo.com. Once again, the Lake Theatre warmly thanks the powers to be for this opportunity to remain open in our community.

BOB SHERMAN
LAKE THEATRE
4 N 4TH ST
CLEAR LAKE, IA 50428

**Water Treatment Plant/Public Works Operator &
Code Enforcement Officer – CITY OF CLEAR LAKE
POSITION ANNOUNCEMENT**

This full-time position involves the performance of a variety of skilled and semi-skilled technical and maintenance work in the operation, maintenance, and repair of the Water Treatment Plant Facilities and distribution system (including meter reading), in addition to selected Code Enforcement responsibilities, and general public works duties (including operation of heavy truck & equipment, snow plowing & hauling, etc.), as needed. This is a "safety-sensitive" position and is subject to random drug and alcohol testing, as required by law. As a condition of employment, a negative "pre-employment" drug test, as well as a physical are required. Must possess a valid Iowa CDL Class "B" Commercial Driver's license, with "air brakes" endorsement ("tanker" also desirable). Successful candidate will be required to complete necessary testing to become certified as a Grade II Water Operator within 42 months of start date. Residency within the City limits of Clear Lake is strongly preferred. Work activities often entail strenuous physical labor, which can often be required to be performed in extreme weather conditions. Successful candidate will also be required to work in an "on- call" rotation schedule, including some overtime (as necessary). Anticipated start date on or about July 1, 2013.

Applicants must submit a resume and completed City employment application, no later than 9:00 a.m., Friday, May 17, 2013 to:

Ms. Jennifer Larsen, City Clerk
City of Clear Lake
PO Box 185
Clear Lake, IA 50428

This position represents a unique opportunity to work in a challenging and diverse environment. **The City of Clear Lake is an Equal Opportunity Employer.**

Employment opportunities with the City are rare and it is anticipated that the response will be substantial. All applicants are thanked in advance for their interest, however only those candidates selected for further consideration will be contacted