

RESOLUTION NO. 1123

RESOLUTION APPROVING A SUBDIVIDER'S AGREEMENT WITH LYNCH EXCAVATING, INC., IN CONNECTION WITH COOKSON SUBDIVISION, WEST BRANCH, IOWA.

WHEREAS, Lynch Excavating, Inc. ("Lynch"), is the owner of that certain parcel of real estate purchased from the City of West Branch and generally referred to as the Cookson property; and

WHEREAS, Lynch has submitted a preliminary plat for Cookson Subdivision, West Branch, Iowa; and

WHEREAS, in accordance with the City's subdivision regulations, Lynch, as part of plat approval, will need to construct certain municipal improvements, namely streets, sidewalks, storm sewer, water and sanitary sewer improvements; and

WHEREAS, the City Attorney has drafted a Subdivider's Agreement which outlines the responsibilities of Lynch with respect to said Cookson Subdivision; and

WHEREAS, it is now necessary for the City Council to formally approve said Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of West Branch, Iowa, that the aforementioned Subdivider's Agreement be and the same is hereby approved. Further, the Mayor and City Clerk are authorized to execute said Subdivider's Agreement on behalf of the City. Further, the City Clerk shall record said Subdivider's Agreement, along with the required documents outlined in Chapter 354 of the Code of Iowa when the final plat of Cookson Subdivision has been formally approved.

Passed and approved this 19th day of August, 2013.



Mark Worrell, Mayor

ATTEST:



Matt Muckler, City Administrator/Clerk

CITY OF WEST BRANCH, IOWA/SUBDIVIDER'S AGREEMENT

COOKSON SUBDIVISION

This Agreement is made by and between Lynch's Excavating, Inc., an Iowa corporation, 607 N. 4th Street, West Branch, Iowa 52358, hereinafter referred to as the "Subdivider", and the City of West Branch, Iowa, a municipal corporation, 110 N. Poplar Street, West Branch, Iowa 52358, hereinafter referred to as the "City".

WITNESSETH

SECTION 1. MUNICIPAL IMPROVEMENTS; CONSTRUCTION AND INSTALLATION OF MUNICIPAL IMPROVEMENTS.

In consideration of the city approving the plat and subdivision of real estate known and designated as Cookson Subdivision, West Branch, Iowa, prior to Subdivider's installation and construction of the required municipal improvements, Subdivider shall make escrow provisions as provided herein. Municipal improvements shall include a 29-foot wide PCC extension of 2nd Street, sanitary sewers, water mains, storm sewers, sump-pump line, street lighting, fire hydrants with appropriate STORZ connections as approved by the Fire Chief and a storm water detention facility located on Outlot A. Said municipal improvements shall be constructed and installed in accordance with construction plans and specifications approved by the City Engineer of the City who shall have the right to make or authorize occasional inspections of the work in progress. Said inspections shall not relieve or release the Subdivider from the responsibility to construct the municipal improvements in accordance with the approved plans and specifications.

The Subdivider shall also be responsible for relocating the existing water main to the north 16-feet of Lot 5, and granting the City an appropriate water main easement for the same.

SECTION 2. SIDEWALKS.

The Subdivider agrees that no later than three (3) years from the date of the City's Resolution approving the Final Plat of Cookson Subdivision, West Branch, Iowa, or upon seventy-five percent (75%) of the development of the lots therein, whichever occurs first, to install sidewalks abutting each lot which shall be at least five (5) feet wide and constructed according to the plans and specifications as approved by the City Engineer. The escrow provision need not include the sidewalk installation, however, the same shall remain a lien against each lot until accepted and released by the City.

SECTION 3. ESCROW MONIES

The Subdivider shall deposit with the City Clerk in escrow an amount equal to the estimated cost of constructing the municipal improvements plus 10% thereof as determined by the City Engineer and said deposit shall be referred to as "Municipal Improvements Escrow". The escrow deposit shall be in the form of cash, bank check that will be cashed, bond or irrevocable letter of credit, all as approved by the City Attorney.

SECTION 4. USE OF ESCROW MONIES

If, after one year from the date of the City's resolution approving the preliminary plat of the subdivision, the municipal improvements have not been constructed and installed for the subdivision, then City may use and/or make demand upon the municipal improvements escrow to construct and install said municipal improvements. The City shall release any bond or letter of credit or refund to the Subdivider any portions of or any excess escrow monies not used by the City after construction, installation and acceptance of all of the municipal improvements. Any cash or check held in escrow shall be released as needed for payment of the costs of the improvements.

In addition, the City may make use of any of the proceeds of the security provided by Subdivider in order to enforce the erosion control requirements pursuant to Section 170.15(15) of the West Branch Code of Ordinances.

SECTION 5. WAIVER

In the event the Subdivider shall sell or convey or make application for a building permit on any lot or lots in the subdivision without having first constructed and installed all the municipal improvements for the subdivision, then the City shall have the right to proceed therewith as provided in Section 3 above.

SECTION 6. LIEN

The costs of the construction and installation of the municipal improvements shall be a lien and charged against all lots in said subdivision and need not meet the requirements of notice, benefit or value as provided for by the Code of Iowa for assessing said municipal improvements which may exceed the municipal improvements escrow.

SECTION 7. RELEASE

The City agrees that when all municipal improvements have been constructed and installed for the subdivision, to the satisfaction of the City and upon acceptance by resolution, to furnish the Subdivider a good and sufficient Release for filing in the office of
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the County Recorder so that this Agreement will not constitute a cloud upon the title.

SECTION 8. PUBLIC SERVICES.

Subdivider agrees that public services including, street maintenance, snow plowing, water and sanitary sewer service, will not be provided in said subdivision until the municipal improvements have been constructed, installed and accepted by the City.

SECTION 9. STORM WATER MANAGEMENT.

The Subdivider shall be required to install a storm water detention facility on Outlot A of said subdivision. In constructing said storm water detention facility, the Subdivider shall be required to detain the difference in volume of the five year undeveloped storm and the one hundred year developed storm events on the entire approximate 3.4-acre tract owned by Subdivider.

Upon request of the City Engineer, the Subdivider shall provide appropriate data to the City Engineer for review to ensure that the storm water detention facility is capable of providing the design capacity of the facility. The City Engineer, in its sole discretion, may require appropriate measures be performed by the Subdivider if the capacity has been reduced by sand, siltation or any other similar problems. After inspection and approval by the City Engineer, the ownership of Outlot A shall be transferred to the City via Warranty Deed, free from liens or encumbrances.

SECTION 10. ASSIGNS AND SUCCESSORS

This agreement shall be binding upon the parties, their assigns or successors in interest and it is understood that the City, at its option, may contract for the construction and installation of the municipal improvements as provided above.

Dated this 25 day of February, 201~~3~~⁴.

Lynch's Excavating:

City of West Branch:

By: *Larry Lynch*
Larry Lynch, President

Mark Worrell
Mark Worrell, Mayor

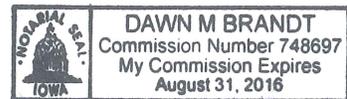
ATTEST:

Matt Muckler
Matt Muckler, City Administrator/Clerk

STATE OF IOWA, COUNTY OF CEDAR, ss:

On this 25th day of February, 201⁴, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Mark Worrell and Matt Muckler, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Branch, Iowa; a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as passed by Resolution of the City Council; and Mark Worrell and Matt Muckler acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Dawn M. Brandt
A Notary Public in and for the
State of Iowa

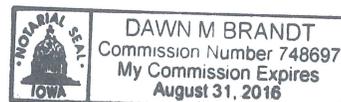


STATE OF IOWA, COUNTY OF CEDAR, ss:

This instrument was acknowledged before me on the 25 day of February, 201⁴, by Larry Lynch as President of Lynch's Excavating, Inc.

Dawn M. Brandt
Notary Public

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