

**RESOLUTION 1725**

**A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO INTO A SETTLEMENT AGREEMENT AND RELEASE WITH FRENCH-RENEKER ASSOCIATES INC. ENGINEERS & SURVEYORS OF FAIRFIELD, IOWA**

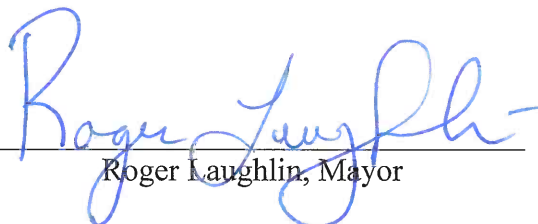
**WHEREAS**, The City of West Branch entered into contract with French-Reneker Associates, Inc., Engineers & Surveyors of Fairfield, Iowa; for the services designing a multi-span wooden bridge to the standards that a flood plain permit from the Department of Natural Resources would be obtained; and

**WHEREAS**, a hydraulic analysis and flood plain permit were needed for the project and French Reneker Associates could meet the requirements of the Department of Natural Resources at the location the project intended and at the cost the project was budgeted.

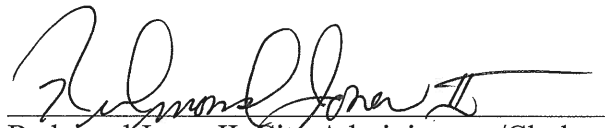
**NOW, THEREFORE, BE IT RESOLVED** the West Branch City Council hereby agrees and authorizes the City Administrator enter into a settlement agreement and release to have a lump sum of \$17,000 the City of West Branch paid French Reneker Associates for engineering services, returned to the City. This agreement is between the City of West Branch and French Reneker Associates, Inc., Engineers & Surveyors of Fairfield, Iowa and will commence upon this date June 25<sup>th</sup> 2018.

\* \* \* \* \*

Passed and approved this 25th day of June, 2018.

  
\_\_\_\_\_  
Roger Laughlin, Mayor

ATTEST:

  
\_\_\_\_\_  
Redmond Jones II, City Administrator/Clerk

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Release") is entered into as of the effective date of June 25, 2018 by and between the City of West Branch, Iowa ("City") and French-Rencker-Associates, Inc., Engineers & Surveyors of Fairfield, Iowa ("Engineer") (City and Engineer, collectively the "Parties").

WHEREAS, City acquired Resource Enhancement and Protection (REAP) funds for a recreational trail. The trail was to be 10-foot wide concrete surface and about 400 feet long. The trail was to connect the West Branch Village Mobile Home Park with the existing Hoover Nature Trail. The 400-foot long trail was to include a multi-span wooden bridge to be constructed by volunteers. The bridge was to span a mapped floodway. A hydraulic analysis and flood plain permit were needed for the project. This recreational trail is herein referred to as the "Project;"

WHEREAS, City, on behalf of itself, entered into a contract (the "Contract") with Engineer to provide engineering services pursuant to the Contract in connection with the Project;

WHEREAS, the engineering services to be provided by Engineer in connection with the Project included Preliminary Services, Design Services, and Engineering Services During Construction (collectively the "Engineering Services");

WHEREAS, the Contract required City to pay Engineer a lump sum amount of \$17,000 for the Engineering Services;

WHEREAS, City has paid Engineer a lump sum amount of \$17,000 for the Engineering Services;

WHEREAS, Engineer has provided Engineering Services for the Project, however, the Project has not received a flood plain permit for the proposed bridge and the Project has yet to receive final design approval to be constructed;

WHEREAS, it is the desire of both City and Engineer that after execution of the Release, the Parties have no continuing contractual obligations or duties under the Contract;

WHEREAS, pursuant to the terms of this Release, Engineer agrees to return the amount of \$17,000 (the "Returned Payment") to City;

WHEREAS, pursuant to the terms of this Release, City agrees to accept the Returned Payment from Engineer;

WHEREAS, City agrees that all plans, specifications, design documents, and all other information produced or generated by Engineer in performing Engineering Services for the

Project shall be returned to Engineer and will not be used by City or City's employees, agents, servants, representatives, officials, attorneys, trustees, partners, contractors, subcontractors, predecessors, successors, or assigns; and

WHEREAS, City agrees to release Engineer from any and all manner of liability, claims, actions, suits, losses, damages, demands, obligations, debts, liens, costs, attorneys' fees and expenses of any nature and description whatsoever arising out of or in any way relating to the Project, or use of or reliance upon any plans, specifications, design documents, or other information produced or generated by Engineer in performing Engineering Services for the Project.

NOW THEREFORE, in consideration of the mutual promises contained herein, the Parties agree:

1. The above recitals are incorporated by reference into this Release. The Parties understand that the Returned Payment is not to be construed as an admission of liability, which liability is expressly denied by Engineer. The Returned Payment is intended to extinguish any and all rights, claims, demands, causes of action or liabilities that the Parties to this Release have against the other as of the effective date of this Release.

2. Engineer has agreed to pay City the Returned Payment of \$17,000 and City has agreed to accept the Returned Payment in exchange for the releases and indemnities detailed in this Release.

3. Following approval of the settlement by the West Branch City Council, the Returned Payment shall be paid to the trust account of Kevin D. Olson at Diehl Law Offices by wire or other means, for transfer to City. Said Returned Payment shall be transferred in full to the trust account of Kevin D. Olson at Diehl Law Offices not later than thirty (30) business days following approval of the settlement by the West Branch City Council.

4. Following execution of this Release by the Parties, City releases Engineer from any and all obligations or duties to perform Engineering Services for the Project. Following execution of this Release by the Parties, City shall not have any obligation or duty to make any payment to Engineer for Engineering Services for the Project. It is the intent of the Parties that after execution of this Release by the Parties, neither City nor Engineer shall have any continuing contractual obligations or duties under the terms of the Contract.

5. Following execution of this Release by the Parties, City agrees that all plans, specifications, design documents, and all other information produced or generated by Engineer in performing Engineering Services for the Project shall be returned to Engineer and will not be used by City or City's employees, agents, servants, representatives, officials, attorneys, trustees, partners, contractors, subcontractors, predecessors, successors, or assigns.

6. In consideration of the actual receipt of the Returned Payment, City hereby fully, completely, finally, and forever releases, acquits and discharges Engineer, and its predecessors, successors, assigns, parent companies, holding companies, subsidiaries, affiliated companies, partnerships, operating groups, officers, directors, executives, employees, agents, servants, officials, attorneys, trustees, partners, heirs, managers, stockholders, and representatives of any of them (collectively "RELEASEES") of and from any and all manner of liability, claims, actions, suits, losses, damages, demands, obligations, debts, liens, costs, attorneys' fees and expenses of any nature and description whatsoever, which are now known, unknown or hereafter discovered, and whether presently accrued or hereafter which City now has ever had or ever will have against RELEASEES or any of them, arising out of or in any way relating to the Project ("RELEASED CLAIMS"), or use of or reliance upon any plans, specifications, design documents, or other information produced or generated by Engineer in performing Engineering Services for the Project. It is expressly understood that this Release is a full and complete Project release in favor of RELEASEES. The RELEASEES, including all of their respective subsidiary and parent companies and all of their successors, predecessors, assigns, affiliates, associated companies or ventures, together with their respective past, present, and future employees, officers, directors, stockholders, members, board members, attorneys, agents, principals, servants, representatives, executors, administrators, and insurers, mutually release all known and unknown claims and causes of action whether arising in contract or tort, in equity or law, that any of the RELEASEES have against City, with respect to, arising out of and/or related to the Project.

7. Any Party wishing to make a future claim against the other Party, or against any third party, for payment relating to the claims settled and released by this Release shall defend and indemnify the other Party from such claims. City further represents that there are no other persons or entities who have any interest in the proceeds of this settlement or who may claim through City in a derivative manner against the Released Parties for any cause arising from or relating to the Released Claims. In any event, City agrees to be responsible for all such interests, claims, and actions and to indemnify and hold harmless the Released Parties from any and all liens, claims of subrogation, contribution, indemnity (express or implied) arising out of the Released Claims which are asserted by any person or entity who is not a party to this Release.

8. No party to the Release shall publicly disparage the other party to the Release.

9. This Release shall apply to and bind all parent and subsidiary companies and respective past, present, and future shareholders, officers, directors, agents, and employees of Engineer and its respective predecessors, assigns, heirs, and legal representatives. This Release shall apply to and bind City and City's employees, agents, servants, representatives, officials, attorneys, trustees, partners, contractors, subcontractors, predecessors, successors, or assigns.

10. The Parties warrant and represent that no promise, inducement, or agreement not herein expressed has been made to them and are executing this Release solely in reliance upon their own knowledge, belief, and judgment and the advice of their own independent counsel. The Parties have read this Release and understand its terms and freely and voluntarily sign the same.

11. Should any provision of this Release be declared or determined by any court to be illegal or invalid, the Parties agree that any remaining provisions shall be enforceable to the fullest extent permitted by law.

12. Controlling Law. This Release shall be interpreted under the laws of the State of Iowa.

I HAVE READ THIS SETTLEMENT AGREEMENT AND RELEASE AND UNDERSTAND ITS TERMS. I SIGN IT FREELY AND VOLUNTARILY.

CITY OF WEST BRANCH, IOWA (CITY)

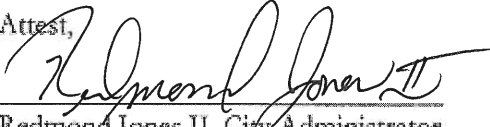
By:   
Roger Laughlin, Mayor

6/25/2018  
Date

FRENCH-RENEKER-ASSOCIATES, INC. (ENGINEER)

By:   
Stephen W. Hausner, President

6/6/18  
Date

Attest,  
  
Redmond Jones II, City Administrator

6/26/2018  
Date