

COUNCIL ACTION FORM

SUBJECT: **ENGINEERING FOR TRIPP STREET EXTENSION**

BACKGROUND:

The City of Ames was working with J-Corp to advance a partnering agreement for development of the former Ames Middle School site at 321 State Avenue. As a part of working towards this agreement, J-Corp retained FOX Engineering to design plans for the potential subdivision layout and infrastructure elements. In early 2018, it was decided that an agreement would not be pursued any further. City of Ames Engineering staff was then asked to develop plans and specifications for the extension of Tripp Street through the site.

At the December 18, 2018 City Council meeting, staff reported on the engineering effort for the 321 State Avenue development. At that time, it was stated in the report only that “City staff did use (the FOX design) in creating a vertical profile to fit the horizontal alignment of the roadway that staff had developed”. It was also noted that “the horizontal alignment of Tripp Street was generally approximate to the plans given by FOX”, however no staff time savings was noted for that effort. Following that City Council report, FOX Engineering requested a meeting with City staff to discuss similarities between the City’s Tripp Street design and the FOX design for the overall subdivision and infrastructure. The roadway alignment followed existing storm sewer and the vertical profile elements of the City plans matched those of FOX. Because of using the FOX alignment, it was pointed out that elements such as pedestrian ramp design inevitably matched, as well.

Both plans also included a pond and storm sewer at the lower east side of the project. While the pond in the City plans was initially utilized for providing roadway fill for the project rather than specifically for stormwater management, it was identical to the stormwater system designed by FOX. However, as the City moves forward with subdivision of this area, the pond will likely become a component of the stormwater management plan. Although other elements such as the western part of the storm sewer system and the water main design did not directly match the FOX plans, it was pointed out that these elements needed to be designed along with the engineering effort for those components that were a match between the two designs.

At the request of City staff, FOX has submitted timesheets showing its staff’s effort for project components such as preliminary plat, preliminary design, stormwater management, survey and construction plans, which totals \$57,339.05. Since FOX’s client on this project was J-Corp, not the City, an agreement has been drafted which provides for payment to J-Corp, which will subsequently transfer these funds to FOX. In turn, the City would own the work product outright and have it available for use on additional elements and phases as the project continues to move forward.

ALTERNATIVES:

1. Approve an agreement with J-Corp and authorize payment to J-Corp of \$57,339.05 from unobligated General Obligation Bond funds. According to the terms of the agreement, J-Corp will transfer these funds to FOX Engineering.
2. Do not approve the agreement

MANAGER'S RECOMMENDED ACTION:

This is an unusual situation, in which City staff is recommending the payment of funds for a work product it did not originally commission. Although the City does not have a contractual or legal obligation to pay these funds, it is in keeping with the City's commitment to the highest integrity that these plans be paid for. While there was no ill intent by City staff for unauthorized use of the FOX plans, certain elements in the City plans were direct matches with the design effort from FOX Engineering.

FOX staff has expressed that they understand that the events that led up to City Staff's use of FOX's design were out of the ordinary and, in retrospect, this situation may have resulted in a misunderstanding at the time by some City staff that FOX's design could be used by the City. However, FOX has rightly pointed out the overall effort required by their staff in the project design in order that these elements were accessible to City staff. Because the initial project relationships were between the City and J-Corp and then J-Corp and FOX, payment for the design effort of \$57,339.05 will be made to J-Corp and then transferred to FOX. The agreement and payment will then allow the City to utilize any additional design components as site development continues. Funding for this payment will come from unobligated G.O. Bond savings.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, as noted above.

**AGREEMENT AND RELEASE BETWEEN
THE CITY OF AMES, IOWA, JCorp, INC., AND FOX ENGINEERING, INC.**

This agreement is entered into by the parties on this _____ day of July, 2019:

WHEREAS, the City of Ames, Iowa is a municipal corporation, JCorp, Inc. is a real-estate developer, and FOX Engineering, Inc. is an engineering firm; and,

WHEREAS, JCorp, at one time, was working toward an agreement to be the joint developer with the City of Ames, for a proposed housing project on City-owned property at 321 State Avenue, and had certain engineering plans prepared for the project by FOX Engineering; and,

WHEREAS, the City later relied upon and utilized significant portions of FOX Engineering's design, including the preliminary plat, stormwater management plan and design drawings; and

WHEREAS, the parties wish to settle this matter in an equitable and fair manner to all three parties;

THEREFORE, the parties agree to the following:

1. The City of Ames will make payment of \$57,339.05 to JCorp.
2. JCorp will, in turn, pay the full \$57,339.05 to FOX Engineering.
3. FOX Engineering agrees to transfer all work product, hard copy and electronic, for the 321 State Avenue project to the City of Ames. The City of Ames owns the entire work product and may use or transfer its use at the City's discretion. If the City of Ames uses or transfers the use of the work product, the City of Ames assumes all responsibility for interpretation of the work product and waives any claims against FOX Engineering that may be in any way connected thereto.
4. For the consideration set forth herein, FOX Engineering and JCorp hereby release the City of Ames, former and current members of the Ames City Council, City's department managers, and other employees, and City's other officers, agents, insurers, and other representatives of any kind, from any and all claims, demands, rights, liabilities and causes of action of any kind or nature, known or unknown, that arose prior to the Effective Date of this Instrument regarding the City's alleged prior use of the FOX Engineering plans referenced above. This release specifically includes, but is not limited to, a release of any and all claims pursuant to federal, state, or local statutes, laws or regulations of any kind, including any common law causes of action, such as claims for invasion of privacy, defamation, breach of express or implied contract, any tort, and any other claim.

Signatures on next page

The parties, by their signatures below, hereby indicate agreement with the above:

John A. Haila, Mayor
CITY OF AMES

ATTEST: _____
Diane Voss, City Clerk

Duane E. Jensen, P.E., Principal
JCORP, INC.

Keith Hobson, P.E., President
FOX ENGINEERING, INC.