

ITEM # 41  
DATE 04-22-08

### COUNCIL ACTION FORM

**SUBJECT: WESSEX SUBDIVISION LETTER OF CREDIT FOR OAKWOOD ROAD IMPROVEMENTS**

**BACKGROUND:**

The City staff was approached recently by Dean Hunziker and Chuck Winkleblack representing the developers of the Wessex Subdivision. The Development Agreement for this subdivision specifies that the developers are responsible for the costs of widening Oakwood Road to three lanes along the frontage of the subdivision. According to the agreement, the responsibility to complete these street improvements is to be secured with cash placed in escrow by the developers.

The developers have emphasized that in accordance with this obligation, a significant amount of cash has been placed in an account at a very low interest rate. In addition, because it must be readily available to the City if, and when, the widening of Oakwood is required, these funds are not available to the developers to accomplish other projects in the City.

**The developers have requested that the City consider accepting a letter of credit as an alternative to satisfying the financial security requirement for street improvements specified in the Wessex Subdivision Development Agreement.**

The letter of credit will adequately secure the developer's obligation to fund the street widening project. The letter of credit will automatically renew annually until the project has been completed or the City is given written notice of the intent to close the letter, at which time the City may present the letter for cash.

**ALTERNATIVES:**

1. Authorize a letter of credit from the developers of Wessex Subdivision in the amount of \$60,000 as financial security for the future street improvements specified in the Development Agreement. This letter of credit must be in a form acceptable to the City staff that will include an automatic renewal provision until the street improvements are made.
2. Retain the current obligation that the developers of the Wessex Subdivision be required to maintain a cash escrow as the security for the future street improvements specified in the Development Agreement.

**MANAGER'S RECOMMENDED ACTION:**

Each development situation is unique and, therefore, must be judged individually. In this particular case, the need to widen Oakwood Road has not progressed as fast as

originally expected. Therefore, this street project is not currently programmed in the five-year Capital Improvement Plan. The timing of these improvements will be based upon the level of continued development in the area. Thus, it could be argued that in this case a letter of credit is a more fair approach to secure the developers' obligation given the uncertainty of the timing for the street improvement project.

**Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby authorizing the attached letter of credit in the amount of \$60,000 as financial security for the future widening of Oakwood Road in association with Wessex Subdivision.** Support for this alternative was conditioned on the fact that an acceptable letter of credit was received that reflects the following language:

*"The expiration date of this Letter of Credit is (Date). It is a condition of this Letter of Credit that it will be automatically extended without amendment in one-year increments until one of the following occurs: (a) 60 days prior to the then expiration date, we notify Beneficiary at the above address of our election not to extend this Letter of Credit for an additional one-year period; or, (b) a deposit for an equivalent amount is made with the City of Ames. Upon receipt of the 60-day notice, the Beneficiary may draw on this Letter of Credit."*



AMES • ANKENY

Issue Date: April 15, 2008

IRREVOCABLE LETTER OF CREDIT # 0364

BENEFICIARY:

City of Ames  
C/o City Clerk  
515 Clark Avenue  
Ames, IA 50010

RE: Wessex Subdivision

We hereby authorize you to draw on First National Bank, Ames, Iowa, for account of Wessex, L.L.C., up to the aggregate amount of \$60,000.00 available by your draft on sight at First National Bank, Ames, Iowa, to be accompanied by:

- 1) Copies of all invoices, which have remained unpaid for 60 days from invoice date
- 2) Beneficiary's signed statement indicating that the invoices are unpaid
- 3) Copy of this Irrevocable Letter of Credit No. 0364

Partial payments are permitted.

We hereby agree that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored.

The expiration of this Letter of Credit is April 15, 2009. It is a condition of this Letter of Credit that it will be automatically extended without amendment in one-year increments until one of the following occurs: (a) 60 days prior to the then expiration date, we notify Beneficiary at the above address of our election not to extend this Letter of Credit for an additional one-year period; or, (b) a deposit for an equivalent amount is made with the City of Ames. Upon receipt of the 60-day notice, the Beneficiary may draw on this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credit (1993) Revision, International Chamber of Commerce Publications No. 500, or current revision in place.

Sincerely,

Scott T. Bauer  
President

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