



**Roll Call Number**

**Agenda Item Number**

14B

DATE June 8, 2020

APPROVING PRIVATE CONSTRUCTION CONTRACT BETWEEN  
POHLMIEER CONSTRUCTION, INC. AND  
BROOK LANDING, LLC  
FOR SANITARY SEWER IMPROVEMENTS IN BROOK LANDING LOT 1  
\$54,135.00

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA: That the attached contract documents for a Private Construction Contract in the amount of \$54,135.00 between Pohlmeier Construction, Inc., Chad M. Pohlmeier, President, 606 Grant Street S., Bondurant, IA, 50035 - as Contractor, and Brook Landing, LLC, Jonathan Galloway, President, 6750 Westown Parkway, Suite 220, West Des Moines, IA, 50266 - as Owner, for construction of Sanitary Sewer Improvements described as sanitary sewer Improvements to serve Brook Landing Lot 1, located south of Douglas Avenue, east of 56th Street as shown on Plan File Numbers 618-177/179, be and the same are hereby approved, subject to receipt of contract and bond approved as to form by the Legal Department, and certificate of insurance acceptable to the Engineering Department.

BE IT FURTHER RESOLVED: That permission be and is hereby granted to the parties of said contract to construct said Sanitary Sewer Improvements in accordance with said contract documents and subject to receipt of contract and bond approved as to form by the Legal Department and certificate of insurance acceptable to the Engineering Department, subject to inspection and approval of the Des Moines City Engineer.



**Roll Call Number**

**Agenda Item Number**

14 B

DATE June 8, 2020

Activity ID: 07-2020-102

Moved by \_\_\_\_\_ to adopt.

FORM APPROVED:

*s/Kathleen Vanderpool*

\_\_\_\_\_  
Kathleen Vanderpool  
Deputy City Attorney

**SLN** Funding Source: All project costs are to be paid by the Owner(s), Brook Landing, LLC

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED

APPROVED

\_\_\_\_\_  
Mayor

I, P. Kay Cmelik, City Clerk of said City Council, hereby certify that at a meeting of the City Council, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
City Clerk





Activity ID 07-2020-102  
Contract No. 15373  
Date June 8, 2020  
Roll Call No. \_\_\_\_\_

### **PRIVATE CONSTRUCTION CONTRACT**

THIS PRIVATE CONSTRUCTION CONTRACT (hereinafter "Contract"), made and entered into on the 18th day of, May 2020, by and between Pohlmeier Construction, Inc., (hereinafter called the "Contractor"), and Brook Landing, LLC, (hereinafter called the "Owner").

WHEREAS, the Owner owns property in the City of Des Moines (hereinafter called the "City" or "Jurisdiction") which requires improvements, as described herein, be constructed for development of the property; and

WHEREAS, the improvements are being constructed at Owner's sole cost and expense; and

WHEREAS, the Contactor is responsible for constructing the improvements as set forth in this Contract; and

WHEREAS, this Contract is to set forth the responsibilities of the Owner and Contractor for construction of the improvements and the conditions and requirements that are to be met before the acceptance of the improvements by the City.

WITNESSETH: That the Contractor and Owner, for the consideration stated herein, agree as follows:

#### **ARTICLE I: DESIGN**

Owner represents and agrees that the improvements have been designed in accordance with the current edition of SUDAS (Statewide Urban Standard Design and Specifications) and all other applicable laws, regulations, codes, ordinances and City approved design references.

#### **ARTICLE II: SCOPE OF WORK**

The Contractor hereby agrees to complete the work comprising the below referenced improvements as specified in the Contract Documents, which are officially on file in the office of the City Engineer. This Contract includes all Contract Documents, as defined in the SUDAS Standard Specifications, 2020 Edition for the construction of the following improvements:

**Sanitary Sewer Improvements to serve Brook Landing Lot 1, located south of Douglas Avenue, east of 56th Street as shown on Plan File Numbers 618-177/179.**

In accordance with Plan File Numbers 618-177/179

The Quantity of work to be done is estimated as shown on Attachment A. The Contractor further agrees to complete the work in strict accordance with said Contract and Contract Documents, and to guarantee the work and improvements as required by law and for the time required in said Contract and Contract Documents, after its acknowledgment of completion and acceptance by the City of Des Moines, Iowa, hereinafter called the "Jurisdiction".

The improvements shall be constructed in accordance with the SUDAS Standard Specifications, 2020 Edition, which were adopted by the City of Des Moines on May 4, 2020 under Roll Call Number 20-0737<sup>1</sup>, as further revised by the City of Des Moines General Supplemental Specifications<sup>2</sup> to the SUDAS Standard Specification, 2020 Edition, all special provisions included in said Contract Documents and all applicable laws, regulations and codes.

<sup>1</sup> The SUDAS Standard Specification may be viewed at the Iowa SUDAS website: <https://iowasudas.org/manuals/specifications-manual/> or can be purchased online at the Iowa SUDAS website at <https://iowasudas.org/order-the-manuals/>.

<sup>2</sup> [https://www.dsm.city/document\\_center/Engineering%20and%20Traffic%20Forms%20and%20Documents/ENG-Publications/Notice%20to%20Contractors%20and%20Consultants%202020%20Edition.pdf?pdf=Notice%20to%20Consultants%20and%20Contractors-2020%20SUDAS&t=1588708706725](https://www.dsm.city/document_center/Engineering%20and%20Traffic%20Forms%20and%20Documents/ENG-Publications/Notice%20to%20Contractors%20and%20Consultants%202020%20Edition.pdf?pdf=Notice%20to%20Consultants%20and%20Contractors-2020%20SUDAS&t=1588708706725)

**ARTICLE III: CITY IS THIRD PARTY BENEFICIARY**

The Owner and Contractor expressly agree that the City is a third-party beneficiary of this Contract. Owner and Contractor acknowledge and agree that the improvements to be constructed under this Contract are intended to be conveyed to the City. As such, Owner and Contractor expressly agree that services are being indirectly provided to the City under this Contract, that the City is a third party beneficiary of this Contract with respect to the improvements which it is constructing and that the provisions of this Contract shall inure to the benefit of and shall be enforceable by the City as if it were the Owner hereunder. Owner and Contractor acknowledge and agree that they are contractually obligated to the City pursuant to this provision. All cost of construction of the improvements shall be at the sole cost and expense of the Owner and at no expense to the City.

**ARTICLE IV: COMMENCEMENT AND COMPLETION OF WORK**

The Contractor hereby agrees to commence the work not later than June 9, 2020, and to fully complete the work and improvements, all punch list items and final clean up and provide applicable as built plans not later than August 31, 2020.

**ARTICLE V: APPROVAL OF PLANS AND SPECIFICATIONS**

The Owner must obtain written approval of the City Engineer of the plans and specifications for the improvements. Any changes to those plans and specifications or Contract Documents once approved by the City Engineer must also be approved in writing by the City Engineer.

**ARTICLE VI: MAINTENANCE REQUIREMENTS**

The Contractor hereby agree, at their own expense:

- A. To remedy any and all defects that may develop in or result from work to be performed under the Contract within the period of four (4) years from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of said work;
- B. To keep all work in continuous good repair; and
- C. To pay the Jurisdiction's reasonable costs of monitoring and inspecting to assure that any defects are remedied, and to repay the Jurisdiction all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

Contractor's agreement herein made extends to defects in workmanship or materials not discovered or known to the Jurisdiction at the time such work was accepted.

**ARTICLE VII: THE CONTRACT SUM**

Upon performance of this Contract by the Contractor, the Owner shall pay to the Contractor the lump sum of fifty four thousand one hundred thirty five dollars dollars (\$ 54,135.00 ), or the total amount based upon the actual quantities constructed and the unit prices listed on Attachment A, which payment shall be in full compensation and settlement for the work. Except as hereafter provided, the details regarding actual payment by the Owner to the Contractor for compensation for work completed shall be between the Owner and the Contractor. The City shall hold the Owner and Contractor responsible for the completion of the work and improvements, until final acceptance is made. Said final acceptance means a certificate of completion of the project, submitted by the Des Moines City Engineer to the Des Moines City Council with written acceptance by the Des Moines City Council by approval of a resolution accepting the improvements. Such certification, approval and acceptance shall not constitute an acceptance of any unauthorized work, and no approval, acceptance or payment shall constitute an acceptance of unauthorized or defective work or improper material.

**ARTICLE VIII: GENERAL**

**A. ENGINEERING SERVICES AND INSPECTIONS**

The Contractor agrees to comply with all procedures required by the Jurisdiction to include, but not limited to: plan check, testing, and construction inspection(s). The Jurisdiction reserves the right to inspect all work on said improvements to the same standard as if the improvement was a Jurisdiction-funded public improvement. The Owner shall hire a licensed surveyor to do all survey work needed for this Contract including an as-built survey. The surveyor shall contact the Jurisdiction regarding format and information required on the as-built survey.

**B. INSPECTION COORDINATION**

The Contractor shall contact the Des Moines Engineering Department at 515-283-4177 (or cellular 515-208-4177), 24-hours before beginning construction and coordinate with Des Moines Engineering Department for inspection. The Contractor shall make arrangements and accommodate inspections by the Jurisdiction. **Failure to have inspections as required may result in the City requiring the Contractor to remove and replace some or all of the work or may result in the City not accepting the improvements.** The Contractor shall notify the Owner and the City Engineer in writing when all construction work, including the punch list and final cleanup, is completed; so that the City Engineer can make a final inspection of the work, and the Owner can order the as-built survey if required and have the surveyor file a monument preservation certification in accordance with Iowa Code 355.11 (if applicable).

**C. FEES PAID BY THE OWNER AND/OR CONTRACTOR**

The Owner and/or Contractor agree to obtain all federal, state, and local permits and pay all fees necessary for the Contract work including, but not limited to, Grading and NPDES permits. The Owner agrees to pay the City's administrative, inspection, and testing fees in accordance with Section 94-321 of the Des Moines City Code, at the time the private construction Contract is submitted to the City Engineer for review and prior to presentation to City Council for approval and permission to construct the improvement. Said fees were established by the City Council on December 18, 2002, under Roll Call No. 02-3007 as follows:

Description of Service/Permit	Fee
Administrative Fee for private construction contracts	\$900.00 per contract
Inspection and Testing Fee for private Paving construction contracts	6% of the first \$30,000 of construction contract cost and 2% thereafter
Inspection and Testing Fee for private Sanitary Sewer construction contracts	8% of the first \$30,000 of construction contract cost and 3% thereafter
Inspection and Testing Fee for private Storm Sewer construction contracts	8% of the first \$30,000 of construction contract cost and 2% thereafter

Payment should be made payable to the City of Des Moines and presented with this contract

**FEE CALCULATION**

Enter data for this contract and calculate fees below, which is the sum of the \$900.00 administrative fee plus the inspection and testing fees based upon the contract costs. (See instructions for example calculations.)

**Paving Fee:** Construction Amount \$ \_\_\_\_\_

Administrative Fee: \$900.00 \$ \_\_\_\_\_

Inspection and Testing Fee:

- 6% of first \$30,000 of paving construction cost \$ \_\_\_\_\_

- 2% of the remaining paving construction cost over \$30,000 \$ \_\_\_\_\_

**Total Paving Fee:** \$ \_\_\_\_\_

**Sanitary Sewer Fee:** Construction Amount \$ 54,135.00

Administrative Fee: \$900.00 \$ 900.00

Inspection and Testing Fee:

- 8% of first \$30,000 of sanitary sewer construction cost \$ 2,400.00

- 3% of the remaining sanitary sewer construction cost over \$30,000 \$ 724.05

**Total Sanitary Sewer Fee:** \$ 4,024.05

**Storm Sewer Fee:** Construction Amount \$ \_\_\_\_\_

Administrative Fee: \$900.00 \$ \_\_\_\_\_

Inspection and Testing Fee:

- 8% of first \$30,000 of storm sewer construction cost \$ \_\_\_\_\_

- 2% of the remaining storm sewer construction cost over \$30,000 \$ \_\_\_\_\_

**Total Storm Sewer Fee :** \$ \_\_\_\_\_

#### **D. BONDS, INSURANCE AND INDEMNITY**

The Contractor agrees to provide the insurance required by Section 1070, Part 3 – Bonds and Insurance, of said Standard Specifications through the period of operations covered by this Contract until acknowledgment of completion and/or acceptance by the Des Moines City Council; and the Contractor shall defend, indemnify, and hold harmless the Jurisdiction and its officers, agents, and employees in accordance with Section 1070, 3.03 Contractor's Indemnity - Contractual Liability Insurance. The Contractor agrees to provide, on the form provided, a Performance, Payment and Maintenance Bond in the full amount of this Contract with the maintenance period of four years.

#### **E. NON-DISCRIMINATION**

The Contractor hereby acknowledges and agrees to comply with any and all applicable provisions of the Des Moines Human Rights Ordinance, Chapter 62 of the Des Moines Municipal Code. The Contractor specifically agrees not to discriminate against any employees or applicants for employment on the basis of age, race, religion, creed, color, sex, sexual orientation, gender identity, national origin, ancestry, disability or familial status. The Contractor further agrees to include this provision in all subcontracts for this project.

#### **F. PUNCH LIST ITEMS AND FINAL COMPLETION**

The Contractor is responsible for timely completion of the improvements in accordance with Article III, including construction of the improvements, completion of all punch list items, final cleanup and providing the as-built survey to the City that also indicates whether the surveyor was required to file a monument preservation certification in accordance with Iowa Code 355.11. **All those items must be completed by the dates set forth in Article IV, or the Contractor will be in violation of this Contract.**

#### **G. CITY'S STANDARD FORM CONTRACT CONTROLS**

The Owner and the Contractor acknowledge that this Contract has been prepared utilizing a standard City of Des Moines contract form provided by the City or downloaded from the City's website in PDF (Portable Document Format). The Owner and Contractor represent that no changes have been made to the form of this Contract other than to insert required information and text in text boxes provided for that purpose, and they agree that unauthorized changes made to the form of the contract shall not be binding on them or on the City and that the form of the contract as it appears on the City's website shall govern and be binding on the parties to this Contract.

#### **H. SURVEY MONUMENT PRESERVATION**

The Owner and Contractor are responsible to fully comply with Section 355.6A of the Iowa Code and shall hire or cause to be hired a licensed professional surveyor to determine if a monument (such as a property corner, section corner, survey control) is likely to be disturbed or removed prior to construction and provide that information to the City before construction begins. The surveyor shall locate and preserve the monuments likely to be disturbed or removed, in the manner provided in section 355.6A. In accordance with Iowa Code 355.11, United States Public Land Survey Corner Monuments shall be preserved and/or replaced.

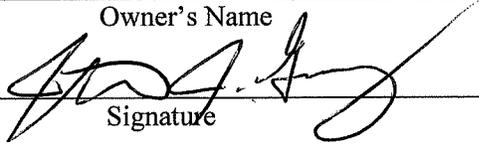
#### **I. NPDES PERMIT AND STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS**

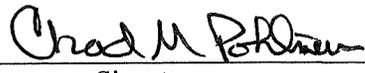
If the work under this Contract disturbs one or more total acres, this Contract is subject to Section 402(b) of the Clean Water Act and Iowa Code Section 455B.174 and Iowa Administrative Code 567-64.4 (projects disturbing one or more total acres) and requires inclusion in the National Pollution Discharge Elimination System (NPDES) General Permit No. 2, or an individual NPDES Permit for stormwater (also storm water) discharge associated with industrial activity for construction activities. All work shall be in accordance with Section 9040 – Erosion and Sediment Control of the SUDAS Standard Specifications. The revisions to Section 9040 – Erosion and Sediment Control that are included in the City of Des Moines General Supplemental Specifications to the current SUDAS Standard Specification, as referenced above, shall not apply. The Owner, and its Contractor, shall be totally responsible for all Erosion and Sediment Control work including preparing the storm water pollution prevention plan, publications, notices, fees, fines, and all stormwater pollution prevention work.

#### **J. TREE PROTECTION SUPPLEMENTAL SPECIFICATIONS**

- A. **WORK ON PRIVATE PROPERTY:** Chapter 42, Article X, Tree Removal and mitigation, of the Municipal Code of the City of Des Moines shall apply.
- B. **WORK ON PUBLIC RIGHT OF WAY:** The City of Des Moines Supplemental Specification for Tree Protection shall apply to this private Construction Contract. The Supplemental Specification for Tree Protection is available from the City Engineer's Office and is also available at the following link:
- C. [https://www.dsm.city/document\\_center/Engineering%20and%20Traffic%20Forms%20and%20Documents/ENG-Regulations/Tree%20Protection%20SS%2003-24-2017%20Current%20Version.pdf?pdf=Tree%20Protection%20Specification&t=1578589324911](https://www.dsm.city/document_center/Engineering%20and%20Traffic%20Forms%20and%20Documents/ENG-Regulations/Tree%20Protection%20SS%2003-24-2017%20Current%20Version.pdf?pdf=Tree%20Protection%20Specification&t=1578589324911).

IN WITNESS WHEREOF, the Parties hereto have caused this Instrument to be executed in four (4) original counterparts as of the day and year first above written.

**OWNER**  
 Brook Landing LLC  
 Owner's Name  
 By   
 Signature  
 Jon Galloway  
 Printed Name  
 President  
 Title  
 6750 Westown PKWY Suite 220  
 Address  
 West Des Moines, Ia 50266  
 City, State, Zip Code  
 515-418-3475  
 Telephone Number  
 Jon@gallowayholdingsia.com  
 Email Address  
 Type or print the name and title of the company's owner, president, CEO, etc. if a different person than entered above.  
 \_\_\_\_\_  
 Name  
 \_\_\_\_\_  
 Title

**CONTRACTOR**  
 Pohlmeier Construction, Inc  
 Contractor's Name  
 By   
 Signature  
 Chad M. Pohlmeier  
 Printed Name  
 President  
 Title  
 606 Grant Street South  
 Address  
 Bondurant, Iowa 50035  
 City, State, Zip Code  
 515-250-2588  
 Telephone Number  
 Chad@Pohlmeier.co  
 Email Address  
 Type or print the name and title of the company's owner, president, CEO, etc. if a different person than entered above.  
 \_\_\_\_\_  
 Name  
 \_\_\_\_\_  
 Title

**CONTRACTOR IDENTIFICATION INFORMATION To Be Provided By:**

- All Contractors: Contractor's public registration number issued by the Iowa Commissioner of Labor pursuant to Section 91C.5 of the Iowa Code: C116328.
- Out-of-State Contractors: Contractor's Bond (State of Iowa, Division of Labor, Out-of-State Contractor Project Bond) pursuant to Section 91C.7 of the Iowa Code  
 Bond No: \_\_\_\_\_  
 Name of Surety: \_\_\_\_\_

NOTE: All signatures on this contract must be original signatures in ink; copies or facsimile of any signature will not be accepted.

**ATTACHMENT A**

In accordance with Article II: Scope of Work, the Quantity of work to be done is estimated on this Private Construction Contract Attachment A as listed below.

In accordance with Article IV: The Contract Sum is the compensation to be paid by the Owner to the Contractor.

- If the Contractor is to be paid based upon a lump sum price, this amount should be entered on the Contract and only the Item Number, Description, and Quantity of the work as shown on the construction plans need to be listed below.
- If the Contractor is to be paid based upon the total amount of the actual quantities constructed instead of based upon a lump sum price, then the Item Number, Description, and Estimated Quantities of work as shown on the construction plans as well as the Unit Prices, and Total Prices are to be listed below, and the total contract sum should be entered in the space provided for the contract sum on the Contract.

Item No.	Description	Quantity	Unit Price	Total Price
1	Sanitary Sewer Gravity Main, Trenched, 8" DIA (P-2 & P-3)	330	55.00	18,150.00
2	Sanitary Sewer Gravity Main, Trenched, 8" DIA (P-1)	269	65.00	17,485.00
3	Sanitary Sewer Service, 4" DIA.	5	1,700.00	8,500.00
5	Manhole, Type SW-301, 48" DIA.	2	5,000.00	10,000.00
<b>TOTAL CONTRACT SUM:</b>				<b>54,135.00</b>

OWNER'S CORPORATE ACKNOWLEDGEMENT

State of \_\_\_\_\_ )  
\_\_\_\_\_ County ) SS

On this \_\_\_\_\_ day of May, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known, who, being by me duly sworn, did say that they are the \_\_\_\_\_, and \_\_\_\_\_, respectively, of the corporation executing the foregoing instrument; that (no seal has been procured by) (the seal affixed thereto is the seal of) the corporation; that said instrument was signed (and sealed) on behalf of the corporation by authority of this Board of Directors; that \_\_\_\_\_ and \_\_\_\_\_ acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_

OWNER'S PARTNERSHIP ACKNOWLEDGMENT

State of \_\_\_\_\_ )  
\_\_\_\_\_ County ) SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, did say that the person is one of the partners of \_\_\_\_\_, a partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_

OWNER'S INDIVIDUAL ACKNOWLEDGEMENT

State of \_\_\_\_\_ )  
\_\_\_\_\_ County ) SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the identical person(s) named in and who executed the foregoing instrument, and acknowledged that (he) (she) (they) executed the instrument as (his) (her) (their) voluntary act and deed.

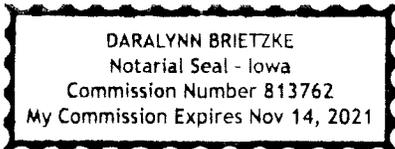
\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_

OWNER'S LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

State of IOWA )  
DALLAS County ) SS

On this 18 day of May, 2020, before me a Notary Public in and for said county, personally appeared Jon Galloway, to me personally know, who being by me duly sworn did say that person is President of said Brook Landing, LLC that (the seal affixed to said instrument is the seal of said OR no seal has been procured by the said) Brook Landing, LLC, and that said instrument was signed and sealed on behalf of the said Brook Landing, LLC, by authority of its managers and the said Jon Galloway acknowledged the execution of said instrument to be the voluntary act and deed of said Brook Landing, LLC, by it voluntarily executed.

Daralynn Brietzke  
Notary Public in and for the State of IOWA  
My commission expires NOV 14, 2021



CONTRACTOR'S CORPORATE ACKNOWLEDGEMENT

State of Iowa )

) SS

Polk County )

On this 18th day of May, 2021, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Chad M. Pohlmeier and \_\_\_\_\_, to me known, who, being by me duly sworn, did say that they are the President, and \_\_\_\_\_, respectively, of the corporation executing the foregoing instrument; that ~~(no seal has been procured by)~~ (the seal affixed thereto is the seal of) the corporation; that said instrument was signed (and sealed) on behalf of the corporation by authority of this Board of Directors; that Chad M. Pohlmeier and \_\_\_\_\_ acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

Heather R. Snyder  
Notary Public in and for the State of Iowa  
My commission expires March 7, 2021



CONTRACTOR'S PARTNERSHIP ACKNOWLEDGMENT

State of \_\_\_\_\_ )

) SS

\_\_\_\_\_ County )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, did say that the person is one of the partners of \_\_\_\_\_, a partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_

CONTRACTOR'S INDIVIDUAL ACKNOWLEDGEMENT

State of \_\_\_\_\_ )

) SS

\_\_\_\_\_ County )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the identical person(s) named in and who executed the foregoing instrument, and acknowledged that (he) (she) (they) executed the instrument as (his) (her) (their) voluntary act and deed.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_

CONTRACTOR'S LIMITED LIABILITY COMPANY ACKNOWLEDGEMENT

State of \_\_\_\_\_ )

) SS

\_\_\_\_\_ County )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public in and for said county, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn did say that person is \_\_\_\_\_ of said \_\_\_\_\_, that (the seal affixed to said instrument is the seal of said OR no seal has been procured by the said) \_\_\_\_\_, and that said instrument was signed and sealed on behalf of the said \_\_\_\_\_, by authority of its managers and the said \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said \_\_\_\_\_, by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_



**PERFORMANCE, PAYMENT & MAINTENANCE BOND**  
**FOR PRIVATE CONSTRUCTION CONTRACTS**

KNOW ALL MEN BY THESE PRESENTS:

That we, Pohlmeier Construction, Inc., as Principal (hereinafter the "Contractor" or "Principal") and Merchants Bonding Company (Mutual), as Surety are held and firmly bound unto the City of Des Moines, Iowa, as Obligee (hereinafter referred to as the "Jurisdiction"), and to all persons who may be injured by any breach of any of the conditions of this Bond in the penal sum of Fifty-four Thousand One Hundred Thirty-five And No/100 dollars (\$ 54,135.00), lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, legal representative and assigns, jointly or severally, firmly by these presents.

The conditions of the above obligations are such that whereas said Contractor entered into a Private Construction Contract with Brook Landing, LLC (hereinafter the "Owner"), bearing date the 18th day of May, 20 20, (hereinafter the "Contract") wherein said Contractor undertakes and agrees to construct the following described improvements:

**Sanitary Sewer Improvements to serve Brook Landing Lot 1, located south of Douglas Avenue, east of 56th Street as shown on Plan File Numbers 618-177/179.**

with the work further described in the Contract Attachment A, and to faithfully perform all the terms and requirements of said Contract within the time therein specified, in a good and workmanlike manner, and in accordance with the Contract Documents. Principal and Surety agree that the Obligee is a third party beneficiary under the Contract and the provisions of the Contract shall inure to the benefit of and shall be enforceable by the Obligee.

It is expressly understood and agreed by the Contractor and Surety in this Bond that the following provisions are a part of this Bond and are binding upon said Contractor and Surety, to-wit:

- 1 **PERFORMANCE:** The Contractor shall well and faithfully observe, perform, fulfill and abide by each and every covenant, condition and part of said Contract and Contract Documents, by reference made a part hereof, for the above referenced improvements, and shall indemnify and save harmless the Jurisdiction from all outlay and expense incurred by the Jurisdiction by reason of the Contractor's default or failure to perform as required. The Contractor shall also be responsible for the default or failure to perform as required under the Contract and Contract Documents by all its subcontractors, suppliers, agents, or employees furnishing materials or providing labor in the performance of the Contract.
- 2 **PAYMENT:** The Contractor and Surety on this Bond are hereby agreed to pay all just claims submitted by persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the performance of the Contract on account of which this Bond is given, including but not limited to claims for all amounts due for labor, materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used by the Contractor or any subcontractor, wherein the same are not satisfied out of the portion of the Contract price which the Owner retains until completion of the improvements.
- 3 **MAINTENANCE:** The Contractor and the Surety on this Bond hereby agree, at their own expense:
  - A. To remedy any and all defects that may develop in or result from work to be performed under the contract within the period of four (4) years from the date of acceptance of the work under the Contract, by reason of defects in workmanship or materials used in construction of said work;
  - B. To keep all work in continuous good repair; and
  - C. To pay the Jurisdiction's reasonable costs of monitoring and inspecting to assure that any defects are remedied, and to repay the Jurisdiction all outlay and expense incurred as a result of Contractor's and Surety's failure to remedy any defect as required by this section.

Contractor's and Surety's agreement herein made extends to defects in workmanship or materials not discovered or known to the Jurisdiction at the time such work was accepted.

- 4 **GENERAL:** Every Surety on this Bond shall be deemed and held, any contract to the contrary notwithstanding, to the following provisions:
  - A. To consent without notice to any extension of time to the Contractor in which to perform the Contract;
  - B. To consent without notice to any change in the Contract or Contract Documents, which thereby increases the total contract price and the penal sum of this bond, provided that all such changes do not, in the aggregate, involve an increase of more than twenty percent of the total contract price, and that this bond shall then be released as to such excess increase; and
  - C. To consent without notice that this Bond shall remain in full force and effect until the Contract is completed; whether completed within the specified contract period, within an extension thereof, or within a period of time after the contract period has elapsed and the liquidated damages are being charged against the Contractor.

The Contractor and every Surety on this Bond shall be deemed and held bound, any contract to the contrary notwithstanding, to the following provisions:

- A. That no provision of this Bond or of any other contract shall be valid which limits to less than five years after the acceptance of the work under the Contract the right to sue on this Bond.
- B. That as used herein, the phrase "all outlay and expense" is not to be limited in any way, but shall include the actual and reasonable costs and expenses incurred by the Jurisdiction including interest, benefits and overhead where applicable. Accordingly, "all outlay and expense" would include but not be limited to all contract or employee expense, all equipment usage or rental, materials, testing, outside experts, attorneys fees (including overhead expenses of the Jurisdiction's staff attorneys), and all cost and expenses of litigation as they are incurred by the Jurisdiction. It is intended the Contractor and Surety will defend and indemnify the Jurisdiction on all claims made against the Jurisdiction on account of Contractor's failure to perform as required in the Contract and Contract Documents, that all agreements and promises set forth in the Contract and Contract Documents, in approved change orders, and in this Bond will be fulfilled, and that the Jurisdiction will be fully indemnified so that it will be put into the position it would have been in had the Contract been performed in the first instance as required.
- C. In the event the jurisdiction incurs any "outlay and expense" in defending itself with respect to any claim as to which the Contractor or Surety should have provided the defense, or in the enforcement of the promises given by the Contractor in the Contract, Contract Documents, or approved change orders, or in the enforcement of the promises given by the Contractor and Surety in this Bond, the Contractor and Surety agree that they will make the Jurisdiction whole for all such outlay and expense, provided that the Surety's obligation under this bond shall not exceed 125% of the penal sum of this bond.

In the event that any actions or proceedings are initiated with respect to this Bond, the parties agree that the venue thereof shall be Polk County, State of Iowa. If legal action is required by the Jurisdiction to enforce the provisions of this Bond or to collect the monetary obligation incurring to the benefit of the Jurisdiction, the Contractor and the Surety agree, jointly and severally, to pay the Jurisdiction all outlay and expense incurred therefor by the Jurisdiction. All rights, powers, and remedies of the Jurisdiction hereunder shall be cumulative and not alternative and shall be in addition to all rights, powers and remedies given to the Jurisdiction, by law. The Jurisdiction may proceed against Surety for any amount guaranteed hereunder whether action is brought against the Contractor or whether Contractor is joined in any such action or actions or not.

5. CITY'S STANDARD BOND FORM CONTROLS: The Contractor and Surety acknowledge that this bond has been prepared utilizing a standard City of Des Moines bond form provided by the City or downloaded from the City's website in PDF (Portable Document Format). The Contractor and Surety represent that no changes have been made to the form of the Bond other than to insert required information and text in text boxes provided for that purpose, and they agree that unauthorized changes made to the standard bond form shall not be binding on them or on the City and that the standard bond form as it appears on the City's website shall govern and be binding on the parties to this Bond.

NOW THEREFORE, the condition of this obligation is such that if said Principal shall faithfully perform all of the promises of the Principal, as set forth and provided in the Contract, in the Contract Documents, and in this Bond, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

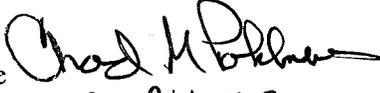
When a word, term, or phrase is used in this Bond, it shall be interpreted or construed first as defined in this Bond, the Contract, or the Contract Documents; second, if not defined in the Bond, Contract, or Contract Documents, it shall be interpreted or construed as defined in applicable provisions of the Iowa Code; third, if not defined in the Iowa Code, it shall be interpreted or construed according to its generally accepted meaning in the construction industry; and fourth, if it has no generally accepted meaning in the construction industry, it shall be interpreted or construed according to its common or customary usage.

Failure to specify or particularize shall not exclude terms or provisions not mentioned and shall not limit liability hereunder. The Contract and Contract Documents are hereby made a part of this Bond.

Witness our hands, in quadruplicate, this 19th day of May, 2020.

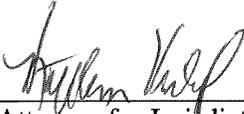
**PRINCIPAL:**

Pohlmeier Construction, Inc.  
Contractor

By Signature   
Chad M Pohlmeier

Title President

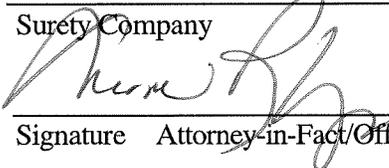
**FORM APPROVED BY:**



Attorney for Jurisdiction

**SURETY:**

Merchants Bonding Company (Mutual)  
Surety Company

  
Signature Attorney-in-Fact/Officer

Dione R. Young, Attorney-in-Fact  
Name of Attorney-in-Fact/Officer

Holmes, Murphy and Associates, LLC  
Company Name

2727 Grand Prairie Parkway  
Company Address

Waukee, IA 50263  
City, State, Zip Code

(515) 223-6800  
Company Telephone Number

NOTE:

1. All signatures on this performance, maintenance & payment bond must be original signatures in ink; copies or facsimile of any signature will not be accepted.
2. This bond must be sealed with the Surety's raised, embossing seal.
3. The Certificate of Power of Attorney accompanying this bond must be valid on its face and sealed with the Surety's raised, embossing seal.
4. The name and signature of the Surety's Attorney-in-Fact/Officer entered on this bond must be exactly as listed on the Certificate or Power of Attorney accompanying this bond.

**MERCHANTS**  
**BONDING COMPANY™**  
**POWER OF ATTORNEY**

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

**Dione R. Young**

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 5th day of March, 2020.

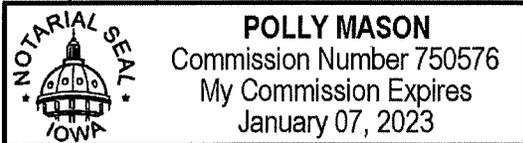


MERCHANTS BONDING COMPANY (MUTUAL)  
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*  
President

STATE OF IOWA  
COUNTY OF DALLAS ss.

On this 5th day of March, 2020, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



*Polly Mason*

Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 19th day of May, 2020.



*William Warner Jr.*  
Secretary