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Dubuque County Iowa  
Kathy Flynn Thurlow Recorder

File **2004-00016842**

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**CHAPTER 28E AGREEMENT**  
**RE SALE AND PURCHASE OF WASTEWATER TRANSPORT AND TREATMENT**  
**SERVICE BETWEEN THE CITY OF PEOSTA AND THUNDER RIDGE ESTATES**  
**HOMEOWNERS ASSOCIATION, INC.**

This Agreement for the sale and purchase of wastewater transport and treatment service is made and entered into this 15th day of September, 2004, by and between the City of Peosta, Iowa, an Iowa municipal corporation ("Seller"), and Thunder Ridge Estates Homeowners Association, Inc., an Iowa corporation ("Buyer").

WHEREAS, Seller is an Iowa municipal corporation organized and existing under the laws of the State of Iowa and is a public agency as defined in Iowa Code Chapter 28E (2003), as amended; and

WHEREAS, Buyer is an Iowa corporation, and a private agency as defined in Iowa Code Chapter 28E (2003), as amended; and

WHEREAS, public agencies may enter into an Agreement with public or private agencies or private individuals for joint or cooperative action pursuant to Iowa Code Chapter 28E (2003), as amended; and

WHEREAS, Seller and Buyer desire to enter into a Contract under which Seller agrees to sell and Buyer agrees to buy wastewater transport and treatment services; and

WHEREAS, Seller and Buyer acknowledge that this Agreement does not include or directly pertain to construction of the service line connecting the Seller's sewer system to Manhole #21; and

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WHEREAS, Seller and Buyer find that joint and cooperative action will be to their mutual advantage and will promote a more efficient and expanded use of City services as contemplated by Iowa Code Section 28E.4 (2003), as amended; and

WHEREAS, it is necessary and desirable to establish an Agreement between Seller and Buyer for the payment of wastewater transport and treatment and service charges from Buyer to Seller so as to comply with the requirements of the laws of the City of Peosta, as well as to meet the cost of maintenance and operation of the wastewater transport and treatment service; and

WHEREAS, on the 14th day of September, 2004, Resolution No. 04-29 was passed by the City Council of Peosta approving this Agreement and authorizing the Mayor and City Clerk to execute this Agreement on behalf of Seller; and

WHEREAS, on the 15th day of September, 2004, a Resolution was passed by the Thunder Ridge Estates Homeowners Association, Inc. approving this Agreement and authorizing its President and Secretary to execute this Agreement on behalf of the Buyer.

NOW, THEREFORE, pursuant to the provisions of Iowa Code Chapter 28E (2003), as amended, Seller and Buyer hereby contract and agree to establish a Wastewater Treatment Service Agreement as follows:

1. DURATION. The duration of this Agreement shall be for the shorter of the useful life of the Seller's wastewater treatment facility or twenty-five (25) years, commencing with the date of filing of this Agreement with the Iowa Secretary of State and the Dubuque County Recorder, in accordance with Iowa Code Section 28E.8.

2. NO SEPARATE ENTITY. No separate legal or administrative entity shall be created for the governance or administration of the terms or subject matter of this Agreement. The Clerk of the City of Peosta shall be the Administrator responsible for administering this joint and cooperative undertaking.

3. PURPOSE. The purpose of this Agreement is to establish an agreement between Seller and Buyer for the providing of wastewater transport and treatment by Seller for Buyer and for the payment of wastewater transport and treatment and service charges from Buyer to Seller so as to comply with the requirements of the laws of the City of Peosta, as well as to meet the costs of maintenance and operation of the wastewater transport and treatment service.

4. TERMS OF AGREEMENT.

A. Seller agrees to furnish Buyer during the term of this Agreement, or any amendment, renewal or extension thereof, wastewater transport and treatment service.

B. The wastewater volume and quality shall be measured at the Buyer's pumping station wet well. Buyer shall construct a "wet-well" level monitoring and metering system at Lift Station #1 (reference Buesing drawings), subject to inspection and approval by Seller, Seller's engineer or Seller's operator. Pump running time meters (three minimum) are to be installed in pump controls.

C. Buyer shall be responsible for all maintenance and costs associated with the metering systems, including, but not limited to, calibration costs and replacement costs. Seller may request a metering calibration when appropriate. It is anticipated that there will be an annual calibration. A designated agent of the Seller shall be present during any calibration.

D. Seller will provide and maintain the sewer line up to the point of connection. The point of connection between Buyer's delivery facilities and Seller's sewer system shall be Manhole #21 (reference Buesing drawings PP-21/PP-22 dated 21 April 2004).

E. Buyer will provide and maintain the Thunder Ridge collection sewers, the pumping station (#1), air release valves, and the pressure main to the point of connection. Buyer grants Seller the right to inspect the aforementioned items.

F. For services provided, Buyer shall pay Seller:

- (i) A fixed monthly rate per month per home serviced in Thunder Ridge Estates equal to one hundred fifty percent (150%) of the fixed monthly rate as established by City of Peosta Ordinance;
- (ii) A variable rate based upon one hundred fifty percent (150%) of the rate established by City of Peosta Ordinance for each gallon of sewage passing through the metering system.

G. Seller shall furnish Buyer, not later than the 16th day of each month, a written billing statement for wastewater transport treatment service for the preceding month.

H. Buyer agrees to pay Seller, not later than the 1st day of the succeeding month, all amounts due for wastewater transport and treatment service. If Buyer has not paid Seller for wastewater treatment service by the 1st day of the succeeding month, the bill shall be considered delinquent. Seller shall notify Buyer in writing that the bill is delinquent, and a penalty of five percent (5%) per month shall be added to the bill for each and every month until the bill is paid. If the bill is not paid within thirty (30) days after receipt of the delinquency notice, Seller shall have the right to halt sewage transport and treatment service to the Buyer. Seller retains all rights it may have in law or equity to recover payment for any delinquent bill. Buyer shall pay Seller all costs incurred by Seller in collecting any delinquent bill, including reasonable attorney fees.

I. Buyer agrees to be subject to and comply with the following provisions of the City of Peosta Code of Ordinances relative to its wastewater disposal system, to-wit:

- (i) Title VI, Chapter 2, Section 3, addressing prohibited acts;
- (ii) Title VI, Chapter 2, Section 6, addressing use;
- (iii) Title VI, Chapter 2, Section 7, addressing protection from damage; and

(iv) Title VI, Chapter 2, Section 8, addressing powers and authority to inspectors.

J. Buyer agrees to adopt and enforce such rules and regulations as may be necessary to implement and control sewer use as are necessary to prevent the introduction of substances into Seller's system which may interfere with Seller's treatment operation.

K. Buyer shall be prohibited from introducing waste from its water processing system into the sewer system without the prior approval of Seller.

L. Buyer will provide documentation quarterly as to the amount of water consumed in Thunder Ridge Estates. Seller may use this information in any way it deems appropriate to determine whether Buyer is introducing ground or surface water into Seller's system.

M. In the event that Buyer discharges or otherwise causes the introduction of toxic or harmful waste into Seller's treatment facility, Buyer agrees to pay for all costs associated with the neutralization, cleanup, removal and/or disposal of said toxic or harmful wastes. Furthermore, Buyer agrees to pay the costs of any and all fines levied by any governmental agency related to the toxic or harmful waste discharge.

N. Buyer agrees to pay for all costs associated with the neutralization of odors resulting from Buyer's waste becoming septic.

O. Any conditions required by the Iowa Department of Natural Resources, as well as conditions of any other government agency, will be considered a part of this Agreement insofar as they may be applicable to the service provided by Seller to Buyer.

P. Seller will, at all times, operate, maintain and replace its system in an efficient manner and will take such action as may be necessary to furnish Buyer with wastewater transport and treatment as required by the Buyer. Seller will provide personnel to read the meter at the wet well. Except during an emergency, or upon Buyer's default

of payment for treatment service, service to the Buyer shall not be interrupted. In the event of an emergency, service shall be resumed, as soon as possible, after alleviation of the emergency conditions. In the event of any emergency, Seller shall give notice thereof to Buyer, and Buyer hereby gives Seller the authority to cut off service. Seller will provide a backup generator to Buyer in case of an emergency, if the generator is available. The generator, however, must be operated by a City operator, and Buyer agrees to pay all costs associated with its use of the backup generator, including, but not limited to, operation costs and wages for the operator. Seller assumes no other maintenance or operation costs beyond Manhole #21.

Q. Buyer assumes all costs of maintaining the metering system. Seller shall have the right to inspect the metering system and establish requirements for operation, calibration and repair thereof.

5. Termination Prior to Expiration of Term. This Agreement may be terminated prior to the expiration of its term as follows:

A. By mutual agreement of the parties;

B. By either party for breach of any of the terms of this Agreement.

Termination shall be accomplished by the non-breaching party giving written notice to the breaching party specifying the breach and stating that the Agreement will be terminated if the breach is not cured within thirty (30) days. Failure to cure the breach within thirty (30) days of receipt of this notice shall result in automatic termination of this Agreement.

C. In the event of termination, except as specifically provided herein, both parties shall be relieved of all further obligations or duties beyond the date of termination, but neither party shall be relieved of its duties and obligations under this Agreement through the date of termination.

6. Notices and Invoices. All notices which the parties are authorized or required to give pursuant to this Agreement shall be mailed to the parties at the addresses identified below:

To Seller:

City Clerk  
City of Peosta  
c/o City Hall  
Peosta, IA 52068

To the Buyer:

Thunder Ridge Estates Homeowners Association, Inc.

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7. Non-Assignment of Interests or Obligations Under This Agreement. Neither Seller nor Buyer shall assign its interests or obligations under this Agreement without the prior written consent of the other party in each instance.

8. Severability. If any section, provision or part of this Agreement is declared to be invalid or unconstitutional by a Court of competent jurisdiction or administrative tribunal, the remainder of the Agreement shall continue in full force and effect.

9. Counterparts. This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original.

10. Entire Agreement and Amendments. This Agreement represents the entire agreement between Seller and Buyer. Any subsequent changes or modifications to the terms of this Agreement must be in the form of a duly executed addendum to this Agreement.

11. Effective Date. This Agreement shall become binding upon the parties upon execution by Seller's Mayor and City Clerk and execution by the appropriate officers of Buyer and recordation of this Agreement with the Secretary of State and the Dubuque County Recorder's Office.

CITY OF PEOSTA, IOWA

By: James Weydert Mayor

And: Karen Snyder City Clerk



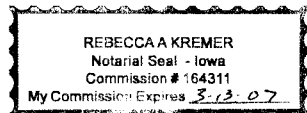
THUNDER RIDGE ESTATES HOMEOWNERS  
ASSOCIATION, INC.

By: [Signature]  
Its: [Signature]

STATE OF IOWA                    }  
DUBUQUE COUNTY                } ss.

On this 15 day of SEPTEMBER, 2004, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared James Weydert and Karen Snyder, to me personally known, who, being duly sworn by me, did say that they are the Mayor and City Clerk, respectively, of the City of Peosta, Iowa; 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 contained in Resolution No. 04-29 adopted by the City Council on the 14th day of September, 2004, and that James Weydert and Karen Snyder 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.

Rebecca A. Kremer  
Notary Public, State of Iowa



STATE OF IOWA }  
DUBUQUE COUNTY } ss.

On this 15 day of SEPTEMBER, 2004, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared A J SPIEGEL, to me personally known, who being by me duly sworn, did say that he is the PRESIDENT of the corporation executing the within and foregoing instrument, that (no seal has been procured by the) (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 its Board of Directors; and that A J SPIEGEL as officer acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by him voluntarily executed.

Rebecca A Kremer  
Notary Public, State of Iowa

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