**CITY OF WEST DES MOINES**
**CITY COUNCIL MEETING COMMUNICATION**

**DATE:** **February 23, 2015**

**ITEM:** Ryan Companies Build-to-Suit Office, 6770 Westown Parkway – Approval and acceptance of an Agreement & Waiver for future Traffic Signal – SP-002397-2014

**RESOLUTION: Approval and Acceptance of Agreement & Waiver for future traffic signal**

**FINANCIAL IMPACT:** Undetermined.

**BACKGROUND:** Attached as Exhibit B, is an Agreement and Waiver for up to ¼ of the cost of a potential fully functioning traffic signal to be located at the intersection of Lake Drive and Westown Parkway. The applicant, 6770 Westown Parkway, LLC, owners of property located at 6770 Westown Parkway has provided the City with an Agreement and Waiver for a share of the cost to install a future traffic signal required as part of the development review process of a Site Plan for Ryan Companies Build-to-Suit Office building (Case #SP-002397-2014). The site plan was approved by the City Council on September 22, 2014. For policy and title purposes, formal acceptance by the City Council of property being conveyed to the City is required.

**CITY COUNCIL SUBCOMMITTEE:** Due to the fact that acceptance of this document by Council is a required formality, this item was not presented to the Development and Planning City Council Subcommittee.

**OUTSTANDING ISSUES:** There are no outstanding issues.

**RECOMMENDATION:** Adopt resolution approving and accepting the Agreement and Waiver for up to ¼ of the cost of a future, fully functioning, traffic signal at the intersection of Lake Drive and Westown Parkway.

Lead Staff Member: Lynne Twedt

**STAFF REVIEWS**

| | |
|---|---|
| Department Director | |
| Appropriations/Finance | |
| Legal | JBW |
| Agenda Acceptance | RTG |

**PUBLICATION(S)** (if applicable)

| | |
|---|---|
| Published In | Noticing not required |
| Date(s) Published | |
| Letter sent to surrounding property owners | |

**SUBCOMMITTEE REVIEW** (if applicable)

| | | | |
|---|---|---|---|
| Committee | N/A | | |
| Date Reviewed | N/A | | |
| Recommendation | Yes ☐ | No ☐ | Split ☐ |

**ATTACHMENTS:**

Exhibit A - Resolution
Exhibit B - Agreement & Waiver – Traffic Signal

Prepared by: L. Twedt, Development Services, City of WDM, PO Box 65320, WDM, IA 50265-0320, 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

## RESOLUTION

**A RESOLUTION APPROVING AND ACCEPTING AGREEMENT AND WAIVER CONVEYING PROPERTY INTERESTS TO THE CITY OF WEST DES MOINES, IOWA**

**WHEREAS,** it is the policy of the City of West Des Moines, Iowa to approve the conveyance of all property interests to the City; and

**WHEREAS,** the following documents conveying property interests to the City have been presented to the City for approval; and

**An Agreement and Waiver for up to ¼ of the cost of a fully functioning traffic signal to be erected in the future at the intersection of Lake Drive and Westown Parkway from 6770 Westown Parkway, LLC, owners of property located at 6770 Westown Parkway and legally described as Lot 16, West Lakes Office Park Plat 3, an official plat in the City of West Des Moines, Dallas County, Iowa**

**WHEREAS,** it is in the best interest of the citizens of the City to approve and accept the above-described documents.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT** the document(s) described above conveying property interests to and from the City of West Des Moines, Iowa, are hereby approved and accepted and shall be filed with the county recorder as appropriate.

**PASSED AND ADOPTED** this 23rd day of February, 2015.

_____
Steven K Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the City Council of the City of West Des Moines, Iowa, at a regular meeting held on February 23, 2015 by the following vote:

ATTEST:

_____

Ryan T. Jacobson
City Clerk

**ATTACHMENT B**

Prepared by: J. Bradley Munford Development Services, P.O. Box 65320, West Des Moines, IA 50265-0320, 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, P. O. Box 65320, West Des Moines, IA 50265-0320

**Project: Ryan Companies Build-to-Suit Office**
**Project Number: SP-002397-2014**

## AGREEMENT AND WAIVER

THIS AGREEMENT AND WAIVER, made and entered into by and between the City of West Des Moines, Iowa, hereinafter referenced as the CITY, and **6770 Westown Parkway, LLC.**, hereinafter referred to as "PROPERTY OWNERS".

WITNESSETH:

**WHEREAS,** the City desires to encourage orderly community development and provide for the regulation and control of the extension of public improvements, public services and utilities consistent with the City's Comprehensive Plan, as adopted in December, 1993, and as amended in September, 2010, and in accordance with Iowa Code Chapter 354, Platting, Division and Subdivision of Land; and

**WHEREAS,** pursuant to Goal 6 of Chapter 3, Growth Policies, West Des Moines Comprehensive Plan, the City endeavors to provide for the safe and efficient movement of people, goods, and services throughout the City, and more specifically:

> As part of the development of vacant land or as part of an expansion of use on developed land, the property owner or developer shall dedicate, widen and/or extend and construct their proportional share of street and parkway improvements (including necessary drainage structures) and on-site and/or off-site improvements reasonably related to the project according to the standards set forth in the Circulation Table and City standards;

and

**WHEREAS,** a property owner or developer may construct and dedicate, or obtain a bond for the necessary public improvements, or in accordance with Iowa Code Section 384.38, Certain Costs Assessed to Private Property, the City may assess to private property within the City the proportionate share of the cost of construction and repair of public improvements within the City; and

**WHEREAS,** as initiated by the City, or upon petition as provided in Iowa Code Section 384.41, Petition by Property Owners, the City may assess to private property affected by public improvements within three miles of the City's boundaries the cost of construction and repair of public improvements within that area; and

**WHEREAS,** the City may propose or be requested to construct certain Improvements (the "Improvements") generally described as:

**Fully activated traffic signal at the intersection of Lake Drive and Westown Parkway. Property Owner, as indicated above, shall be responsible for one-fourth (¼) of the financial cost of the initial installation and operation of said signal.**

**NOW, THEREFORE, BE IT AGREED AMONG THE PARTIES AS FOLLOWS:**

1. As soon as practicable the City shall have the right to cause the above-described Improvements to be constructed in accordance with such plans and specifications as it shall deem appropriate. The construction of said Improvements shall be under the supervision of an engineer to be selected by the City.

2. For the purpose of this Agreement, the City may elect to enter into a contract for the construction of said Improvements as a part of any contract(s) for a public improvement project entered into prior to the receipt of this instrument as authorized by Section 384.41(2) of the Code of Iowa.

3. In consideration of the construction of said Improvements by the City, the undersigned Property Owners hereby WAIVE the following:
   A. All legal formalities of whatsoever kind or character required by the laws of Iowa to be observed by cities in the construction of said Improvements where the expense of such Improvements is to be assessed against private property; and

   B. Each and every question of jurisdiction, the intention of the Property Owners being to authorize and direct said City to construct the Improvements without requiring any of the formalities or legal proceedings required of cities by the statutes of Iowa; and

   C. Any limitation of the amount of said assessment as a percentage of valuation as provided in Section 384.62 of the Code of Iowa, subject to Paragraph 6, below; and

   D. Any right to defer or postpone the payment of any such assessment.

4. It is further agreed that:
   A. When said Improvements have been constructed in accordance with the plans and specifications, the City may make assessments against the properties of the undersigned Property Owners, or their successors or assigns, for their pro-rata share of the entire cost of the construction of said Improvements, including acquisition of necessary easements and right-of-way, the cost of engineering, supervision, and preparation of assessment schedule.

   B. Said assessments will be paid to the City of West Des Moines and shall be a lien upon the properties hereinafter described. Further, each of the undersigned Property Owners hereby agree to accept responsibility for the assessment which is thus assessed against the Owner's property.

   C. Said assessments shall have the same legal force and effect as if all the legal formalities provided by law in such cases had been fully and faithfully performed and observed.

   D. Said assessment shall be paid within the time provided by statute for the payment of special assessments for such Improvements.

   E. All Property Owners entitled to Agricultural Deferment under Chapter 384 of the City Code of Iowa hereby WAIVE their right to such deferral.

5. The amount and proportion of the cost of the Improvements to be paid shall be ascertained and determined by the Engineers and reported to the City Council, which shall make such changes or alterations as they may require. When said assessments are finally passed by the Council and by it levied, they shall constitute the assessments against the properties.

6. Any assessment, and the methodology of calculating the assessment, shall be made in accordance with Iowa law and the City's ordinance pertaining to special assessments for streets (Ordinance No. 1389) and any amendments thereto, in effect as of the date the City Council sets the date for a public hearing on the plans and specifications for the Improvement(s). During the assessment process the Property Owners retain the right to request of the City a review of the proposed assessment. In the sole discretion of the City Council, a reduction in the assessment may be made to ensure that the amount of the assessment is proportional to the benefit provided by the Improvements. The Property Owners also retain the right to request a review of the mathematical calculations made to ensure their accuracy and compliance with Ordinance No. 1389, and any amendments thereto. No assessment will be made by the City Council unless notice to all Property Owners has been given as provided by state statute and City ordinance.

7. Property Owners hereby authorize the City Council to pass any Resolution requisite or necessary to order and secure said Improvements, to provide for the construction of the same and to make the assessments herein provided. Any such Resolution may contain recitals that said Improvements are ordered or made by the Council without petition of Property Owners, without in any way qualifying this Agreement or releasing the Property Owners from their obligation to pay the assessments levied against their property for the cost of said Improvements, and to issue improvement bonds payable out of said assessments.

8. Each Property Owner warrants that the real estate described below is free and clear of all liens and encumbrances other than for ordinary taxes, except for matters of record.

9. Each Property Owner further agrees that the terms of this Agreement and Waiver shall become a covenant which runs with the land of the above-referenced property, and shall be binding upon all successors and assigns.

10. The signatories and the City agree this document will be recorded in the office of the appropriate county recorder to ensure that any and all future purchasers of property are put on notice of the above conditions.

**Description of Property: Lot 16, WEST LAKES OFFICE PARK PLAT 3, Dallas County, Iowa**

**PROPERTY OWNER: 6770 Westown Parkway, LLC.**

By: _____

Name: Timothy M. Gray

Title Governor

Date November 11, 2014

STATE OF MINNESOTA)
)ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 11 day of November, 2014, by Timothy M. Gray, the Governor of 6770 Westown Parkway, LLC, a Minnesota limited liability company, for and on behalf of said limited liability company.

JUDY A. HERMANSON
Notary Public-Minnesota
My Commission Expires Jan 31, 2020

_____
Notary Public

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**LIENHOLDER:** U.S. Bank National Association

By: Caleb Frostman

Name: Caleb Frostman

Title Assistant Vice President

Date 11/14/14

Witness Luke Accola

Name Luke Accola

STATE OF Minnesota )ss

COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 14th day of November, 2014, by Caleb Frostman the Asst. VP of U.S. Bank National Association, a national banking association, for and on behalf of said association.

Linda A. Dixon

Notary Public

LINDA A. DIXON
NOTARY PUBLIC - MINNESOTA
My Commission Expires Jan. 31, 2020

**Presented and approved by the City Council on _____, 2014.**

_____

Ryan T. Jacobson, City Clerk

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