CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

Date: November 28, 2016

ITEM: Businessolver, 1025 Ashworth Drive – Approve and Accept Hold Harmless Agreement – GuideOne Mutual Insurance Company – MML2-003084-2016

RESOLUTION: Approval and Acceptance of Hold Harmless Agreement

FINANCIAL IMPACT: Undetermined.

BACKGROUND: Attached is a Hold Harmless Agreement for property located within Lot 2, Colby's Office Park. The applicant, GuideOne Mutual Insurance Company, owners of property located at 1025 Ashworth Road, in association with Businessolver, tenant within the building has provided the City with a Hold Harmless Agreement which was required by the City as part of a minor modification development application for Businessolver to modify the building and the front parking lot (Project File # MML2-003084-2016). Businessolver wants a new monument sign along Ashworth Road to better identify their business to passersby. The City sign code requires that a monument sign be setback 10 feet from the ultimate right-of-way. The ultimate right-of-way for Ashworth Road is located 27' further to the north than the existing right-of-way line. Businessolver requested that they be allowed to install the sign 10' from the existing right-of-way instead of the ultimate right-of-way, so that the sign will be closer to Ashworth Road and therefore more visible. The city requested the property owner and tenant execute a Hold Harmless Agreement releasing the city from claims for losses, damages, or expenses which occurs during the removal and/or reinstallation of the sign as a result of city activity relating to construction, reconstruction, and right-of-way acquisition should Ashworth Road be expanded in the future. The executed Hold Harmless Agreement has been provided and thus staff is recommending the City Council accept the Hold Harmless Agreement.

CITY COUNCIL SUBCOMMITTEE: This request was presented to the Development and Planning City Council Subcommittee on July 25, 2016 as an informational item. The committee members present were in support of the proposed Hold Harmless Agreement.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Adopt a resolution approving and accepting the Hold Harmless Agreement.

Lead Staff Member: Brian Portz BP

Staff Reviews:

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	n/a
Date(s) Published	n/a
Letter sent to surrounding property owners	n/a

SUBCOMMITTEE REVIEW (if applicable)

Committee	Development & Planning		
Date Reviewed	July 25, 2016		
Recommendation	Yes X	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Resolution
Exhibit II - Hold Harmless Agreement

EXHIBIT I

Prepared by: B. Portz, 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 A HOLD HARMLESS AGREEMENT FOR PROPERTY LOCATED AT 1025 ASHWORTH ROAD

WHEREAS, it is the policy of the City of West Des Moines, Iowa to approve agreements involving any property interests of the City; and

WHEREAS, the following documents establishing a hold harmless agreement for the purposes of allowing the encroachment into the ultimate right-of-way of a monument sign identifying Businessolver which is located in the building at 1025 Ashworth Road has been presented to the City for approval;

Hold Harmless Agreement for the placement of a monument sign within the ultimate right of way of Ashworth Road, and as legally described as Lot 2, Colby's Office Park, an official plat in the City of West Des Moines, Polk 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 described above agreeing to conditions to the encroachment of a monument sign in the Ashworth Road ultimate right-of-way by the tenant and owner of 1025 Ashworth Road and the City of West Des Moines, Iowa is hereby approved and accepted and shall be filed with the county recorder as appropriate.

PASSED AND ADOPTED this 28th day of November 28, 2016.

_____
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 November 28, 2016, by the following vote:

ATTEST:

_____

Ryan T. Jacobson
City Clerk

EXHIBIT II

Prepared by: B. Portz, City of West Des Moines 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
Address Tax Statement to: Not applicable

AGREEMENT

This Agreement is made and entered into this 21 day of October 2016 by and between Businessolver.Com, Inc., a Delaware corporation ("Owners"), GuideOne Mutual Insurance Company, an Iowa corporation ("Lessor") and the City of West Des Moines, Iowa, an Iowa municipal corporation ("City").

WITNESSETH:

WHEREAS, the Owner leases a building from Lessor located in West Des Moines, Iowa, on property legally described as:

LOT 2, COLBY'S OFFICE PARK, AN OFFICIAL PLAT,
ALL IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA

WHEREAS, the Owner has requested approval to install a ground monument sign identifying the business located on the above legally-described property, locally known as 1025 Ashworth Road; and

WHEREAS, under the terms and conditions of the lease and/or by consent of the Lessor of the Property, the Owner has the lawful right and authority to install the ground monument sign; and

WHEREAS, location of the ground monument sign will be on private property but will be within the area identified in the Comprehensive Plan of the City of West Des Moines that may ultimately comprise a portion of the future Ashworth Road right of way, which will be owned and/or controlled by the City; and

WHEREAS, the West Des Moines city code prohibits private property improvements to be located within the area comprising the ultimate right of way without approval of the City; and

WHEREAS, in exchange for approval by the City to allow installation of the monument sign, the Owner and the Lessor have agreed to enter into this Agreement; and

WHEREAS, at such time, if ever, the area comprising a portion of the ultimate right of way for Ashworth Road on which the monument sign is located is required by the City for construction, reconstruction or expansion of Ashworth Road, the Owner agrees to remove the monument sign and any appurtenant structures or devices at Owner's sole cost and expense.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged by the Owner, the Lessor and the City, the parties hereby agree as follows:

Placement and Removal of Sign. Owner shall have the right to place the monument sign in the area identified in the West Des Moines Comprehensive Plan as Ashworth Road Ultimate right of way on the property legally-described above, subject to all rules and regulations of the City of West Des Moines. If, as solely determined by City, removal of the sign becomes necessary, Owner agrees to remove the sign and any appurtenant structures at Owner's sole expense and without compensation from the City.

Maintenance. The Owner acknowledges and agrees that it shall be responsible and liable at all times for the maintenance, repair, removal, replacement or relocation of the monument sign and that the Owner expressly acknowledges and agrees that the City shall not have any responsibility or liability whatsoever for the repair, removal, replacement or relocation of the monument sign or any appurtenant structures or devices.

Running of Benefits and Burdens. The terms and conditions of this Agreement are binding upon the Owner and the Lessor, including, but not limited to, future owners, developers, successors-in-interest, lessees or occupants. All provisions of this instrument, including benefits and burdens, run with the land and are binding upon and inure to the heirs, assigns, successors, tenants and personal representatives of the parties hereto.

Representations and Warranties. The Owner and Lessor covenant with the City that they have good right and lawful authority to make and execute this Agreement. The Owner warrants that it will defend this Agreement against the lawful claims of all persons.

Jurisdiction and Venue. The Owner and Lessor agree that the district court in and for the State of Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and conditions of this Agreement. The parties consent to the district court in and for Polk County, Iowa as proper venue.

Words and Phrases. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, according to the context.

Parties. The term "City" as used herein shall refer to the City of West Des Moines, Iowa, its elected officials, agents, employees, officers, and contractors. The term "Owner" shall refer to Businessolver.Com, Inc., its assigns, successors-in-interest and lessees, if any, and the term "Lessor' shall refer to GuideOne Mutual Insurance Company, its assigns, successors-in-interest and lessees, if any.

Paragraph Headings. The paragraph headings in this Agreement are included solely for convenience and shall not affect or be used in connection with the interpretation of this Agreement.

Integration/Construction. This Agreement shall constitute the entire agreement between the parties regarding the subject matter hereof, and no amendments or additions to this Agreement shall be binding unless in writing and executed by the Owner, Lessor and the City. This Agreement has been fully negotiated at arms-length between the signatories hereto, and after advice by counsel and other representatives chosen by such signatories, such signatories are fully informed with respect thereto; no such signatory shall be deemed the scrivener of this Agreement; and, based on the foregoing, the provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any party.

Recording. This instrument shall be recorded in the Office of the Polk County Recorder. Cost of recording shall be the responsibility of the Owner.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first written above.

BUSINESSOVLER.COM, Inc.,
a Delaware corporation
OWNER

Todd Seiffer
CFO

KEVIN JOHN KAUFFMAN
Commission Number 788440
My Commission Expires
February 13, 2018

STATE OF IOWA)
) SS:
COUNTY OF Polk)

This record was acknowledged before me on this 24 day of October, 2016, by Kevin John Kauffman as _____ of Businessolvers.Com, Inc. on behalf of whom the record was executed.

Notary Public in and for the State of Iowa

GUIDEONE MUTUAL INSURANCE COMPANY,
an Iowa corporation
LESSOR

_____

STATE OF IOWA)
) SS:
COUNTY OF _____)

This record was acknowledged before me on this _____ day of _____, 2016, by _____ as _____ of GuideOne Mutual Insurance Company, on behalf of whom the record was executed.

Notary Public in and for the State of Iowa

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first written above.

BUSINESSOVLER.COM, Inc.,
a Delaware corporation
OWNER

_____
Name of person signing,
Title of Person signing,

STATE OF IOWA)
) SS:
COUNTY OF _____)

This record was acknowledged before me on this _____ day of _____, 2016, by _____ _____ as _____ of Businessolvers.Com, Inc. on behalf of whom the record was executed.

_____
Notary Public in and for the State of Iowa

GUIDEONE MUTUAL INSURANCE COMPANY,
an Iowa corporation
LESSOR

Brian Hughes
_____
Name of person signing, Brian Hughes
Title of Person signing, SVP & CIO

STATE OF IOWA)
) SS:
COUNTY OF Polk)

This record was acknowledged before me on this 21st day of October, 2016, by _____ Lana L. Marsh _____ as — _____ of GuideOne Mutual Insurance Company, on behalf of whom the record was executed.

Lana L Marsh
Notary Public in and for the State of Iowa

LANA L. MARSH
Commission Number 149000
My Commission Expires
10/21/2018

CITY OF WEST DES MOINES, IOWA

_____
Steven K. Gaer, Mayor

Attest:

_____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
)SS:
COUNTY OF POLK)

On this _____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, a Municipal Corporation executing the within and foregoing instrument, that the seal of the City of West Des Moines, Iowa, has been affixed hereto; and that said instrument was signed and sealed on behalf of the Municipal Corporation of the City of West Des Moines, Iowa, by authority of its City Council by Resolution duly adopted and that said Mayor and City Clerk as such officers acknowledged the execution of said instrument to be the voluntary act and deed of the City of West Des Moines, Iowa by it and them voluntarily executed.

_____
Notary Public in and for the State of Iowa