CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: June 11, 2018

ITEM: Resolution - Opening and Closing Public Hearing authorizing the conveyance of property at 5000 Westwood Drive to Paine Development Group and approving and accepting the Purchase Agreement for the property.

FINANCIAL IMPACT: $41,101.00 (positive impact to City)

SYNOPSIS: On May 29, 2018, City Council accepted the bid from Paine Development Group for the sale of property at 5000 Westwood Drive. Acceptance of the bid was contingent upon receiving a Purchase Agreement, which includes the requirement that a single family house with a value of no less than $125,000.00 be constructed no later than June, 2019. The attached Resolution approves the Purchase Agreement and conveyance of the property and authorizes the filing of all relevant documents.

OUTSTANDING ISSUES: None

RECOMMENDATION: Approve the Resolution opening and closing the public hearing, approving the Purchase Agreement and approving conveyance of the property located at 5000 Westwood Drive to Paine Development Group.

Lead Staff Member: Richard J. Scieszinski, City Attorney

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	DSM Register
Dates(s) Published	06/07/2018

SUBCOMMITTEE REVIEW (if applicable)

Committee	Finance & Administration		
Date Reviewed	April 11, 2018		
Recommendation	Yes	No	Split

Prepared by: Richard J. Scieszinski, City Attorney, PO Box 65320, West Des Moines, IA 50265-0320 (515) 222-3614
Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines IA 50265 (515) 222-3600

SPACE ABOVE THIS LINE FOR RECORDER

RESOLUTION NO. _____

RESOLUTION OPENING AND CLOSING PUBLIC HEARING, AUTHORIZING APPROVAL AND ACCEPTANCE OF PURCHASE AGREEMENT AND CONVEYANCE OF PROPERTY INTERESTS TO PAINE DEVELOPMENT GROUP

WHEREAS, on May 29, 2018 the City Council of the City of West Des Moines, Iowa accepted the bid for sale of 5000 Westwood Drive, West Des Moines, legally described as: Lot 1 in Southwoods West Plat 2, an Official Plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa, now included in and forming a part of the City of West Des Moines, Polk County, Iowa (hereinafter "Property"); and

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

WHEREAS, following public notice for sale of the property, on May 23, 2018 the City received the high bid from Paine Development Group for $41,101.00; and

WHEREAS, the City of West Des Moines has negotiated a Purchase Agreement for the sale of the property attached hereto as **Exhibit "A"**; and

WHEREAS, pursuant to Code of Iowa Sections 362.3 and 364.7, publication of notice for the sale of the property legally described above and attached hereto as Exhibit "B" has been made; and

WHEREAS, this being the time and place for a public hearing regarding sale of the above legally-described property; and

WHEREAS, it is in the best interest of the City to approve and accept the Purchase Agreement and convey the property to Paine Development Group.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. Pursuant to Code of Iowa Section 364.7, publication of notice regarding the sale of the property legally-described on the attached **Exhibit "B"** has been properly made.

2. The public hearing regarding the sale of the above legally-described property is closed and the sale and conveyance of the property to Paine Development Group is approved.

3. The Purchase Agreement is hereby approved and accepted.

4. The Mayor is authorized to sign all documents necessary to convey the property to Paine Development Group and the City Clerk is directed to attest to his signature.

5. The City Attorney is authorized to take all steps necessary and consistent with the Purchase Agreement to convey the property.

PASSED AND ADOPTED this ____ day of _____, 2018.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan Jacobson, City Clerk

Exhibit "A"

Prepared by: Greta Truman, Assistant City Attorney, PO Box 65320, West Des Moines, IA 50265-0320 (515) 222-3673
Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines IA 50265 (515) 222-3600

SPACE ABOVE THIS LINE FOR RECORDER

PURCHASE AGREEMENT
5000 Westwood Drive, West Des Moines, Iowa

THIS AGREEMENT IS MADE AND ENTERED this 29 day of May, 2018, by and between the City of West Des Moines, Iowa ("CITY" OR "SELLER"), and Paine Development Group ("BUYER"), for the purchase and transfer of real property identified on the attached Plat of Survey (POS-003749-2018), approved by the West Des Moines City Council at its meeting held on April 2, 2018 ("PROPERTY"), with an address of 5000 Westwood Drive, West Des Moines, Iowa, and for the construction of a single family residential structure on the PROPERTY.

1. SELLER agrees to sell and transfer ownership to BUYER of the PROPERTY for the full bid price of $ 41,101.00 ("Purchase Price") as set forth in the attached bid solicitation and response, and for other valuable consideration, including, but not limited to, BUYER performing all obligations as set forth below. This Agreement must be executed by the BUYER, as evidenced below, no later than 5:00 p.m. (CST), May 29, 2018, or the BUYER'S bid will be deemed rejected.

2. BUYER shall deposit the Purchase Price in cash, cashier's check, or certified check payable to the City of West Des Moines no later than 5:00 p.m. (CST), June 29, 2018. Failure of BUYER to comply with this provision will constitute a breach of this Agreement resulting in forfeiture of the five hundred dollars ($500.00) submitted as bid security to SELLER and termination of any and all rights of BUYER to ownership and possession of the PROPERTY.

3. BUYER shall build a single family residential structure to completion on the PROPERTY no later than June 30, 2019, unless otherwise agreed to in writing by the CITY. Excluding the value of the land, the single family residential structure shall have a minimum value of one hundred twenty-five thousand dollars ($125,000). BUYER agrees that failure to build a single family residential structure to completion by June 30, 2019, shall constitute a material breach of this Agreement.

   BUYER understands and agrees that the CITY will only issue a building permit for the PROPERTY for the construction of a single family residential structure with a minimum projected valuation of one hundred twenty-five thousand dollars ($125,000), excluding the value of the land. BUYER understands and agrees that the CITY will not issue an occupancy permit unless the as-built value of the residential structure, excluding the value of the land, is at least one hundred twenty-five thousand dollars ($125,000). Upon request, BUYER shall provide proof of value to the reasonable satisfaction of the CITY in the form of a residential appraisal.

   BUYER shall obtain from the applicable jurisdiction(s) all required permits to build the single family residential structure and any other improvements on the PROPERTY.

4. The BUYER shall pay for all costs and obligations associated with building the single family residential structure with an attached garage, including, but not limited to the establishment of all required utility connections; the installation of sidewalks; and the installation a concrete driveway of sufficient length to allow for the parking of at least one (1) legally parked vehicle and all permits and inspections.

5. BUYER shall repair any damage to the trail along S. 50th Street that occurs during the construction, as well as damage to any street pavement and curbing adjacent to the property during construction. Any repairs or replacement shall be completed within thirty (30) calendar days upon notification, unless otherwise agreed to in writing by the CITY. All installations, repairs, or replacement shall be performed to the CITY'S specifications.

6. BUYER shall comply with all City of West Des Moines regulations and ordinances.

7. BUYER shall provide and maintain erosion control from the time the BUYER takes possession of the property until the time construction is completed and grass has been established. BUYER shall complete necessary grading to the property lines, or be responsible for the construction and maintenance of a retaining wall and/or fencing at or near the property line along S. 50th Street.

8. BUYER shall acquire, possess, and maintain homeowners' insurance for the PROPERTY and in sufficient amounts to protect the residential dwelling and for liability purposes at all times. Said insurance must be purchased and maintained as soon as this Agreement has been approved by both parties.

9. SELLER shall refund to BUYER the bid security of five hundred dollars ($500.00) upon fulfillment of the terms and conditions of this Agreement to the reasonable satisfaction of the CITY.

10. Unless otherwise specifically addressed herein, in the event BUYER defaults in the performance or observance of any covenant, agreement, or obligation set forth in this Agreement, and if such default remains uncured or steps are not taken to address the default within three (3) business days after notice of default has been given by SELLER to BUYER, SELLER may pursue all legal remedies including, but not limited to, specific performance.

11. INDEMNIFICATION/HOLD HARMLESS AGREEMENT. BUYER acknowledges and agrees that the PROPERTY is being sold in "AS IS" condition. BUYER acknowledges that the CITY, as SELLER, has not inspected the property for any deficiencies or defects.

    With that acknowledgment and understanding, BUYER agrees to indemnify, hold harmless and defend the CITY, as SELLER, its officials, employees, agents, contractors and assigns, from any and all claims, demands, causes of action, liabilities, losses, damages, or injuries, both to person and property, arising out of, related to, or connected with the acquisition and construction of any improvements to the PROPERTY. This indemnification and hold harmless applies to and includes, but is not limited to, the payment of all penalties, fines, judgments, awards, decrees, attorney's fees, expert witness fees, investigation fees, settlements, related costs or expenses, interest, and any reimbursements to the SELLER, its officials, employees, agents, contractors, and assigns for all legal expenses and costs incurred by it.

    This indemnification and hold harmless agreement is effective upon execution and shall be unlimited as to amount or duration. This instrument binds the BUYER and the BUYER'S executors, administrators, successors, assignees, and heirs.

12. The terms and conditions of this Agreement shall run with the land and be binding upon the BUYER'S executors, administrators, successors, assignees, and heirs. It is the BUYER'S responsibility to notify any executors, administrators, successors, assignees, and heirs of the existence of this Agreement.

DSP 13. THIS PURCHASE AGREEMENT IS SUBJECT TO ONE ATTACHED ADDENDUM.

BUYER'S SIGNATURE

I, the undersigned, hereby represent that I possess the requisite authority to sign this Agreement on behalf of the BUYER, either in an individual or representative capacity, and agree that the BUYER shall be bound by all of the terms and conditions set forth in this Agreement.

Signed by: _____ Date: 5/29/2018
(Print Name and Title, if applicable)
President - Paine Development Group

STATE OF IOWA)
) ss
COUNTY OF POLK)

Individual capacity:
This record was acknowledged before me on the 29 day of May, 2018, by Daniel Paine.

Representative capacity:
This record was acknowledged before me on the 29 day of May, 2018, by Daniel Paine as President of Paine Development Group, on behalf of whom this record was executed.

_____
Notary

MEGAN S. TOMLINSON
Commission Number 705393
MY COMMISSION EXPIRES
9-20-2018

CITY OF WEST DES MOINES, IOWA

Signed by: _____ Date: 5/29/18
(Print Name and Title, if applicable)

STATE OF IOWA)
) ss
COUNTY OF POLK)

This record was acknowledged before me on the 29 day of May, 2018, by Jason B. Wittgraf

_____
Notary

MEGAN S. TOMLINSON
Commission Number 705393
MY COMMISSION EXPIRES
9-20-2018

PURCHASE AGREEMENT ADDENDUM
5000 Westwood Dr, West Des Moines, Iowa

1. Setbacks of PROPERTY confirmed with SELLER are as follows and shall remain;
   North (Front) – 25'
   South (Rear) – 30'
   East – 30'
   West – 5'
2. SELLER agrees typical utilities are provided and available on PROPERTY as found with new construction developments within the City of West Des Moines
3. SELLER shall promptly provide an abstract of title continued to and including the date of acceptance of this agreement. Such abstract shall be delivered to an attorney for a title opinion for the BUYER. Such attorney to be selected by the BUYER mortgagee. The SELLER agrees to make every reasonable effort to promptly perfect the title in accordance with the title opinion so upon conveyance the title shall be deemed marketable. In compliance with this agreement, the land title laws of the State of Iowa, and the Iowa Title Standards of the Iowa Bar Association.

REGISTER MEDIA
A GANNETT COMPANY

Order Confirmation for Ad #: 0002960088

Customer:	CITY OF WEST DES MOINES
Address:	4200 MILLS CIVIC PKWY
	WEST DES MOINES IA 502652000 USA
Acct. #:	DES-22042101
Phone:	5152223600
EMail:	
Payor:	CITY OF WEST DES MOINES
Ordered By:	Jill Moomey

OrderStart Date: 06/07/2018 **Order End Date: 06/13/2018**

Tear Sheets	Affidavits	Blind Box	Promo Type	Materials	Special Pricing
0	1				

Net Amount	Tax Amount	Total Amount	Payment Method	Payment Amount	Amount Due
$25.20	$0.00	$25.20	Invoice	$0.00	$25.20

Ad Order Notes:

Sales Rep: jchristens **Order Taker:** jchristens

Product	# Ins	Lines	Start Date	End Date
DES-RM Des Moines Register	1	31	06/07/2018	06/07/2018
DES-RM Register Digital	7	31	06/07/2018	06/13/2018

Text of Ad:

NOTICE OF PUBLIC HEARING

The West Des Moines City Council will hold a public hearing at 5:35 p.m. on June 11, 2018, at the West Des Moines City Hall Council Chambers, 4200 Mills Civic Parkway, West Des Moines, Iowa to consider the sale and conveyance of property locally known as 5000 Westwood Drive to Paine Development Group and legally described as:

Lot 1 in Southwoods West Plat 2, an Official Plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa

Any interested person may appear at the hearing and be heard regarding the proposed sale and conveyance of the property. A detailed location map showing the property may be obtained at the West Des Moines City Hall, 4200 Mills Civic Parkway, West Des Moines, Iowa.

CITY OF WEST DES MOINES, IOWA

By: Ryan Jacobson, City Clerk

Published in the Des Moines Register June 7, 2018.

Exhibit "B"