CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: June 11, 2018

ITEM: Bike Shop Building Addition, 232 6th Street - Approval and Acceptance of a Sanitary Sewer Easement and a Hold Harmless Agreement – Jerry DuBois– MML2-003725-2017

Resolution: **Approval and Acceptance of a Sanitary Sewer Easement and a Hold Harmless Agreement**

FINANCIAL IMPACT: Undetermined.

BACKGROUND: The applicant, Jerry DuBois, represented by Pete Dahly of Dahly Construction, Inc., submitted a Minor Modification Level II application to build a 1,998 sq. ft. building addition to the Bike Shop in Valley Junction located at 232 6th Street. As a part of that application an additional Sanitary Sewer Easement was needed and the applicant was proposing to install an awning that projected 4 feet into the City's Right-Of-Way. The proposed awning requires a Hold Harmless agreement between the applicant and the City. Exhibits II and III are copies of the easement and agreement. For policy purposes, formal acceptance by the City Council of these are required.

CITY COUNCIL SUBCOMMITTEE: 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 a resolution approving and accepting the Sanitary Sewer Easement, granted to the City of West Des Moines and a resolution approving and accepting the Hold Harmless Agreement between the City of West Des Moines and Jerry DuBois for the installation of a projection awning at 232 6th Street as part of the Minor Modification Level II application for a 1,998 sq. ft. building addition to the Bike Shop in Valley Junction.

Lead Staff Member: J. Bradley Munford

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In		
Date(s) Published	N/A	
Letter sent to surrounding property owners		

SUBCOMMITTEE REVIEW (if applicable)

Committee	None		
Date Reviewed			
Recommendation	Yes ☐	No ☐	Split ☐

ATTACHMENTS:

Exhibit I	-	Resolution
Exhibit II	-	Sanitary Sewer Easement
Exhibit III	-	Hold Harmless Agreement

EXHIBIT I

Prepared by: J.B. Munford, 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 SANITARY SEWER EASEMENT AND A HOLD HARMLESS AGREEMENT BETWEEN THE CITY OF WEST DES MOINES AND JERRY DUBOIS RELATED TO A MINOR MODIFICATION LEVEL II APPLICATION FOR A 1,998 SQ. FT. BUILDING ADDITION TO THE BIKE SHOP IN VALLEY JUNCTION AT 232 6TH STREET.

WHEREAS, it is the policy of the City of West Des Moines, Iowa to approve and accept all easement and agreements conveying property and other interests to the City; and

WHEREAS, it is the policy of the City of West Des Moines, Iowa to approve hold harmless agreements; and

WHEREAS, the following documents in Exhibit II and Exhibit III have been presented to the City for approval and acceptance; and

Sanitary Sewer Easement and a Hold Harmless Agreement for that property
locally known as 232 6th Street and legally described as:

Lot 1, Block 9, Valley Junction, an official plat within 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 documents described above conveying property and other interests to 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 11th day of June, 2018.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

EXHIBIT II

Prepared by: J.B. Munford Development Services, PO Box 65320, West Des Moines, 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

SANITARY SEWER EASEMENT(S)

KNOW TO ALL MEN BY THESE PRESENTS:

1. Grant of Easement(s).

The undersigned, Jerry DuBois, on behalf of Agricultural Engineering Incorporated, an Iowa corporation (hereinafter referred to as the "Grantor(s)"), owner(s) and/or developer(s) of 232 6th Street, in the City of West Des Moines, Polk County, Iowa, in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, grant, and convey to the City of West Des Moines, Iowa, a municipal Corporation (hereinafter referred to as "the City"), a permanent and perpetual easement (hereinafter referred to as "Sanitary Sewer Easement" or "Easement(s)") and right-of-way upon, over, under, through and across the real property legally described as:

THE WEST SEVEN (7) FEET OF LOT 1, BLOCK 9, VALLEY JUNCTION, AN OFFICIAL PLAT, ALL IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA

2. Use and Purpose of Easement(s).

This Easement shall be granted for the purpose of locating sanitary sewer(s) (hereinafter referred to as "Sewer(s)") and to permit and allow the city to enter at any time upon, over, under, through, and across into said Easement(s) herein described to use as much of the surface and sub-surface thereof to construct, replace, locate, rebuild, enlarge, reconstruct, repair (including the right to place and build additional Sewer(s) therein or to connect and/or join Sewer(s) and appurtenances thereto) and to forever maintain Sewer(s) whenever necessary within the Easement(s) granted herein. No structure, obstruction, or building of any kind whatsoever shall be placed upon property that is the subject of this Easement without the express written consent of the City.

3. Maintenance.

After the initial construction of the Sewer(s), and acceptance by the City, the City agrees, as part of the reconstruction, maintenance and patrolling of the Sewer(s), to restore and replace the Easement area(s) to substantially the same condition as prior to the time of entry or as agreed upon by the City and the Grantor(s), except the City shall not be required to replace landscaping, trees, shrubs, bushes, landscape elements, structures, or underground water systems nor shall the City be required to restore the Easement area by reason of settlement, depression, or any unknown conditions which arise subsequent to the restoration and/or replacing of the easement area; any subsequent restoration by reason of settlement, depression or any unknown conditions shall be the sole responsibility of the Grantor(s) at the Grantor(s)' sole expense.

4. Hold Harmless.

The Grantor(s) agrees to indemnify and hold harmless the City, its elected officials, employees, officers,

agents, representatives, contractors, and attorneys from and against any and all claims or demands for liability, loss, damage, costs, expenses, or attorney's fees of any kind for actions or omissions of the Grantor(s) arising out of or in connection with any undertaking arising out of or otherwise related to this Easement.

5. Running of Benefits and Burdens.

The terms and conditions of this Easement are binding upon the Grantor including, but not limited to, future owners, developers, 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.

6. Jurisdiction and Venue.

The City and the Grantor(s) agree the District Court of the State of Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and conditions of this Easement and said parties consent to the jurisdiction of the person being in Polk County, Iowa.

7. Words and Phrases.

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

8. 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 "Grantor(s)" shall refer to Agricultural Engineering Incorporated, their assigns, successors-in-interest, or lessees, if any.

9. Integration.

This Agreement shall constitute the entire Agreement between the parties and no amendments or additions to this Agreement shall be binding unless in writing and signed by both parties.

10. 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.

Dated this day of June 5th, 2018.

DUBOIS AGRICULTURAL ENGINEERING INCORPORATED, AN IOWA CORPORATION

By: _____
Jerry DuBois
Owner

MIKE THOMAS
Commission Number 798780
My Commission Expires
8-16-19

STATE OF IOWA)
) **SS:**
COUNTY OF Polk)

This record was acknowledged before me on Jun 5th by Jerry DuBois as owner/president of DuBois Agricultural Engineering Incorporated, on behalf of whom the record was executed.

Notary Public in and for the State of Iowa

CERTIFICATION BY CITY OF WEST DES MOINES, IOWA

I, Ryan T. Jacobson, City Clerk of the City of West Des Moines, Iowa, do hereby certify that acquisition of the within and foregoing Sanitary Sewer Easement was duly authorized and approved by the City Council of the City of West Des Moines by Roll Call No. _____, passed on _____, and that this certificate is made pursuant to the authority of said City Council.

Signed this _____ day of _____, _____.

CITY OF WEST DES MOINES, IOWA

BY:_____
Ryan T. Jacobson, City Clerk

EXHIBIT III

Prepared by: J.B. Munford, 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 5th day of June 2018 by and between DuBois Agricultural Engineering Incorporated, an Iowa corporation (the "Owner"), and the City of West Des Moines, Iowa, an Iowa municipal corporation (the "City").

WITNESSETH:

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

LOTS 1, BLOCK 9, VALLEY JUNCTION, 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 an awning/canopy (the "canopy") on a building located on the above legally-described property, locally known as 232 6th Street; and

WHEREAS, A portion of the canopy will be located in the right of way of Elm Street and 6th Street, which is 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 right-of-way without approval of the City; and

WHEREAS, in exchange for approval by the City to allow installation of the canopy, the Owner has agreed to enter into this Agreement; and

WHEREAS, at such time, if ever, the area comprising of the right-of-way for Elm Street or 6th Street on which the canopy is located is required by the City for construction, reconstruction or expansion of Elm Street or 6th Street, the Owner agrees to remove the canopy 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 City and the Owner, the parties hereby agree as follows:

Indemnification and Hold Harmless. Owner agrees to indemnify, hold harmless, and defend the City, its officials, employees, agents, contractors, and assigns, from any and all claims, demands, causes of action, liability, loss, damage or injury, both to person and property, arising out of, related to, or connected with the canopy. This indemnification 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 incurred by or assed to the City, its officials, employees, agents, contractors and assigns, related to the canopy.

Owner understands and agrees that it shall have no right of coverage under any and all existing or future insurance policies.

Placement and Removal of Canopy. Owner shall have the right to place the canopy in the area identified as the Elm Street and 6th Street right of ways 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 canopy becomes necessary, Owner agrees to remove the canopy 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 canopy and that the Owner expressly acknowledges and agrees that the City shall not have any responsibility or liability for the repair, removal, replacement or relocation of the canopy or any appurtenant structures or devices.

Running of Benefits and Burdens. The terms and conditions of this Agreement are binding upon the Owner 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 assigns, successors, tenants and personal representatives of the parties hereto.

Representations and Warranties. The Owner covenants with the City that it has 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 agrees 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 DuBois Agricultural Engineering Incorporated, 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 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.

DUBOIS ENGINEERING INCORPORATED, AN IOWA CORPORATION

Jerry DuBois
Owner

MIKE THOMAS
Commission Number 798780
My Commission Expires
6-14-19

STATE OF IOWA)
) SS:
COUNTY OF Polk)

This record was acknowledged before me on this 5th day of June, 2018, by Jerry DuBois, owner of DuBois Agricultural Engineering Incorporated, on behalf of whom this record was executed.

Notary Public in and for the State of Iowa

CITY OF WEST DES MOINES, IOWA

Steven K. Gaer, Mayor

Attest:

Ryan T. Jacobson
City Clerk