CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: June 17, 2019

ITEM: Approval and Acceptance of Hold Harmless Agreement, 9080 University - Hurd Greenway LLC SP-003933-2018

Resolution: **Approval and Acceptance of Hold Harmless for Sign Placement within Ultimate Right-of-Way**

FINANCIAL IMPACT: None.

BACKGROUND: The contractor for the Fresenius Medical Care Clinic at 9080 University Avenue (SP-003933-2018) constructed the masonry sign mount within the ultimate right-of-way for University Avenue. The Development and Planning City Council Subcommittee at their May 20, 2019, meeting supported a request to execute a hold harmless agreement in favor of the City to allow the monument sign to stay where is was constructed.

Exhibit II is a copy of the hold harmless agreement for the location of the monument sign. For policy purposes, formal acceptance by the City Council of this document is required.

CITY COUNCIL SUBCOMMITTEE: This situation was presented to the Development and Planning City Council Subcommittee on May 20, 2019. The Subcommittee was supportive of using the document.

OUTSTANDING ISSUES: There are no outstanding issues.

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

Lead Staff Member: Kara V. Tragesser, AICP

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	Development and Planning		
Date Reviewed	May 20, 2019		
Recommendation	Yes X	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Resolution
Exhibit II - Hold Harmless Agreement – Hurd Greenway LLC

EXHIBIT I

Prepared by: KTragesser 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 HOLD HARMLESS AGREEMENT BY AND BETWEEN HURD GREENWAY, LLC AND THE CITY OF WEST DES MOINES, IOWA

WHEREAS, the contractor for the Fresenius Medical Care Clinic at 9080 University Avenue (SP-003933-2018) constructed a masonry sign mount within the ultimate right-of-way for University Avenue; and

WHEREAS, Hurd Greenway, LLC and the City of West Des Moines have negotiated a Hold Harmless Agreement to allow the monument sign to stay where is was constructed, legally described as:

Lot 2 Greenway Crossing Plat 1, an official plat now in and forming a part of 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 document.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT the Agreement between Hurd Greenway, LLC and the City is hereby approved and accepted and shall be filed with the county recorder as appropriate. The City Clerk is directed to certify the City Council's approval and acceptance.

PASSED AND ADOPTED this 17th day of June 2019

_____
Steven K Gaer, Mayor

ATTEST:

_____
Ryan Jacobson
City Clerk

EXHIBIT II

Prepared by: K Tragesser, 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, PO. Box 65320, West Des Moines, IA 50265-0320
Address Tax Statement to: Not applicable

AGREEMENT

This Agreement is made and entered into this 31st day of May 2019 by and between Hurd Greenway LLC., an Iowa Limited Liability Company and the City of West Des Moines, Iowa, an Iowa municipal corporation ("City").

WITNESSETH:

WHEREAS, Hurd Greenway LLC owns the following property legally described as:

LOT 2, GREENWAY CROSSING PLAT 1, AN OFFICIAL PLAT,
ALL IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, DALLAS 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 9080 University Avenue; 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 University Avenue 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 has 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 University Avenue on which the monument sign is located is required by the City for construction, reconstruction or expansion of University Avenue, 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 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 University Avenue 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, 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 covenants 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 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 Dallas 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 Hurd Greenway LLC., 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 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 Dallas 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.

Hurd Greenway, LLC and Iowa Limited Liability Company
OWNER

Name of person signing: Richard Hurd
Title of Person signing, Manager

STATE OF IOWA)
) SS:
COUNTY OF Polk)

This record was acknowledged before me on this 31 day of May, 2019, by Richard Hurd as Manager of Hurd Greenway LLC on behalf of whom the record was executed.

STACIE HATCH
Commission Number 748258
My Commission Expires
Aug 6, 2019

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

CITY OF WEST DES MOINES, IOWA

I, Ryan T. Jacobson, City Clerk of the City of West Des Moines, Iowa, do hereby certify that the within and foregoing Easement was duly approved and accepted by the City Council of said City of West Des Moines by Resolution and Roll Call No. _____, passed on the ____ day of _____ 2019, and this certificate is made pursuant to authority contained in said Resolution.

Signed this _____ day of _____ 2019.

Ryan Jacobson, City Clerk