

# CITY OF WEST DES MOINES

## COUNCIL AGENDA

**date:** Monday, November 11, 2024

**time:** 7:30 a.m.

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MAYOR .....	RUSS TRIMBLE	CITY MANAGER.....	TOM HADDEN
COUNCILMEMBER AT LARGE .....	RENEE HARDMAN	CITY ATTORNEY.....	GRETA TRUMAN
COUNCILMEMBER AT LARGE .....	MATTHEW MCKINNEY	CITY CLERK.....	RYAN JACOBSON
COUNCILMEMBER 1 <sup>ST</sup> WARD .....	KEVIN L. TREVILLYAN		
COUNCILMEMBER 2 <sup>ND</sup> WARD .....	GREG HUDSON		
COUNCILMEMBER 3 <sup>RD</sup> WARD.....	DOUG LOOTS		

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**West Des Moines City Hall – Training Room  
4200 Mills Civic Parkway**

- 1. Call Meeting to Order**
  
- 2. Approval of Agenda**
  - a. Motion - Approval of Agenda
  
- 3. New Business**
  - a. Christmas Tree Encroachment and Hold Harmless Agreement - Fire/EMS Administration Building, 318 5th Street - City Initiated
    1. Resolution - Approval and Acceptance of Agreement
  
- 4. Executive Session**
  - a. Pending/Threatened Litigation  
(with retained legal counsel Mike Richards and Katie Gral of Dentons Davis Brown)
  
- 5. Receive and File**
  - a. Special Meeting Notice

The City of West Des Moines is pleased to provide accommodations to disabled individuals or groups and encourages their participation in city government. Should special accommodations be required please contact the Clerk's office at least 48 hours in advance, at 222-3600 to have accommodations provided.

**CITY OF WEST DES MOINES  
STAFF REPORT COMMUNICATION**

**Meeting Date:** November 11, 2024

**ITEM:** 318 5<sup>th</sup> Street– Approval and Acceptance of Christmas Tree Encroachment Hold Harmless Agreement – Historic Valley Junction Foundation

**Resolution: Approval and Acceptance of Sign Encroachment and Hold Harmless Agreement**

**Background:** The applicant, Historic Valley Junction Foundation (the “Foundation”), requests the approval to place a lighted Christmas tree on property outside of the building located at 318 5<sup>th</sup> Street. The Foundation intends to have the tree placed on November 18<sup>th</sup>. The property at 318 5<sup>th</sup> Street is owned by the City and operated as the Fire and EMS Administration building. The Christmas tree will be placed in front of the garage doors of the building on City-owned property; therefore, as a condition of approval of the sign permit, the applicant is required to execute an Encroachment and Hold Harmless Agreement, which has been provided.

**Staff Review & Comment:** The requirement to provide the agreement indicated above was reviewed by the City’s Legal Department and found to be necessary based on the proposed impacts of the project. For policy and title purposes, formal acceptance by the City Council of property interests being conveyed to the City is required.

**Outstanding Issues:** There are no outstanding issues.

**Recommendation:** Approve and Accept the Sign Encroachment and Hold Harmless Agreement.

**Lead Staff Member: Craig Leu, Fire and EMS Chief**

**Staff Report Reviews:**

City Council	<input checked="" type="checkbox"/> Director	<input checked="" type="checkbox"/> Legal Department
	<input type="checkbox"/> Appropriations/Finance	<input checked="" type="checkbox"/> Agenda Acceptance

**Publications (if applicable)**

Published In:	
Date(s) Published	n/a
Date(s) of Mailed Notices	n/a

**Council Subcommittee Review (if applicable)**

Committee	
Date Reviewed	n/a
Recommendation	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Split

## Location Map



Prepared by: Jessica Grove, City of West Des Moines Legal Dept., PO Box 65320, West Des Moines, Iowa 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 ENCROACHMENT AND HOLD HARMLESS AGREEMENT**

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

**WHEREAS**, an Encroachment and Hold Harmless Agreement to allow the placement of a Christmas tree on City-owned property has been presented to the City Council for approval for 318 5th Street; and

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

**NOW, THEREFORE**, the City Council does approve and accept the document described above. Said document shall be filed with the county recorder as appropriate.

**PASSED AND ADOPTED** on November 11, 2024.

\_\_\_\_\_  
Russ Trimble, Mayor

ATTEST:

\_\_\_\_\_  
Ryan 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 special meeting held on November 11, 2024, by the indicated vote.

Prepared by: Jessica D. Grove, City of West Des Moines Legal Dept., PO Box 65320,  
West Des Moines, Iowa 50265-0320 515-222-3620  
Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265 (515) 222-3600

**SPACE ABOVE THIS LINE FOR RECORDER**

### **CHRISTMAS TREE ENCROACHMENT AND HOLD HARMLESS AGREEMENT**

This Agreement is made and entered into this \_\_\_\_\_ day of November, 2024, by and between Historic Valley Junction Foundation, an Iowa nonprofit corporation, ("Foundation") and the **City of West Des Moines, Iowa**, an Iowa municipal corporation ("City") (hereinafter collectively the "Parties").

#### **WITNESSETH:**

**WHEREAS**, the City owns a building, located in West Des Moines, Iowa, on property legally described on the attached Exhibit "A" (City's Property).

**WHEREAS**, the Foundation has requested approval to install a lighted Christmas tree ("Improvements") in front of the garage doors on the above legally-described property, locally known as 318 5th Street, West Des Moines, Iowa (Fire/EMS Administration Building); and

**WHEREAS**, a the Improvements will encroach upon City's Property and/or the right of way of 5th Street which are both owned and controlled by the City; and

**WHEREAS**, the West Des Moines City Code prohibits private property improvements within the area comprising the right-of-way or City-owned property without approval of the City; and

**WHEREAS**, in exchange for approval by the City to allow installation of the Improvements, the City and Foundation have agreed to enter into this Agreement.

**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 Foundation, hereby agree as follows:

#### **1. Indemnification and Hold Harmless**

The Foundation agrees to indemnify, hold harmless, and defend the City, its elected officials, employees, officers, agents, representatives, 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 any activity or placement of the Improvements above and within the City's property by the Foundation. 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 assessed to the City, its officials, employees, agents, contractors and assigns. The Foundation shall provide the City with prompt notice of any such claim, demand, or action so that the City may, at its sole option, defend or settle such claim, demand, or action. The Foundation shall be severally liable for the costs of indemnification and defense.

The Foundation understands and agrees that it shall not have a right of coverage under any existing or future insurance policies owned by the City. The Foundation shall obtain and maintain the following insurance coverage by an insurance company licensed to do business in the State of Iowa: (1) comprehensive general liability coverage and contractual liability insurance in the limits of at least \$1,000,000 each personal injury accident and/or death; \$2,000,000 general aggregate personal injury and/or death; and \$1,000,000 for each property damage accident, and (2) umbrella liability insurance in excess of the general liability insurance in the limit of at least \$1,000,000 each occurrence and \$2,000,000 in the aggregate. The City shall be named as additional insured on a primary and non-contributing basis for on-going and completed operations. The Foundation shall file an applicable insurance certificate with the City and shall designate the City as an additional insured. The Foundation shall not cancel or materially alter any required insurance policy without giving the City at least thirty (30) days written notice by registered mail, return receipt requested. The Foundation also acknowledges that the City has no responsibility for any damage caused to the Foundation's property by any source. The Foundation agrees the encroachment above and within the City's property is at the Foundations own volition and assume all known or unknown risks associated with the encroachment.

This Indemnification and Hold Harmless provision is effective upon execution and shall be of indefinite duration and shall survive the termination of this Agreement.

## **2. Placement and Removal of Improvements**

The Foundation shall have the right to place the Improvements in front of the garage doors and on the area identified as the 5th Street right of way, subject to all rules and regulations of the City of West Des Moines. If, as solely determined by City, removal of the Improvements becomes necessary, the Foundation agrees to remove the Improvements and any appurtenant structures at the Foundation's expense and without compensation from the City. The Foundation shall remove the aforementioned within sixty (60) days of written notice from the City.

## **3. Maintenance**

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

## **4. Benefits and Burdens**

The terms and conditions of this Agreement are binding upon the Foundation including, but not limited to, future owners, future tenants, developers, successors-in-interest, assigns, heirs, lessees, and occupants. All provisions of this Agreement, including benefits and burdens, run

with the land and are binding upon and inure to the assigns, successors-in-interest, heirs, and personal representatives of the parties hereto.

**5. Jurisdiction and Venue**

The Foundation 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.

**6. Lawful Authority**

The Foundation covenants with the City that each has good, right, and lawful authority to make and execute this Agreement. The Foundation warrants that it will defend this Agreement against the lawful claims of all persons.

**7. Approval of City**

This Agreement shall not be binding until it has received the final approval and acceptance by the City of West Des Moines, Iowa, which approval and acceptance shall be noted on this Agreement by the City Clerk.

**8. Attorney Fees**

Either party may enforce this Agreement by appropriate action, and the prevailing party shall recover as part of its costs the reasonable attorney fees incurred in such action.

**9. 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.

**10. Parties**

The term "City" as used herein shall refer to the City of West Des Moines, Iowa, its elected officials, agents, employees, officers, contractors, successors and assigns. The term "Foundation" shall refer to the undersigned, their heirs, assigns, successors in interest, or lessees, if any.

**11. Integration/Construction**

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 all parties. 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.

**12. Paragraph Headings**

The paragraph headings in this Agreement are included solely for convenience and shall not





**CITY OF WEST DES MOINES, IOWA**

\_\_\_\_\_  
Russ Trimble, Mayor

Attest:

\_\_\_\_\_  
Ryan T. Jacobson, City Clerk

STATE OF IOWA     )  
                                  ) ss:  
COUNTY OF POLK    )

On this \_\_\_\_ day of November, 2024, before me a Notary Public in and for said County, personally appeared Russ Trimble and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. \_\_\_\_\_, passed on the \_\_\_\_\_ day of November, 2023, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

**Exhibit "A"**

Lots 4 & 5 in Block 19, 1<sup>st</sup> Addition to Valley Junction, Polk County, Iowa.