

Date April 20, 2020

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF SEGMENTS OF 6TH AVENUE AND UNIVERSITY AVENUE RIGHT-OF-WAY AND CONVEYANCE OF EASEMENTS FOR BUS SHELTER ENCROACHMENT ON CITY-OWNED PROPERTY TO DES MOINES AREA REGIONAL TRANSIT AUTHORITY FOR \$1,540.00

WHEREAS, Des Moines Area Regional Transit Authority (hereinafter “DART”) wishes to acquire seven permanent easements on portions of City right-of-way located at various points along 6th Avenue and University Avenue, as legally described below (“Easement Area”), for the purpose of constructing, operating and maintaining a DART bus stop shelters; and

WHEREAS, DART and the City Real Estate Division have negotiated the terms of the permanent easements which include: (1) DART’s installation and use of the Bus Shelter shall comply with all City, State and Federal ordinances and regulations; (2) DART, or its contractors, shall obtain, comply with, and pay all related fees for all necessary permits, and provide required insurance and bond, related to excavation and obstruction of City right-of-way upon and above the Easement Area prior to accessing the Easement Area, and, except in the case of emergency, access to the Easement Area shall be limited to the times set forth in such permits; (3) the bus shelter shall be constructed and installed in accordance with plans and specifications approved by the City Engineer or designee, and DART shall certify to the City that the bus shelter has been constructed and located within the Easement Area as shown on the approved plans and specifications; (4) DART shall be solely responsible for all activities related to and costs of maintenance of the Easement Area and installation, operation, maintenance and repair of the bus shelter, including snow removal, in accordance with City ordinances, policies and regulations, and State law, which easements are subject to the reservation of utilities therein; and

WHEREAS, DART shall pay to the City \$220.00 per easement, a total of \$1,540.00 for costs incurred by the City in preparing necessary documentation for bus shelter location to allow for vacation and conveyance of an easement within the right-of-way, including but not limited to preparation of an exhibit and corresponding legal description, and no additional consideration is required in accordance with Iowa Code §364.7(3); and

WHEREAS, the vacation of said portions of City right-of-way located along 6th Avenue and University Avenue, as legally described below, and conveyance of said Easements for Bus Shelter Encroachment on City-owned Property will not inconvenience the City or public.

WHEREAS, on March 23, 2020, by Roll Call No. 20-0519, it was duly resolved by the City Council of the City of Des Moines, Iowa that the proposed vacation and conveyance of such permanent easement interests be set for hearing on April 20, 2020, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

WHEREAS, the location of City Council meetings have been relocated to the Richard A. Clark Municipal Services Center instead of City Hall due to the developing COVID-19 pandemic; and

WHEREAS, prior to publication of notice City staff corrected the location of said hearing; and

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WHEREAS, due notice of said proposal to vacate portions of City right-of-way located along 6th Avenue and University Avenue and convey said proposed easements therein was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with City Council direction, those interested in said proposed vacation and conveyance, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to said proposed vacation and conveyance of the Easements for Bus Shelter Encroachment on City-owned Property in such vacated right-of-way as described below are hereby overruled, and the hearing is closed.
2. The public would not be inconvenienced by reason of the vacation of various portions of City right-of-way located along 6th Avenue and University Avenue, subject to the reservation of easement therein, legally described as follows, and said vacation is hereby approved:

6th Avenue, North of Franklin Avenue, East Side

A PART OF 6TH AVENUE RIGHT OF WAY IN RIVERVIEW PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 16 IN SAID RIVERVIEW PARK, SAID SOUTHWEST CORNER ALSO BEING ON THE EAST RIGHT OF WAY LINE OF 6TH AVENUE; THENCE NORTH ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 34 FEET; THENCE WEST AND PARALLEL TO THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 16, A DISTANCE OF 8.5 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING WEST AND PARALLEL TO THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 16, A DISTANCE OF 7 FEET; THENCE NORTH AND PARALLEL TO SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 48 FEET; THENCE EAST AND PARALLEL TO THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 16, A DISTANCE OF 7 FEET; THENCE SOUTH AND PARALLEL TO SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 48 FEET TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 336 SQUARE FEET.

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COMMENCING AT THE SOUTHWEST CORNER OF LOT 16 IN SAID RIVERVIEW PARK; THENCE WEST ALONG THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 16, A DISTANCE OF 66 FEET TO THE WEST RIGHT OF WAY LINE OF SAID 6TH AVENUE; THENCE NORTH ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 45 FEET; THENCE EAST AND PARALLEL TO

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THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 16, A DISTANCE OF 8.5 FEET TO THE POINT OF BEGINNING; THENCE NORTH AND PARALLEL TO SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 48 FEET; THENCE EAST AND PARALLEL TO THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 16, A DISTANCE OF 7 FEET; THENCE SOUTH AND PARALLEL TO SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 48 FEET; THENCE WEST AND PARALLEL TO THE WESTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 16, A DISTANCE OF 7 FEET TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 336 SQUARE FEET.

6th Avenue, North of Washington Avenue, East Side

A PART OF 6TH AVENUE RIGHT OF WAY IN THE OFFICIAL PLAT OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 79 NORTH, RANGE 24 WEST OF THE 5TH P.M., (ALSO REFERRED TO AS POLK COUNTY HOMESTEAD & TRUST CO'S ADDITION), ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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COMMENCING AT THE SOUTHEAST CORNER OF LOT 6 IN BLOCK 5 OF SAID OFFICIAL PLAT OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 79 NORTH, RANGE 24 WEST OF THE 5TH P.M., SAID SOUTHEAST CORNER ALSO BEING ON THE WEST RIGHT OF WAY LINE OF 6TH AVENUE; THENCE NORTH ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 42 FEET; THENCE EAST AND PARALLEL TO THE EASTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 6, A DISTANCE OF 8.5 FEET TO THE POINT OF BEGINNING; THENCE NORTH AND PARALLEL TO SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 48 FEET; THENCE EAST AND PARALLEL TO THE EASTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 6, A DISTANCE OF 7 FEET; THENCE SOUTH AND PARALLEL TO SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 48 FEET; THENCE WEST AND PARALLEL TO THE EASTERLY EXTENSION OF THE SOUTH LINE OF SAID LOT 6, A DISTANCE OF 7 FEET TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 336 SQUARE FEET.

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6th Avenue, South of College Avenue, East Side

A PART OF 6TH AVENUE RIGHT OF WAY IN W.W. FINK'S SUBDIVISION OF LOT 42 OF OFFICIAL PLAT OF SE 1/4 S 34, T79, R24, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF COLLEGE AVENUE AND THE EAST RIGHT OF WAY LINE OF 6TH AVENUE; THENCE SOUTH ALONG SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 74.5 FEET; THENCE WEST AND PARALLEL TO THE WESTERLY EXTENSION OF SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 8.5 FEET TO THE POINT OF BEGINNING; THENCE SOUTH AND PARALLEL TO SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 48 FEET; THENCE WEST AND PARALLEL TO THE WESTERLY EXTENSION OF SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 7 FEET; THENCE NORTH AND PARALLEL TO SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 48 FEET; THENCE EAST AND PARALLEL TO THE WESTERLY EXTENSION OF SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 7 FEET TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 336 SQUARE FEET.

University Avenue, West of 27th Street, North Side

A PART OF UNIVERSITY AVENUE RIGHT OF WAY IN UNIVERSITY PLACE, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 118 IN SAID UNIVERSITY PLACE; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 118, A DISTANCE OF 70 FEET; THENCE SOUTH AND PERPENDICULAR TO THE SOUTH LINE OF SAID LOT 118, A DISTANCE OF 3 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH AND PERPENDICULAR TO THE SOUTH LINE OF SAID LOT 118, A DISTANCE OF 10.5 FEET; THENCE WEST AND PARALLEL TO THE SOUTH LINE OF SAID LOT 118, A DISTANCE OF 36 FEET; THENCE NORTH AND PERPENDICULAR TO THE SOUTH LINE OF SAID LOT 118, A DISTANCE OF 10.5 FEET; THENCE EAST AND PARALLEL TO THE SOUTH LINE OF SAID LOT 118, A DISTANCE OF 36 FEET TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 378 SQUARE FEET.

University Avenue, West of 29th Street, North Side

A PART OF UNIVERSITY AVENUE RIGHT OF WAY IN DRAKE UNIVERSITY'S 1ST ADDITION TO UNIVERSITY PLACE, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 25 IN SAID DRAKE UNIVERSITY'S 1ST ADDITION TO UNIVERSITY PLACE; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 25, A DISTANCE OF 3 FEET; THENCE SOUTH AND PERPENDICULAR TO THE SOUTH LINE OF SAID LOT 25, A DISTANCE OF 0.5 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH AND PERPENDICULAR TO THE SOUTH LINE OF SAID LOT 25, A DISTANCE OF 10.5 FEET; THENCE WEST AND PARALLEL TO THE SOUTH LINE OF SAID LOT 25, A DISTANCE OF 36 FEET; THENCE NORTH AND PERPENDICULAR TO THE SOUTH LINE OF SAID LOT 25, A DISTANCE OF 10.5 FEET; THENCE EAST AND PARALLEL TO THE SOUTH LINE OF SAID LOT 25,

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A DISTANCE OF 36 FEET TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 378 SQUARE FEET.

3. That the conveyance of an Easement for Bus Shelter Encroachment on City-owned Property in such vacated right-of-way as described below, to Des Moines Area Regional Transit Authority for a fee of \$1,540.00, together with payment by said grantee of the estimated publication and recording costs for this transaction, be and is hereby approved, subject to the reservation of easements therein, and further subject to the negotiated terms of the permanent easements as set forth herein above:

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SOUTH RIGHT OF WAY LINE, A DISTANCE OF 7 FEET; THENCE NORTH AND PARALLEL TO SAID EAST RIGHT OF WAY LINE, A DISTANCE OF 48 FEET; THENCE EAST AND PARALLEL TO THE WESTERLY EXTENSION OF SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 7 FEET TO THE POINT OF BEGINNING, AND CONTAINING APPROXIMATELY 336 SQUARE FEET.

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4. The Mayor is authorized and directed to sign the seven (7) Easements for Bus Shelter Encroachment on City-owned Property for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

5. Upon final passage of an ordinance vacating said right-of-way, and upon proof of payment of the \$1,540.00 fee the City Clerk is authorized and directed to forward the original Easements, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.

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6. The Real Estate Division Manager is authorized and directed to forward the original of the Easements, together with a certified copy of this resolution and of the affidavit of publication of notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.
7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Easements and copies of the other documents to the grantee.
8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.
9. The actions of City staff in preparing the notice with the correct place of the hearing are hereby ratified.

Moved by _____ to adopt.

APPROVED AS TO FORM:


 Lisa A. Wieland, Assistant City Attorney

PTW

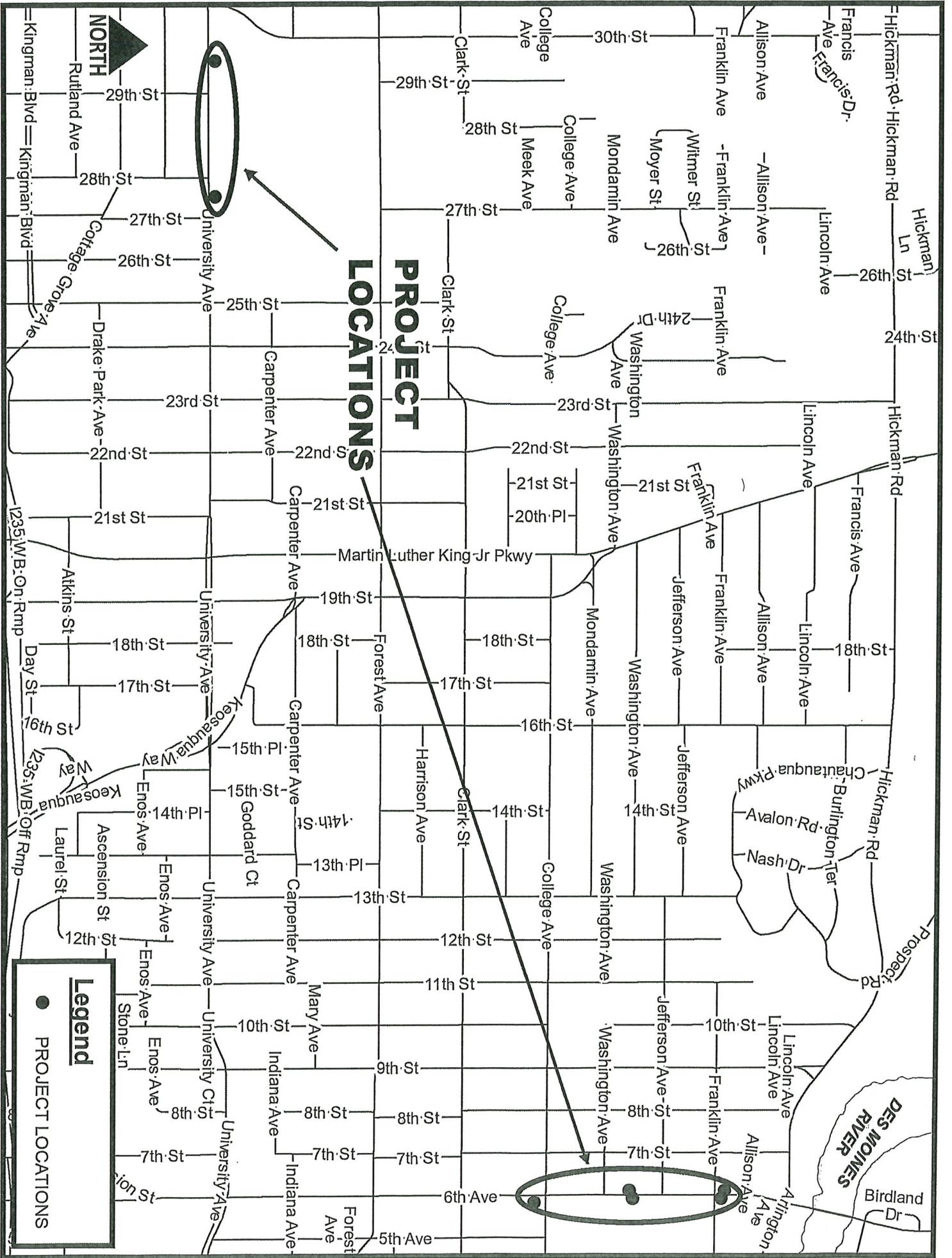
COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				
MOTION CARRIED	APPROVED			
_____ Mayor				

CERTIFICATE

I, P. KAY CMELIK, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk



PROJECT LOCATIONS

Legend

● PROJECT LOCATIONS

NORTH



DES MOINES RIVER

40

Prepared by: David DeForest Colvig, Real Estate Coordinator for the City of Des Moines, Seller, (515) 283-4561
Return to: Real Estate Division, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, IA 50309-1891
Title of Document: Easement for Bus Shelter Encroachment on City-Owned Property
Grantor's Name: City of Des Moines, Iowa
Grantee's Name: Des Moines Area Regional Transit Authority
Legal Description: See below on this page.

Project: DART Bus Shelters

Parcel No.: 009

Activity ID: 341111000

EASEMENT FOR BUS SHELTER ENCROACHMENT ON CITY-OWNED PROPERTY

The City of Des Moines, Iowa (hereinafter referred to as the "Grantor" or "City"), in consideration of the sum of Two Hundred Twenty and No/100 Dollars (\$220.00) for costs incurred by the City, receipt of which is hereby acknowledged, does hereby convey unto Des Moines Area Regional Transit Authority (DART, hereinafter referred to as the "Grantee"), an Easement for Bus Shelter Encroachment upon vacated City of Des Moines, Iowa right-of-way located on the east side of 6th Avenue, north of Franklin Avenue, Des Moines, Iowa, and legally described as follows:

A PART OF VACATED 6TH AVENUE RIGHT OF WAY IN RIVERVIEW PARK, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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AS GENERALLY DEPICTED ON ATTACHED EXHIBIT "A".

(Vacated by Ordinance No. _____, passed _____, 20____)

(hereinafter referred to as the "Easement Area") for the limited purpose of the Grantee installing, operating, repairing, and maintaining a Des Moines Area Regional Transit Authority (DART) bus stop shelter, (hereinafter "Bus Shelter"), and for no other purpose.

This Easement shall be subject to the following terms and conditions:

1. **USE OF EASEMENT AREA.** Grantee shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area for the limited purpose, and subject to the provisions, set forth herein. This Easement allows the Grantee, its contractors, agents, and employees, the right to enter in, upon and onto the Easement Area to perform any and all activities related to or necessary for the construction, reconstruction, repair, operation, or maintenance of the Bus Shelter, subject to the following: (1) Grantee's installation and use of the Bus Shelter shall comply with all City, State and Federal ordinances and regulations, and shall be performed in a workmanlike manner; (2) Grantee, or its contractors, shall obtain, comply with, and pay all related fees for all necessary permits, and provide required insurance and bond, related to excavation and obstruction of City right-of-way upon and above the Easement Area prior to accessing the Easement Area, and, except in the case of emergency, access to the Easement Area shall be limited to the times set forth in such permits; (3) the Bus Shelter shall be constructed and installed in accordance with plans and specifications approved by the City Engineer or designee, and Grantee shall certify to the City that the Bus Shelter has been constructed and located within the Easement Area as shown on the approved plans and specifications.

The City, its franchisees or licensees with existing equipment in the Easement Area as of the date of recording this Agreement, and their respective agents, contractors, and employees, shall have the right of access to the Easement Area and have all right of ingress and egress reasonably necessary for use, construction, reconstruction, operation, maintenance, expansion, and repair of the adjacent roadway and/or any and all public or private utilities located within the Easement Area or adjoining City-owned property. If the Bus Shelter has to be temporarily or permanently modified or temporarily or permanently relocated due to above said use of Easement Area by City, or said City franchisees or licensees, then Grantee shall be solely responsible for costs associated with the temporary or permanent modification/relocation.

2. **MAINTENANCE OF AND LIABILITY FOR EASEMENT AREA.** The Grantee shall be solely responsible for all activities related to and costs of maintenance of the Easement Area and installation, operation, maintenance and repair of the Bus Shelter, in accordance with City ordinances, policies and regulations, and State and federal law.

In addition to the indemnification requirements set forth in this Easement, Grantee acknowledges and agrees that it is accepting this Easement at Grantee's own risk; that the City shall not mark, locate, or otherwise identify this Easement or cause other utilities or right-of-way users to be aware of or avoid the Easement Area; that the City shall not be liable for any damage caused by the City, its employees, agents, contractors, volunteers or assigns, or by any other utility, person or entity, to the Bus Shelter within the Easement

Area; and that Grantee agrees to hold the City harmless from any claims, including but not limited to claims made by Grantee, relating to the foregoing.

3. **EASEMENT RUNS WITH LAND.** This Easement shall be deemed to run with the land, and shall remain binding on the City and the City's successors and assigns and on Grantee and Grantee's successors and assigns for its duration. For purposes of this Easement and enforcement thereof, the term "Grantee" shall include Grantee's successors and assigns unless otherwise specified. The use of the Easement Area by Grantee, its successors and assigns, for the installation, operation, maintenance or repair of the Bus Shelter shall constitute Grantee's, and its successors' and assigns', acceptance of the provisions and of the obligations of Grantee as set forth in this Easement.
4. **DURATION; REMOVAL OF BUS SHELTER UPON TERMINATION.** This Easement shall remain in full force and effect for the life of the Bus Shelter upon the Easement Area. In the event that Grantee abandons or no longer uses the Bus Shelter within the Easement Area, then this Easement shall automatically terminate with or without recorded release. After either such termination, Grantee shall have sixty (60) days to remove the Bus Shelter from the Easement Area and to commence restoration of the surface and above-surface improvements upon and above the Easement Area to their original condition prior to such installation and access, as determined by the City, pursuant to this Easement and to all applicable permits for use of the City right-of-way and in accordance with the City's Utility Accommodation and Street Restoration Specifications. If Grantee fails to remove its Bus Shelter as provided herein, it shall be deemed abandoned and the City may remove part of all of the Bus Shelter at Grantee's, or its successors or assigns, cost, or the City may assume possession and ownership of the Bus Shelter without compensation to Grantee, at City's sole discretion.
5. **INDEMNITY AND INSURANCE.** Grantee agrees (a) to defend, pay on behalf of, indemnify, and hold harmless the City of Des Moines, Iowa, its elected and appointed officials, employees and volunteers and other working on behalf of the City, as more particularly provided in Attachment 1 hereto, and (b) to obtain and maintain in continuous effect during the term of this Easement, the insurance coverage set forth in Attachment 1 hereto.
6. **SPECIAL PROVISIONS.** The consideration paid for this Easement accounts for costs incurred by the City in preparing necessary documentation for each Bus Shelter location to allow vacation and conveyance of property within the right-of-way including but not limited to preparation of an exhibit and corresponding legal description. Grantee's indemnification obligations set forth herein include any and all claims arising from the City's acts or omissions in reviewing and preparing the legal description(s) for the Easement Area as requested by DART. DART shall solely be responsible for all snow removal within the Easement Area.
7. **ENFORCEMENT OF EASEMENT TERMS.** The terms and obligations set forth in this Easement are enforceable by the City by any and all legally available options, including but not limited to specific performance, injunctive relief, and assessment of costs. This Easement shall be governed by, construed and enforced in accordance with the laws of the

State of Iowa, and Grantee agrees to pay and discharge all costs and fees, including fees for services rendered by the City Legal Department, attorneys, officers, employees, or agents, or any expense that shall arise from enforcing any of the terms of this Easement.

Signed this _____ day of _____, 20_____.

CITY OF DES MOINES, IOWA

ATTEST:

By: _____
P. Kay Cmelik, City Clerk

By: _____
T M Franklin Cownie, Mayor

APPROVED AS TO FORM:



Lisa A. Wieland
Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 20__ before me, the undersigned, a Notary Public, personally appeared T. M. Franklin Cownie and P. Kay Cmelik, to me personally known, who, being by me duly sworn, did state that they are the Mayor and City Clerk, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Resolution and Roll Call No. ____-____ adopted by the City Council on the _____ day of _____, and that T. M. Franklin Cownie and P. Kay Cmelik acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

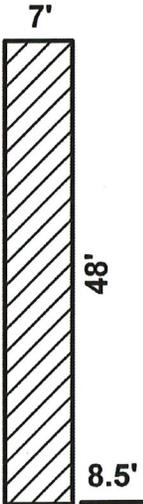
Notary Public in the State of Iowa

EXHIBIT A

RIVERVIEW PARK

LOT 16

6th Ave



POB

EAST ROW LINE OF 6TH AVE

34'

SW CORNER OF LOT 16 (POC)

Legend

 EASEMENT AREA

Franklin Ave



ATTACHMENT 1

CITY STANDARD EASEMENT – MAJOR

INSURANCE & INDEMNIFICATION REQUIREMENTS

1. GENERAL

The GRANTEE shall purchase and maintain insurance to protect the GRANTEE and CITY throughout the duration of the Agreement to which these Requirements are attached (hereinafter “Agreement”). Said insurance shall be provided by an insurance company(ies), “admitted” and “nonadmitted” to do business in the State of Iowa, having no less than an A. M. Best Rating of “B+.” All policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to the CITY. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the CITY prior to Agreement execution or commencement of GRANTEE’S use or occupancy of City property including that of GRANTEE’S officers, agents, employees, contractors, subcontractors and any other party working for, through, or on behalf of GRANTEE.

The City of Des Moines, Iowa hereby reserves the right to revise and enforce the requirements in this Attachment over the term of this Agreement but only after providing GRANTEE at least sixty (60) days advance written notification of any such change.

2. INSURANCE REQUIREMENTS

A. WORKER’S COMPENSATION & EMPLOYER’S LIABILITY INSURANCE: The GRANTEE shall procure and maintain Worker’s Compensation Insurance, including Employer’s Liability Coverage, both written with State of Iowa statutory limits. ***Waiver of Subrogation in favor of the CITY is required.***

B. COMMERCIAL GENERAL LIABILITY INSURANCE: The GRANTEE shall procure and maintain Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground – XCU (when applicable). ***Waiver of Subrogation in favor of the CITY is required.***

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by a standard form Commercial General Liability Policy (ISO CG 0001 including standard exclusions or a non-ISO equivalent form).

C. UMBRELLA/EXCESS LIABILITY INSURANCE: The Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella or Excess Liability Insurance. If the Umbrella or Excess Insurance policy does not follow the form of the primary policies, it shall include the same endorsements as required of the primary policies. ***Waiver of Subrogation in favor of the CITY is required.***

- D. ADDITIONAL INSURED ENDORSEMENT: The General Liability Insurance policy shall include standard ISO endorsements CG 20 26 07 04 and CG 20 37 07 04 or their non-ISO equivalents. GRANTEE'S insurance shall be primary to that of the City and noncontributory to any other insurance or similar coverage available to the CITY whether the other available coverage is primary, contributing or excess.
- E. GOVERNMENTAL IMMUNITY ENDORSEMENT: The General Liability Insurance policy shall include the CITY Governmental Immunities Endorsement language as provided below. Standard ISO or insurance carrier "Waiver of Immunity" endorsements are not acceptable.

**CITY OF DES MOINES, IOWA
GOVERNMENTAL IMMUNITIES ENDORSEMENT**

1. Nonwaiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Des Moines, Iowa as Additional Insured does not waive any of the defenses of governmental immunity available to the City of Des Moines, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
 2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time. Those claims not subject to Code of Iowa Section 670.4 shall be covered by the terms and conditions of this insurance policy.
 3. Assertion of Government Immunity. The City of Des Moines, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Des Moines, Iowa.
 4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Des Moines, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Des Moines, Iowa.
 5. No Other Change in Policy. The insurance carrier and the City of Des Moines, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.
- F. CANCELLATION & NONRENEWAL NOTIFICATION ENDORSEMENT: The General Liability Insurance policy shall be endorsed to provide the CITY with no less than thirty (30) days Advanced Written Notice of Cancellation, forty-five (45) days Advanced Written Notification for Nonrenewal and ten (10) days Written Notification of Cancellation due to non-payment of premium. ***Written notifications shall be sent to: City of Des Moines, Real Estate Division, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.***

- G. WAIVER OF SUBROGATION: To the fullest extent permitted by law, GRANTEE hereby releases the CITY, including its elected and appointed officials, agents, employees and volunteers and others working on its behalf from and against any and all liability or responsibility to the GRANTEE or anyone claiming through or under the GRANTEE by way of subrogation or otherwise, for any loss without regard to the fault of the CITY or the type of loss involved, including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. The GRANTEE'S policies of insurance shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY including its elected and appointed officials, agents, employees and volunteers, and others working on its behalf.
- H. PROOF OF INSURANCE: The GRANTEE shall provide to the CITY a Certificate(s) of Insurance evidencing all required insurance coverage as provided in paragraphs A through H above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify the title of the Agreement under "Description of Operations/Locations/Vehicle/Special Items." Copies of compliant Additional Insured, Governmental Immunities, and Cancellation and Material Change endorsements shall be submitted with the Certificate(s) of Insurance so as to evidence their inclusion in the coverages required. ***Mail Certificate of Insurance to: City of Des Moines, Real Estate Division, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.***
- I. AGENTS, CONTRACTORS AND SUBCONTRACTORS: The GRANTEE shall require that any of its agents, contractors and subcontractors who perform work and/or services on behalf of the GRANTEE purchase and maintain the types of insurance customary to the services provided.
- J. RESPONSIBILITY FOR THE PROPERTY OF OTHERS – GRANTEE shall assume full responsibility for all loss or damage from any cause whatsoever to any property brought onto City property that is owned or rented by GRANTEE, or any of GRANTEE'S employees, agents, contractors, subcontractors or any other party working for, through, or on behalf of GRANTEE.

3. **INDEMNIFICATION REQUIREMENTS**

For purposes of this Section 3, the term "CITY" means the City of Des Moines, Iowa and its elected and appointed officials, agents, employees and volunteers, and others working on its behalf. To the fullest extent permitted by law, GRANTEE agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith, including, but not limited to, attorneys' fees and court costs, that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss, including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with the Agreement and/or GRANTEE'S use or occupancy of City property including that of GRANTEE'S officers, agents, employees, contractors, subcontractors and others under the control of GRANTEE.

GRANTEE's obligation to indemnify the CITY contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by GRANTEE arising out of or in any way connected or associated with the Agreement and/or GRANTEE's use or occupancy of City property including that of GRANTEE'S officers, agents, employees, contractors, subcontractors and others under the control of GRANTEE, except to the extent caused by or resulting from the negligence of the CITY.

GRANTEE expressly assumes responsibility for any and all damage caused to CITY property arising out of or in any way connected or associated with the Agreement and/or GRANTEE'S use or occupancy of City Property including that of GRANTEE'S officers, agents, employees, contractors, subcontractors and others under the control of GRANTEE.

GRANTEE shall ensure that its activities on CITY property will be performed and supervised by adequately trained and qualified personnel, and GRANTEE will observe all applicable safety rules.