

Date April 6, 2020

HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF PORTIONS OF ALLEY AND 7TH STREET RIGHT-OF-WAY ADJOINING 655 WALNUT STREET, AND 7TH STREET RIGHT-OF-WAY ADJOINING 319 7TH STREET, 701 WALNUT STREET AND 700 LOCUST STREET; AND CONVEYANCE OF CERTAIN EASEMENT INTERESTS TO EMPLOYERS MUTUAL CASUALTY COMPANY FOR \$5,571.00

WHEREAS, on March 9, 2020, by Roll Call No. 20-0419, the City Council of the City of Des Moines, Iowa voted to receive and file a recommendation from the City Plan and Zoning Commission to approve a request from Employers Mutual Casualty Company, owner of property at 655 and 701 Walnut Street, to vacate the following portions of street and alley rights-of-way, subject to the reservation of any necessary easements to allow public access to the alley entrances from 7th Street; subject to the reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at applicant's expense; and further subject to the provision that any construction on the proposed vacations shall be in accordance with all administrative comments as part of the Site Plan review:

- (1) A segment of air rights within the east/west alley and 7th Street adjoining 655 Walnut Street to allow for encroachment of the private portion of the 2nd Story Skywalk Bridge over the street;
- (2) Two segments of surface and subsurface rights in the eastern portion of 7th Street adjacent to 655 Walnut Street and 319 7th Street to allow for support elements of the Skywalk Bridge; and
- (3) Two segments of surface and subsurface rights on the western portion of 7th Street adjacent to 701 Walnut Street and 700 Locust Street; and

WHEREAS, Employers Mutual Casualty Company, owner of property at 655 and 701 Walnut Street, has offered to the City of Des Moines ("City") the purchase price of \$5,571.00 for the purchase of a Permanent Easement for Air Space Above City-owned Property, a Permanent Easement for Building Encroachment, and a Permanent Easement for Subsurface Building Encroachment in portions of the vacated alley and 7th Street right-of-way adjoining 655 Walnut Street, 319 7th Street, 701 Walnut Street and 700 Locust Street, Des Moines, Iowa (hereinafter "Property"), for the purpose of installing, operating, maintaining, or repairing a skywalk bridge connection between buildings at 655 Walnut Street and 700 Locust Street, which price reflects the fair market value of the Property as determined by the City's Real Estate Division; and

WHEREAS, the City has no known current or anticipated public need for the Property proposed to be vacated and conveyed, subject to: 1) the reservation of any necessary easements to allow public access to the alley entrances from 7th Street; 2) the reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at applicant's expense; and 3) the provision that any construction on the proposed vacations shall be in accordance with a site plan approved by the City, and the City will not be inconvenienced by the vacation and sale of easements within said Property; and

WHEREAS, on March 23, 2020, by Roll Call No. 20-0518, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation and conveyance of the Property be

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Date April 6, 2020.....

set for hearing on April 6, 2020, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

WHEREAS, due notice of said proposal to vacate (1) a segment of air rights within the east/west alley and 7th Street adjoining 655 Walnut Street; (2) two segments of surface and subsurface rights in the eastern portion of 7th Street adjacent to 655 Walnut Street and 319 7th Street; and (3) two segments of surface and subsurface rights on the western portion of 7th Street adjacent to 701 Walnut Street and 700 Locust Street, Des Moines, Iowa, subject to: 1) the reservation of any necessary easements to allow public access to the alley entrances from 7th Street; 2) the reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at applicant's expense; and 3) the provision that any construction on the proposed vacations shall be in accordance with all administrative comments as part of the Site Plan review, 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 the 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 the proposed vacation and conveyance of (1) a segment of air rights within the east/west alley and 7th Street adjoining 655 Walnut Street; (2) two segments of surface and subsurface rights in the eastern portion of 7th Street adjacent to 655 Walnut Street and 319 7th Street; and (3) two segments of surface and subsurface rights on the western portion of 7th Street adjacent to 701 Walnut Street and 700 Locust Street, as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the street and alley right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of said street and alley right-of-way, legally described as follows, and said vacation is hereby approved:

SURFACE ENCROACHMENT:

A PART OF THE 7TH STREET RIGHT-OF-WAY LYING EAST OF BLOCK 1, FORT DES MOINES AND WEST OF BLOCK 12, ORIGINAL TOWN OF FORT DES MOINES, OFFICIAL PLATS NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

AREA "A"

COMMENCING AT THE NORTHEAST CORNER OF LOT 6 IN SAID BLOCK 1, FORT DES MOINES; THENCE NORTH 78°04'33" EAST, 1.21 FEET TO THE POINT OF BEGINNING; THENCE NORTH 74°15'14" EAST, 1.07 FEET; THENCE SOUTH 15°44'46" EAST, 2.04 FEET; THENCE

Date April 6, 2020

SOUTH 74°15'14" WEST, 1.07 FEET; THENCE NORTH 15°44'46" WEST, 2.04 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.2 SQUARE FEET.

AREA "B"

COMMENCING AT THE NORTHEAST CORNER OF LOT 6 IN SAID BLOCK 1, FORT DES MOINES; THENCE NORTH 12°44'17" WEST, 22.99 FEET TO THE POINT OF BEGINNING; THENCE NORTH 15°44'46" WEST, 2.04 FEET; THENCE NORTH 74°15'14" EAST, 1.07 FEET; THENCE SOUTH 15°44'46" EAST, 2.04 FEET; THENCE SOUTH 74°15'14" WEST, 1.07 FEET TO THE POINT OF BEGINNING AND CONTAINING 2.2 SQUARE FEET.

AREA "C"

COMMENCING AT THE NORTHEAST CORNER OF LOT 6 IN SAID BLOCK 1, FORT DES MOINES; THENCE NORTH 59°44'19" EAST, 65.75 FEET TO THE POINT OF BEGINNING; THENCE NORTH 15°44'46" WEST, 1.17 FEET; THENCE NORTH 74°15'14" EAST, 1.21 FEET; THENCE SOUTH 15°44'46" EAST, 1.17 FEET; THENCE SOUTH 74°15'14" WEST, 1.21 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.4 SQUARE FEET.

AREA "D"

COMMENCING AT THE NORTHEAST CORNER OF LOT 6 IN SAID BLOCK 1, FORT DES MOINES; THENCE SOUTH 86°43'45" EAST, 67.33 FEET TO THE POINT OF BEGINNING; THENCE NORTH 74°15'14" EAST, 1.21 FEET; THENCE SOUTH 15°44'46" EAST, 1.17 FEET; THENCE SOUTH 74°15'14" WEST, 1.21 FEET; THENCE NORTH 15°44'46" WEST, 1.17 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.4 SQUARE FEET.

AIR SPACE ENCROACHMENT:

A PART OF THE 7TH STREET AND EAST-WEST ALLEY RIGHT-OF-WAY LYING ADJACENT TO LOT 3 IN BLOCK 12 OF THE ORIGINAL TOWN OF FORT DES MOINES, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 6 IN BLOCK 1, FORT DES MOINES, AN OFFICIAL PLAT; THENCE NORTH 85°51'40" EAST, 67.29 FEET TO THE WEST LINE OF SAID LOT 3 IN BLOCK 12 OF THE ORIGINAL TOWN OF FORT DES MOINES AND THE POINT OF BEGINNING; THENCE NORTH 60°38'46" WEST, 14.27 FEET; THENCE NORTH 29°21'14" EAST, 20.22 FEET; THENCE SOUTH 60°38'46" EAST, 15.30 FEET TO THE NORTH LINE OF SAID LOT 3; THENCE SOUTH 74°15'04" WEST ALONG SAID NORTH LINE, 14.96 FEET TO THE NORTHWEST CORNER OF SAID LOT 3; THENCE SOUTH 15°21'59" EAST ALONG THE WEST LINE OF SAID LOT 3, A DISTANCE OF 13.54 FEET TO THE POINT OF BEGINNING AND CONTAINING 198 SQUARE FEET, LYING BETWEEN ELEVATIONS 53.59 AND 76.68 FEET CITY OF DES MOINES VERTICAL DATUM (REFERENCE GROUND ELEVATION OF 36.26 FEET AT SIDEWALK BELOW).

Date April 6, 2020

SUBSURFACE ENCROACHMENT:

A PART OF THE 7TH STREET RIGHT-OF-WAY LYING EAST OF BLOCK 1, FORT DES MOINES AND WEST OF BLOCK 12, ORIGINAL TOWN OF FORT DES MOINES, OFFICIAL PLATS NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

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COMMENCING AT THE NORTHEAST CORNER OF LOT 6 IN SAID BLOCK 1, FORT DES MOINES; THENCE NORTH 04°43'30" WEST, 3.89 FEET TO THE POINT OF BEGINNING; THENCE NORTH 74°15'14" EAST, 2.00 FEET; THENCE SOUTH 15°44'46" EAST, 8.00 FEET; THENCE SOUTH 74°15'14" WEST, 2.00 FEET; THENCE NORTH 15°44'46" WEST, 8.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 16 SQUARE FEET.

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COMMENCING AT THE NORTHEAST CORNER OF LOT 6 IN SAID BLOCK 1, FORT DES MOINES; THENCE NORTH 13°36'59" WEST, 20.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 15°44'46" WEST, 8.00 FEET; THENCE NORTH 74°15'14" EAST, 2.00 FEET; THENCE SOUTH 15°44'46" EAST, 8.00 FEET; THENCE SOUTH 74°15'14" WEST, 2.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 16 SQUARE FEET.

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3. The proposed sale of such vacated alley right-of-way, and a Permanent Easement for Air Space Above City-owned Property, a Permanent Easement for Building Encroachment, and a Permanent Easement for Subsurface Building Encroachment, as legally described and to the grantees and for the consideration identified below, subject to: 1) the reservation of any necessary easements to allow public access to the alley entrances from 7th Street; 2) the reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or relocated at applicant's expense; and 3) the provision that any construction on the proposed vacations shall be in accordance with a site plan approved by the City, is hereby approved:

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Date April 6, 2020

Grantee: Employers Mutual Casualty Company
Consideration: \$5,571.00
Legal Description:

SURFACE ENCROACHMENT:

A PART OF THE VACATED 7TH STREET RIGHT-OF-WAY LYING EAST OF BLOCK 1, FORT DES MOINES AND WEST OF BLOCK 12, ORIGINAL TOWN OF FORT DES MOINES, OFFICIAL PLATS NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

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AIR SPACE ENCROACHMENT:

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Date April 6, 2020

AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

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4. The Mayor is authorized and directed to sign the Permanent Easement for Air Space Above City-owned Property, a Permanent Easement for Building Encroachment, and a Permanent Easement for Subsurface Building Encroachment for the conveyances as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

5. Upon proof of payment of the consideration, plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the Permanent Easement for Air Space Above City-owned Property, a Permanent Easement for Building Encroachment, and a Permanent Easement for Subsurface Building Encroachment, 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.

6. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Air Space Above City-owned Property, a Permanent Easement for Building Encroachment, and a Permanent Easement for Subsurface Building Encroachment, together with a certified copy of this resolution and of the affidavit of publication of the 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 Permanent Easement for Air Space Above City-owned Property, a Permanent Easement for Building Encroachment, and a Permanent Easement for Subsurface Building Encroachment, and a copy of the other documents to the grantee.

8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

41

Date April 6, 2020

Moved by _____ to adopt.

APPROVED AS TO FORM:


 Lisa A. Wieland, Assistant City Attorney

pin

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED APPROVED

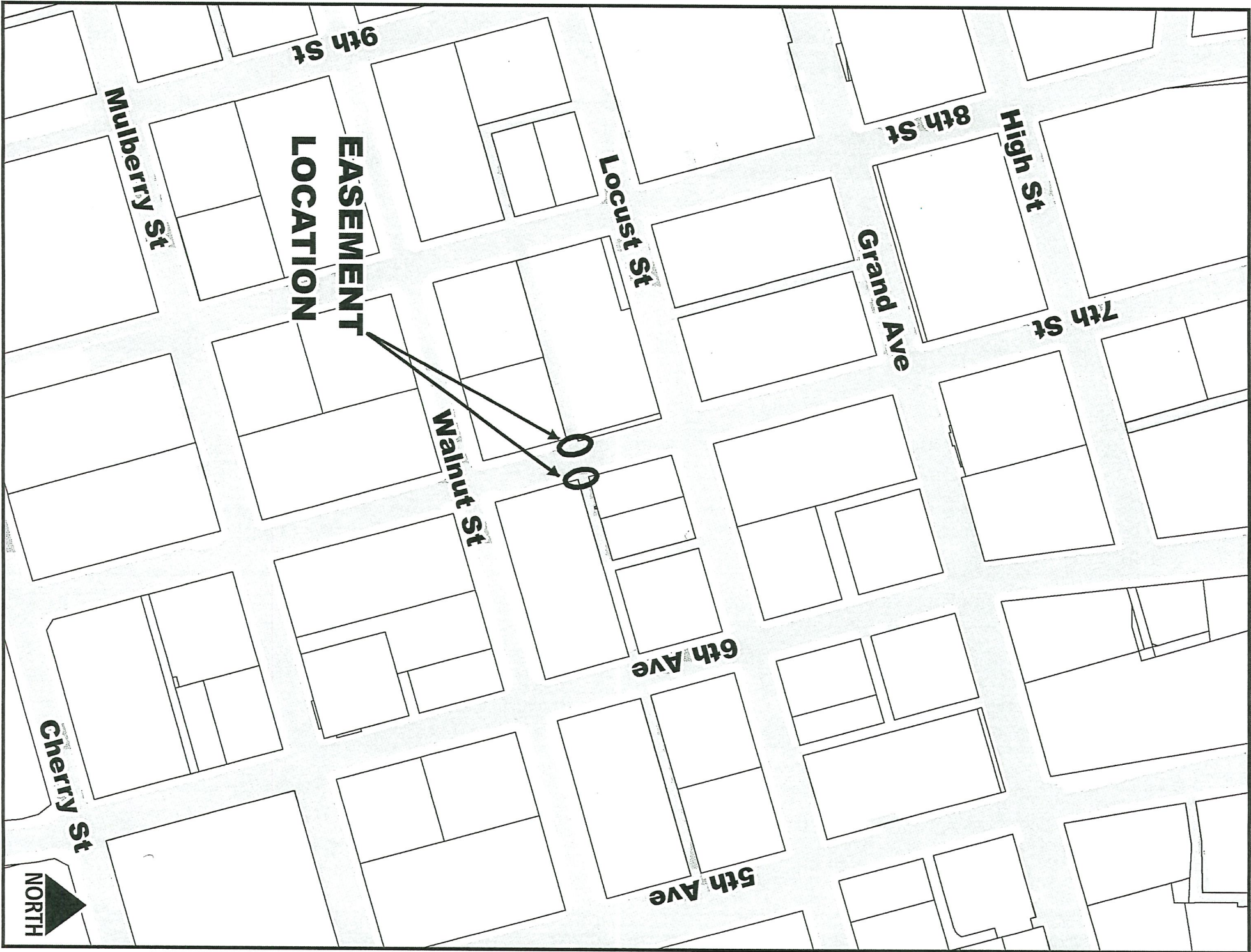
 Mayor

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



March 3, 2020

Date April 20, 2020
Agenda Item 41
Roll Call # _____

Honorable Mayor and City Council
City of Des Moines, Iowa

Members:

Communication from the City Plan and Zoning Commission advising that at their February 20, 2020 meeting, the following action was taken regarding a request from Employers Mutual Casualty Company (owner) 655 and 701 Walnut Street, represented by Cindy McCauley (officer) for vacation of the following segments of Right-Of-Way.

- A) A segment of air rights within the east/west alley and 7th Street adjoining 655 Walnut Street to allow for encroachment of the private portion of the 2nd Story Skywalk Bridge over the street.
- B) Two segments of surface and subsurface Right-Of-Way on the eastern portion of 7th Street adjacent to 655 Walnut Street and 319 7th Street to allow for support elements of the Skywalk Bridge.
- C) Two segments of surface and subsurface Right-Of-Way on the western portion of 7th Street adjacent to 701 Walnut Street and 700 Locust Street.

COMMISSION RECOMMENDATION:

After public hearing, the members voted 8-0 as follows:

Commission Action:	Yes	Nays	Pass	Absent
Francis Boggus	X			
Dory Briles	X			
Abby Chungath	X			
Jacqueline Easley				X
Jann Freed				X
John "Jack" Hilmes				X
Lisa Howard	X			
Carolyn Jenison	X			
Greg Jones				X
William Page				X
Rocky Sposato	X			
Steve Wallace	X			
Greg Wattier				X
Emily Webb	X			

RECOMMEND APPROVAL of the requested vacations subject to the following conditions:

1. Reservation of any necessary easements to allow public access to the alley entrances from 7th Street.
2. Reservation of any existing utilities until such time that they are abandoned or relocated at the applicant's expense.
3. Any construction on the proposed vacations shall be in accordance with all administrative comments as part of the Site Plan review.

(11-2020-1.02)

Written Responses

1 in Favor

0 in opposition

RECOMMENDATION TO THE P&Z COMMISSION

Part A-C) Staff recommends approval of the requested vacations subject to the following conditions:

1. Reservation of any necessary easements to allow public access to the alley entrances from 7th Street.
2. Reservation of any existing utilities until such time that they are abandoned or relocated at the applicant's expense.
3. Any construction on the proposed vacations shall be in accordance with all administrative comments as part of the Site Plan review.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. **Purpose of Request:** The proposed vacations would allow construction of a skywalk connection between buildings at 655 Walnut Street and 700 Locust Street replacing a previous skywalk connection between 655 Walnut Street and 701 Walnut Street.
2. **Size of Site:** 269.2 square feet total for all proposed vacations.
3. **Existing Zoning (site):** "DX1" Downtown District. *DX1 is intended for the highest intensity of activity in the downtown, where mixed use buildings include offices, ground floor storefronts with shopping, services, and restaurants, and residential and lodging.*
4. **Existing Land Use (site):** The site consists of public 7th Street and alley rights-of-way.
5. **Adjacent Land Use and Zoning:**

North – “DX1”; Use includes 7th Street public right-of-way.

South – “DX1”; Uses include 7th Street public right-of-way.

East – “DX1”; Use includes Employers Mutual Casualty Company and the Des Moines Griffin Building.

West – “DX1”; Use includes a parking garage and proposed high-rise development under construction.

6. General Neighborhood/Area Land Uses: The subject property is located in Downtown Des Moines Neighborhood, which is an area consisting of a mix of multiple-household residential, office, commercial, religious, educational, and institutional uses.

7. Applicable Recognized Neighborhood(s): The subject property is located in the Downtown Des Moines Neighborhood. The neighborhood association was notified of the public hearing by mailing of the Preliminary Agenda on January 31, 2020 and by mailing of the Final Agenda on February 14, 2020. Additionally, separate notifications of the hearing for this specific item were mailed on February 10, 2020 (10 days prior to public hearing) to the Neighborhood Associations and to the primary titleholder on file with the Polk County Assessor for each property adjacent or directly across the street from the requested right-of-way.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division on the date of the mailing. The Downtown Des Moines Neighborhood Association notices were mailed to Peter Erickson, 214 Watson Powell Jr. Way #505, Des Moines, IA 50309.

8. Relevant Zoning History: On October 26, 2016, by Docket ZON2016-00185, the Zoning Board of Adjustment granted an Exception of 105 feet over the calculated maximum allowed 315 feet of height for a building at 701 Walnut Street to allow construction of a mixed-use (commercial and multiple-family residential) building having a maximum height of up 420 feet and a maximum prism volume of up to 4,536,045 cubic feet, on a parcel of land with 17,315 square feet of area

9. PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation: Downtown Mixed Use.

10. Applicable Regulations: Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code, the Commission reviews all proposals to vacate land dedicated for a specific public purpose, such as for streets and parks, to determine whether the land is still needed for such purpose or may be released (vacated) for other use. The recommendation of the Commission is forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. Utilities: A distribution water main, valves and hydrant connections are located within the 7th Street right-of-way. A sanitary conduit is located within the 7th Street right-of-way. The subject vacations do not appear to directly impact these utilities; however, any necessary easements must be reserved for any existing utilities until such time that they are abandoned or relocated at the applicant’s expense.

2. **Alley System:** The subject east/west alley rights-of-way provide access to the rear of the surrounding buildings including emergency pedestrian exits. The proposed vacations should not impact the ability to provide adequate access to the properties via this alley. Staff recommends approval of the requested vacations subject to reservation of any necessary easements to allow public access to the alley entrances from 7th Street.
3. **Streets/Sidewalk:** The proposed vacations would facilitate the construction of necessary support structures within the public rights-of-way, including the sidewalks and alley accesses, along the east and west sides of 7th Street. Staff recommends approval of the requested vacations subject to reservation of any necessary easements within the 7th Street rights-of-way.

SUMMARY OF DISCUSSION

Dory Briles asked if any member of the audience or the commission desired to speak regarding the item. None were present or requested to speak.

COMMISSION ACTION:

Rocky Sposato made a motion for approval of the requested vacations subject to the following conditions:

1. Reservation of any necessary easements to allow public access to the alley entrances from 7th Street.
2. Reservation of any existing utilities until such time that they are abandoned or relocated at the applicant's expense.
3. Any construction on the proposed vacations shall be in accordance with all administrative comments as part of the Site Plan review.

Motion passed: 8-0

Respectfully submitted,



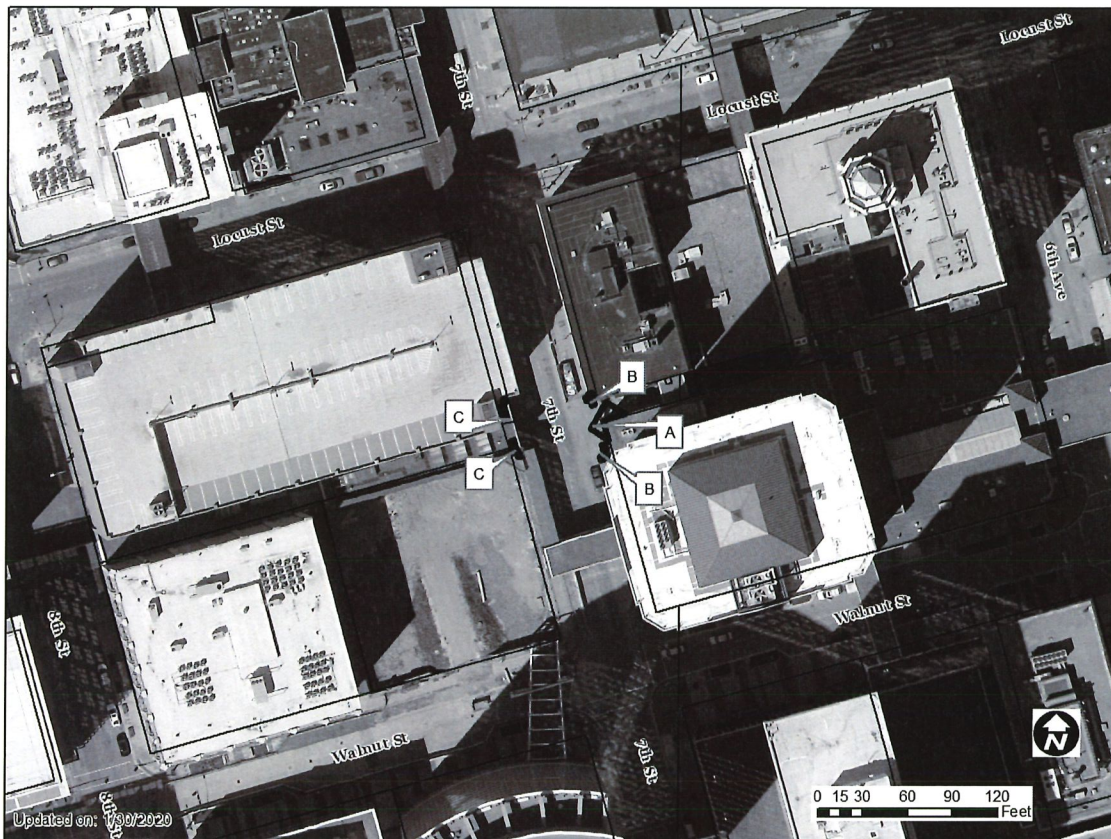
Erik Lundy, AICP
Senior City Planner

EML:tjh
Attachments

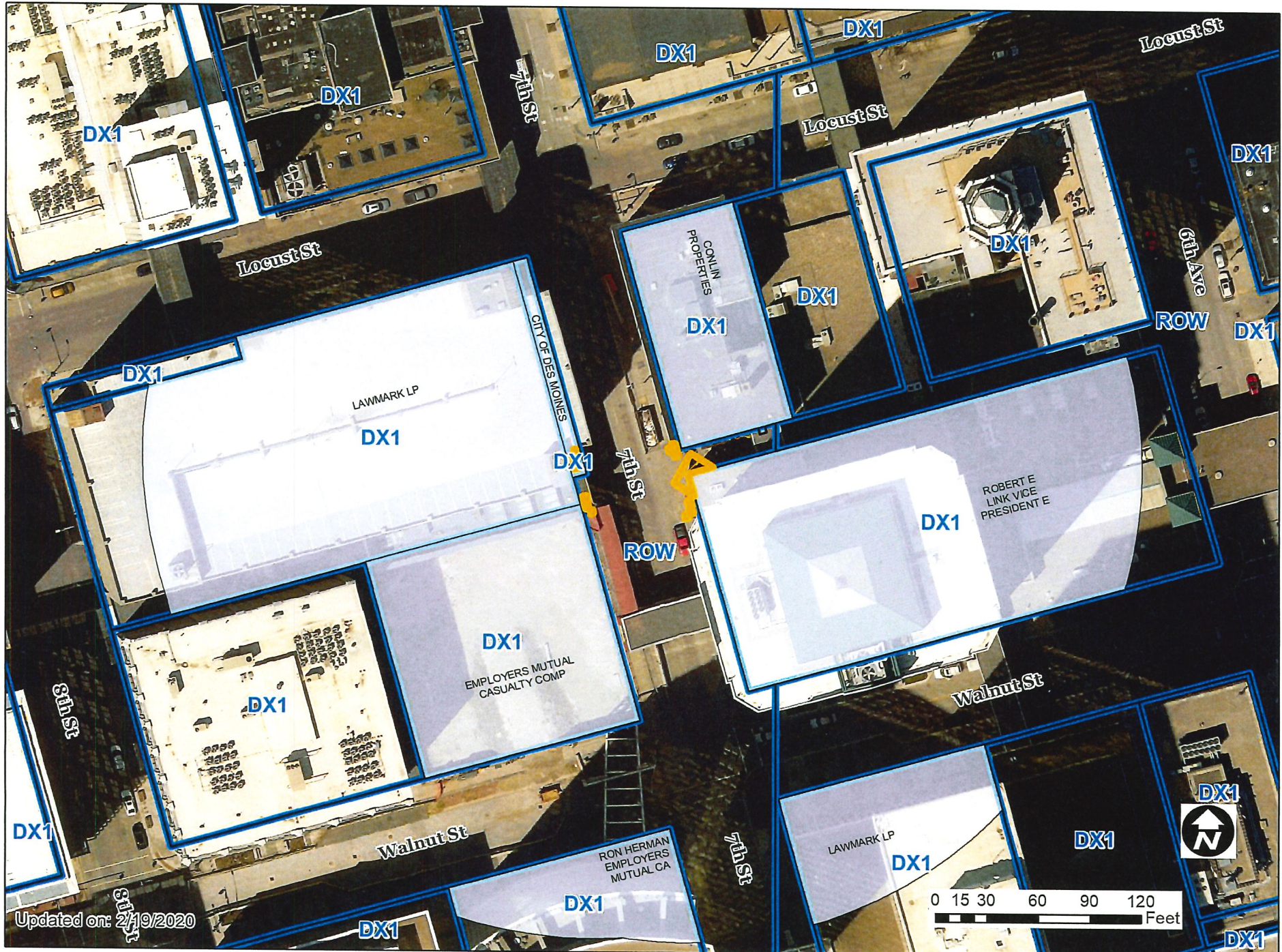
Employers Mutual Casualty Company (owner) 655 and 701 Walnut Street, represented by Cindy McCauley (officer).			File #	
			11-2020-1.02	
Description of Action	Vacation of the following segments of Right-Of-Way: A) A segment of air rights within the east/west alley and 7th Street adjoining 655 Walnut Street to allow for encroachment of the private portion of the 2nd Story Skywalk Bridge over the street. B) Two segments of surface and subsurface Right-Of-Way on the eastern portion of 7th Street adjacent to 655 Walnut Street and 319 7th Street to allow for support elements of the Skywalk Bridge. C) Two segments of surface and subsurface Right-Of-Way on the western portion of 7th Street adjacent to 701 Walnut Street and 700 Locust Street.			
PlanDSM Future Land Use	Current: Downtown Mixed Use. Proposed: N/A.			
Mobilizing Tomorrow Transportation Plan	No planned improvements.			
Current Zoning District	"DX1" Downtown District.			
Proposed Zoning District	N/A.			
Consent Card Responses	In Favor	Not In Favor	Undetermined	% Opposition
Outside Area (200 feet)				
Within Subject Property	1	0		
Plan and Zoning Commission Action	Approval	X	Required 6/7 Vote of the City Council	Yes
	Denial			No

Employers Mutual Casualty Co., 655 and 701 Walnut Street

11-2020-1.02



1 inch = 74 feet



Updated on: 2/19/2020

1 inch = 74 feet

17

Item: 11-2020-1.02 Date: 2/14/20

I (am) (am not) in favor of the request: SUBJECT PROPERTY OWNER

(Circle One)

Print Name: Cindy McCawley, ARP-EMC

RECEIVED
COMMUNITY DEVELOPMENT

Signature: Cindy McCawley

FEB 18 2020

Address: 717 Mulberry St., Dubuque IA 52009

Reason for opposing or approving this request may be listed below:

Prepared by: David DeForest Colvig, Real Estate Coordinator City of Des Moines, 400 Robert D. Ray Drive, Des Moines, IA 50309-1891 (515) 283-4561
Return to: Real Estate Division, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, IA 50309-1891
Taxpayer: Employers Mutual Casualty Company, 717 Mulberry Street, Des Moines, IA 50309
Title of Document: Permanent Easement for Subsurface Building Encroachment
Grantor's Name: City of Des Moines, Iowa
Grantee's Name: Employers Mutual Casualty Company
Legal Description: See below on this page.

Project: Disposition – No Acquisition Project

Parcel No.: 613

Activity ID: 341111000

PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY

That the **CITY OF DES MOINES, IOWA**, a municipal corporation of the County of Polk, the State of Iowa (hereinafter referred to as the "City"), in consideration of the sum of Eight Hundred Thirty-two and no/100 Dollars (\$832.00) and other valuable consideration, receipt of which is hereby acknowledged, does hereby convey unto **Employers Mutual Casualty Company**, an Iowa corporation, (hereinafter referred to as the "Grantee"), a Permanent Easement for Subsurface Building Encroachment On City-Owned Property under, through and across the following described property:

A PART OF THE VACATED 7TH STREET RIGHT-OF-WAY LYING EAST OF BLOCK 1, FORT DES MOINES AND WEST OF BLOCK 12, ORIGINAL TOWN OF FORT DES MOINES, OFFICIAL PLATS NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

AREA "A"

COMMENCING AT THE NORTHEAST CORNER OF LOT 6 IN SAID BLOCK 1, FORT DES MOINES; THENCE NORTH 04°43'30" WEST, 3.89 FEET TO THE POINT OF BEGINNING; THENCE NORTH 74°15'14" EAST, 2.00 FEET; THENCE SOUTH 15°44'46" EAST, 8.00 FEET; THENCE SOUTH 74°15'14" WEST, 2.00 FEET; THENCE NORTH 15°44'46" WEST, 8.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 16 SQUARE FEET.

AREA "B"

COMMENCING AT THE NORTHEAST CORNER OF LOT 6 IN SAID BLOCK 1, FORT DES MOINES; THENCE NORTH 13°36'59" WEST, 20.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 15°44'46" WEST, 8.00 FEET; THENCE NORTH 74°15'14" EAST, 2.00 FEET; THENCE SOUTH 15°44'46" EAST, 8.00 FEET; THENCE SOUTH 74°15'14" WEST, 2.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 16 SQUARE FEET.

AREA "C"

COMMENCING AT THE NORTHEAST CORNER OF LOT 6 IN SAID BLOCK 1, FORT DES MOINES; THENCE NORTH 62°36'10" EAST, 64.59 FEET TO THE POINT OF BEGINNING; THENCE NORTH 15°44'46" WEST, 8.00 FEET; THENCE NORTH 74°15'14" EAST, 2.00 FEET; THENCE SOUTH 15°44'46" EAST, 8.00 FEET; THENCE SOUTH 74°15'14" WEST, 2.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 16 SQUARE FEET.

AREA "D"

COMMENCING AT THE NORTHEAST CORNER OF LOT 6 IN SAID BLOCK 1, FORT DES MOINES; THENCE SOUTH 89°25'35" EAST, 65.91 FEET TO THE POINT OF BEGINNING; THENCE NORTH 74°15'14" EAST, 2.00 FEET; THENCE SOUTH 15°44'46" EAST, 8.00 FEET; THENCE SOUTH 74°15'14" WEST, 2.00 FEET; THENCE NORTH 15°44'46" WEST, 8.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 16 SQUARE FEET.

(VACATED BY ORDINANCE NO. _____, PASSED _____, 20____.)

subject to any and all easements, restrictions, and covenants of record,

(hereinafter referred to as the "Easement Area") for the sole purpose of the Grantee installing, operating, maintaining, or repairing footings for a skywalk bridge connection to the building at 655 Walnut Street, legally described as:

LOTS 3 AND 4, AND ALL OF THE VACATED NORTH/SOUTH ALLEY LYING EAST OF AND ADJOINING SAID LOTS 3 AND 4, ALL IN BLOCK 12, FORT DES MOINES, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

(hereinafter referred to as the "Benefited Property").

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 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, renovation, use, or maintenance of subsurface footings, subject to the following: (1) Grantee's renovation and use of the Easement Area shall comply with all City ordinances, and State and federal laws and regulations, and shall be performed in a workmanlike manner; and (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 any and all access to the Easement Area from the surface.
2. **SURFACE IMPROVEMENTS EXCLUDED; RESTORATION.** Following each future access or repair to the Easement Area or maintenance thereof from the surface of the Easement Area, Grantee, at its sole cost and expense, shall promptly restore or cause

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. In the event that Grantee fails to complete the restoration obligations set forth in this paragraph, or the City Engineer determines that such restoration work performed by Grantee or its contractor(s) is unacceptable, the City, in addition to other enforcement options available to it, shall have the right to complete or cause to be completed such restoration by City work crew or contractor, and to assess the costs back to Grantee.

Other than the foregoing, nothing in this Easement provides Grantee any right to use, alter, or impact the surface or above-surface improvements upon and above the Easement Area, unless required by local, state or federal law. Said surface and above-surface improvements remain dedicated sidewalk and City right-of-way abutting the Benefited Property, subject to pedestrian and/or vehicular access by the City and the public, and subject to all pertinent local, state and federal laws and regulations, including but not limited to Chapter 102 of the Municipal Code and Chapter 364 of the Code of Iowa (2020). This Easement is further subject to all existing and future public and private utilities within the Easement Area, including those for the benefit and use of the City of Des Moines, with the right of entry for servicing the same.

3. **MAINTENANCE OF AND LIABILITY FOR EASEMENT AREA.** The Grantee shall be solely responsible for all activities related to and costs of construction, reconstruction, repair, renovation, use, or maintenance of the Easement Area. Grantee shall maintain the Easement Area in a safe condition and in a manner so as not to physically conflict or electronically interfere with pedestrian or vehicular use of the sidewalk and City right-of-way upon and above the Easement Area.

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 Grantee's improvements 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.

4. **EASEMENT RUNS WITH LAND.** This Easement shall be deemed to run with the land for the benefit of the Benefited Property, 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 construction, reconstruction, repair, renovation, use, or maintenance of the Easement Area 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.

5. **DURATION; REMOVAL OF IMPROVEMENTS UPON TERMINATION.** This Easement shall remain in full force and effect for the life of the existing buildings upon the Benefited Property. Following reconstruction of the Easement Area and Benefited Property, in the event that the building upon the Benefited Property is ever destroyed by any means whatsoever, to such a degree that the estimated cost of the repairs necessary to restore such building to its condition prior to such destruction exceed 60% of the assessed value of such building prior to such destruction, then this Easement shall automatically terminate with or without recorded release. In the event that Grantee abandons or no longer uses 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 improvements from the Easement Area and to commence restoration thereof. If Grantee fails to remove its improvements and secure and seal the Easement Area as provided herein, it shall be deemed abandoned and the City may remove part of all of the improvements and secure and seal the Easement Area at Grantee's, or its successors or assigns, cost, or the City may assume possession and ownership of the improvements without compensation to Grantee, at City's sole discretion.

6. **INDEMNITY AND INSURANCE.** The City shall incur no expense related to Grantee's exercise of the rights hereby granted. Grantee and Grantee's successors and assigns agree (a) to indemnify, defend, pay on behalf of and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City, as more particularly provided in Attachment 1 hereto, which obligation shall include payments made under workers' compensation laws and shall also include the obligation to pay all reasonable expenses incurred by the City in defending itself with regard to any of the claims listed in Attachment 1, including all out-of-pocket expenses incurred by the City in defending itself, such as attorney's fees, expert witness fees, and the value of any services rendered by the Legal Department of the City or any other officers or employees of the City, and (b) to obtain and maintain in continuous effect during the term of this Easement, the insurance coverage set forth in Attachment 1 hereto.

Grantee's indemnification of the City includes, but it not limited to, assumption by Grantee of all liability and financial responsibility for any cavity remaining within the Easement Area, and for any and all damages resulting from any failure of the opening, vault or cavity, and the assumption by Grantee of all financial responsibility for any and all repairs to both private and City property resulting from any failure of an opening, vault or cavity 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.

8. **ACCEPTANCE.** This Permanent Easement for Subsurface Building Encroachment on City-Owned Property shall be of no force or effect unless accepted by Grantee by execution of the Acceptance below.

9. **SPECIAL CONDITIONS.**

A. **ACCESS TO EXISTING ALLEY ENTRANCES FROM 7TH STREET.** This Easement is subject to continued use, maintenance, repair and/or reconstruction of any and all existing alley entrances from 7th Street, including all rights of public ingress and egress necessary to access such entrances.

B. **CONSTRUCTION.** All construction within the Easement Area shall be in accordance with a site plan approved by the City.

Signed this _____ day of May _____, 2020.


ATTEST

CITY OF DES MOINES, IOWA

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 _____, 20__, 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

ACCEPTANCE BY GRANTEE

The undersigned hereby accepts this Permanent Easement for Air Space Above City-Owned Property and agrees to be bound by the terms set forth above.

Employers Mutual Casualty Company

By _____
Todd A. Strother, Executive Vice President

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20____, by Todd A. Strother as Executive Vice President of Employers Mutual Casualty Company.

Notary Public in and for the State of _____

ATTACHMENT 1

CITY STANDARD EASEMENT – MAJOR

INSURANCE & INDEMNIFICATION REQUIREMENTS

For the purposes of this Attachment and all provisions included herein, the term “CITY” shall mean the City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf.

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 “non-admitted” 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. 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 as per Paragraph 2.G. below.***

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).

- B. 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 including a ***Waiver of Subrogation in favor of the CITY is required as per Paragraph 2.G. below.***
- C. WORKER’S COMPENSATION & EMPLOYER’S LIABILITY INSURANCE (if applicable): As required by State of Iowa Workers’ Compensation Law, the GRANTEE shall procure and maintain Worker’s Compensation Insurance, including Employer’s Liability Coverage. The Workers’ Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, the GRANTEE is not required to purchase Workers’ Compensation Insurance,

the GRANTEE shall submit a copy of the Nonelection of Workers' Compensation or Employers' Liability Coverage form filed with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. ***Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.***

- 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 include a policy endorsement providing the CITY with no less than thirty (30) days Advance Written Notice of Cancellation, forty-five (45) days Advance 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 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 the following proof of insurance to the CITY:
- (1) Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through G 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" and indicate Waiver of Subrogation by marking the corresponding boxes on COI and/or including a statement of compliance under Description of Operations.
 - (2) If applicable as per paragraph 2.C. above, a copy of the Nonelection of Workers' Compensation or Employers' Liability Coverage form.
 - (3) A copy of the Cancellation and Nonrenewal Notification Endorsements required in paragraph 2.F. above, or its equivalent.
- 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 all its agents, contractors and subcontractors who perform work and/or services on behalf of the GRANTEE to 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**

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.

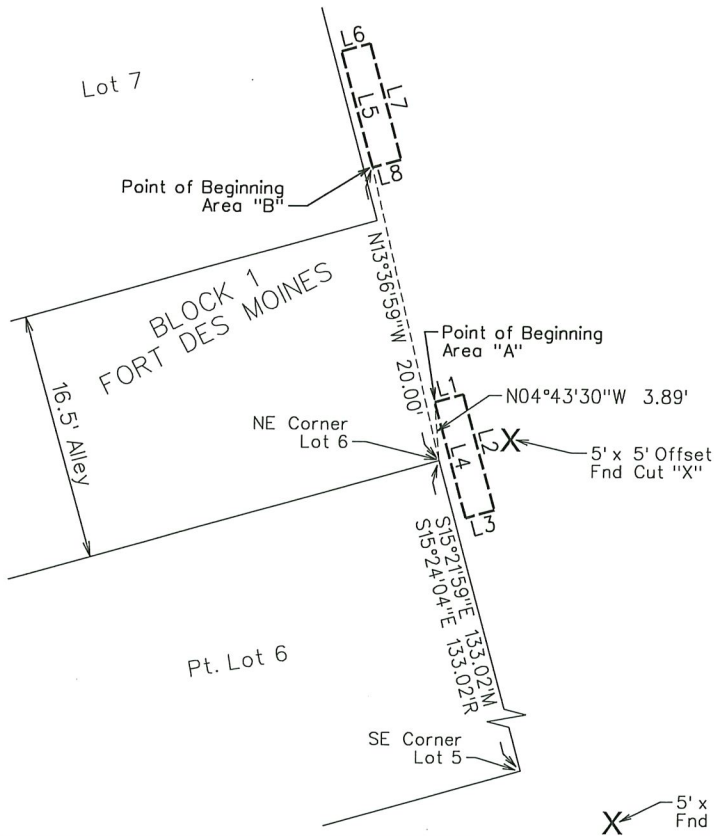
GRANTEE expressly assumes responsibility for any and all damage caused to CITY Property arising out of or in any way connected or associated with the Agreement and/or GRANTEE'S use or occupancy of CITY Property including that of GRANTEE'S officers, agents, employees, contractors, subcontractors and others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

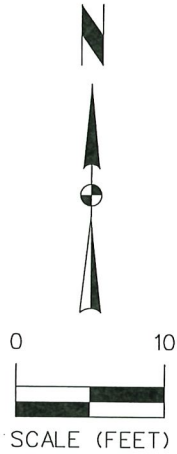
EASEMENT EXHIBIT

LINE TABLE

L1	N74°15'14"E	2.00'
L2	S15°44'46"E	8.00'
L3	S74°15'14"W	2.00'
L4	N15°44'46"W	8.00'
L5	N15°44'46"W	8.00'
L6	N74°15'14"E	2.00'
L7	S15°44'46"E	8.00'
L8	S74°15'14"W	2.00'



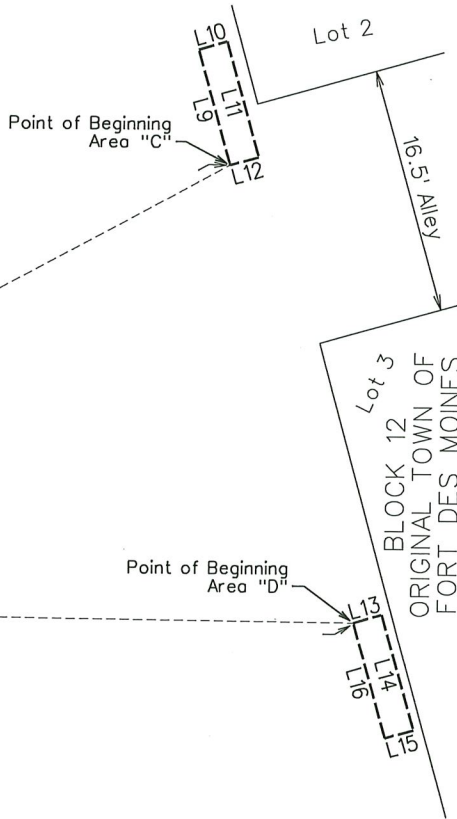
7TH STREET
66' R.O.W.



X ← 5' x 5' Offset
End Cut "X"

LINE TABLE

L9	N15°44'46"W	8.00'
L10	N74°15'14"E	2.00'
L11	S15°44'46"E	8.00'
L12	S74°15'14"W	2.00'
L13	N74°15'14"E	2.00'
L14	S15°44'46"E	8.00'
L15	S74°15'14"W	2.00'
L16	N15°44'46"W	8.00'



EAS 2-20-20

7TH STREET RIGHT-OF-WAY

EASEMENT EXHIBIT



2727 S.W. SNYDER BLVD.
ANKENY, IA 50023 (515) 964-2020

SHEET 2 OF 2

PN: 119.1091

FLD BK: XX PG: XX

DATE: 01/28/20

PM/TECH: EDG/SGK

