

## COMMUNITY DEVELOPMENT

Planning,  
Zoning,  
Building Safety,  
Construction Inspection Services,  
Public Health,  
Housing Inspections,  
Code Enforcement

### MEMORANDUM

**To:** Mayor and City Council Members  
**From:** Andrew Fangman, City Planner  
**Cc:** Gregg Mandsager, City Administrator  
Dave Gobin, Community Development Director  
**Date:** May 17, 2018  
**Re:** Request to Approve Exchange Agreement with DG Partners LLC

**INTRODUCTION:** An agreement with DG Partners LLC to exchange the City granting an easement to DG Partners, for a dumpster enclosure and a truck dock and related uses on an undeveloped portion of the White Street right of way, adjacent to DG Partner's property a located 807 Grandview Avenue in exchange for the dedication of right of way to the City, which necessary for sidewalk improvements along Warren Street.

**BACKGROUND:** DG Partners LLC purchased the former WFO grocery store located at 807 Grandview Avenue and converted it into a Dollar General store and a smaller, yet to be leased retail space. During this remodeling DG Partners LLC approached the City with a request for an easement on part of the White Street right of way located behind the curb.

DG Partners LCC is requesting this easement to accommodate two things; a dumpster enclosure, the previous occupant of the building had placed their dumpster in this portion of the White Street right of way without any kind of screening, and to clarify that the truck dock, that has long existed in the White Street right of way, has the legal right to be located in the location.

In exchange for this is easement DG Partners LLC has offered to dedicate to the City an additional 20' of right of way along Warren Street between Grandview Avenue and Liberty Street. This additional right of way, makes possible a sidewalk/trail project that is vital to achieving the vision of a community-wide network of safe routes for non-motorized travel that as envisioned in both the Comprehensive Plan and Bike Pedestrian Master Plan. Full details of the proposed sidewalk/trail project can be found in the Sidewalk Construction Plan memo. It should be noted that without this right of way dedication the construction the proposed sidewalk/trail project would not be possible, nor would the construction of a narrower sidewalk meeting current City standards.

### RECOMMENDATION/RATIONALE

Staff recommends approval of the proposed exchange agreement with DG Partners LLC, as the improvements that it will allow for will be beneficial for the community as whole and particularly beneficial for the South End. The dumpster being located within an enclosure will improve both cleanliness and aesthetics of this portion of White Street. The truck dock has existed within the White Street right of way for many years without any reported problems. The sidewalk/trail

project that the dedication of the additional right of way on Warren Street will improve pedestrian, bicyclist, and vehicle safety; and allow for the linking up of two trail segments of over 5 miles in length.

**BACKUP INFORMATION:**

1. Exchange Agreement
2. White Street Easement Agreement
3. White Street Easement Plat
4. Warrant Street Right of Way Dedication

## EXCHANGE AGREEMENT

### I. Recital

#### A. The parties to this agreement are:

1. The City of Muscatine, Iowa (City).
2. DG Partners LLC (DG Partners).

#### B. The purpose of this agreement is to provide for:

1. Granting an easement to DG Partners, for access, ingress and egress to and from White Street, and for a dumpster enclosure, a truck dock and related uses on an undeveloped portion of the White Street right of way, adjacent to DG Partner's property at 807 Grandview Avenue.
2. Dedication of right of way to the City, necessary to construct a trail along Warren Street partially on DG Partner's property at 807 Grandview.

### II. Agreement

In consideration of the mutual covenants herein contained, it is agreed that:

1. The City shall fully execute a grant of easement to DG Partners, hereby attached as **Attachment A**, for access, ingress and egress, a dumpster enclosure and a truck dock, within a portion of the undeveloped White street right of way fully described as: BEGINNING AT THE MOST WESTERLY CORNER OF LOT 1, BLOCK 23, SOUTH MUSCATINE ADDITION TO THE CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA; THENCE S48°34'25"E, ALONG THE SOUTHWESTERLY LINE OF SAID LOT 1, BLOCK 23, A DISTANCE OF 120.61 FEET; THENCE S41°25'35"W, 14.00 FEET; THENCE N48°34'25"W, 120.13 FEET; THENCE N39°27'57"E, 14.01 FEET TO THE POINT OF BEGINNING, CONTAINING 0.04 ACRE (1,685 SQUARE FEET) AND IS SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD
2. DG Partners shall fully execute a dedication of right of way to the City, hereby attached as **Attachment B**, that is necessary to construct a trail along Warren Street partially on DG Partner's property at 807 Grandview, said easement area being more fully described as: THE NORTHEASTERLY 20 FEET OF LOT 5 IN BLOCK 23 OF SOUTH MUSCATINE ADDITION TO THE CITY OF MUSCATINE, IN MUSCATINE COUNTY IOWA; AND THE NORTHEASTERLY 20 FEET OF LOT 6 IN BLOCK 23 OF SOUTH MUSCATINE ADDITION TO THE CITY OF MUSCATINE, IN MUSCATINE COUNTY, IOWA.

**IN WITNESS WHEREOF**, we have hereunto affixed our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Diana Broderson, Mayor

ATTEST:

\_\_\_\_\_  
Gregg Mandsager, City Clerk

**STATE OF IOWA, COUNTY OF MUSCATINE, ss:**

On the \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared **DIANA BRODERSON** and **GREGG MANDSAGER**, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Muscatine, Iowa, a municipal corporation; that said instrument was signed and contained in the Resolution adopted by the City Council of Muscatine, Iowa, on the \_\_\_\_ day of \_\_\_\_\_, 2018, and the said **DIANA BRODERSON** and **GREGG MANDSAGER** acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

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

**IN WITNESS WHEREOF**, we have hereunto affixed our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Grantee:

DG Partners LLC

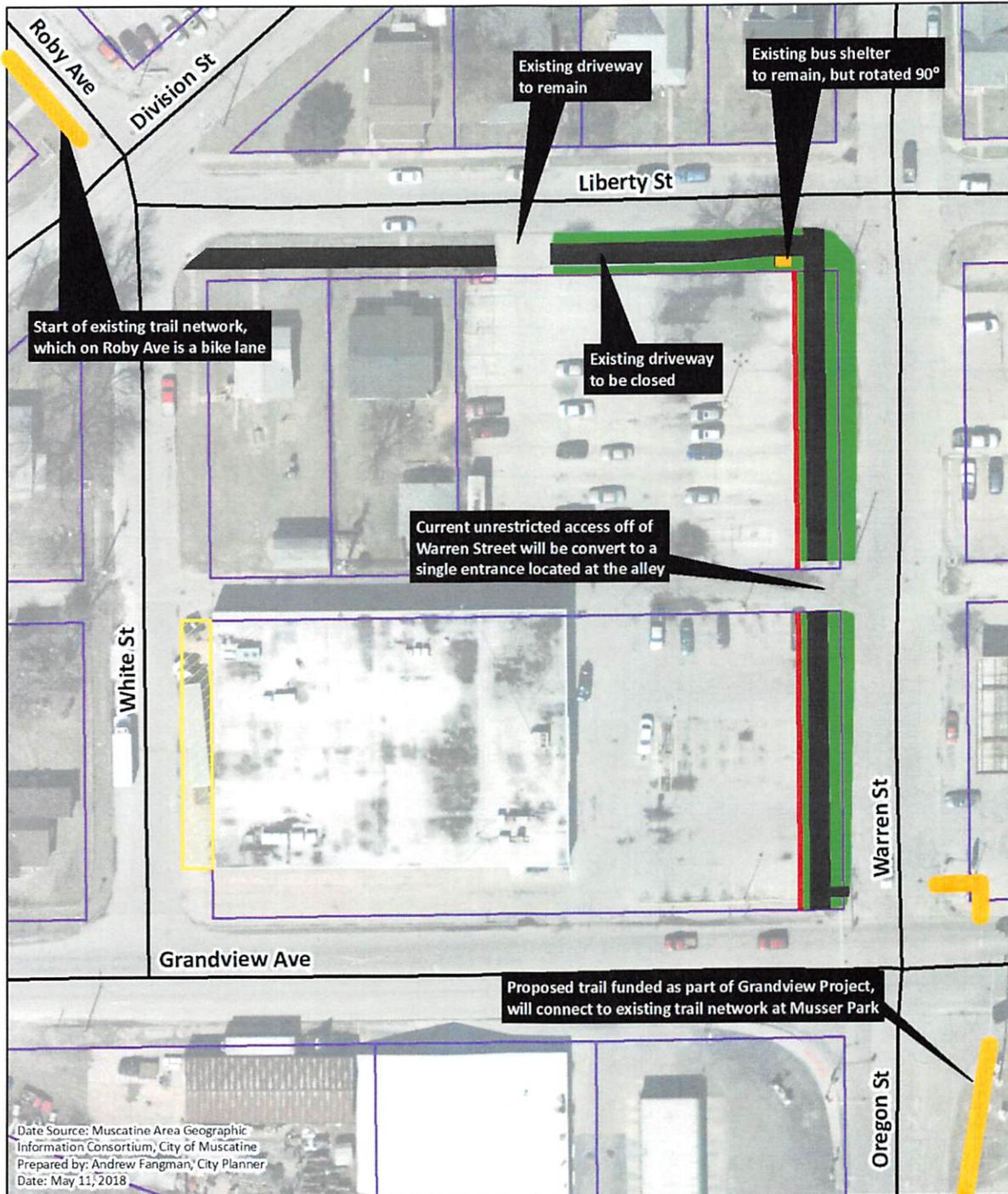
By: Cissell-Mueller Construction, Inc., Manager

By: \_\_\_\_\_  
Robert D. Cissell, Secretary

**STATE OF \_\_\_\_\_, \_\_\_\_\_ COUNTY, ss:**

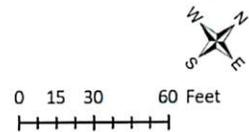
On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared Robert D. Cissell, to me personally known, who, being by me duly sworn, did say that he is the Secretary of Cissell-Mueller Construction, Inc., which is the Manager of **DG PARTNERS LLC**, that the instrument was signed on behalf of **DG PARTNERS LLC**, by authority of its Managers, and that Robert D. Cissell, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of **DG PARTNERS LLC**, by it and by him voluntarily executed.

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



Date Source: Muscatine Area Geographic Information Consortium, City of Muscatine  
 Prepared by: Andrew Fangman, City Planner  
 Date: May 11, 2018

- Proposed 10' Sidewalk
- Proposed Truck Dock and Dumpster Easement Area
- New Turfed Areas
- New right of way line after dedication of 20' of right of way by adjoining property owner
- Current Parcel Lines



Checked by: GDM  
 Project No: 5474-016  
 Date: 5/7/2018  
 Drawn by: MAS  
 Scale: 1"=50'

RIGHT-OF-WAY EASEMENT EXHIBIT  
 A PORTION OF WHITE STREET RIGHT-OF-WAY ADJACENT TO  
 LOT 1, BLOCK 23, OF SOUTH MUSCATINE ADDITION,  
 LOCATED IN SEC. 3, T76N-R27W OF THE 5TH P.M.,  
 CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA.

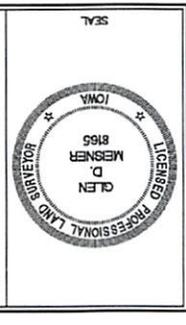
MMS CONSULTANTS, INC.  
 IOWA CITY, IOWA 52240  
 (319) 351-8282  
 www.mmsconsultants.net



Date \_\_\_\_\_  
 Revision \_\_\_\_\_

**LEGEND AND NOTES**

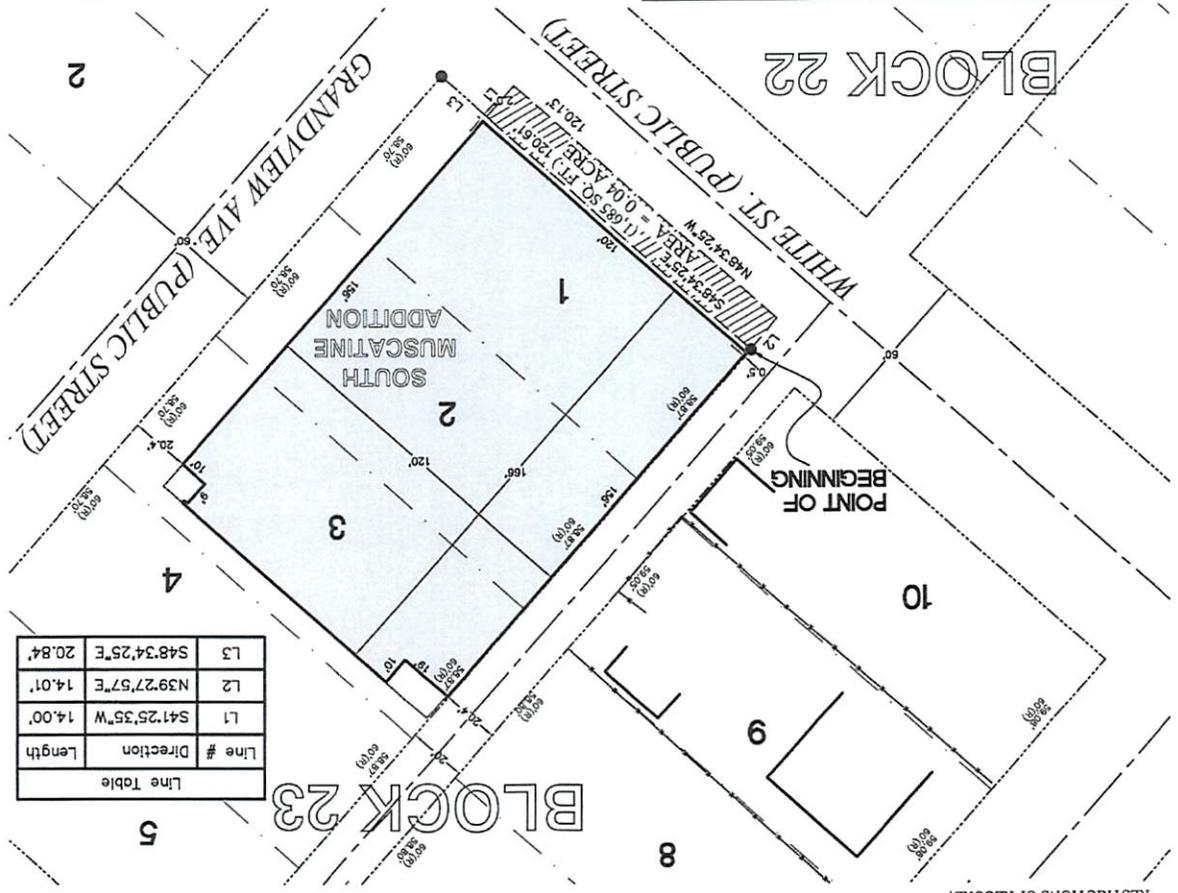
- CONGRESSIONAL CORNER, FOUND
- CONGRESSIONAL CORNER, REESTABLISHED
- CONGRESSIONAL CORNER, FOUND (as noted)
- PROPERTY CORNERS SET
- (5/8" from Pth w/ yellow, plastic LS Cap
- marked with "MMS")
- CUT "X"
- PROPERTY &/or BOUNDARY LINES
- CONGRESSIONAL SECTION LINES
- RIGHT-OF-WAY LINES
- CENTER LINES
- LOT LINES, INTERNAL
- LOT LINES, PLATTED OR BY DEED
- EXISTING EASEMENT LINES, PURPOSE NOTED
- RECORDED DIMENSIONS
- MEASURED DIMENSIONS
- CURVE SEGMENT NUMBER
- UNLESS NOTED OTHERWISE, ALL DIMENSIONS ARE IN FEET AND HUNDREDTHS



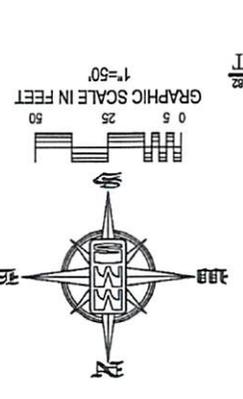
I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a duly licensed Professional Land Surveyor under the laws of the State of Iowa.

GLEN D. MESNER  
 L.S. Iowa Lic. No. 8165  
 My license renewal date is December 31, 2019

Pages or sheets covered by this seal: 1#



LEGAL DESCRIPTION  
 CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA  
 PERMANENT RIGHT-OF-WAY EASEMENT EXHIBIT  
 PREPARED BY AND RETURN TO: MMS CONSULTANTS, INC. 1917 S. GILBERT ST. IOWA CITY, IOWA 52240 (319)351-8282



NOTE: FOUND PINS ARE 5/8" REBAR PINS WITH YELLOW PLASTIC CAPS NO. 8165

LAND SURVEYOR	DOCUMENT RETURN INFORMATION
DATE OF SURVEY: MAY 7, 2018	
CITY OF MUSCATINE	
PROPRIETOR OR OWNER: DG PARTNERS, LLC	
SURVEY REQUESTED BY:	
GLEN D. MESNER, PE & PLS MMS CONSULTANTS, INC. 1917 SOUTH GILBERT STREET IOWA CITY, IOWA 52240 PHONE: 319-351-8282	
LAND SURVEYOR, INCLUDING FIRM OR ORGANIZATION:	
LOCATION: A PORTION OF WHITE STREET RIGHT-OF-WAY ADJACENT TO LOT 1, BLOCK 23, OF SOUTH MUSCATINE ADDITION, LOCATED IN SEC. 3 T76N-R27W OF THE 5TH P.M., CITY OF MUSCATINE, MUSCATINE COUNTY, IOWA	

Prepared by and return to Andrew Fangman, 215 Sycamore St., Muscatine, IA 52761 – (563)  
262-4141

**DEDICATION OF RIGHT OF WAY**

STATE OF IOWA, MUSCATINE COUNTY, ss:

The undersigned, DG Partners LLC, a Missouri limited liability company, does hereby certify that it is the owner in fee simple of all the real estate embraced within Lot 5 and Lot 6 in Block 23 of the South Muscatine Addition, in the City of Muscatine, Muscatine County, Iowa,

The undersigned, DG Partners LLC, a Missouri limited liability company, does hereby dedicate a parcel of land for right-of-way purposes situated in THE NORTHEASTERLY 20 FEET OF LOT 5 IN BLOCK 23 OF SOUTH MUSCATINE ADDITION TO THE CITY OF MUSCATINE, IN MUSCATINE COUNTY IOWA; AND THE NORTHEASTERLY 20 FEET OF LOT 6 IN BLOCK 23 OF SOUTH MUSCATINE ADDITION TO THE CITY OF MUSCATINE, IN MUSCATINE COUNTY IOWA, to the City of Muscatine, Iowa and to public use forever; and that this Dedication is the free act and deed of the undersigned.

Dated at \_\_\_\_\_, Iowa this \_\_\_\_ day of \_\_\_\_\_, 2018.

DG Partners LLC

By: Cissell-Mueller Construction, Inc., Manager

By: \_\_\_\_\_  
Robert D. Cissell, Secretary

**STATE OF \_\_\_\_\_, \_\_\_\_\_ COUNTY, ss:**

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared Robert D. Cissell, to me personally known, who, being by me duly sworn, did say that he is the Secretary of Cissell-Mueller Construction, Inc., which is the Manager of **DG PARTNERS LLC**, that the instrument was signed on behalf of **DG PARTNERS LLC**, by authority of its Managers, and that Robert D. Cissell, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of **DG PARTNERS LLC**, by it and by him voluntarily executed.

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

**WHEN RECORDED RETURN TO:**

Andrew Fangman  
City Planner  
City of Muscatine  
215 Sycamore Street  
Muscatine, Iowa 52761

Preparer Information: Andrew Fangman, City Planner, City of Muscatine (563) 262-4141

**PERMANENT RIGHT-OF-WAY EASEMENT AGREEMENT**

THIS PERMANENT RIGHT-OF-WAY EASEMENT AGREEMENT (this "Agreement") is entered into by and between, **the City of Muscatine, Iowa**, an Iowa municipal corporation, (hereinafter referred to as "Grantor") and **DG PARTNERS LLC**, a Missouri limited liability company (hereinafter referred to as "Grantee").

1. Property and Purpose. Grantor is the owner of certain real estate located in the right-of-way (White Street) adjacent to the Grantee's property, as more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference (the "Property"). Grantee desires to obtain a perpetual, non-exclusive easement and ingress and egress rights over and across the Property and additionally in order to construct an enclosure for a dumpster and thereafter maintain a dumpster in said enclosure, and to accommodate a previously constructed truck dock. Grantor is willing to grant Grantee an easement for said purpose, subject to the terms and conditions set forth below.

2. Grant of Easement. In consideration of the covenants and obligations set forth herein and other good and valuable consideration in the sum of One Dollar (\$1.00) paid by Grantee to Grantor, the receipt of which is hereby acknowledged, Grantor hereby grants, conveys and declares unto Grantee, its successors and assigns, a perpetual, non-exclusive right-of-way easement (the "Easement") including ingress and egress rights, upon, over, across and through the Property, to have and to hold the same, together with all rights and appurtenances to the same belonging, for vehicular and pedestrian access to and egress from White Street, and for the additional purposes of (a) the construction, repair and maintenance of the supports of a dumpster enclosure and truck dock; (b) maintaining a dumpster in said enclosure; (c) repairing, maintaining, altering, improving and replacing the existing truck dock (hereinafter the "Project"), the renderings and geographic map of which are attached hereto as Exhibit "B."

3. Use by Grantor. Grantor retains the right to use the Property. The Property is subject to all matters of record, including all easements of record, the retained rights of Grantor

and whatever other easements, rights, licenses or grants that contemporaneous herewith or subsequent hereto, may be granted, or otherwise created by Grantor, provided that any subsequently created interest does not prevent Grantee from utilizing this Easement pursuant to this Agreement for its intended purpose. The Easement shall revert to Grantor upon release.

4. Grantor's Improvements. Grantee shall replace and restore any and all improvements of Grantor on the Property and Grantor's adjoining land which are disturbed by Grantee's activities, including, but not limited to, curbing, landscaping, paving, irrigation systems, utility infrastructure and/or traffic controls (collectively, "Grantor's Improvements"). Grantee agrees to restore the Property to a condition after construction substantially the same as prior to entry by the Grantee.

5. Approvals. Erection of the Project will require compliance with the City of Muscatine, Iowa ordinances. Nothing in this Agreement shall be construed to exempt the Grantee from full compliance with any requirements imposed by the City Code or other applicable laws, rules, and regulations regarding the anticipated use of the Easement by Grantee. By executing this Agreement, Grantor does not waive any of its regulatory authority over the Project.

6. Maintenance. After Grantee commences construction and/or erection of the Project on the Property, Grantee shall maintain, repair and replace the Project and keep it in good order, condition and state of repair. In the event Grantee fails to fulfill its obligations to maintain, repair and replace the Project as set forth herein, Grantor shall have the right, but not the obligation, to perform such maintenance, repair and replacement after providing Grantee thirty (30) days written notice of Grantor's intent to perform the same and opportunity to cure, and assess such costs to the Grantee. Grantee shall maintain, repair and replace any and all of Grantor's Improvements that are affected by Grantee's maintenance, repair and replacement of the Project.

7. Indemnification. Grantee, with respect to its use of the Property for the Project, agrees to indemnify, protect, defend, and hold harmless Grantor, its successors and assigns, and its agents, servants, employees, elected officials, and officers, from any and all loss, damage, liability, cost or expense (including but not limited to, attorneys fees and court costs) and all other sums which Grantor, its successors and assigns, and its agents, servants, employees, elected officials, and officers may incur, be subjected to, or may reasonably pay or become obligated to pay on account of any, all and every demand, claim, or action to the extent arising out of any act or omission of Grantee, its agents, servants or employees in connection with the Easement.

8. Recording Costs. Grantee hereby agrees to pay the recording costs to record this Agreement with the Muscatine County Recorder.

9. Covenants with the Land. All rights, privileges, benefits and burdens created herein are covenants running with the land, binding upon and inuring to the benefit of Grantor, Grantee and their respective assigns and successors in title.

10. Captions and Governing Law. The captions included herein are for reference only and should not be used in construing any of the terms hereof. This Agreement shall be construed and enforced in accordance with the laws of the State of Iowa.

IN WITNESS WHEREOF, we have hereunto affixed our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Grantor:

City of Muscatine, Iowa

\_\_\_\_\_  
Diana Broderson, Mayor

ATTEST:

\_\_\_\_\_  
Gregg Mandsager, City Clerk

**STATE OF IOWA, COUNTY OF MUSCATINE, ss:**

On the \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared **DIANA BRODERSON** and **GREGG MANDSAGER**, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Muscatine, Iowa, a municipal corporation; that said instrument was signed and contained in the Resolution adopted by the City Council of Muscatine, Iowa, on the \_\_ day of \_\_\_\_\_, 2018, and the said **DIANA BRODERSON** and **GREGG MANDSAGER** acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

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

IN WITNESS WHEREOF, we have hereunto affixed our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Grantee:

DG Partners LLC

By: Cissell-Mueller Construction, Inc., Manager

By: \_\_\_\_\_  
Robert D. Cissell, Secretary

STATE OF \_\_\_\_\_, \_\_\_\_\_ COUNTY, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me the undersigned, a Notary Public in and for the State of \_\_\_\_\_, personally appeared Robert D. Cissell, to me personally known, who, being by me duly sworn, did say that he is the Secretary of Cissell-Mueller Construction, Inc., which is the Manager of **DG PARTNERS LLC**, that the instrument was signed on behalf of **DG PARTNERS LLC**, by authority of its Managers, and that Robert D. Cissell, as such officer, acknowledged the execution of the instrument to be the voluntary act and deed of **DG PARTNERS LLC**, by it and by him voluntarily executed.

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