

COMMUNITY DEVELOPMENT

MEMORANDUM

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

To: Mayor and City Council Members
From: Andrew Fangman, City Planner
Cc: Gregg Mandsager, City Administrator
Dave Gobin, Community Development Director
Date: June 7, 2018
Re: Resolution to Approve an Easement Agreement with DG Partners LLC at 807 Grandview Avenue

INTRODUCTION: There is an exchange agreement between DG Partners LLC and the City of Muscatine, approved on May 17, 2018, to exchange an easement 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 at 807 Grandview Avenue in exchange for the dedication of right of way to the City, which necessary for sidewalk improvements along Warren Street. This resolution will fulfill the City's obligation under this exchange agreement.

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.

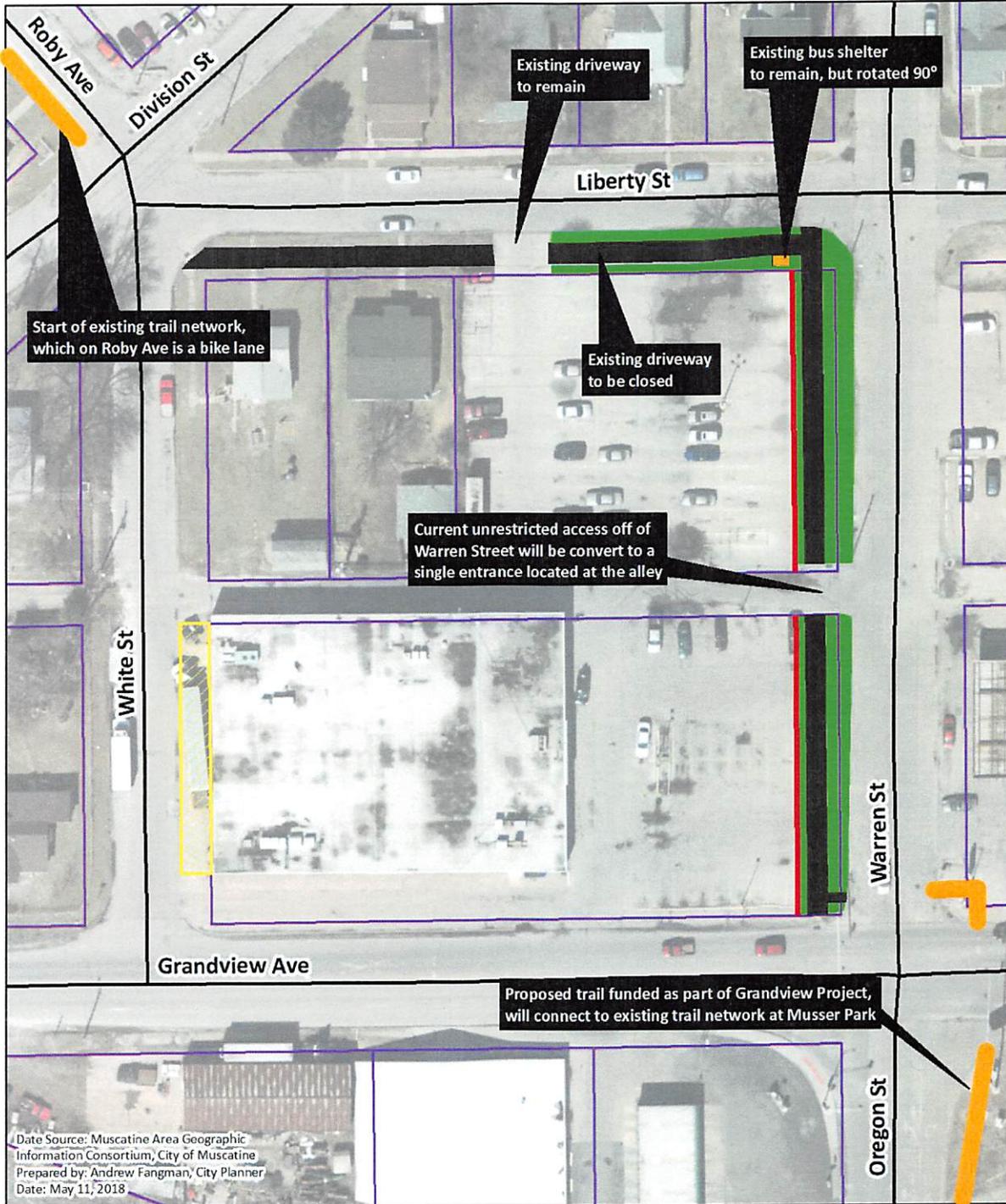
In exchange for this is easement DG Partners LLC will dedicate to the City an additional 20' of right of way along Warren Street between Grandview Avenue and Liberty Street. This additional right of way, makes possible a sidewalk/trail project that is vital to achieving the vision of a community-wide network of safe routes for non-motorized travel that as envisioned in both the Comprehensive Plan and Bike Pedestrian Master Plan. 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 this easement agreement as it fulfills the City's obligation under this exchange agreement previously reached DG Partners LLC

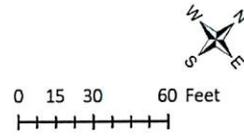
BACKUP INFORMATION:

1. Resolution approving White Street Easement Agreement
2. White Street Easement Agreement



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



RESOLUTION NO. _____

ACCEPTANCE OF A PERMANENT RIGHT-OF-WAY EASEMENT
AGREEMENT

WHEREAS, 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").

WHEREAS, 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 "B" 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 in the permanent right-of-way easement agreement attached as Exhibit "A".

WHEREAS, 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 "C"

NOW, THEREFORE, BE IT RESOLVED, by the City Council for the City of Muscatine, that the City of Muscatine, Iowa approve the permanent right-of-way easement agreement attached as Exhibit "A".

PASSED, APPROVED AND ADOPTED this 7th day of June, 2018.

**BY THE CITY COUNCIL OF THE
CITY OF MUSCATINE, IOWA**

Diana Broderson, Mayor

Attest:

Gregg Mandsager, City Clerk

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 Broderon, 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 _____

EXHIBIT A

Insert legal description

EXHIBIT B

Depiction(s) of Easement Area