

# CITY COUNCIL MEETING

City of Davenport, Iowa

Wednesday, July 12, 2017; 5:30 PM

City Hall, 226 West 4th Street, Council Chambers

I. Moment of Silence

II. Pledge of Allegiance

III. Roll Call

IV. Meeting Protocol and Decorum

V. Approval of Minutes

Approval of the City Council Meeting Minutes for June 28, 2017

VI. City Administrator Update

VII. Report on Committee of the Whole

Approval of the Report of the Committee of the Whole for July 5, 2017

VIII. Appointments, Proclamations, Etc.

IX. Presentations

A. Local Business "The Foundation of Our Community" to Expression Jewelers

X. Petitions and Communications from Council Members and the Mayor

A. Community Engagement Update - Alderman Rawson, Chair

XI. Individual Approval of Items on the Discussion Agenda

1. Motion approving The Current (Putnam Landlord, LLC)- 128 -130 W 2nd St - Outdoor area "New License: - License Type: C Liquor/B Wine **\*liquor license issuance is contingent upon the compliance of Iowa Alcoholic Beverages Division's established requirements\***

XII. Approval of All Items on the Consent Agenda

**\*\*NOTE:** These are routine items and will be enacted at the City Council Meeting by one roll call vote without separate discussion unless an item is requested to be removed and considered separately.

## Community Development

1. Third Consideration: Ordinance for Case No. ROW17-02 - Request of Genesis Health System for the right-of-way vacation (abandonment) of 0.38 acre (16,336 square feet), more or less, of public right-of-way known as East Lombard Street between College Avenue and the west line extended of the north-south alley east of

formerly vacated Esplanade Avenue. [Ward 5]

2. Third Consideration: Ordinance for Case No. ROW17-03 being the request of Genesis Health System for the right-of-way vacation (abandonment) of 0.26 acre (11,400 square feet), more or less, of public right-of-way known as Denison Avenue between the west line of Adams Street and the railroad. [Ward 5]

#### Public Safety

1. First Consideration: An Ordinance amending Title X entitled "VEHICLES AND TRAFFIC" by amending or adding various sections thereto.
2. Resolution closing various street(s), lane(s) or public grounds on the listed date(s) to hold outdoor event(s).

Three on Third (Kilkenny's Carriage Haus, Mac's), Bix Outdoor Street Festival, July 24, 2017 to July 29, 2017; Beginning at 5:00 p.m. July 24, 2017 to July 29, 2017 at 1:00 AM; Closure Location: 3rd Street between Ripley and Harrison Streets and Harrison Street between 3rd Street and the alley north on the west side. [Ward 3]

Downtown Partnership, Downtown Street Festival, July 27, 2017 through July 29, 2017; 7:30 a.m. July 27, 2017 to Midnight July 29, 2017; Closure Location: Second Street – all lanes from the east side of Ripley Street to the west side of Brady Street; Harrison Street – 2 lanes from 3<sup>rd</sup> Street to Harrison Street parking garage entrance (1/2 block), all lanes from garage entrance to the Transit Center Entrance; Main Street – all lanes from The Current Hotel parking lot entrance south to the Main Street parking garage, one lane from the parking garage (1/2 block) to River Dr. [Ward 3]

Sippi's Restaurant, Car Show, August 12, 2017; 6:00 AM - 3:00 PM; Closure Location: 2nd Street between Ripley and Scott Streets. [Ward 3]

Davenport Schools, North High Homecoming Parade, September 14, 2017; 6:00 PM to 8:00 PM; Closure Location: Starting at Wood Intermediate, Division to Northwest Blvd, Northwest Blvd south to West 56<sup>th</sup> Street, Oakbrook Road to West 57<sup>th</sup> Street to Marquette, Marquette to West 60<sup>th</sup>, West 60<sup>th</sup> to Myrtle St to West 59<sup>th</sup> to Vine Street to West 58<sup>th</sup> Street to Gaines Street to North High School finish.

3. Motion approving the Special Occurrence Permit for Shenangian's, 303 West 2nd Street to allow a food truck to operate outside this business along the street on Thursday, Friday, and Saturday from 9:00 p.m. to 2:00 a.m.; now through March 31, 2018. [Ward 3]
4. Motion approving beer and liquor license applications.

A. New license, new owner, temporary permit, temporary outdoor area, location transfer, etc. (as noted):

#### Ward 3

The Filling Station (Bar Management L.L.C.) - 500 W 3rd St. (QC Times Lot) - Outdoor Area July 29, 2017 "Bix Post Race Party" - License Type: B Beer

Front Street Brewery (Front Street Brewery Inc.) - 208 E River Dr. - Outdoor Area  
Premise Update - License Type: C Liquor

Kilkenny's Pub & Eatery (Kilkenny's Pub, Inc.) - 300 W 3rd St. - Outdoor Area July 24  
- 30, 2017 "Bix Fest" (Street closure July 29 - 30 - Parking lot for duration of license) -  
License Type: C Liquor

Mac's Tavern (Failte, Inc.) - 316 W 3rd St. - Outdoor Area July 27 - 30, 2017 "Bix  
Festival" - License Type: C Liquor

The Office (Local 563 Cocktail Lounge, LLC) - 116 W 3rd St. - Outdoor Area July 29  
- 30, 2017 "Bix Festival" - License Type: C Liquor

Sippis Restaurant (Sippis Inc.) - 406 W 2nd St (from Ripley to Scott St.) - Outdoor  
Area August 12, 2017 "Car Show" - License Type: C Liquor

Street Fest (Quad Cities Chamber of Commerce) - 2nd St. from Brady St. to Ripley  
St. - Outdoor Area July 27 - 30, 2017 - License Type: B Wine

#### Ward 4

Mississippi Valley Fair Inc. (Mississippi Valley Fair Inc.) - 2815 W Locust St. -  
Outdoor Area August 1 - 6, 2017 - License Type: Beer / Wine

The Pour House (Boss Lady, Inc.) - 1502 W Locust St. - Outdoor Area July 15 - 16,  
2017 "Personal Fundraiser" - License Type: C Liquor

B. Annual license renewals (with outdoor area renewals as noted):

#### Ward 1

Express Lane Gas & Food Mart, Inc. (Expresslane, Inc.) - 4425 W Locust St. -  
License Type: C Beer

Smokin' Joe's Tobacco and Liquor Outlet #1 (The Outlet Inc.) - 3120 Rockingham  
Rd. - License Type: E Liquor

Veterans of Foreign Wars, F.W. Galbraith Post #828 - 101 S Linwood Ave - License  
Type: A Liquor

#### Ward 3

Frick's Tap (LBLN, LLC) - 1402 W 3rd St. - Outdoor Area - License Type: C Liquor

#### Ward 4

Smokin' Joe's Tobacco and Liquor Outlet #2 (The Outlet Inc.) - 1606 W Locust St. -  
License Type: E Liquor

## Ward 7

Express Lane Gas and Food Mart (Expresslane Inc.) - 3622 Brady St. - License Type: C Beer

Kwik Star #294 (Kwik Trip, Inc.) - 1650 W Kimberly Rd. - License Type: C Beer

Lunardi's (T.S. Lunardi, Inc.) - 102 E Kimberly Rd. Ste. E - License Type: C Liquor

### Public Works

1. Resolution awarding the contract and conditionally approving the contract and bond, subject to Iowa DOT concurrence, to Valley Construction Company of Rock Island, IL for the 76th Street Extension project from Division Street to Hancock Court. The bid amount was \$3,774,930.30, to be funded from CIP #01629. [Ward 7]
2. Resolution approving change order #2 to the contract with Valley Construction Company in the amount of \$130,000 for the Kimberly and Division Intersection Improvements Project, CIP #01793. The city will be reimbursed up to 80% of the eligible cost by the Federal Surface Transportation Program Grant. [Wards 2 & 7]
3. Resolution approving the contract for the Eastern Ave 10 ft. Wide Trail/ Sidewalk to Ardo Schmidt Construction Inc. of Preston IA, in the amount of \$157,347.13.
4. Resolution approving the plans, specifications, form of contract and estimated cost for the Central Fire Station Streetscaping project. The estimated cost is \$104,000 budgeted in CIP #02348. [Ward 3]
5. Resolution of acceptance for the former site of Rhythm Casino Demolition and Restoration project; completed by Hawkeye Paving Corp. in the amount of \$253,700 budgeted in CIP #68001. [Ward 3]
6. Motion approving change order #3 in the amount of \$67,476 to the Sanitary Sewer Equalization Basin-V&K contract, CIP #02166. This change order will add three months of construction engineering services to the Water Pollution Control Plant Optimization project. [All Wards]
7. Motion approving change order #2 to Hagerty Earthworks in the amount of \$60,000 to install two manholes along the Duck Creek South Interceptor for the FY2017 Contract Sewer Repair program budgeted in CIP #00200. [Ward 7].

### Finance

1. Third Consideration: Ordinance amending Title 1 by adding Chapter 1.04.100 entitled "Suspension of issuing licenses and permits" to provide the City the with ability to suspend the issuance of any licenses or permits for delinquent invoices owed to the City. [All Wards]
2. Second Consideration: Ordinance amending Chapter 2.62 entitled "Levee Improvement Commission" to update the governance and processes of the Commission. [All Wards]
3. Resolution approving the lease of the Transload Terminal's short line rail system with

Savage Davenport Railroad. [Ward 8]

4. Resolution awarding a contract for the construction of three houses on East 6<sup>th</sup> Street to River Valley Homes for the price not-to-exceed \$713,510 and authorizing Mayor Frank Klipsch or designee to sign and manage any related agreements. [Ward 3]
5. Resolution appointing Gene Meeker to fill the 6th Ward Alderman vacancy until the winner of this Fall's regular City Election is determined and sworn in. [All Wards]

XIII. Other Ordinances, Resolutions and Motions

XIV. Public with Business

PLEASE NOTE: At this time individuals may address the City Council on any matters of City business. This is not an opportunity to discuss issues with the Council members or get information. In accordance with Open Meetings law, the Council can not take action on any complaint or suggestions tonight, and can not respond to any allegations at this time.

Please state your Name and Ward for the record. There is a five (5) minute time limit.  
Please end your comments promptly.

XV. Reports of City Officials

XVI. Adjourn

City of Davenport

Agenda Group: Council  
Department: City Clerk  
Contact Info: Jackie E Holecek  
Wards: All

**Action / Date**  
**7/12/2017**

Subject:  
Approval of the City Council Meeting Minutes for June 28, 2017

ATTACHMENTS:

| Type         | Description   |
|--------------|---------------|
| ▣ Cover Memo | CC Min 062817 |

REVIEWERS:

| Department | Reviewer       | Action   | Date                |
|------------|----------------|----------|---------------------|
| City Clerk | Admin, Default | Approved | 7/5/2017 - 11:16 AM |

COUNCIL CHAMBERS, CITY HALL, Davenport, Iowa, June 28, 2017---The Council observed a moment of silence. Pledge of Allegiance. The Council met in regular session at 5:30 PM with Mayor Klipsch presiding and all aldermen present.

The minutes of the June 14, 2017 City Council meeting were approved as printed.

The report of the Committee of the Whole was as follows: COUNCIL CHAMBERS, CITY HALL, Davenport, Iowa, Wednesday, June 21, 2017---The Council observed a moment of silence. Pledge of Allegiance. The Council met in Committee of the Whole at 5:30 PM with Mayor Klipsch presiding and all alderman present. The following Proclamation was issued: Summer Solstice, June 21, 2017, 261. Action items for Discussion: (The votes on all motions were by voice vote. All votes were unanimous unless specifically noted.) Community Development: Ald. Gripp reviewed all items listed. On motion by Ald. Dickmann, second by Ald. Justin all items moved to the Consent Agenda. Public Safety: Ald. Matson reviewed all items listed. On motion by Ald. Dickmann, second by Ald. Rawson items #3 regarding The Office and #4 regarding Rookies moved to the Discussion Agenda and all other items moved to the Consent Agenda. Public Works: Ald. Dunn reviewed all items listed. On motion by Ald. Dunn, second by Ald. Gordon all items moved to the Consent Agenda. Finance: Ald. Gordon reviewed all items listed. On motion by Ald. Gripp, second by Ald. Rawson the Ordinance amending Chapter 2.62 entitled "Levee Improvement Commission" was amended to separate super majority power in the case of a positive recommendation to a simple majority of the City Council to overturn and a denial recommendation takes a super majority of the City Council to overturn. On motion by Ald. Tompkins, second by Ald. Gripp all items moved to the Consent Agenda. Council adjourned at 6:09 p.m.

The following Proclamation was issued: Red White & Boom, July 3, 2017. 262.

The Discussion Agenda items were as follows: NOTE: The votes on all ordinances and resolutions were by roll call vote. The votes on all motions were by voice vote. All votes were unanimous unless specifically noted.

The following motions were passed: approving a noise variance for The Office, 116 W 3rd Street, Bix Outdoor Event, July 29, 2017; 12:00 PM to 1:00 AM (July 30th), Over 50 dBa, 263; approving the temporary outdoor area for Rookie's Sports Bar (Rookies Inc.), 2818

June 28, 2016

Brady Street - Extended outdoor area July 9, 2017 "Personal Fundraiser" - License Type: C Liquor, 264.

The Consent Agenda was as follows: NOTE: These are routine items and are enacted at the City Council meeting by one roll call vote. The vote was unanimous unless otherwise noted.

Community Development: The following ordinance was adopted: Ordinance for Case No. REZ17-03 - Proposed rezoning of 64.6 acres, more or less, of property located west of Division Street and south of Interstate 80 from A-1 Agricultural District to M-1 Light Industrial District, 265.

The following ordinances moved to second consideration: for Case No. ROW17-02 - Request of Genesis Health System for the right-of-way vacation (abandonment) of 0.38 acre (16,336 square feet), more or less, of public right-of-way known as East Lombard Street between College Avenue and the west line extended of the north-south alley east of formerly vacated Esplanade Avenue; for Case No. ROW17-03 being the request of Genesis Health System for the right-of-way vacation (abandonment) of 0.26 acre (11,400 square feet), more or less, of public right-of-way known as Denison Avenue between the west line of Adams Street and the railroad.

The following resolutions were adopted: approving Case No. F17-09 being the final plat of Riverview on 6th, being a replat of a part of Lots 8, 9, and Lot 10 of Block 146 and Lot 7 and a part of Lot 6 of Block 125 of LeClaire's 12th Addition, located west of Grand Avenue on either side of East 6th Street, containing 0.84 acres, more or less, and three (3) residential lots, 266; approving Case No. F17-10 being the final plat of Interstate 80 Airport Industrial Park 10th Addition. The property is located at the northeast corner of Hillandale Road and Research Parkway, containing two industrial lots on 29.43 acres, more or less, 267; approving Case No. FDP17-02 being the request of Genesis Health System for a PDD Final Development Plan approval for a medical office building located on 2.92 acres, more or less, of property located at 3200 West Kimberly Road, 268.

Public Safety: The following ordinance was adopted: amending Schedule VII of Chapter 10.96 entitled "No Parking" by deleting 54th Street along the north side from a point 85 feet east of Tremont Avenue, east 145 feet, 269.

June 28, 2016

The following resolution was adopted: closing various street(s), lane(s) or public grounds on the listed date(s) to hold outdoor event(s), 270.

The following motions were passed: Motion approving noise variance request(s) for various events on the listed dates at the listed times, 271; approving all submitted beer and liquor license applications, 272.

Public Works: The following resolutions were adopted: approving a contract amendment to the Lorton, 29th and Fairhaven Area Stormwater Improvement project with Legacy Corporation of IL in the amount of \$210,000, CIP #10131, 273; accepting the sanitary sewer, storm sewer, and pavement associated with the Villas at Pheasant Creek 1st Addition Phase One site improvements, 274; of acceptance for the Duck Creek Golf Course Bridge Repair project; completed by Brandt Construction Co. in the amount of \$32,392.83 budgeted in CIP #10519, 275; to award a contract to five contractors for the FY2018 Sewer Lateral Repair Program in the amount of \$900,000, CIP #30031, 276; assessing the cost of weed cutting, brush & debris removal, repairing water service, repairing sewer service, repairing sewer lateral, boarding up buildings at various lots and tracts of real estate, 277, 278, 279, 280, 281.

The following motions were passed: approving a contract amendment to the FY2017 Sanitary Sewer Lateral Repair Program with Hometown Plumbing and Heating Co. in the amount of \$50,000, CIP #30022, 282; approving a contract amendment to the FY2017 Sanitary Sewer Lateral Repair Program with Petersen Plumbing in the amount of \$50,000, CIP #30022, 283; approving the purchase of a used portable conveyor system from KIMCO USA, Inc. of Marshall, IL in the amount of \$93,342.11, 284.

Finance: The following ordinance moved to third consideration: amending Title 1 by adding Chapter 1.04.100 entitled "Suspension of issuing licenses and permits" to provide the City the with ability to suspend the issuance of any licenses or permits for delinquent invoices owed to the City; the following ordinance moved to second consideration: amending Chapter 2.62 entitled "Levee Improvement Commission" to update the governance and processes of the Commission.

The following resolutions were passed: setting a public hearing related to a lease agreement with Savage Davenport Railroad for the lease of the City's main track and real

June 28, 2016

property 25 feet on each side thereof at the Davenport Transload Terminal, 285; approving the renewal of general and auto liability, property, and workers' compensation insurance, and related professional risk management services for Fiscal Year 2018 with multiple insurance companies in the amount of \$913,361, 286.

The following motion was passed: awarding a contract for paratransit, limited fixed route, and JARC transportation services to River Bend Transit of Davenport, IA, 287.

Other Ordinances, Resolutions and Motions: On motion by Ald. Justin, second by Ald. Rawson the rules were suspended and the following resolution was added to the agenda and adopted: authorizing application to the Economic Development Administration's Economic Development Assistance program for assistance for improvements to the Transload Facility, 288.

Reports of City Officials: The following Civil Service Certification lists were received and filed: *Construction Inspector:* Corey Smith, Brad Thomas, Zachary White; *Design & Construction Coordinator:* Kevin Bailey, Michael McGrath, Dylan Daehn, Michael Kramer, Joe Praught, Lindsay Hoggard, Susan Seville, Eric Avants, Russell Miller, Megan Hudacheck, Dean McKenzie, Scott Rosenfeldt, Garan Duckett; *Economic Development Analyst:* Laura Berkley, Adam Holland, Jenelle Kreiling; *Packer Driver/Loader:* Michael Fascher, Matthew Fleetwood, Luke Fletcher, Levi Landon, Christopher Mohr, Troy Porter, Dean Schlapkohl, Joseph Thorndike; *Project Technician:* Jay Barber, Nicholas Johnson, Jason Kratz, Brenda Scott; *Senior Mechanic:* Nick Shinnars, Greg Greenwood, Steve Keppy, 289.

On motion Council adjourned at 5:49 P.M.

A handwritten signature in black ink that reads "Jackie E. Holecek". The signature is written in a cursive, flowing style.

Jackie E. Holecek, MMC  
Deputy City Clerk

City of Davenport

Agenda Group:  
Department: City Clerk  
Contact Info: Jackie E Holecek  
Wards: All

**Action / Date**  
**7/12/2017**

Subject:  
Approval of the Report of the Committee of the Whole for July 5, 2017

ATTACHMENTS:

| Type         | Description   |
|--------------|---------------|
| ▣ Cover Memo | Report of COW |

REVIEWERS:

| Department | Reviewer       | Action   | Date                |
|------------|----------------|----------|---------------------|
| City Clerk | Admin, Default | Approved | 7/5/2017 - 11:19 AM |

COUNCIL CHAMBERS, CITY HALL, Davenport, Iowa, Wednesday, July 5, 2017---The Council observed a moment of silence. Pledge of Allegiance. The Council met in Committee of the Whole at 5:30 PM with Mayor Klipsch presiding and all alderman present. The following Appointment was approved: Library Board of Trustee: Naghme Motto, 290. Action items for Discussion: (The votes on all motions were by voice vote. All votes were unanimous unless specifically noted.) Community Development: Ald. Gripp reviewed all items listed. On motion by Ald. Dickmann, second by Ald. Ambrose all items moved to the Consent Agenda. Public Safety: Ald. Matson reviewed all items listed. On motion by Ald. Dickmann, second by Ald. Ambrose the item regarding the The Current (new license) moved to the Discussion Agenda and all other items moved to the Consent Agenda. Public Works: Ald. Ambrose reviewed all items listed. On motion by Ald. Dunn, second by Ald. Rawson all items moved to the Consent Agenda. Finance: Ald. Gordon reviewed all items listed. On motion by Ald. Tompkins, second by Ald. all items moved to the Consent Agenda. Council adjourned at 6:25 p.m.

City of Davenport

Agenda Group: Council  
Department: Office of the Mayor  
Contact Info: Nevada Lemke  
Wards: All

**Action / Date**  
**7/12/2017**

Subject:  
Local Business "The Foundation of Our Community" to Expression Jewelers

REVIEWERS:

| Department          | Reviewer       | Action   | Date                |
|---------------------|----------------|----------|---------------------|
| Office of the Mayor | Admin, Default | Approved | 7/7/2017 - 12:01 PM |

City of Davenport

Agenda Group: Council  
Department: City Clerk  
Contact Info: Sherry Eastman  
Wards: 3

**Action / Date**  
**7/12/2017**

Subject:

Motion approving The Current (Putnam Landlord, LLC)- 128 -130 W 2nd St - Outdoor area "New License: - License Type: C Liquor/B Wine **\*liquor license issuance is contingent upon the compliance of Iowa Alcoholic Beverages Divison's established requirements\***

REVIEWERS:

| Department | Reviewer       | Action   | Date               |
|------------|----------------|----------|--------------------|
| City Clerk | Admin, Default | Approved | 7/6/2017 - 9:15 AM |

## City of Davenport

Agenda Group:

Department: Community Planning & Economic Development

Contact Info: Matt Flynn, 888-2286

Wards: 5

**Action / Date**

**6/7/2017**

Subject:

Third Consideration: Ordinance for Case No. ROW17-02 - Request of Genesis Health System for the right-of-way vacation (abandonment) of 0.38 acre (16,336 square feet), more or less, of public right-of-way known as East Lombard Street between College Avenue and the west line extended of the north-south alley east of formerly vacated Esplanade Avenue. [Ward 5]

Recommendation:

The City Plan and Zoning Commission forwards Case No. ROW17-02 to the City Council with a recommendation for approval subject to the following condition:

1. A utility easement be dedicated for the preservation and maintenance of public utilities within the East Lombard Street right-of-way. Alternatively, Genesis Health System could abandon the public utilities.

Relationship to Goals:

Urban revitalization.

Background:

Genesis Health System is petitioning to vacate the East Lombard Street right-of-way to facilitate campus expansion. At this time, the intent is for the property to be green space. Genesis Health System owns the property on both sides of East Lombard Street between College Avenue and the alley west of Mississippi Avenue. There is a sanitary sewer main and natural gas main located within the East Lombard Street right of way. A public utility easement would need to be provided or Genesis Health System would need to abandon the utilities.

### ATTACHMENTS:

| Type              | Description                                          |
|-------------------|------------------------------------------------------|
| ▣ Ordinance       | ROW17-02 - Ordinance                                 |
| ▣ Backup Material | ROW17-02 - Plan and Zoning Commission Letter         |
| ▣ Backup Material | ROW17-02 - Plan and Zoning Commission Vote Results   |
| ▣ Backup Material | ROW17-02 - Plan and Zoning Commission Staff Report   |
| ▣ Backup Material | ROW17-02 - Properties owned by Genesis Health System |

### REVIEWERS:

| Department                                | Reviewer       | Action   | Date                |
|-------------------------------------------|----------------|----------|---------------------|
| Community Planning & Economic Development | Admin, Default | Approved | 7/5/2017 - 11:10 AM |

## ORDINANCE NO.

ORDINANCE for Case No. ROW17-02: Request of Genesis Health System for the right-of-way vacation (abandonment) of 0.38 acre (16,800 square feet), more or less, of public right-of-way known as East Lombard Street between College Avenue and the west line extended of the north-south alley east of formerly vacated Esplanade Avenue. [5<sup>th</sup> Ward]

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAVENPORT, IOWA:

Section 1. The following described unit of Scott County, Iowa real estate is hereby vacated (abandoned). The property has the following legal description:

Part of Lombard Street in the southeast quarter of Section 24, Township 78 North, Range 3 East of the 5th Principal Meridian in the city of Davenport, County of Scott, State of Iowa, more particularly described as follows:

Beginning at the northwest corner of Lot 84 in Home Addition to the City of Davenport; thence North 02 degrees 18 minutes 04 seconds West along the easterly line of previously vacated College Avenue, a distance of 60.00 feet to the westerly projection of the north right of way line of Lombard Street; thence North 87 degrees 41 minutes 56 seconds East along said westerly projection and north right of way line, a distance of 272.68 feet to the southeast corner of Lot 58 in said Home Addition; thence South 01 degrees 31 minutes 20 seconds East along the southerly projection of the east line of said Lot 58, a distance of 60.01 feet to the south right of way line of Lombard Street; thence South 87 degrees 41 minutes 56 seconds West along said south right of way line, a distance of 271.86 feet to the Point of Beginning.

The above described parcel contains 16,336 square feet or 0.38 acres, more or less as shown by the attached Right of Way Vacation Plat.

For the purpose of this description bearings are based on the Iowa State Plane Coordinate System, South Zone, North American Datum of 1983 (2011 Adjustment).

The vacation (abandonment) is subject to the following condition:

1. A utility easement be dedicated for the preservation and maintenance of public utilities within the East Lombard Street right-of-way. Alternatively, Genesis Health System could abandon the public utilities.

SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason illegal or void, then the lawful provisions of this ordinance, which are separable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

EFFECTIVE DATE. This ordinance shall be in full force and effective after its final passage and publication as by law provided.

First Consideration \_\_\_\_\_

Second Consideration \_\_\_\_\_

Approved \_\_\_\_\_

\_\_\_\_\_  
Frank Klipsch  
Mayor

Attest: \_\_\_\_\_  
Jackie Holecek, CMC  
Deputy City Clerk

Published in the *Quad City Times* on \_\_\_\_\_

May 17, 2017

Honorable Mayor and City Council  
City Hall  
226 West 4<sup>th</sup> Street  
Davenport, Iowa 52801

At its regular meeting of May 16, 2017, the City Plan and Zoning Commission considered Case No. ROW17-02 being the request of Genesis Health System for the right-of-way vacation (abandonment) of 0.38 acre (16,800 square feet), more or less, of public right-of-way known as East Lombard Street between College Avenue and the west line extended of the north-south alley east of formerly vacated Esplanade Avenue.

The City Plan and Zoning Commission forwards Case No. ROW17-02 to the City Council with a recommendation for approval subject to the following condition:

1. A utility easement be dedicated for the preservation and maintenance of public utilities within the East Lombard Street right-of-way. Alternatively, Genesis Health System could abandon the public utilities.

Respectfully submitted,



Robert Inghram, Chairperson  
City Plan and Zoning Commission

|          |           | APPROVED                            | APPROVED                             | APPROVED                                     | APPROVED                                                | APPROVED                                | APPROVED                       |  |  |
|----------|-----------|-------------------------------------|--------------------------------------|----------------------------------------------|---------------------------------------------------------|-----------------------------------------|--------------------------------|--|--|
| Name:    | Roll Call | ROW17-02<br>Genesis<br>E Lombard St | ROW17-03<br>Genesis<br>E Denison Ave | FDP17-02<br>Genesis<br>3200 W<br>Kimberly Rd | FDP17-03<br>Build to Suit<br>Lot 9 Utica<br>Corners 6th | F17-10<br>I-80 Airport Indus<br>Pk 10th | P17-02<br>Inverness<br>Estates |  |  |
| Connell  | P         | Y                                   | Y                                    | Y                                            | Y                                                       | Y                                       | Y                              |  |  |
| Hepner   | P         | Y                                   | Y                                    | Y                                            | Y                                                       | Y                                       | Y                              |  |  |
| Inghram  | P         |                                     |                                      |                                              |                                                         |                                         |                                |  |  |
| Kelling  | EX        |                                     |                                      |                                              |                                                         |                                         |                                |  |  |
| Lammers  | P         | Y                                   | Y                                    | Y                                            | Y                                                       | Y                                       | Y                              |  |  |
| Maness   | EX        |                                     |                                      |                                              |                                                         |                                         |                                |  |  |
| Martinez | EX        |                                     |                                      |                                              |                                                         |                                         |                                |  |  |
| Medd     | P         | Y                                   | Y                                    | Y                                            | Y                                                       | Y                                       | Y                              |  |  |
| Quinn    | P         | Y                                   | Y                                    | Y                                            | Y                                                       | Y                                       | Y                              |  |  |
| Reinartz | P         | Y                                   | Y                                    | Y                                            | Y                                                       | Y                                       | Y                              |  |  |
| Tallman  | P         | Y                                   | Y                                    | Y                                            | Y                                                       | Y                                       | AB                             |  |  |
|          |           | 7-YES<br>0-NO<br>0-ABSTAIN          | 7-YES<br>0-NO<br>0-ABSTAIN           | 7-YES<br>0-NO<br>0-ABSTAIN                   | 7-YES<br>0-NO<br>0-ABSTAIN                              | 7-YES<br>0-NO<br>0-ABSTAIN              | 6-YES<br>0-NO<br>1-ABSTAIN     |  |  |



City of Davenport  
Community Planning & Economic Development Department  
**FINAL STAFF REPORT**

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**Meeting Date:** May 16, 2017  
**Request:** Right-of-way vacation (abandonment) of public right-of-way known as  
**Location:** East Lombard Street between College Avenue and the west line extended of the north-south alley east of Esplanade Avenue.  
**Case No.:** ROW17-02  
**Applicant:** Genesis Health System

**Update:**

Genesis Health System vacated Esplanade Avenue located between East Rusholme Street and East Lombard Street in 2014 (ORD2014-178). College Avenue between High Street and East Rusholme Street was also vacated at that time. Therefore, the portion of the request pertaining to Esplanade Avenue has been deleted from the request.

**Recommendation:**

Staff recommends the City Plan and Zoning Commission accept the listed findings and forward Case No. ROW17-02 to the City Council with a recommendation for approval subject to the listed condition.

**Introduction:**

Genesis Health System is petitioning to vacate the East Lombard Street right-of-way to facilitate campus expansion. At this time, the intent is for the property to be green space.

**LOCATION:**



 Subject Property



**Background:**

**Comprehensive Plan:**

Within Existing Urban Service Area: Yes

Within Urban Service Area 2035: Yes

**Zoning:**

The adjacent properties are zoned “PDD” Planned Development District and “R-4” Moderate Density Dwelling District.



 Subject Property



 Subject Property

 Properties owned by Genesis Health System



### Technical Review:

Streets. East Lombard Street is improved with roadways and sidewalks.

Storm Water. There is no existing stormwater infrastructure within the East Lombard Street right of way.

Sanitary Sewer. Sanitary sewer service is located within the East Lombard Street right of way.



 Subject Property



Other Utilities. Electric does not appear to be located within the East Lombard Street right of way. However, a natural gas main is located with the East Lombard Street right of way.

Emergency Services. This request would not affect Emergency services.

Parks/Open Space. This request does not impact any existing or planned parks or public open spaces.

**Public Input:**

Public Hearing notices were sent to property owners within 200 feet of the proposed right-of-way vacation in advance of the May 2, 2017 Plan and Zoning Commission Public Hearing. No one spoke other than the applicant at the public hearing. To date, staff has not received any objections to the request.

**Discussion:**

Genesis Health System is petitioning to vacate the East Lombard Street right-of-way to facilitate campus expansion. At this time, the intent is for the property to be green space. Genesis Health System owns the property on both sides of East Lombard Street between College Avenue and the alley west of Mississippi Avenue. There is a sanitary sewer main and natural gas main located within the East Lombard Street right of way. A public utility easement would need to be provided or Genesis Health System would need to abandon the utilities.

**Staff Recommendation:**

## Findings:

1. The proposed right of way vacation would not impact adjacent property owners since Genesis Health System owns property on both sides of East Lombard Street in the location of the right of way vacation; and
2. A utility easement would preserve the rights for utility providers maintaining utilities within the East Lombard Street right-of-way.

Staff recommends the City Plan and Zoning Commission forward Case No. ROW17-02 to the City Council with a recommendation for approval subject to the following condition:

1. A utility easement be dedicated for the preservation and maintenance of public utilities within the East Lombard Street right-of-way. Alternatively, Genesis Health System could abandon the public utilities.

Prepared by:



Ryan Rusnak, AICP  
Planner III



City of Davenport

Agenda Group:

Department: Community Planning & Economic Development

Contact Info: Matt Flynn, 888-2286

Wards: 5

**Action / Date**

**6/7/2017**

Subject:

Third Consideration: Ordinance for Case No. ROW17-03 being the request of Genesis Health System for the right-of-way vacation (abandonment) of 0.26 acre (11,400 square feet), more or less, of public right-of-way known as Denison Avenue between the west line of Adams Street and the railroad. [Ward 5]

Recommendation:

The City Plan and Zoning Commission forwards Case No. ROW17-02 to the City Council with a recommendation for approval subject to the following condition:

1. A utility easement be dedicated for the preservation and maintenance of the public utility within the Denison Avenue right-of-way. Alternatively, Genesis Health System could abandon the public utility.

Relationship to Goals:

Urban revitalization.

Background:

Genesis Health System is petitioning to vacate the Denison Avenue right-of-way to secure the campus from trespassers. Genesis Health System owns the adjacent property to the north.

There is a sanitary sewer main at the western portion of the right-of-way. A public utility easement would need to be provided or Genesis Health System would need to abandon the utility.

ATTACHMENTS:

| Type              | Description                                          |
|-------------------|------------------------------------------------------|
| ▣ Ordinance       | ROW17-03 - Ordinance                                 |
| ▣ Backup Material | ROW17-03 - Plan and Zoning Commission letter         |
| ▣ Backup Material | ROW17-03 - Plan and Zoning Commission Vote Results   |
| ▣ Backup Material | ROW17-03 - Plan and Zoning Commission Staff Report   |
| ▣ Backup Material | ROW17-03 - Properties owned by Genesis Health System |

REVIEWERS:

| Department                                | Reviewer       | Action   | Date                |
|-------------------------------------------|----------------|----------|---------------------|
| Community Planning & Economic Development | Admin, Default | Approved | 7/5/2017 - 11:10 AM |

ORDINANCE NO.

ORDINANCE for Case No. ROW17-03: Request of Genesis Health System for the right-of-way vacation (abandonment) of 0.26 acre (11,400 square feet), more or less, of public right-of-way known as Denison Avenue between the west line of Adams Street and the railroad.. [5<sup>th</sup> Ward]

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAVENPORT, IOWA:

Section 1. The following described unit of Scott County, Iowa real estate is hereby vacated (abandoned). The property has the following legal description:

Part of Denison Avenue in the southeast quarter of Section 24, Township 78 North, Range 3 East of the 5th Principal Meridian in the city of Davenport, County of Scott, State of Iowa, more particularly described as follows:

Beginning at the northeast corner of Lot 28 in Home Addition to the City of Davenport, Iowa; thence North 00 degrees 18 minutes 19 seconds West along the west right of way line of Adams Street, a distance of 50.00 feet to the north right of way line of Denison Avenue; thence North 88 degrees 58 minutes 01 seconds East along said north right of way line, a distance of 198.35 feet to the southwesterly right of way line of the Soo Line Railroad; thence Southeasterly 72.33 feet along said southwesterly right of way line and the arc of a curve to the right with a radius of 3,770.00 feet, a chord bearing of South 47 degrees 17 minutes 58 seconds East and a chord distance of 72.33 feet to the south right of way line of Denison Avenue; thence South 88 degrees 58 minutes 01 seconds West along said south right of way line and it's westerly projection, a distance of 251.25 feet to the Point of Beginning.

The above described parcel contains 11,248 square feet or 0.26 acres, more or less as shown by the attached Right of Way Vacation Plat.

For the purpose of this description the west right of way line of Adams Street is assumed to have a bearing of North 00 degrees 18 minutes 19 seconds West.

The vacation (abandonment) is subject to the following condition:

1. A utility easement be dedicated for the preservation and maintenance of the public utility within the Denison Avenue right-of-way. Alternatively, Genesis Health System could abandon the public utility.

SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason illegal or void, then the lawful provisions of this ordinance, which are separable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

EFFECTIVE DATE. This ordinance shall be in full force and effective after its final passage and publication as by law provided.

First Consideration \_\_\_\_\_

Second Consideration \_\_\_\_\_

Approved \_\_\_\_\_

\_\_\_\_\_  
Frank Klipsch  
Mayor

Attest: \_\_\_\_\_

Jackie Holecek, CMC  
Deputy City Clerk

Published in the *Quad City Times* on \_\_\_\_\_

May 17, 2017

Honorable Mayor and City Council  
City Hall  
226 West 4<sup>th</sup> Street  
Davenport, Iowa 52801

At its regular meeting of May 16, 2017, the City Plan and Zoning Commission considered Case No. ROW17-03 being the request of Genesis Health System for the right-of-way vacation (abandonment) of 0.26 acre (11,400 square feet), more or less, of public right-of-way known as Denison Avenue between the west line of Adams Street and the railroad. The request is to facilitate securing the property.

The City Plan and Zoning Commission forwards Case No. ROW17-03 to the City Council with a recommendation for approval subject to the following condition:

1. A utility easement be dedicated for the preservation and maintenance of the public utility within the Denison Avenue right-of-way. Alternatively, Genesis Health System could abandon the public utility.

Respectfully submitted,



Robert Inghram, Chairperson  
City Plan and Zoning Commission

|          |           | APPROVED                            | APPROVED                             | APPROVED                                     | APPROVED                                                | APPROVED                                | APPROVED                       |  |  |
|----------|-----------|-------------------------------------|--------------------------------------|----------------------------------------------|---------------------------------------------------------|-----------------------------------------|--------------------------------|--|--|
| Name:    | Roll Call | ROW17-02<br>Genesis<br>E Lombard St | ROW17-03<br>Genesis<br>E Denison Ave | FDP17-02<br>Genesis<br>3200 W<br>Kimberly Rd | FDP17-03<br>Build to Suit<br>Lot 9 Utica<br>Corners 6th | F17-10<br>I-80 Airport Indus<br>Pk 10th | P17-02<br>Inverness<br>Estates |  |  |
| Connell  | P         | Y                                   | Y                                    | Y                                            | Y                                                       | Y                                       | Y                              |  |  |
| Hepner   | P         | Y                                   | Y                                    | Y                                            | Y                                                       | Y                                       | Y                              |  |  |
| Inghram  | P         |                                     |                                      |                                              |                                                         |                                         |                                |  |  |
| Kelling  | EX        |                                     |                                      |                                              |                                                         |                                         |                                |  |  |
| Lammers  | P         | Y                                   | Y                                    | Y                                            | Y                                                       | Y                                       | Y                              |  |  |
| Maness   | EX        |                                     |                                      |                                              |                                                         |                                         |                                |  |  |
| Martinez | EX        |                                     |                                      |                                              |                                                         |                                         |                                |  |  |
| Medd     | P         | Y                                   | Y                                    | Y                                            | Y                                                       | Y                                       | Y                              |  |  |
| Quinn    | P         | Y                                   | Y                                    | Y                                            | Y                                                       | Y                                       | Y                              |  |  |
| Reinartz | P         | Y                                   | Y                                    | Y                                            | Y                                                       | Y                                       | Y                              |  |  |
| Tallman  | P         | Y                                   | Y                                    | Y                                            | Y                                                       | Y                                       | AB                             |  |  |
|          |           | 7-YES<br>0-NO<br>0-ABSTAIN          | 7-YES<br>0-NO<br>0-ABSTAIN           | 7-YES<br>0-NO<br>0-ABSTAIN                   | 7-YES<br>0-NO<br>0-ABSTAIN                              | 7-YES<br>0-NO<br>0-ABSTAIN              | 6-YES<br>0-NO<br>1-ABSTAIN     |  |  |



City of Davenport  
Community Planning & Economic Development Department  
**FINAL STAFF REPORT**

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**Meeting Date:** May 16, 2017  
**Request:** Right-of-way vacation (abandonment) of public right-of-way known as  
**Location:** Denison Avenue between the west line extended of Adams Street and the railroad.  
**Case No.:** ROW17-03  
**Applicant:** Genesis Health System

**Recommendation:**

Staff recommends the City Plan and Zoning Commission accept the listed findings and forward Case No. ROW17-03 to the City Council with a recommendation for approval subject to the listed condition.

**Introduction:**

Genesis Health System is petitioning to vacate the Denison Avenue right-of-way to secure the campus from trespassers.

**LOCATION:**



 Subject Property



**Background:**

**Comprehensive Plan:**

Within Existing Urban Service Area: Yes

Within Urban Service Area 2035: Yes

**Zoning:**

The adjacent properties are zoned “PDD” Planned Development District, “R-4” Moderate Density Dwelling District and “C-2” General Commercial District.



 Subject Property



 Subject Property

 Properties owned by Genesis Health System



## Technical Review:

Streets. Denison Avenue is not improved with a roadway or sidewalks.

Storm Water. There is no existing storm water infrastructure within the Denison Avenue right of way.

Sanitary Sewer. Sanitary sewer service is located at the western portion of Denison Avenue.



Other Utilities. Other utilities do not appear to be located within the Denison Avenue right of way.

Emergency Services. This request would not affect Emergency services.

Parks/Open Space. This request does not impact any existing or planned parks or public open spaces.

**Public Input:**

Public Hearing notices were sent to property owners within 200 feet of the proposed right-of-way vacation in advance of the May 2, 2017 Plan and Zoning Commission Public Hearing. No one spoke other than the applicant at the public hearing. To date, staff has not received any objections to the request.

**Discussion:**

Genesis Health System is petitioning to vacate the Denison Avenue right-of-way to secure the campus from trespassers. Genesis Health System owns the adjacent property to the north. There is a sanitary sewer main at the western portion of the right-of-way. A public utility easement would need to be provided or Genesis Health System would need to abandon the utility.

**Staff Recommendation:**

## Findings:

1. The proposed right of way vacation would not impact adjacent property owners since Genesis Health System owns the adjacent property to the north; and
2. A utility easement would preserve the right of the utility provider maintaining the sanitary sewer within the Denison Avenue right-of-way.

Staff recommends the City Plan and Zoning Commission forward Case No. ROW17-03 to the City Council with a recommendation for approval subject to the following condition:

1. A utility easement be dedicated for the preservation and maintenance of the public utility within the Denison Avenue right-of-way. Alternatively, Genesis Health System could abandon the public utility.

Prepared by:

A handwritten signature in blue ink, appearing to read "Ryan Rusnak", is written over a horizontal line.

Ryan Rusnak, AICP  
Planner III



City of Davenport

Agenda Group:  
Department: Public Safety  
Contact Info: Brian  
Wards: All

**Action / Date**  
**7/5/2017**

**Subject:**

First Consideration: An Ordinance amending Title X entitled "VEHICLES AND TRAFFIC" by amending or adding various sections thereto.

**Recommendation:**

Consider adoption of the ordinance.

**Background:**

Sections 1 and 2 of the proposed ordinance clean up issues between the city's current ordinance language and state code provisions. Section 3, which regulates the use of cellphones while driving, incorporates the newly adopted state code provisions in the city code. Section 4 restricts the use of engine brakes on semi-tractors in the city.

**ATTACHMENTS:**

| Type         | Description                                                                    |
|--------------|--------------------------------------------------------------------------------|
| ▣ Cover Memo | AN ORDINANCE AMENDING TITLE TEN BY AMENDING OR ADDING VARIOUS SECTIONS THERETO |

**REVIEWERS:**

| Department    | Reviewer       | Action   | Date                |
|---------------|----------------|----------|---------------------|
| Public Safety | Admin, Default | Approved | 7/5/2017 - 11:11 AM |

ORDINANCE NO.

AN ORDINANCE AMENDING TITLE TEN ENTITLED "VEHICLES AND TRAFFIC" BY AMENDING AND ADDING VARIOUS SECTIONS THERETO OF THE MUNICIPAL CODE OF DAVENPORT, IOWA.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAVENPORT, IOWA:

Section 1. That Section 10.40.030 of the Municipal Code of Davenport, Iowa, be and the same is hereby amended to read as follows:

10.40.30 Control of vehicle.

A. A person operating a motor vehicle shall have the vehicle under control at all times.

B. A person operating a motor vehicle shall reduce speed to a reasonable and proper rate:

1. when approaching and passing a person walking in the traveled portion of the public highway.

2. when approaching and passing an animal which is being led, ridden or driven upon a public highway.

3. when approaching or traversing a crossing or intersection of public highways, or a sharp turn, curve, or steep descent in a public highway.

4. when approaching and passing an emergency warning device displayed in accordance with rules adopted under Iowa law, or an emergency vehicle displaying a revolving or flashing light or directional light arrow.

5. when approaching or passing a slow moving vehicle displaying a reflective device or flashing light.

6. when approaching or passing through a road work zone.

Section 2. That Section 10.36.050 of the Municipal Code of Davenport, Iowa, be and the same is hereby amended to read as follows:

10.36.050 Striking fixtures.

A person operating a motor vehicle shall not allow said vehicle to strike, hit or collide with any fixture or property legally upon or adjacent to a public street or highway. The driver of any vehicle that does strike, hit or collide with any fixture or property legally upon or adjacent to a public street or highway resulting in damage to such fixture or property shall take reasonable steps to locate and notify the owner or person in possession or charge of the fixture or property or a police officer of such damage and of his or her name and address and the registration number of the vehicle

that caused the damage and shall, upon request, exhibit his or her operator's or chauffeur's license to the owner or person in possession or charge of the fixture or property.

Section 3. That Chapter 10.68 of the Municipal Code of Davenport, Iowa, be and the same is hereby amended by adding a new section 10.68.290 entitled "Use of electronic communication device for texting while driving prohibited" to be read as follows:

10.68.290 Use of electronic communication device for texting while driving prohibited.

No person shall use a hand-held electronic communication device to write, send or view an electronic message while driving a motor vehicle unless the motor vehicle is at a complete stop off the traveled portion of the roadway. This prohibition does not apply to a member of a public safety agency as defined in Iowa Code section 34.1 while performing official duties, a health care professional in the course of an emergency situation or a person receiving safety-related information including emergency traffic or weather alerts. A person violating this section shall be guilty of committing a simple misdemeanor offense subject to a scheduled fine as set by Iowa law.

For purposes of this section a "hand-held electronic communication device" means a mobile telephone or other portable electronic communication device capable of being used to write, send or view an electronic message; but does not include a voice-operated or hands-free device which allows the user to write, send or listen to an electronic message without the use of either hand except to activate or deactivate a feature or function. Hand-held electronic communication device does not include a wireless communication device used to transmit or receive data as part of a digital dispatch system. Hand-held electronic communication device includes a device that is temporarily mounted inside a motor vehicle unless the device is a voice-operated or hands-free device.

For purposes of this section an "electronic message" means images visible on the screen of a hand-held electronic communication device including, but not limited to, a text-based message, an instant message, a portion of electronic mail, an internet site, a social media application, a game or similar content viewable on a hand-held electronic communication device.

For purpose of this section the terms "write", "send", or "view" with respect to an electronic message means the manual entry, transmission or retrieval of an electronic message including the playing, browsing or accessing of an electronic message.

Nothing in this section shall be construed to authorize a peace officer to confiscate a hand-held electronic communication device from the driver or occupant of a motor vehicle as evidence.

Section 4. That Chapter 10.74 of the Municipal Code of Davenport, Iowa, be and the same is hereby amended by adding a new Section 10.74.150 to read as follows:

10.74.150 Engine Brakes Prohibited.

It shall be unlawful for any person to engine brake anywhere within the city limits. Engine braking means any method of slowing diesel trucks in a manner that produces a loud noise, often by venting the cylinder of the diesel engine midway through its cycle causing the engine to absorb power, instead of producing power, thereby slowing the truck's movement down dramatically. Engine braking also means the production of excessive noise produced by diesel engine due to a truck operating with an improperly maintained, defective or modified muffler exhaust system or the use of straight exhaust pipes with no mufflers or baffles. A violation of this section shall be a simple misdemeanor punishable by a fine of \$100.00 plus court costs.

SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason illegal or void, then the lawful provisions of this ordinance, which are separable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

EFFECTIVE DATE. This ordinance shall be in full force and effective after its final passage and publication as by law provided.

First Consideration \_\_\_\_\_

Second Consideration \_\_\_\_\_

Approved \_\_\_\_\_

\_\_\_\_\_  
Frank Klipsch  
Mayor

Attest: \_\_\_\_\_  
Jackie Holecek, MMC

Deputy City Clerk

Published in the Quad City Times on \_\_\_\_\_

City of Davenport

Agenda Group:  
Department: Public Safety  
Contact Info: Jackie Holecek  
Wards: 3, 8

**Action / Date**  
**7/5/2017**

**Subject:**

Resolution closing various street(s), lane(s) or public grounds on the listed date(s) to hold outdoor event(s).

Three on Third (Kilkenny's Carriage Haus, Mac's), Bix Outdoor Street Festival, July 24, 2017 to July 29, 2017; Beginning at 5:00 p.m. July 24, 2017 to July 29, 2017 at 1:00 AM; Closure Location: 3rd Street between Ripley and Harrison Streets and Harrison Street between 3rd Street and the alley north on the west side. [Ward 3]

Downtown Partnership, Downtown Street Festival, July 27, 2017 through July 29, 2017; 7:30 a.m. July 27, 2017 to Midnight July 29, 2017; Closure Location: Second Street – all lanes from the east side of Ripley Street to the west side of Brady Street; Harrison Street – 2 lanes from 3<sup>rd</sup> Street to Harrison Street parking garage entrance (1/2 block), all lanes from garage entrance to the Transit Center Entrance; Main Street – all lanes from The Current Hotel parking lot entrance south to the Main Street parking garage, one lane from the parking garage (1/2 block) to River Dr. [Ward 3]

Sippi's Restaurant, Car Show, August 12, 2017; 6:00 AM - 3:00 PM; Closure Location: 2nd Street between Ripley and Scott Streets. [Ward 3]

Davenport Schools, North High Homecoming Parade, September 14, 2017; 6:00 PM to 8:00 PM; Closure Location: Starting at Wood Intermediate, Division to Northwest Blvd, Northwest Blvd south to West 56<sup>th</sup> Street, Oakbrook Road to West 57<sup>th</sup> Street to Marquette, Marquette to West 60<sup>th</sup>, West 60<sup>th</sup> to Myrtle St to West 59<sup>th</sup> to Vine Street to West 58<sup>th</sup> Street to Gaines Street to North High School finish.

**Recommendation:**

Approve the resolution.

**ATTACHMENTS:**

| Type         | Description |
|--------------|-------------|
| ▣ Cover Memo | Resolution  |

**REVIEWERS:**

| Department    | Reviewer       | Action   | Date                |
|---------------|----------------|----------|---------------------|
| Public Safety | Admin, Default | Approved | 7/5/2017 - 11:11 AM |

## RESOLUTION NO. 2017-

Resolution offered by Alderman Matson

Resolution closing various street(s), lane(s) or public grounds on the listed date(s) to hold outdoor event(s).

RESOLVED by the City Council of the City of Davenport.

Whereas, the City through its Special Events Policy has accepted the following application(s) to hold an outdoor event(s) on the following date(s), and

Whereas, upon review of the application(s) it has been determined that the street(s), lane(s) or public grounds listed below will need to be closed, and

NOW, THEREFORE, BE IT RESOLVED that the City Council approves and directs the staff to proceed with the temporary closure of the following street(s), lane(s) or public grounds on the following date(s) and time(s):

*Entity: Three on Third (Kilkenny's, Carriage Haus, Mac's)*

*Event: Bix Outdoor Street Festival*

*Date: July 24, 2017 – July 29, 2017*

*Time: Beginning at 5:00 PM July 24<sup>th</sup> – 1:00 AM July 29<sup>th</sup>*

*Closure Location: 3<sup>rd</sup> Street between Ripley and Harrison Streets and Harrison Street between 3<sup>rd</sup> Street and the alley north along the west side (Note: Some events planned will be done in the park lot behind Kilkenny's)*

*Ward: 3*

*Entity: Downtown Partnership*

*Event: Downtown Street Festival*

*Date: July 27 and 29, 2017*

*Time: 7:30 a.m., July 27, 2017 to Midnight, July 29, 2017.*

*Closure Location: Second Street – all lanes from the east side of Ripley Street to the west side of Brady Street; Harrison Street – 2 lanes from 3<sup>rd</sup> Street to Harrison Street Parking Garage Entrance (1/2 block), all lanes from the Garage Entrance to the Transit Center Entrance; Main Street – all lanes from The Current Hotel parking lot entrance south to the Main Street Parking Garage, one lane from the Parking Garage (1/2 block) to River Drive*

*Ward: 3*

*Entity: Sippi's Restaurant*

*Event: Car Show*

*Date: August 12, 2017*

*Time: 6:00 AM – 3:00 PM*

*Closure Location: 2<sup>nd</sup> Street between Ripley and Scott Streets*

*Ward: 3*

*Entity: Davenport Schools*

*Event: North High School Homecoming Parade*

*Date: September 14, 2017*

*Time: 6:00 p.m. to 8:00 p.m.*

*Closure Location: Starting at Wood Intermediate, Division to Northwest Blvd, Northwest Blvd south to West 56<sup>th</sup> Street, Oak Brook Road to West 57<sup>th</sup> Street to Marquette, Marquette to West 60<sup>th</sup>, West 60<sup>th</sup> to Myrtle St to West 59<sup>th</sup> to Vine Street to West 58th Street to Gaines Street to North High School Finish*

*Ward: 8*

Approved this 12<sup>th</sup> day of July, 2017.

Approved:

Attest:



\_\_\_\_\_  
Frank Klipsch, Mayor

\_\_\_\_\_  
Jackie E. Holecek, MMC, Deputy City Clerk

City of Davenport

Agenda Group:  
Department: Public Safety  
Contact Info: Jackie E Holecek, 6163  
Wards: 3

**Action / Date**  
**6/28/2017**

**Subject:**

Motion approving the Special Occurrence Permit for Shenangian's, 303 West 2nd Street to allow a food truck to operate outside this business along the street on Thursday, Friday, and Saturday from 9:00 p.m. to 2:00 a.m.; now through March 31, 2018. [Ward 3]

**Background:**

Per ordinance requirements notices were sent to property owners and/or tenants with a 200' radius of this location. Thirty-four notices were sent and 19 of those were returned as Vacant or No Such Address. Notice addresses were generated using the GIS system.

**ATTACHMENTS:**

| Type         | Description |
|--------------|-------------|
| ▣ Cover Memo | Notice      |

**REVIEWERS:**

| Department    | Reviewer       | Action   | Date                |
|---------------|----------------|----------|---------------------|
| Public Safety | Admin, Default | Approved | 7/5/2017 - 11:11 AM |



## NOTICE OF APPLICATION FOR SPECIAL OCCURRENCE LICENSE



**TO ALL PROPERTY OWNERS WITHIN 200 FEET OF THE SUBJECT PROPERTY LOCATED AT:  
131 West 2nd Street.**

The City Council at its Committee of the Whole meeting on JUNE 7, 2017 at 5:30 P.M. in Council Chambers at City Hall, 226 West 4th Street Davenport, Iowa to consider the Request of River Music Experience (RME) to have a food truck present outside their premise on public right-of-way. As a neighboring property owner, you have the opportunity to submit written comments, and/or to appear at the meeting, to express your views on the request described below. If you intend to send in written comments, it is appreciated if those comments could be received by the City Clerk no later than 12:00 PM, June 5m 2017.

### **The Request is described as follows:**

**Request of River Music Experience, 131 West 2nd Street, to allow a food truck to operate outside this business in the RME Courtyard, in front of the Skybridge along the street on the following dates: Most Fridays, June – September on June 16, 23, 30 and July 7, 14, 21, 25, August 4, 11, 18, 25, 26 and September 1, 8, 15, 22, 29 from 4:00 p.m. to 8:00 p.m.**

*Please feel free to comment on this request. Comments to the City Clerk must be presented in writing/email.*

To submit written comments send email to **specialevents@ci.davenport.ia.us** or mail a letter to:  
City Clerk/City Hall, 226 West Fourth Street, Davenport, IA 52801

### **Contact the City Clerk:**

Email: [specialevents@ci.davenport.ia.us](mailto:specialevents@ci.davenport.ia.us) • Phone: 326-6163

Address sent notice to:

Tenant  
111 W 2<sup>nd</sup> Street  
Davenport, IA 52801

Tenant  
101 Main St  
Davenport, IA 52801

Tenant  
201 W 2nd Street  
Davenport, IA 52801

Tenant  
203 W 2nd Street  
Davenport, IA 52801

Tenant  
205 W 2nd Street  
Davenport, IA 52801

Tenant  
209 W 2nd Street  
Davenport, IA 52801

Tenant  
217 W 2<sup>nd</sup> Street  
Davenport, IA 52801

Tenant  
214 W 2<sup>nd</sup> Street  
Davenport, IA 52801E

City of Davenport

Agenda Group:  
Department: Public Safety  
Contact Info: Sherry Eastman 326-7795  
Wards: Various

**Action / Date**  
**7/5/2017**

Subject:  
Motion approving beer and liquor license applications.

A. New license, new owner, temporary permit, temporary outdoor area, location transfer, etc. (as noted):

Ward 3

The Filling Station (Bar Management L.L.C.) - 500 W 3rd St. (QC Times Lot) - Outdoor Area July 29, 2017 "Bix Post Race Party" - License Type: B Beer

Front Street Brewery (Front Street Brewery Inc.) - 208 E River Dr. - Outdoor Area Premise Update - License Type: C Liquor

Kilkenny's Pub & Eatery (Kilkenny's Pub, Inc.) - 300 W 3rd St. - Outdoor Area July 24 - 30, 2017 "Bix Fest" (Street closure July 29 - 30 - Parking lot for duration of license) - License Type: C Liquor

Mac's Tavern (Failte, Inc.) - 316 W 3rd St. - Outdoor Area July 27 - 30, 2017 "Bix Festival" - License Type: C Liquor

The Office (Local 563 Cocktail Lounge, LLC) - 116 W 3rd St. - Outdoor Area July 29 - 30, 2017 "Bix Festival" - License Type: C Liquor

Sippis Restaurant (Sippis Inc.) - 406 W 2nd St (from Ripley to Scott St.) - Outdoor Area August 12, 2017 "Car Show" - License Type: C Liquor

Street Fest (Quad Cities Chamber of Commerce) - 2nd St. from Brady St. to Ripley St. - Outdoor Area July 27 - 30, 2017 - License Type: B Wine

Ward 4

Mississippi Valley Fair Inc. (Mississippi Valley Fair Inc.) - 2815 W Locust St. - Outdoor Area August 1 - 6, 2017 - License Type: Beer / Wine

The Pour House (Boss Lady, Inc.) - 1502 W Locust St. - Outdoor Area July 15 - 16, 2017 "Personal Fundraiser" - License Type: C Liquor

B. Annual license renewals (with outdoor area renewals as noted):

Ward 1

Express Lane Gas & Food Mart, Inc. (Expresslane, Inc.) - 4425 W Locust St. - License Type: C

## Beer

Smokin' Joe's Tobacco and Liquor Outlet #1 (The Outlet Inc.) - 3120 Rockingham Rd. - License Type: E Liquor

Veterans of Foreign Wars, F.W. Galbraith Post #828 - 101 S Linwood Ave - License Type: A Liquor

## Ward 3

Frick's Tap (LBLN, LLC) - 1402 W 3rd St. - Outdoor Area - License Type: C Liquor

## Ward 4

Smokin' Joe's Tobacco and Liquor Outlet #2 (The Outlet Inc.) - 1606 W Locust St. - License Type: E Liquor

## Ward 7

Express Lane Gas and Food Mart (Expresslane Inc.) - 3622 Brady St. - License Type: C Beer

Kwik Star #294 (Kwik Trip, Inc.) - 1650 W Kimberly Rd. - License Type: C Beer

Lunardi's (T.S. Lunardi, Inc.) - 102 E Kimberly Rd. Ste. E - License Type: C Liquor

Recommendation:  
Consider the license applications.

Relationship to Goals:  
Support local businesses.

Background:  
The following applications have been reviewed by the Police, Fire and Zoning Departments.

### REVIEWERS:

| Department    | Reviewer       | Action   | Date                |
|---------------|----------------|----------|---------------------|
| Public Safety | Admin, Default | Approved | 7/5/2017 - 11:11 AM |

City of Davenport

Agenda Group:  
Department: Public Works - Engineering  
Contact Info: Lesley Eastlick; 563-326-7729  
Wards: 7

**Action / Date**  
**7/5/2017**

**Subject:**

Resolution awarding the contract and conditionally approving the contract and bond, subject to Iowa DOT concurrence, to Valley Construction Company of Rock Island, IL for the 76th Street Extension project from Division Street to Hancock Court. The bid amount was \$3,774,930.30, to be funded from CIP #01629. [Ward 7]

**Recommendation:**

Pass the resolution.

**Relationship to Goals:**

Enhance quality of life.

**Background:**

The extension of West 76<sup>th</sup> Street is part of the city's long range transportation plan and creates a corridor connecting Northwest Blvd to Brady St. This project paves a connection from Northwest Blvd to Division St, and opens approximately 60 acres of land for future development along the new roadway.

The project is primarily funded by the Federal Highway Authority through an STP grant – 80% of eligible costs, and by a grant through Revitalize Iowa's Sound Economy (RISE) – 50% of eligible costs. The Iowa DOT administers and lets the contract. There were three bidders, with the low bidder being Valley Construction Company of Rock Island, Illinois with a bid amount of \$3,774,930.30. Subject to Iowa DOT concurrence, public works recommends awarding the above said work to Valley Construction Company.

**ATTACHMENTS:**

| Type                | Description       |
|---------------------|-------------------|
| ▢ Resolution Letter | Resolution Page 2 |

**REVIEWERS:**

| Department                 | Reviewer       | Action   | Date                |
|----------------------------|----------------|----------|---------------------|
| Public Works - Engineering | Admin, Default | Approved | 7/5/2017 - 11:12 AM |

Resolution No. \_\_\_\_\_

RESOLUTION offered by Alderman Ambrose

RESOLVED by the City Council of the City of Davenport.

RESOLUTION awarding the contract and conditionally approving the contract and bond, subject to Iowa DOT concurrence, to Valley Construction Company of Rock Island, IL for the 76<sup>th</sup> Street Extension Project from Division Street to Hancock Court. The bid amount was \$3,774,930.30, to be funded from CIP #01629.

WHEREAS, the 76<sup>th</sup> Street Extension Project was duly advertised and published according to state law; and

WHEREAS, three responsible and responsive bids were received at the appointed time and place for the bid opening:

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Davenport that, subject to Iowa DOT concurrence, the contract for the above said work be awarded to the low bidder, Valley Construction Company of Rock Island, Illinois.

BE IT FURTHER RESOLVED: that the mayor is hereby authorized and directed to sign said contract on behalf of the City of Davenport, Iowa.

BE IT FURTHER RESOLVED: that, upon approval by City staff and the Iowa DOT, the executed contract and bond are hereby approved.

Passed and approved this 12<sup>th</sup> day of July, 2017.

Approved:

Attest:

\_\_\_\_\_  
Frank Klipsch, Mayor

\_\_\_\_\_  
Jackie E. Holecek, Deputy City Clerk

City of Davenport

Agenda Group:  
Department: Public Works - Engineering  
Contact Info: Mike Kramer 327-5141  
Wards: 2 & 7

**Action / Date**  
**7/5/2017**

Subject:  
Resolution approving change order #2 to the contract with Valley Construction Company in the amount of \$130,000 for the Kimberly and Division Intersection Improvements Project, CIP #01793. The city will be reimbursed up to 80% of the eligible cost by the Federal Surface Transportation Program Grant. [Wards 2 & 7]

Recommendation:  
Pass the resolution

Relationship to Goals:  
Upgraded City Infrastructure & Public Facilities

Background:  
Additional costs will be incurred during construction of the Kimberly and Division Intersection paving sections of the project. The additional cost will involve removal and replacement of unsuitable soils that were encountered while preparing the grade on the north side of Kimberly in the south bound lanes of Division Street. The estimated quantity involves about 1,067 cubic yards of soils to be removed and replaced or about 1,600 square yards of area involved with the replacement. This additional work involves unsuitable soils removal to a depth of 24", placement of engineering fabric, placement of 18" of large stone (macadam), topping with 6" of road stone (modified subbase). The anticipated additional cost for this work is approximately \$130,000. This change order approves the additional contract amount to be used for construction installation services requested and to be performed by Valley Construction Company.

ATTACHMENTS:

| Type                | Description |
|---------------------|-------------|
| ▣ Resolution Letter | Page 2      |

REVIEWERS:

| Department                 | Reviewer       | Action   | Date                |
|----------------------------|----------------|----------|---------------------|
| Public Works - Engineering | Admin, Default | Approved | 7/5/2017 - 11:12 AM |

Resolution No. \_\_\_\_\_

RESOLUTION offered by Alderman Ambrose

RESOLUTION approving change order #2 to the contract with Valley Construction Company in the amount of \$130,000 for the Kimberly and Division Intersection Improvement Project, CIP # 01793. The City will be reimbursed up to 80% of the eligible cost by the Federal Surface Transportation Program grant (Wards 2 & 7).

WHEREAS, the City of Davenport entered into a contract with Valley Construction Company for the Kimberly and Division Intersection Improvements Project;

WHEREAS, changes to the project plans have become necessary;

WHEREAS, the contractor will incur additional costs beyond the original bid due to these changes; and

WHEREAS, pricing has been reviewed and approved by the Public Works Department;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Davenport that Change Order #2 in the total amount of \$130,000 for the Kimberly and Division Intersection Improvements Project is hereby approved.

Passed and approved on this this 12th day of July, 2017.

Approved:

Attest:

\_\_\_\_\_  
Frank Klipsch, Mayor

\_\_\_\_\_  
Jackie E. Holecek, City Clerk

City of Davenport

Agenda Group:  
Department: Public Works - Engineering  
Contact Info: Brian Schadt 326-7786  
Wards: 8

**Action / Date**  
**7/5/2017**

Subject:  
Resolution approving the contract for the Eastern Ave 10 ft. Wide Trail/ Sidewalk to Ardo Schmidt Construction Inc. of Preston IA, in the amount of \$157,347.13.

Recommendation:  
Approve the Resolution.

Relationship to Goals:  
Financially Responsible City Government.

Background:  
On June 5, 2017, the Purchasing Division issued a bid for this work and it was sent to 239 contractors. On June 26, the Purchasing Division opened and read 6 bids. Ardo Schmidt Construction Inc was the lowest responsive and responsible bidder. See bid tab attached.

This project consists of installing a 10 ft. wide by 6 inch depth concrete trail. The trail is to connect to the existing trail approximately 190 ft. south of the intersection of E 54th Street and run along the west side of Eastern Avenue and connect at the intersection of Prairie Heights Park Road.

Funding for this project is from CIP #28002, Bike Path Construction, with a current balance of \$160,788.54. These funds are from the sale of GO Bonds.

**ATTACHMENTS:**

| Type         | Description                                         |
|--------------|-----------------------------------------------------|
| ▣ Cover Memo | Resolution - Eastern Ave 10 ft. Wide Trail/Sidewalk |
| ▣ Cover Memo | Bid Tab - Eastern Ave. 10 ft. Wide Trail/Sidewalk   |

**REVIEWERS:**

| Department                 | Reviewer       | Action   | Date                |
|----------------------------|----------------|----------|---------------------|
| Public Works - Engineering | Admin, Default | Approved | 7/5/2017 - 11:12 AM |

Resolution No. \_\_\_\_\_

Resolution offered by Alderman Gordon

RESOLVED by the City Council of the City of Davenport.

RESOLUTION approving the contract for Eastern Ave. 10 ft. Wide Trail/Sidewalk to Ardo Schmidt Construction Inc of Preston IA at the price of \$157,347.13 .

WHEREAS, the City needs to construct a bike trail; and

WHEREAS, the applicable bidding process was followed resulting in a recommendation to award to Ardo Schmidt Construction Inc ;

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Davenport, Iowa, that:

1. the contract of Eastern Avenue 10 ft Wide Trail/Sidewalk from Ardo Schmidt Construction Inc is hereby approved; and
2. Mayor Frank Klipsch is authorized to sign and manage any related agreements;

Attest:

Approved:

\_\_\_\_\_  
Jackie E. Holecek, CMC  
Deputy City Clerk

\_\_\_\_\_  
Frank Klipsch  
Mayor

CITY OF DAVENPORT, IOWA  
INVITATION TO BID RESPONDENTS

DESCRIPTION: EASTERN AVE. 10' WIDE TRAIL/SIDEWALK  
BID NUMBER: 17-125  
OPENING DATE: JUNE 26, 2017  
ACCOUNT USED: 70604696 530350 28002 BALANCE IS \$160,788.54  
RECOMMENDATION: AWARD THE CONTRACT TO ARDO SCHMIDT  
CONSTRUCTION INC

| <u>VENDOR NAME</u>                                 | <u>AMOUNT BID</u>   |
|----------------------------------------------------|---------------------|
| <b>Ardo Schmidt Construction Inc of Preston IA</b> | <b>\$157,347.13</b> |
| Valley Construction Company of Rock Island IL      | \$227,805.50        |
| Emery Construction Group of Moline IL              | \$247,812.00        |
| Hawkeye Paving Corporation of Bettendorf IA        | \$250,565.00        |
| Estes Construction of Davenport IA                 | \$256,262.50        |
| Aero Concrete LTD of Davenport IA                  | \$262,228.68        |

Prepared By Kristi Keller  
Purchasing

Approved By Nicole Gleason  
Department Director

Approved By Brandi Coe  
Budget/CIP

Approved By Linda Stollard  
Finance Director

City of Davenport

Agenda Group:  
Department: Public Works - Engineering  
Contact Info: Clay Merritt (563) 888-3055  
Wards: 3

**Action / Date**  
**7/5/2017**

Subject:  
Resolution approving the plans, specifications, form of contract and estimated cost for the Central Fire Station Streetscaping project. The estimated cost is \$104,000 budgeted in CIP #02348. [Ward 3]

Recommendation:  
Pass the resolution

Relationship to Goals:  
Enhance Quality of Life

Background:  
Following the completion of the Central Fire Renovation project; the city is looking to provide streetscaping to the area as defined in the downtown design guidelines. Streetscape improvements enhance the downtown's character and livability by fostering attractive design and activities that give comfort, convenience, safety and pleasure to all its residents and visitors. This project is funded in CIP #02348, Central Station Renovation.

ATTACHMENTS:

| Type                | Description |
|---------------------|-------------|
| ▢ Resolution Letter | PW_RES pg2  |

REVIEWERS:

| Department                 | Reviewer       | Action   | Date                |
|----------------------------|----------------|----------|---------------------|
| Public Works - Engineering | Admin, Default | Approved | 7/5/2017 - 11:12 AM |

Resolution No. \_\_\_\_\_

Resolution offered by Alderman Ambrose

RESOLVED by the City Council of the City of Davenport.

RESOLUTION approving the proposed plans, specifications, form of contract and estimate of cost for the Central Fire Station Streetscaping Project, CIP #02348.

WHEREAS, plans, specifications, form of contract and an estimate of cost were filed with the City Clerk of Davenport, Iowa, for the Central Fire Station Streetscaping Project.

WHEREAS, Notice of Hearing on plans, specifications and form of contract was published as required by law:

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Davenport that, said plans, specifications, form of contract and estimate of cost are hereby approved as the plans, specifications, form of contract and estimate of cost for the Central Fire Station Streetscaping Project.

Passed and approved this 12th day of July, 2017.

Approved:

Attest:

\_\_\_\_\_  
Frank Klipsch, Mayor

\_\_\_\_\_  
Jackie E. Holecek, City Clerk

City of Davenport

Agenda Group:

Department: Public Works - Engineering

Contact Info: Clay Merritt; (563)-888-3055

Wards: 3

**Action / Date**

**7/5/2017**

Subject:

Resolution of acceptance for the former site of Rhythm Casino Demolition and Restoration project; completed by Hawkeye Paving Corp. in the amount of \$253,700 budgeted in CIP #68001. [Ward 3]

Recommendation:

Approve the resolution

Relationship to Goals:

Enhance Quality of Life

Background:

Work was completed to remove the parking lot previously used by the Rhythm City casino on the riverfront; the area was turned into greenspace. This project has been completed and accepted by the Engineering Division.

ATTACHMENTS:

| Type                | Description |
|---------------------|-------------|
| ▣ Resolution Letter | PW_RES pg2  |

REVIEWERS:

| Department                 | Reviewer       | Action   | Date                |
|----------------------------|----------------|----------|---------------------|
| Public Works - Engineering | Admin, Default | Approved | 7/5/2017 - 11:12 AM |

Resolution No. \_\_\_\_\_

Resolution offered by Alderman Ambrose

RESOLVED by the City Council of the City of Davenport.

RESOLUTION of acceptance for the Former Site of Rhythm Casino Demolition and Restoration project; completed by Hawkeye Paving Corporation in the amount of \$253,700 budgeted in CIP #68001

WHEREAS, the City of Davenport entered into a contract with Hawkeye Paving Corporation of Bettendorf, IA

WHEREAS, work on the project has been satisfactorily completed and accepted by the Engineering Division

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Davenport that the Former Site of Rhythm Casino Demolition and Restoration project is hereby accepted.

Approved:

Attest:

\_\_\_\_\_  
Frank Klipsch, Mayor

\_\_\_\_\_  
Jackie E. Holecek, City Clerk

City of Davenport

Agenda Group:  
Department: Public Works - Engineering  
Contact Info: Sandy Doran; (563) 326-7756  
Wards: All

**Action / Date**  
**7/5/2017**

Subject:  
Motion approving change order #3 in the amount of \$67,476 to the Sanitary Sewer Equalization Basin-V&K contract, CIP #02166. This change order will add three months of construction engineering services to the Water Pollution Control Plant Optimization project. [All Wards]

Recommendation:  
Approve the motion.

Relationship to Goals:  
Enhance Quality of Life

Background:  
The intent of the Sewer Equalization Basin Wet Weather Treatment Optimization project improves the operation, performance and secondary treatment flow capacity at the Water Pollution Control Plant and meets the intent of the Iowa DNR consent order.

The additional three months is necessary for full-time inspection for quality assurance and that the plans and specification detail are being followed. The extension was agreed to by IDNR staff.

Other construction engineering activities such as contract administration and review of constructability and operability issues can be addressed immediately and will continue throughout the contract period.

|                         |              |
|-------------------------|--------------|
| Original Contract:      | \$313,309.00 |
| Previous Change Orders: | \$151,582.00 |
| This Change Order:      | \$ 67,476.00 |

---

Amended Contract Amount: \$532,367.00

ATTACHMENTS:

| Type              | Description                                                                   |
|-------------------|-------------------------------------------------------------------------------|
| □ Backup Material | Change Order #3 to the Sanitary Sewer Equalization Basin - contract amendment |

REVIEWERS:

| Department                 | Reviewer       | Action   | Date                |
|----------------------------|----------------|----------|---------------------|
| Public Works - Engineering | Admin, Default | Approved | 7/5/2017 - 11:12 AM |



**VEENSTRA & KIMM, INC.**

1800 5th Avenue • Rock Island, Illinois 61201-8119  
309-786-7590 • 309-797-0996 (fax) • 877-241-8010 (WATS)

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June 26, 2017

City of Davenport  
Attn: Sandy Doran  
Engineering Division  
1200 E. 46<sup>th</sup> Street  
Davenport, IA 52807

DAVENPORT, IOWA  
EQ BASIN/WET WEATHER IMPROVEMENTS – PHASE III  
WET WEATHER TREATMENT OPTIMIZATION  
CONTRACT AMENDMENT 2R – CHANGE ORDER #3

Attached are two copies of Contract Amendment 2R Change Order #3 regarding the Optimization of the WWTP. Change Order #3 is required to continue on-site construction inspection, engineering during construction and Multivista webcam and documentation for the months of June, July and August 2017. The Contractor is delayed and has provided a schedule showing completion in the end of August 2017.

Once this has been signed, please return one copy to this office. If you have any questions regarding this project, please contact the undersigned at 309-786-7590.

VEENSTRA & KIMM, INC.

A handwritten signature in blue ink, appearing to read 'LFF', with a long, sweeping horizontal line extending to the right.

Leo F. Foley, P.E.

LFF:gfd  
22252  
Enclosures



# City of Davenport

## Public Works Department

1200 East 46<sup>th</sup> Street • Davenport, Iowa 52807

Telephone: 563-326-7923 Fax: 563-327-5182

### CERTIFICATIONS

CITY ENGINEER \_\_\_\_\_  
(Work is Required)

CIP MANAGEMENT ANALYST \_\_\_\_\_  
(Funds are Available)

CHIEF OF CONSTRUCTION \_\_\_\_\_  
(Work is Constructible)

PUBLIC WORKS DIRECTOR \_\_\_\_\_  
(Approval)

CONTRACTOR: Veenstra & Kimm  
CONTRACTING COMPANY: Veenstra & Kimm, Inc.  
ADDRESS: 1530 46<sup>th</sup> Avenue – Suite 2B  
CITY, STATE, AND ZIP CODE: Moline, IL 61265-7019

PROJECT TITLE: Sanitary Sewer Equalization Basin – V & K Contract Amendment 2R – Davenport Optimization Project  
MultiVista Complete Project Documentation.

CHANGE ORDER #3

CIP # 02166

ORG #

OBJECT #

### CHANGE ORDER DESCRIPTION:

1. This change order is to add three (3) months of construction engineering services to the Water Pollution Control Plant Optimization Project. It is estimated the completion will be delayed until the end of August 2017. Attachment 1 is a bar chart provided by the Contractor that shows the projected completion work and schedule. Attachment 2 shows the scope of work for continued services during construction for the next three months. This Change Order will amend the construction services for contract administration and on-site full-time review.

#### Costs:

|                                                                 |                 |
|-----------------------------------------------------------------|-----------------|
| Full-time on-site review – 600 hrs. (40 hrs/wk/3 mos.)          | \$ 48,000.00    |
| Construction contract administration – 96 hrs (4 hrs/wk/3 mos.) | 7,776.00        |
| Construction engineering support – 96 hrs (4 hrs/wk/3 mos.)     | 8,400.00        |
| Multivista webcam/hosting                                       | 1,800.00        |
| Mileage/per diem/supplies                                       | <u>1,500.00</u> |
| Summary                                                         | \$67,476.00     |

### SUMMARY OF CONTRACT AMOUNT:

|                          |                     |
|--------------------------|---------------------|
| Original Contract:       | \$ 313,309.00       |
| Previous Change Orders   | \$ 151,582.00       |
| <u>This Change Order</u> | <u>\$ 67,476.00</u> |

(Hourly with Not-to-Exceed - see Attachment 2 for detailed scope)

Amended Contract Amount: \$ 532,367.00

Recommend/Approved: \_\_\_\_\_  
(Up to \$5,000) Project Manager

Date: \_\_\_\_\_

Recommend/Approved: Z.F. Folger  
Contractor Engineer

Date: 6/26/2017

Recommend/Approved: \_\_\_\_\_  
(Up to \$15,000) Nicole Gleason, Public Works Director

Date: \_\_\_\_\_

Recommend/Approved: \_\_\_\_\_  
(Up to \$25,000) Corrin Spiegel, City Administrator

Date: \_\_\_\_\_

Recommend/Approved: \_\_\_\_\_  
(Up to \$100,000) Chair, Public Works Committee

Date: \_\_\_\_\_



# City of Davenport

Public Works Department

1200 East 46<sup>th</sup> Street • Davenport, Iowa 52807

Telephone: 563-326-7923 Fax: 563-327-5182

Required: Green Sheet Motion to Approve

Council Meeting Date: \_\_\_\_\_

Recommend/Approved: \_\_\_\_\_  
(Over \$100,000) City Clerk, City of Davenport

Date: \_\_\_\_\_

Required: Green Sheet Resolution to Approve

Council Meeting Date: \_\_\_\_\_

## ACTIVITIES

JUNE

# CALENDAR

| SUNDAY        | MONDAY                                                                                                                               | TUESDAY                                            | WEDNESDAY             | THURSDAY                                               | FRIDAY             | SATURDAY |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|-----------------------|--------------------------------------------------------|--------------------|----------|
|               |                                                                                                                                      |                                                    |                       | 1<br>TBS ELECT<br>SAIRS/RAILS/GRADING                  | 2                  |          |
|               | 5<br>TBS ELECT<br>SAIRS/RAILS/GRADING, TBS                                                                                           | 6                                                  | 7                     | 8<br>CLARIFIER STEPS<br>FORM TBS CURB<br>INSULATE R.D. | 9                  |          |
|               | 12<br>TBS ELECT<br>CLAR. STAIR/PIGS.                                                                                                 | 13<br>P.C. SCUM BOX REPAIRS                        | 14                    | 15<br>SET HELL + HARKINS<br>EQUIP. PADS                | 16<br>MECH. PIPING |          |
|               | 19<br>ODLE - TBS<br>P.C. SCUM BOXES<br>TBS + PDC ELECT.                                                                              | 20<br>FORM CURB                                    | 21<br>POUR            | 22 MEETING<br>FORM APRON                               | 23<br>N. STAIR TBS |          |
|               | 26<br>TBS ROADWAY<br>POUR APRON<br>P.C. SCUM BOXES<br>RAS + RAW ELECT.<br>SITE WORK<br>MECH. PIPING<br>TBS ELECT.<br>RAS + RAW PAINT | 27<br>GRIT PLATFORM<br>PDC STAIRS<br>SET COMPACTOR | 28<br>START UP ?????? | 29<br>GRIND/PATCH<br>SEED                              | 30                 |          |
| SPECIAL NOTES |                                                                                                                                      |                                                    |                       |                                                        |                    |          |

# ACTIVITIES

JULY

# CALENDAR

SUNDAY

MONDAY

TUESDAY

WEDNESDAY

THURSDAY

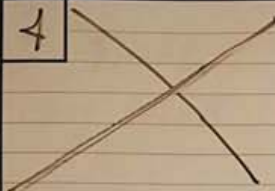
FRIDAY

SATURDAY

3

GRIND/PATCH  
HVAC

4



5

RAS/RAW PAINT  
GRIND/PATCH  
TBS DOWNSPOUTS  
HVAC

6

CLEAN-UP  
FLOOD TEST

7

10

LADDERS  
HANDRAILS  
RAW/RAS ELECT

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1

AUGUST

PUMP MOTORS

2

3

4

SPECIAL NOTES

LEE

NEEDHAM

PRICE

TOBIN

ODLE

GIESE

## Continued Services During Construction

Engineer will provide construction management services as defined below. These services are intended to continue to assist Owner in administering the contract for construction, monitoring the performance of the construction Contractor, verifying that the Contractor's work is in substantial compliance with the contract documents, and assisting Owner in responding to events that occur during the construction.

Engineer will not be responsible for the means, methods, techniques, sequences or procedures of the Contractor, nor shall Engineer be responsible for the Contractor's failure to perform in accordance with the contract documents.

1. Resident Project Representative (RPR): The RPR will be to continue to be Owner's primary point of contact for day- to- day communication during the construction phase of the project. The RPR shall not:
  - a. Have authority to authorize any deviation from the construction Contract Documents or substitution of materials or equipment, unless authorized with consent of Owner.
  - b. Undertake any of the responsibilities of the Contractor, Subcontractors, Suppliers, or Contractor's superintendent.
  - c. Accept shop drawings, submittals, or samples from anyone other than the Contractor.
2. Document Management System: Engineer shall continue managing, tracking and storing all relevant documents between the Engineer, Contractor, and Owner produced during construction. Engineer shall maintain hard copy records, suitably organized, of all relevant documentation. Engineer shall turn over one complete set of project approved submittals to Owner.
3. Field Instructions and Orders: Engineer will issue field instructions, orders or similar documents during construction as provided in the contract for construction.
4. Project Site Meetings: Engineer will conduct monthly meetings with the Contractor and will prepare the documentation of these meetings.
5. Review of Contractor's Requested Changes: Engineer shall review all Contractor - requested changes to the contract for construction. Engineer will make recommendations to OWNER regarding the acceptability of the Contractor's request and, upon approval of OWNER, assist OWNER in negotiations of the requested change. Upon agreement and approval, Engineer will prepare final change order documents. Design and engineering services to review Contractor initiated changes and to prepare drawings and specifications for issuance to the Contractor shall be considered as additional services, entitling the Engineer to additional compensation.
6. Review of Work: The Engineer's RPR will be onsite to monitor contractor progress and perform inspections. The amount of time onsite is assumed to be full time equivalent staff person for up to 6 months. Engineer's RPR review is for the purposes of determining if the work generally conforms to the contract for construction and that the

integrity of the design concept as reflected in the contract for construction has been implemented and preserved by the Contractor.

7. Design Team Site Visits: Engineer shall coordinate periodic visits to the site by the design team members to review progress and quality of the work, to assist and witness field performance testing, and attend site meetings. These trips may coincide with the monthly Contractors progress meetings. Engineer will provide a single discipline lead on each of three separate one- day visits.
8. Substantial Completion: Engineer will be at the site for 1 day to assist Owner with inspections at substantial completion, in accordance with the contract for construction. Engineer will prepare a punch list of items requiring completion or correction.
9. Review of Shop Drawings, Samples, and Submittals: Engineer will continue to perform the reviews of the Contractor's shop drawings, samples, and other submittals. Engineer will log and track all shop drawings, samples and submittals.
10. Requests for Information: Engineer will continue to review the Contractor's requests for information or clarification of the contract for construction. Engineer will coordinate such review with the design team and with OWNER as appropriate. Engineer will coordinate and issue responses to the requests.
11. Claims and Disputes: Engineer shall receive, log, and notify OWNER about all notices from the Contractor concerning claims or disputes between the Contractor and OWNER pertaining to the acceptability of the work or the interpretation of the requirements of the contract for construction. Engineer shall provide technical assistance to OWNER and Engineer in discussions with the Contractor to resolve Contractor claims and disputes, when necessary.
12. Project Schedule: Engineer shall review periodic schedule updates and verify that it is consistent with the requirements of the contract for construction. Engineer will also review the schedule updates as requested.
13. Independent Testing and Special Inspection Services: Engineer shall coordinate any additional services (beyond those specified to be completed by the Contractor) for laboratory testing and special inspection as required. OWNER shall subcontract for these services with an independent laboratory, testing, or specialty inspection services firm.
14. Engineer will manage the health, safety, and environmental activities of its staff and the staff of its subcontractors to achieve compliance with applicable health and safety laws and regulations.
15. Engineer will coordinate its health, safety, and environmental program with the responsibilities for health, safety and environmental compliance specified in the contract for construction. Engineer will coordinate with responsible parties to correct conditions that do not meet applicable federal, state, and local occupational safety and health laws and regulations, when such conditions expose Engineer staff to unsafe conditions.

16. Engineer will notify affected personnel of any site conditions posing an imminent danger to them which Engineer observes.
17. Engineer is not responsible for health or safety precautions of construction workers. Engineer is not responsible for the Contractor's compliance with the health and safety requirements in the contract for construction, or with federal, state, and local occupational safety and health laws and regulations.
18. Payments to Contractor: Engineer will continue to receive and review the Contractor's requests for payment. Engineer will determine whether the amount requested reflects the progress of the Contractor's work and is in accordance with the contract for construction. Engineer shall provide recommendations to OWNER as to the acceptability of the requests. Engineer will advise OWNER as to the status of the total amounts requested, paid, and remaining to be paid under the terms of the contract for construction. Recommendations by Engineer to OWNER for payment will be based upon Engineer's knowledge, information, and belief from its observations of the work onsite and selected sampling that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by Engineer to ascertain that the Contractor has completed the work in exact accordance with the contract for construction; that Engineer has made an examination to ascertain how or for what purpose the Contractor has used the moneys paid; that title to any of the work, materials or equipment has passed to Owner free and clear of liens, claims, security interests, or encumbrances.
19. Operations and Maintenance Manual: Engineer will update the existing Operations and Maintenance (O&M) manual to describe the modifications to facilities and systems. This manual will explain the various primary modes of operation that may be used, including both normal operation and initial emergency operation procedures. The manual will explain the purpose and basic concept of the various processes that are incorporated into the overall project modifications. Where appropriate, reference will be made to the manufacturer's detailed O&M submittals. The manual will be suitable for use as an operational tool and to facilitate operator training. The manual will be produced in a computerized format using commercially available software.
20. Record Drawings: Engineer will provide 4 hardcopies (2 sets 22x34 and 2 sets 11x17 drawing size) and one electronic copy (CADD drawings on CD) of the final record drawings to the Owner. Engineer will develop record drawings from red-lined drawings furnished by the Contractor to Engineer which were annotated by the Contractor to show all changes made during construction. Engineer will not verify the accuracy of the information provided by the Contractor that is incorporated in the record drawings or other record documents.
21. Operation and Maintenance Training: Engineer will provide supplemental instruction to the Owner's staff in the operation, maintenance and testing of the equipment provided under this Project. This instruction shall cover both the basic operational concept and actual operation of the systems and components under both normal and abnormal operations that are likely to occur. The instruction will also include training of the staff

for equipment maintenance. Engineer will also coordinate the services of qualified representatives from equipment manufacturers. Engineer will provide 2 days of classroom and 1 day of field training to the plant staff.

22. Project Close Out: Engineer shall close out the construction contract including punch list items, warranties, liens, outstanding claims and final payment. Engineer shall review these items before issuing a statement of final completion to OWNER.

City of Davenport

Agenda Group:  
Department: Public Works - Engineering  
Contact Info: Ron Hocker; (563) 327-5169  
Wards: 7

**Action / Date**  
**7/5/2017**

Subject:  
Motion approving change order #2 to Hagerty Earthworks in the amount of \$60,000 to install two manholes along the Duck Creek South Interceptor for the FY2017 Contract Sewer Repair program budgeted in CIP #00200. [Ward 7].

Recommendation:  
Pass the motion

Relationship to Goals:  
Enhance Quality of Life

Background:  
The Duck Creek South Interceptor Rehabilitation program (CIP #00200) is currently out to bid and scheduled to begin construction later this summer or early fall. This project will involve cured-in-place (CIPP) lining of selected sections of the district interceptor sewer, chemical grouting of leaking joints and miscellaneous related work.

There are two locations along the interceptor where smaller diameter sanitary sewers serving the neighborhoods to the south connect directly to the pipe (instead of at a manhole, which is typical). In order to complete the CIPP lining of these sections, manholes need to be constructed to serve as access points where the liner can be inserted. These manholes will have the added benefit of allowing proper maintenance of the smaller diameter sewers in the future.

The construction of two 72" diameter manholes has been assigned to Hagerty Earthworks under the FY2017 Contract Sewer Repair program, with the work to be paid out of the Duck Creek South Interceptor Rehabilitation Program. Change order #2 to this contract authorizes the transfer of \$60,000 from CIP #00200 to contract #715441702 to facilitate the construction of the required manholes.

REVIEWERS:

| Department                 | Reviewer       | Action   | Date                |
|----------------------------|----------------|----------|---------------------|
| Public Works - Engineering | Admin, Default | Approved | 7/5/2017 - 11:12 AM |

City of Davenport

Agenda Group:  
Department: Finance  
Contact Info: Brandon Wright  
Wards: All

**Action / Date**  
**6/7/2017**

Subject:

Third Consideration: Ordinance amending Title 1 by adding Chapter 1.04.100 entitled "Suspension of issuing licenses and permits" to provide the City the with ability to suspend the issuance of any licenses or permits for delinquent invoices owed to the City. [All Wards]

Recommendation:

Adopt the ordinance.

Relationship to Goals:

Financially Responsible City Government

Background:

Currently individuals, contractors and businesses are able to obtain licenses and permits while having delinquent invoices with the City. This ordinance change will allow the Revenue Division of the Finance Department to suspend the issuance of any license or permit until all balances 60 days or older are paid in full.

ATTACHMENTS:

| Type         | Description |
|--------------|-------------|
| ▣ Cover Memo | Ordinance   |

REVIEWERS:

| Department | Reviewer       | Action   | Date                |
|------------|----------------|----------|---------------------|
| Finance    | Admin, Default | Approved | 7/5/2017 - 11:13 AM |

ORDINANCE NO. \_\_\_\_\_

ENACTING Ordinance amending Title 1 by adding Chapter 1.04.100 entitled "Suspension of issuing licenses and permits" to provide the City the with ability to suspend the issuance of any licenses or permits for delinquent invoices owed to the City.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAVENPORT, IOWA:

SECTION 1: That Chapter 1.04.100 be enacted to read as follows:

**1.04.100. Licenses and permits.**

Applicants with any delinquent balance owed to the City 60 days past the due date must pay the outstanding balance in full prior to the issuance of any new permit or license.

SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason illegal or void, then the lawful provisions of this ordinance, which are separable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

EFFECTIVE DATE. This ordinance shall be in full force and effective \_\_\_\_\_

First Consideration \_\_\_\_\_

Second Consideration \_\_\_\_\_

Approved \_\_\_\_\_

\_\_\_\_\_  
Frank Klipsch, Mayor

Attest: \_\_\_\_\_

Jackie E. Holecek, MMC, Deputy City Clerk

Published in the Quad City Times on \_\_\_\_\_



City of Davenport

Agenda Group:  
Department: Finance  
Contact Info: Tom Warner 326-7735  
Wards: All

**Action / Date**  
**6/21/2017**

Subject:  
Second Consideration: Ordinance amending Chapter 2.62 entitled "Levee Improvement Commission" to update the governance and processes of the Commission. [All Wards]

Recommendation:  
Consider the ordinance

Background:  
After several meetings and many good discussions, the commission agreed to the text of the proposed ordinance.

The main changes are: 1) a name change to Riverfront Improvement Commission; 2) An expansion from 7 members to 11 members; 3) Mayor will no longer serve as chair; 4) Joint quarterly meeting with the Parks Advisory Board; and 5) designation of a member to serve as a liaison to the Parks Advisory Board and attend its meetings.

ATTACHMENTS:

| Type         | Description                |
|--------------|----------------------------|
| ▯ Cover Memo | Ordinance as amended by CC |

REVIEWERS:

| Department | Reviewer       | Action   | Date                |
|------------|----------------|----------|---------------------|
| Finance    | Admin, Default | Approved | 7/5/2017 - 11:13 AM |

ORDINANCE NO. \_\_\_\_

Ordinance amending Chapter 2.62 entitled "Levee Improvement Commission" to update the governance and processes of the Commission.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAVENPORT, IOWA:

Section 1: That Chapter 2.62 is amended to reads as follows:

**Chapter 2.62 RIVERFRONT IMPROVEMENT COMMISSION**

**Sections:**

- 2.62.010 Created.**
- 2.62.020 Membership - Term.**
- 2.62.030 Purpose.**
- 2.62.040 Chair, Vice Chair, Secretary, and ex officio officers.**
- 2.62.050 Meetings.**
- 2.62.060 Adoption of rules or bylaws.**
- 2.62.070 Riverfront defined - Jurisdiction.**
- 2.62.080 Area improvements and maintenance - Encumbrances - Approval.**
- 2.62.090 Police powers.**
- 2.62.100 Control of funds.**

**2.62.010 Created.**

In pursuance of the laws of the state in reference thereto, there is created and established a riverfront improvement commission in the city, consisting of eleven members, all of whom shall be residents and qualified electors of the city.

**2.62.020 Membership -Term.**

Each Alderman and the Mayor shall have an assigned commission position for which they are the appointing authority. Appointments shall be confirmed by the City Council. The term of office is six years. The Mayor and Aldermen shall give due consideration to appointing members focused foremost on the stewardship of the Riverfront, overall gender balance of the

commission, and professional representation reflective of such areas as education, finance, real estate, law, construction, engineering or other design professions. Members shall have no other official position in, or connection with, the city. Each member so appointed shall, upon taking office, take the oath prescribed for officers elected in the city. If any vacancy occurs, the person appointed to fill the same shall hold office until the expiration of the term for which the person was appointed.

Transition rule: Current commissioners as of July 1, 2017 shall be allowed to serve out their terms so long as death, disability or conduct does not result in removal from office. In order to assign a seat to the Mayor and each Council Member the following transition plan shall be in place:

1st Ward – Open for immediate appointment; term ends 4/30/2023  
2nd Ward – Open for immediate appointment; term ends 4/30/2023  
3rd Ward – Patrick Walton (3rd Ward Resident); term ends 4/30/2022  
4th Ward – Open for immediate appointment; term ends 4/30/2021  
5th Ward – Karl Rhomberg (5th Ward Resident); term ends 4/30/2020  
6th Ward – Bill Ashton (6th Ward Resident); term ends 4/30/2020  
7th Ward – Open for immediate appointment; term ends 4/30/2021  
8th Ward – Open for immediate appointment; term ends 4/30/2019  
At Large – Mike Veal (6th Ward Resident); term ends 4/30/2018  
At Large – Shelley Chambers (6th Ward Resident); term ends 4/30/2018  
Mayor – Frank Clark (6th Ward Resident); term ends 4/30/2022

From April 2018 onward, if only one of the Aldermen at Large has not appointed a then serving commissioner, that Alderman at Large shall have the privilege of appointment; otherwise, the Alderman at Large who is the top vote recipient of the two at the last city election shall have the appointment privilege.

#### **2.62.030 Purpose.**

The Mississippi Riverfront is one of Davenport's most important resources. The Riverfront Improvement Commission improves the riverfront through stewardship, collaboration, innovative planning, thoughtful development, and sound management.

#### **2.62.040 Chair, Vice Chair, Secretary and ex officio officers.**

In July of every year, the members shall choose a chair, vice chair and secretary from among their membership. The chair shall preside at all meetings, and the vice chair shall preside in the absence of the chair. If neither is present, but a quorum is present, the members

present shall nominate and choose a member to preside at the meeting immediately after the announcement of a quorum. The secretary shall ensure that a complete and accurate record of all its acts and proceedings are kept. The finance director or the director's designee shall be ex officio treasurer. The director of the community and economic development department or the director's designee shall have charge of the accounts, books and other clerical work in connection with said commission.

#### **2.62.050 Meetings.**

The commission shall meet at least monthly at a time and place conducive to public meetings. Special meetings may be called pursuant to the bylaws. A majority of the members present and voting shall be necessary for the passage of any motion.

The commission shall meet jointly at least quarterly with the parks and recreation commission to discuss future opportunities and amenities in an effort to create a coordinated vision and effort. The chairs of these bodies shall preside at any joint meetings.

The commission shall choose a member to act as a liaison to and attend the meetings of the parks and recreation commission.

The commission shall choose four members to attend, participate and report back on Council work sessions called for the purpose of discussing future opportunities and amenities including the Riverfront. At least once a year Council shall hold such a work session.

#### **2.62.060 Adoption of rules or bylaws.**

The commission shall have power to adopt the rules or bylaws concerning its meetings and all other matters pertaining to the business of such commission as are not inconsistent with provisions of this chapter.

#### **2.62.070 Riverfront defined - Jurisdiction.**

As provided in this chapter, the riverfront improvement commission shall have responsibility, supervision and control of territory included within the limits of the city and described as follows, to-wit:

Beginning at a point at the intersection of the east city limits and the centerline of the Mississippi River (Iowa-Illinois boundary); thence northerly along the east city limits (extension of Fernwood Avenue) to the intersection with the centerline of East River Drive, then in a generally westerly direction along the centerline of East River Drive and West River Drive to the intersection of West River Drive to the intersection of West River Drive with the centerline of the Soo Line Railroad (immediately west of Blackhawk Creek), thence in a southwesterly direction along the centerline of the Soo Line Railroad to the intersection with the west city limits (Utah Avenue); thence in a southerly direction to the intersection of the extension of the

west city limits with the centerline of the Mississippi River, thence upstream along the centerline of the Mississippi River (Iowa-Illinois boundary) to the point of beginning.

**2.62.080 Area improvements and maintenance - Encumbrances - Approval.**

A. The riverfront improvement commission shall have exclusive charge, supervision and control of all work done, or to be done, and of all improvements made, or to be made using the riverfront improvement funds within the commission's control as set forth in Section 2.62.100, upon, over, along or within the area described in Section 2.62.070, including the filling, grading, paving, macadamizing, riprapping and construction of retaining walls upon, over, along or within the area: provided, that the city reserves to itself exclusive charge, supervision and control of such improvements therein or thereon as the city itself has constructed or may hereafter construct using its own funds derived from any lawful source, as well as reasonable rights of access thereto for all purposes, including the alteration, repair, reconstruction and maintenance thereof.

B. Notwithstanding any provision in this chapter to the contrary, no encumbrances, by lease, easement, license, agreement or otherwise upon property within the commission's jurisdiction for a term greater than three years shall be final and binding until such encumbrance has been voted upon by the city council.

C. Any encumbrance requiring a city council vote shall be referred to the city council and placed on the council's agenda. If the commission denied the encumbrance, then an affirmative vote of three-fourths of the members of the city council is required to approve the encumbrance. If the commission approved the encumbrance, the matter will be determined by the normal simple majority of the members of the council rule.

D. The commission may not consent to or otherwise authorize or approve any lien, by mortgage or otherwise, upon the Riverfront.

**2.62.090 Police powers.**

Nothing contained in this chapter shall be construed as limiting or abrogating the police power of the city in the Riverfront area described in Section 2.62.070.

**2.62.100 Control of funds.**

For all projects whose proposed budget is less than five hundred thousand dollars, the riverfront improvement commission shall have exclusive charge and control of the riverfront improvement fund, and of all monies dedicated to such fund derived from the sale of bonds on behalf of the commission, issued by the city council for the purpose of carrying on the work of

making any of the improvements authorized to be made by the commission. The finance director or his designee shall keep a specific general ledger account for the riverfront improvement fund and monies belonging to the fund derived from the sale of bonds as provided above or from other sources. Commission funds, as described above, shall only be spent as authorized by the commission.

SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason illegal or void, then the lawful provisions of this ordinance, which are separable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

EFFECTIVE DATE. This ordinance shall be in full force and effective after its final passage and publication as by law provided.

First Consideration \_\_\_\_\_,

Second Consideration \_\_\_\_\_,

Third Consideration \_\_\_\_\_,

\_\_\_\_\_  
Frank Klipsch  
Mayor

Attest: \_\_\_\_\_

Jackie E. Holecek, CMC  
Deputy City Clerk

Published in the Quad-City Times on \_\_\_\_\_.

City of Davenport

Agenda Group:  
Department: Finance  
Contact Info: Brandon Wright 326-7750  
Wards: 8

**Action / Date**  
**7/5/2017**

Subject:  
Resolution approving the lease of the Transload Terminal's short line rail system with Savage Davenport Railroad. [Ward 8]

Recommendation:  
Adopt the resolution.

Relationship to Goals:  
Financially Responsible City Government

**Background:**

The City of Davenport's Transload Terminal project, although one project, consists of two basic elements; one being the facility itself and the other the short line rail system from the Canadian Pacific main line to the facility. The Transload Terminal and the property it sits on are already under lease to Savage Davenport Railroad, having been approved by the City Council on September 28, 2016. The purpose of this resolution is to approve the lease of the short line to Savage Davenport Railroad.

Owning and operating a short line is business area best contracted with a firm that specializes in such operations. Rail operations consist of track certification and maintenance, crossing certification and maintenance, purchase of locomotives, the hiring of certified locomotive operators and rail personnel, the purchase of costly liability insurance, and much more. In consideration of the complexity and cost of the operation, it is in the City's best interest to lease the short line to Savage Davenport Railroad. The lease will include the right to use the right-of-way for railroad operations, tracks, rails, ties, ballast and other track materials, switches, crossings, bridges, culverts, buildings, warning devices, and any and all improvements. Savage Davenport Railroad agrees to pay the City of Davenport the amount of one dollar (\$1.00) per year as this lease is ancillary to the main operation of the Transload Terminal. The lease period is for ten years.

Under Iowa law, any lease of municipal property exceeding three years requires a public hearing; such public hearing is scheduled to be held on Wednesday, July 5, 2017 at 5:30 p.m.

**ATTACHMENTS:**

| Type                | Description                             |
|---------------------|-----------------------------------------|
| ▢ Resolution Letter | Resolution Savage Transload Track Lease |
| ▢ Backup Material   | Savage Transload Track Lease            |

**REVIEWERS:**

| Department | Reviewer       | Action   | Date                |
|------------|----------------|----------|---------------------|
| Finance    | Admin, Default | Approved | 7/5/2017 - 11:13 AM |

Resolution No. \_\_\_\_\_

Resolution offered by Alderman Gordon:

RESOLVED by the City Council of the City of Davenport.

RESOLUTION approving the lease of the Transload Terminal's short line rail system with Savage Davenport Railroad.

WHEREAS, the City Council approved a service agreement with Savage Davenport Railroad for operation of the Transload Terminal on September 26, 2016; and

WHEREAS, it is necessary for Savage Davenport Railroad to have a leasehold interest in the rail track described as:

All of the City of Davenport's main track and the real property 25 feet on each side thereof. Such track commences 75 feet from the Canadian Pacific's mainline switch located at MP 191.2 of the Davenport Sub and ends at the Davenport Transload Terminal; and

WHEREAS, a required public hearing was held on July 5, 2017.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Davenport that the lease of the Transload Terminal's short line rail system with Savage Davenport Railroad is hereby approved.

Approved:

Attest:

\_\_\_\_\_  
Frank Klipsch, Mayor

\_\_\_\_\_  
Jackie E. Holecek, MMC, City Clerk

# **LEASE AGREEMENT**

**Between**

**CITY OF DAVENPORT**

**and**

**Savage Davenport Railroad**

## **Covering Certain Land and Track:**

**All of the City of Davenport's main track and the real property 25 feet on each side thereof. Such track commences 75 feet from Canadian Pacific' mainline switch located at MP 191.2 of the Davenport Sub and ends at the Davenport Transload Terminal**

**In Davenport, Iowa**

**Effective as of \_\_\_\_\_, 2017**

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## **EXHIBITS**

|                             |                                                                                                           |
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| <b><u>Exhibit A</u></b>     | <b>Depiction of Leased Premises</b>                                                                       |
| <b><u>Exhibit 1.2</u></b>   | <b>List of Leases and Licenses on Leased Premises</b>                                                     |
| <b><u>Exhibit 5.1.4</u></b> | <b>List of contracts, deeds, agreements relating to Leased Premises, but not contained in Exhibit 1.2</b> |
| <b><u>Exhibit 13.2</u></b>  | <b>Memorandum of Lease</b>                                                                                |

**LEASE AGREEMENT**  
**DAVENPORT, IOWA**

**THIS LEASE AGREEMENT**, dated as of this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Davenport, a political subdivision of the State of Iowa, ("LESSOR") and Savage Davenport Railroad Company, a Delaware corporation ("LESSEE").

**RECITALS**

A. LESSEE intends to lease from LESSOR, all of LESSOR'S main track and the real property 25 feet on each side thereof. As depicted on the attached Exhibit A, such track commences 75 feet from Canadian Pacific' mainline switch located at MP 191.2 of the Davenport Sub and ends at the Davenport Transload Terminal (the "Leased Premises").

B. The parties desire to enter into this Lease setting forth terms and conditions for the use, management and operation of the Leased Premises described above.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, intending to be legally bound, the parties do hereby agree as follows:

**SECTION I.**            **LEASED PREMISES**

**SECTION 1.1**            LESSOR does hereby lease to LESSEE and LESSEE does hereby lease from LESSOR the Leased Premises described in the Recitals above and the property described in Section 1.2.

**SECTION 1.2**            The Leased Premises shall include, without limitation, the right to use the right of way for railroad operations, tracks, rails, ties, ballast, other track materials, switches, crossings, bridges, culverts, buildings, crossing, warning devices and any and all improvements or fixtures affixed to the right-of-way, but specifically exclude any and all items of personal property not owned by LESSOR or not affixed to the land, including, without limitation, railroad rolling stock, locomotives, equipment, machinery, tools, inventories, materials and supplies.

LESSEE may, at its expense obtain and locate on the Leased Premises, AEI readers at other locations of its choice on the Leased Premise. Any AEI readers obtained and placed at the expense of LESSEE shall remain the property of LESSEE and LESSEE shall have the right to remove such readers from the Leased Premises upon expiration or termination of this Agreement.

**SECTION 1.3**            **Except as otherwise expressly set forth in this Lease**, LESSEE shall take the Leased Premises in an "AS IS, WHERE IS" CONDITION AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT

LIMITED TO ANY WARRANTIES OF TITLE, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE and subject to: (a) reservations or exceptions of record of minerals or mineral rights; (b) all easements, public utility easements and rights-of-way, howsoever created, for crossings, pipelines, wire lines, fiber optic facilities, roads, streets, highways and other legal purposes; (c) all existing ways, alleys, privileges, rights, appurtenances and servitudes, howsoever created; and (d) the LESSOR's exclusive right to grant any and all easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the Leased Premises, or any portion thereof, for the purpose of construction. PROVIDED, HOWEVER, that none of the foregoing shall materially interfere with LESSEE's railroad operations. Notwithstanding the foregoing, if LESSEE is unable because of snow to properly inspect the Leased Premises pursuant to Section 5.1 below, then LESSEE reserves the right to re-inspect the Leased Premises promptly after the snow has melted. If such inspection reveals any material defect in the Leased Premises exceeding \$5,000.00, then LESSOR (at LESSOR'S cost) shall promptly correct the defect.

## **SECTION II.**        **LEASE TERM**

**SECTION 2.1**        Unless this Agreement is terminated earlier in accordance with Section XIV, LESSEE shall have and hold the Leased Premises unto itself, its successors and assigns, for an Initial Term of ten (10) years, beginning no later than July 1, 2017, or at such other date as is mutually agreed to by both parties in writing, and continuing in effect until June 30, 2027. The "Effective Date" shall be the date five (5) days after LESSOR has notified LESSEE in writing that LESSOR has satisfactory evidence of compliance with the conditions precedent provided in Section V unless such notice period is waived by mutual agreement. At the option of Lessee, the Initial Term of this Agreement shall be automatically extended for an additional term of ten (10) years ("Extension Term").

Promptly following execution of this Agreement, Lessee, at its sole expense, shall prepare and file such documents as may be required (if any) to secure approval, or exemption from approval of this transaction by the Surface Transportation Board of the United States Department of Transportation ("STB"), if such approval or exemption from approval is necessary or appropriate. LESSEE shall permit LESSOR to review prior to filing all documents proposed by LESSEE to be filed with the STB, or any court, to secure legal approval or exemption of this transaction.

**SECTION 2.2**        If, subject to the right of LESSOR to evict or remove LESSEE from the Leased Premises by all available legal means, LESSEE holds over and remains in possession of the Leased Premises following expiration of the then current term, original or extended, or following an early termination of this Lease pursuant to Section XIV, such holding over will create a month-to-month tenancy only. During any such hold over period, LESSEE agrees to pay to LESSOR as annual rent, a sum of \$1.00 per year. Such annual payments shall be due each year on the Anniversary Date of this Lease. Any profits or losses from LESSEE's operations during any holdover period shall inure and accrue to the LESSEE.

### **SECTION III.**      **RAIL SERVICE**

**SECTION 3.1**      Beginning on the Effective Date and throughout the term of this Lease, LESSEE shall be entitled to use of the Leased Premises for the operation of common carrier rail service to shippers approved in advance by the LESSEE, which approval shall not be unreasonably withheld, conditioned or delayed. LESSOR warrant that: (i) as of the date of this Lease, there is no other rail carrier or other person to which LESSOR has granted rights to use the Leased Premises for rail service; and (ii) during the term of this Lease, LESSOR shall not grant rights to any other rail carrier to use the Leased Premises or to any other person to use the Leased Premises for rail service. During the term of this Lease, LESSEE shall not grant to any third party the right to operate over the Leased Premises, nor shall it enter into any commercial or other agreement to move the traffic of any third party, other than to perform its common carrier obligations under the Interstate Commerce Commission Termination Act. The foregoing sentence shall not be construed to limit LESSEE's right to subcontract the performance of its rights and obligations under the terms of this Agreement to a third party consistent with this Lease, provided LESSEE remains liable to LESSOR under the terms of this Lease.

**SECTION 3.2**      During the term of this Lease, LESSEE will not suspend or discontinue its operation as a common carrier by rail over all or any part of the Leased Premises without first applying for and obtaining from the Surface Transportation Board ("STB"), and any other regulatory agency with jurisdiction, any necessary certificate of public convenience and necessity or other approvals or exemptions from regulation for such discontinuance of operations over the Leased Premises; provided, however, that LESSEE will not seek such regulatory authority, or if no regulatory authority is needed, take any action to suspend or discontinue its operations on the Leased Premises, without first giving LESSOR ninety (90) days' advance written notice of LESSEE's intent to do so.

**SECTION 3.3**      Upon suspension or discontinuance of LESSEE's operations as a rail carrier of freight over all or any part of the Leased Premises during the term of this Lease or any extended term hereof, for reasons other than events of force majeure, or a lawful embargo, whether or not pursuant to necessary and proper regulatory authority as required by Section 3.2 of this Section III, LESSEE will promptly relinquish to LESSOR possession of the Leased Premises and this Lease Agreement will terminate as provided by Section XIV of this Lease; PROVIDED, HOWEVER, any discontinuance of service or abandonment of any portion(s) of the Leased Premises which are inconsequential to rail freight service over the Leased Premises will be permitted and will not result in a termination of this Lease or require relinquishment of possession of the Leased Premises by LESSEE.

### **SECTION IV.**      **RENT**

**SECTION 4.1** LESSEE agrees to pay LESSOR rent for the Leased Premises in the amount of one dollar (\$1.00) per year during the Initial Term and any Extension Term. Such rent shall be paid in a lump sum at the beginning of the Initial Term and the Extension Term.

**SECTION 4.2** LESSEE shall pay all due rent payments, and all other payments required by this Lease, to LESSOR at the City of Davenport, or at such other location or individual as may be designated by LESSOR in writing from time to time.

**SECTION 4.3** Acceptance by LESSOR or LESSEE, their successors, assigns or designees of rent, or other payments shall not be deemed to constitute a waiver of any other provision of this Lease.

**SECTION 4.4** All undisputed payments due under this Section 4 shall be made within thirty (30) days after receipt of invoices therefor. In the event any amount is disputed, payment for the undisputed portion shall be made within the time limits herein and the parties will confer in good faith to resolve issues relating to disputed charges. In the event of payment after thirty (30) days, the amount owed will be subject to a late payment charge equivalent to 1/12<sup>th</sup> of the prime lending rate published in The Wall Street Journal on the due date of such payment plus two percent (2%).

## **SECTION V. CONDITIONS-PRECEDENT**

**SECTION 5.1** Prior to the Effective Date and as conditions precedent to either party's obligations hereunder:

5.1.1 LESSEE shall have acquired, at LESSEE's cost, the right to conduct rail freight service over the Leased Premises from the Surface Transportation Board ("STB") through an application or exemption under 49 U.S.C. § 10901 and shall have obtained such judicial, administrative agency or other regulatory approvals, authorizations or exemptions as may be necessary to enable it to undertake its obligations hereunder.

5.1.2 LESSOR and LESSEE shall not be prevented from fulfilling their respective obligations under this Lease as a result of legislative, judicial or administrative action.

5.1.3 LESSEE and Canadian Pacific ("CP") shall execute an interchange agreement whereby CP and LESSEE will interchange traffic destined to or originating at industries located on or served from the Leased Premises (the "Interchange Agreement").

5.1.4 Before execution hereof, LESSOR shall make available for LESSEE's inspection and review all contracts, deeds, agreements and documents pertaining to or affecting the Leased Premises. A listing of those contracts, deeds, agreements and documents relating to the Leased Premises, but not listed in Exhibit 1.2 is attached as Exhibit 5.1.4. LESSEE shall also have

the right to obtain its own environmental assessments, structural and engineering assessments and other studies of the Leased Premises, at its own expense. LESSEE and its agents shall have the right to enter upon the Lease Premise for such purpose. The environmental assessments obtained by LESSEE shall be indicative but not dispositive of the environmental conditions of the Leased Premises as of the Effective Date.

5.1.5 Before execution hereof, LESSOR shall deliver to LESSEE all environmental studies and assessments, geotechnical and other studies of the Leased Premises, or any portion thereof, which Seller has in its possession.

5.1.6 LESSOR hereby grants to LESSEE and its representatives a license to enter and inspect the Leased Premises at reasonable times and in a manner reasonably acceptable to LESSOR. Such inspection shall be conducted in a manner that does not damage the Leased Premises or any improvements or other property thereon. The Leased Premises shall be returned to its original condition upon completion of any investigations and LESSEE agrees to indemnify and hold LESSOR harmless from and against any and all claims, costs, damages, liabilities or losses arising directly as a result of LESSEE'S negligence or intentional misconduct during its inspection of the Leased Premises. A condition precedent to this Lease become effective is that LESSEE, at its sole and absolute discretion, is satisfied with its inspection of the Leased Premises.

5.1.7 A condition precedent to this Lease become effective is that LESSEE, at its sole and absolute discretion, is satisfied with the state of title to the Leased Premises.

**SECTION 5.2** Each party to this Lease shall be responsible for all costs of protection of its respective employees arising out of STB approval or exemption of this transaction under 49 U.S.C. § 10901 and implementation of the transaction, the exercise or performance by LESSOR or LESSEE of any rights or obligations hereunder, the termination of this Lease, or LESSEE's abandonment or discontinuance of operations on the Lease Premises, whether such costs are attributable to protective conditions or benefits imposed by any judicial, regulatory or governmental body or are required to be paid pursuant to collective bargaining or other agreements.

## **SECTION VI. MAINTENANCE, MODIFICATIONS AND IMPROVEMENTS**

**SECTION 6.1** During the term of this Lease, LESSEE shall:

6.1.1. At LESSEE's cost, maintain the Leased Premises in compliance with all state and federal statutes, rules and regulations and except for track that is classified as excepted track pursuant to 49 C.F.R. § 213.4 ("Excepted Track") on the Effective Date, maintain the track on the Leased Premises to at least Class 1 standards, as defined in Federal Railroad Administration ("FRA")

regulations (49 C.F.R. § 213.9(a)), and capable of operating speeds of at least 10 miles an hour.

6.1.2. Maintain Excepted Track on the Leased Premises in a condition that operations can be safely conducted over it.

6.1.3. Protect the Leased Premises against all unauthorized uses.

**SECTION 6.2** LESSEE may relocate switches and industrial tracks from one location on the Leased Premises to another location on the Leased Premises upon receiving any necessary and proper regulatory authority and after ten (10) days' written notice to LESSOR.

**SECTION 6.3** LESSEE may from time to time establish or relocate sidetracks or industrial spur tracks on the Leased Premises. That portion of any such spur track that is constructed upon the Leased Premises shall become part of the Leased Premises and, upon termination of this Lease, the property of LESSOR. Prior to execution of any industry track agreement by LESSEE, Lessee shall obtain LESSOR's written approval, which approval shall not be unreasonably withheld, conditioned or delayed. For any industry or customer track built on the Leased Premises after the effective date, LESSEE shall be entitled to any and all track rentals derived therefrom during the term of this Lease.

**SECTION 6.4** [Intentionally Deleted]

**SECTION 6.5** LESSEE shall not allow any liens to be placed on the Leased Premises or encumbrances against the Leased Premises or any portion thereof arising from acts of LESSEE, and will pay, satisfy, and discharge all claims or liens for material and labor or either of them used, contracted for, or employed by LESSEE during the term of this Lease in any construction, repair, maintenance, or removal on the Leased Premises and any improvements located thereon, whether said improvements are the property of LESSOR or of LESSEE, within thirty (30) days of receiving notice of such lien, provided that LESSEE may contest in appropriate proceedings and withhold payment of such claims or liens so long as such proceedings have not become final. **LESSEE WILL INDEMNIFY AND SAVE HARMLESS LESSOR FROM ALL SUCH CLAIMS, LIENS, OR DEMANDS WHATSOEVER.** In the event the Lease is terminated or expires, LESSEE shall return the Leased Premises to LESSOR free and clear of any such liens claims and demands arising from actions of LESSEE and so long as LESSOR has not otherwise agreed to indemnify LESSEE for such claims or is otherwise responsible under this Lease for the underlying claim that serves as the basis of such lien, claim or demand.

**SECTION 6.6** During the term of this Agreement, LESSEE shall be entitled to take all lawful tax credits on the Leased Premises pursuant to 26 U.S.C. Section 45G et seq.

**SECTION VII.** [Intentionally Deleted]

## **SECTION VIII. REPRESENTATIONS AND WARRANTIES**

### **SECTION 8.1** LESSOR represents and warrants that:

8.1.1 It has full statutory power and authority to enter into this Lease and to carry out the obligations of LESSOR hereunder.

8.1.2 Its execution of and performance under this Lease do not violate any statute, rule, regulation, order, writ, injunction or decree of any court, administrative agency or governmental body.

8.1.3 Upon the commencement or expiration of the original or any extended term of this Lease or termination hereof by LESSOR pursuant to Section XIV, LESSOR will bear any and all costs of protection of its current or future employees arising from any labor protective conditions imposed by the STB, any other regulatory agency or statute as a result of LESSEE's Lease or operation of the Leased Premises and any related agreements or arrangements, or arising as a result of the termination of this Lease.

### **SECTION 8.2** LESSEE represents and warrants that:

8.2.1 It is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and by the Effective Date shall be qualified to do business in the State of Iowa.

8.2.2 It has full power and authority to enter into this Lease, and, subject to necessary judicial and regulatory authority, to carry out its obligations hereunder.

8.2.3 Upon expiration of the original or any extended term of this Lease or upon termination hereof by LESSOR pursuant to Section XIV, LESSEE will bear any and all costs of protection of its current or future employees, including former employees of LESSOR that may be employed by LESSEE, arising from any labor protective conditions imposed by the STB, any other regulatory agency or statute as a result of LESSEE's lease or operation of the Leased Premises and any related agreements or arrangements, or arising as a result of the termination of this Lease. Nothing contained herein is intended to be for the benefit of any such employee nor should any employee be considered a third party beneficiary hereunder. Nothing in this Lease shall be construed as an assumption by LESSEE of any obligations to LESSOR's current or former employees under collective bargaining or other agreements that may exist or have existed between LESSOR and its employees, or any of them.

## **SECTION IX. OBLIGATIONS OF THE PARTIES**

**SECTION 9.1** [Intentionally omitted.]

**SECTION 9.2** During the term of this Lease, LESSEE will comply with all applicable federal, state and municipal laws, ordinances, and regulations, and LESSEE will not knowingly do, or permit to be done, upon or about the Leased Premises, anything forbidden by law, ordinance or regulation. In the event new regulatory requirements are imposed that require capital investments in the Lease Premises, the cost of such investments shall be borne by LESSOR. LESSEE and LESSOR further agree to use their commercially reasonable efforts to secure all necessary governmental authority for them to commence operations under this Lease and discontinue operation on the Leased Premises at the expiration or termination of this Lease, as applicable.

**SECTION 9.3** During the term of this Lease, LESSEE will comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, hazardous waste, solid waste, and other pollution or relating to the storage, transport, release, or disposal of hazardous materials, substances, waste, or other pollutants. LESSEE at LESSEE'S expense will make all modifications, repairs, or additions to the Leased Premises, install and bear the expense of any and all structures, devices, or equipment, and implement and bear the expense of any remedial action which may be required under any such laws, rules, regulations, ordinances, or judgments related to actions occurring during the term of this Lease. During the term of this Lease, LESSEE will not dispose of any wastes of any kind, whether hazardous or not, on the Leased Premises.

**SECTION 9.4** EACH PARTY WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY, ITS PARENT, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS AND EACH OF THEIR OFFICERS, DIRECTORS, SHAREHOLDERS AND EMPLOYEES ("RELATED PARTIES") FROM ANY DAMAGE TO PROPERTY, ANY INJURY TO PERSON (INCLUDING DEATH), AND ANY DIRECT DEMANDS, CLAIMS, EXPENSES, FINES AND LOSSES OF ANY TYPE (INCLUDING, BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND LITIGATION EXPENSES) TO THE EXTENT RESULTING FROM (A) THE INDEMNIFYING PARTY'S OR ITS RELATED PARTIES' NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN PERFORMING OR FAILING TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, (B) THE INDEMNIFYING PARTY'S OR ITS RELATED PARTIES' BREACH OF ANY REPRESENTATION, WARRANTY OR COVENANT CONTAINED IN THIS AGREEMENT OR IN ANY OF ITS EXHIBITS, OR (C) THE INDEMNIFYING PARTY'S OR ITS RELATED PARTIES' FAILURE TO COMPLY WITH APPLICABLE LAW. TO THE EXTENT ANY CLAIMS, DAMAGES, ETC. ARE JOINTLY CAUSED BY THE ACTS OR OMISSIONS OF THE PARTIES, SUCH CLAIMS WILL BE APPORTIONED BETWEEN THE PARTIES ON A PURE COMPARATIVE NEGLIGENCE BASIS.

LESSOR REPRESENTS AND WARRANTS THAT TO LESSOR'S KNOWLEDGE THERE HAS BEEN NO RELEASE OF HAZARDOUS MATERIALS (DEFINED BELOW) ON, UNDER OR NEAR THE LEASED PREMISES. LESSOR SHALL INDEMNIFY AND HOLD LESSEE HARMLESS FROM ANY CLAIMS, LIABILITIES, COSTS OR EXPENSES INCURRED OR SUFFERED BY LESSEE ARISING FROM LESSOR'S BRINGING, ALLOWING, USING, PERMITTING, GENERATING, CREATING, RELEASING OR DISPOSING OF HAZARDOUS MATERIALS ON THE LEASED PREMISES. LESSEE WILL NOT CAUSE OR PERMIT THE STORAGE, USE, GENERATION, OR DISPOSITION OF ANY HAZARDOUS MATERIALS IN, ON, OR ABOUT THE PREMISES OR THE PROJECT, BY LESSEE, ITS AGENTS, EMPLOYEES, OR CONTRACTORS IN VIOLATION OF ANY HAZARDOUS MATERIALS LAWS (DEFINED BELOW). LESSEE WILL IMMEDIATELY ADVISE THE LESSOR IN WRITING OF (A) ANY AND ALL ENFORCEMENT, CLEANUP, REMEDIAL, REMOVAL, OR OTHER GOVERNMENTAL OR REGULATORY ACTIONS INSTITUTED, COMPLETED, OR THREATENED PURSUANT TO ANY HAZARDOUS MATERIALS LAWS RELATING TO ANY HAZARDOUS MATERIALS AFFECTING THE LEASED PREMISES; AND (B) ALL CLAIMS MADE OR THREATENED BY ANY THIRD PARTY AGAINST LESSEE, LESSOR, OR THE LEASED PREMISES RELATING TO DAMAGE, CONTRIBUTION, COST RECOVERY, COMPENSATION, LOSS, OR INJURY RESULTING FROM ANY HAZARDOUS MATERIALS ON OR ABOUT THE LEASED PREMISES. WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, LESSEE WILL NOT TAKE ANY REMEDIAL ACTION OR ENTER INTO ANY AGREEMENTS OR SETTLEMENTS IN RESPONSE TO THE PRESENCE OF ANY HAZARDOUS MATERIALS IN, ON OR ABOUT THE LEASED PREMISES. LESSEE SHALL COMPLY, AT ITS SOLE COST, WITH ALL LAWS PERTAINING TO SUCH HAZARDOUS MATERIALS. FOR PURPOSES OF THIS LEASE, THE TERM "HAZARDOUS MATERIALS" MEANS ANY EXPLOSIVES, RADIOACTIVE MATERIAL, HAZARDOUS WASTES, OR HAZARDOUS SUBSTANCES, INCLUDING WITHOUT LIMITATION SUBSTANCES DEFINED AS "HAZARDOUS SUBSTANCES" IN THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED; HAZARDOUS MATERIALS TRANSPORTATION ACT OF 1975, AS AMENDED; THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, AS AMENDED; OR ANY OTHER FEDERAL, STATE, OR LOCAL STATUTE, LAW, ORDINANCE, CODE, RULE, REGULATION, ORDER, OR DECREE, RELATING TO, OR IMPOSING LIABILITY OR STANDARDS OF CONDUCT CONCERNING HAZARDOUS MATERIALS, WASTE, OR SUBSTANCES NOW OR AT ANY TIME HEREINAFTER IN EFFECT (COLLECTIVELY, "HAZARDOUS MATERIALS LAWS"). EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR, LESSEE WILL BE SOLELY RESPONSIBLE FOR AND WILL DEFEND, INDEMNIFY, AND HOLD LESSOR, ITS AGENTS, AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, COSTS, AND LIABILITIES, INCLUDING

**ATTORNEYS' FEES AND COSTS, ARISING OUT OF OR IN CONNECTION WITH THE REMOVAL, CLEANUP, AND RESTORATION WORK AND MATERIALS NECESSARY TO REMEDIATE THE LEASED PREMISES IN ACCORDANCE WITH THIS SECTION. THE PARTIES' OBLIGATIONS UNDER THIS SECTION WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE.**

**SECTION 9.5** During the term of this Lease, LESSOR will have the right, upon five (5) days prior notice, to enter the Leased Premises for the purpose of inspecting the Leased Premises to ensure compliance with the requirements of this Lease. Notwithstanding the foregoing, LESSOR shall not unreasonably interfere with LESSEE'S operations on the Leased Premises. If LESSOR detects any violation, including but not limited to any contamination of the Leased Premises, which is the responsibility of LESSEE under this Agreement, LESSOR will notify LESSEE of the violation. Upon receipt of such notice, LESSEE will take immediate steps to eliminate the violation or remove the contamination to the satisfaction of any governmental agency with jurisdiction over the subject matter of the violation. Should LESSEE inadequately remedy or fail to eliminate the violation, LESSOR or its representative will have the right, but not the obligation, to enter the Leased Premises and to take whatever corrective action LESSOR reasonably deems necessary to eliminate the violation, at the sole expense of LESSEE. The above provision shall in no way limit or restrict LESSEE's right to challenge or otherwise object to the legitimacy of the interpretation or applicability of any governmental requirement.

**SECTION X. EMINENT DOMAIN**

**SECTION 10.1** In the event that at any time during the term of this Lease the whole or any part of the Leased Premises shall be taken by any lawful power by the exercise of the right of eminent domain for any public or quasi-public purpose the following provisions shall be applicable: To the extent any compensation received by LESSOR is for improvements paid for by LESSEE, a percentage of the amount received by LESSOR for such improvements paid for by LESSEE equal to the amount received by LESSOR for such improvement multiplied by percentage which has numerator equal to the number of years remaining in the then current term of the Agreement and a denominator equal to ten (10).

10.1.1 If such proceedings shall result in the taking of the whole or a portion of the Leased Premises that materially interferes with LESSEE's use of the Leased Premises for railroad purposes, LESSEE shall have the right, upon written notice to LESSOR, to terminate this Lease in its entirety. In that event, and subject to any necessary regulatory approvals or exemptions, this Lease shall terminate and expire on the date title to the Leased Premises vests in the condemning authority, and the rent and other sums or charges provided in this Lease shall be adjusted as of the date of such vesting.

10.1.2 If such proceeding shall result in the taking of less than all of the Leased Premises which does not materially interfere with LESSEE's use of the Leased

Premises for railroad purposes, then the Lease shall continue for the balance of its term as to the part of the Leased Premises remaining, without any reduction, abatement or effect upon the rent or any other sum or charge to be paid by the LESSEE under the provisions of this Lease.

10.1.3 Except as otherwise expressly provided in this Section, LESSOR shall be entitled to any and all funds payable for the total or partial taking of the Leased Premises without any participation by LESSEE; provided, however, that nothing contained herein shall be construed to preclude LESSEE from prosecuting any claim directly against the condemning authority for loss of its business or for the value of its leasehold estate.

10.1.4 Each party shall provide prompt notice to the other party of any eminent domain proceeding involving the Leased Premises. Each party shall be entitled to participate in any such proceeding, at its own expense, and to consult with the other party, its attorneys, and experts. LESSEE and LESSOR shall make-all reasonable efforts to cooperate with each other in the defense of such proceedings and to use their best efforts to ensure LESSEE's continued ability to use the Leased Premises for the conduct of freight railroad operations.

## **SECTION XI. INSURANCE AND INDEMNIFICATION**

**SECTION 11.1** LESSEE shall, at its own sole cost and expense, procure the following kinds of insurance for the term of this agreement commencing as of the date of the Effective Date and promptly pay when due all premiums for that insurance. The following minimum insurance coverage shall be kept in force during the term of this Lease:

Statutory worker's compensation coverage with waiver of subrogation.

Commercial General Liability insurance or Railroad Liability Insurance, including coverage for railroad operations, providing coverage for bodily injury, including death, personal injury and property damage coverage with a combined single limit of \$5,000,000 per each occurrence or claim and a general aggregate limit of at least \$5,000,000. This insurance shall contain contractual liability coverage and name LESSOR as an additional insured on a primary basis with respect to all liabilities arising out of LESSEE's obligation to LESSOR in the Lease. If coverage is purchased on a "claims made" basis it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked should insurance covering the time period of this Lease be canceled unless replaced with a policy containing the same Retro Anniversary Date as the policy being replaced.

**SECTION 11.2** LESSEE shall furnish to LESSOR certificates of insurance, naming LESSOR as an additional insured but only to the extent of the insured liabilities assumed by LESSEE under this Agreement, evidencing the required coverage and endorsements and in the event of a disputed claim or loss, if requested by LESSOR, LESSEE shall allow LESSOR to view a copy of any or all policy sections (including Endorsements) required in this Agreement if pertaining to the disputed claim or loss. LESSEE shall notify LESSOR in writing of any material alteration including any change in the retroactive date in any "claims made" policies or substantial reduction of aggregate limits, if such limits apply, or cancellation thereof at least thirty (30) days prior thereto.

**SECTION 11.3** Insurance coverage provided in the amounts set forth herein shall not be construed to otherwise relieve LESSEE from liability hereunder in excess of such coverage, nor shall it preclude LESSEE from taking such other action as is available to it under any other provision of this Agreement or otherwise in law.

## **SECTION XII. TAXES**

**SECTION 12.1** It is understood and agreed that the LESSOR shall pay all taxes and assessments, general and special or otherwise which may be levied, assessed or imposed upon the Leased Premises during the Lease Term. LESSOR shall pay such taxes and assessments directly to the taxing authorities on or before the due date, but reserves the right to contest any tax or assessment, in good faith, by appropriate proceeding, as it may deem necessary or appropriate.

## **SECTION XIII. EASEMENTS, LEASES AND LICENSES**

**SECTION 13.1** Except to the extent specifically provided in other sections of this Agreement, LESSEE shall not be entitled to receive any revenue from any Reserved Rights as defined in Section 22.1 of this Agreement or renewals thereof, or attributable to any agreements entered into by LESSOR for Reserved Rights following the Effective Date. LESSOR reserves the exclusive right to grant easements, licenses, agreements and leases affecting the Leased Premises which do not materially interfere with the LESSEE's use of the Leased Premises. LESSOR shall be responsible for all duties, maintenance, costs, fencing, insurance, taxes (income, ad valorem, or otherwise), special assessments and liabilities owed to, on or for said revenues, easements, lease, licenses, or other agreements.

**SECTION 13.2** The parties shall execute and record a memorandum of lease substantially in the form attached hereto as Exhibit 13.2.

## **SECTION XIV. TERMINATION**

**SECTION 14.1** This Lease may be terminated: as follows:

14.1.1 By LESSEE or LESSOR on or at any time prior to the Effective Date if any substantive condition unacceptable to LESSEE or to LESSOR is

imposed upon the regulatory approvals or exemptions contemplated by Section V of this Lease for LESSEE's lease and operation of the Leased Premises;

14.1.2. Pursuant to Section XVIII upon the occurrence of an Event of Default as provided in Section XVII, unless the arbitrator finds that the breach is fully remedied through payment of damages;

14.1.3. By LESSOR upon five (5) days' notice to LESSEE, as a consequence of an uninterrupted abandonment or discontinuance of operations, as the case may be, by LESSEE over any line segment of the Leased Premises (other than an inconsequential abandonment or discontinuance not affecting rail service generally over the Line) lasting more than twenty (20) days, other than by reason of an event of force majeure, a lawful embargo, or changes in the demand for service; or

14.1.4. By LESSEE or LESSOR upon the effective date of regulatory approvals or exemptions to permit LESSEE to abandon or discontinue rail operations, provided LESSEE shall give LESSOR contemporaneous notice of initiation or receipt of documents relating to any such application, exemption or proceeding;

14.1.5 By LESSOR OR LESSEE if the Interchange Agreement expires or is terminated and LESSEE is unable to enter into a new Interchange Agreement within ninety (90) days after such termination.

14.1.6 The termination or expiration of this Agreement will not affect or impair the rights or obligations of either party arising under this Agreement prior to such termination or expiration.

14.1.7 By LESSOR or LESSEE upon the expiration or termination of that certain Services Agreement between LESSOR and Savage Services Corporation dated September 21, 2016.

**SECTION 14.2** In the event of termination of this Lease, LESSEE shall vacate the Leased Premises in an orderly manner. Upon any termination resulting from an Event of Default by LESSEE, LESSOR, at any time thereafter and subject to all necessary prior regulatory approvals or exemptions, may re-enter and take possession of the Leased Premises by affording sixty (60) days' written notice to LESSEE specifying such Event or Events of Default and that this Lease has terminated.

**SECTION 14.3** At least sixty (60) days prior to the expiration of this Lease, or promptly upon the earlier termination of this Lease, LESSEE shall submit all necessary applications, petitions and/or notices to the STB or any successor agency, and shall make when and where due all related ancillary submissions (including but not limited environmental reports) required to effectuate a termination of this Lease and a discontinuance of LESSEE's operations hereunder. In the event that LESSEE fails to make such filings, LESSOR may make such filings as may be appropriate to effectuate

discontinuance of LESSEE's operations of the Leased Premises, with LESSEE being responsible for all reasonable costs (including but not limited to filing fees and attorney fees) incurred by LESSOR in making such filings. Upon expiration or earlier termination of this Lease, LESSOR shall have the right to enter onto and operate the Leased Premises.

## **SECTION XV.**                      **FORCE MAJEURE**

**SECTION 15.1**            The prompt and timely performance of all obligations and covenants under this Lease, including the obligation to make prompt and timely payment of each installment of rent or any other payment of any nature, is and shall be of the essence of this Lease.

**SECTION 15.2**            Either party shall be excused from its obligations under this Lease, other than payment of rent, to the extent its performance is prevented by an event of Force Majeure. For purposes of this Lease an event of Force Majeure shall include: strikes, lockouts, labor disputes, casualties, acts of God, war, terrorist acts, court orders, work stoppages, nuclear incidents, riots, public disorder, acts of a public enemy, criminal acts or acts or omissions of other parties or entities, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climactic conditions, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, embargoes, Association of American Railroads, STB or FRA orders, other governmental laws, orders or regulations or other such causes beyond the reasonable control of said party (each a "Force Majeure"). In the event either party is prevented from performing its obligations under this Lease by a Force Majeure, the party so prevented shall be excused from its obligations under this Lease, other than payment of rent, to the extent such performance was prevented by such Force Majeure. The party experiencing Force Majeure shall take prompt action to remove such causes of Force Majeure insofar as practicable with all reasonable dispatch, and its obligation to perform the provisions of this Lease shall resume immediately after such causes have been removed.

## **SECTION XVI.**            **DEFEASANCE**

**SECTION 16.1**            LESSEE shall not make any use of the Leased Premises inconsistent with LESSOR's right, title and interest therein and which may cause the right to use and occupy the Leased Premises to revert to any party other than LESSOR.

**SECTION 16.2**            Irrespective of any other provision of this Lease, and so long as no Event of Default by Lessee shall have occurred and be continuing, LESSOR, its successor, permitted assigns, and any other entity in privity with LESSOR shall not disturb the quiet use, enjoyment and other exercise of rights of LESSEE under the terms of this Lease and LESSOR agrees that it shall not take any action or fail to take any action which would allow any other entity to disturb or interfere with LESSEE's quiet enjoyment of its rights under this Lease.

## **SECTION XVII. EVENTS OF DEFAULT AND BREACH**

### **SECTION 17.1** The following shall be Events of Default:

17.1.1 Failure by LESSEE to make payments of rent when due and such failure continues for a period of 15 days after written notice of such failure from LESSOR to LESSEE has been received by LESSEE.

17.1.2 The filing of any involuntary bankruptcy, receivership or arrangement proceeding by LESSOR or LESSEE which filing is not dismissed within sixty (60) days.

**SECTION 17.2** Upon the occurrence of a default included in 17.1; or any material breach of any material term of this Lease not considered a default under Section 17.1 the injured party shall notify the breaching party in writing and specify the breach and what corrective action is desired to cure the breach.

**SECTION 17.3** If, upon the expiration of thirty (30) days from the receipt of said notice or time specified in 17.2, the breach has not been cured (or, if such breach cannot be cured within 30 days, steps have not been taken to effect such cure and pursued with all due diligence within said period), the injured party shall have the right, at its sole option, to cure the breach if possible and be reimbursed by the breaching party for the cost thereof, including any and all reasonable attorney's fees.

**SECTION 17.4** Nothing herein shall prevent the injured party from resorting to any other remedy permitted under this Lease or at law or equity, including seeking damages and/or specific performance, as shall be necessary or appropriate to make the injured party whole in the premises. Failure of the injured party to demand or enforce a cure for breach in one instance shall not be deemed a waiver of its right to do so for any subsequent breach by the breaching party.

**SECTION 17.5** The failure of either party hereto to enforce at any time any of the provisions of this Lease or to exercise any right or option which is herein provided shall in no way be construed to be a waiver of such provisions as to the future, nor in any way to affect the validity of this Lease or any part hereof or the right of either party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this Lease shall be held to be a waiver of any other or subsequent breach.

**SECTION 17.6** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, NEITHER PARTY, NOR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, AFFILIATES OR EMPLOYEES WILL BE LIABLE TO THE OTHER PARTY (OR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, AFFILIATES OR EMPLOYEES) FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE, OR FOR ANY LOSS OF PROFITS OR LOSS OF USE OF CAPITAL OR REVENUE

UNDER ANY CIRCUMSTANCE (EVEN IF THAT PARTY HAS BEEN ADVISED OF OR HAS FORESEEN THE POSSIBILITY OF SUCH DAMAGES), WHETHER THE CLAIM ARISES IN TORT, CONTRACT, OR OTHERWISE UNDER THIS AGREEMENT. THE FOREGOING LIMITATION IS NOT TO BE CONSTRUED TO LIMIT RECOVERY OF DAMAGES OR LOSSES SUFFERED BY A THIRD PARTY (I.E., PERSONS WHICH ARE NOT AFFILIATES OF EITHER PARTY) UNDER A TORT CLAIM FOR WHICH EITHER PARTY IS RESPONSIBLE.

## **SECTION XVIII. ARBITRATION**

**SECTION 18.1** If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, the parties will follow the dispute resolution procedures set forth in this Section XVIII. No arbitrator shall have authority to change the terms or provisions of this Agreement.

**SECTION 18.2** Any dispute arising out of or relating in any way to this Lease shall be subject to arbitration under this Section in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Any party may, upon ten (10) days' prior notice to the other party or parties, refer the matter to arbitration hereunder. The arbitrator shall be jointly selected by the parties, but, if they do not agree on an arbitrator within thirty (30) days after demand for arbitration is made by a party, they shall request that the arbitrator be designated by the American Arbitration Association.

**SECTION 18.3** Until any award is made upon questions submitted to arbitration, the business, settlements and payments to be transacted and made and other performance under the Agreement shall continue to be transacted and made in the manner and form existing prior to the time such questions arose. Any such damages in such an award shall earn interest from the date the damages were initially incurred until paid at the corporate "prime rate" as reported in The Wall Street Journal on the date of the Award.

**SECTION 18.4** The arbitrator shall have the power to require the performance of acts found to be required by this Agreement, to require the cessation or nonperformance of acts found to be prohibited by this Agreement and in appropriate cases to order termination of the Lease. The arbitrator shall not have the power to award consequential or punitive damages. No award under this Section may change the terms of this Agreement.

**SECTION 18.5** The arbitrator shall make an award in writing, shall be final, binding and conclusive on all parties to the arbitration when delivered to them.

**SECTION 18.6** Any party may, within ten (10) days of delivery of the award, seek clarification or reconsideration of the award from the arbitrator. The other party or parties shall be provided an opportunity for a response thereto within twenty (20) days of receipt thereof. The arbitrator shall make the decision granting or denying such clarification or reconsideration in writing, within sixty (60) days of receipt of a petition

for such clarification or reconsideration, which shall then be final, binding and conclusive on all parties to the arbitration when delivered to them.

**SECTION 18.7** Each party to the arbitration shall pay the fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs, and expenses of the arbitrator shall be paid in equal shares by the parties to the arbitration.

**SECTION 18.8** The parties may conduct such reasonable discovery as will facilitate a prompt and efficient resolution of the issues in dispute; provided that the arbitrator may provide for and place such limitations on the conduct of such discovery as the arbitrator may deem appropriate. The books and papers of the parties, as far as they relate to the matter submitted for arbitration, shall be open to the examination of the arbitrator.

**SECTION 18.9** All proceedings relating to any such arbitration, and all testimony, written submissions and award of the arbitrator therein, shall be private and confidential as among the parties, and shall not be disclosed to any other person, except as required by law and except as reasonably necessary to prosecute or defend any judicial action to enforce, vacate or modify such arbitration award.

**SECTION 18.10** The location of any arbitration proceeding held hereunder shall be agreed upon by the parties, or, if they are unable to agree, in Davenport, Iowa.

## **SECTION XIX. COMPLIANCE WITH AAR**

For the term of this Lease, LESSEE agrees to comply with and be legally bound by the terms and provisions of the Association of American Railroads' practices, rules, agreements, and circulars such as OT-5, claim handling, as it applies to lading and equipment damage occurring while in LESSEE's possession, etc.

## **SECTION XX.**

**SECTION 20.1** [Intentionally Omitted.]

## **SECTION XXI. SALE OF LEASED PREMISES**

LESSOR shall have the right to sell the Leased Premises as part of a transaction that involves all or a substantial portion of the assets of LESSOR. However, in the event of such transaction, the sale shall be made subject to the terms of this Lease. In the event of a sale during the first seven (7) years of less than a substantial portion of LESSOR's assets, which nevertheless encompasses the Leased Premises, LESSOR hereby grants to LESSEE the option of either a right of first refusal to acquire the involved assets upon the same terms and conditions as agreed to by LESSOR with a bona fide third party purchaser. LESSEE shall make the election contained in the preceding sentence within ten (10) days of receiving written notice from LESSOR of said sale, and in the event LESSEE elects to exercise the right of first

refusal, it shall be able to tender the required consideration for the assets involved within sixty (60) days of its receipt of LESSOR's original notice of the transaction.

## **SECTION XXII**      **RESERVED RIGHTS**

**SECTION 22.1**      LESSOR reserves unto itself, its affiliates, subsidiaries, parents, successors and/or assigns, the following property rights hereinafter collectively referred to as the "Reserved Rights" the following:

22.1.1              All existing agreements, leases, or licenses with third parties, including any affiliates of LESSOR, whether recorded or not, except those assigned to LESSEE under this Lease if any (provided that LESSOR has provided LESSEE with a copy of all such agreements, leases or licenses prior to the execution of this Lease); and

22.1.2              The right, by any commercially reasonable means, to install, construct, operate, maintain, repair, renew, replace, and remove utility systems and their associated and appurtenant equipment and facilities as well as the right to attach the utility systems and related facilities to existing bridges, and to install them in existing tunnels, and the right of ingress and egress for access purposes; and

22.1.3              The right, by any commercially reasonable means, to install, construct, operate, maintain, repair, renew, replace, and remove commercial poster panels and towers and their associated and appurtenant equipment and facilities as well as the right to attach the commercial poster panels and towers and related facilities to existing bridges and to install them in existing tunnels, and the right of ingress and egress for access purposes; and

22.1.4              All rights to and the right to convey all minerals, mineral rights, and air rights in, on or under the Leased Premises.

**SECTION 22.2**      LESSOR shall retain any rentals, fees or other payments associated with the Reserved Rights. LESSOR shall be responsible for any duties required to be performed pursuant to the Reserved Rights including but not limited to all maintenance, costs, fencing, insurance, taxes (income, ad valorem, or otherwise) , special assessments, and liabilities owed to, on, or for said reserved rights.

**SECTION 22.3**      LESSOR's exercise of the Reserved Rights in this Section XXII shall not materially interfere with LESSEE's present or reasonably contemplated freight operations under this Lease.

## **SECTION XXIII.**      **CONFIDENTIALITY**

**SECTION 23.1**      Each party hereto covenants that all information and documents concerning the disclosing party ("Disclosing Party") communicated to, or received or reviewed by, the receiving party ("Receiving Party"), its employees, agents

or representatives, in connection with this Lease and the transactions contemplated hereby shall be maintained in confidence and not disclosed or utilized (other than in connection with the transactions contemplated hereby) by the Receiving Party, its employees, agents or representatives, without the Disclosing Party's prior written consent, unless (i) such information and documents were, are now, or become generally available to the public (but not as a result of a breach of any duty of confidentiality by which the Receiving Party, or any of its employees, agents and representatives, is bound), (ii) such information and documents were known to Receiving Party prior to their disclosure to the Receiving Party by the Disclosing Party in connection with this Lease, as demonstrated by the Receiving Party's written records, (iii) such information and documents are disclosed by a third party, or (iv) such items are required to be disclosed pursuant to a judicial order or applicable law, rule or regulation or to the parties' insurers. Notwithstanding anything herein to the contrary, each party may disclose (without prior notification to, or approval or consent by, the Disclosing Party), to taxing authorities and/or to such party's representatives, outside counsel and advisors, any confidential information that is required to be disclosed in connection with such party's tax filings, reports, claims, audits, and litigation.

**SECTION 23.2** In the event that either party hereto, or any of its employees, agents, representatives, becomes legally compelled to disclose any such information or documents, the Receiving Party shall (to the extent permitted by law) provide the Disclosing Party with prompt notice before such disclosure so that the Disclosing Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Lease, or both. In the event that such protective order or other remedy is not obtained, or that the Disclosing Party waives compliance with the provisions of this Lease, the Receiving Party shall furnish only that portion of the information or documents that it is advised by written opinion of counsel is legally required.

**SECTION 23.3** It is agreed that money damages would not be a sufficient remedy or any breach of this Section 23 and that either party hereto shall be entitled to specific performance as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for breach of this Section 23 but shall be in addition to all other remedies available at law or in equity. Each party hereto further agrees and covenants that it shall not use any information or document that it obtains or has obtained in connection with this Lease in any judicial or administrative proceeding brought against the other party, except in a proceeding brought hereunder. With respect to any judicial or administrative proceeding brought by a third party challenging any provision of this Lease or relating to any action or inaction required by this Lease, the party against whom such proceeding is brought may use for purposes of defending such proceeding information or documents that it obtains or has obtained in connection with this Lease; provided, however, that the party against whom such proceeding is brought shall consult with the other party prior to such use of information or documents.

## **SECTION XXIV. MISCELLANEOUS**

**SECTION 24.1**      **Entire Agreement.**    This Lease expresses the entire agreement between the parties and supersedes all prior oral or written agreements, commitments, or understandings with respect to the matters provided for herein, and no modification of this Lease shall be binding upon the party affected unless set forth in writing and duly executed by the affected party.

**SECTION 24.2**      **Notices.**    All notices, demands, requests or other communications which may be or are required to be given, served or sent by either party to the other pursuant to this Lease shall be in writing and shall be deemed to have been properly given or sent:

24.2.1            If intended for LESSOR, by mailing by registered or certified mail, return receipt requested, with postage prepaid, addressed to LESSOR at:

City of Davenport  
Attention: City Administrator  
226 West 4<sup>th</sup> Street  
Davenport, IA 52801

With a copy of all notices regarding breach, termination, or similar legal issues to:

Corporation Counsel  
City of Davenport  
226 West 4<sup>th</sup> Street  
Davenport, IA 52801

24.2.2            If intended for LESSEE by mailing by registered or certified mail, return receipt requested with postage prepaid, addressed to LESSEE at:

Rail, Industrial, Chemical & Logistics Group Leader  
c/o Savage Services Corporation  
Attention: Group Leader—Rail, Industry & Chemical Logistics  
901 W. Legacy Center Way  
Midvale, Utah 84047

With a copy to:

Savage Services Corporation  
Attention: General Counsel  
901 W. Legacy Center Way  
Midvale, Utah 84047

24.2.3            Each notice, demand, request or communication which shall be (a) mailed by registered or certified mail, (b) hand delivered, or (c) sent by recognized overnight courier service, to either party at such address shall be deemed sufficiently given, served or sent for all purposes at the time such

notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation. Either party may change the name of the recipient of any notice, or his or her address, at any time by complying with the foregoing procedure.

**SECTION 24.3**      **Binding Effect.** This Lease shall be binding upon and inure to the benefit of LESSOR and LESSEE, and shall be binding upon the successors and assigns of LESSEE, subject to the limitations hereinafter set forth. LESSEE may not assign its rights under this Lease or any interest therein, or attempt to have any other person assume its obligations under this Lease through merger or otherwise, without the prior written consent of LESSOR.

**SECTION 24.4**      **Severability.** If fulfillment of any provision hereof or any transaction related hereto shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Lease in whole or in part, then such clause or provision only shall be held ineffective, as though not herein contained, and the remainder of this Lease shall remain operative and in full force and effect.

**SECTION 24.5**      **Headings.** Article headings used in this Lease are inserted for convenience of reference only and shall not be deemed to be a part of this Lease for any purpose.

**SECTION 24.6**      **Governing Law.** This Lease shall be governed and construed in accordance with the laws of the State of Iowa.

**SECTION 24.7**      **Amendment.** No modification, addition, deletion, change, or amendments to this Lease or any of the Appendices shall be effective unless and until such modification, addition or amendment is in writing and signed by the parties.

**SECTION 24.8**      **Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

[Signatures on Following Page]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed on their behalf, as of the \_\_\_\_ day of \_\_\_\_\_, 2017.

**LESSOR:**

**CITY OF DAVENPORT**

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

**LESSEE:**

**SAVAGE DAVENPORT RAILROAD COMPANY**

By:\_\_\_\_\_

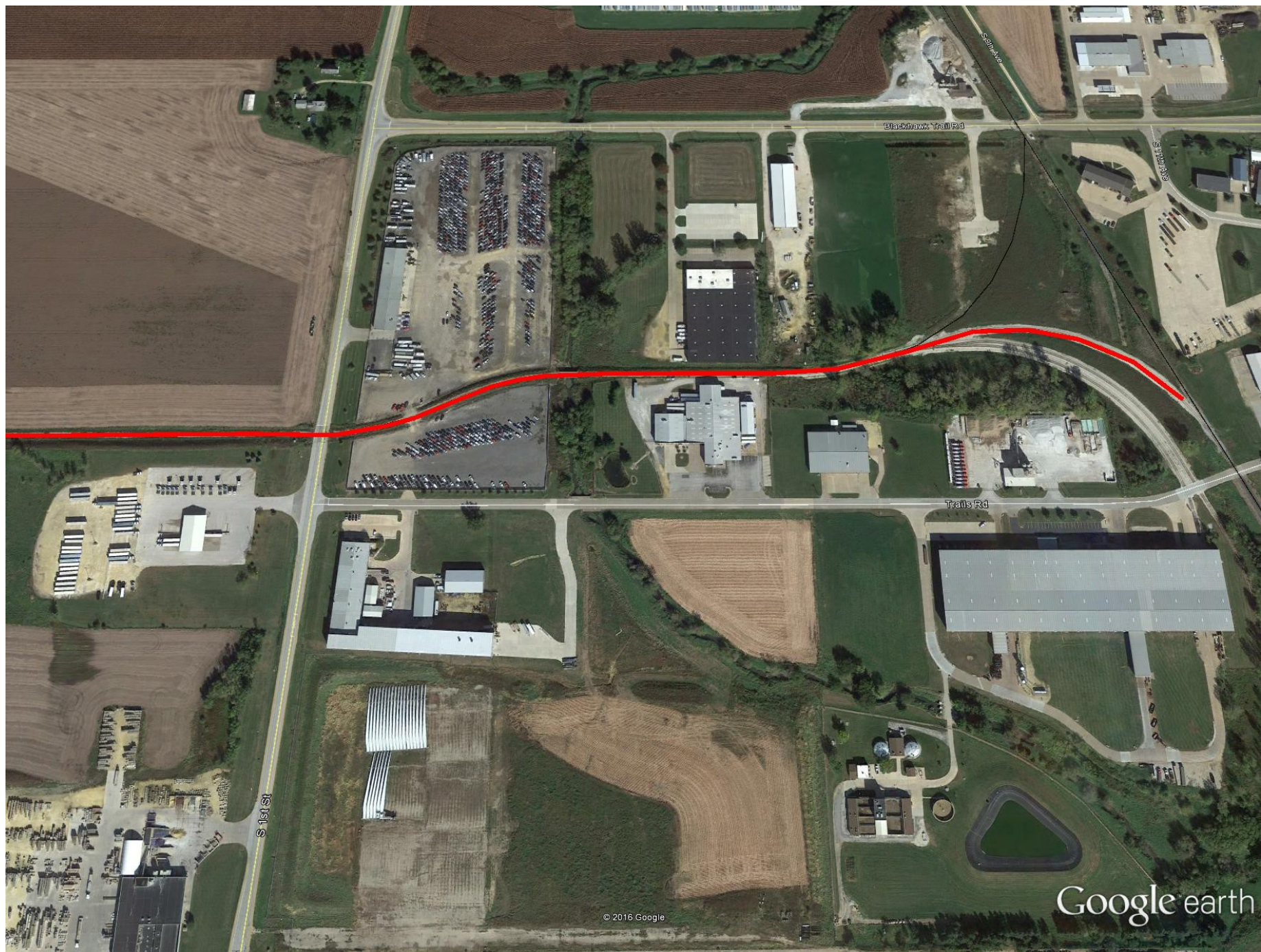
Name:\_\_\_\_\_

Title:\_\_\_\_\_

## **EXHIBIT A**

### **Depiction of Leased Premises**

The Leased Premises consists of all of LESSOR'S main track and the real property 25 feet on each side thereof. As depicted below such track commences 75 feet from Canadian Pacific' mainline switch located at MP 191.2 of the Davenport Sub and ends at the Davenport Transload.







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Google earth

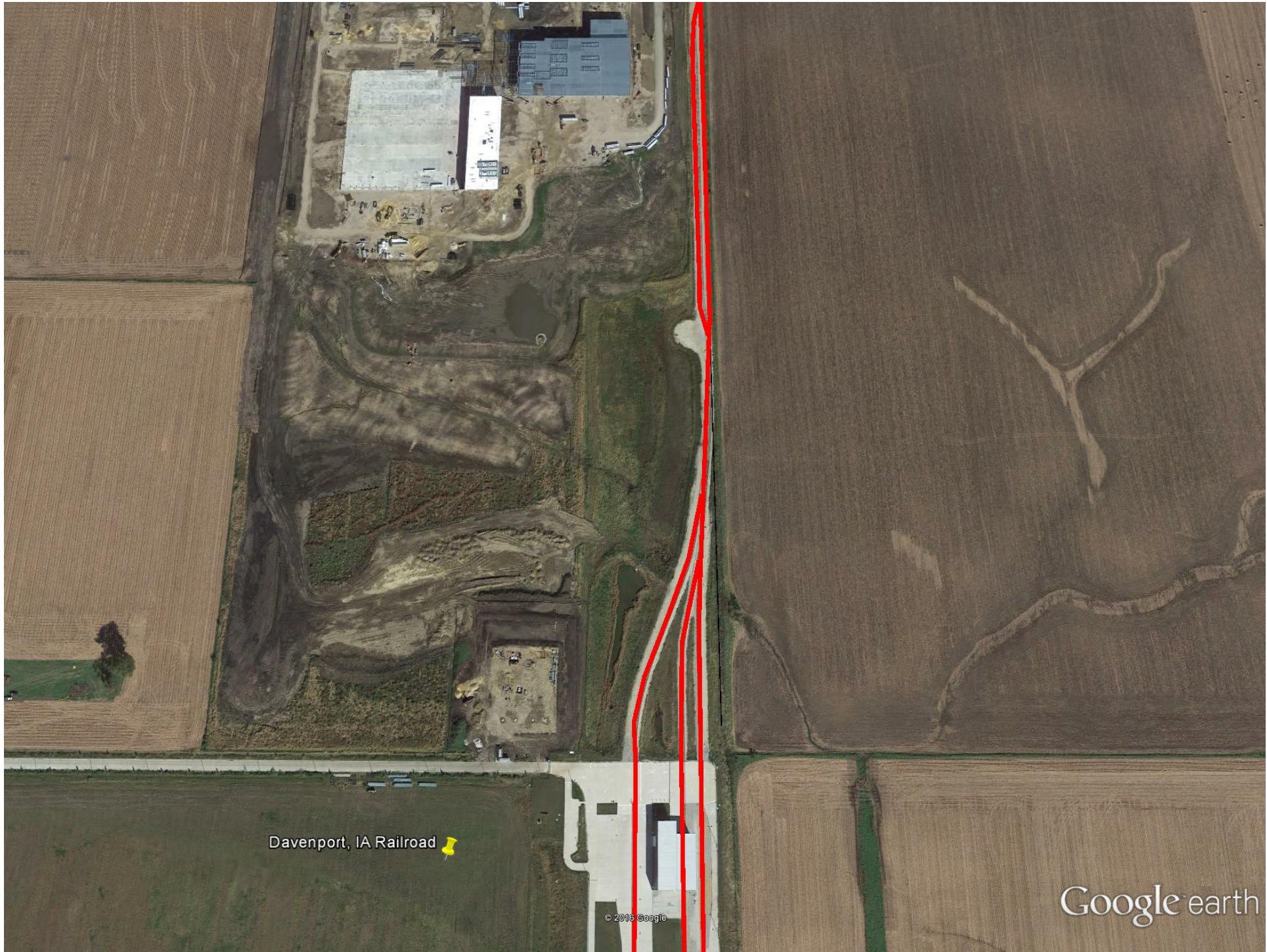


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Google earth

155th Ave





Davenport, IA Railroad

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Google earth



Davenport, IA Railroad

Legal Description for the Expansion of the North Urban Revitalization Area

Parts of Sections 26, 27, 28 and 33 all in Township 79 North Range 3 East of the 5<sup>th</sup> P.M. being more particularly described as follows:

**Tract 1 (City of Davenport)**: Parcel No. W3307-01 described in the Warranty Deed filed for record with the Office of the Recorder of Scott County on December 22, 2011 as Document 2011-36630 with the following legal description:

*Part of the North Half of the Northeast Quarter of Section 33 in Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. being more particularly described as follows: Lot 1 of Interstate 80 Airport Industrial Park 6<sup>th</sup> Addition to the City of Davenport Iowa. Said tract contains 13.64 acres, more or less.*

**Tract 2 (City of Davenport)**: Parcel No. W2801-01 described in the Warranty Deed filed for record with the Office of the Recorder of Scott County on December 22, 2011 as Document 2011-36628 with the following legal description:

*Part of the Southeast Quarter of the Southeast Quarter of Section 28, in Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. being more particularly described as follows: The Eastern 390.00 feet of the Southeast Quarter of the Southeast Quarter of Section 28, in Township 79 North Range 3 East, excluding the Rail Road Right-of-Way per document 2011-1922. Said tract contains 10.00 acres, more or less.*

**Tract 3 (City of Davenport)**: Parcel No. W2801-02 described in the Warranty Deed filed for record with the Office of the Recorder of Scott County on January 18, 2011 as Document 2011-1922.

and

**Tract 4 (Scott County)**: Parcel No. 932839005 described in the Warranty Deed filed for record with the Office of the Recorder of Scott County on January 18, 2011 as Document 2011-1922.

Tract 3 and 4 are legally described as follows:

*Part of the Southeast Quarter of Section 28 and the Southwest Quarter of Section 27, Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. being more particularly described as follows: A variable width right-of-way, the centerline of which is divided into equal stations of 100.00 feet in length; said centerline is described as follows: Commencing at the West Quarter Corner of said Section 27; thence South 02 degrees 09 minutes 53 seconds East 2.85 feet on the west line of the Southwest Quarter of said Section 27; thence North 87 degrees 50 minutes 11 seconds East 0.60 feet to the east line of described right-of-way line of Slopertown Road; thence on said southerly line and the arc of a 1943.00 foot radius curve, concave northeasterly 25.98 feet, with a chord bearing and distance of North 81 degrees 38 minutes 28 seconds East 25.98 feet to the point of beginning; said point being centerline Station 219+36.05; thence South*

*02 degrees 09 minutes 49 seconds East on said centerline 2660.95 feet to the intersection with the south line of the Southeast Quarter of said Section 28 and there terminating a centerline Station 245+96.97. The east line of the proposed right-of-way line is 25.00 feet easterly of a parallel with the aforesaid centerline, bounded on the north by the southerly right-of-way line of Slopertown Road at 25.00 feet left of Station 219+40.80 and runs southerly to Station 239+99.14; thence said right-of-way widens to 35 feet easterly of and parallel with said centerline to Station 245+97.37 at the intersection with the south line of the Southwest Quarter of said Section 27; and there terminating. The west line of the proposed right-of-way is 25.00 feet westerly of and parallel with said centerline, bounded on the north by the southerly right-of-way line of Slopertown Road at 25.00 feet right of Station 219+31.09 and runs southerly to Station 221+49.11; thence said right-of-way line widens to 45.00 feet westerly of and parallel with said centerline to Station 237+99.52; thence said right-of-way line narrows to 25.00 feet westerly of and parallel with said centerline to Station 239+9.14; thence said right-of-way line widens to 35.00 feet westerly of and parallel with said centerline to Station 245+96.56 at the intersection with the south line of the Southeast Quarter of said Section 28, and there terminating. The above described right-of-way contains 4.10 acres, more or less. Right-of-way plat attached and by this reference made apart hereof.*

**Tract 5 (City of Eldridge):** Parcel No.932703005 described in the Warranty Deed filed for record with the Office of the Recorder of Scott County on January 18, 2011 as Document 2001-1925 with the following legal description:.

*Part of the Northwest Quarter of Section 27 and the Northeast Quarter of Section 28, all in Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. being more particularly described as follows: a strip of land 50.00 feet wide the centerline being described as follows: Commencing at the southeast corner of the Northeast Quarter of the Northwest Quarter of Section 27; thence North 02 degrees 02 minutes 05 seconds West 314.87 feet; thence South 87 degrees 57 minutes 04 seconds West 545.77 feet to the point of beginning; thence South 87 degrees 57 minutes 04 second West along the centerline of said strip 1432.24 feet to the point of curvature of a curve, concave southeasterly, having a radius of 716.20 feet with a central angle of 90 degrees 04 minutes 12 seconds and a chord bearing and distance of South 42degrees 55 minutes 11 seconds West 1013.48 feet for a distance of 1125.88 feet along said curve; thence South 02 degrees 06 minutes 55 seconds East 862.30 feet to the northerly right-of-way line of Slopertown Road and there terminating. Said tract contains 3.93 acres, more or less.*

**Tract 6 (City of Eldridge):** Parcel No. 932713002 described in the Warranty Deed filed for record with the Office of the Recorder of Scott County on July 29, 1985 as Document 1985-11443 with the following legal description:

*Part of the Northwest Quarter of Section 27 and the Northeast Quarter of Section 28, all in Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. being more particularly described as follows: a strip of land 50.00 feet wide the centerline being described as follows: Commencing at the southeast corner of the Northeast Quarter of the Northwest Quarter of Section 27; thence North 02 degrees 02 minutes 05 seconds West 314.87 feet; thence South 87 degrees 57 minutes 04 seconds West 545.77 feet*

*to the point of beginning; North 87 degrees 57 minutes 04 seconds East 545.77 feet to the west line of Buttermilk Road also known as 155<sup>th</sup> Avenue and there terminating. Said tract contains 0.63 acres, more or less.*

**Tract 7 (Scott County)**: Parcel No. 932705006 described in the Warranty Deed filed for record with the Office of the Recorder of Scott County on January 18, 2011 as Document 2011-1923. With the following legal description:

*Part of the Northwest Quarter of Section 27 and the Northeast Quarter of Section 28, all in Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. being more particularly described as follows: a right-of-way strip of land 50.00 feet wide the centerline being described as follows: Commencing at the northeast corner of said Section 27, thence South 01 degrees 53 minutes 47 seconds East 1022.09 feet on the east line of said Section 27; thence South 87 degrees 57 minutes 04 seconds West 1327.16 feet to the east line of the west half of the Northeast Quarter of said Section 27 and the point of beginning; thence South 87 degrees 57 minutes 04 seconds West 1292.58 feet to the east right-of-way line of Buttermilk Road (155<sup>th</sup> Avenue) and there terminating. Along with a triangular piece of land lying adjacent to and coincident with the southwest corner of the above described right-of-way said corner being the point of beginning; thence North 87 degrees 57 minutes 04 seconds East 148.00 feet along the south line of the the above described right-of-way; thence southwesterly to a point in the east right-of-way line of Buttermilk Road (155<sup>th</sup> Avenue) 35 feet southerly of the southwest corner of the above described right-of-way; thence North east right-of-way line of Buttermilk Road (155<sup>th</sup> Avenue) 35 feet to the point of beginning. Said combined tracts contain 1.54 acres, more or less.*

**Tract 8 (City of Eldridge)**: Parcel No.932707003 described in the Warranty Deed filed for record with the Office of the Recorder of Scott County on January 18, 2011 as Document 2011-1926 with the following legal description:

*Part of the Northeast Quarter of the Northeast Quarter of Section 27, all in Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. being more particularly described as follows: a right-of-way strip of land 50.00 feet wide the centerline being described as follows: Commencing at the northeast corner of the Northeast Quarter of the Northeast Quarter of said Section 27; thence South 01 degrees 53 minutes 47 seconds East 1022.09 feet on the east line of said Quarter Section to the point of beginning; thence South 87 degrees 57 minutes 04 seconds West 1327.16 feet to the west line of the Northeast Quarter of the Northeast Quarter of said Section 27 and there terminating. Said tract contains 1.52 acres, more or less.*

**Tract 9 (City of Eldridge)**: Parcel No.932601005 described in the Warranty Deed filed for record with the Office of the Recorder of Scott County on January 18, 2011 as Document 2011-1924 with the following legal description:

*Part of the Northwest Quarter of Section 26, all in Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. being more particularly described as follows: A right-of-way strip of land 50.00 feet wide described as follows: Commencing at the northwest corner of said Section 26; thence South 01 degree 53 minutes 47 seconds East along the west line of said Northwest Quarter 997.09 feet to the south line of land currently owned by Alfred*

*Arp LLC as described in the Court Officer Deed filed for recorded on March 18, 1997 as document 1997-6145, and being the point of beginning; thence North 87 degrees 50 minutes 07 seconds East along said south line 1213.09 feet to the northwest corner of Lot 1 of Lancer Industrial Park South Behrens Second Addition to the City of Eldridge; thence South 02 degrees 18 minutes 17 seconds East along the west line of said Lot 1 50.00 feet; thence South 87 degrees 50 minutes 07 seconds West along a line 50.00 feet southerly of and parallel to the south line of said land owned by Alfred Arp LLC 1213.44 feet to the west line of said Northwest Quarter; thence North 01 degrees 53 minutes 47 seconds West along the west line of said Northwest Quarter 50.00 feet to the point of beginning. Said tract contains 1.39 acres, more or less.*

**Tract 10 (City of Eldridge):** Parcel No.9326031012 described in the Warranty Deed filed for record with the Office of the Recorder of Scott County on December 02, 2011 as Document 2011-34211 with the following legal description:

*Part of the Northeast Quarter of Section 26, Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. being more particularly described as follows: A right-of-way 50.00 feet wide described as the North 50.00 feet of Lot 1 of Lancer Industrial Park South Behrens Second Addition to the City of Eldridge. Said tract contains 1.01 acres, more or less.*

**Tract 11 (City of Eldridge):** Parcel No.932603101-22 described in the Warranty Deed filed for record with the Office of the Recorder of Scott County on December 02, 2011 as Document 2011-34209 with the following legal description:

*Part of the North Half of Section 26, Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. being more particularly described as follows: a right-of-way 50.00 feet wide in part of Lots 1 and 2 of Lancer Industrial Park South to the City of Eldridge, with the centerline being described as follows: Commencing at the northwest corner of said Lot 2; thence South 01 degree 10 minutes 15 seconds West along the west line of said Lot 2 174.82 feet to the point of beginning; thence 284.78 feet along the arc of a 716.78 foot radius curve concave northwesterly, having a chord bearing and distance of North 71 degrees 55 minutes 58 seconds East 282.91 feet with a central angle of 22 degrees 45 minutes 51 seconds; thence North 60 degrees 33 minutes 03 seconds East 40.72 feet; thence 339.72 feet along the arc of a 716.78 foot radius curve concave southeasterly with a chord bearing and distance of North 74 degrees 07 minutes 43 seconds East 336.55 feet with a central angle of 27 degrees 09 minutes 20 seconds; thence North 87 degrees 42 minutes 23 seconds East 52.95 feet to the east line of said Lots 1 and 2 and there terminating. Said tract contains 0.82 acre, more or less.*

**Tract 12 (City of Eldridge):** Parcel No.9326052012 described in the Warranty Deed filed for record with the Office of the Recorder of Scott County on December 02, 2011 as Document 2011-34207 with the following legal description:

*Part of the Northeast Quarter of Section 26, Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. being more particularly described as follows: a right-of-way 25.00 feet wide located in part of Lots 1 and 3 of the Replat of Lot 2 of Mueller Lumber 1<sup>st</sup> Addition to the City of Eldridge described as follows: The South 25.00 feet of Lots 1 and 3 of the Replat of Lot 2 of Mueller Lumber 1<sup>st</sup> Addition to the City of Eldridge. Said tract contains 0.30 acre, more or less.*

**Tract 13 (City of Eldridge):** Parcel No.9326052012 described in the Quit Claim Deed filed for record with the Office of the Recorder of Scott County on December 02, 2011 as Document 2011-34205 with the following legal description:

*Part of the Northeast Quarter of Section 26, Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. being more particularly described as follows: a right-of-way 12.50 feet wide located in part of Lot 3 of Lancer Industrial Park South to the City of Eldridge described as follows: the North 12.50 feet of Lot 3 of Lancer Industrial Park South to the City of Eldridge. Said tract contains 0.15 acre, more or less.*

**Tract 14 (City of Eldridge):** Parcel No.93260530A2 described in the Corrected Warranty Deed filed for record with the Office of the Recorder of Scott County on June 10, 2013 as Document 2013-18332 with the following legal description:

*Part of the Northeast Quarter of Section 26, Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. being more particularly described as follows: a right-of-way 50.00 wide located in part of Parcel A in Mueller Lumber 2<sup>nd</sup> Addition to the City of Eldridge with a centerline described as follows: Commencing at the southwest corner of said Parcel A, thence North 02 degrees 01 minutes 33 seconds West a distance of 125.16 feet on the east line of said Parcel A to a point of curve, concave northwesterly, having a radius of 552.00 feet and the point of beginning; thence southwesterly 148.79 feet along the arc of said curve through a central angle of 16 degrees 19 minutes 53 seconds with a chord bearing and distance of South 87 degrees 42 minutes 23 seconds West 80.94 feet to the west line of said Parcel A and there terminating. Said tract contains 0.17 acre, more or less.*

**Tract 15 (City of Eldridge):** Parcel No.93260540B2 described in the Warranty Deed filed for record with the Office of the Recorder of Scott County on December 02, 2011 as Document 2011-34203 with the following legal description:

*Part of the Northeast Quarter of Section 26, Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. being more particularly described as follows: a right-of-way 50.00 wide located in part of Parcel B in Mueller Lumber 3<sup>rd</sup> Addition to the City of Eldridge with a centerline described as follows: Commencing at the southeast corner of said Parcel B, thence North 02 degrees 01 minutes 33 seconds West 195.17 feet on the east line of said Parcel B to a point of curve concave northwesterly having a radius 716.78 feet and being the point of beginning; thence southwesterly 261.31 feet along the arc of said curve through a central angle of 20 degrees 53 minutes 17 seconds with a chord bearing and distance of South 72 degrees 08 minutes 00 seconds West 259.87 feet to the west line of said Parcel B and there terminating. Said tract contains 0.30 acres more or less.*

**Tract 16 (City of Eldridge):** Parcel No.93260540C described in the Warranty Deed filed for record with the Office of the Recorder of Scott County on January 12, 2011 as Document 2011-1467, containing two tracts, a permanent rail easement and a roll & hold easements in the Plat of Rail Easements dated September 30, 2014.

*Tract No. 1 PRE Permanent Rail Easement*

*A parcel of land located in part of Parcel C of Mueller Lumber 3<sup>d</sup> Addition to the City of Eldridge situated in part of the Northeast Quarter of Section 26, Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. shown as Tract No. 1-PRE on the attached Plat of Rail Easements Sheet 1 of 4 attached hereto and by this reference made a part hereof and being more particularly described as follows: Commencing in the southeast corner Parcel C of said Mueller Lumber 3<sup>d</sup> Addition; thence North 00 degrees 11 minutes 13 seconds along the east line of said Parcel C 125.57 feet to the point of beginning; thence in a northwesterly, westerly and southwesterly direction along the arc of a curve concave southerly with a radius of 645.21 feet with a chord bearing and distance of North 84 degrees 09 minutes 52 Seconds West 561.22 feet for a distance of 591.71 feet; thence South 79 degrees 29 minutes 50 seconds West 7.76 feet to the intersection with the west line of said Parcel C; thence North 00 degrees 11 minutes 56 seconds East along the west line of said Parcel C 42.86 feet; thence northeasterly, easterly and southeasterly along the arc of a curve concave southerly with a radius of 650.81 feet with a chord bearing and distance of North 88 degrees 49 minutes 58 seconds East 566.27 feet for a distance of 585.85 feet to the intersection with the east line of said Parcel C; thence South 00 degrees 11 minutes 13 seconds West along the east line of said Parcel C 110.04 feet to the point of beginning. Said tract contains 0.99 acre, more or less.*

*Tract No. 2 PR&HE Permanent Roll and Hold Easement*

*A parcel of land located in part of Parcel B and Parcel C of Mueller Lumber 3<sup>d</sup> Addition to the City of Eldridge situated in part of the Northeast Quarter of Section 26, Township 79 North, Range 3 East of the 5<sup>th</sup> P.M. shown as Tract No. 2-PR&HE on the attached Plat of Rail Easements Sheet 1 of 4 attached hereto and by this reference made a part hereof and being more particularly described as follows:*

*Commencing at the southeast corner of Parcel C of said Mueller Lumber 3<sup>d</sup> Addition; thence North 00 degrees 11 minutes 13 seconds East along the east line of said Parcel C 4.81 feet to the point of beginning; thence in a northwesterly, westerly and southwesterly direction along the arc of a curve concave southerly with a radius of 529.73 feet with a chord bearing and distance of North 72 degrees 06 minutes 33 seconds West 497.89 feet for a distance of 518.32 feet; thence South 79 degrees 56 minutes 57 seconds West 381.64 feet to the intersection with the southerly right-of-way line of an existing rail easement; thence in a northeasterly direction along the arc of a curve concave northwesterly with a radius of 741.78 feet with a chord bearing and distance of North 72 degrees 24 minutes 01 seconds East 194.65 feet for a distance of 195.21 feet to the intersection with the west line of said Parcel C; thence North 00 degrees 11 minutes 56 seconds East along the west line of said Parcel C 13.75 feet; thence North 79 degrees 29 minutes 50 seconds East 7.76 feet; thence in a northeasterly, easterly and southeasterly direction along the arc of a curve concave southerly with a radius of 645.21 feet with a chord bearing and distance of South 84 degrees 09 minutes 52 seconds 561.22 feet for a distance of 591.71 feet to the intersection with the east line of said Parcel C; thence South 00 degrees 11 minutes 13 seconds along the east line of said Parcel C 120.76 feet to the point of beginning. Said tract contains 0.92 acre, more or less.*

*Note the East line of Parcel C of Mueller Lumber 3<sup>d</sup> Addition has a platted bearing of N00 degrees 13 minutes 40 seconds East and a surveyed bearing of North 00 degrees 11 minutes 13 seconds East which is used for the purpose of this description.*

Combined tracts contain 41.41 acres, more or less.

## **EXHIBIT 1.2**

### **List of Leases and Licenses on Leased Premises**

**EXHIBIT 5.1.4**

**List of contracts, deeds, agreements relating to Leased Premises  
not contained in Exhibit 1.2**

## EXHIBIT 13.2

### Memorandum of Lease

#### MEMORANDUM OF GROUND LEASE

WHEN RECORDED, RETURN TO:

\_\_\_\_\_  
901 W. Legacy Center Way  
Midvale, Utah 84047  
Attn: General Counsel

#### MEMORANDUM OF LEASE

THIS MEMORANDUM OF GROUND LEASE ("**Memorandum of Ground Lease**") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between \_\_\_\_\_, a Utah \_\_\_\_\_ ("**Lessee**"), and \_\_\_\_\_, having an address at \_\_\_\_\_ ("**Lessor**").

#### WITNESSETH

1. Lessor is the owner of certain real property located in \_\_\_\_\_, Iowa ("**Leased Premises**"), as more particularly described in **Exhibit A** attached hereto and incorporated herein by reference.
2. Pursuant to the terms of that certain Lease, dated \_\_\_\_\_, 2017, by and between Lessor and Lessee (the "**Lease**"), Lessor leased the Leased Premises to Lessee.
3. The initial term of the Lease is ten (10) years, commencing \_\_\_\_\_, 2017 and expiring on \_\_\_\_\_, 2027. Lessee has the option to extend the Lease for one additional term of ten (10).
4. The rent and other obligations of Lessor and Lessee are set forth in the Lease, to which reference is made for further information. This Memorandum of Lease describes only selected provisions of this Lease, and reference is made to the full text of the Lease for the full terms and conditions thereof. If a conflict exists between the terms of the Lease and this Memorandum of Lease, those contained in the Lease shall govern and be controlling.
5. The purpose of this Memorandum of Lease is to provide notice of the existence of the Lease, and it is understood that this Memorandum of Lease shall not amend or modify the Lease in any respect.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Ground Lease as of the date first set forth above.

LESSEE:

\_\_\_\_\_,  
a Utah \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LESSOR:

a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a Utah  
\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
by \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

Exhibit A  
to  
Memorandum of Lease

Legal Description of Leased Premises

City of Davenport

Agenda Group:  
Department: Finance  
Contact Info: Dawn Cameron 326-6177  
Wards: 3

**Action / Date**  
**7/5/2017**

**Subject:**

Resolution awarding a contract for the construction of three houses on East 6<sup>th</sup> Street to River Valley Homes for the price not-to-exceed \$713,510 and authorizing Mayor Frank Klipsch or designee to sign and manage any related agreements. [Ward 3]

**Recommendation:**

Adopt the Resolution.

**Relationship to Goals:**

Financially Responsible City Government.

**Background:**

A Request for Proposals was issued on May 2, 2017 and was sent to 171 contractors. On June 7, 2017 the Purchasing Division received and opened two proposals.

Proposals were evaluated on the following criteria: (1) Quality/detail of proposal (25%); (2) Timeline of construction (20%); (3) History of ability/ workmanship/experience/references (15%); (4) Sufficient and qualified personnel (15%); (5) Pricing (10%); (6) Subcontractors (10%); and (7) Project management software (5%).

The houses will be constructed at the addresses and the costs below:

634 East 6th Street = \$234,115

643 East 6th Street = \$234,605

648 East 6th Street = \$229,790

These properties will be constructed with federal funding and once complete will be sold to qualifying home owners.

**ATTACHMENTS:**

| Type                | Description                      |
|---------------------|----------------------------------|
| □ Resolution Letter | Resolution East 6th Street Homes |
| □ Backup Material   | RFP Respondents                  |

**REVIEWERS:**

| Department | Reviewer       | Action   | Date                |
|------------|----------------|----------|---------------------|
| Finance    | Admin, Default | Approved | 7/5/2017 - 11:13 AM |

Resolution No. \_\_\_\_\_

Resolution offered by Alderman Gordon:

RESOLVED by the City Council of the City of Davenport.

RESOLUTION awarding a contract for the construction of three houses on East 6<sup>th</sup> Street to River Valley Homes for the price not-to-exceed \$713,510 and authorizing Mayor Frank Klipsch or designee to sign and manage any related agreements.

WHEREAS, the City needs to contract the construction of the three houses at 634, 643, and 648 East 6<sup>th</sup> Street; and

WHEREAS, the applicable purchasing process was followed resulting in a recommendation to award to River Valley Homes;

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Davenport, Iowa, that:

1. the contract for the construction of three homes on East 6<sup>th</sup> Street from River Valley Homes is hereby approved; and
2. Mayor Frank Klipsch or designee is authorized to sign and manage any related agreement.

Attest:

Approved:

\_\_\_\_\_  
Jackie E. Holecek, CMC  
Deputy City Clerk

\_\_\_\_\_  
Frank Klipsch  
Mayor

CITY OF DAVENPORT, IOWA  
PROPOSAL TABULATION

DESCRIPTION: EAST 6<sup>TH</sup> STREET HOUSE CONSTRUCTION

RFP NUMBER: 17-110

OPENING DATE: JUNE 7, 2017

RECOMMENDATION: AWARD THE CONTRACT TO RIVER VALLEY HOMES OF  
BETTENDORF, IA

| <u>VENDOR NAME</u>         | <u>LOCATION</u>       |
|----------------------------|-----------------------|
| <b>RIVER VALLEY HOMES</b>  | <b>BETTENDORF, IA</b> |
| DAXON CONSTRUCTION COMPANY | ROCK ISLAND, IL       |

Prepared By Cindy Whitaker  
Purchasing

Approved By Rita Pridel Sr. Manager  
Department Director

Approved By Jaime Garner  
Budget/CIP

Approved By Linda Stollard  
Finance Director

City of Davenport

Agenda Group:  
Department: Finance  
Contact Info: Tom Warner 326-7752  
Wards: All

**Action / Date**  
**7/12/2017**

Subject:  
Resolution appointing Gene Meeker to fill the 6th Ward Alderman vacancy until the winner of this Fall's regular City Election is determined and sworn in. [All Wards]

Recommendation:  
Approve the resolution.

Background:  
Alderman Jeff Justin, after serving on the City Council as the 6th Ward Alderman since November 2007, has announced his resignation as a result of a new job opportunity that will relocate his family to Florida. As a result of his move, the City Council announced its intent to fill the vacancy with an appointment since holding a special election so close to the regular election would likely cause voter confusion and would also cause the seat to remain vacant until sometime in October. By filling the vacancy now through appointment, those in the 6th Ward interested in running for office can focus their energy and efforts on the regular City Election this fall.

The Mayor and City Council established specific criteria for the person they would ultimately appoint. Those criteria are that 1) the appointed person must live in the 6th Ward, 2) the appointed person should have prior experience in elected office (preferably with the City of Davenport and recent experience), 3) the appointed person must express no desire to run for office in this fall's City Election, and 4) the appointed person should have economic development experience.

Based on these criteria, the recommendation is that Gene Meeker, former Davenport At-large Alderman, be appointed to fill the 6th Ward vacancy until the winner of this fall's regular City Election is determined and sworn in. Former Alderman Meeker satisfies all of the criteria established by the Mayor and City Council, including expressing no desire to run for City office in this fall's regular City Election.

ATTACHMENTS:

| Type                | Description |
|---------------------|-------------|
| ▢ Resolution Letter | Resolution  |

REVIEWERS:

| Department | Reviewer       | Action   | Date                |
|------------|----------------|----------|---------------------|
| Finance    | Admin, Default | Approved | 7/5/2017 - 11:13 AM |

Resolution No. \_\_\_\_\_

Resolution offered by Alderman Gordon

RESOLVED by the City Council of the City of Davenport.

RESOLUTION appointing Gene Meeker to fill the 6<sup>th</sup> Ward Alderman vacancy until the winner of this Fall's regular City election is determined and sworn in.

WHEREAS, Jeff Justin has resigned the office of 6<sup>th</sup> Ward Alderman to move to Florida;

WHEREAS, holding a special election this close to the regular election will likely cause voter confusion and result in the seat remaining vacant until sometime in October;

WHEREAS, people interested in running for the office can focus their energy and efforts on the regular City election this Fall if an appointment is made now; and

WHEREAS, Gene Meeker is a 6<sup>th</sup> Ward resident and recently served as a Davenport Alderman, has economic development experience, and has expressed no desire to run for the office in this Fall's regular City election.

NOW THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Davenport, Iowa, that Gene Meeker is hereby appointed as 6<sup>th</sup> Ward Alderman until no later than 10 days after the vote for the regular November 2017 general city election in the 6<sup>th</sup> Ward is canvassed.

Attest:

Approved:

\_\_\_\_\_  
Jackie E. Holecek, CMC  
Deputy City Clerk

\_\_\_\_\_  
Frank Klipsch  
Mayor