

MEETING DATE: 06/21/21

ITEM: 10H

## AGENDA ITEM SUMMARY

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**Subject: Consider Resolution No. 80-21 approving agreement with Vince Rottinghaus**

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Recommendation: Approve resolution for agreement

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### **Background Summary:**

A building on property located at 1105 5<sup>th</sup> Street owned by Vince Rottinghaus was severely damaged by fire this past year. Vince's insurance company has set aside a \$10,000 reserve to help cover cleanup costs. We needed to be sure that Vince capped the utilities at this location, but he has indicated a desire to possibly build a new structure on this lot. The agreement Brad has drafted has given a time limit for Vince to build or he has to cap the utilities.

We recommend approval of the resolution.

CITY OF CHARLES CITY

RESOLUTION NO. 80-21

**RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING**

WHEREAS, a structure at 1105 5th Street in Charles City, Iowa, owned by Vince Rottinghaus (Owner), sustained significant fire damage in December 2020; and

WHEREAS, the insurance company has set aside a reserve in the amount of \$10,000 to protect the City's interest in removing the nuisance conditions created by the fire; and

WHEREAS, the Owner has completed demolition of the structure but has not been able to complete restoration of the lot nor capped the utilities serving the residence at the main; and

WHEREAS, the Owner has requested that he have additional time to complete restoration of the lot and either cap the utilities or begin construction of a new structure on the lot; and

WHEREAS, the City finds the Owner's request to be reasonable and accordingly has entered into a Memorandum of Understanding with the Owner concerning these issues,

NOW, THEREFORE BE IT RESOLVED that the Memorandum of Understanding between the City of Charles City and Vince Rottinghaus should be approved and the Mayor and City Clerk are authorized to execute this agreement on behalf of the City.

Passed and approved this 21<sup>st</sup> day of June, 2021.

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Dean Andrews, Mayor

Attest:

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Trudy O'Donnell, City Clerk

Prepared by and Return to: Brad Sloter, 200 N. Johnson St., Charles City, IA 50616, 641-228-4533

## AGREEMENT

This Agreement (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2021 (“the Effective Date”), by and between the City of Charles City, Iowa (“the City”) and DEB Enterprises, L.C., an Iowa Limited Liability Company (“Owner”).

## RECITALS

- A. Owner owns real property located at 1105 5<sup>th</sup> Street, Charles City, Floyd County, Iowa, as legally described in Exhibit A hereto (“the Property”).
- B. The structure on the Property was damaged in a fire. The Owner has since removed and demolished the structure located on the Property.
- C. The Owner’s insurer has notified the City that it has retained a portion of the insurance proceeds for the structure on the Property as a demolition cost reserve under Iowa Code Section 515.139.
- D. Iowa Code Section 515.139(4)(a) states that a reserve for demolition costs is no longer required if the insurer has received notice from the insured and the City that the insured has completed demolition of the property in compliance with all applicable statutes and local ordinances.
- E. The Charles City Code of Ordinances requires that the sanitary sewer and water service lines servicing the Property be terminated and disconnected at the sanitary sewer main and water main.
- F. The Owner has completed demolition of the property in compliance with all applicable statutes and local ordinances except for termination and disconnection of the sanitary sewer line and water line at the main.
- G. The Owner indicates it may construct a new structure at the Property which would utilize the existing sanitary sewer and water line(s) and has requested that the City provide it twelve (12) months to either initiate construction of a new structure at the Property or to terminate and disconnect the sanitary sewer line and water line at the main.
- H. Subject to the terms and conditions set forth herein, the City has agreed to provide the Owner with twelve months from the Effective Date to either initiate construction of a

new structure at the Property or to terminate and disconnect the sanitary sewer line and water line at the main.

- I. Upon approval and execution of this Agreement, the City agrees to execute any and all documents necessary to effectuate a release of the City's interest in the demolition reserve cost funds.

NOW THEREFORE in consideration of the mutual covenants herein contained be it agreed by the undersigned parties as follows:

1. Construction of New Structure or Termination of Sewer Line. The Owners shall either (1) initiate construction of a new structure on the Property or (2) terminate and disconnect the sanitary sewer line and water line at the main within twelve (12) months from the Effective Date. For purposes of this Agreement, "initiate construction" means the Owner shall have completed all preconstruction engineering and design, received all necessary licenses and permits, engaged contractors, ordered all essential equipment and supplies, and begun physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Property.
2. Termination of Utility Lines by City. If the Owner has not initiated construction or terminated and disconnected both the sanitary sewer line and water line at the main within twelve (12) months of the Effective Date, then the Owner hereby authorizes and requests the City and its agents, contractors, and employees, to enter upon the Property for the purpose of removing, disconnecting, and terminating the sanitary sewer line and water line at the main. In such case, the City shall be responsible for supervising the disconnection and termination of the utility lines.
3. Waiver of Notices and Hearings. The Owner hereby waives any and all notices, hearings, and rights that they may be entitled to under the Charles City Code of Ordinances and/or Iowa law regarding the ordering of the construction/removal of the utility lines, and the subsequent assessment of costs thereof to the Property. Such waiver includes, but is not limited to, the requirement of a prior finding by the City Council that the utility lines constitute a nuisance and/or violation of the City Code of Ordinances, and the requirement of prior notice to the Owners of their obligation to disconnect the utility lines at the main.
4. Assessment for Costs and Billing and Certifying to the County. Upon completion of the termination and disconnection of the utility lines by the City as set forth herein, the City Engineer shall submit to the City Council an itemized and verified statement of expenditures for material and labor and the legal description of the Property on which work has been performed. The costs shall be assessed to the Property, shall constitute a lien against the property, and shall be collected as set forth in the Charles City Code of Ordinances and in Iowa Code Section 364.12.
5. Consent of Owner. The Owner expressly consents to the City undertaking the disconnection and termination of the utility lines as set forth herein and consents to all

reasonable and appropriate costs for material and labor for the disconnection and termination of the utility lines being assessed to the Property as set forth herein.

- 6. Temporary Construction Easement. The Owner hereby grants to the City and its agents, contractors, and employees, a temporary easement to enter upon the Property for the purpose completing disconnection of the utilities as set forth herein.
- 7. Indemnification and Hold Harmless. The Owner agrees to hold the City harmless from and indemnify the City for any claims for damages to persons or property asserted against the City and arising from the work performed by the City for the termination of the service line(s).
- 8. Binding Effect. The terms of this Agreement shall be binding on the undersigned parties, together with their heirs, successors, and assigns.
- 9. Approval of City Council. This agreement is subject to approval by the City Council of the City of Charles City, Iowa.

**CITY OF CHARLES CITY, IOWA**  
 105 Milwaukee Mall  
 Charles City, IA 50616

**OWNER**  
 1105 5th Street  
 Charles City, IA 50616

BY: \_\_\_\_\_  
 Dean Andrews, Mayor

\_\_\_\_\_  
 DEB Enterprises, LLC  
 By Vincent L. Rottinghaus  
 Its \_\_\_\_\_ (title)

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

Attest:

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

\_\_\_\_\_  
 Trudy O'Donnell, City Clerk

STATE OF IOWA, COUNTY OF FLOYD )ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, a notary public in and for the state of Iowa, personally appeared Dean Andrews and Trudy O'Donnell, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Charles City, Iowa; that the seal affixed to the foregoing instrument is the seal of said municipality of Charles City, Iowa, and that the instrument was signed and sealed on behalf of said City by authority of its City Council, and that Dean Andrews and Trudy O'Donnell acknowledged the execution of the instrument to be the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

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

STATE OF IOWA, COUNTY OF FLOYD )ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Vincent L. Rottinghaus, as \_\_\_\_\_ (title) of DEB Enterprises, LLC, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

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

Exhibit A

The South 125 feet of the North 245 feet of a parcel of land described as commencing at a point on the East line of the Southwest Quarter of the Northwest Quarter of Section 12, Township 95 North, Range 16 West of the 5th P.M., which point is 853.21 feet South of the Northeast corner of said Southwest Quarter of the Northwest Quarter of Section 12; thence running South on said East line to the Southeast corner of said Southwest Quarter of the Northwest Quarter of Section 12; thence running West to the East line of the right-of-way of the Charles City Western Railway Company; thence running North along the East right-of-way line to a point due West of the point of beginning; thence East to the point of beginning; together with the Mortgagor's right, title and interest in and to a perpetual easement over and across the East 12 feet of that parcel of land described as Commencing at a point on the East line of the Southwest Quarter of the Northwest Quarter, 853.21 feet South of the Northeast corner of the Southwest Quarter of the Northwest Quarter; thence running South on said East line to the South line of said Southwest Quarter of the Northwest Quarter; thence running West to the East line of the right-of-way of said Railroad; thence running North along the East Railroad right-of-way line to a point due West of the point of beginning; thence running East to the point of beginning, all in Section 12, Township 95 North, Range 16 West.

ALSO,

The North 120.0 feet of that parcel of land described as follows: Commencing at a point 853.21 feet South of the Northeast corner of the Southwest Quarter of the Northwest Quarter of Section 12, Township 95 North, Range 16 on the East line thereof; thence South on the East line to the South line of the Southwest Quarter of the Northwest Quarter of said Section; thence running West to the East line of right-of-way of Charles City Western Railroad; thence running North along East line of Railway to a point due West of the point of beginning; thence running east to the point of beginning, all in Charles City, Floyd County, Iowa.

AND

The West 70 feet of Lots Two and Three (2 & 3); the West 70 feet of the South 49 1/3 feet of Lot One (1); and all that part of the vacated public alley, lying between the South boundary line of Lot 3 extended Westerly and a line parallel thereto; and 188 feet North thereof, all located in Block Sixteen (16) of Gilbert's Addition to St. Charles, now incorporated in and as a part of Charles City, Iowa, and all its right, title and interest in the easement given by G. F. Ardery and Inez K. Ardery to the Floyd County Farm Bureau, as shown by a deed from G. F. Ardery and Inez Ardery, recorded in Book 57 of Town Lot Deeds, page 334, on the 11th day of April, 1961,

AND

A parcel of land in the SW ¼ NW ¼ of Sec. 12-95-16 W. of the 5th P.M. described as follows: Commencing at the SE corner of the SW ¼ NW ¼ of Section 12-95-16 W., thence North along the ¼ - ¼ line a distance of 243.5 ft.; thence West to the East line of the C. C. Western R.R. a distance of 153.6 ft.; thence South along the East line of said R.R. a distance 243.5 ft. to the east and west ½ section line; thence east along the ½ section line a distance of 147.7 ft. to the point of beginning, in Floyd County, Iowa.

That said parcel of land is also described as follows: Commencing at a point 853.21 feet South of the Northeast corner of the Southwest Quarter of the Northwest Quarter of Section 12, Township 95 North, Range 16 West of the 5<sup>th</sup> P.M. on the East line thereof, thence running South on said

East line to the South line thereof, thence running West to the East line of the Charles City Western Railway Company, thence running North along the East line of said R.R. right of way to a point due West to the point of beginning, thence running East to the point of beginning, except the North 245 feet thereof, subject to public highways and easements of record, in Floyd County, Iowa

AND

A parcel of land in the Northwest  $\frac{1}{4}$  of Section 12, T95N, R16W of the 5<sup>th</sup> P.M. in Floyd County, Iowa, described as follows: A tract of land 50 feet in width being 25 feet on either side of the centerline of the former Iowa Terminal Railroad (formerly known as the Charles City Western Railway Company) tracks lying North of the North right-of-way line of Iowa Highway #14 and South of the South line of 3<sup>rd</sup> Street (extended) in the City of Charles City, Iowa, containing 0.64 acres, except the following described parcel: The West 25 feet of the above described parcel along with the East 25 feet of the North 90.00 feet.