

RESOLUTION 1833

RESOLUTION APPROVING A 28E AGREEMENT WITH THE WEST BRANCH COMMUNITY SCHOOL DISTRICT REGARDING THE ENCROACHMENT OF THE LITTLE ROSE BOWL PRESS BOX ON THE OLIPHANT STREET RIGHT-OF-WAY.

WHEREAS, the West Branch Community School District recently replaced the Press Box structure at the Little Rose Bowl and said Press Box encroaches upon the Oliphant Street right-of-way; and

WHEREAS, the City Attorney has drafted a 28E Agreement to allow said encroachment that requires the approval of both the City Council and the Board of Directors of the West Branch Community School District; and

WHEREAS, said Board of Directors has approved said 28E Agreement; and

WHEREAS, it is in the best interests of the City to approve said 28E Agreement.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of West Branch, Iowa, that the aforementioned 28E Agreement be and the same is hereby approved. Further, the Mayor and City Clerk are directed to execute said Agreement on behalf of the City.

BE IT FURTHER RESOLVED, that the City Clerk is directed to file a copy of the fully executed agreement with the Iowa Secretary of State as required by law.

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Passed and approved this 19th day of August, 2019.



Roger Laughlin, Mayor

ATTEST:



Redmond Jones II, City Administrator/Clerk

28E AGREEMENT

THIS AGREEMENT entered into by and between the City of West Branch, Iowa, 110 N. Poplar Street, West Branch, Iowa 52358 (hereafter referred to as the "City"); and the West Branch Community School District, 148 N. Oliphant Street, West Branch, Iowa 52358 (hereafter referred to as "School").

WHEREAS, the Board of Directors of the West Branch Community School District has heretofore deemed it necessary and desirable to reconstruct the Press Box at the Little Rose Bowl on Oliphant Street (the "Project"); and

WHEREAS, the School has requested that the Project be constructed in part on the Oliphant Street right-of-way; and

WHEREAS, the City has agreed to allow the School to construct the Project within said right-of-way; and

WHEREAS, it is now necessary for the City and School to enter into a 28E Agreement to Project.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **PURPOSE.** The purpose of this 28E Agreement is to set forth the duties and obligations of the City and School in connection with the construction of the Project by the School.

2. **CONSIDERATION.** It is hereby expressly acknowledged by both the City and School that construction of the Project by the School and the payment in part by the City in accordance with the terms and conditions set forth in this Agreement constitutes mutual and sufficient consideration to enter into this Agreement.

3. **SEPARATE ENTITY.** Further, it is hereby noted that no separate legal entity shall be created by this Agreement. However, the City Administrator and the School Superintendent shall be responsible for administering this agreement.

4. **DUTIES AND RESPONSIBILITIES OF THE PARTIES.**

A. The School shall have the right to construct part of the Project within the Oliphant Street right-of-way. The School shall own and maintain the Press Box and shall have exclusive use of the Press Box.

B. The School shall pay for the entirety of the construction of the Project.

5. TERMINATION

This Agreement shall terminate on June 30, 2024, unless renewed as provided herein.

6. RENEWAL

The School shall have the option to renew this Agreement upon the same terms and conditions for successive five-year terms beginning July 1, 2024 provided that the School is not in default of any of its obligations under this Agreement at the time the renewal is to be effective. Renewal will be automatically effective for each option period unless the School gives written notice to the City of non-renewal by the immediately preceding April 1. This Agreement will terminate when the School discontinues the use of the Press Box, and at such time, the School shall remove the Press Box from the right-of-way and replace the surface in a manner that is comparable to the surrounding right-of-way not covered by the Press Box.

7. DECLARATION OF DEFAULT AND NOTICE

In the event that the City or the School determines that the other has defaulted in the performance of its obligations under this Agreement, either party may declare that default has occurred and give notice thereof to the defaulting party. Notice of default shall be given in writing, shall specify the nature of the default and the provision of this Agreement involved, and shall specify what action is required of the defaulting party to correct the default. The defaulting party shall have thirty (30) days from the date of its receipt of the notice of default to correct the default. If at the end of said thirty-day period the default has not, in the opinion of the aggrieved party, been corrected, that party may thereupon pursue all lawful remedies, including but not limited to, termination of this Agreement, an action for specific performance thereof, and action for damages for breach thereof.

8. NOTICES.

All notices given under this Agreement shall be in writing and shall be deemed delivered on the date of placing the notice in the U.S. Mail, postage prepaid, to the following address:

For the School:

West Branch Community Schools
148 N. Oliphant Street

West Branch, Iowa 52358
ATTN: Superintendent

For the City:

City of West Branch
110 N. Poplar Street
West Branch, Iowa 52358
ATTN: City Administrator

9. INDEMNITIES. Each party to this Agreement expressly agrees to save and hold the other party, its employees and agents, harmless from any and all claims filed against both or either party arising from the performance of the duties and obligations under this Agreement. This does not waive any of the defenses of governmental immunity available to the City or the School under Section 670.4 of the Code of Iowa, as it now exists and as it may be amended from time to time.

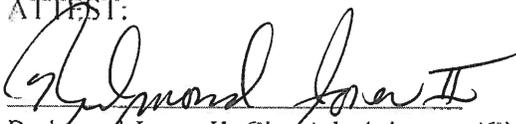
10. FILING. The Board Secretary of the School shall file this Agreement with the Iowa Secretary of State's office as required by Section 28E.8 of the Code of Iowa.

Executed and approved this 19th day of August, 2019.

CITY:

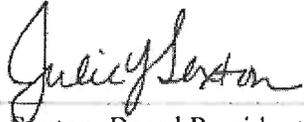

Roger Laughlin, Mayor

ATTEST:


Redmond Jones II, City Administrator/Clerk

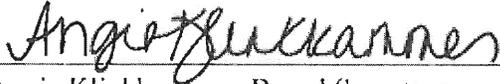
Executed and approved this 15th day of August, 2019.

SCHOOL:



Julie Sexton, Board President

ATTES1:



Angie Klinkhammer, Board Secretary