CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: April 6, 2015

ITEM: Resolution - Approval and Acceptance of Purchase Agreement for the disposition of excess property for the Alice's Road/105th Street (n/k/a Grand Prairie Parkway) Overpass at I-80 Project

FINANCIAL IMPACT: $336,000.00 (reimbursement to Waukee/West Des Moines for previous expenditure)

SYNOPSIS: In 2009 the City of West Des Moines, in conjunction with the City of Waukee, obtained property necessary for the Alice's Road/105th Street Overpass Project from Lina Robel by eminent domain. Subsequent to acquisition, the scope of the Project changed, requiring less land for construction. On October 28, 2013 the City of West Des Moines declared the acquired property to be excess and, pursuant to state law, on February 17, 2015 provided notice to Linda Robel of her right to purchase the property at its fair market value. On March 23, 2015 Linda Robel submitted the attached offer to purchase the excess property.

The attached Resolution approves the conveyance of 6.22 acres of property from the Alice's Road/105th Street Overpass Project declared excess by the City of West Des Moines to Linda Robel for the established fair market value of $336,000.00.

RECOMMENDATION:

Adopt the Resolution approving the disposition of excess property from the City of West Des Moines related to the Alice's Road/105th Street Overpass Project.

Lead Staff Member: Richard J. Scieszinski, City Attorney RJS

STAFF REVIEWS

Department Director	Richard J. Scieszinski, City Attorney
Appropriations/Finance	
Legal	
Agenda Acceptance	RTJ

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	City Council Approval 10/28/2013		
Date Reviewed			
Recommendation	Yes	No	Split

RESOLUTION NO._____

AUTHORIZING APPROVAL AND ACCEPTANCE OF PURCHASE AGREEMENT FOR THE DISPOSITION OF EXCESS PROPERTY RELATED TO THE ALICE'S ROAD/105TH STREET OVERPASS PROJECT, PROJECT NUMBER 0510-015-2008

WHEREAS, in 2008 the Cities of Waukee and West Des Moines (the "Cities") undertook the construction of the Alice's Road/105th Street Overpass Project, and acquired property from Linda Robel for the Project; and

WHEREAS, on October 28, 2013 the City of West Des Moines declared the property acquired from Linda Robel for the Overpass Project to be excess property subject to disposition at fair market value; and

WHEREAS, as the previous owner and current adjacent owner of the excess property, Iowa Code Section 306.23 provides Linda Robel the opportunity to make an offer that equals or exceeds the current fair market value of the property within sixty days from the receipt of the Notice of Intent of the City of West Des Moines to dispose of the excess property; and

WHEREAS, following receipt of Notice of Intent to Dispose of Property provided to Linda Robel by certified mail on February 17, 2015 as required by Iowa Code section 306.23, a copy of which is attached, Linda Robel submitted to the City an Offer to Purchase and Agreement for the excess property at fair market value.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. The Purchase Agreement and all supporting documentation, including a Special Warranty Deed for the conveyance of the property declared excess by the City of West Des Moines to Linda Robel is approved.

2. The Mayor is authorized to sign all documents related to the transaction and the City Clerk is directed to attest to the Mayor's signature.

3. The Legal Department is authorized to take all steps necessary to finalize the transaction pursuant to the terms and conditions of the Purchase Agreement.

PASSED AND ADOPTED this 6th day of April, 2015.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

NOTICE OF INTENT TO DISPOSE OF PROPERTY

TO: Linda Robel
9075 Lindas Lane
West Des Moines, IA 50266-8069

Linda Robel
c/o Marcus Abels, Attorney at Law
666 Grand Avenue, 9th Floor
Des Moines, IA 50309-3723

YOU ARE HEREBY NOTIFIED that the City of West Des Moines, Iowa, hereinafter referred to as the "Acquiring Agency," pursuant to Iowa Code §306.22 and 306.23 (2015), has declared the following legally-described property to be excess property and will dispose of the excess property as provided herein.

The property that will be disposed is legally described as:

> South and east of Wendover Road, on the south side of Interstate 80 and east of 105th Street (n/k/a Grand Prairie Parkway), further identified as Parcel 7 by survey dated March, 2008, Dallas County, West Des Moines, Iowa,
>
> and as depicted on the attached survey identified as Exhibit "A" consisting of 6.22 acres.

You are hereby notified that as the prior property owner, you have the right to purchase the above-described real property within 60 days from the date this notice is served upon you at a price equal to the current appraised fair market value of the real property. You are further notified that the current appraised fair market value of the above-described property is $336,000.

Please be advised that in the event no offer is received within sixty (60) days from the date of this Notice which equals the fair market value of the property, the property will be disposed of by the City of West Des Moines pursuant to Iowa Code 306.23.

If you elect to purchase the real property at the price set forth herein before the expiration of the 60 day period, you must notify the Acquiring Agency in writing of your intention to do so.

A copy of the appraisal is included in this Notice of Intent to Dispose of Property.

Take notice and govern yourself accordingly.

Tom Hadden, City Manager of the City of West Des Moines, Iowa

State of Iowa)
) ss.
County of Polk)

This document was acknowledged before me on the 17 day of February, 2015 by Tom Hadden, City Manager of the City of West Des Moines, Iowa.

MEGAN S. TOMLINSON
Commission Number 705393
MY COMMISSION EXPIRES
9-21-2015

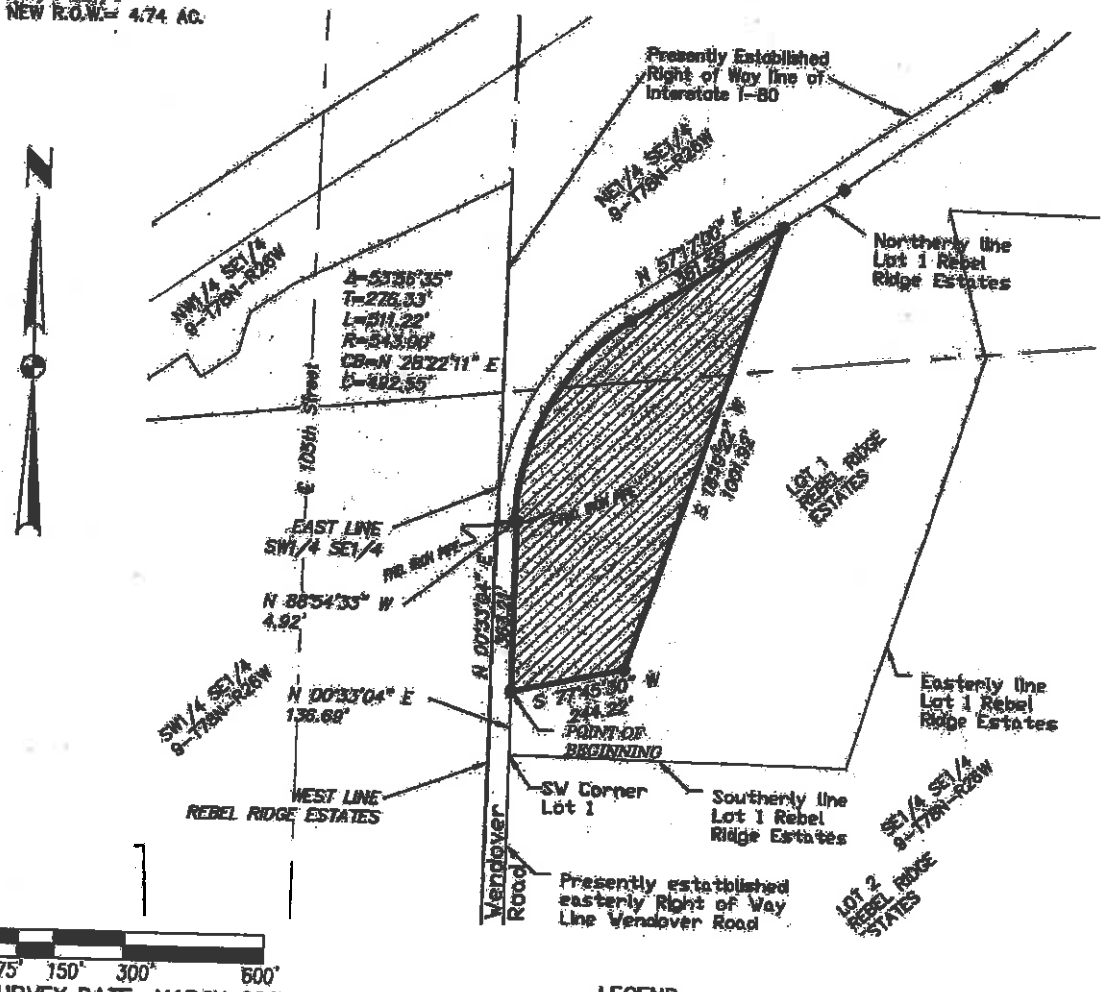
Notary Public in the State of Iowa

ACQUISITION PLAT
OF PROPERTY BEING CONVEYED
BY THE CITY OF WEST DES MOINES
EXHIBIT "A"

COUNTY DALLAS STATE CONTROL NO.
PROJECT NO. 0510-015-2008 PARCEL NO. 7
SECTION 09 TOWNSHIP 78 NORTH RANGE 26 WEST
ROW-FEE 6.22 AC. EASE AC. EXCESS-FEE AC

Acquisition
NE1/4 SE1/4
NEW R.O.W.= 1.48 AC.

SE1/4 SE1/4
NEW R.O.W.= 4.74 AC.



SURVEY DATE: MARCH 2008

THIS SURVEY WAS PREPARED AT THE REQUEST OF THE CITY OF WAUKEE AND THE CITY OF WEST DES MOINES

ADDRESS: 32987 WENDOVER RD
WAUKEE, IOWA

BRIEF LEGAL: PART OF LOT 1 REBEL RIDGE ESTATES
OWNER: LINDA ROBEL
TAX PARCEL NO.: 16-09-400-006

LEGEND
- Ó SET 5/8"x24" REROD W/ YELLOW PLASTIC CAP #17340
- ● FND. 5/8"x24" REROD W/ YELLOW PLASTIC CAP #17340
- M MEASURED
- R RECORDED
- P PLATTED

BASIS OF BEARING:
THE EASTERLY RIGHT OF WAY LINE OF WENDOVER ROAD IS ASSUMED TO BEAR NORTH 0033'04" EAST FOR THIS SURVEY. THIS BEARING WAS DERIVED FROM THE CITY OF WEST DES MOINES HORIZONTAL DATUM.

LICENSED LAND SURVEYOR CHAD W. MARSH 17340 IOWA

I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

CHAD W. MARSH DATE
LICENSE NUMBER
MY LICENSE RENEWAL DATE IS DECEMBER 31, 2014.
PAGES OR SHEETS COVERED BY THIS SEAL:
THIS SHEET ONLY

KIRKHAM MICHAEL
CONSULTING ENGINEERS

TITLE PARCEL 7		PROJECT NO. 0506623
DATE June 2008	SCALE 1"=300'	SHEET NO.
DRAWN DEL	FIELD BOOK	1 of 2
APPROVED CWM	REVISION	

OFFER TO BUY REAL ESTATE AND ACCEPTANCE

TO: City of West Des Moines, Sellers:

1. REAL ESTATE DESCRIPTION. The Buyers offer to buy real estate in Dallas County, Iowa, described as follows:

South and east of Wendover Road, on the south side of Interstate 80 and east of 105th Street (n/k/a Grand Prairie Parkway), further identified as Parcel 7 by survey dated March, 2008, Dallas County, West Des Moines, Iowa, and as depicted on the attached survey identified as Exhibit "A" consisting of 6.22 acres

with any easements and appurtenant servient estates, but subject to the following: a. any zoning and other ordinances; b. any covenants of record; c. any easements of record for public utilities, roads and highways, and d. (consider: liens, mineral rights; other easements; interests of others.) _____

designated the Real Estate; provided Buyers, on possession, are permitted to make the following use of the Real Estate: Agricultural.

2. PRICE. The purchase price shall be $ 336,000.00, payable at Polk County, Iowa, as follows:

Cash at closing. Closing shall occur on a mutually acceptable date within thirty (30) days after a title opinion has been issed by Buyer's attorney showing merchantable title in Seller.

3. REAL ESTATE TAXES. Sellers shall pay
fiscal year 2013-2014 payable 2014-2015 and a normal proration (unless the property is exempt).

and any unpaid real estate taxes payable in prior years. Buyers shall pay all subsequent real estate taxes. Any proration of real estate taxes on the Real Estate shall be based upon such taxes for the year currently payable unless the parties state otherwise.

4. SPECIAL ASSESSMENTS.

A. Sellers shall pay all special assessments which are a lien on the Real Estate as of the date of acceptance of this offer.

B. If A. IS STRICKEN, then Sellers shall pay all installments of special assessments which are a lien on the Real Estate and, if not paid, would become delinquent during the calendar year this offer is accepted, and all prior installments thereof.

C. All other special assessments shall be paid by Buyers.

5. RISK OF LOSS AND INSURANCE. Risk of loss prior to Seller's delivery of possession of the Real Estate to Buyers shall be as follows:

A. All risk of loss shall remain with Sellers until possession of the Real Estate shall be delivered to Buyers.

B. IF A. IS STRICKEN, Sellers shall maintain $ _____ of fire, windstorm and extended coverage insurance on the Real Estate until possession is given to Buyers and shall promptly secure endorsements to the appropriate insurance policies naming Buyers as additional insureds as their interests may appear. Risk of loss from such insured hazards shall be on Buyers after Sellers have performed under this paragraph and notified Buyers of such performance. Buyers, if they desire, may obtain additional insurance to cover such risk.

6. CARE AND MAINTENANCE. The Real Estate shall be preserved in its present condition and delivered intact at the time possession is delivered to Buyers, provided, however, if 5.a. is stricken and there is loss or destruction of all or any part of the Real Estate from causes covered by the insurance maintained by Sellers, Buyers agree to accept such damaged or destroyed Real Estate together with such insurance proceeds in lieu of the Real Estate in its present condition and Sellers shall not be required to repair or replace same.

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7. POSSESSION. If Buyers timely perform all obligations, possession of the Real Estate shall be delivered to Buyers on closing, with any adjustments of rent, insurance, and interest to be made as of the date of transfer of possession.

8. FIXTURES. All property that integrally belongs to or is part of the Real Estate, whether attached or detached, such as light fixtures, shades, rods, blinds, awnings, windows, storm doors, screens, plumbing fixtures, water heaters, water softeners, automatic heating equipment, air conditioning equipment, wall to wall carpeting, built-in items and electrical service cable, outside television towers and antenna, fencing, gates and landscaping shall be considered a part of Real Estate and included in the sale except: (consider: rental items.)
N/A

9. USE OF PURCHASE PRICE. At time of settlement, funds of the purchase price may be used to pay taxes and other liens and to acquire outstanding interests, if any, of others.

10. ABSTRACT AND TITLE. Sellers, at their expense, shall promptly obtain an abstract of title to the Real Estate continued through the date of acceptance of this offer, and deliver it to Buyers for examination. It shall show merchantable title in Sellers in conformity with this agreement, Iowa law and Title Standards of the Iowa State Bar Association. The abstract shall become the property of the Buyers when the purchase price is paid in full. Sellers shall pay the costs of any additional abstracting and title work due to any act or omission of Sellers, including transfers by or the death of Sellers or their assignees.

11. DEED. Upon payment of the purchase price, SELLERS shall convey the Property to BUYERS by Special Warranty deed, free and clear of all liens, restrictions, and encumbrances except as provided in this Agreement. General warranties of title shall extend to the time of delivery of the deed excepting liens or encumbrances suffered or permitted by BUYERS.

12. JOINT TENANCY IN PROCEEDS AND IN REAL ESTATE. If Sellers, immediately preceding acceptance of this offer, hold title to the Real Estate in joint tenancy with full right of survivorship, and the joint tenancy is not later destroyed by operation of law or by acts of the Sellers, then the proceeds of this sale, and any continuing or recaptured rights of Sellers in the Real Estate, shall belong to Sellers as joint tenants with full rights of survivorship and not as tenants in common; and Buyers, in the event of the death of either Seller, agree to pay any balance of the price due Sellers under this contract to the surviving Seller and to accept a deed from the surviving Seller consistent with paragraph 11.

13. JOINDER BY SELLER'S SPOUSE. Seller's spouse, if not a titleholder immediately preceding acceptance of this offer, executes this contract only for the purpose of relinquishing all rights of dower, homestead and distributive shares or in compliance with Section 561.13 of the Iowa Code and agrees to execute the deed or real estate contract for this purpose.

14. TIME IS OF THE ESSENCE. Time is of the essence in this contract.

15. REMEDIES OF THE PARTIES

A. If Buyers fail to timely perform this contract, Sellers may forfeit it as provided in the Iowa Code, and all payments made shall be forfeited or, at Seller's option, upon thirty days written notice of intention to accelerate the payment of the entire balance because of such failure (during which thirty days such failure is not corrected) Sellers may declare the entire balance immediately due and payable. Thereafter this contract may be foreclosed in equity and the Court may appoint a receiver.

B. If Sellers fail to timely perform this contract, Buyers have the right to have all payments made returned to them.

C. Buyers and Sellers also are entitled to utilize any and all other remedies or actions at law or in equity available to them and shall be entitled to obtain judgment for costs and attorney fees as permitted by law.

16. STATEMENT AS TO LIENS. If Buyers intend to assume or take subject to a lien on the Real Estate, Sellers shall furnish Buyers with a written statement from the holder of such lien, showing the correct balance due.

17. SUBSEQUENT CONTRACT. Any real estate contract executed in performance of this contract shall be on a form of the Iowa State Bar Association.

18. APPROVAL OF COURT. If the sale of the Real Estate is subject to Court approval, the fiduciary shall promptly submit this contract for such approval. If this contract is not so approved, it shall be void.

19. CONTRACT BINDING ON SUCCESSORS IN INTEREST. This contract shall apply to and bind the successors in interest of the parties.

20. CONSTRUCTION. Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

21. CERTIFICATION. Buyers and Sellers each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Each party hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to my breach of the foregoing certification.

22. TIME FOR ACCEPTANCE. If this offer is not accepted by Sellers on or before April 7, 2015 it shall become void and all payments shall be repaid to the Buyers.

23. INSPECTION OF PRIVATE SEWAGE DISPOSAL SYSTEM. Delete inappropriate alternatives below. If no deletions are made, the provisions set forth in Paragraph A shall be deemed selected.

A. Seller represents and warrants to Buyer that the Property is not served by a private sewage disposal system, and there are no known private sewage disposal systems on the property.

B. ~~The Property is served by a private sewage disposal system, or there is a private sewage disposal system on the Property. Seller and Buyer agree to the provision selected in the attached Addendum for Inspection of Private Sewage Disposal System.~~

C. ~~Seller and Buyer agree that the transaction is exempt from the time of transfer inspection requirements by reason that~~ _____.

24. OTHER PROVISIONS.

Sale of Real Estate is subject to the following conditions: the Real Estate shall not be used in any manner so as to interfere with the use of the highway by the public, or to endanger public safety in the use of the highway, or to the material damage of the adjacent owner.

Accepted _____	Dated 3-23-15
SELLERS CITY OF WEST DES MOINES	BUYERS
By: _____	Linda Robel
Print Name _____	Print Name Linda Robel
SS# _____	SS# [redacted]
_____	_____
Print Name _____	Print Name _____
SS# _____	SS# _____
Address :	Address : 9075 Linda's Lane West Des Moines, IA 50266-8069
_____	
Telephone: _____	Telephone: _____