4(m)

CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **July 24, 2017**

ITEM: Resolution - Approval and Acceptance of Property Interests for the South Grand Prairie Parkway Improvements Project, Project Number 0510-062-2015

FINANCIAL IMPACT: None

BACKGROUND: Property interests necessary for the South Grand Prairie Parkway Improvements Project have been acquired through donation from the owners shown on **Exhibit "A"**. For policy and title purposes, the attached resolution approves and formally accepts the property interests and authorizes the filing of all relevant documents. Costs associated with acquisition of the easements will be paid from Account No. 500.000.000.5550.735.

OUTSTANDING ISSUES (if any): None

RECOMMENDATION:

Adopt Resolution approving and accepting the property interests for the South Grand Prairie Parkway Improvements Project.

Lead Staff Member: Brian J. Hemesath, P.E., Interim City Engineer

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			
Date Reviewed			
Recommendation	Yes	No	Split

RESOLUTION NO._____

AUTHORIZING APPROVAL AND ACCEPTANCE OF CONVEYANCE OF PROPERTY INTERESTS FOR THE CONSTRUCTION OF THE SOUTH GRAND PRAIRIE PARKWAY IMPROVEMENTS PROJECT, PROJECT NUMBER 0510-062-2015

WHEREAS, the City Council of the City of West Des Moines, Iowa has previously approved the establishment of the South Grand Prairie Parkway Improvements, Project Number 0510-062-2015; and

WHEREAS, on January 26, 2016, the City Council approved the acquisition of property, for the Project; and

WHEREAS, it is the policy of the City of West Des Moines, Iowa, to approve the conveyance of all property interests to the City; and

WHEREAS, the City of West Des Moines has obtained property interests through donation, necessary for the Project; and

WHEREAS, documents conveying property interests for the improvements have been presented to the City for approval; and

WHEREAS, the name of the property owner of the property to be acquired is attached hereto as **Exhibit "A"** and made a part of this resolution; and

WHEREAS, it is in the best interest of the citizens of the City to approve and accept the above-described documents.

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

1. The documents described above conveying property interests to the City of West Des Moines, Iowa, are hereby approved and accepted.

2. The City Clerk is directed to certify the Council's approval and acceptance.

3. The documents shall be filed with the county recorder as appropriate.

PASSED AND ADOPTED this **24th** day of **July, 2017**.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

Exhibit "A"

SOUTH GRAND PRAIRIE PARKWAY IMPROVEMENTS,
RACCOON RIVER DRIVE TO MADISON AVENUE,
WDM PROJECT NO. 0510-062-2015

Property Interest	PROPERTY OWNER	ACQUIRED PRICE-FMV	
Fee Title Public Utility Easement Temporary Construction Easement	Martin Marietta Materials Real Estate Investments, Inc. A part of Parcel Nos. 1628400002 and 1628400004	$0.00*	***donation**

Prepared by/Return to: R.J. Scieszinski, City Attorney, 4200 Mills Civic Pkwy, West Des Moines, IA 50265; (515) 222-3614

SPACE ABOVE THIS LINE FOR RECORDER

PERMANENT PUBLIC UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

1. Grant of Easement.

The undersigned, on behalf of **Martin Marietta Materials Real Estate Investments, Inc., a North Carolina corporation** (hereinafter referred to as "Grantor," owner and/or developer of property upon which this Easement is located), in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, grant, and convey to the **City of West Des Moines,** an Iowa municipal corporation (hereinafter referred to as "City"), a permanent and perpetual Public Utility Easement (hereinafter referred to as the "Easement") upon, over, under, through and across the real property legally described as:

As shown on the attached Permanent Easement Acquisition Plat marked **Exhibit "1-P"** located in the City of West Des Moines, **Dallas** County, Iowa.

2. Use and Purpose of Easement.

This Easement shall be granted for the purpose of locating public utilities and to permit and allow the City and other non-City owned public utilities to enter at any time upon, over, under, through and across the Easement area as shown on the attached **Exhibit "1-P"** to use as much of the surface and sub-surface area to locate, construct, replace, rebuild, enlarge, reconstruct, patrol, repair (including the right to place and build additional public utilities and appurtenances thereto as authorized by the City) and to forever maintain said utilities whenever necessary within the Easement granted herein. No structure, obstruction or building of any kind whatsoever shall be placed upon property that is the subject of this Easement without the express written consent of the City, subject to the following terms and conditions:

a) No structure or building of any kind whatsoever shall be erected upon property that is the subject of this Easement without the express written consent of the City.

b) The City shall take reasonable steps to ensure that all work performed by the City in the Easement area will be initiated and completed within a reasonable period. Following completion of the work performed by the City, the Easement area described herein shall be restored to a condition similar to that which existed prior to the performance of work by

the City, excluding the replacement of trees and/or landscaping. The City shall also be responsible for removal of all debris, spoils, equipment, etc. used by the City in connection with the work performed in the Easement area.

c) Unless done at the direction or authority of the City, nothing in this Easement agreement shall obligate the City to perform any work or engage in any repair or restoration of the Easement area resulting from actions taken by individuals or entities (i.e., utility companies) other than the City or its contractors.

d) It is understood and agreed that the consideration for this Easement includes full compensation for damages to Grantor as agreed upon by the City and the Grantor.

3. Hold Harmless.

Each party shall indemnify and hold the other party harmless from and against any loss, expense or claim asserted by third parties for damage to third party tangible property, or for bodily injury, or both, related to this Agreement, to the extent such damage or injury is attributable to the negligent or willful misconduct of the indemnitor; provided, indemnitee gives the indemnitor prompt notice of any such claim and all necessary information and assistance so that indemnitor, at its option, may defend or settle such claim, and indemnitee does not take any adverse position in connection with such claim. In the event that any such damage or injury is caused by the joint or concurrent negligence of both parties, the loss, expense or claim shall be borne by each party in proportion to its negligence.

4. Running of Benefits and Burdens.

The terms and conditions of this Easement are binding upon the City and Grantor including, but not limited to future owners, developers, lessees or occupants. All provisions of this record, including benefits and burdens, run with the land and are binding upon and inure to the heirs, assigns, successors, tenants, and personal representatives of the parties hereto.

6. Jurisdiction and Venue.

The City and the Grantor agree that the District Court in and for the state of Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and conditions of this Easement and said parties shall consent to the jurisdiction of Dallas County, Iowa.

7. Words and Phrases.

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

8. Attorney's Fees.

Either party may enforce this record by appropriate action, and the prevailing party shall recover as part of its costs the reasonable attorney fees incurred in such action.

9. Parties.

The term "City" as used herein shall refer to the City of West Des Moines, Iowa, its elected officials, agents, employees, officers, and contractors. The term "Grantors" shall refer to the undersigned, its heirs, assigns, successors in interest or lessees, if any.

10. Integration.

This Agreement shall constitute the entire Agreement between the parties and no amendments or additions to this Agreement shall be binding unless in writing and signed by both parties.

11. Paragraph Headings.

The paragraph headings in this Agreement are included solely for convenience and shall not affect or be used in connection with the interpretation of this Agreement.

Dated this 12th day of July, 2017

MARTIN MARIETTA MATERIALS
REAL ESTATE INVESTMENTS, INC.

By _____
William J. Gahan, President, Midwest Division

STATE OF IOWA)
) SS
COUNTY OF Polk)

This record was acknowledged before me on the 12th day of July, 2017 by William J. Gahan, President, Midwest Division, Martin Marietta Materials Real Estate Investments, Inc., on behalf of whom the record was executed.

_____
NOTARY PUBLIC
My Commission expires:

NOTARIAL SEAL IOWA
NEIL GRANT
Commission Number 777789
My Commission Expires
April 3, 2019

CERTIFICATION BY CITY OF WEST DES MOINES, IOWA

I, Ryan T. Jacobson, City Clerk of the City of West Des Moines, Iowa, do hereby certify that acquisition of the within and foregoing Public Utility Easement was duly authorized and approved by the City Council of the City of West Des Moines by Roll Call No. _____, passed on _____, 2017 and that this certificate is made pursuant to the authority of said City Council.

Signed this ____ day of _____, 2017.

CITY OF WEST DES MOINES, IOWA

BY: _____
Ryan T. Jacobson, City Clerk

Index Legend	
Location:	SE1/4 of NE1/4 & NE1/4 of SE1/4 & SE1/4 of SE1/4
	Section 28, Township 78 N, Range 26 W
Requestor:	City of West Des Moines
Proprietor:	Martin Marietta Materials Real Estate Investments, Inc.
Surveyor:	Jeremy Soukup
Surveyor Company:	Foth Infrastructure & Environment, LLC
Return To:	8191 Birchwood Court, Suite L Johnston, IA 50131 | (515) 254-1393

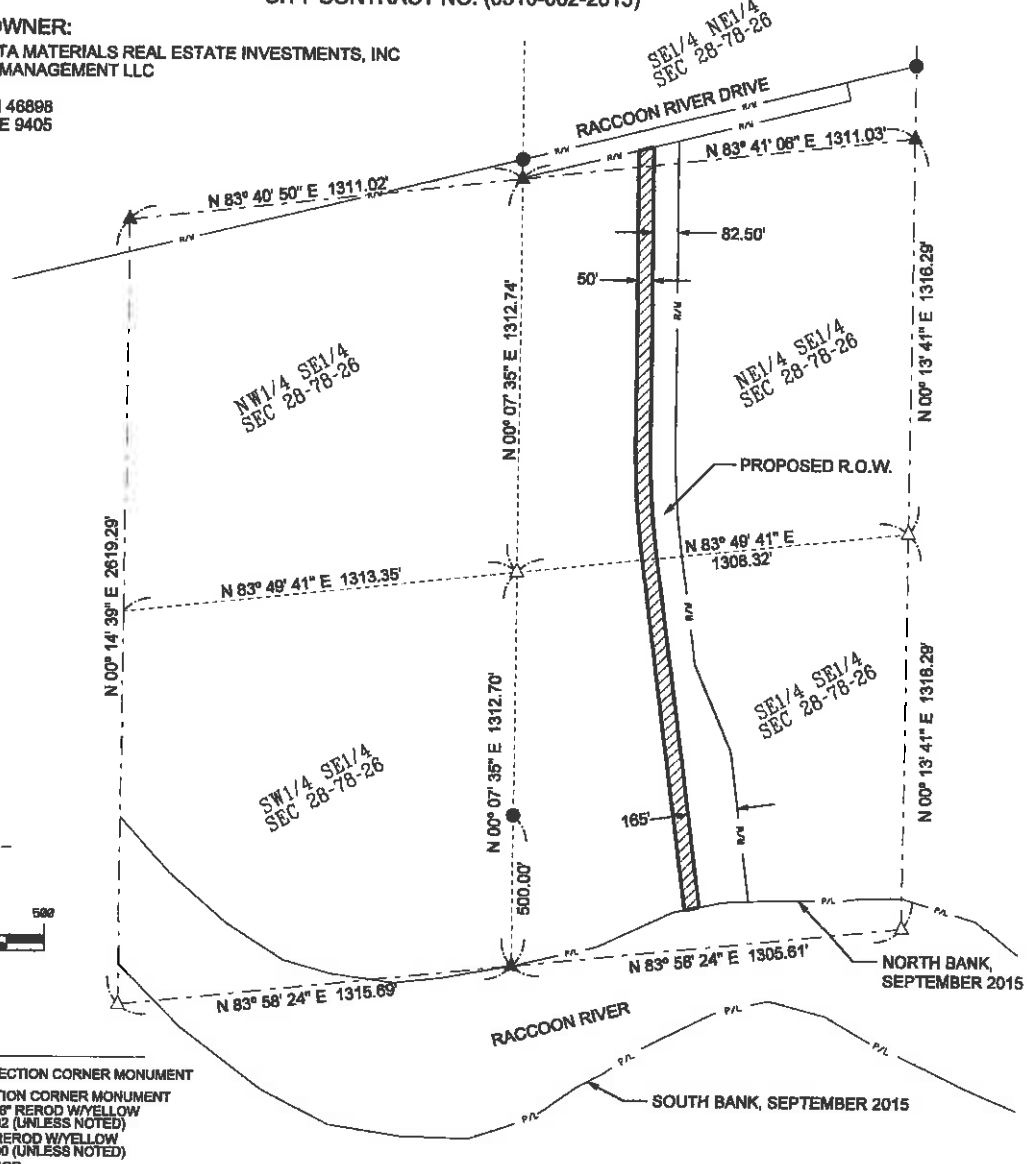
PERMANENT EASEMENT

EXHIBIT 1-P

PERMANENT EASEMENT BEING CONVEYED TO THE CITY OF WEST DES MOINES
SOUTH GRAND PRAIRIE PARKWAY IMPROVEMENTS
PARCEL 1
CITY CONTRACT NO. (0510-062-2015)

FIELD SURVEY COMPLETED: JULY, 2015

PROPERTY OWNER:
MARTIN MARIETTA MATERIALS REAL ESTATE INVESTMENTS, INC
C/O BADEN TAX MANAGEMENT LLC
PO BOX 8040
FORT WAYNE, IN 46898
BOOK 2005, PAGE 9405



LEGEND

- ▲ FOUND SECTION CORNER MONUMENT
- △ SET SECTION CORNER MONUMENT
- ● FOUND 5/8" REROD W/YELLOW CAP#11632 (UNLESS NOTED)
- ○ SET 5/8" REROD W/YELLOW CAP#18900 (UNLESS NOTED)
- I.R. IRON REROD
- I.P. IRON PIPE
- (M) MEASURED DIMENSION
- (R) RECORDED DIMENSION
- QUARTER QUARTER LINE
- SECTION LINE
- R/W RIGHT-OF-WAY LINE
- EASEMENT LINE
- P/L PROPERTY LINE
- PERMANENT EASEMENT

LICENSED LAND SURVEYOR
ALBERT JEREMY SOUKUP
18900
IOWA

I hereby certify that this land surveying document was prepared 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.

ALBERT JEREMY SOUKUP, L.S. 6/12/2017
DATE
License Number: 18900
My license renewal date is DECEMBER 31, 2017.
Pages or sheets covered by this seal: 4

SURVEY FOR:
CITY OF WEST DES MOINES
4200 MILLS CIVIC PKWY
WEST DES MOINES, IA 50265
PHONE: (515) 222-3480

FOTH PROJECT NO. 15W046-01 DATE: 6/5/2017

Foth
Foth Infrastructure & Environment, LLC
8191 Birchwood Court, Suite L
Johnston, IA 50131-2931
Phone: 515-254-1393 Fax: 515-254-1642

SHEET 1 OF 4

Prepared by Jeremy Soukup, 8191 Birchwood Court, Suite L, Johnston, IA 50131 Phone: 515-254-1393

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COMPLETED: JULY, 2015

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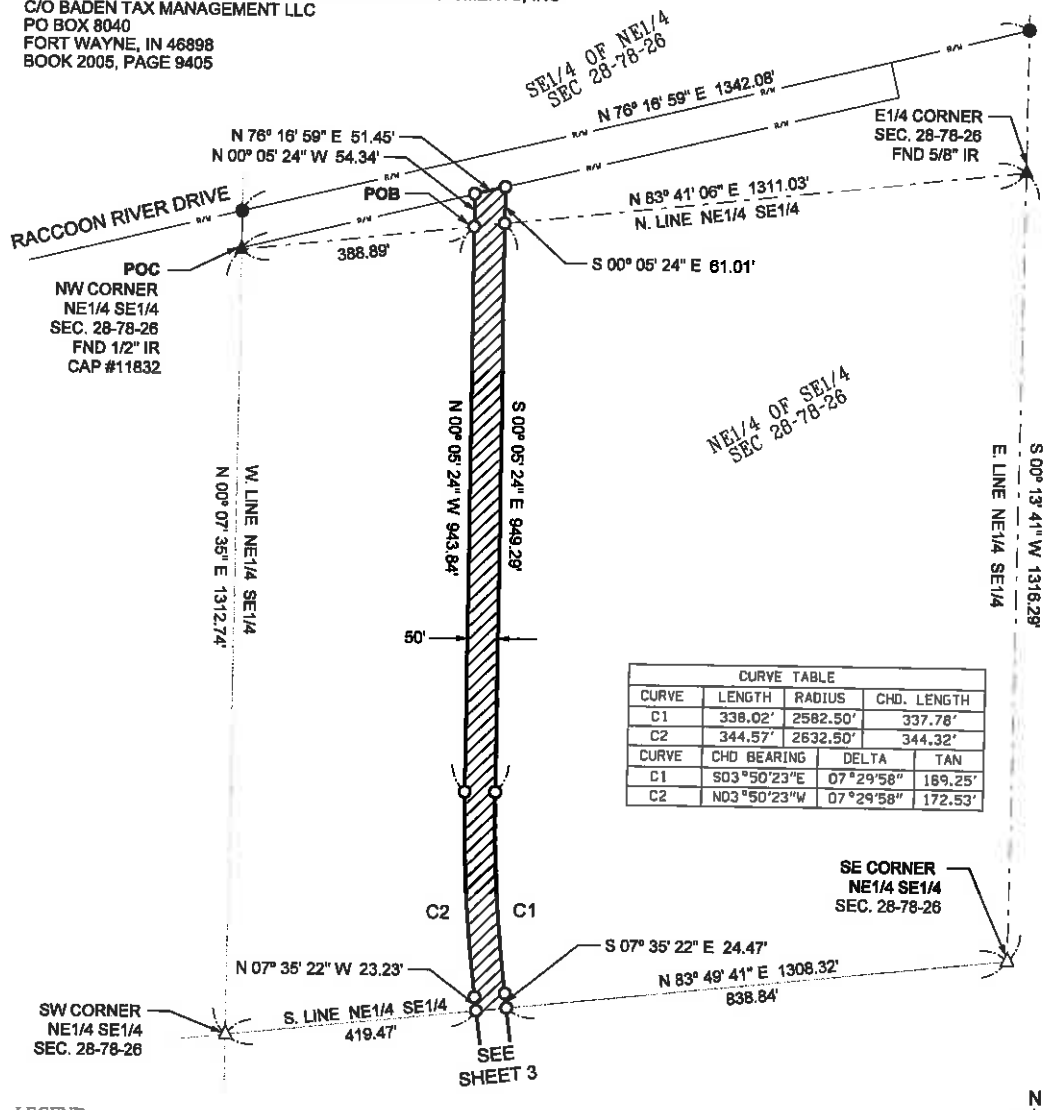
C/O BADEN TAX MANAGEMENT LLC
PO BOX 8040
FORT WAYNE, IN 46898
BOOK 2005, PAGE 9405



CURVE TABLE			
CURVE	LENGTH	RADIUS	CHD. LENGTH
C1	338.02'	2582.50'	337.78'
C2	344.57'	2632.50'	344.32'
CURVE	CHD BEARING	DELTA	TAN
C1	S03°50'23"E	07°29'58"	169.25'
C2	N03°50'23"W	07°29'58"	172.53'

LEGEND

- ▲ FOUND SECTION CORNER MONUMENT
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- QUARTER QUARTER LINE
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- PERMANENT EASEMENT

N

0 125 250

NOTE: MONUMENTS SHOWN TO BE SET WILL BE ESTABLISHED AFTER CONSTRUCTION IS COMPLETED

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CITY OF WEST DES MOINES
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WEST DES MOINES, IA 50265
PHONE: (515) 222-3480

FOTH PROJECT NO. 15W046-01 DATE: 5/15/2017

Foth

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Phone: 515-254-1393 Fax: 515-254-1642

SHEET
2 OF 4

Prepared by Jeremy Soukup, 8191 Birchwood Court, Suite L, Johnston, IA 50131 Phone: 515-254-1393

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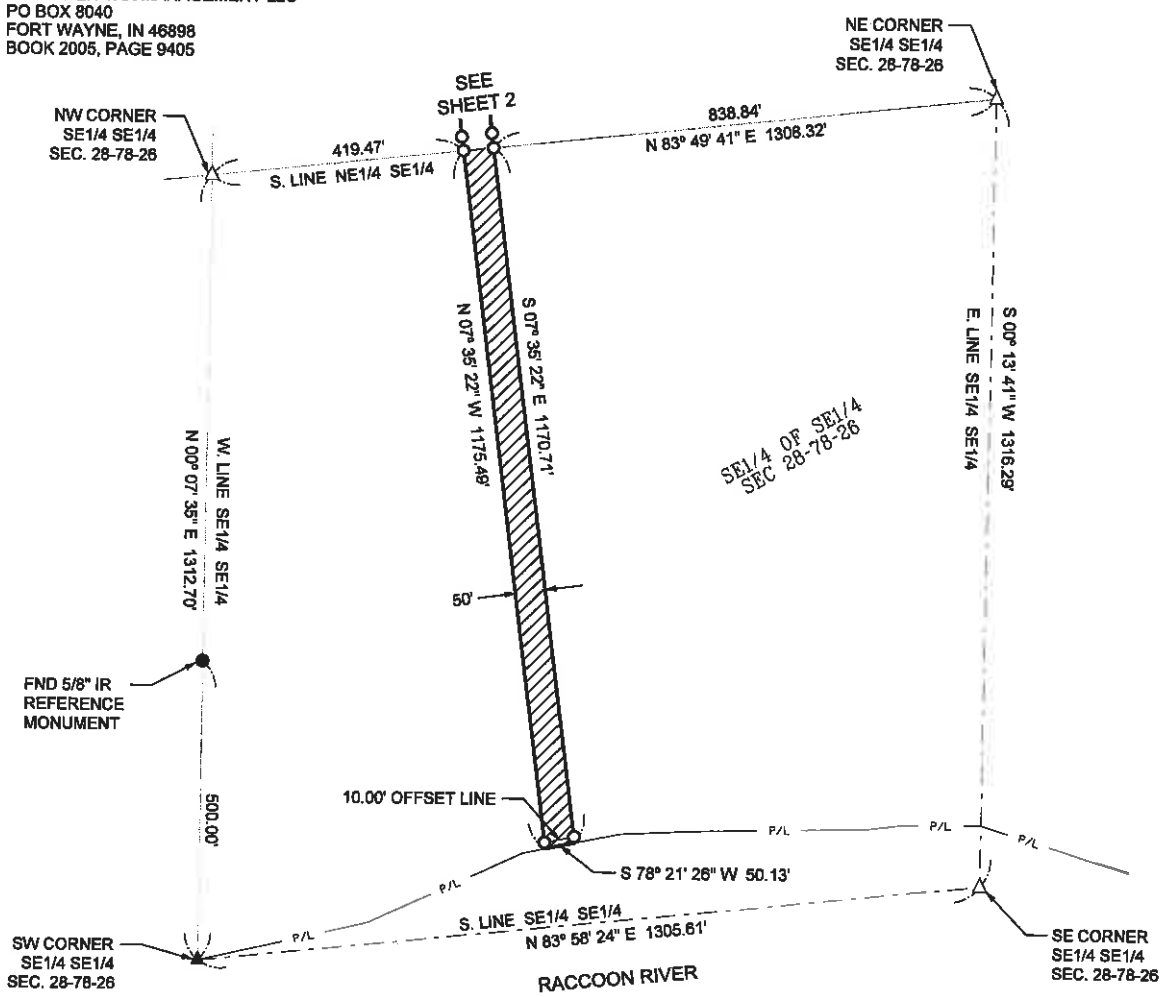

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I.R.	IRON REROD	— — —	EASEMENT LINE
I.P.	IRON PIPE	— P/L —	PROPERTY LINE
(M)	MEASURED DIMENSION	▨	PERMANENT EASEMENT

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FOTH PROJECT NO. 15W046-01 DATE: 6/13/2017

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3 OF 4

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LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, DALLAS COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 28, THENCE NORTH 83° 41' 06" EAST, 388.89 FEET ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 28 TO THE POINT OF BEGINNING; THENCE NORTH 00° 05' 24" WEST, 54.34 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF RACCOON RIVER DRIVE; THENCE NORTH 76° 16' 59" EAST, 51.45 FEET ALONG SAID LINE; THENCE SOUTH 00° 05' 24" EAST, 61.01 FEET TO SAID NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER; THENCE CONTINUING SOUTH 00° 05' 24" EAST, 924.29 FEET; THENCE SOUTH A DISTANCE OF 338.02 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE EAST WITH A CENTRAL ANGLE OF 07° 29' 58", ALONG A 2582.50 FOOT RADIUS WITH A CHORD THAT BEARS SOUTH 03° 50' 23" EAST, 337.78 FEET; THENCE SOUTH 07° 35' 22" EAST, 24.47 FEET TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 28; THENCE CONTINUING SOUTH 07° 35' 22" EAST, 1170.71 FEET; THENCE SOUTH 78° 21' 26" WEST, 50.13 FEET; THENCE NORTH 07° 35' 22" WEST, 1175.49 FEET TO SAID SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER; THENCE CONTINUING NORTH 07° 35' 22" WEST, 23.23 FEET; THENCE NORTH A DISTANCE OF 344.57 FEET ALONG THE ARC OF A TANGENT CURVE CONCAVE EAST WITH A CENTRAL ANGLE OF 07° 29' 58", ALONG A 2632.50 FOOT RADIUS WITH A CHORD THAT BEARS NORTH 03° 50' 23" WEST, 344.32 FEET; THENCE NORTH 00° 05' 24" WEST, 943.84 FEET TO THE POINT OF BEGINNING, CONTAINING 127,124 SQUARE FEET OR 2.92 ACRES MORE OR LESS.

AREA BREAKDOWN

QUARTER QUARTER	AREA (SQ FT)	AREA (ACRES)
SE1/4 NE1/4 SEC 28-78-26	2,884	0.07
NE1/4 SE1/4 SEC 28-78-26	65,585	1.50
SE1/4 SE1/4 SEC 28-78-26	58,655	1.35
TOTAL	127,124	2.92

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