# CITY OF WEST DES MOINES
# CITY COUNCIL MEETING COMMUNICATION

**DATE:** **May 6, 2019**

**ITEM:** Resolution - Approval of Settlement Agreement

**FINANCIAL IMPACT:** Settlement Amount $7,500;
Costs to be paid from Account No. 500.000.000.5550.730,
Project No. 0510 007 2017 (Case number Warren County EQCV037530).

**SYNOPSIS:** On June 22, 2018, a Petition in Equity was filed in Warren County District Court claiming compulsory condemnation (inverse condemnation) and equitable estoppel (injunctive relief).

The parties have reached a settlement agreement that requires the Plaintiff to dismiss the suit with prejudice within 10 days of receiving the settlement payment.

**OUTSTANDING ISSUES** (if any): None.

**RECOMMENDATION:** Adopt Resolution Approving the Settlement Agreement.

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

**STAFF REVIEWS**

| | |
|---|---|
| Department Director | Richard J. Scieszinski, City Attorney |
| Appropriations/Finance | Ch for TS |
| Legal | |
| Agenda Acceptance | |

**PUBLICATION(S)** (if applicable)

| | |
|---|---|
| Published In | |
| Dates(s) Published | |

**SUBCOMMITTEE REVIEW** (if applicable)

| | | | |
|---|---|---|---|
| Committee | None | | |
| Date Reviewed | | | |
| Recommendation | | | |

**Prepared by/return to: Greta Truman, Asst. City Attorney, PO Box 65320, West Des Moines, IA 50265 (515) 222-3673**

## RESOLUTION APPROVING SETTLEMENT

**WHEREAS**, on June 26, 2017, the City Council ordered construction of the Veteran's Parkway: SE Maffitt Lake Road to SE Adams Street, Project No. 0510-007-2017 ("Project"); and

**WHEREAS**, Donald Paulin and Heather Lindsay, property owners of 8800 County Line Road, Norwalk, Iowa, filed a lawsuit the Iowa District Court for Warren County entitled *Donald Paulin and Heather Lindsay vs. City of West Des Moines,* Case No. EQCV037530, claiming compulsory condemnation (inverse condemnation) and equitable estoppel (injunctive relief); and

**WHEREAS,** the parties have reached a proposed settlement and seek to memorialize the terms of the settlement; and

**WHEREAS,** approval of a $7,500.00 settlement is in the best interest of the City of West Des Moines.

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

1. The City Council hereby approves a $7,500.00 settlement in the case of entitled *Donald Paulin and Heather Lindsay vs. City of West Des Moines,* Case No. EQCV037530.

2. The City's Finance Department is authorized to make the payment to as provided in the Settlement Agreement.

**PASSED AND ADOPTED** this 6th day of May, 2019.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

# SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this "Agreement") is entered into as of the last date signed below (the "Effective Date") by and between Donald Paulin and Heather Lindsay (the "Plaintiffs") on the one part and the City of West Des Moines (the "City") on the other part (each, a "Party," and together, the "Parties").

**WHEREAS**, the Plaintiffs own certain property locally known as 8800 County Line Road, Norwalk, Iowa, and legally described as Parcel V of S of the survey being the West 110.00 feet of Parcel S recorded in Book 2005, Page 2069 in the office of the Warren County Recorder, located in Lot 1 of the Northwest quarter of the Northwest quarter of Section 3, Township 77 North, Range 25 West of the 5th P.M., Warren County, Iowa as shown in Book 2008, Page 5707 in the office of the Warren County Recorder (the "Property");

**WHEREAS**, the Plaintiffs have brought an action against the City alleging various facts and claiming compulsory condemnation (inverse condemnation) and equitable estoppel (injunctive relief), which action is currently pending in the Iowa District Court for Warren County, Case No. EQCV037530 (the "Lawsuit"); and

**WHEREAS**, the Parties deem it in their respective best interests to resolve any and all disputes between them arising out of or relating to the Lawsuit or the facts alleged therein;

**NOW, THEREFORE**, based on the mutual promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Settlement Amount. The City will pay the Plaintiffs the total amount of seven thousand five hundred USD ($7,500) (the "Settlement Payment") within fourteen (14) days of the Effective Date.

2. Dismissal of Lawsuit. The Plaintiffs will dismiss the Lawsuit within ten (10) days of receiving the Settlement Payment.

3. Release of Liability. The Plaintiffs hereby irrevocably and unconditionally release and forever discharge the City from and against any and all actions, causes of action, suits, debts, charges, complaints, claims, liabilities, obligations, judgments, damages, and expenses, whether known or unknown, which the Plaintiff has now, has ever had, or may hereafter ever have, against or concerning the City arising from or in any way relating to the Lawsuit or the facts alleged therein.

4. Representations of the City. The City represents and warrants it does not need to acquire the Property in connection with those certain improvements presently planned, contemplated, or being constructed at, around, or to Veteran's Parkway. The City

expressly does not desire or intend to take the Property by any means or for any purpose.

5. No Admission of Liability. This Agreement shall not be interpreted, asserted, or construed as an admission of any wrongful acts or liability by the City. The City specifically disclaims and denies any liability to the Plaintiffs and further deny engaging in any wrongful, tortious, or unlawful activity.

6. Further Documentation and Action. To the extent necessary, the Parties agree to execute all additional documents and take all further actions necessary to effectuate the purpose of, and the promises, obligations, and the like set forth in, this Agreement.

7. Integrated Agreement. This Agreement constitutes the entire understanding between the Parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous negotiations, discussions, communications, or understandings between the parties. No representation, promises, or inducements not included or referred to herein shall be binding upon either party. This Agreement may not be amended except in writing signed by the party to be bound.

8. Severability. In the event any provision of this Agreement is held invalid, illegal, or unenforceable in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall not be affected thereby and shall continue to be valid and enforceable.

9. Governing Law, Jurisdiction, and Venue. This Agreement is entered into and shall be governed by the laws of the State of Iowa without regard to Iowa's provisions relating to conflicts of law. Any action arising out of this Agreement shall be filed exclusively in a state or federal court sitting in Warren County, Iowa. The Parties hereby submit to the jurisdiction of such state and federal courts and agree not to assert in any proceeding that any such action is brought in an inconvenient forum or an improper venue.

10. Due Authority. Each Party respectively warrants and represents, which warranty and representation shall survive the date of this Agreement, that: (i) it has good right, title and authority to enter into this Agreement and perform its respective obligations hereunder; (ii) the execution and delivery hereof by the individuals set forth below, and the consummation of the transactions herein provided, have been duly authorized and approved by such Parties; and (iii) this Agreement, upon its Effective Date, will constitute a valid and binding obligation, enforceable against it in accordance with its terms.

11. Binding Effect. This Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and assigns.

12. Execution. This Agreement may be executed in counterparts, each of which shall be an original but all of which shall together constitute one instrument. Any facsimile signatures shall be recognized as originals.

13. Public Record. The Parties agree that this Agreement is a public record under Iowa Code section 22.13.

[SIGNATURES TO FOLLOW]

**IN WITNESS HEREOF**, the Parties hereto have duly executed this Agreement as of the Effective Date:

DONALD PAULIN

Date: 4-2-19

HEATHER LINDSAY

Date: 4/2/19

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

_____
Steven K. Gaer
Mayor

ATTEST:

_____
Ryan Jacobson
City Clerk

STATE OF IOWA )
) ss:
COUNTY OF POLK )

On this ____ day of _____, 2019, before me a Notary Public in and for said County, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing record is the seal of said Municipal Corporation, and that said record was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council as contained in the Resolution adopted under Roll Call No. 19-_____, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said Municipal Corporation by it voluntarily executed.

_____
Notary, State of Iowa