# CITY OF WEST DES MOINES
# CITY COUNCIL MEETING COMMUNICATION

**DATE: July 1, 2019**

**ITEM:**

Resolution - Establishing Public Hearing
Regarding the Final Design, Site Selection and Consideration of Acquiring Agricultural Property
Sugar Creek Conveyance Phase 2

**FINANCIAL IMPACT:**

None at this time.

**BACKGROUND:**

State law requires a public hearing prior to the authorization for acquisition of agricultural property necessary for a public improvement project. A Public Hearing should be scheduled for 5:35 p.m. on August 5, 2019.

A copy of the notice that will be mailed to property owners is included in the packet.

This agenda item was distributed to the Public Services Subcommittee by e-mail only since there was no meeting.

**OUTSTANDING ISSUES:** None.

**RECOMMENDATION:**

City Council Adopt:

- Resolution Establishing Public Hearing Regarding the Final Design, Site Selection and Consideration of Acquiring Agricultural Property
- Ordering the City Clerk to publish the notice of intent to commence a Public Improvements project and to Acquire Agricultural Land

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

**STAFF REVIEWS**

| | |
|---|---|
| Department Director | Brian J. Hemesath, P.E., City Engineer |
| Appropriations/Finance | Tim Stiles, Finance Director |
| Legal | Richard Scieszinski, City Attorney JDS |
| Agenda Acceptance | |

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

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

**SUBCOMMITTEE REVIEW** (if applicable)

| | | | |
|---|---|---|---|
| Committee | | | |
| Date Reviewed | | | |
| Recommendation | Yes | No | Split |

**RESOLUTION ESTABLISHING PUBLIC HEARING REGARDING THE FINAL DESIGN, SITE SELECTION AND CONSIDERATION OF ACQUIRING AGRICULTURAL PROPERTY**

**SUGAR CREEK CONVEYANCE PHASE 2**
**PROJECT NO. 0510-021-2016**

**WHEREAS**, the City of West Des Moines is initiating the construction of above named project (hereinafter "Project") which will include the acquisition of private property necessary for the location, construction and operation of stormwater conveyance improvements;

**WHEREAS**, the acquisition of private property necessary for the Project includes agricultural property; and

**WHEREAS**, Code of Iowa Section 6B.2A requires a municipality to hold a public hearing to receive input regarding the final design and site selection for a public improvement project in which agricultural property will be acquired; and

**WHEREAS**, pursuant to state code it is necessary to set a public hearing date and provide written and published notice regarding the public hearing to each owner and contract purchaser of agricultural property which may be the subject of acquisition for the Project; and

**WHEREAS**, the City is establishing a public hearing date to receive public input regarding the general nature of the Project, determine the source of funding for the Project, review the site-specific design and location of the Project and determine if the acquisition of agricultural property, through voluntary purchase or condemnation, is for a public purpose and necessary for completion of the Project.

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

1. A public hearing time and date of 5:35 p.m. on August 5, 2019 is established to consider the Project.

2. Pursuant to Code of Iowa Section 6B.2A, written and published notice of the public hearing shall be made to each owner and contract purchaser of agricultural property which may be needed for construction of the Project.

3. Written and published notices shall be provided as required by State Code to affected property owners, tenants and contract purchasers.

**PASSED AND ADOPTED** on this **1st** day of **July, 2019**.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

**NOTICE OF INTENT TO COMMENCE A PUBLIC IMPROVEMENT PROJECT AND TO ACQUIRE AGRICULTURAL LAND FOR THE PROJECT**

**SUGAR CREEK CONVEYANCE PHASE 2**
**PROJECT NO. 0510-021-2016**

All or a portion of the property as shown on the Parcel Location Map attached hereto as Exhibit "A".

**TO:** Owners and Parties in Possession

Under the provisions of Chapter 6B of the Iowa Code, a governmental body which proposes to acquire agricultural land under power of eminent domain for a public improvement project is required to give notice of intent to commence the project to all owners of such agricultural land whose properties may be acquired in whole or in part for the project (see Iowa Code §§ 6A.21(a) and 6B.2A)

## 1. DESCRIPTION OF THE PROJECT.

**NOTICE IS HEREBY GIVEN** to the above identified owners of agricultural land that the City Council of the City of West Des Moines, Iowa will consider authorizing the commencement of a project to acquire property and property interests for the construction of stormwater conveyance improvements which will comprise the Sugar Creek Conveyance Phase 2 Project to be located along Sugar Creek from Raccoon River Drive to Racoon River.

## 2. PRIVATE PROPERTY MAY BE ACQUIRED BY PURCHASE OR CONDEMNATION.

If the above described project and/or acquisition of property is approved by the City Council, the City will be required to acquire property for the project improvements. Upon review of Dallas County property records, it appears that agricultural land and property interests owned by the above identified persons/entities may have to be acquired in whole or in part for the Project. The City will attempt to purchase the required agricultural land and/or property interests by good faith negotiations, and it may condemn those properties which it is unable to purchase. The proposed location of the above described public improvement is shown on a conceptual drawing of the Project which is now on file in the office of the City Clerk and available for public inspection.

## 3. CITY PROCESS TO DECIDE TO PROCEED WITH THE PROJECT AND TO ACQUIRE PROPERTY; CITY COUNCIL ACTION REQUIRED TO PROCEED WITH PROJECT; OPPORTUNITY FOR PUBLIC INPUT.

In making the decision to proceed with the Project and to authorize the acquisition of property and property interests, the City Council will hold a public hearing, giving persons interested in the proposed Project the opportunity to present their views, including the proposed acquisition of property. The public hearing will be held during the City Council's regularly scheduled meeting on **the 5th day of August, 2019 in the City Council Chambers, City Hall, 4200 Mills Civic Parkway, West Des Moines, Iowa, commencing at 5:35 p.m.** In order for the City to proceed, the City Council will be required to consider and approve the Project and authorize acquisition of private property by Council resolution following the public hearing.

If the Project is approved, an appraiser retained by the City will determine the compensation to be paid for property or property interests that are needed for the Project. The City will offer no less than the

appraised fair market value and will attempt to purchase only the needed property by good faith negotiations. If the City is unable to acquire property needed for the Project by negotiation, the City will acquire the property by condemnation.

## 4. CONTACT PERSON.

Further information regarding this proposed public improvement project or its impact on the properties identified above may be obtained by contacting **Brian Hemesath, West Des Moines City Engineer, 4200 Mills Civic Parkway, West Des Moines, Iowa 50265, or by telephone at (515) 222-3475.**

## 5. STATEMENT OF RIGHTS.

Just as the law grants certain entities the right to acquire private property, you as the owner of property have certain rights. You have the right to:

a. Receive just compensation for the taking of property. (Iowa Const., Article 1, Section 18)

b. An offer to purchase which may not be less than the lowest appraisal of the fair market value of the property. (Iowa Code §§ 6B.45, 6B54)

c. Receive a copy of the appraisal, if an appraisal is required, upon which the acquiring agency's determination of just compensation is based, not less than ten (10) days before being contacted by the acquiring agency's acquisition agent. (Iowa Code §6B.45)

d. When an appraisal is required, an opportunity to accompany at least one appraiser of the acquiring agency who appraises your property. (Iowa Code §6B.54)

e. Participate in good faith negotiations with the acquiring agency before the acquiring agency begins condemnation proceedings. (Iowa Code §6B.3(l))

f. If you cannot agree on a purchase price with the acquiring agency, a determination of just compensation by an impartial compensation commission and the right to appeal its award to district court. (Iowa Code §§ 6B.4, 6B.7, and 6B.18)

g. A review by the compensation commission of the necessity for the condemnation if your property is agricultural land being condemned for industry. (Iowa Code § 6B.4A)

h. Payment of the agreed upon purchase price, or if condemned, a deposit of the compensation commission award before you are required to surrender possession of the property. (Iowa Code §§ 6B.25 and 6B.54(11))

i. Reimbursement for expenses incidental to transferring title to the acquiring agency. (Iowa Code §§ 6B.33 and 6B.54(10))

j. Reimbursement of certain litigation expenses: (1) if the award of the compensation commissioners exceeds 110 percent of the acquiring agency's final offer before condemnation; and (2) if the award on appeal in court is more than the compensation commissioner's award. (Iowa Code § 6B.33)

k. At least 90 days written notice to vacate occupied property. (Iowa Code § 6B.54(4))

l. Relocation services and payments, if you are eligible to receive them, and the right to appeal your eligibility, and the amount of payments. (Iowa Code §316.9)

The rights set out in this Statement are not claimed to be a full and complete list or explanation of an owner's rights under the law. They are derived from Iowa Code Chapters 6A, 6B and 316. For a more thorough presentation of an owner's rights, you should refer directly to the Iowa Code or contact an attorney of your choice.

This Notice is given by authority of the City Council of the City of West Des Moines, Iowa.

/s/ Ryan T. Jacobson
City Clerk, West Des Moines, Iowa

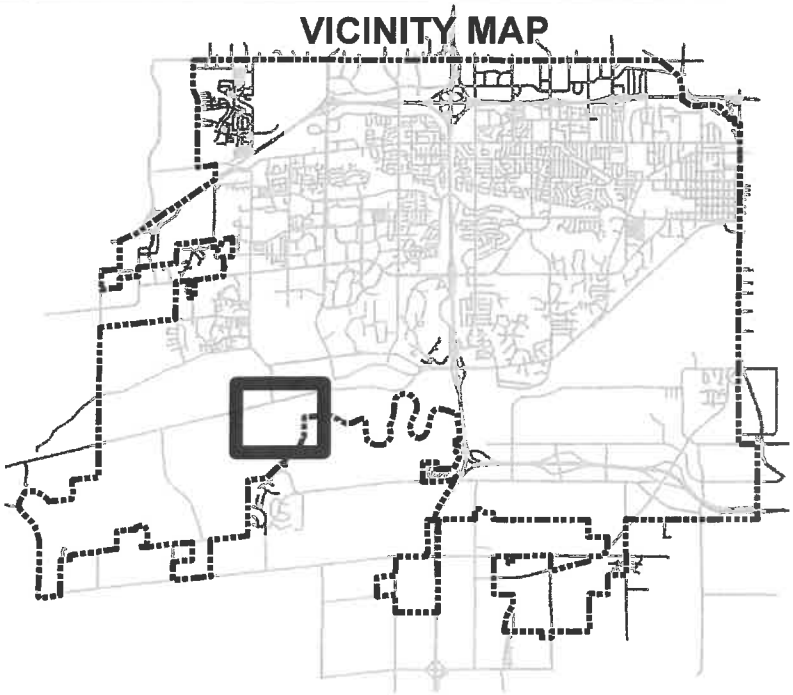
To be published in the Des Moines Register no less than four (4) nor more than twenty (20) days before August 5, 2019.

Mailed to all affected Property Owners on June 25, 2019.

**Agricultural Properties**
**Sugar Creek Conveyance Phase 2**
**0510-021-2016**

| Parcel No. | Mail Name | Mail Address | Mail City | Mail ST | Mail ZIP |
|---|---|---|---|---|---|
| 1626100003 | Hallett Construction Company | PO Box 55038 | Lexington | KY | 40555 |
| 1626100005 | Hallett Construction Company | PO Box 55038 | Lexington | KY | 40555 |
| 1626200005 | Hallett Construction Company | PO Box 55038 | Lexington | KY | 40555 |
| 1626300003 | Hallett Construction Company | PO Box 55038 | Lexington | KY | 40555 |
| 1626400001 | Hallett Construction Company | PO Box 55038 | Lexington | KY | 40555 |

## VICINITY MAP



## LEGEND

PROJECT LOCATION

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W E
S

THE CITY OF WEST DES MOINES

PROJECT:

# Sugar Creek Conveyance Phase 2 - Ag Properties

LOCATION: **Exhibit "A"**

| DRAWN BY: JDR | DATE: 6/24/2019 | PROJECT NUMBER/NAME: 0510-021-2016 | SHT. 1 of 1 |
|---|---|---|---|