CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: July 15, 2019

ITEM: Approval and Acceptance of Sanitary Sewer Easement and Deed, 4800 Corporate Drive - Hurd Westown LLC – POS-004268-2019

Resolution: **Approval and Acceptance of Sanitary Sewer Easement and Deed for Right-of-Way**

FINANCIAL IMPACT: None.

BACKGROUND: The applicant received approval for a plat of survey to subdivide property at 4800 Corporate Drive into two lots and one street lot on May 20, 2019. As part of the review of the plat of survey, staff requested a sanitary sewer easement for the existing sanitary sewer on the property and a deed for additional right-of-way along Corporate Drive.

Exhibit II includes copies of the warranty deed and sanitary sewer easement. For policy purposes, formal acceptance by the City Council of the documents is required.

CITY COUNCIL SUBCOMMITTEE: These documents were not presented to a City Council Subcommittee.

OUTSTANDING ISSUES: There are no outstanding issues. Staff notes that a provision regarding attorney fees will be added to the final document that was unable to be corrected prior to the staff report submittal.

RECOMMENDATION: Adopt a resolution approving and accepting the Sanitary Sewer Easement and the Warranty Deed.

Lead Staff Member: Kara V. Tragesser, AICP KVT

STAFF REVIEWS

Department Director	UD
Appropriations/Finance	
Legal	TDS
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Date(s) Published	N/A
Letter sent to surrounding property owners	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes ☐	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Resolution
Exhibit II - Sanitary Sewer Easement and Warranty Deed

EXHIBIT I

Prepared by: KTragesser Development Services, City of WDM, PO Box 65320, WDM, IA 50265-0320, 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

RESOLUTION

A RESOLUTION APPROVING AND ACCEPTING SANITARY SEWER EASEMENT AND WARRANTY DEED ASSOCIATED WITH A PLAT OF SURVEY AT 4800 CORPORATE DRIVE

WHEREAS, as part of the review of Plat of Survey POS-004268-2019 for property at 4800 Corporate Drive, the City required a warranty deed for additional right-of-way and a sanitary sewer easement for the existing sewer on site; and

WHEREAS, Hurd Westown LLC has provided these documents for property locally known as 4800 Corporate Drive and legally described as:

Parcel 2019-85, Parcel 2019-84, and Parcel 2019-55 as shown on the Plat of Survey recorded at Book 17384 Page 638 at the Office of the Polk County Recorder, Polk County, Iowa;

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 the sanitary sewer easement and warranty deed are hereby approved and accepted and shall be filed with the county recorder as appropriate. The City Clerk is directed to certify the City Council's approval and acceptance.

PASSED AND ADOPTED this 15th day of July 2019

_____
Steven K Gaer, Mayor

ATTEST:

_____
Ryan Jacobson
City Clerk

EXHIBIT II

Prepared by: Kara Tragesser, Development Services, PO Box 65320, West Des Moines, IA 50265-0320, 515-222-3620
Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

PERMANENT SANITARY SEWER EASEMENT

KNOW TO ALL PERSONS BY THESE PRESENTS:

1. Grant of Easement.

The undersigned, **Hurd Westown, LLC, an Iowa limited liability company** ("Grantor"), owner of the Easement Area hereinafter described, 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, Iowa, a municipal corporation** (the "City"), a permanent and perpetual sanitary sewer easement (the "Easement") and right-of-way upon, over, under, through and across the real property legally described as follows (the "Easement Area"):

> The South 30.00 feet of Parcel 2019-85 of a part of Lot 2 in Westown Centre, an Official Plat in West Des Moines, Polk County, Iowa, as shown on survey recorded June 27, 2019 in Book 17384 at Page 6038 in the office of the Recorder for Polk County, Iowa.

2. Use and Purpose of Easement.

This Easement shall be granted for the purpose of locating sanitary sewer improvements (the "Sewers") and to permit and allow the City to enter at any time upon, over, under, through, and across into the Easement Area to use as much of the surface and sub-surface thereof to construct, replace, locate, rebuild, enlarge, reconstruct, patrol, repair (including the right to place and build additional Sewers therein or to connect and/or join Sewers and appurtenances thereto) and to forever maintain the Sewers whenever necessary within the Easement Area. The City acknowledges that its rights herein granted are subordinate to certain other easements of record, and the City agrees that it has no rights to interfere with the use, operation, maintenance, repair or replacement of any improvements installed in the Easement Area by the holders of the prior rights. Further, the City acknowledges that the holders of these prior rights are not bound by any restrictions imposed herein. The use of the Easement Area is subject to the following terms and

conditions:

(a) No improvement, structure or building of any kind whatsoever shall be erected upon the Easement Area without the express written consent of the City. If authorized by the City, the installation of driveways, sidewalks or other objects installed or placed in the Easement Area shall be subject to removal and replacement at Grantor's expense if necessary for the City to access the Easement Area for its intended purpose.

(b) The City agrees to obtain, at its sole cost and expense, such permits, licenses or other authority which may be required from federal, state, county, municipal or other governmental agency or units exercising jurisdiction over the installation and operation of the Sewers before using the Easement or exercising the rights herein provided, and further agrees to comply with and strictly observe any and all laws, rules, and regulations of any such governmental agency or unit.

(c) 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 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, shrubs, bushes, landscape elements, structures, underground water systems and landscaping elements and restoration of the existing grade. The City shall also be responsible for removal of all debris, spoils, and equipment used by the City in connection with the work performed in the Easement Area.

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

(e) 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 Grantor.

(f) Upon restoration of the Easement Area, Grantor will resume all maintenance responsibilities of the Easement Area at Grantor's sole expense. The City will not be required to restore the Easement Area by reason of settlement, depression or any unknown conditions which arise subsequent to the restoration of the Easement Area.

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 Easement, to the extent such damage or injury is attributable to the negligence 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. Benefits, Burdens and Assignment.

All provisions of this Easement, including benefits and burdens, run with the land and are binding upon the City and the Grantor, including but not limited to future owners, developers, lessees, occupants or assignees. Grantor acknowledges and agrees that this Easement is assignable by the City without consent from Grantor to a third-party public entity, and assignable by the City with written notice to and consent from Grantor to a third-party private entity.

5. Approval of City.

This Easement shall not be binding until it has received the final approval and acceptance by the City Council, City of West Des Moines, Iowa, which approval and acceptance shall be noted on this Easement by the City Clerk.

6. Jurisdiction and Venue.

The City and Grantor agree the District Court of the State of Iowa in Polk County, Iowa shall have exclusive jurisdiction over the subject matter and enforcement of the terms and conditions of this Easement.

7. Words and Phrases.

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

8. Lawful Authority.

Grantor covenants with the City that it holds the Easement Area by good and marketable title, free and clear of liens, easements, and encumbrances, except any of record, and that Grantor has a right and lawful authority to make and execute this Easement. Grantor warrants and defends the Easement against the lawful claims of all persons claiming by, through or under Grantor.

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 "Grantor" shall refer to Hurd Westown, LLC, its assigns, successors-in-interest, or lessees, if any.

10. Integration.

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

11. Paragraph Headings.

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

Dated: 6/18, 2019.

HURD WESTOWN, LLC,
an Iowa ~~limited liability~~ company

By: _____
Richard W. Hurd, Manager

STATE OF IOWA, COUNTY OF POLK:

This record was acknowledged before me on 6/18, 2019, by Richard W. Hurd, Manager of Hurd Westown, LLC.

By: _____
Notary Public

NOTARIAL SEAL IOWA
TIMOTHY C. HOGAN
Commission Number 160432
My Commission Expires
May 02, 2021

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 Sanitary Sewer Easement was duly authorized and approved by the City Council of the City of West Des Moines by Roll Call No. _____, passed on _____, 2019, and that this certificate is made pursuant to the authority of said City Council.

Signed this _____ day of _____, 2019.

CITY OF WEST DES MOINES, IOWA

BY:_____
Ryan T. Jacobson, City Clerk

Prepared by: Timothy C. Hogan, Hogan Law Office, 3101 Ingersoll Ave., Suite 103, Des Moines, IA 50312 (515) 279-9059
Return to & Tax Statements: City Clerk, West Des Moines, PO Box 65320, West Des Moines, IA 50265

WARRANTY DEED

For the consideration of One Dollar(s) ($1.00) and other valuable consideration,

HURD WESTOWN, LLC, an Iowa limited liability company,

does hereby convey to the

CITY OF WEST DES MOINES, an Iowa municipality,

the following described real estate:

Parcel 2019-84 of a part of Lot 2 in Westown Centre, an Official Plat in West Des Moines, Polk County, Iowa, as shown on survey recorded June 27, 2019 in Book 17384 at Page 638 in the office of the Recorder for Polk County, Iowa.

This deed represents a transfer of land for public street right-of-way and is exempt from transfer tax and declaration of value pursuant to Iowa Code § 428A.2(21) (consideration less than $500.00).

Grantor does hereby covenant with Grantee and successors in interest, that Grantor holds the real estate by title in fee simple; that Grantor has good and lawful authority to sell and convey the real estate; that the real estate is free and clear of all liens and encumbrances except as may be above stated; and Grantor covenants to warrant and defend the real estate against the lawful claims of all persons except as may be above stated.

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

Dated: 6/18, 2019.

HURD WESTOWN, LLC,
an Iowa limited liability company

By: _____
Richard W. Hurd, Manager

STATE OF IOWA, COUNTY OF POLK:

This record was acknowledged before me on 6/18, 2019, by Richard W. Hurd, Manager of Hurd Westown, LLC.

By: _____
Notary Public

NOTARIAL SEAL IOWA
TIMOTHY C. HOGAN
Commission Number 160432
My Commission Expires
May 02, 2021