CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **September 16, 2019**

ITEM: Unity Point Clinic, 4055 Westown Parkway – Vacate a 20-foot public sanitary sewer easement and acceptance of new easement – Central Iowa Hospital Corporation – VAC-004387-2019

RESOLUTION: Approval of Vacation Request
Approval and Acceptance of Sanitary Sewer Easement

FINANCIAL IMPACT: Undetermined.

BACKGROUND: The applicant, Unity Point Health-Des Moines, in coordination with the property owner, Central Iowa Hospital Corporation, is requesting approval of the vacation of a 20-foot public sanitary sewer easement within Lot 2 of the Westown Parkway Plaza plat. The vacation request is being made because a portion of the existing sanitary sewer main within the easement will become private with the development of a medical clinic on the site. Once the easement is vacated, a new, smaller easement will be needed to contain the area of the remaining sanitary sewer on the site that will remain public. The new easement document is attached for review and acceptance. The vacation and approval of a new easement will occur under separate resolutions.

CITY COUNCIL SUBCOMMITTEE: This item was presented to the Development and Planning City Council Subcommittee on July 1, 2019 as an informational item only. Councilmembers had no comments and expressed support of the proposal.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Based upon the preceding review and a finding of consistency with the goals and policies of the Comprehensive Plan, Staff recommends the City Council approve the Vacation Request to vacate a 20-foot public sanitary sewer easement within Lot 2 of Westown Parkway Plaza plat and approve and accept a new sanitary sewer easement.

Lead Staff Member: Brian S. Portz, AICP BP

STAFF REVIEWS

Department Director	
Appropriations/Finance	
Legal	JDS
Agenda Acceptance	KL

PUBLICATION(S) (if applicable)

Published In	Des Moines Register	
Date(s) Published	August 28, 2019	
Letter sent to surrounding property owners		N/A

SUBCOMMITTEE REVIEW (if applicable)

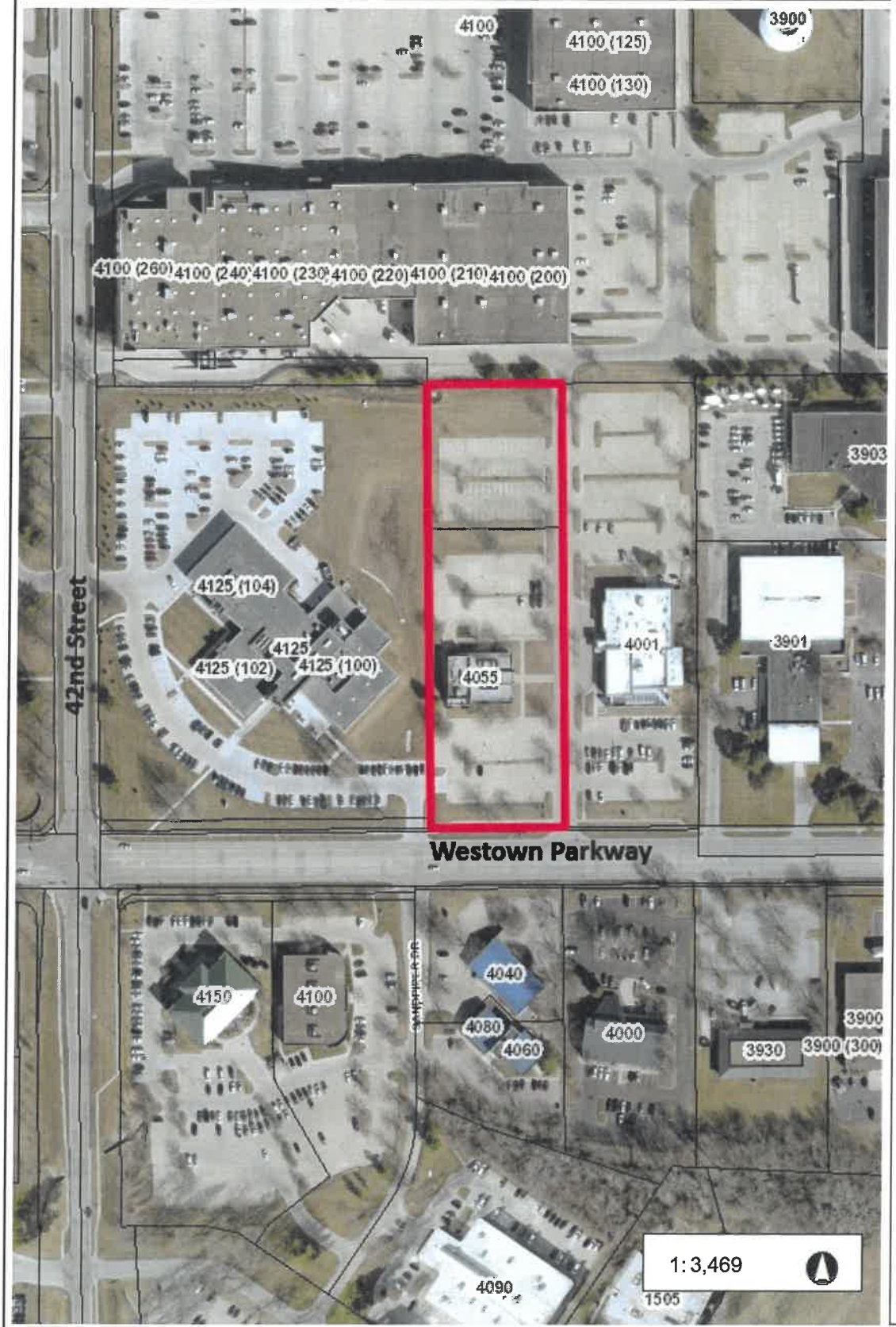
Committee	Development & Planning		
Date Reviewed	July 1, 2019		
Recommendation	Yes X	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Location Map
Exhibit II - City Council Resolution – Vacation of Easement
Exhibit A - Vacation Exhibit
Exhibit III - City Council Resolution – Acceptance of Sanitary Sewer Easement
Exhibit IV - Signed Sanitary Sewer Easement

EXHIBIT I

Unity Point Clinic



Legend

- Addresses
- Corporate Limits
- Parcels

578.2 0 289.12 578.2 Feet

WGS_1984_Web_Mercator_Auxiliary_Sphere

© City of West Des Moines, Iowa

Disclaimer: The City of West Des Moines makes no warranties regarding the accuracy or completeness of the data provided herein.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

EXHIBIT II

Prepared by: B. Portz, Development Services, P.O. Box 65320 West Des Moines, IA 50265-0320, (515)222-3620
When Recorded, Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines, IA 50265-0320

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, APPROVING THE VACATION REQUEST (VAC-004387-2019) FOR THE PURPOSE OF VACATING A 20-FOOT PUBLIC SANITARY SEWER EASEMENT

WHEREAS, pursuant to the provisions of Title 10, Chapter 1 et seq, of the West Des Moines Municipal Code, the applicant, Unity Point Health – Des Moines, in coordination with the property owner, Central Iowa Hospital Corporation, has requested approval for a Vacation Request (VAC-004387-2019) for an existing public sanitary sewer easement located across Lot 2, Westown Parkway Plaza Plat described below and as illustrated on the attached exhibit; and

WHEREAS, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference; and

WHEREAS, on September 16, 2019 this City Council held a duly-noticed public hearing to consider the application for Vacation Request (VAC-004387-2019).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:

SECTION 1. The findings, for approval, in the staff report, dated September 16, 2019, or as amended orally at the City Council hearing of September 16, 2019, are adopted.

SECTION 2. VACATION REQUEST (VAC-004387-2019) for that easement as previously stated here within, is approved, subject to compliance with all the conditions in the staff report, dated September 16, 2019, including conditions added at the Hearing. Violation of any such conditions shall be grounds for any remedy, legal or equitable, which is available to the City.

SECTION 3. City of West Des Moines interest as shown in the Public Sanitary Sewer Easement recorded in Polk County, Book 7437 at Page 494 and described in the easement document recorded in Book 7436 at Page 947, is hereby terminated.

The legal description of the easement to be vacated is as follows:

ALL THAT PORTION OF THE 20.00 FOOT WIDE SANITARY SEWER EASEMENT OVER, UNDER, AND ACROSS LOT 2 IN WESTOWN PARKWAY PLAZA, AS SHOWN ON SAID PLAT RECORDED IN BOOK 7437 AT PAGE 494 AND DESCRIBED IN THE EASEMENT DOCUMENT RECORDED IN BOOK 7436 AT PAGE 947, IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.

PASSED AND ADOPTED on September 16, 2019.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the City Council of the City of West Des Moines, Iowa, at a regular meeting held on September 16, 2019 by the following vote:

ATTEST:

_____
Ryan T. Jacobson
City Clerk

Prepared by: B. Portz 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 A PUBLIC SANITARY SEWER EASEMENT RELATED TO A SITE PLAN APPROVAL GRANTED TO 4055 WESTOWN PARKWAY FOR CONSTRUCTION OF A MEDICAL CLINIC

WHEREAS, on July 1, 2019, the City Council of the City of West Des Moines, Iowa approved the Unity Point Clinic Site Plan (SP-004277-2019) subject to conveyance of a public sanitary sewer easement; and

WHEREAS, it is the policy of the City of West Des Moines, Iowa to approve and accept all easements and agreements conveying property and other interests to the City; and

WHEREAS, the following document has been presented to the City for approval and acceptance; and

Sanitary Sewer Easement within Lot 2, Westown Parkway Plaza Plat and
legally described as:

The north 30.00 feet of the south 150.00 feet of the east 30.00 feet of Lot 2, Westown Parkway Plaza, an Official Plat, West Des Moines, Polk County, Iowa.

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

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT the document described above conveying property and other interests to the City of West Des Moines, Iowa, is hereby approved and accepted and shall be filed with the county recorder as appropriate.

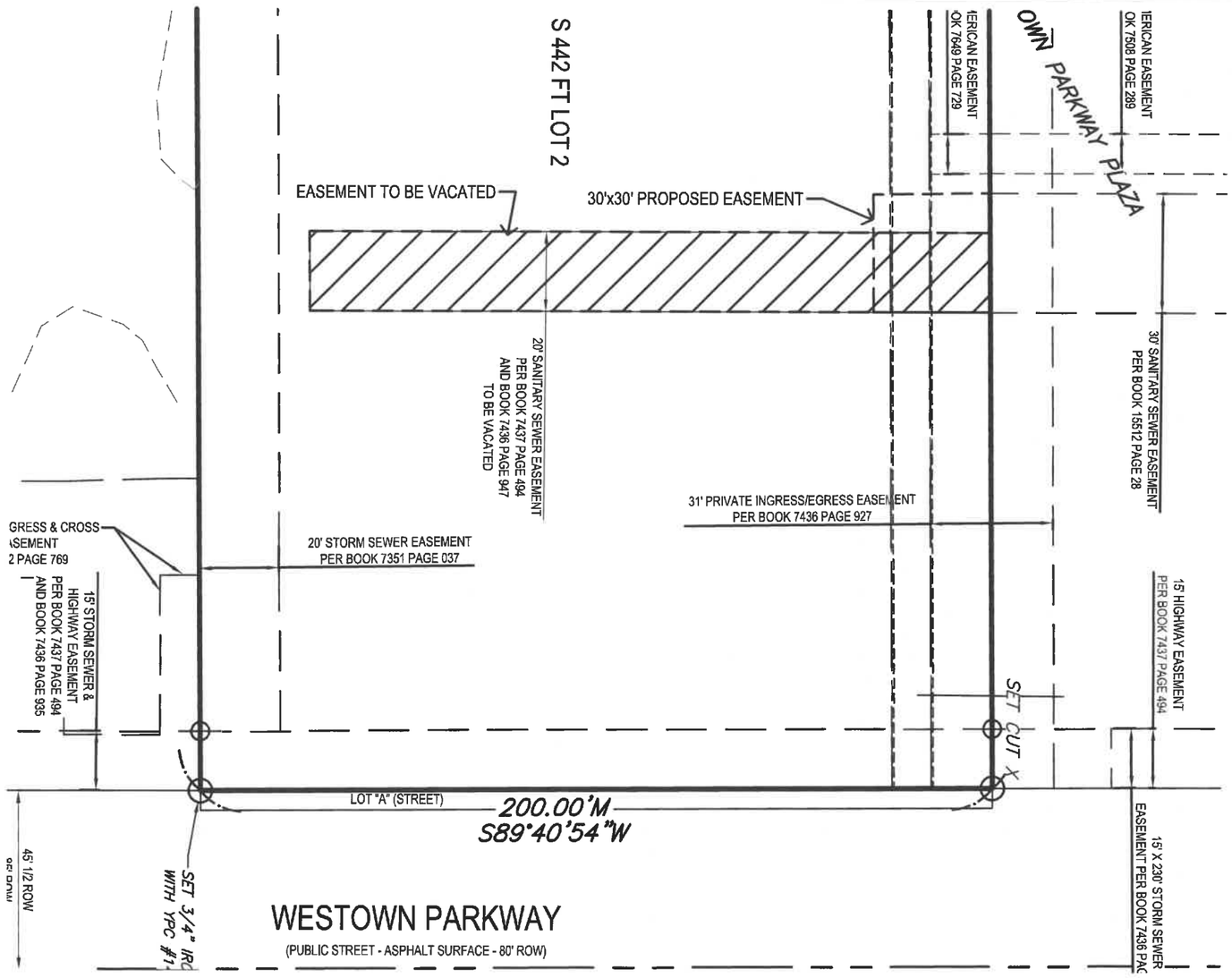
PASSED AND ADOPTED this 16th day of September, 2019.

_____
Steven K. Gaer
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

SANITARY SEWER EASEMENT VACATION EXHIBIT "A"



EASEMENT DESCRIPTION:

VACATING ALL THAT PORTION OF THE 20.00 FOOT WIDE SANITARY SEWER EASEMENT OVER, UNDER, AND ACROSS LOT 2 IN WESTOWN PARKWAY PLAZA, AS SHOWN ON SAID PLAT RECORDED IN BOOK 7437 AT PAGE 494 AND DESCRIBED IN THE EASEMENT DOCUMENT RECORDED IN BOOK 7436 AT PAGE 947

OWNER/PREPARED FOR:

UNITY POINT HEALTH-DES MOINES
1200 E PLEASANT STREET
DES MOINES, IA 50309

LEGEND:

●	PROPERTY CORNER
⊕	SECTION CORNER
M	MEASURED DISTANCE
P	PLATTED DISTANCE
D	DEEDED DISTANCE
PRA	PREVIOUSLY RECORDED AS
ROW	RIGHT OF WAY
POC	POINT OF COMMENCEMENT
POB	POINT OF BEGINNING

GRAPHIC SCALE

40 0 20 40

LICENSED PROFESSIONAL LAND SURVEYOR
LARRY D. HYLER, P.L.S. No. 14775
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 PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

SIGNED: _____ DATE: _____
LARRY D. HYLER, P.L.S. 14775

LICENSE RENEWAL DATE: DEC. 31, 2020
PAGES OR SHEETS COVERED BY THIS SEAL: SHEET 1 OF 1

Bishop Engineering
"Planning Your Successful Development"
3501 104th Street
Des Moines, Iowa 50322-3825
Phone: (515)276-0467 Fax: (515)276-0217
Civil Engineering & Land Surveying Established 1959

EASEMENT VACATION
WEST DES MOINES, IOWA

EASEMENT EXHIBIT

REFERENCE NUMBER:

DRAWN BY: BA

PROJECT NUMBER: 190129

EXHIBIT III

Prepared by: B. Portz 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

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PASSED AND ADOPTED this 16th day of September, 2019.

_____
Steven K. Gaer
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

EXHIBIT IV

Prepared by: Jessica D. Spoden, Assistant City Attorney, PO Box 65320, West Des Moines, IA 50265-0320 (515) 222-367
Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines IA 50265 (515) 222-3600

SPACE ABOVE THIS LINE FOR RECORDER

PERMANENT SANITARY SEWER EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

1. **Grant of Permanent Easement**

The undersigned, on behalf of **Central Iowa Hospital Corporation, an Iowa Corporation** ("Grantor(s)", owner 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, Iowa,** a municipal corporation ("City"), a permanent and perpetual Sanitary Sewer Easement ("Easement") upon, over, under, through, and across the real property legally described as:

The north 30.00 feet of the south 150.00 feet of the east 30.00 feet of Lot 2, Westown Parkway Plaza, an Official Plat, West Des Moines, Polk County, Iowa.

2. **Use and Purpose of Easement**

This Easement shall be granted solely and exclusively for the purpose of constructing and permanently maintaining a permanent sanitary sewer, allowing the City to enter at any time upon and into the Easement Area and to use as much of the surface and subsurface thereof to locate, construct, replace, rebuild, enlarge, reconstruct, add to, patrol, repair and maintain the sanitary sewer whenever necessary. The use of the Easement Area is 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. 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 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 facilities 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 and landscaping and restoration of the existing grade. 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.

(d) Unless done at the direction or by the 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 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 the Grantor.

(f) Upon restoration of the Easement Area, Grantor will resume all maintenance responsibilities 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 Agreement, 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 the Grantor to a third-party public entity, and assignable by the City with written notice to and consent from the Grantor to a third-party private entity.

5. **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.

6. **Lawful Authority**

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

7. **Approval of City**

These Easements shall not be binding until they have received the final approval and acceptance by the City of West Des Moines, Iowa, which approval and acceptance shall be noted on this Easement Agreement by the City Clerk.

8. **Attorney Fees**

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

9. **Words and Phrases**

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

10. **Parties**

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

11. **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.

12. **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 11th day of September, 2019.

GRANTORS
CENTRAL IOWA HOSPITAL CORPORATION

Michael J. Dewerff, Sr. Vice President / CFO

STATE OF IOWA)
) SS
COUNTY OF Polk)

This record was acknowledged before me on this 11th day of September, 2019, **by Michael J. Dewerff, Sr. Vice President / CFO of Central Iowa Hospital Corporation.**

NOTARY PUBLIC

NOTARIAL SEAL IOWA
NOEL R WALKER
Commission Number 817649
My Commission Expires
June 25, 2022

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