CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **September 16, 2019**

ITEM: Resolution - Approval of Reservation by City of Storm Sewer and Utility Easement

FINANCIAL IMPACT: None.

SYNOPSIS: In conjunction with the sale of City property to a private entity located near 1st Street and Grand Avenue, the City is reserving a storm sewer and utility easement to allow continued access to the property. The attached Resolution formally accepts the Easement.

OUTSTANDING ISSUES (if any): None.

RECOMMENDATION: Adopt the Resolution approving and accepting the Storm Sewer and Utility Easement.

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

STAFF REVIEWS

Department Director	
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard J. Scieszinski, City Attorney
Agenda Acceptance	Ryan T. Jacobson, City Clerk RJ

PUBLICATION(S) (if applicable)

Published In	NA
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	NA		
Date Reviewed			
Recommendation	Yes	No	Split

RESOLUTION NO._____

APPROVAL OF RESERVATION OF STORM SEWER AND UTILITY EASEMENT

WHEREAS, the City of West Des Moines is the owner of property in which a storm sewer and appurtenant structures are located; and

WHEREAS, due to the anticipated sale of the property to one or more private entities, it is necessary that the City retain a permanent storm sewer and utility easement on the property; and

WHEREAS, the attached Storm Sewer and Utility Easement reserves to the City the ability to maintain access to the property following the property's sale.

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

1. The attached Storm Sewer and Utility Easement located on Lot 2 and Lot 3, Linnwill Plat 2, City of West Des Moines, Polk County, Iowa is hereby approved.

2. The Mayor is authorized to sign the Easement and the City Clerk is directed to attest to the Mayor's signature.

3. Upon execution the Storm Sewer and Utility Easement 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

Prepared by/Return to: Richard J. Scieszinski, City Attorney, P.O. Box 65320, West Des Moines, IA 50265 (515) 222-3614

STORM SEWER AND UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

1. Reservation of Permanent Easement

The **CITY OF WEST DES MOINES**, an Iowa municipal corporation, hereby reserves onto itself, its successors and assigns, ("City") a permanent and perpetual Storm Sewer Easement (hereinafter "Easement") upon, over, through and across the real property as shown and legally described on the attached **Exhibit "A"** located in the City of West Des Moines, Polk County, Iowa, hereinafter "Easement Area."

2. Use and Purpose of Easement

This Easement shall be for the purpose of accessing the Easement Area to construct, reconstruct, patrol, maintain and repair, whenever necessary, the storm sewer and all appurtenances located in the Easement Area. No structure or building of any kind whatsoever shall be erected upon the Easement Area without the express written consent of the City.

The City maintains the right to work in the Easement Area in furtherance of the Use and Purpose of the Easement as defined above at no cost to the City, its contractors, designees and assigns for such duration as necessary to fulfill the Use and Purpose of the Easement. Unless determined an emergency by the City, reasonable notice of not less than ten (10) calendar days shall be provided to the Fee Title Owner by the City prior to beginning work in the Easement Area. The City maintains the sole right to close the Easement Area as necessary but shall make reasonable effort, whenever possible, to mitigate loss of access to the Easement Area.

The City maintains the further right to use the Easement Area for the future placement of underground utilities, fiber or other facilities which serve a public purpose.

3. Restoration of Easement Area

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.

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) other than the City or its contractors.

4. Hold Harmless

The City shall indemnify and hold the underlying Fee Title Owner 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 the Use and Purpose of this Easement, as defined above, to the extent such damage or injury is attributable to the negligent or willful misconduct of the City, its contractors, designees or assigns, provided, the Fee Title Owner gives the City prompt notice of any such claim and all necessary information and assistance so that City, at its option, may defend or settle such claim, and fee title owner does not take any adverse position in connection with such claim.

The Fee Title Owner, its lessees, invitees, contractors, successors or assigns shall indemnify and hold the City, its officials, employees, contractors and assigns 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 its use of the Easement Area to the extent such damage or injury is attributable to the negligent or willful misconduct of the Fee Title Owner, its lessees, invitees, contractors, successors or assigns. The City shall give the Fee Title Owner prompt notice of any such claim and all necessary information and assistance so that Fee Title Owner, at its option, may defend or settle such claim, and City 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.

5. Successors and Assigns

The terms and conditions of this Easement are binding upon the City, its officials, employees, designees, successors and assigns, and upon the Fee Title Owner, its lessees, invitees, contractors, successors and assigns, and all provisions of this instrument, 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. 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. 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 "Fee Title Owner" shall refer to the owner of the underlying property identified on the attached Exhibit "A", its heirs, lessees, successors in interest, or assigns, if any.

CITY OF WEST DES MOINES, IOWA:

_____
Steven K Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this _____ day of September, 2019, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me known to be the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa; that this record was signed on behalf of the City, by authority of its City Council as contained in Resolution No. _____ approved on the 19th day of September, 2015 by the City Council of the City of West Des Moines, Iowa, and that the Mayor and City Clerk acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the City, by it voluntarily executed.

_____
NOTARY PUBLIC
My Commission expires:

Company:	Foth Infrastructure & Environment, LLC
Return To:	8191 Birchwood Court, Suite L Johnston, IA 50131 | (515) 254-1393

PLAT OF SURVEY #2018-18

CITY CONTRACT NO. (0510-009-2013)

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN LOT 2 AND LOT 3 IN LINNWILL PLAT 2, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, AS RECORDED IN BOOK M, PAGE 229 OF THE POLK COUNTY RECORDER'S OFFICE, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 3, THENCE SOUTH 89° 59' 44" EAST, 25.02 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF GRAND AVENUE; THENCE SOUTH 00° 01' 52" WEST, 179.24 FEET TO THE EXTENSION OF THE SOUTH LINE OF LOT 4 IN SAID LINNWILL PLAT 2; THENCE SOUTH 89° 50' 52" WEST, 25.01 FEET ALONG SAID EXTENSION TO THE EAST LINE OF SAID LOT 4; THENCE NORTH 00° 01' 33" EAST, 179.31 FEET ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 4,484 SQUARE FEET OR 0.10 ACRES MORE OR LESS.

FOR THE PURPOSE OF THIS DESCRIPTION, ALL BEARING AND DISTANCES ARE REFERENCED TO NAD83(2011) IA SPCS SOUTH ZONE, US SURVEY FOOT.

N

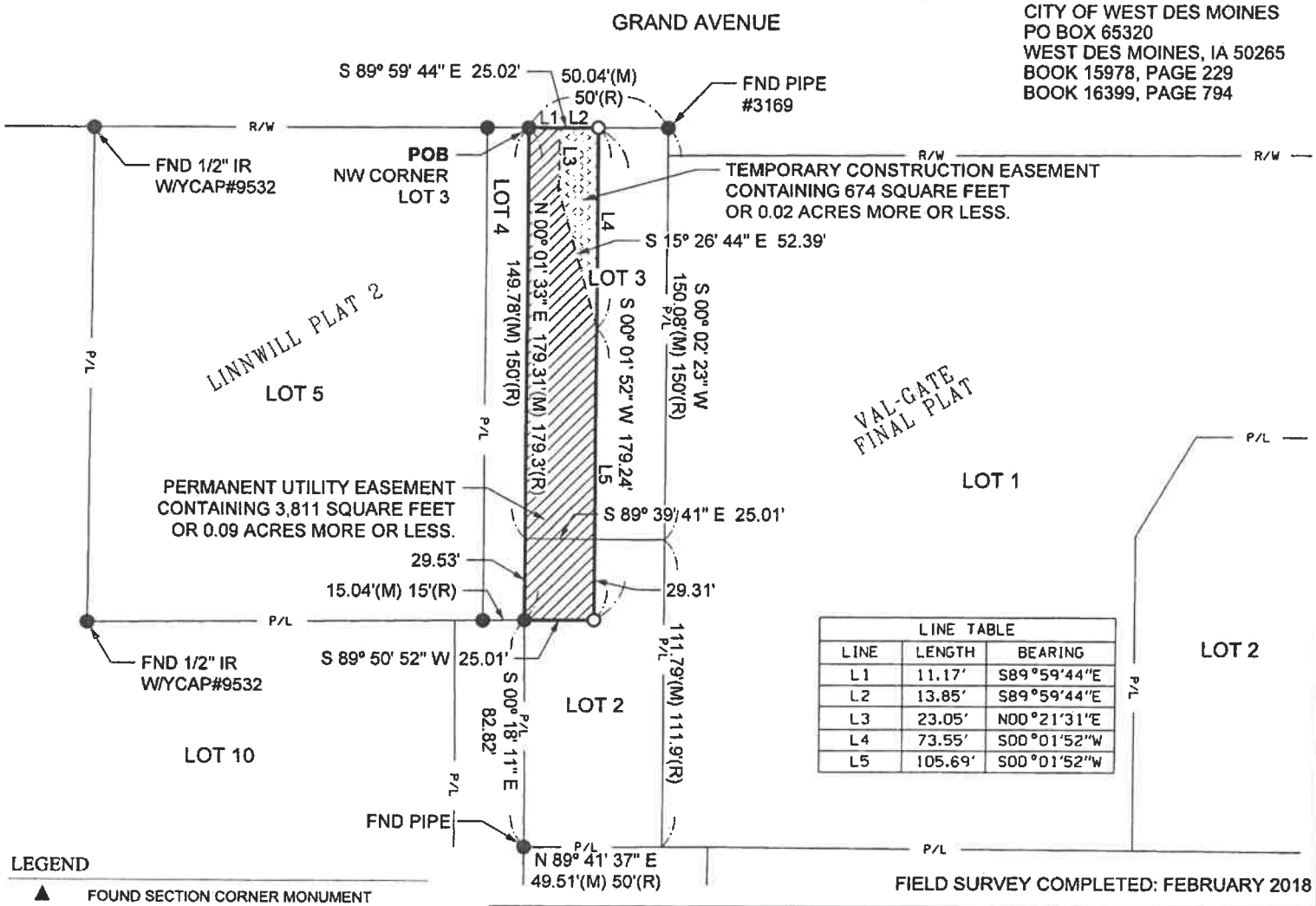
0 30 60

FEET

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

PROPERTY OWNER:

CITY OF WEST DES MOINES
PO BOX 65320
WEST DES MOINES, IA 50265
BOOK 15978, PAGE 229
BOOK 16399, PAGE 794



LINE TABLE		
LINE	LENGTH	BEARING
L1	11.17'	S89°59'44"E
L2	13.85'	S89°59'44"E
L3	23.05'	N00°21'31"E
L4	73.55'	S00°01'52"W
L5	105.69'	S00°01'52"W

FIELD SURVEY COMPLETED: FEBRUARY 2018

LEGEND

- ▲ FOUND SECTION CORNER MONUMENT
- △ SET SECTION CORNER MONUMENT
- ● FOUND CUT "X" (UNLESS NOTED)
- O SET 5/8" REROD W/PINK CAP#22847 (UNLESS NOTED)
- (M) MEASURED DIMENSION
- (R) RECORDED DIMENSION
- I.R. IRON ROD
- I.P. IRON PIPE
- — · — · SECTION LINE
- — R/W — RIGHT-OF-WAY LINE
- EXISTING LOT LINE

PROFESSIONAL LAND SURVEYOR JODY A. BUDDE 22847 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.

5-1-2018

JODY A. BUDDE, P.L.S. DATE

License Number: 22847

My license renewal date is DECEMBER 31, 2018.

Pages or sheets covered by this seal: 1 of 1

Return To:	8191 Birchwood Court, Suite L Johnston, IA 50131 | (515) 254-1393

PLAT OF SURVEY #2018-19

CITY CONTRACT NO. (0510-009-2013)

LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN LOT 2 AND LOT 3 IN LINNWILL PLAT 2, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, AS RECORDED IN BOOK M, PAGE 229 OF THE POLK COUNTY RECORDER'S OFFICE, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 3, THENCE SOUTH 00° 02' 23" WEST, 261.86 FEET ALONG THE WEST LINE OF LOT 1 IN VAL-GATE FINAL PLAT TO THE SOUTH LINE OF SAID LOT 2; THENCE SOUTH 89° 41' 37" WEST, 49.51 FEET ALONG SAID SOUTH LINE TO THE WEST LINE OF SAID LOT 2; THENCE NORTH 00° 18' 11" WEST, 82.82 FEET ALONG SAID WEST LINE TO THE SOUTHEAST CORNER OF LOT 4 IN SAID LINNWILL PLAT 2; THENCE NORTH 89° 50' 52" EAST, 25.01 FEET; THENCE NORTH 00° 01' 52" EAST, 179.24 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF GRAND AVENUE; THENCE SOUTH 89° 59' 44" EAST, 25.02 FEET ALONG SAID SOUTH RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING.

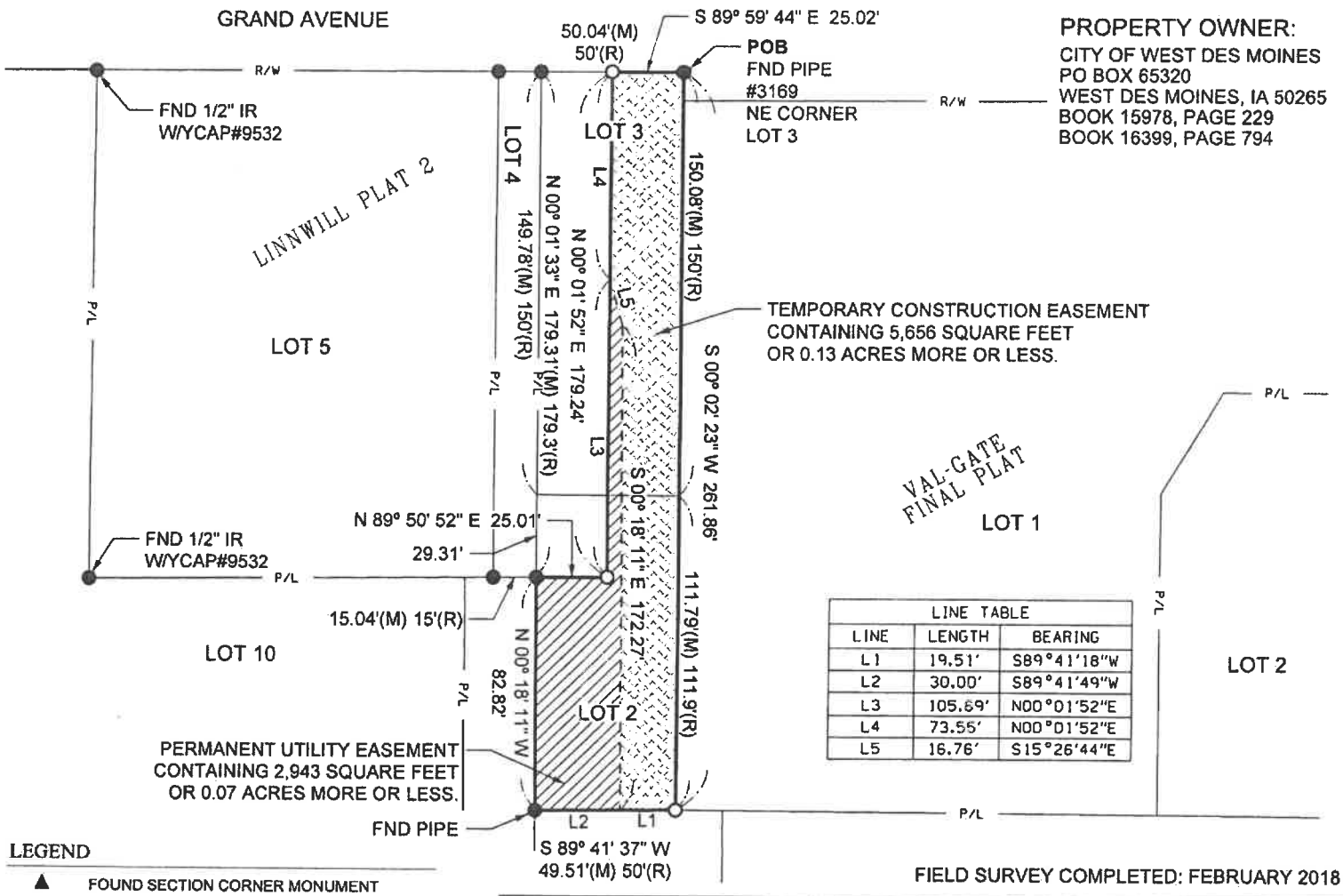
SAID TRACT CONTAINS 8,599 SQUARE FEET OR 0.20 ACRES MORE OR LESS.

FOR THE PURPOSE OF THIS DESCRIPTION, ALL BEARING AND DISTANCES ARE REFERENCED TO NAD83(2011) IA SPCS SOUTH ZONE, US SURVEY FOOT.

N

0 30 60
FEET

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



PROPERTY OWNER:
CITY OF WEST DES MOINES
PO BOX 65320
WEST DES MOINES, IA 50265
BOOK 15978, PAGE 229
BOOK 16399, PAGE 794

LINE TABLE		
LINE	LENGTH	BEARING
L1	19.51'	S89°41'18"W
L2	30.00'	S89°41'49"W
L3	105.69'	N00°01'52"E
L4	73.55'	N00°01'52"E
L5	16.76'	S15°26'44"E

FIELD SURVEY COMPLETED: FEBRUARY 2018

LEGEND

- ▲ FOUND SECTION CORNER MONUMENT
- △ SET SECTION CORNER MONUMENT
- ● FOUND CUT "X" (UNLESS NOTED)
- O SET 5/8" REROD W/PINK CAP#22847 (UNLESS NOTED)
- (M) MEASURED DIMENSION
- (R) RECORDED DIMENSION
- I.R. IRON ROD
- I.P. IRON PIPE
- — · — · — SECTION LINE
- — R/W — RIGHT-OF-WAY LINE
- EXISTING LOT LINE

LICENSED PROFESSIONAL LAND SURVEYOR
JODY A. BUDDE
22847
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.

5-1-2018

JODY A. BUDDE, P.L.S. DATE

License Number: 22847

My license renewal date is DECEMBER 31, 2018.

Pages or sheets covered by this seal: 1 OF 1