CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: February 17, 2020

ITEM: Resolution - Opening and Closing Public Hearing and Approving Conveyance of Easement to Des Moines Metropolitan Wastewater Reclamation Authority along Sugar Creek between Booneville Road and Stagecoach Drive

FINANCIAL IMPACT: None at this time

SYNOPSIS: A 28E Agreement with the Des Moines Wastewater Reclamation Authority ("WRA"), also being considered for approval at this meeting, requires the City to convey a Permanent Access, Maintenance and Conservation Easement to the WRA along Sugar Creek between Booneville Road and Stagecoach Drive in West Des Moines for the WRA Sugar Creek Improvements Phase 1 Project.

RECOMMENDATION: Approve the Resolution and supporting documents conveying the Permanent Access, Maintenance and Conservation Easement to the Des Moines Metropolitan Wastewater Reclamation Authority.

Lead Staff Member: Richard J. Scieszinski, City Attorney

STAFF REVIEWS

Department Director	Brian J. Hemesath, P.E., City Engineer
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	Des Moines Register
Dates(s) Published	February 12, 2020

SUBCOMMITTEE REVIEW (if applicable)

Committee	N/A		
Date Reviewed			
Recommendation			

Prepared by: Richard J. Scieszinski, City Attorney, PO Box 65320, West Des Moines, IA 50265-0320 (515) 222-3614
Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

SPACE ABOVE THIS LINE FOR RECORDER

RESOLUTION NO. _____

RESOLUTION OPENING AND CLOSING PUBLIC HEARING AND APPROVING CONVEYANCE OF EASEMENT TO THE DES MOINES WASTEWATER RECLAMATION AUTHORITY

WHEREAS, the City of West Des Moines, Iowa is the owner of property legally described as:

> Outlot 'B' in King's Landing Plat 2, an Official Plat, now included in and forming a part of the City of West Des Moines, Dallas County, Iowa as recorded in Book 2017, Page 22452 in the Office of the Dallas County Recorder.

WHEREAS, City Council has approved a 28E Agreement with the Des Moines Metropolitan Wastewater Authority ("WRA") for the WRA Sugar Creek Improvements Phase 1 Project; and

WHEREAS, pursuant to that agreement, West Des Moines agreed to convey a Permanent Access, Maintenance and Conservation Easement on the above-described, City-owned property to the WRA; and

WHEREAS, the WRA has agreed to construct, establish, and maintain a riparian buffer with permanent vegetative cover and other stream corridor improvements along a portion of Sugar Creek between Booneville Road and Stagecoach Drive for a period of twenty (20) years; and

WHEREAS, pursuant to Code of Iowa Sections 362.3 and 364.7, publication of notice for the conveyance of the property interests legally described above has been made; and

WHEREAS, this being the time and place for a public hearing regarding conveyance of the easement; and

WHEREAS, the City Council of the City of West Des Moines, Iowa finds that the conveyance of the Permanent Access, Maintenance and Conservation Easement to the WRA is in the best interest of the City of West Des Moines, Iowa.

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

1. Pursuant to Code of Iowa Section 364.7, publication of notice regarding conveyance of the easement being conveyed has been properly made.

2. The public hearing regarding conveyance of the easement is hereby closed.

3. Conveyance of the easement, as described on the attached conveyance document to the Des Moines Metropolitan Wastewater Reclamation Authority, is hereby approved.

4. The Mayor is authorized to sign the conveyance documents and the City Clerk is directed to attest to his signature. The documents shall be filed with the County Recorder as appropriate.

PASSED AND APPROVED this 17th day of February, 2020.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

Prepared by: Greta Truman, Assistant City Attorney, PO Box 65320, West Des Moines, IA 50265-0320 (515) 222-3673
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 ACCESS, MAINTENANCE AND CONSERVATION EASEMENT

KNOW TO ALL MEN BY THESE PRESENTS:

1. Grant of Easement

The undersigned, on behalf of the City of West Des Moines, Iowa, a municipal corporation ("Grantor"), owner of the property legally described as:

> Outlot 'B' in King's Landing Plat 2, an official plat now included in and forming a part of the City of West Des Moines, Dallas County, Iowa, as recorded in Book 2017, Page 22452 in the office of the Dallas County Recorder,

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 **Des Moines Metropolitan Wastewater Reclamation Authority** (hereinafter "WRA"), a permanent and perpetual access, maintenance and conservation easement ("Easement") upon, over, through and across the real property as legally described above ("Easement Area").

2. Use and Purpose of Easement

This Easement shall be granted solely and exclusively and dedicated for the purpose of accessing, constructing, establishing, maintaining and conserving a sustainable and natural stream corridor to support stream stability, water quality and ecological functions through the construction and maintenance of a riparian buffer with permanent vegetative cover and other stream corridor improvements ("Improvements") along Sugar Creek for the WRA Sugar Creek Improvements – Phase 1 Project ("Project"). The Easement shall allow the WRA to enter at any time upon and into the Easement Area as shown and legally described above and to use as much of the surface and subsurface thereof for these purposes, whenever reasonably necessary, subject to the following terms and conditions:

a) Erection of Structures or Placement of Obstructions Prohibited. No structure, building, device, material or other matter of any kind whatsoever shall be erected or placed upon the Easement Area that is reasonably likely to substantially obstruct or impede the normal flow of surface water. The construction of a bike trail and associated improvements within the Easement Area shall be allowed unless the bike trail and associated improvements are or become detrimental to the function of the Project and/or to the natural floodplain.

b) Change of Grade Prohibited. Grantor shall not change the grade, elevation or contour of any part of the Easement Area without obtaining the prior written consent of the WRA.

c) Dumping Prohibited. The WRA and Grantor shall not dump refuse, waste, sewage or other debris within the Easement Area.

d) Trees, Shrubs or Other Plantings Prohibited. No trees, shrubs or other plantings shall be placed or planted within any part of the Easement Area which are reasonably likely to materially obstruct or impede the normal flow of surface water over the Easement Area. No row crops of any nature whatsoever shall be placed or planted within any part of the Easement Area, and in no event shall any planting inconsistent with the native species for this geographic region be allowed within the Easement Area.

e) Alterations Prohibited. Grantor shall not make any alterations to the Easement Area that conflict with the purpose of the Easement, including any actions, intentional or accidental, that would adversely impact the riparian best management practices or stability of the stream channel. The Grantor shall be responsible to mitigate all adverse impacts caused by its actions.

f) Completion and Debris Removal. The WRA shall take reasonable steps to ensure that all work performed by the WRA in the Easement Area will be initiated and completed within a reasonable period. The WRA shall also be responsible for removal of all debris, spoils, equipment, etc. used by the WRA in connection with the work performed in the Easement Area.

g) Restoration of Easement Area. Upon completion of the initial installation of the Project improvements, the WRA shall promptly restore and grade the Easement Area pursuant to the grading plans approved for the Project and shall seed the Easement Area with weed free, full vegetative coverage of all the disturbed area. The WRA shall also plant and maintain for one (1) year landscaping as indicated on the plans approved for the Project.

h) WRA Obligations. Unless done at the direction or authority of the WRA, nothing in this Easement shall obligate the WRA 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 WRA or its contractors.

i) Wetlands Mitigation. The Easement Area contains existing wetlands. The WRA will be responsible for mitigation of any wetland area that is disturbed as part of the Project.

j) Maintenance. The objective of the Easement is to reduce creek bank erosion and improve water quality though the preservation of a deep-rooted vegetated stream buffer. Unless approved in writing by the WRA, the Grantor shall not mow, fertilize, or otherwise maintain the Easement Area. The WRA shall be allowed to engage in all activities reasonably necessary to maintain the immediate streambank located within the Easement Area, including routine inspections and monitoring, and shall be responsible for the maintenance of the Easement Area.

k) Right of Access. The WRA, its agents, contractors, and employees shall have the right of access to the Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area. This Easement allows the WRA, its agents, contractors, and employees the right to enter in, upon and onto the Easement Area at any time to perform any and all activities reasonably related to or reasonably necessary for the construction, reconstruction, repair, maintenance or conservation of the Easement Area.

l) Assignment and Right of Access to WRA. The WRA shall not assign this easement without the written consent of the Grantor. The WRA shall have the right of access to the Easement Area and shall have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Easement Area. This Easement allows the WRA, its agents, contractors, employees and assigns the right to enter in, upon and onto the Easement Area at any time to perform any and all activities related to construction and maintenance of a riparian buffer with permanent vegetative cover and make other stream corridor improvements ("Improvements"). This right of access shall begin upon approval by the Grantor and WRA, and shall be effective for a period of twenty (20) years from the date of completion of construction of the Project by WRA, at which time WRA shall release and assign all its rights in the Easement back to the City.

3. Benefits, Burdens and Assignment

All provisions of this Easement, including benefits and burdens, run with the land and are binding upon the WRA and the Grantor, including but not limited to future owners, developers, lessees, occupants or assignees.

4. **Jurisdiction and Venue**

The Parties 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.

5. **Approval of City and WRA**

This Easement shall not be binding until it has received the final approval and acceptance of the City of West Des Moines, Iowa, and the Des Moines Metropolitan Wastewater Reclamation Authority by Resolution of their Council and Board, respectively. Such approval and acceptance shall be noted on this Easement.

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.

7. **Parties**

The term "Grantor" 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 "WRA" as used herein shall refer to the Des Moines Metropolitan Wastewater Reclamation Authority, its officials, agents, employees, officers, contractors, and successors.

8. **Notices**

All notices pursuant to this Easement shall be in writing and may be personally delivered or sent by ordinary mail to the addresses hereinafter provided. Mailed notices shall be deemed received by the Party to whom directed when the notice is postmarked. In the event circumstances require immediate attention, notification may also be made by email or telephone. Such notices may be personally delivered, mailed or communicated otherwise to the following persons at the addresses listed:

Notice to WRA:

WRA Director
3000 Vandalia Road
Des Moines, IA 50317
515-323-8031
shutchens@dmgov.org

Notice to CITY:

City Engineer, City of West Des Moines
4200 Mills Civic Parkway
West Des Moines, IA 50265
515-273-0642
brian.hemesath@wdm.iowa.gov

9. Remedies

In addition to any other remedies available under applicable law, the Parties shall have the right to the equitable remedy of specific performance to enforce compliance with any provision of this Easement.

10. 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 all Parties.

11. 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 ____ day of _____, 2020.

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 _____, 2020, 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 said record was signed on behalf of said Municipal Corporation by authority and resolution of its City Council as contained in the Resolution No. _____, 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 Public

PASSED AND APPROVED BY the Des Moines Metropolitan Wastewater Reclamation Authority, by authority and resolution of its Board on _____, 2020.

_____
Chair, Des Moines Metropolitan
Wastewater Reclamation Authority