CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **April 20, 2020**

ITEM: Resolution – Approval of Settlement and Release Agreement between the City of West Des Moines and Todd and Cindy Herren – Cedar Ridge Sewer Extension, Project No. 0510-054-2018

FINANCIAL IMPACT: $7,750.00

SYNOPSIS: Todd and Cindy Herren ("Owners") own property located at 9141 Mills Civic Parkway. As part of the Cedar Ridge Sewer Extension, Project No. 0510-054-2018, the City acquired an easement from Owners over a portion of the Property to install the sewer improvements. At the time the Easement was executed, the house was under construction and qualified for connection to the new sewer, at Owner's cost. If a homeowner within the City and adjacent to the sewer desires to connect, the City would allow the installation of a sewer service at the homeowners' expense. In this case, a stub was not installed during construction of Cedar Ridge Sewer Extension. Owners subsequently installed a stub to connect to the sewer at a significantly higher price ($15,500) than what would typically be charged if it had been installed during construction of the Cedar Ridge Sewer Extension.

This matter was presented to the Public Service Subcommittee and they were supportive of reimbursing Owners half ($7,750) of the cost of the connection.

The attached Settlement Agreement sets forth the terms and conditions of the reimbursement, including the release of the parties from any further claims.

OUTSTANDING ISSUES (if any): None.

RECOMMENDATION:

Approve the Settlement and Release Agreement between the City of West Des Moines and Todd and Cindy Herren

Lead Staff Member: Richard J. Scieszinski, City Attorney

STAFF REVIEWS

Department Director	Richard J. Scieszinski, City Attorney
Appropriations/Finance	TS
Legal	GT
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Service		
Date Reviewed	02/24/2020		
Recommendation	Yes		

RESOLUTION APPROVING SETTLEMENT AND RELEASE AGREEMENT BY AND BETWEEN TODD HERREN, CINDY HERREN AND THE CITY OF WEST DES MOINES, IOWA

WHEREAS, in conjunction with the Cedar Ridge Sewer Extension, Project No. 0510-054-2018, Todd and Cindy Herren ("Owners") is requesting reimbursement of a stub connection fee for their property located at 9141 Mills Civic Parkway; and

WHEREAS, the City of West Des Moines and Owners have reached an agreement that provides reimbursement for a portion of the cost and the release of any and all future claims; and

WHEREAS, approval of the Settlement and Release Agreement is in the best interest of the City of West Des Moines.

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

1. The Agreement by and between Todd and Cindy Herren and the City of West Des Moines is hereby approved.

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

3. The West Des Moines Finance Department is authorized to make appropriate payment as provided by the terms of the Agreement.

PASSED AND ADOPTED this 20th day of April, 2020.

_____

Steven K. Gaer, Mayor

ATTEST:

_____

Ryan T. Jacobson
City Clerk

SETTLEMENT AND RELEASE AGREEMENT BY AND BETWEEN TODD HERREN, CINDY HERREN AND THE CITY OF WEST DES MOINES, IOWA

This Settlement and Release is made by and between Todd Herren and Cindy Herren, and the City of West Des Moines, an Iowa municipal corporation and is effective upon execution by all parties.

Todd Herren and Cindy Herren ("Owners"), own property in the City of West Des Moines legally described as:

Lot 6 in Cedar Ridge, an Official Plat, now included in and forming a part of the City of West Des Moines, Dallas County, Iowa ("Property").

As part of the Cedar Ridge Sewer Extension, Project No. 0510-054-2018, the City acquired an easement from Todd Herren and Cindy Herren over a portion of the Property to install the sewer improvements. At the time the Easement was executed, the house was under construction and qualified for connection to the new sewer, at Owner's cost, since the Property is within the corporate limits of West Des Moines. When installing new sewer improvements in the Capital Improvements Program, it has not been the practice of the City to install services for homeowners. If a homeowner within the City and adjacent to the sewer desires to connect, the City would allow the installation of a sewer service at the homeowners' expense. In this case, a stub was not installed during construction of Cedar Ridge Sewer Extension. Owners subsequently installed a stub to connect to the sewer at a significantly higher price than what would typically be charged if it had been installed during construction of the Cedar Ridge Sewer Extension. Due to a miscommunication between the parties, the City Council determines it is fair for the City to share in the cost of the Owners' connection.

Therefore, in consideration of receipt of seven thousand seven hundred fifty dollars ($7,750.00), the Owners hereby release and forever discharge the City of West Des Moines, its officials, employees, contractors and assigns from any and all claims, demands, causes of action of any kind, known and unknown, which the Owners may have now or in the future related or arising from the connection to City sewer, design, construction, reconstruction, grading, regrading, seeding, reseeding or any other matter done in conjunction the Cedar Ridge Sewer Extension Project, Project No. 0510-054-2018 or Owners' subsequent connection to the City Sewer System.

Dated this 25 day of March, 2020.

OWNER

Todd Herren

Todd Herren

OWNER

Cindy Herren

Cindy Herren

STATE OF IOWA)
) ss
COUNTY OF _____)

This record was acknowledged before me on the _____ day of _____, 2020, by Todd Herren and Cindy Herren.

_____
Notary Public in and for the State of Iowa

Dated this _____ day of _____, 2020.

CITY OF WEST DES MOINES

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. 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 the seal affixed to the foregoing record is the seal of said Municipal Corporation, and that said record was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council as contained in the Resolution adopted under Roll Call No. _____, passed on the _____ day of _____, 2020, 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 in and for the State of Iowa