CITY OF WEST DES MOINES
STAFF REPORT COMMUNICATION

Meeting Date: May 3, 2021

ITEM: Della Vita, 8975 Linda's Lane – Approval and Acceptance of Amended and Restated Storm Sewer Easement – Rebecca L. Robel – MI-005149-2021

Resolution: Approval and Acceptance of Storm Sewer Easement

Background: The Amended and Restated Storm Sewer Easement is necessary to accommodate an agreement between the Rebecca R. Robel (f/k/a Rebecca R. Holmes) (to the south of the Della Vita development) and Hubbell Realty Company (Della Vita developer) to resolve a drainage issue. The Robel family asked Hubbell to realign the storm sewer outlet constructed as part of the extension of EP True Parkway to better follow the natural drainage path and lessen the impact to their property. Both owners worked cooperatively to reach a mutually agreeable solution. There is no real impact to the City.

Staff Review & Comment: For policy and title purposes, formal acceptance by the City Council of property interests being conveyed to the City is required.

Outstanding Issues: There are no outstanding issues.

Recommendation: Approve and Accept Amended and Restated Storm Sewer Easement

Lead Staff Member: Brian Portz

Approval Meeting Dates:

Plan and Zoning Commission	n/a
City Council	May 3, 2021

Staff Report Reviews:

City Council	☒ Director	☒ Legal Department
	☐ Appropriations/Finance	☑ Agenda Acceptance

Publications (if applicable)

Published In:	Des Moines Register Community Section
Date(s) Published	n/a
Date(s) of Mailed Notices	n/a

Council Subcommittee Review (if applicable)

Committee	Development & Planning
Date Reviewed	n/a
Recommendation	☐ Yes ☐ No ☐ Split

Prepared by: Brian Portz, City of West Des Moines Development Services Dept., PO Box 65320, West Des Moines, Iowa 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 DOCUMENT(S) CONVEYING PROPERTY INTERESTS TO THE CITY OF WEST DES MOINES, IOWA

WHEREAS, it is the policy of the City of West Des Moines, Iowa to approve the conveyance of all property interest to the City; and

WHEREAS, An Amended and Restated Storm Sewer Easement ("Easement") from Rebecca L. Robel, f/k/a Rebecca R. Homes conveying property interests to the City for the property legally described on the attached Easement has been presented to the City Council for approval; and,

WHEREAS, it is in the best interests of the citizens of the City to approve and accept the above-described document(s).

NOW, THEREFORE, the City Council does approve and accept the document(s) described above. Said document(s) shall be filed with the county recorder as appropriate.

PASSED AND ADOPTED on May 3, 2021.

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan 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 May 3, 2021, by the indicated vote.

Prepared by and return to: Ashley N. Hemphill, Hubbell Realty Company, 6900 Westown Parkway, West Des Moines, Iowa 50266 (515) 280-2013

SPACE ABOVE THIS LINE FOR RECORDER

AMENDED AD RESTATED STORM SEWER EASEMENT

KNOW TO ALL MEN BY THESE PRESENTS:

THIS AMENDED AND RESTATED STORM SEWER EASEMENT, is made and entered into as of this ___ day of _____ 2021 (the "Amended Easement"), by and among **Rebecca L. Robel, f/k/a Rebecca L. Holmes, a single person** (hereinafter referred to as the "Grantor"), and the **City of West Des Moines, Iowa**, a municipal Corporation (hereinafter referred to as "the City").

WHEEAS, Grantor and the City (collectively the "Parties") entered into that certain **Storm Sewer Easement** dated August 18, 2016 and filed of record in the Recorder's Office for Dallas County, Iowa on April 23, 2020 in Book 2020, Page 7869 (the "Easement")

WHEREAS, this Amended Easement is given to restate, amend, and replace that certain Easement.

WHEREAS, the legal description and depiction for the Easement described in that certain Exhibit A of the Easement shall be amended and replaced as described on Exhibit B attached hereto.

WHEREAS, Grantor is the owner of the property described on Exhibit A attached hereto.

1. Grant of Easement(s). The undersigned, Grantor, 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, a permanent and perpetual easement ("Amended Easement") and right-of-way upon, over, under, through and across the real property described as:

See attached as Exhibit B.

2. Use and Purpose of Amended Easement(s). This Amended Easement shall be granted for the purpose of locating storm sewer(s), (hereinafter referred to as "Sewer(s)") and to permit and allow the City to enter at any time upon, over, under, through, and across into said Amended Easement(s) herein described 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 Sewer(s) therein or to connect and/or join Sewer(s) and appurtenances thereto) and to forever maintain Sewer(s) whenever necessary within the Amended Easement(s) granted herein. No structure, obstruction, or building of any kind whatsoever shall be placed upon property that is the subject of this Amended Easement without the express written consent of the City.

3. **Maintenance.** After the initial construction of the Sewer(s), and acceptance by the City, the City agrees, as part of the reconstruction, maintenance and patrolling of the Sewer(s), and to restore and replace the Amended Easement area(s) to substantially the same condition as prior to the time of entry or as agreed upon by the City and the Grantor(s), provided, however, the City shall not be required to replace landscaping, trees, shrubs, bushes, landscape elements, structures, or underground water systems nor shall the City be required to restore the Amended Easement area by reason of settlement, depression, or any unknown conditions which arise subsequent to the restoration and/or replacing of the Amended Easement area; any subsequent restoration by reason of settlement, depression or any unknown conditions shall be the sole responsibility of the Grantor(s).

4. **Hold Harmless.** The Grantor(s) agrees to indemnify and hold harmless the City, its elected officials, employees, officers, agents, representatives, contractors, and attorneys from and against any and all claims or demands for liability, loss, damage, costs, expenses, or attorney's fees of any kind for actions or omissions of the Grantor(s) arising out of or in connection with any undertaking arising out of or otherwise related to this Amended Easement.

5. **Jurisdiction and Venue.** The City and the Grantor(s) 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 Amended Easement and said parties shall consent to the jurisdiction of Dallas County, Iowa.

6. **Running of Benefits and Burdens.** The terms and conditions of this Amended Easement are binding upon the Grantor including, but not limited to, future owners, developers, lessees or occupants. 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.

7. **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.

8. **Attorney's Fees.** Either party may enforce this Agreement by appropriate action, and should they prevail in such litigation they shall recover as part of their costs the reasonable attorney's fees incurred in such litigation.

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(s)" shall refer to Rebecca L. Robel, f/k/a Rebecca L. Holmes, her heirs, assigns, successors-in-interest, or lessees, if any.

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 both parties.

11. **Paragraph Headings.** The paragraph headings in this Agreement are included solely for convenience and shall not effect or be used in connection with, the interpretation of this Agreement.

SIGNATURE PAGES TO FOLLOW

Dated this 9th day of April, 2021.

REBECCA L. ROBEL, F/K/A REBECCA L. HOLMES

Rebecca L. Robel

Rebecca L. Robel, f/k/a Rebecca L. Holmes

STATE OF IOWA)
) SS:
COUNTY OF DALLAS)

This instrument was acknowledged before me on April 9th, 2021, by Rebecca L. Robel, f/k/a Rebecca L. Holmes.

Janelle Valadez

Notary Public in and for the State of Iowa

JANELLE VALADEZ
Commission Number 819963
My Commission Expires
September 05, 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 Permanent Amended Easement was duly authorized and approved by the City Council of the City of West Des Moines by Roll Call No. _____, passed on ____ _____, _____, 2021 and that this certificate is made pursuant to the authority of said City Council.

Signed this ____day of _____, 2021.

CITY OF WEST DES MOINES, IOWA

BY:_____
Ryan T. Jacobson, City Clerk

EXHIBIT A
ROBEL PROPERTY
LEGAL DESCRIPTION

Parcel J as described in a Plat of Survey filed on July 27, 2007, in Book 2007, Page 11742, in the Office of the Dallas County Recorder, and further described as:

A part of Lot E of the Plat of Survey recorded in Book 4, Page 230, a part of Lot G and Lot H of the Plat of Survey recorded in Book 1998, Page 9092, all being in the Northeast ¼ of the Southeast ¼ of Section 10, Township 78 North, Range 26 West of the 5th P.M., City of West Des Moines, Dallas County, Iowa and more particularly described as follows:

Commencing at the Northwest Corner of said Northeast ¼ of the Southeast ¼; thence North 83°16'14" East along the North Line of said Northeast ¼ of the Southeast ¼, a distance of 598.44 Feet to the Point of Beginning; thence continuing North 83°16'14" East along said North Line, 321.09 Feet; thence South 00°47'12" West along the Northerly Line of said Lot G, 220.00 Feet; thence North 83°16'14" East continuing along said Northerly Line, 396.00 Feet to the Northeast Corner of said Lot G; thence South 00°47'12" West along the East Line of said Northeast ¼ of the Southeast ¼, a distance of 389.81 Feet to the Southeast Corner of said Lot G; thence South 83°13'43" West along the Southerly Line of said Lot G, 395.56 Feet; thence South 87°45'22" West along said Southerly Line, 217.26 Feet; thence South 06°48'12"East, 235.57 Feet to the Southerly Line of said Lot H; thence South 83°11'48" West along said Southerly Line, 104.45 Feet; thence North 66°09'45" West continuing along said Southerly Line, 102.83 Feet to the East Line of said Lot E; thence North 17°16'18" West, 254.93 Feet; thence North 05°18'50" West, 157.71 Feet; thence North 84°25'42" East, 162.32 Feet; thence North 00°44'06" East, 369.40 to the Point of Beginning and containing 9.71 acres (423,023 S.F.) and subject to any and all easements of record including 33.00 feet of roadway easements along the East Line thereof, said easement containing 0.30 acres (12,864 S.F.)

EXHIBIT B
STORM SEWER EASEMENT

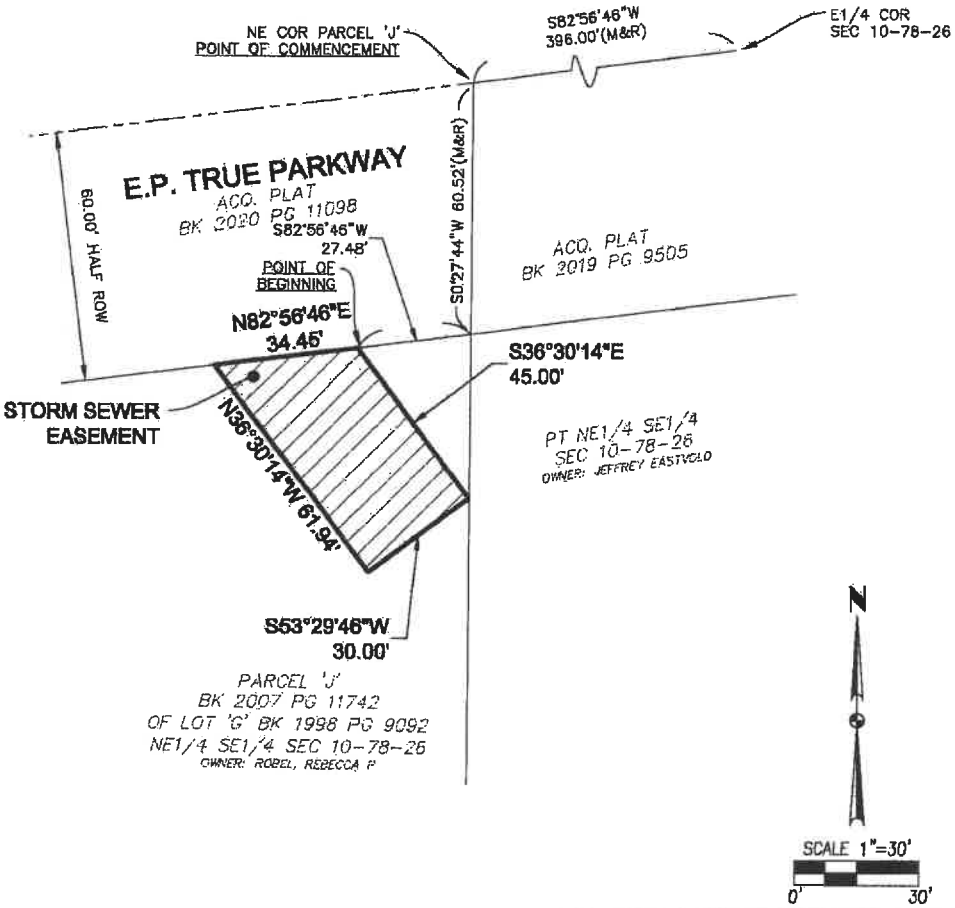
PREPARED BY & RETURN TO: CIVIL DESIGN ADVANTAGE, 3405 SE CROSSROADS DRIVE, SUITE G, GRIMES, IA. 50111, PH: 369-4400 FAX: 369-4410

EXHIBIT 'A' - EASEMENT PLAT

STORM SEWER EASEMENT DESCRIPTION:

A PART OF PARCEL 'J' AS SHOWN ON THE PLAT OF SURVEY RECORDED IN BOOK 2007, PAGE 11742, BEING A PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN IN THE CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID PARCEL 'J'; THENCE SOUTH 0°27'44" WEST ALONG THE EASTERLY LINE OF SAID PARCEL 'J', 60.52 FEET TO THE SOUTH LINE OF THE E.P. TRUE PARKWAY RIGHT OF WAY; THENCE SOUTH 82°56'46" WEST ALONG SAID SOUTH LINE, 27.48 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 36°30'14" EAST, 45.00 FEET; THENCE SOUTH 53°29'46" WEST, 30.00 FEET; THENCE NORTH 36°30'14" WEST, 61.94 FEET TO SAID SOUTH LINE; THENCE NORTH 82°56'46" EAST ALONG SAID SOUTH LINE, 34.45 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.04 ACRES (1,604 SQUARE FEET).



FILE: H:\2019\1909484\DWG\1909484- STORM SEWER EASEMENT2.DWG
FILE DATE: 11/6/20 DATE PLOTTED: 11/6/2020 3:52 PM
PLOTTED BY: JON ERDAHL

1/1
1909.484

PT PARCEL 'J'
PT NE1/4 SE1/4 SEC 10-78-26
EASEMENT PLAT
WEST DES MOINES, IOWA

CIVIL DESIGN ADVANTAGE

3405 SE CROSSROADS DRIVE, SUITE G
GRIMES, IOWA 50111
PH: (515) 369-4400 Fax: (515) 369-4410