



**Roll Call Number**

21-1959

**Agenda Item Number**

70

**Date** December 20, 2021

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR CONVEYANCE OF A  
PERMANENT EASEMENT FOR WATER MAIN RIGHT-OF-WAY IN  
PROPERTY LOCATED SOUTH OF AND ADJOINING OBSERVATORY ROAD  
TO DES MOINES WATER WORKS FOR \$1.00**

**WHEREAS**, on November 1, 2021, by Roll Call No. 16-1649, the City Council of the City of Des Moines voted to authorize the acquisition of the necessary property interests for the Observatory Road Reconstruction from Polk Boulevard West to Parking Lot Project which project includes the installation of a fire hydrant and related appurtenances; and

**WHEREAS**, in order to construct and maintain said fire hydrant, Des Moines Water Works has requested that the City convey a Permanent Easement for Water Main to the City of Des Moines for the use and benefit of the Board of Water Works Trustees of the City of Des Moines, Iowa in accordance with Iowa Code Section 364.7(3) for the public purposes of constructing, reconstructing, repairing, enlarging, maintaining, accessing, and operating a water main, together with appurtenances thereto, both above and below ground, under, over, through and across said Property; and

**WHEREAS**, the City will not be inconvenienced by the conveyance of a Permanent Easement for Water Main Right-of-Way in City property located south of and adjoining Observatory Road; and

**WHEREAS**, on December 6, 2021 by Roll Call No. 21-1817, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed conveyance be set down for hearing on December 20, 2021, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

**WHEREAS**, due notice of said proposal to convey the Permanent Easement for Water Main Right-of-Way was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

**WHEREAS**, in accordance with City Council direction, those interested in the proposed conveyance, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed conveyance of a Permanent Easement for Water Main Right-of-Way in property located south of and adjoining Observatory Road, Des Moines, Iowa, to the City of Des Moines for the use and benefit of the Board of Water Works Trustees of the City of Des Moines, Iowa for \$1.00, as described herein, are hereby overruled and the hearing is closed.



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2. The public would not be inconvenienced by reason of the conveyance of a Permanent Easement for Water Main Right-of-Way in property located south of and adjoining Observatory Road, Des Moines, Iowa, legally described as follows, to the City of Des Moines for the use and benefit of the Board of Water Works Trustees of the City of Des Moines, Iowa for \$1.00 for the public purposes of constructing, reconstructing, repairing, enlarging, and maintaining a water main, together with necessary appurtenances thereto, and said conveyance is hereby approved:

STRIP OF GROUND 20.00 FEET IN WIDTH OVER AND ACROSS THE NORTHWEST FRACTIONAL QUARTER, SECTION 1, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M. AND CENTERED ON THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING 3 FEET EAST OF THE CENTER LINE OF SAID SECTION 1 AND 35 FEET SOUTH OF THE NORTH LINE OF LOT 21 OF THE OFFICIAL REPLAT OF THE OFFICIAL PLAT OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 78, RANGE 25 WEST OF THE 5TH P.M., AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA; THENCE SOUTH 86°(DEGREES) 15'(MINUTES) 00"(SECONDS) WEST ALONG THE LOCATED CENTERLINE OF AN EXISTING FEEDER MAIN THROUGH PARK PROPERTY, 92.00 FEET; THENCE SOUTH 0°11'40" WEST ALONG A LINE BEING PARALLEL WITH SAID CENTERLINE OF SECTION 1, A DISTANCE OF 15.04 FEET TO A POINT ON THE SOUTH LINE OF AN EXISTING 30.00 FOOT WIDE FEEDER MAIN EASEMENT AS RECORDED IN THE RESOLUTION ADOPTED BY THE CITY OF DES MOINES, IOWA, UNDER ROLL CALL NUMBER 1955-3437 TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0°11'40" WEST, 36.54 FEET TO THE POINT OF TERMINUS. EASEMENT CONTAINING 731 SQUARE FEET.

3. The Mayor is authorized and directed to sign the Permanent Easement for Water Main Right-of-Way for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

4. The City Clerk is authorized and directed to forward the original of the Permanent Easement for Water Main Right-of-Way, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.

5. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Water Main Right-of-Way, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.

6. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Permanent Easement for Water Main Right-of-Way and copies of the other documents to the grantee.

7. There are no proceeds associated with this transaction.



**Roll Call Number**

21-1959

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70

**Date** December 20, 2021

Moved by Westergaard to adopt.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE         | ✓    |      |      |        |
| BOESEN         | ✓    |      |      |        |
| GATTO          | ✓    |      |      |        |
| GRAY           | ✓    |      |      |        |
| MANDELBAUM     | ✓    |      |      |        |
| VOSS           | ✓    |      |      |        |
| WESTERGAARD    | ✓    |      |      |        |
| TOTAL          | 7    |      |      |        |

MOTION CARRIED APPROVED

J. M. Franklin Cowrie Mayor

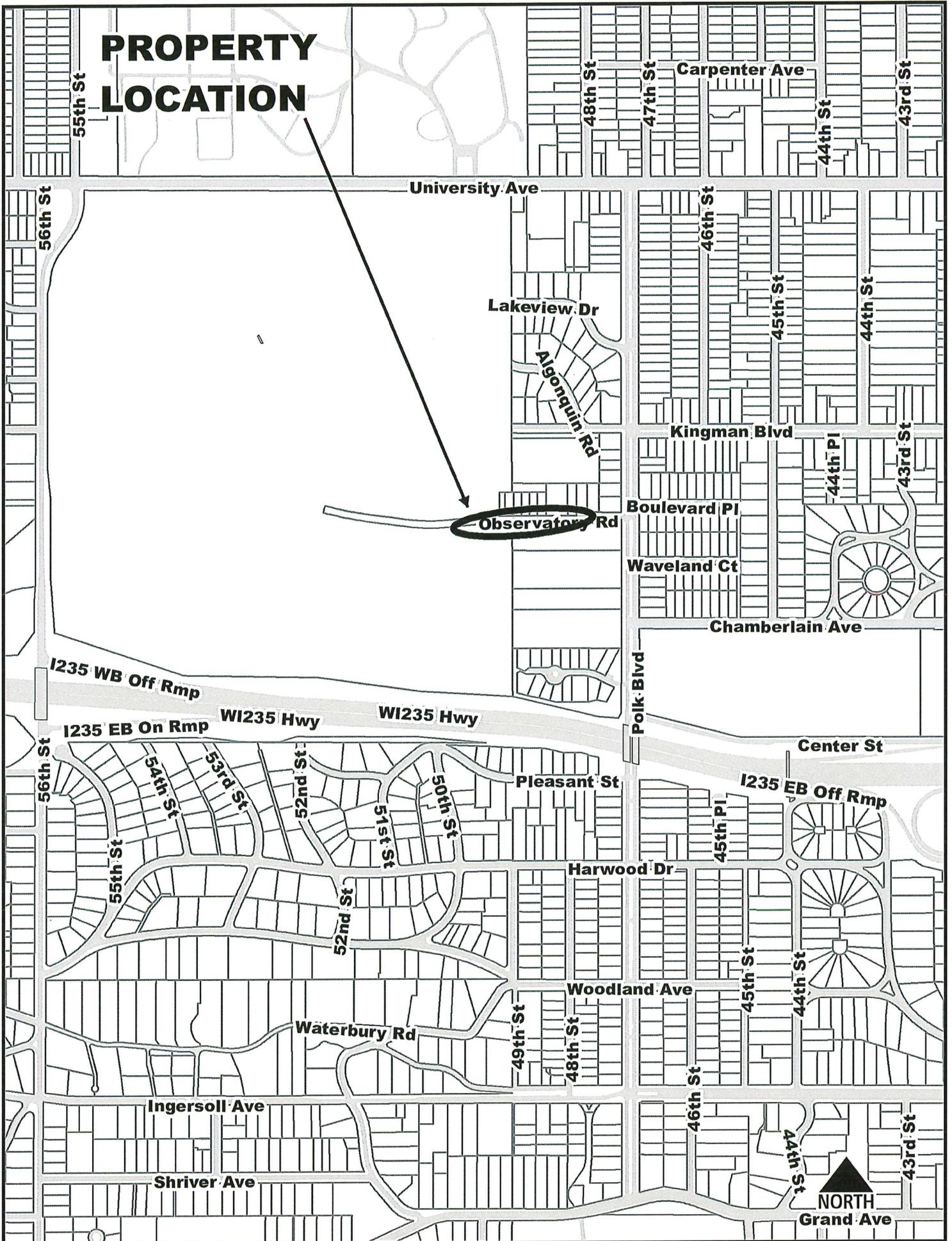
**CERTIFICATE**

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

P. Kay Cmelik City Clerk

# PROPERTY LOCATION



21-147  
P



**Roll Call Number**

21-1959

**Agenda Item Number**

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**Date** December 20, 2021

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**WHEREAS**, in order to construct and maintain said fire hydrant, Des Moines Water Works has requested that the City convey a Permanent Easement for Water Main to the City of Des Moines for the use and benefit of the Board of Water Works Trustees of the City of Des Moines, Iowa in accordance with Iowa Code Section 364.7(3) for the public purposes of constructing, reconstructing, repairing, enlarging, maintaining, accessing, and operating a water main, together with appurtenances thereto, both above and below ground, under, over, through and across said Property; and

**WHEREAS**, the City will not be inconvenienced by the conveyance of a Permanent Easement for Water Main Right-of-Way in City property located south of and adjoining Observatory Road; and

**WHEREAS**, on December 6, 2021 by Roll Call No. 21-1817, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed conveyance be set down for hearing on December 20, 2021, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

**WHEREAS**, due notice of said proposal to convey the Permanent Easement for Water Main Right-of-Way was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

**WHEREAS**, in accordance with City Council direction, those interested in the proposed conveyance, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed conveyance of a Permanent Easement for Water Main Right-of-Way in property located south of and adjoining Observatory Road, Des Moines, Iowa, to the City of Des Moines for the use and benefit of the Board of Water Works Trustees of the City of Des Moines, Iowa for \$1.00, as described herein, are hereby overruled and the hearing is closed.



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4. The City Clerk is authorized and directed to forward the original of the Permanent Easement for Water Main Right-of-Way, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.

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7. There are no proceeds associated with this transaction.



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APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS     | ABSENT |
|----------------|------|------|----------|--------|
| COWNIE         | ✓    |      |          |        |
| BOESEN         | ✓    |      |          |        |
| GATTO          | ✓    |      |          |        |
| GRAY           | ✓    |      |          |        |
| MANDELBAUM     | ✓    |      |          |        |
| VOSS           | ✓    |      |          |        |
| WESTERGAARD    | ✓    |      |          |        |
| TOTAL          | 7    |      |          |        |
| MOTION CARRIED |      |      | APPROVED |        |

J. M. Franklin Cownie Mayor

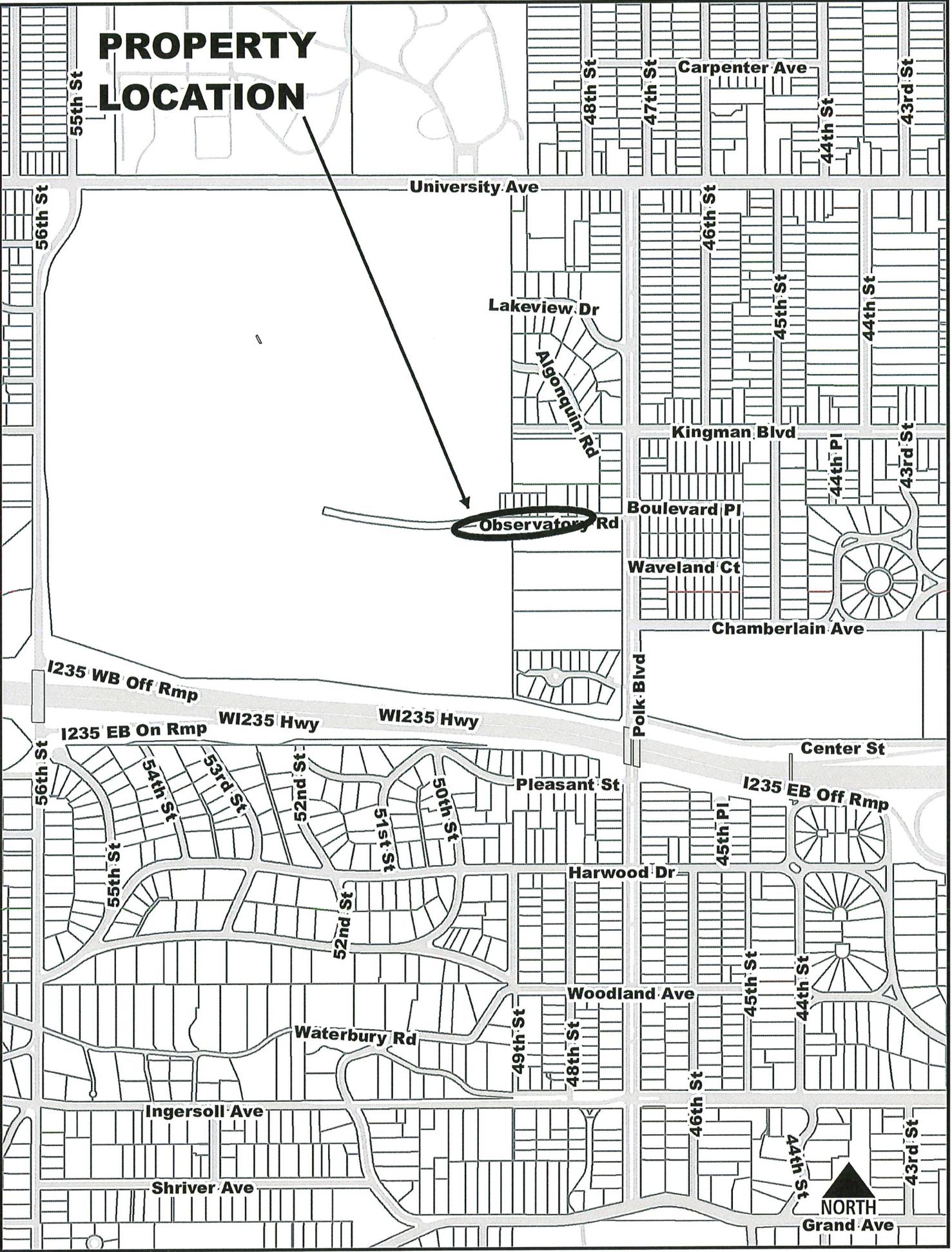
**CERTIFICATE**

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

P. Kay Cmelik City Clerk

# PROPERTY LOCATION



SETTING DATE OF HEARING

70 78

1. On conveyance of a Permanent Easement for Water Main right-of-way in property located south of and adjoining Observatory Road to Des Moines Water Works, (12-20-21).



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APPROVED AS TO FORM:

/s/ Lisa A. Wieland

Lisa A. Wieland, Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE         | ✓    |      |      |        |
| BOESEN         | ✓    |      |      |        |
| GATTO          | ✓    |      |      |        |
| GRAY           | ✓    |      |      |        |
| MANDELBAUM     | ✓    |      |      |        |
| VOSS           | ✓    |      |      |        |
| WESTERGAARD    | ✓    |      |      |        |
| TOTAL          | 7    |      |      |        |

MOTION CARRIED

APPROVED

J. M. Franklin Cownie Mayor

CERTIFICATE

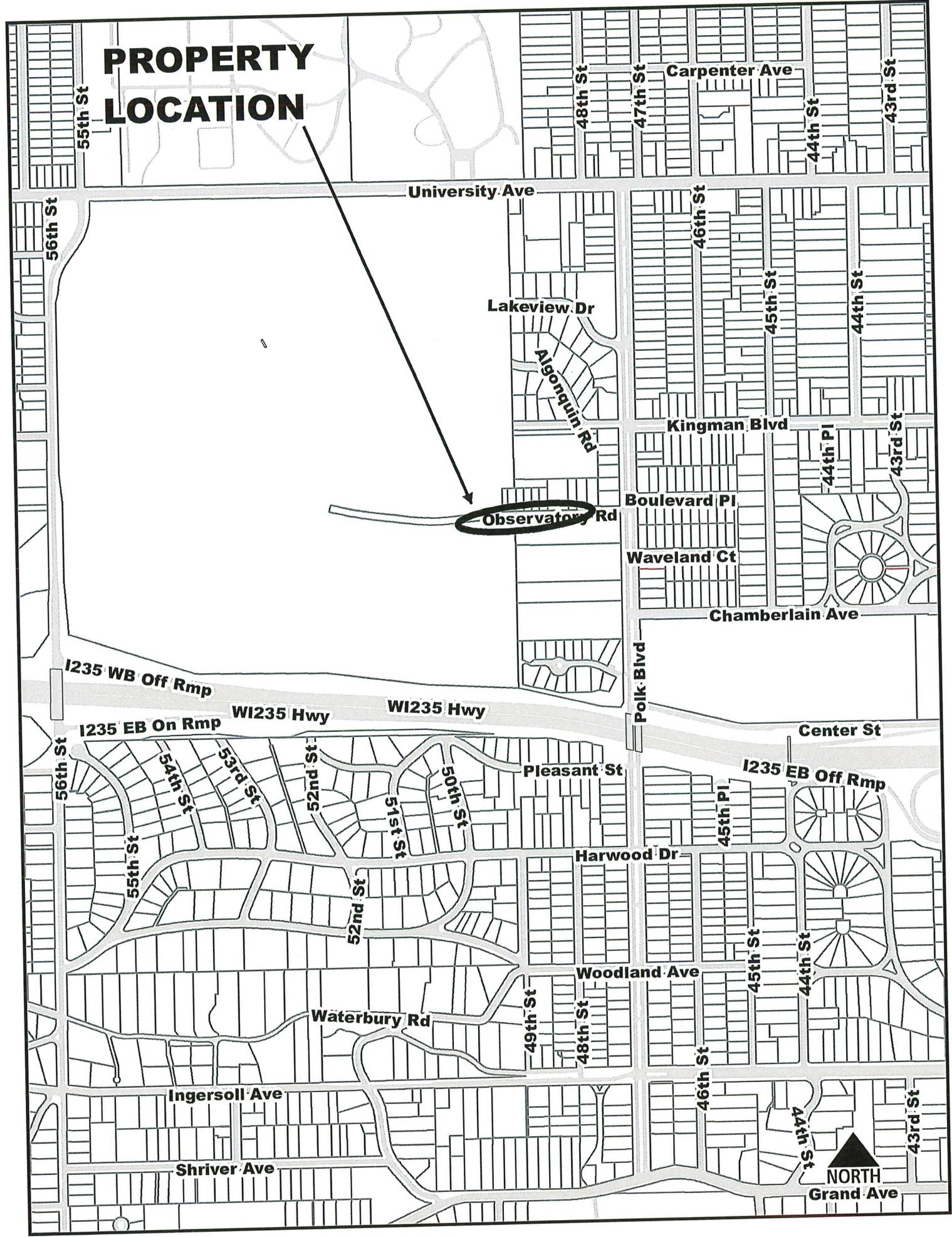
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IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

P. Kay Cmelik

City Clerk

# PROPERTY LOCATION



Observatory Rd



SETTING DATE OF HEARING

70 78

1. On conveyance of a Permanent Easement for Water Main right-of-way in property located south of and adjoining Observatory Road to Des Moines Water Works, (12-20-21).

PO # 11743

#10



DES MOINES, CITY OF  
400 ROBERT D RAY DR

DES MOINES IA 503091813

# of Affidavits 1

This is not an invoice

# AFFIDAVIT OF PUBLICATION

State of Wisconsin

County of Brown, ss.:

The undersigned, being first duly sworn on oath, states that The Des Moines Register and Tribune Company, a corporation duly organized and existing under the laws of the State of Iowa, with its principal place of business in Des Moines, Iowa, the publisher of

## THE DES MOINES REGISTER

newspaper of general circulation printed and published in the City of Des Moines, Polk County, Iowa, and that an advertisement, a printed copy of which is attached as Exhibit "A" and made part of this affidavit, was printed and published in The Des Moines Register in the editions dated:

| Ad No.     | Start Date: | Editions Dated: | Cost:   |
|------------|-------------|-----------------|---------|
| 0005032602 | 12/8/21     | 12/08/2021      | \$65.76 |

Copy of Advertisement  
Exhibit "A"

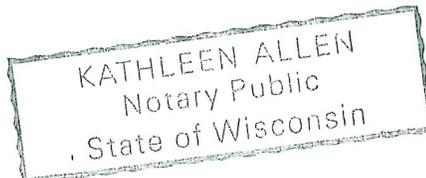
  
Staff member, Register Media

Subscribed and sworn to before me by said affiant this

8 day of December, 2021

  
Notary Public

1-7-25  
Commission expires



PO # 11743  
# 65.76



Prepared by: Joe Ekdahl, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, IA 50309-1891, (515) 283-4548  
Return to: Real Estate Division, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, IA 50309-1891

Project: Observatory Road Reconstruction West of Polk Boulevard to Parking Lot  
Location: 4908 University Avenue, Des Moines, IA 50311

Activity ID: 062018011  
Parcel No.: 002

## **PERMANENT EASEMENT FOR WATER MAIN RIGHT-OF-WAY**

KNOW ALL PERSONS BY THESE PRESENTS:

That City of Des Moines (hereinafter called "Grantor") in consideration of the sum of One Dollar (\$1.00), receipt of which is hereby acknowledged, does hereby convey unto the City of Des Moines, Iowa, for the use and benefit of the Board of Water Works Trustees of the City of Des Moines, Iowa, a Permanent Easement for Water Main Right-of-Way, under, over, through, and across the following described real estate:

STRIP OF GROUND 20.00 FEET IN WIDTH OVER AND ACROSS THE NORTHWEST FRACTIONAL QUARTER, SECTION 1, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5TH P.M. AND CENTERED ON THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING 3 FEET EAST OF THE CENTER LINE OF SAID SECTION 1 AND 35 FEET SOUTH OF THE NORTH LINE OF LOT 21 OF THE OFFICIAL REPLAT OF THE OFFICIAL PLAT OF THE NORTHEAST 1/4 OF SECTION 1, TOWNSHIP 78, RANGE 25 WEST OF THE 5TH P.M., AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA; THENCE SOUTH 86°(DEGREES) 15'(MINUTES) 00"(SECONDS) WEST ALONG THE LOCATED CENTERLINE OF AN EXISTING FEEDER MAIN THROUGH PARK PROPERTY, 92.00 FEET; THENCE SOUTH 0°11'40" WEST ALONG A LINE BEING PARALLEL WITH SAID CENTERLINE OF SECTION 1, A DISTANCE OF 15.04 FEET TO A POINT ON THE SOUTH LINE OF AN EXISTING 30.00 FOOT WIDE FEEDER MAIN EASEMENT AS RECORDED IN THE RESOLUTION ADOPTED BY THE CITY OF DES MOINES, IOWA, UNDER ROLL CALL NUMBER 1955-3437 TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 0°11'40" WEST, 36.54 FEET TO THE POINT OF TERMINUS.

EASEMENT CONTAINING 731 SQUARE FEET.

Which property is also described and depicted on the plat attached hereto as Exhibit "PE-2"

(hereinafter called "Easement Area") for the purpose of the Water Works reconstructing, repairing, enlarging, and maintaining a water main, together with necessary appurtenances thereto.

This easement shall be subject to the following terms and conditions:

1. **Permanent Erection of Structures and Paving Prohibited.** Grantors shall not erect any structure over or within the Permanent Easement area without obtaining the prior written consent of the Board of Water Works Trustees of the City of Des Moines, Iowa ("Des Moines Water Works"), except that trees, other plantings, and signage shall be allowed to be placed in the Easement Area by Grantor within seven (7) feet of the water main pipe.
2. **Change of Grade and Conflicting Easements Prohibited.** Grantors shall not change the grade, elevation, or contour of any part of the Permanent Easement Area without prior written consent of the Des Moines Water Works. Grantors shall not grant or convey easements to other individuals or entities, both above and below ground, under, over, through and across the Permanent Easement Area without obtaining the prior written consent of the Des Moines Water Works.
3. **Right of Access.** Des Moines Water Works shall have the right of access to the Permanent Easement Area and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Permanent Easement Area as herein described, including but not limited to the right to remove any unauthorized obstructions or structures placed or erected on the Permanent Easement Area. The specific centerline of the water line shall be marked on the Permanent Easement Area prior to construction, which centerline location shall be subject to the written approval of the Des Moines Park and Recreation Director. Water Works shall provide notice to the Des Moines Park and Recreation Department Director of any work within Grays Lake Park or removal of obstructions or structures or for major improvements to water facilities in easement area, excluding routine maintenance and emergency repairs. Des Moines Water Works shall take all reasonable efforts to protect trees and plantings within the Permanent Easement Area and within Grays Lake Park that could foreseeably be impacted by use of this Easement, including, without limitation, fencing around trees and no debris/dirt shall be placed near trees or on plantings.
4. **Indemnification.** Des Moines Water Works shall indemnify and hold harmless Grantor from any and all claims, causes of action, and damages including, but not limited to legal fees, arising in any way out of Des Moines Water Works exercise of rights granted it under the terms of this easement.

The Des Moines Water Works agrees that as a further consideration for the easements herein mentioned that it shall, upon the completion of any work by it of construction, repair, operation, inspection, or maintenance, cause the surface of the real estate to be restored to the condition that it was in immediately prior to such work to the extent reasonably possible.

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

Signed this 20<sup>th</sup> day of December, 2021.

ATTEST

CITY OF DES MOINES, IOWA

By: *P. Kay Cmelik*  
P. Kay Cmelik, City Clerk

By: *T. M. Franklin Cownie*  
T M Franklin Cownie, Mayor

APPROVED AS TO FORM

*Lisa A. Wieland*  
Lisa A. Wieland, Assistant City Attorney

STATE OF IOWA    )  
                          ) ss:  
COUNTY OF POLK )

On this 20<sup>th</sup> day of December 2021 before me, the undersigned, a Notary Public, personally appeared T. M. Franklin Cownie and P. Kay Cmelik, to me personally known, who, being by me duly sworn, did state that they are the Mayor and City Clerk, respectively, of the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Resolution and Roll Call **No. 21-1649** adopted by the City Council on the 1<sup>st</sup> day of November 2021, and that T. M. Franklin Cownie and P. Kay Cmelik acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

*Sandi L. Deery*  
Notary Public in the State of Iowa



BOARD OF WATER WORKS TRUSTEES OF THE CITY OF DES MOINES, IOWA

By: \_\_\_\_\_  
\_\_\_\_\_, Chairperson

By: \_\_\_\_\_  
\_\_\_\_\_, CEO and General Manager

STATE OF IOWA    )  
                                  ) ss.  
COUNTY OF POLK )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who being by me duly sworn did say that they are the Board Chairperson and the Chief Executive Officer and General Manager of the Board of Water Works, Trustees of the City of Des Moines, Iowa; that the instrument was signed on behalf of the entity by authority of Board as contained in the resolution adopted by the Board on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and that \_\_\_\_\_ and \_\_\_\_\_ acknowledged the execution of the instrument to be the voluntary act and deed of the Board of Water Works, Trustees of the City of Des Moines, Iowa, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in the State of Iowa