AMENDED AND RESTATED

COUNCIL BLUFFS CITY WATER WORKS
COUNCIL BLUFFS, IOWA
MAIN EXTENSION AGREEMENT

This AGREEMENT made and entered into this ____ day of _____, 2020, by and between the Board of Water Works Trustees of the City of Council Bluffs, Iowa, 2000 North 25th Street, Council Bluffs, Iowa ("Board") and the City of Council Bluffs, Iowa, 209 Pearl Street, Council Bluffs, Iowa 51503 ("Applicant" or "City").

RECITALS

This Agreement is made with reference to the following facts and circumstances.

A. Applicant is developing a subdivision within Pottawattamie County, Iowa, known as River's Edge Subdivision Replat 2. (the "Project").

B. The City of Council Bluffs, Iowa, ("City") before granting building permits for construction of improvements in the Project requires a water main be located so as to provide domestic service and fire protection.

C. The parties are in agreement that in order to install the required water main it will be necessary to install approximately 4,400 linear feet of 16-inch ductile iron pipe together with all necessary fire hydrants and necessary appurtenances (said fire hydrants and appurtenances being collectively the "Appurtenances") within the public rights-of-way in the proposed streets in the Project, said streets being currently identified as Avenue G, Avenue E, North 36th Street and North 40th Street and/or the portions of the Project constituting easements to be granted to the City for construction, operation, maintenance or removal of water mains and appurtenances to be constructed prior to the final platting of the Project (the "Easements"). The new main will extend from the Board's existing 16-inch water main located at the intersection of North 36th Street and Avenue E and connect to the existing 12-inch water main located at the intersection of Avenue B and 40th Street. All of said installations shall be in compliance with City requirements and Board approved engineering design and locations required to enable Applicant, its grantees or assigns to provide potable water to its subdivision and to obtain necessary building permits from the City.

AGREEMENT

In consideration of the foregoing recitals which are incorporated into and are made a part of this Agreement, and in further consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree, subject to the terms and conditions hereinafter set forth, as follows:

1. The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein):

   a. "OPC" shall mean the Board's opinion of the probable Cost of The Work.

   b. "Administrative Fee" shall mean that amount, computed under the Board's current Administrative Fee Schedule, required to reimburse the Board for its costs for development of the water main extension(s) contemplated in this Agreement, including, without limitation, distribution system modeling in order to determine appropriate water main size and routing, preliminary opinion of probable cost, field surveys, final plans, specifications, IDNR construction permit, final opinion of probable cost, construction staking, geotechnical services, construction observation services, lab tests, legal fees and contract administration.

   c. "Initial Administrative Fee" shall mean the Administrative Fee based upon the OPC.

   d. "Final Administrative Fee" shall mean the Administrative Fee based upon the actual Cost of The Work; provided, however, that the Final Administrative Fee shall not be less than 90% of the Initial Administrative Fee.

   e. "Cost of The Work" shall mean all expenses required to be paid in order to complete The Work including, but not limited to, all costs and expenses for labor, materials, machines and equipment and contractors' charges. Notwithstanding the foregoing, the Cost of The Work shall not include any expenses paid by Applicant through the Administrative Fee.

   f. "The Work" shall mean the construction of a 16-inch ductile iron pipe water main with all Appurtenances constructed within the public rights-of-way of the Project and/or the Easements in order to provide domestic water service and fire protection

in and to the Project.

2. To enable Applicant to develop the proposed Project, the Board, in consideration of the agreement of Applicant to the terms and conditions hereinafter provided, agrees that at such time as Applicant:

   a. completes the grading and paving of the proposed public rights-of-way located in the Project to be dedicated to the City/County and/or the grading of the Easements free of all encumbrances of any kind or nature; and

   b. completes construction of the sanitary and storm sewer system and certifies the soil density testing results of this construction;

   the Board shall, commensurate with existing weather conditions and prudent construction practices during the 2020 and 2021 construction season, construct, install and operate The Work.

3. Applicant agrees:

   a. To pay to the Board, concurrent with the execution of this Agreement, the Initial Administrative Fee in the amount of One Hundred Forty-Four Thousand Two Hundred Sixty-Seven and 00/100 Dollars ($144,267.00).

   b. To pay to the Board the difference between the Initial Administrative Fee and the Final Administrative Fee in the event the Final Administrative Fee exceeds the Initial Administrative Fee before the Board will furnish any water service to any water customers located in the Project.

   c. To pay to the Board any Duplicative Costs (defined in §4.c below).

   d. To pay to the Board all of the Cost of The Work other than the Board's Portion of the Cost of The Work, if any.

   e. To cause to be executed, acknowledged and delivered to the Board an Easement Agreement in form attached hereto as Exhibit 1 in the event easements are required.

f. To deposit with the Board the sum of Two Million Ninety-Five Thousand Three Hundred Forty-Seven and 00/100 Dollars ($2,095,347.00) (the "Initial Deposit") at least ten (10) full working days prior to advertisement for construction bids or at least thirty (30) full working days prior to the commencement of construction by the Board, whichever is applicable. The Initial Deposit is the sum representing the March 4, 2020 letting, low bid price for the Applicant's total Cost of The Work. Nonetheless, it is specifically understood by Applicant that the actual total Cost of The Work may be a sum greater or lesser than said sum.

g. If, prior to the Board's commencement of construction of The Work, the Board discovers that any of the amounts used by the Board in establishing its opinion as to the total Cost of The Work are less than the amounts then known by the Board to be required to pay for the Cost of The Work, Applicant, prior to the letting of the construction contract for The Work by the Board or commencement of construction of The Work by the Board, whichever is applicable, shall deposit with the Board an additional sum equivalent to the difference between the Initial Deposit and the Applicant's then apparent share of the Cost of The Work.

h. After completion and acceptance of The Work by the Board, and before any water service connections may be made by any person or entity to The Work, Applicant shall pay to the Board all additional sums, if any, required in order to fully reimburse the Board for Applicant's share of the Cost of The Work.

4. IT IS MUTUALLY AGREED THAT:

a. The funds to be paid/deposited by Applicant pursuant to the terms of this Agreement shall be applied as follows:

(1) The Initial Administrative Fee shall be placed in the Board's General Fund for the payment of the expenses covered by the Administrative Fee.

(2) The Initial Deposit shall be placed in a separate FDIC Insured Money Market Account or Business Checking Account (either being the "Account") in the name of "The Council Bluffs Water Works" for the Board to draw interest until expended for the Cost of The Work.

(3) In lieu of the Initial Deposit, the Applicant may deliver to the Board by the deadline for the Initial Deposit an Irrevocable Letter of Credit drawn on a Council Bluffs, Iowa, bank in favor of the Board in the form prescribed by the Board (the "ILOC") for drawings up to the amount of the Initial Deposit.

(4) If, after full satisfaction of all Cost of The Work payable by Applicant under this Agreement, any funds remain in the Account or available under the ILOC, the balance of said funds shall be paid or credited to Applicant. If the funds either then on deposit in the Account or then available under the ILOC are insufficient to satisfy all Cost of The Work payable by Applicant, Applicant shall pay to the Board the balance due the Board for Applicant's share of the Cost of The Work before the Board will furnish any water service to any water customers located in the Project.

b. If the Initial Administrative Fee is greater than the Final Administrative Fee, the difference shall be paid or credited to Applicant by the Board.

c. No extra work shall be added to or deleted from The Work after the letting of the contact by the Board or commencement of construction of The Work by the Board, whichever is applicable, without Applicant's prior written consent, which consent shall not be unreasonably withheld.

If Applicant so consents to such extra work and the funds then on deposit with the Board are insufficient to pay Applicant's share of the cost of the extra work, Applicant will deposit with the Board such additional funds required to pay such cost for deposit and investment as part of the Initial Deposit before such extra work shall be performed. Applicant's written consent for such extra work shall not be unreasonably withheld. If unreasonably withheld, Applicant shall be liable to the Board for all expenses incurred by the Board in enforcing this Agreement, including reasonable attorney fees and expenses, and for all special and general damages and any punitive damages that may be awarded the Board against Applicant by a court or jury for Applicant's breach of this Agreement.

d. The Board is using surveys, plans, drawings and other design documents furnished

to the Board by Applicant for the routing, location and design of the water main extension. The Board is wholly reliant upon the Applicant as to the accuracy and completeness of the information provided by Applicant and its engineer and surveyor and assumes no liability, stated or implied, for any errors or omissions resulting from the use of the documents provided. While reasonable care and diligence will be exercised in determining the location of buried utilities, soil conditions and depth of water table prior to letting of construction contracts, unforeseen conditions may arise that require a contract change order for extra work and a cost increase. Notwithstanding any provision in this Agreement to the contrary, it is agreed that the Project contractor shall be responsible for the construction staking required for the Project in accordance with the plans and specifications.

In the event any of the information so provided by the Applicant proves to be incorrect and results in the Board duplicating any of its responsibilities under this Agreement, the cost of said duplication (the "Duplicative Cost") shall be paid by Applicant to the Board before the Board will furnish any water service to any water customers located in the Project.

e. The Board reserves the right to reject any or all bids the Board may receive for The Work for any reason considered by the Board to be against the best interest of the City.

f. The Work and all additions thereto and replacements thereof, as and when installed, shall be and shall remain the property of and under the exclusive control and jurisdiction of the Board and its assigns and the Board shall have the right to extend said main beyond or laterally without further consent of Applicant and without becoming liable to Applicant for any refunds.

g. Applicant, as well as any others desiring water service to be furnished by the Board from and through The Work, shall make application to the Board for the necessary tap permit and shall pay the then existing tap fee and other charges assessed by the Board for providing such water service, none of which shall be refundable to Applicant. Thereafter, the Board agrees to furnish water service to such customers so long as they timely pay for such service at the rates and

charges applicable thereto and are in full compliance with all other rules and regulations of the Board pertaining to the providing of water service to its customers.

5. Applicant, its successors in interest and assigns shall be jointly and severally liable for all payments required to be paid to the Board and performance of all obligations of Applicant under the terms and conditions of this Agreement.

6. This Agreement shall not be sold, transferred or assigned by Applicant without written consent of the Board, which consent shall not be unreasonably withheld. Except as above provided, this Agreement shall be binding on and inure to the benefit of the parties, their successors in interest and assigns, the same as if they were original parties signing this Agreement.

7. This Agreement shall become effective only when duly signed and acknowledged by all parties of this Agreement.

8. All exhibits referred to in this Agreement are attached hereto and are incorporated herein by reference as if fully set forth herein.

9. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Iowa applicable to contracts made and performed in Iowa.

10. Words and phrases herein, including acknowledgements endorsed hereon shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

11. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof.

12. This Agreement and any amendments, waivers, consents, supplements may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed and delivered shall be deemed an

original, but all of which counterparts together shall constitute but one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopy or similar electronic medium shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopy or similar electronic medium shall also deliver a manually executed counterpart of this Agreement; provided that the failure to deliver a manually executed counterpart shall not affect the validity, enforceability or binding effect of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties have signed this Agreement and affixed any seals required by their respective entities on the dates set opposite their respective signatures.

Board Of Water Works Trustees Of The City Of Council Bluffs, Iowa

Date Signed:_____ By:_____
Martin L. Brooks, Chairperson

Date Signed:_____ By:_____
Douglas P. Drummey, Secretary

City of Council Bluffs, Iowa

Date Signed:_____ By:_____
Matthew J. Walsh, Mayor

Date Signed:_____ By:_____
Jodi Quakenbush, City Clerk

STATE OF IOWA)
) ss
COUNTY OF POTTAWATTAMIE)

On this ____ day of _____, 2020, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Martin L. Brooks and Douglas P. Drummey to me personally known, and who, being by me duly sworn, did say that they are the Chairperson and Secretary respectively, of the Board of Water Works Trustees of the City of Council Bluffs, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed and sealed on behalf of the Board of Water Works Trustees of the City of Council Bluffs, Iowa, by authority of said Board, as contained in Resolution Number 09-25-16 adopted and passed by said Board on the 20th day of September, 2016, and that Caitlin A. Beresford and Douglas P. Drummey acknowledge the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of said Board, by it voluntarily executed.

_____
Notary Public in and for said State

STATE OF IOWA)
) ss
COUNTY OF POTTAWATTAMIE)

On this _____ day of _____, 2020, before me, a Notary Public in and for said county, personally appeared Matthew J. Walsh and Jodi Quakenbush, to me personally known, who being by me duly sworn did say that they are the Mayor and City Clerk respectively of the City of Council Bluffs, Iowa; that the instrument was signed and sealed on behalf of the City of Council Bluffs by authority of the City Council of the City of Council Bluffs, as contained in Resolution Number_____ adopted and passed by the City Council on the _____ day of _____, 2020, and that Matthew J. Walsh and Jodi Quakenbush acknowledged the execution of said instrument to be the voluntary act and deed of said City Council, by it voluntarily executed.

_____
Notary Public in and for said State

(Seal)

Exhibit 1

EASEMENT AGREEMENT

Recorder's Cover Sheet

Preparer Information: (Name, address and phone number)

Council Bluffs Water Works, P. O. Box 309, Council Bluffs, IA 51502, Phone 712.328.1006
Douglas P. Drummey, General Manager. Reviewed and approved by legal counsel for the Board of Water Works Trustees of the City of Council Bluffs, Iowa.

Taxpayer Information: (Name and complete address)

Council Bluffs Water Works, P. O. Box 309, Council Bluffs, IA 51502, Phone 712.328.1006
Douglas P. Drummey, General Manager.

Return Document To: (Name and complete address)

Council Bluffs Water Works, P. O. Box 309, Council Bluffs, IA 51502, Phone 712.328.1006
Douglas P. Drummey, General Manager.

Grantors:

_____
_____
_____

Grantees:

City of Council Bluffs, Iowa, for the use and benefit of The Board of Water Works Trustees of the City of Council Bluffs, Iowa

Legal Description: See next page.

Document or instrument number of previously recorded documents if applicable:

EASEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT _____, a(n) _____(State) _____(corporation/limited liability company), for good and sufficient valuable consideration, receipt of which is hereby acknowledged, does hereby grant and convey unto the City Of Council Bluffs, Iowa, for the use and benefit of The Board of Water Works Trustees of the City of Council Bluffs, Iowa, (the “City Water Works”) a permanent non-exclusive easement at least fifty (50) feet in width, over, across and through the following described real estate situated in the City of Council Bluffs, Pottawattamie County, Iowa, to-wit:

See Exhibit "A"

including the perpetual right to enter upon said real estate, at any time that it may see fit, and construct, inspect, maintain, repair, replace and operate or remove underground pipe lines and/or mains for the purpose of conveying water over, across, through and under said real estate, together with the right to excavate and refill ditches and/or trenches for the location of said pipe lines and/or mains, and the further right to remove trees, bushes, undergrowth, and other obstructions interfering with the location, construction and maintenance of said pipe lines and/or mains.

The Easement herein granted shall be a servient estate which shall run with the land and be binding on the successors-in-interest to said tracts of land.

The said City Water Works shall properly and promptly refill any excavations made on said premises after the purpose of said excavation has been fulfilled and shall leave the premises in the same general condition as it was in before the said City Water Works went upon the same; further, that if any fences or existing structures are moved for the purpose of laying, maintaining, operating or replacing said main, such fences and structures shall be promptly replaced by said City Water Works upon completion of the work requiring such removal.

In further consideration for the good and sufficient valuable consideration received by the undersigned, the undersigned agrees that it will not place any permanent structures upon or over said easement without first obtaining the written consent of said City Water Works; further, the

undersigned covenants with Grantee that it is lawfully seized and possessed of the real estate above described; that it has good and lawful right to convey it, or any part thereof, that it is free from all encumbrances, and that it will forever warrant and defend the title thereto against the lawful claims of all persons whomsoever.

As a part of the consideration of this grant, the undersigned does hereby release any and all claims for damages from whatsoever cause incidental to the exercise of the rights herein granted.

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

All provisions of this Agreement shall inure to the benefit of and be binding upon and applicable to the successors, personal representatives, heirs, and assigns of the parties hereto the same as if they were in all instances named herein.

_____(name)

Dated:_____ By:_____
_____(name and title)

_____(address)
_____(city, state and ZIP)
_____(telephone)

Individual

STATE OF _____)
) ss
COUNTY OF _____)

This instrument was acknowledged before me on (date) by (name).

_____
Notary Public in and for said State

(Seal)

All Other Entities

STATE OF _____)
) ss
COUNTY OF _____)

This instrument was acknowledged before me on (date) by (name) as (type of authority, e.g. officer, manager, member) of (name of party on behalf of whom instrument was executed, e.g. name of corporation or limited liability company).

_____
Notary Public in and for said State

(Seal)