



DES MOINES WATER WORKS
Board of Water Works Trustees

Agenda Item No. III C
Meeting Date: January 22, 2019
Chairperson's Signature Yes No

AGENDA ITEM FORM

SUBJECT: Amendment to Easement for DMWW Ingress/Egress on Charles Colby and Ruth Colby Family Trust for Joint Maffitt Lake Booster Station

SUMMARY:

- Access to DMWW property at Maffitt Lake where the new Joint Maffitt Lake Booster Station is located will be partially through an existing driveway on the Charles Colby and Ruth Colby Family Trust property.
- DMWW's staff and legal counsel have been working with legal counsel representing the Charles Colby and Ruth Colby Family Trust to develop an easement agreement for access to DMWW property.
- Agreement has been reached on all terms and conditions of the easement.
- Staff recommends that the Board authorize the CEO and General Manager to execute the document to obtain an easement for access from the Charles Colby and Ruth Colby Family Trust.

FISCAL IMPACT:

No fiscal impact associated with this item.

RECOMMENDED ACTION:

Authorize the CEO and General Manager to execute the document that obtains an easement access to DMWW property through the Charles Colby and Ruth Colby Family Trust.

BOARD REQUIRED ACTION:

Motion to authorize the CEO and General Manager to execute the document that obtains an easement access to DMWW property through the Charles Colby and Ruth Colby Family Trust.

<i>Nathan W Casey</i> Nathan W. Casey Infrastructure Planning Manager	<i>[Signature]</i> Michael J. McCurnin, P.E. Engineering Services Manager	<i>[Signature]</i> William G. Stowe CEO and General Manager
1/15/19 (date)	1/15/2019 (date)	1-16-19 (date)

Attachments: Easement Document

AMENDMENT TO RESERVATION OF PERMANENT EASEMENT
Recorder's Cover Sheet

Preparer Information: Nathan J. Barber, Belin McCormick, P.C., 666 Walnut Street, Suite 2000
Des Moines, IA 50309-3989; Phone 515-283-4676

Taxpayer Information: N/A

Return Document To: Preparer

Legal Description: See Exhibit A, Page 5

Grantor and Grantee: See Page 2

Document or instrument number of previously recorded documents:

1. Reservation of Permanent Easement filed July 25, 2002 in Book 2002, Page 8481;
2. Amendment to Reservation of Permanent Easement filed March 26, 2018 in Book 2018, Page 2112.

AMENDMENT TO RESERVATION OF PERMANENT EASEMENT

The Board of Water Works Trustees of the City of Des Moines, Iowa (“Board”), as benefited party, and Charles I. Colby and Ruth Colby Family Trust, an Iowa trust (“Colby”), as owner of the property burdened by the Easement legally described at **Exhibit A** hereto (the “Burdened Parcel”), hereby make the following amendment to the Reservation of Permanent Easement filed July 25, 2002 in Book 2002, Page 8481 of the Warren County, Iowa records, as amended by Amendment to Reservation of Permanent Easement filed March 26, 2018 in Book 2018, Page 2112 (hereinafter called the “Original Easement”), effective this ___ day of _____, 2018.

The following Section 8 is added at the end of the Original Easement:

1. **Ingress/Egress Easement.** Board and its “Additional Permittees” as defined herein shall have the right of access to the area identified on **Exhibit B** hereto (the “Ingress/Egress Easement Area”) for the purpose of accessing its property adjoining the Burdened Parcel (the “Adjoining Land”), and have all rights of ingress and egress reasonably necessary for the use and enjoyment of the Ingress/Egress Easement Area. Board shall not improve the Ingress/Egress Easement Area without the written consent of Colby. Each party shall indemnify and hold the other party harmless from and against any loss, expense or claim asserted by third parties for damage to third party tangible property, or for bodily injury, or both, related to this Ingress/Egress Easement, to the extent such damage or injury is attributable to the negligence or willful misconduct of the indemnitor; provided, indemnitee gives the indemnitor prompt notice of any such claim and all necessary information and assistance so that indemnitor, at its option, may defend or settle such claim, and indemnitee does not take any adverse position in connection with such claim. In the event that any such damage or injury is caused by the joint or concurrent negligence of both parties, the loss, expense or claim shall be borne by each party in proportion to its negligence. The parties understand and agree that Board has established and may in the future establish jointly used or owned water facilities to which this Ingress/Egress Easement applies and agree that the Board in the exercise of its discretion may authorize additional parties to utilize this Ingress/Egress Easement in connection with such facilities (the “Additional Permittees”).
2. **Relocation of Ingress/Egress Easement.** In the event the City of West Des Moines or other government authority requires the relocation of the Ingress/Egress Easement Area, in connection submittal of a site plan, subdivision plan, or other development submittal by either party, Board and Colby agree, upon written request of either party, to relocate the Ingress/Egress Easement Area to a point further west on Adams Street and thereafter to negotiate in good faith to establish an ingress/egress easement and frontage road easement for reasonable access to the Burdened Parcel by Colby or its successors in interest and to preserve Board’s ingress/egress rights. If the relocation is not triggered by Board’s development application, then Colby shall be responsible for the costs of

surveying and creating a legal description for the relocated access drive and related easement descriptions.

3. **Existing Easement Rights.** The easement rights granted herein are in addition to the rights granted under the Original Easement, all of which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

Two Signature Pages Follow

**CHARLES I. COLBY AND RUTH
COLBY FAMILY TRUST**

By: *Michael P. Colby*
Name: Michael P. Colby Trustee

By: *Thomas E. Colby*
Name: Thomas E. Colby Trustee

By: *Cary C. Claiborne*
Name: Cary C. Claiborne Trustee

STATE OF IOWA, COUNTY OF POLK) ss:

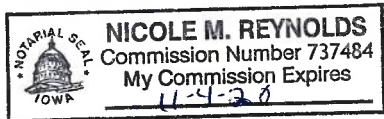
This instrument was acknowledged before me on November 13, 2018 by Michael P. Colby as Trustee of Charles I. Colby and Ruth Colby Family Trust.



Nicole M. Reynolds
Notary Public

STATE OF IOWA, COUNTY OF POLK) ss:

This instrument was acknowledged before me on November 13, 2018 by Thomas E. Colby as Trustee of Charles I. Colby and Ruth Colby Family Trust.



Nicole M. Reynolds
Notary Public

STATE OF IOWA, COUNTY OF POLK) ss:

This instrument was acknowledged before me on November 13, 2018 by Cary C. Claiborne as Trustee of Charles I. Colby and Ruth Colby Family Trust.



Nicole M. Reynolds
Notary Public

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

By: _____
William G. Stowe, CEO & General Manager

STATE OF IOWA)

) ss:

COUNTY OF POLK)

This instrument was acknowledged before me on _____, 2018 by William G. Stowe as CEO & General Manager of Board of Water Works Trustees of the City of Des Moines, Iowa.

Notary Public

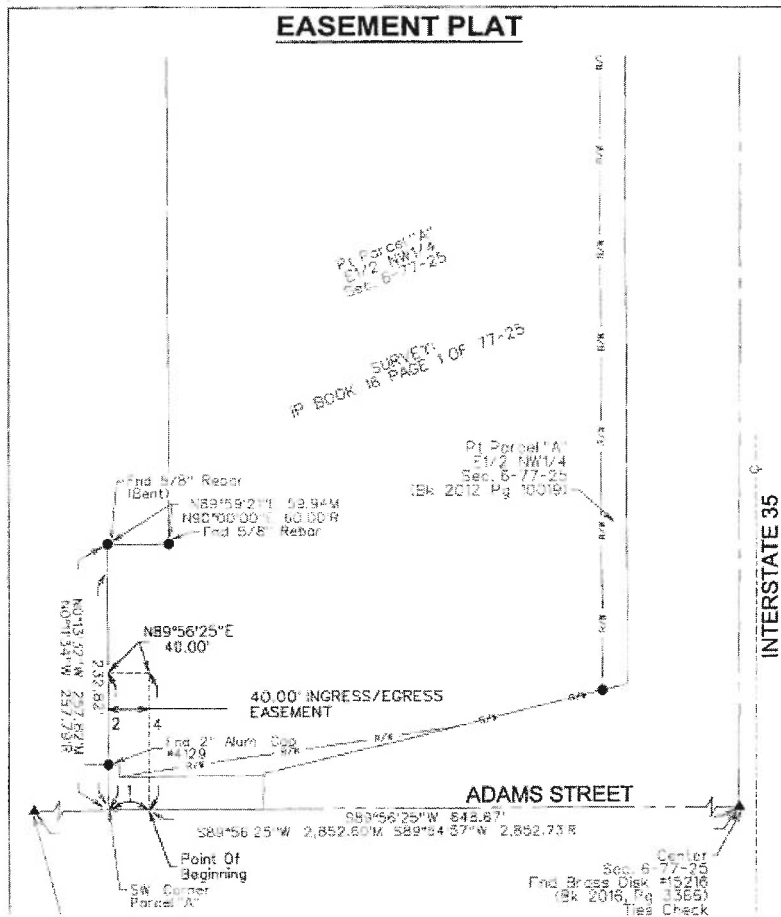
Exhibit A – The Burdened Parcel

THE FEE SIMPLE TITLE GRANTED IS TO LAND DESCRIBED AS FOLLOWS:

A parcel of land located in Auditor's Parcel "A" as described in Deed Book 2002, Page 8794 in the Office of the Warren County Recorder, located in the E½ NW¼ of Section 6, Township 77 North, Range 25 West of the 5th P. M., Warren County, Iowa, as shown on Acquisition Plat Exhibit "A" (1 of 2 and 2 of 2) attached hereto and by this reference made a part hereof, more particularly described as follows:

Commencing at the SE Corner of the E½ NW¼ of said Section 6; thence N89°54'57"W, a distance of 540.00 feet along the southerly line of the NW¼ of said Section 6 to the easterly line of said Auditor's Parcel "A"; thence N00°17'19"E, a distance of 35.00 feet along said easterly line to the southerly line of said Auditor's Parcel "A"; thence N76°27'19"E, a distance of 335.02 feet along said southerly line to the Point of Beginning; thence N00°06'13"W, a distance of 1144.19 feet; thence N00°48'56"W, a distance of 909.00 feet; thence N09°17'28"E, a distance of 432.83 feet to the northerly line of said NW¼; thence S89°31'51"E, a distance of 7.69 feet along the northerly line of said NW¼ to a point on the presently established westerly right of way line of Primary Road No. Interstate 35, said point being the beginning of a non-tangent curve, concave easterly having a radius of 3074.58 feet, a central angle of 09°29'12", a chord distance of 508.49 feet, bearing S04°38'23"W; thence southerly 509.07 feet along said westerly right of way line and curve; thence S00°06'13"E, a distance of 1967.35 feet along

Exhibit B



(3126851.1)