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MB

MELISSA BAHNSEN, RECORDER
CEDAR COUNTY IOWA

RESOLUTION 2023-106

(RECORDING COVERSHEET)

PREPARED BY LESLIE BRICK, CLERK, CITY OF WEST BRANCH, PO BOX 218, WEST BRANCH, IA 52358
(319) 643-5888

RETURN TO: LESLIE BRICK, CITY OF WEST BRANCH, PO BOX 218, WEST BRANCH, IA 52358

Grantor/Grantee: See Page 2

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RESOLUTION 2023-106

**RESOLUTION APPROVING THAT CERTAIN EASEMENT AGREEMENT
WITH THE KATHARINE GASKILL IN CONNECTION WITH THE WAPSI
CREEK WIDENING PROJECT.**

WHEREAS, in order to construct the Wapsi Creek Widening Project, the City was required to obtain a permanent and temporary easement from Katharine K. Gaskill for the Project; and

WHEREAS, the city subsequently obtained said easement through condemnation; and

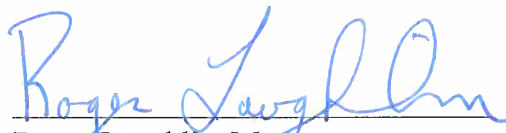
WHEREAS, Gaskill appealed said ruling to the Iowa District Court; and

WHEREAS, the parties have now negotiated a revised easement agreement to settle said lawsuit; and

WHEREAS, it is now necessary to approve said easement agreement.

NOW, THEREFORE, It Is Resolved by the Council of the City of West Branch, Iowa, that the aforementioned easement agreement with Katharine K. Gaskill is hereby accepted and approved. Further, the City Clerk is hereby directed to record a copy of said easement agreement in the Office of the Cedar County Recorder's Office.

Passed and approved this 2nd day of October, 2023.



Roger Laughlin, Mayor

ATTEST:



Leslie Brick, City Clerk

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Prepared by: Kevin D. Olson, West Branch City Attorney, 1400 5th Street, Coralville, IA 52241, (319)351-2277.
Return to: City Clerk, City of West Branch, Iowa, 110 Poplar, West Branch, Iowa 52358

**PERPETUAL DRAINAGE EASEMENT
AND
TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

THIS AGREEMENT, made and entered into by and between **Katharine K. Gaskill**, a single person, hereinafter collectively referred to as "GRANTOR," and the **City of West Branch, Iowa**, a municipal corporation, 110 Poplar, West Branch, Iowa 52358, hereinafter referred to as "the CITY."

FOR THE PARTIES' JOINT AND MUTUAL CONSIDERATION IT IS HEREBY AGREED AS FOLLOWS:

1. THAT UNDERSIGNED GRANTOR states that GRANTOR is the lawful possessor of certain real estate described in Exhibit "A" attached to this Agreement and by this made a part hereof, and that said possession is not subject to any other third-party possessory or proprietary interests except: Cliff Bowie, tenant.

2. That GRANTOR hereby grants and conveys to the CITY an exclusive **perpetual easement** for the purposes of constructing, operating, maintaining, using and reconstructing a creek/waterway channel and drainage improvements, including, but not limited to grading and shaping and plantings and other associated improvements to reduce flooding and enhance water quality (the "Installation") in the easement area described in Exhibit "A" hereto in connection with that certain improvement project heretofore referred to as the "City of West Branch Wapsi Creek Widening Project ("the Project")." The exclusivity of the foregoing easement shall not be deemed to preclude other subsurface utility easements so long as the installation or presence of such utilities do not interfere with the right granted or GRANTOR'S remaining use of the Property.

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3. That GRANTOR hereby covenants that GRANTOR is lawfully seized and possessed, and is the owner of real estate described above, and that GRANTOR has a good and lawful right to convey this easement subject to the tenancy of Cliff Bowie. The City agrees to indemnify and hold GRANTOR harmless from any claims Cliff Bowie may have against Grantor created by the Project.
4. That the CITY shall have the right to make excavations and to grade as it may find reasonably necessary for the construction, operation, repair, maintenance and reconstruction of the installation in the easement area; provided, however, the CITY must leave and return the easement area in essentially the same condition as prior to construction which may include but not be limited to sodding, seeding, and plantings.
5. That the CITY shall have the right to trim and remove all trees and bushes which may interfere with the exercise of the CITY's rights pursuant to this easement. The City shall remove and stack all Walnut trees taken from Grantor's property at a location agreeable to the City and Grantor.
6. That City shall have the right of ingress and egress to and from the easement area by such route as shall occasion the least practical damage and inconvenience to GRANTOR.
7. That GRANTOR reserves the right to use the above-described real estate for purposes which shall not interfere with the CITY's or public's full enjoyment of rights granted in the easement; provided, however, that GRANTOR shall not erect or construct any building or structure, or drill or operate any well, or construct any reservoir or other obstructions within the easement, nor shall GRANTOR allow or cause any substantial fill or cut over said easement without consent of CITY, which consent shall not be unreasonably withheld.
8. That CITY agrees to promptly repair any damages within the areas subject to the easement, with the intent being to restore the surface of said areas to as close to original condition as is reasonably practicable, given the perpetual easement mentioned herein.
9. Without limiting the generality of the preceding provisions of this Agreement, GRANTOR does hereby further convey herein to CITY an exclusive **temporary construction easement** for the purpose of constructing the Installation. Further, said temporary construction easement shall automatically terminate and become non-existent after completion of initial construction of the Installation and acceptance by CITY thereof. Notwithstanding any other provision herein, all construction shall be completed on Grantor's property by October 1, 2024, at which time any temporary easements associated herewith shall terminate. The City shall pay Grantor \$500 per month for any occupation of the property beyond October 1, 2024.

10. That CITY shall indemnify GRANTOR against any loss or damage which may occur in the exercise of the easement rights granted hereunder by the CITY.
11. That GRANTOR acknowledges that possession of that certain real property described in Exhibit "A" hereto is the essence of this Agreement and that, accordingly, GRANTOR does hereby grant the CITY immediate possession of said real property. Notwithstanding this Paragraph, the City agrees to stake the permanent and temporary taking areas contemplated herein for view by Grantor prior to any construction activities.
12. That CITY will be responsible for any necessary abstracting and recording fees involving the preparation and recording of the perpetual easement granted herein, and, additionally, the CITY will replace any property pins displaced as a result of construction of the Utility Installation.
13. That provisions hereof inure to the benefit of and bind the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land. This Agreement shall be recorded at the time of its execution.
14. That this written Perpetual Drainage Easement and Temporary Construction Easement Agreement constitutes the entire agreement between GRANTOR and the CITY and there is no agreement to do or not to do any act or deed except as specifically provided herein.
15. That the CITY shall be solely responsible for compliance with any wetlands laws, regulations and other requirements which shall become necessary by virtue of CITY's exercise of the right herein granted. The CITY agrees to indemnify and hold Grantor harmless in connection with all CRP issues related to the rights granted hereunder. The City agrees to replant trees as required by the appropriate governmental authority.
16. The City agrees to move the bridge located on the property to a location agreeable to Grantor upon two (2) weeks notice.
17. South Maple Street shall remain open in perpetuity for purposes of access to the billboards on Grantor's property. The City agrees to provide a gravel path from the east end of Elm Street to the west edge of Grantor's property to provide perpetual vehicle access to Grantor's billboards on Grantor's property.
18. The City shall pay Grantor Thirty Thousand Dollars (\$30,000) for the rights granted hereunder and contribute Ten Thousand Dollars (\$10,000) towards Grantor's attorney fees.

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19. Upon execution of this Agreement, Grantor shall dismiss her appeal in EQCV036903. The City shall abandon the condemnation proceedings giving rise to Grantor's appeal and shall record the appropriate documents memorializing the rights granted hereunder.
20. The City hereby notifies Gaskill of her rights pursuant to Iowa Code Section 6B.52 to renegotiate damages.
21. This Agreement is negotiated under threat of condemnation.

Dated this 2 day of October, 2023.

GRANTOR:

Katharine K. Gaskill

Katharine K. Gaskill

CITY OF WEST BRANCH:

Roger Laughlin

Roger Laughlin, Mayor

ATTEST:

Leslie Brick

Leslie Brick, City Clerk

STATE OF IOWA, COUNTY OF CEDAR, ss:

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On this 17 day of October, 2023, before me, the undersigned, A Notary Public in and for the State of Iowa, personally appeared Roger Laughlin and Leslie Brick, 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 West Branch, Iowa; a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as passed by Resolution of the City Council; and Roger Laughlin and Leslie Brick acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

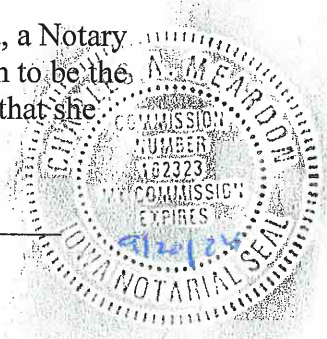


Heidi Van Auken
Notary Public in and for the State of Iowa

STATE OF IOWA, COUNTY OF Johnson, ss:

On this 2nd day of October, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared, Katharine K. Gaskill, to me known to be the person(s) named in and who executed the foregoing instrument, and acknowledged that she executed the same as her voluntary act and deed.

[Signature]
Notary Public, State of Iowa



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Permanent & Temporary Easement Plat Map

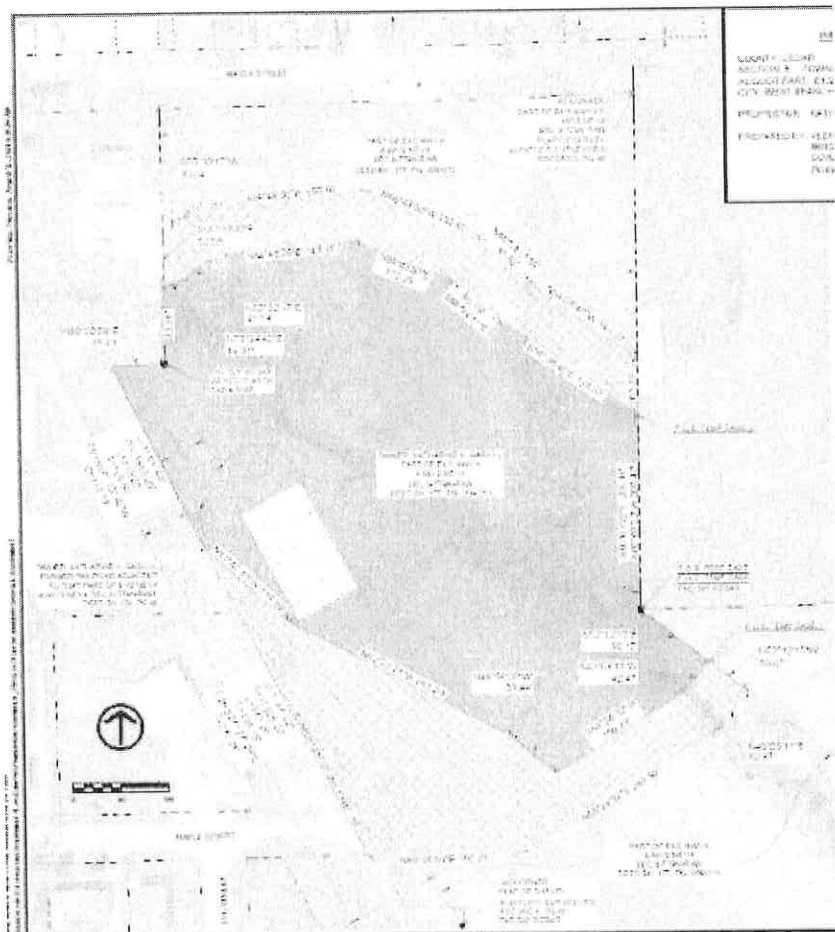


Exhibit "A"

Legal Description for Permanent Easement

PERPETUAL DRAINAGE EASEMENT DESCRIPTION

A Perpetual Drainage Easement in that part of the E1/2 of the NW 1/4 and the W1/2 of the NE1/4 of Section 8, Township 79 North, Range 4 West of the 5th P.M., West Branch, Iowa as recorded in Deed Book 177 on Page 209 of the Cedar County Records and also in that part of the former Chicago, Rock Island and Pacific Railroad Company Right-of-Way in Section 8, Township 79 North, Range 4 West of the 5th P.M. in Cedar County, Iowa as recorded in Deed Book 223 on Page 48. Said Perpetual easement being more particularly described as:

Beginning at a found 5/8" rebar on the Easterly line of said part of the E1/2 of the NW1/4 and the W1/2 of the NE1/4, said point being 546.00 feet South of the NE Corner of said part of the E1/2 of the NW1/4 and the W1/2 of the NE1/4 in accordance with the plat in Surveyor's Record 8 - Page 88, Cedar County Auditor's Office, said point labeled as P.O.B. PERP EASE; thence S52°12'15"E, 90.17 feet along the Easterly line of said part of the E1/2 of the NW1/4 and the W1/2 of the NE1/4; thence S40°53'11"W, 42.47 feet; thence S58°24'32"W, 159.13 feet; thence N48°56'00"W, 59.44 feet; thence N62°25'21"W, 267.20 feet; thence N47°42'43"W, 119.59 feet to a point on the former centerline of the Chicago, Rock Island and Pacific Railroad; thence Northwestly 213.20 feet along a 11,855.20 foot radius curve concave Northeastly and having a chord which bears N28°02'49"W, 213.19 feet along said former centerline of the Chicago, Rock Island and Pacific Railroad; thence N89°02'58"E, 55.01 feet to a point on the former Easterly Right-of-Way of said Chicago, Rock Island and Pacific Railroad, said point also being on the Westerly line of said part of the E1/2 of the NW1/4 and the W1/2 of the NE1/4; thence N00°20'00"W, 83.36 feet along said Westerly line; thence N75°34'42"E, 18.91 feet; thence N55°32'17"E, 41.78 feet; thence Northeastly 12.77 feet along a 25.00 foot radius curve concave Southeastly and having a chord which bears N70°10'27"E, 12.63 feet; thence N84°48'36"E, 143.18 feet; thence S66°43'50"E, 112.25 feet; thence S48°34'11"E, 60.19 feet; thence S54°38'45"E, 178.57 feet to a point on said Easterly line of said part of the E1/2 of the NW1/4 and the W1/2 of the NE1/4; thence S00°03'22"E, 206.40 feet along said Easterly line to the Point of Beginning. Said Perpetual Drainage Easement contains 4.73 Acres.

Legal Description Temporary Easement

TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION

A Temporary Construction Easement in that part of the E1/2 of the NW 1/4 and the W1/2 of the NE1/4 of Section 8, Township 79 North, Range 4 West of the 5th P.M., West Branch, Iowa as recorded in Deed Book 177 on Page 209 of the Cedar County Records and also in that part of the former Chicago, Rock Island and Pacific Railroad Company Right-of-Way in Section 8, Township 79 North, Range 4 West of the 5th P.M. in Cedar County, Iowa as recorded in Deed Book 223 on Page 48. Said Temporary Easement being more particularly described as:

Commencing at a found 5/8" rebar on the Easterly line of said part of the E1/2 of the NW1/4 and the W1/2 of the NE1/4, said point being 546.00 feet South of the NE Corner of said part of the E1/2 of the NW1/4 and the W1/2 of the NE1/4 in accordance with the plat in Surveyor's Record 8 - Page 88, Cedar County Auditor's Office, said point labeled as P.O.C. TEMP EASE; thence S52°12'15"E, 90.17 feet along the Easterly line of said part of the E1/2 of the NW1/4 and the W1/2 of the NE1/4 to the Point of Beginning, said point labeled as P.O.B. Temp Ease 1; thence S40°53'11"W, 42.47 feet; thence S58°24'32"W, 159.13 feet; thence N48°56'00"W, 59.44 feet; thence N62°25'21"W, 267.20 feet; thence N47°42'43"W, 119.59 feet to a point on the former centerline of the Chicago, Rock Island, and Pacific Railroad; thence Southeastly 370.26 feet along a 11,855.20 foot radius curve concave Northeastly and having a chord which bears S27°27'25"E, 370.25 feet along said former centerline of the Chicago, Rock Island, and Pacific Railroad; thence N89°05'50"E, 160.25 feet; thence N58°24'32"E, 243.59 feet; thence N40°53'11"E, 52.87 feet to a point on said Easterly line of said part of the E1/2 of the NW1/4 and the W1/2 of the NE1/4; thence N52°12'15"W, 50.07 feet along said Easterly line to the Point of Beginning. Said Temporary Construction Easement contains 1.31 Acres.

AND

Commencing at a found 5/8" rebar on the Easterly line of said part of the E1/2 of the NW1/4 and the W1/2 of the NE1/4, said point being 546.00 feet South of the NE Corner of said part of the E1/2 of the NW1/4 and the W1/2 of the NE1/4 in accordance with the plat in Surveyor's Record 8 - Page 88, Cedar County Auditor's Office, said point labeled as P.O.C. TEMP EASE; thence N00°03'22"W, 206.40 feet along said Easterly line to the Point of Beginning, said point labeled as P.O.B. TEMP EASE 2; thence N00°03'22"W, 61.35 feet continuing along said Easterly line; thence N54°38'45"W, 140.37 feet; thence N48°34'11"W, 65.52 feet; thence N66°43'50"W, 132.92 feet; thence S84°48'36"W, 155.86 feet; thence Southwestly 38.32 feet along a 75.00 foot radius curve concave Southeastly and having a chord which bears S70°10'27"W, 37.90 feet; thence S55°32'17"W, 30.04 feet to a point on the Westerly line of said part of the E1/2 of the NW1/4 and the W1/2 of the NE1/4; thence S00°20'00"E, 52.58 feet along said Westerly line; thence N75°34'42"E, 18.91 feet; thence N55°32'17"E, 41.78 feet; thence Northeastly 12.77 feet along a 25.00 foot radius curve concave Southeastly and having a chord which bears N70°10'27"E, 12.63 feet; thence N84°48'36"E, 143.18 feet; thence S66°43'50"E, 112.25 feet; thence S48°34'11"E, 60.19 feet; thence S54°38'45"E, 178.57 feet

to a point on said Easterly line of said part of the E1/2 of the NW1/4 and the W1/2 of the NE1/4, said point also being the Point of Beginning.

Said Temporary Construction Easement contains 0.65 Acres.

Total Temporary Construction Easement Area contains 1.96 Acres.

LEGEND

- FOUND PROPERTY CORNER AS NOTED
- ▲ FOUND SECTION CORNER AS NOTED