CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: January 21, 2020

ITEM: Resolution –Acceptance of and Authorization to Pay Judgment in Warren County Case CVCV037263 related to Project Osmium Public Infrastructure (Middle Creek Trunk Sewer Extension and Veterans Parkway: SE 50th Street to SW 60th Street)

FINANCIAL IMPACT: $205,957.90 (previously budgeted)

SYNOPSIS: The City of West Des Moines acquired property interests necessary for Project Osmium Public Infrastructure (Middle Creek Trunk Sewer Extension and Veterans Parkway: SE 50th Street to SW 60th Street). Due to the inability of the parties to reach a negotiated settlement, some property interests were obtained through condemnation. On December 20, 2017, the Warren County Compensation Commission awarded Michael Holzworth and Katherine Holzworth ("Property Owners") $316,375.00 for condemned property interests. Property Owners appealed and were awarded $512,000.00 (plus $6,332.9 interest and $4,000 appraisal fee). Costs associated with acquisition of the property interests will be paid from Account No. 640.000.000.5550.730, Project No. 0510 015 2017 and Account No. 500.000.000.5550.730, Project No. 0510 009 2017, respectively.

OUTSTANDING ISSUES (if any): Additional monies will be due for payment of attorney fees and court costs.

RECOMMENDATION: Accept and authorize payment of the judgment in Warren County CVCV037263 related to the Project Osmium Public Infrastructure (Middle Creek Trunk Sewer Extension and Veterans Parkway: SE 50th Street to SW 60th Street).

Lead Staff Member: Brian J. Hemesath, P.E., City Engineer

STAFF REVIEWS

Department Director	Richard J. Scieszinski, City Attorney
Appropriations/Finance	
Legal	
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	None		
Date Reviewed			
Recommendation			

RESOLUTION NO._____

AUTHORIZING ACCEPTANCE AND PAYMENT OF JUDGMENT IN WARREN COUNTY CASE NUMBER CVCV037263 RELATED TO THE CONSTRUCTION OF PROJECT OSMIUM PUBLIC INFRASTRUCTURE (MIDDLE CREEK TRUNK SEWER EXTENSION, PROJECT NO. 0510-015-2017 AND VETERANS PARKWAY: SE 50TH STREET TO SW 60TH STREET, PROJECT NO. 0510-009-2017)

WHEREAS, on June 26, 2017, the City Council of the City of West Des Moines, Iowa established the fair market value and authorized the acquisition of property and easements, including any leasehold interests, necessary for the construction of the Project Osmium Public Infrastructure (Middle Creek Trunk Sewer Extension, Project No. 0510-015-2017 and Veterans Parkway: SE 50th Street to SW 60th Street, Project No. 0510-009-2017); and

WHEREAS, On December 20, 2017, the Warren County Compensation Commission made an award for property necessary for the Projects. Property owners appealed this decision in Warren County District Court case number CVCV037263 and a jury awarded additional compensation and costs to property owners; and

WHEREAS, the Case Submission Order is attached as **Exhibit "A"** and made a part of this resolution; and

WHEREAS, it is in the best interest of the citizens of the City to approve and accept the above-described documents.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. The judgment in Warren County case number CVCV037263 is hereby accepted.
2. The City's Legal Department is authorized to take all steps necessary and consistent with the judgment.
3. The City's Finance Director is authorized to pay the judgment.

PASSED AND ADOPTED this **21st** day of **January, 2020.**

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

Exhibit "A"

IN THE IOWA DISTRICT COURT IN AND FOR WARREN COUNTY

MICHAEL PAUL HOLZWORTH MARJORIE A ABILD KATHERINE ABILD HOLZWORTH Plaintiff vs. WARREN COUNTY IOWA CITY OF WEST DES MOINES, IOWA WARREN WATER DISTRICT Defendant	05911 CVCV037263 CASE SUBMISSION ORDER

This case came on for trial on December 10 - 12, 2019.

Pursuant to the jury verdict returned December 12, 2019, judgment is entered in favor of plaintiffs and against the defendant City of West Des Moines, Iowa, in the amount of $512,000. Costs are taxed to the defendant City of West Des Moines, Iowa.

State of Iowa Courts

Case Number	**Case Title**
CVCV037263	MARJORIE ABILD ET AL VS CITY OF WEST DES MOINES ET AL
Type:	OTHER ORDER

So Ordered

John D. Lloyd, Senior Judge,
Fifth Judicial District of Iowa

Electronically signed on 2019-12-12 13:43:35

Exhibit "B"

PROJECT OSMIUM PUBLIC INFRASTRUCTURE (MIDDLE CREEK TRUNK SEWER EXTENSION, PROJECT NO. 0510-015-2017 AND VETERANS PARKWAY: SE 50TH STREET TO SW 60TH STREET, PROJECT NO. 0510-009-2017)

PARCEL #	PROPERTY OWNER	ACQUIRED PRICE-FMV	
"009-03"	Marjorie A. Abild, Katherine A. Holzworth, And Michael P. Holzworth 2280 20th Ave Parcel Nos. 43000080420, 43000080440, 15000070220, 15000070240	$152,408.85	***total award $512,000. (Condemnation award for road $232,848.00, previously paid; $144,762.50 judgment; $4,686.35 interest; $2,960.00 appraisal reimbursement)**
"009-01"	Marjorie A. Abild, Katherine A. Holzworth, And Michael P. Holzworth 2280 20th Ave Parcel Nos. 15000060820, 15000060840, 15000060860, 15000060880	$53,549.05	***total award $512,000. (Condemnation award for sewer $83,527.00, previously paid; $50,862.50 judgment; $1,646.55 interest; $1,040.00 appraisal reimbursement)**
	TOTAL	**$205,957.90**	