

COUNCIL ACTION FORM

**SUBJECT: 2516 LINCOLN WAY DEVELOPMENT PROJECT STORM DRAIN
EASEMENT**

BACKGROUND:

This Storm Sewer Easement request was initially on the May 10, 2022 agenda. The City did not receive a signed easement prior to the City Council Meeting and the item was pulled from the agenda. Staff has now received a signed copy of the easement and it is ready for City Council approval. On the direction of the City Attorney's office updates to the easement document have been made in paragraph 1 in order to grant "...to the City a perpetual easement for storm sewer purposes over, under, and across the area..." This language was added in order to clarify that the easement did not just apply to area only "over" the storm sewer.

The property owner, F F & F of Ames, LLC has submitted a Minor Site Development Plan application for a two-story bar and restaurant to be constructed at 2516 Lincoln Way. Presently, this is a vacant site. Previous development consisted of three buildings constructed across three lots. The previous buildings were constructed over the in-place box culvert constructed in 1935. This culvert conveys College Creek under the site as well as beneath the building at 122 Hayward Avenue. Ultimately, College Creek flows towards Lake LaVerne on the Iowa State University Campus. A map of the area is in Attachment A.

At the time of redevelopment at 122 Hayward Avenue, it was determined that the culvert could stay in place as long as an existing conditions assessment of the existing box culvert was performed, in-situ condition of the existing box culvert for load/vibration impacts had to be monitored during construction, and a post-construction assessment of the existing box culvert had to be completed, all at the developer's expense.

There are a total of four properties that site atop the box culvert, the property at 2516 Lincoln Way that is set for redevelopment, 122 Hayward Avenue that was redeveloped in 2015, Lot X, the City owned parking area, and 110 Hayward Avenue Rear currently used for parking. (See Attachment A)

Staff directed the property owner of 2516 Lincoln Way to go through the same process and enter into an easement agreement with the City. On April 25, 2022 City Staff along with engineers on behalf of the developer conducted an inspection of the box culvert and deemed it safe to proceed with construction over the structure.

Attached is the proposed easement agreement and easement exhibit to be entered into if City Council approves. **The easement gives the ability to perform maintenance to**

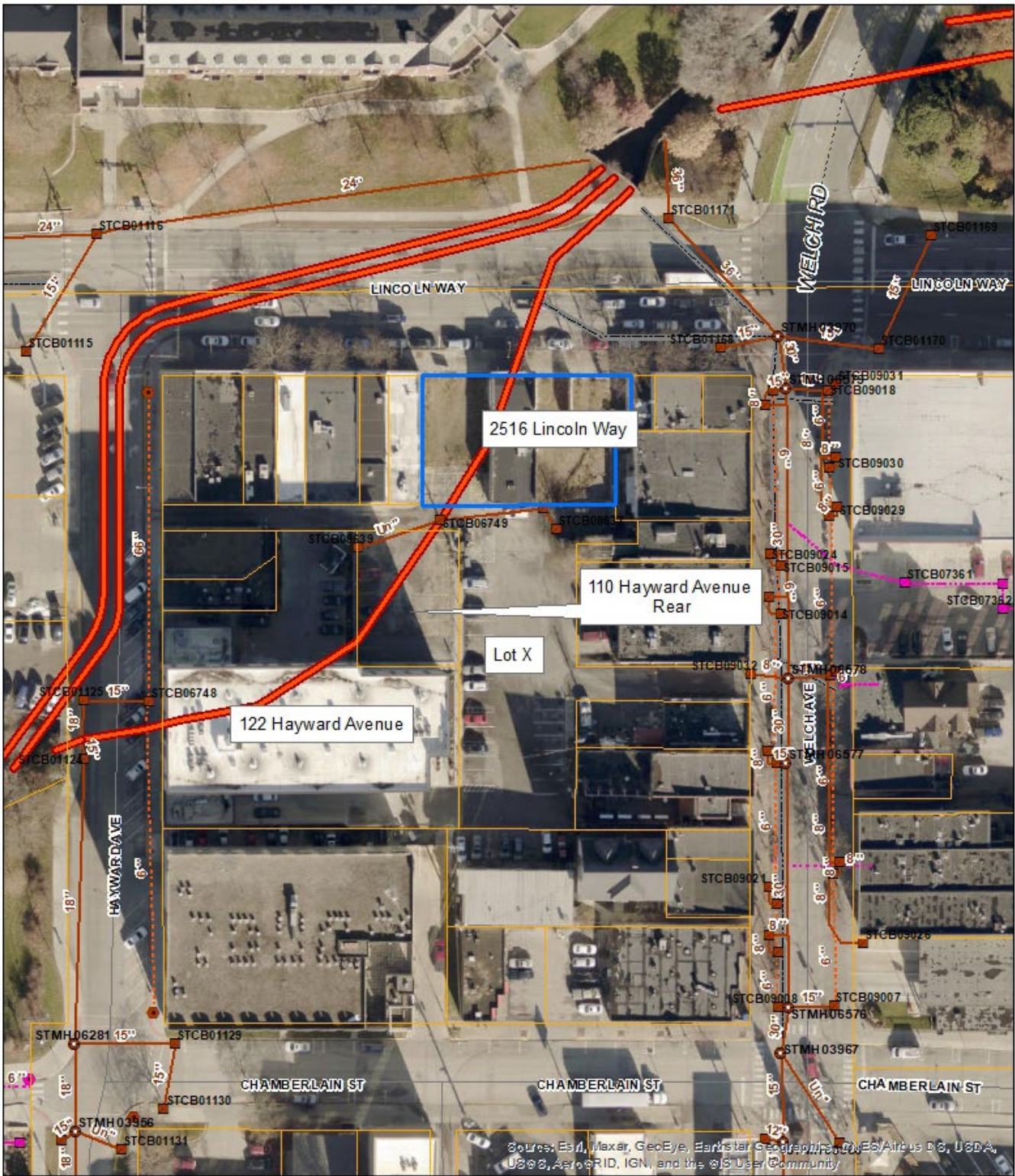
the box culvert and the City has no liability for damage to the property. The applicant will provide a signed final copy prior to the City Council meeting on Tuesday.

ALTERNATIVES:

1. Approve the proposed easement for the box culvert.
2. Do not approve the proposed easement for the box culvert.
3. Refer this item back to staff or the applicant for more information.

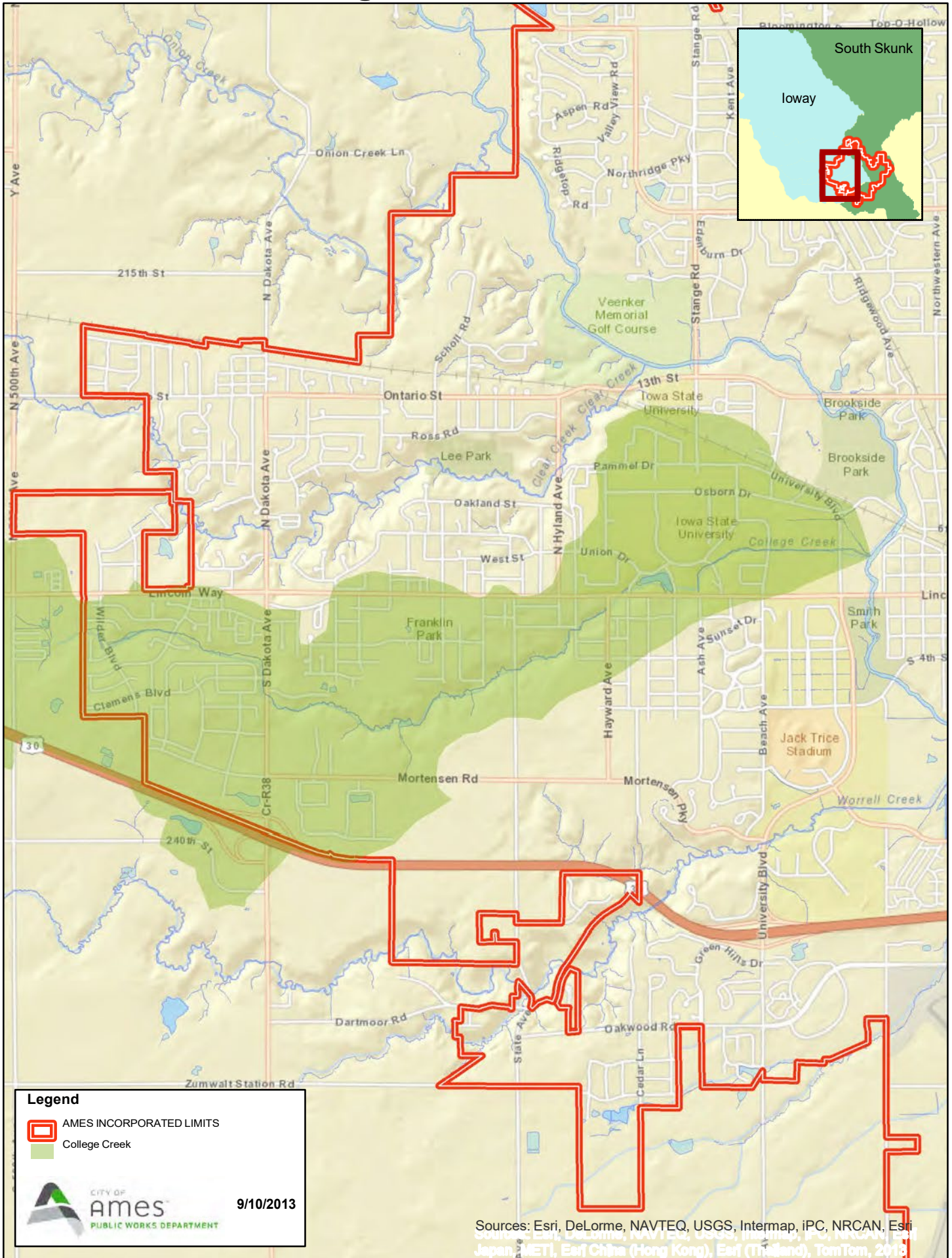
CITY MANAGER'S RECOMMENDED ACTION:

The developer of 2516 Lincoln Way asks for City Council to accept the proposed easement. The box culvert is a unique issue where it is located with buildings over the culvert. Staff believes the language of the easement protects the City's interest for maintenance of the City's box culvert. **Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative #1, as described above.**



Storm Sewer Exhibit

College Creek Watershed



Prepared by, recording requested by and
return to:

Attorney Kevin J. Roop
Hale, Skemp, Hanson, Skemp & Sleik
505 King Street, Suite 300
P.O. Box 1927
La Crosse, WI 54602-1927
(608) 784-3540

EASEMENT AND WAIVER DECLARATION

This Easement and Waiver Declaration (herein "Declaration") is made by and between FF & F of Ames, LLC, an Iowa limited liability company (herein "Grantor" or "Party") for good and valuable consideration, in favor of The City of Ames, an Iowa municipality (herein "Grantee" "City" or "Party") (collectively herein "Parties").

RECITALS

WHEREAS, Grantor owns of record the real estate legally described on Exhibit A attached hereto and incorporated herein by reference (herein "Property");

WHEREAS, the Property identified is further described and identified on the ALTA survey attached hereto as Exhibit B and incorporated herein by reference;

WHEREAS, the Property is encumbered by an underground box culvert at the location identified on Exhibit B attached hereto (herein "Box Culvert");

WHEREAS, the location of the Box Culvert on the Property is legally described on Exhibit C attached hereto and incorporated herein by reference (herein "Storm Sewer Easement");

WHEREAS, the Box Culvert was installed by Grantee and has been maintained by Grantee to control water runoff for the benefit of Grantee and surrounding property owners (herein "Purpose"); and

WHEREAS, Grantor desires to construct a building and other improvements above and around the Storm Sewer Easement in a manner that will not interfere with the Purpose.

NOW, THEREFORE, in consideration of the foregoing, the covenants and promises contained herein and other good and valuable consideration, the Grantor declares as follows:

1. **Grant of Easement.** Grantor does hereby grant, convey and warrant to Grantee a non-exclusive ingress and egress easement over and upon the Property, for the purpose of servicing, cleaning, maintaining, repairing and replacing the Box Culvert in its current location, size and configuration. Grantor further grants to the City a non-exclusive easement for storm sewer purposes over, under and across the Storm Sewer Easement identified on Exhibit C.
2. **Waiver.** Grantor does hereby waive any and all claims for any damages which might or may be caused by the construction, reconstruction, perpetuation, repair, maintenance, replacement or overflow of said Box Culvert, and waives any and all claims for damages now or hereafter sustained from any flood water caused by the inability of said Box Culvert to receive and carry the same. Grantor shall not make any connection with said Box Culvert, except with the prior written consent of the City.
3. **Duration.** The easements and obligations created pursuant to this Declaration shall be perpetual in duration.
4. **Covenant Running with the Land.** The easements and obligations created pursuant to this Declaration shall be easements and covenants running with the land.
5. **Additional Provisions.**
 - a. **Recitals.** The Recitals to this Declaration are incorporated into and made a part of this Declaration by reference.
 - b. **Binding Effects and Benefits.** This Declaration shall be binding upon and shall be for the benefit of the Parties hereto and their respective heirs, successors, personal representatives, and assigns.
 - c. **Headings.** Section and other headings contained in this Declaration are for reference purpose only and shall not affect the meaning or interpretation of this Declaration.

EXHIBIT A

Property

Parcel L of Lots 5, 6, 7, and 8, Block 4 in the Auditor's Replat of Block 3, 4, and 5, Beardshear's Addition and Walter's Subdivision, Ames, Story County, Iowa, as shown on the Plat of Survey recorded on March 13, 2017, at Inst. No. 17-02121, Slide 561, Page 4.

EXHIBIT B

ALTA Survey

(ATTACHED)

OWNER:
 R. G. GARDNER
 2316 LINCOLN WAY
 APPEL, IOWA 50610

ZONING DISTRICT:
 CSC - COUNCILTOWN SERVICE CENTER
 Ordinance No. 17161
 Adopted: 11/17/09
 Page: 9 of 10

SURVEY DESCRIPTION:

Parcel 1 of Lots 6, 7, and 8, Block 4 to the Augusta Property of Block 3, 4, and 5, respectively, within and within the boundaries of the City of Council Bluffs, Iowa, as shown on the Plat of Survey recorded on March 12, 2017, at last. 17-14-181, 2018-041, Page 4.

SURVEYOR'S REPORT ON SCHEDULE B, PART I:
 Commission for This Instrument No. 0-00000000, dated January 17, 2020

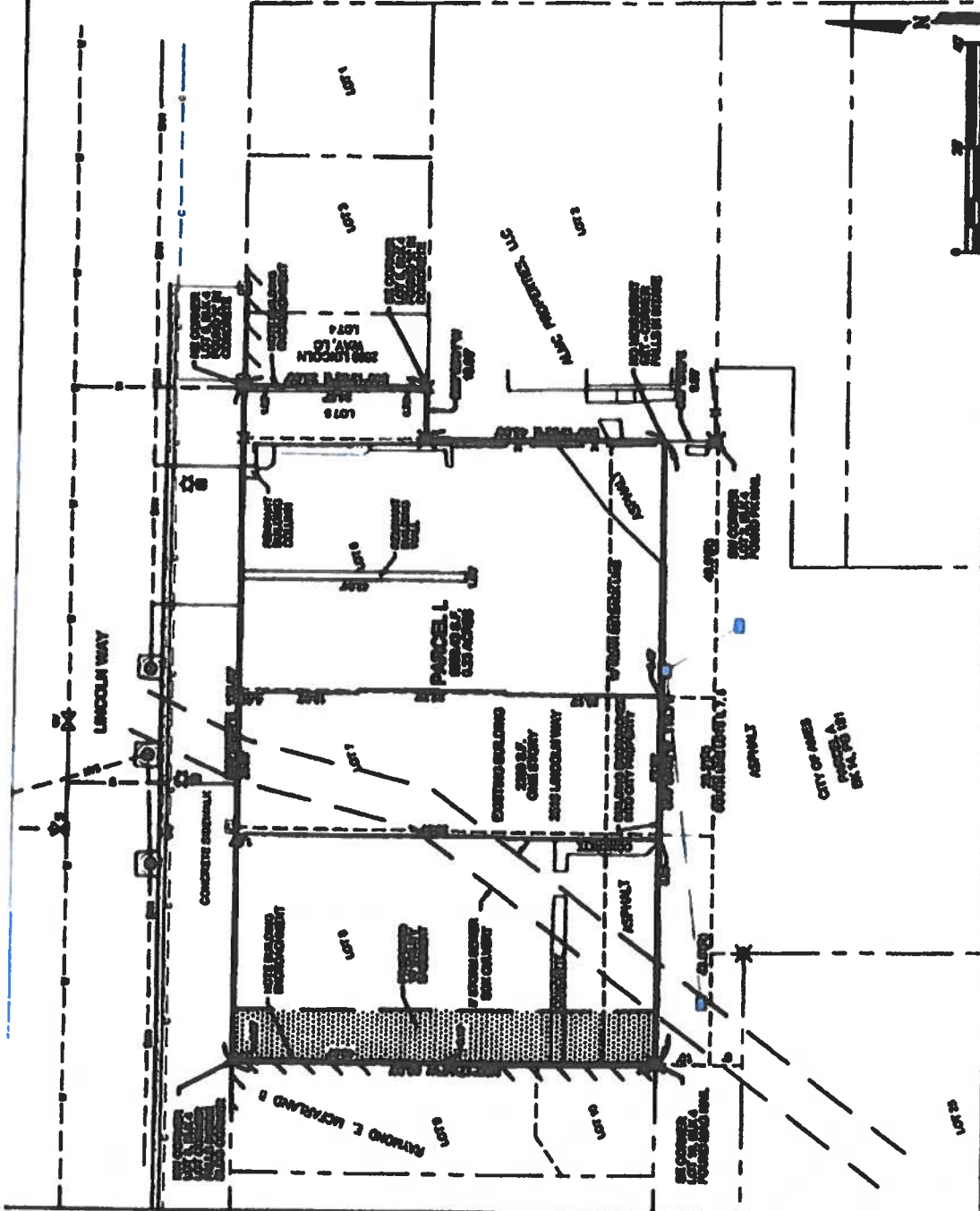
SURVEYOR'S CERTIFICATION:
 To the P.P. of Iowa, U.C. unto The County, a Division of the Iowa Planning Authority and State of Iowa, I, the Surveyor, certify that I am a duly Licensed Professional Land Surveyor under the laws of the State of Iowa.

SURVEYOR'S CERTIFICATION:

To the P.P. of Iowa, U.C. unto The County, a Division of the Iowa Planning Authority and State of Iowa, I, the Surveyor, certify that I am a duly Licensed Professional Land Surveyor under the laws of the State of Iowa.

This is to certify that this map of land and the survey on which it is based were made by me or under my direct supervision and that I am a duly Licensed Professional Land Surveyor under the laws of the State of Iowa. The survey was made and approved by A.S.T.A. and A.S.T.A. on 11/17/2019. The survey was made and approved by A.S.T.A. and A.S.T.A. on 11/17/2019. The survey was made and approved by A.S.T.A. and A.S.T.A. on 11/17/2019.

WELCH AVENUE



LEGEND

---	Property Line
---	Survey Line
---	Boundary Line
---	Right of Way Line
---	Utility Line
---	Other



I hereby certify that this map of land and the survey on which it is based were made by me or under my direct supervision and that I am a duly Licensed Professional Land Surveyor under the laws of the State of Iowa.

R. Gardner
 R. G. GARDNER, P.L.S.
 License number 17161
 DATE: 11/17/2019

ALTA/NSP LAND TITLE SURVEY
 2316 LINCOLN WAY
 APPEL, IOWA
 JOB# 5439-10A DATE: 3/04/20 PAGE 1 OF 1

FOX Engineering
 Fox Engineering Associates, Inc.
 404 South 7th Street, Suite 107
 Ames, Iowa 50010
 Phone: (515) 261-4000
 Fax: (515) 261-4000

EXHIBIT C

Storm Sewer Easement Legal Description

(ATTACHED)

EASEMENT EXHIBIT

LOCATION: PARCEL L OF LOTS 5-8, BLK 4, AUDITOR'S REPLAT OF BLOCKS 3, 4 & 5, BEARDSHEAR'S ADD. & WALTERS SUBD., CITY OF AMES, STORY COUNTY, IOWA

PROPRIETOR: F & F OF AMES, LLC

REQUESTED BY: DAN MILLER, BORTON CONSTRUCTION

SURVEYOR: R. BRADLEY STUMBO, PLS #17161

FOX STRAND
AMES, IA 50010
515-233-0000



FOX STRAND ASSOCIATES

414 South 17th Street, Suite 107
Ames, Iowa 50010
Phone: (515) 233-0000
FAX: (515) 233-0103

JOB# 7218.001 DATE: 5/11/22

PAGE 1 OF 1

I hereby certify that this land surveying document was prepared by me or under my direct personal supervision and that I am a duly licensed Professional Land Surveyor under the laws of the State of Iowa.

5/11/22

DATE

R. BRADLEY STUMBO, PLS

License number 17161

My license renewal date is December 31, 2023.

