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## AGENDA ITEM SUMMARY

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**Subject: Consider Resolution 129-21 approving a permanent sidewalk easement from HD Development LLC at 501 Freeman Street**

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Recommendation: Approve Resolution No. 129-21

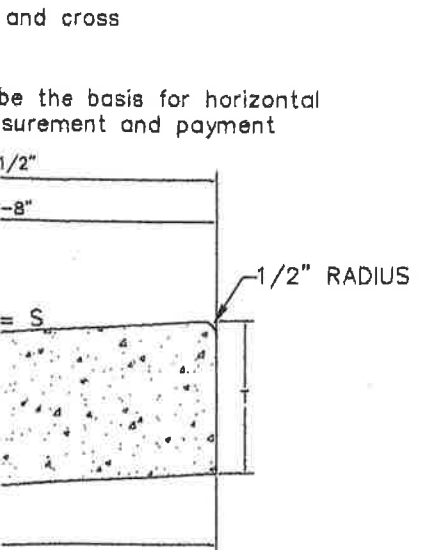
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**Background Summary:**

As part of the site work at the new Scotter's coffee restaurant at the intersection of Gilbert and Freeman Streets, some of the public sidewalk was removed for driveway and utility work. Upon replacement of the sidewalk, it became apparent that the existing traffic signal base created an accessibility problem for sidewalk users.

We have worked with the property owner and project developer to relocate an accessible sidewalk on the westerly side of the signal base. This places the sidewalk outside of the public right-of-way and onto private property. The easement allows for the public use of the sidewalk, and provides that the owner will maintain the sidewalk in accordance with the City's sidewalk regulations.

We recommend approval of Resolution 129-21 approving the permanent sidewalk easement from HD Development LLC.



and cross

be the basis for horizontal measurement and payment

1/2"

8"

1/2" RADIUS

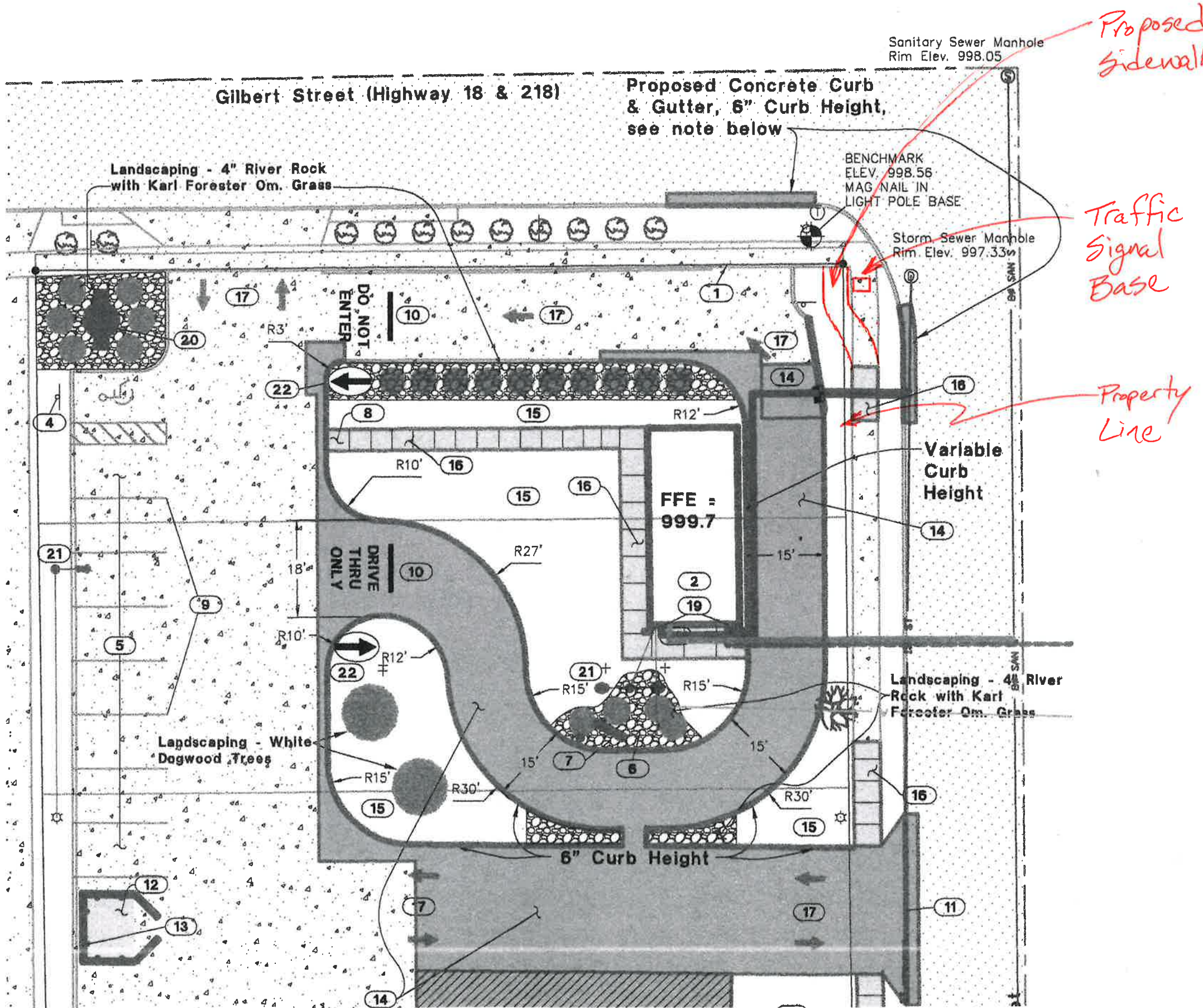
shall be placed, trans-

and Gutter and the project centerline. e Curb or Concrete e Sidewalk, to the

to Concrete Pavement, r shall be insofar Pavement. cent to Concrete Pavement vals of 150 feet.

shall be placed, longi- to the depth of the Concrete (adjacent to an existing vals of 15 feet, maximum.

**3 AND SECTION**



**JACOBSON-WESTERGARD & ASSOCIATES, INC.**  
 105 S. SIXTH ST. ESTHERVILLE, IOWA  
 PHONE: (712) 362-2647 Toll Free (866) 215-2298  
 E-MAIL: jwa@jacobson-westergard.com  
 Web Site: www.jacobson-westergard.com  
 CONSULTING ENGINEERS LAND SURVEYING



NO.	REVISIONS	BY	DATE
1.	Revised Notes	J.L.R.	4-30-21

**FILE**

Scooters Coffee Site – Swly Corner Gilbert and Freeman Streets



Prepared by and Return to Brad Slotter, 200 N. Johnson St., Charles City (641) 228-4533

### PERMANENT SIDEWALK EASEMENT AGREEMENT

This Permanent Sidewalk Easement Agreement (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Charles City, Iowa (“the City”) and HD Development, LLC, a South Dakota limited liability company (“HD Development”).

#### RECITALS

A. HD Development is the owner of real property located at 501 Freeman Street, Charles City, Floyd County, Iowa, and legally described as:

Lot One (1), EXCEPT the North three feet (N3’) thereof, and Lots Two (2), Three (3), Four (4), Five (5), and Six (6), Block “I”, Plat of Freeman, now incorporated in and a part of Charles City, in Floyd County, Iowa

(“the Property”).

B. HD Development is constructing certain improvements on the Property. As part of its construction of improvements, HD Development removed the sidewalk improvements on the Property located within the City right-of-way on Freeman Street.

C. There is a signal base in the middle of the sidewalk at the corner of Freeman Street Gilbert Street which prevents HD Development from reconstructing the sidewalk with an accessible walkway on the sidewalk abutting Freeman Street.

D. HD Development has agreed to construct a sidewalk on its Property outside of the City right-of-way and has agreed to grant and convey to the City a permanent public easement for use of the sidewalk on the terms set forth herein.

NOW THEREFORE in consideration of the mutual covenants herein contained be it agreed by the undersigned parties as follows:

1. HD Development hereby grants and conveys to the City a permanent easement for the operation of a public sidewalk for pedestrian ingress and egress over, under, through and across the following described property:

**The East five feet (E5’) of the North twenty-eight feet (N28’)** of Lot One (1), EXCEPT the North three feet (N3’) thereof, and Lots Two (2), Three (3), Four (4), Five (5), and Six (6), Block “I”, Plat of Freeman, now incorporated in and a part of Charles City, in Floyd County, Iowa.

(“the Easement Area”)

2. HD Development shall be responsible for constructing the sidewalk within the Easement Area at its cost and shall be responsible for maintaining the same.
3. The public sidewalk within the Easement Area shall be subject to Chapter 136 (Sidewalk Regulations) of the Charles City Code of Ordinances. Accordingly, the easement shall allow public pedestrian and non-motorized traffic and shall permit maintenance, repair and replacement of the paving in the Easement Area. Although the City is provided the authority to maintain the sidewalk within the Easement Area, such grant shall not be construed to require the City to perform any maintenance on such improvements or to impose an affirmative obligation on the City.
4. HD Development warrants and covenants that it is the owner in fee simple of the Property, that it has the right to grant this easement, and that the Easement Area granted herein is granted free and clear of all liens and encumbrances. HD Development further covenants to warrant and defend the same premises against the lawful claims of all persons whomsoever.
5. HD Development shall protect, save and hold harmless, and defend, the City from all claims, actions, filed or threatened, costs, damages, or expenses of any nature whatsoever arising out of or in connection with any acts or omissions of HD Development in connection with this Agreement. The obligation to protect, save and hold harmless, and defend shall not include such claims, actions, costs, damages, or expenses which may be caused by the sole negligence of the City.
6. The covenants, agreements, and easements granted herein shall be deemed covenants running with the land and shall inure to the benefit of and shall be binding upon the respective grantees, successors, and assigns of the parties.
7. This Agreement may be amended only by a written instrument signed by both parties or their respective successors and assigns, which instrument will only become effective after being recorded in the office of the Floyd County Recorder.
8. HD Development warrants and represents to the City that the individual signing this Agreement on behalf of HD Development has full power and authority to execute and deliver the same to the City.
9. Approval of City Council. This Agreement is subject to approval by the City Council of the City of Charles City, Iowa.

Executed this 26th day of October, 2021.

HD Development, LLC

  
 HD Development, LLC  
 By Cal Hoogestraat  
 Its Managing Member

City of Charles City, Iowa

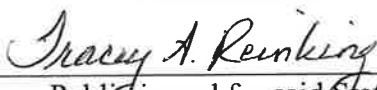
\_\_\_\_\_  
 Dean Andrews, Mayor  
 City of Charles City

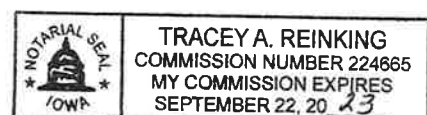
Attested to by:

\_\_\_\_\_  
 Trudy O'Donnell, City Clerk  
 City of Charles City

STATE OF Iowa, COUNTY OF Sioux

This record was acknowledged before me on October 24, 2021, by Cal Hoogestraat as Managing Member (title) of HD Development, LLC, on behalf of whom the instrument was executed.

  
 Notary Public in and for said State



STATE OF IOWA, COUNTY OF FLOYD

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, a notary public in and for the state of Iowa, personally appeared Dean Andrews and Trudy O'Donnell, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Charles City, Iowa; that the seal affixed to the foregoing instrument is the seal of said municipality of Charles City, Iowa, and that the instrument was signed and sealed on behalf of said City by authority of its City Council, and that Dean Andrews and Trudy O'Donnell acknowledged the execution of the instrument to be the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

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Notary Public in and for the State

**RESOLUTION NO. 129-21**

*RESOLUTION APPROVING PERMANENT EASEMENT AT 501 FREEMAN ST*

WHEREAS, certain improvements are being constructed at the property located at 501 Freeman that required the removal of sidewalk located within the city ROW, and

WHEREAS, there is a signal base in the middle of the sidewalk at the corner of Freeman Street/Gilbert Street which prevents the property owner from reconstructing the sidewalk with an accessible walk way, and

WHEREAS, the property owner has agreed to construct a sidewalk on their property outside the city right of way and has agreed to grant a permanent easement for the public sidewalk,

WHEREAS, it is in the best interest of the citizens of the City of Charles City, that said improvements be completed.

NOW, THEREFORE, BE IT RESOLVED by the City of Charles City, Iowa meeting in regular session on this 1<sup>st</sup> day of November, 2021, that the permanent easement listed above is approved and the mayor and city clerk are authorized to sign it on behalf of the city.

COUNCIL MEMBER moved the adoption of the foregoing Resolution;

COUNCIL MEMBER seconded the motion to adopt, and on roll call the voting was as follows:

AYES:

NAYS:

Passed and approved this 1<sup>st</sup> day of November, 2021.

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Dean Andrews, Mayor

Attest:

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Trudy O'Donnell, City Clerk