

Date ..... October 23, 2006 .....

**APPROVING SETTLEMENT OF CONDEMNATION APPEAL FOR THE ACQUISITION OF PROPERTY FROM THE UNION PACIFIC RAILROAD COMPANY FOR THE AMERICAN DISCOVERY TRAIL – RIVERPOINT SEGMENT PROJECT**

**WHEREAS**, on January 12, 2004, by Roll Call No. 04-076, the City Council of the City of Des Moines, Iowa, approved the proposed alignment and authorized the acquisition of all necessary property interests by gift, negotiation, or condemnation for the American Discovery Trail Project – Riverpoint Segment; and,

**WHEREAS**, on June 7, 2004, by Roll Call No. 04-1121, the City Council established Fair Market Value in the amount of \$358,000; and,

**WHEREAS**, the City’s Real Estate Division was unable to negotiate a settlement and condemnation proceedings were subsequently instituted; and,

**WHEREAS**, the Polk County Condemnation Commissioners convened on August 2, 2004, in Des Moines, Iowa, awarding the amount of \$272,400; and,

**WHEREAS**, on August 9, 2004, by Roll Call No. 04-1684, the City Council of the City of Des Moines, Iowa, authorized the payment of the award of \$272,400 for Fee Title to the property plus Sheriff’s fees and jury expenses as certified by the Sheriff of Polk County; and,

**WHEREAS**, Union Pacific Railroad Company appealed the award made by the Polk County Condemnation Commissioners in Union Pacific RR Co. v. City of Des Moines, Polk County District Court Case No. CE 49450; and,

**WHEREAS**, the parties have agreed to a "global" settlement whereby the American Discovery Trail - Riverpoint Segment Project acquisition, now pending on appeal in Polk County District Court, Case No. CE 49450, will be dismissed with prejudice by Union Pacific Railroad Company in consideration of payment for the total amount (including payment previously deposited with the Sheriff pursuant to the award made August 9, 2004) of \$468,000 as part of a global settlement; and,

**WHEREAS**, this settlement appears to be in the best interests of the City of Des Moines.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, that the City Council hereby authorizes payment of \$468,000 in full and final settlement of the condemnation appeal for the property acquired from Union Pacific Railroad Company for the American Discovery Trail Project – Riverpoint Project.

★ **Roll Call Number**

**Agenda Item Number**

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Project Name: Page 2

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**BE IT FURTHER RESOLVED:**

That the Finance Director is authorized and directed to issue checks in the amounts necessary to carry out the transactions and to pay any unforeseen additional costs certified by the Legal Department and the Engineering Department; the Real Estate Division Manager is authorized and directed to complete the transactions in accordance with standard real estate practices.

That the Real Estate Division of the Engineering Department is directed to obtain the Legal Department's review and approval of all closing documents prior to closing.

(Council Communication No. 06- 673)

Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

Emily Gould Chafa  
Emily Gould Chafa, Assistant City Attorney

2006-07 CIP, Street Improvements,  
Corridor Studies, Page 11, STR118  
Activity ID: 32-2003-008

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
KIERNAN				
HENSLEY				
MAHAFFEY				
VLASSIS				
TOTAL				

MOTION CARRIED APPROVED

\_\_\_\_\_  
Mayor

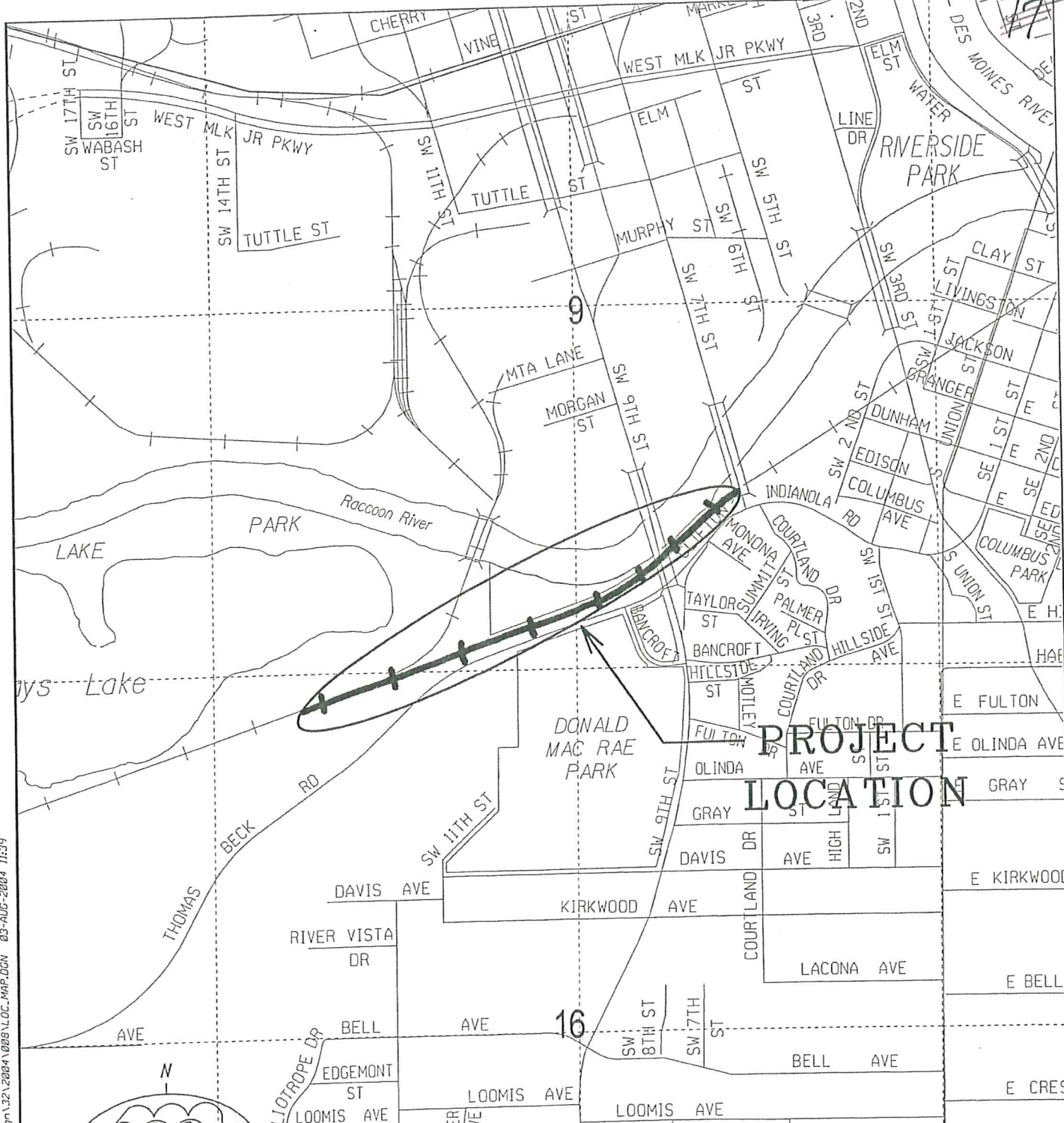
**CERTIFICATE**

I, Diane Rauh, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

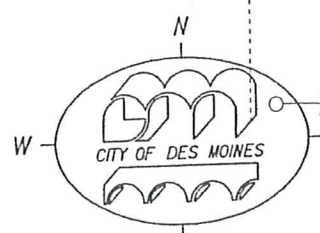
\_\_\_\_\_  
City Clerk

180 ✓



**PROJECT  
LOCATION**

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**AMERICAN DISCOVERY TRAIL  
RIVERPOINT SEGMENT  
S.W. 12TH TO S.W. 7TH  
ACTIVITY I.D. 32-2004-008**