

Date April 9, 2012

**HEARING FOR VACATION AND CONVEYANCE OF A PORTION OF SE 21<sup>ST</sup> COURT AND A PORTION OF SHAW STREET RIGHT-OF-WAY ADJOINING 607 SE 21<sup>ST</sup> COURT TO AVAILABLE MATERIAL HANDLING LLC (AMH) FOR \$3,500**

**WHEREAS**, on February 27, 2012, by Roll Call No. 12-0278, the City Council received the recommendation from the Plan and Zoning Commission that a portion of SE 21<sup>st</sup> Court from Scott Avenue to the Union Pacific Railroad and a portion of Shaw Street right-of-way adjoining 607 SE 21<sup>st</sup> Court from the Union Pacific Railroad to the north/south alley, hereinafter more fully described, be vacated and conveyed to Available Material Handling LLC, (AMH) subject to reservation of easements for all public utilities in place, and with closing on the sale being subject to conformance by AMH with an approved Site Plan for the existing non-conforming contractor's storage yard use on adjoining property to the east and north, to include conformance with current Site Plan and landscaping requirements; and

**WHEREAS**, AMH is the owner of 607 SE 21<sup>st</sup> Court, and has offered to the City of Des Moines the purchase price of \$3,500 for the purchase of the City right-of-way more specifically described below for incorporation with the adjoining property, subject to the Plan and Zoning Commission recommendations as stated above, which price reflects the fair market value of the property as currently estimated by the City's Real Estate Division; and

**WHEREAS**, there is no known current or future public need or benefit for the right-of-way proposed to be vacated and conveyed, and the City will not be inconvenienced by the vacation and conveyance of said property; and

**WHEREAS**, on March 26, 2012, by Roll Call No. 12-0455, it was duly resolved by the City Council that the proposed vacation and conveyance of such right-of-way be set down for hearing on April 9, 2012, at 5:00 p.m., in the Council Chamber; and

**WHEREAS**, due notice of said proposal to vacate and convey public right-of-way was given as provided by law, setting forth the time and place for hearing on said proposal; and

**WHEREAS**, in accordance with said notice, those interested in said proposed vacation and conveyance, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

**NOW THEREFORE BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed vacation and conveyance of public right-of-way as described below are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the right-of-way proposed to be vacated and the public would not be inconvenienced by reason of the vacation of a portion of SE 21<sup>st</sup> Court from

Date April 9, 2012

Scott Avenue to the Union Pacific Railroad and a portion of Shaw Street right-of-way adjoining 607 SE 21<sup>st</sup> Court from the Union Pacific Railroad to the north/south alley, more specifically described as follows:

ALL THAT PART OF THE SHAW STREET LYING WEST OF THE SOUTHERLY EXTENSION OF THE NORTH-SOUTH ALLEY IN BLOCK 7, JACK'S PLAT, AN OFFICIAL PLAT, AND EAST OF THE UNION PACIFIC RAILROAD RIGHT OF WAY, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

ALL THAT PART OF THE SOUTHEAST 21ST COURT LYING SOUTH OF THE SOUTH RIGHT OF WAY LINE OF SCOTT STREET (AVENUE), AND NORTH OF THE UNION PACIFIC RAILROAD RIGHT OF WAY, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

3. The proposed sale of such vacated right-of-way, described as follows, to Available Material Handling LLC for \$3,500, with closing on the sale subject to the Plan and Zoning Commission recommendations as stated above, is hereby approved:

ALL THAT VACATED PART OF THE SHAW STREET LYING WEST OF THE SOUTHERLY EXTENSION OF THE NORTH-SOUTH ALLEY IN BLOCK 7, JACK'S PLAT, AN OFFICIAL PLAT, AND EAST OF THE UNION PACIFIC RAILROAD RIGHT OF WAY, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

AND

ALL THAT VACATED PART OF THE SOUTHEAST 21ST COURT LYING SOUTH OF THE SOUTH RIGHT OF WAY LINE OF SCOTT STREET (AVENUE), AND NORTH OF THE UNION PACIFIC RAILROAD RIGHT OF WAY, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA.

4. The Mayor is authorized and directed to sign the Offer to Purchase and, prior to closing, the Quit Claim Deed for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature and, upon final passage of an ordinance vacating the said right-of-way and upon proof of payment of the consideration plus \$113.00 for publication and recording costs, to deliver the aforementioned documents to the Real Estate Division Manager for recording and closing purposes, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing.

5. The City Manager and/or his designee, the City's Real Estate Division Manager, is hereby authorized and directed to administer and monitor the Offer to Purchase to confirm compliance with the Plan and Zoning Commission recommendations prior to closing; to approve and execute documents pertaining to minor or unsubstantial changes to said Offer, following approval of the City's Legal Department as to form; to proceed to closing in accordance with the terms set forth herein and in the Offer; and, if needed, to proceed with and execute documents pertaining to the termination of the Offer if Available Handling Materials LLC fails to fulfill the contract terms required therein, following approval of the City's Legal Department.

Date April 9, 2012

6. The proceeds from the sale of this property shall be deposited into the following account:  
Property Maintenance Endowment Fund, SP767, ENG980500.

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

APPROVED AS TO FORM:

*Glenna K. Frank*  
Glenna K. Frank  
Assistant City Attorney

*PSW*

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

**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.

MOTION CARRIED APPROVED

\_\_\_\_\_  
Mayor

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