

Date December 17, 2012

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**APPROVING ACQUISITION OF PROPERTY LOCALLY KNOWN AS
1101 RACCOON STREET FROM ROBERT F. ETZEL FOR THE
SOUTHEAST CONNECTOR PROJECT, \$40,000**

WHEREAS, on April 25, 2005, by Roll Call No. 05-969, City Council authorized the acquisition by gift, negotiation or condemnation of the right-of-way required to construct the Southeast Connector Project; and

WHEREAS, on December 20, 2010, by Roll Call No. 10-2064, City Council established fair market value of real property locally known as 1101 Raccoon Street, owned by Robert F. Etzel, in the amount of \$105,000, plus closing costs and relocation expenses; and

WHEREAS, the City's Real Estate Division was unable to reach an agreement with the property owner for fee acquisition of the property as needed for the Southeast Connector Project, and condemnation proceedings were subsequently instituted for the acquisition of the property; and

WHEREAS, the Polk County Compensation Commission convened on January 9, 2012, in Des Moines, Iowa and made an award to the property owner in the amount of \$130,000, which amount was deposited by the City with the Polk County Sheriff as required by Iowa Code Section 6B.25; and

WHEREAS, Robert F. Etzel appealed the condemnation award in *Robert F. Etzel v. City of Des Moines, et al.*, Polk County District Court Case No. CVCV9007; and

WHEREAS, as part of the condemnation appeal proceedings, City staff and the property owner have negotiated a settlement of the condemnation appeal litigation and of the property acquisition in the total amount of \$170,000, including the \$130,000 previously deposited by the City with the Polk County Sheriff and an additional payment by the City to Robert F. Etzel of \$15,000 for property acquisition, \$20,000 for attorney fees, and \$5,000 for appraisal costs, in exchange and as consideration for Mr. Etzel's dismissal of the appeal litigation; and

WHEREAS, the City Real Estate Division and Legal Department recommend approval of payment of the negotiated settlement amount to the property owner and any other applicable payees, subject to and in exchange for dismissal of the pending condemnation appeal litigation.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that additional payment of \$40,000, allocable as set forth above, be and hereby is approved as full and final settlement of the condemnation appeal litigation and property acquisition of the real property locally known as 1101 Raccoon Street, owned by Robert F. Etzel, for the Southeast Connector Project, subject to and in exchange for dismissal of the pending condemnation appeal litigation.

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BE IT FURTHER RESOLVED, that the Real Estate Division of the Engineering Department is directed to obtain the Legal Department's review and approval of the Settlement Agreement prior to payment.

BE IT FURTHER RESOLVED, that the Finance Director is authorized and directed to issue checks in the amounts necessary to carry out the transaction and to pay any unforeseen additional costs certified by the Legal Department and the Engineering Department.

Moved by _____ to adopt.

APPROVED AS TO FORM:

Gary Goudelock
Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GRIESS, HENSLEY, MAHAFFEY, MEYER, MOORE, and TOTAL.

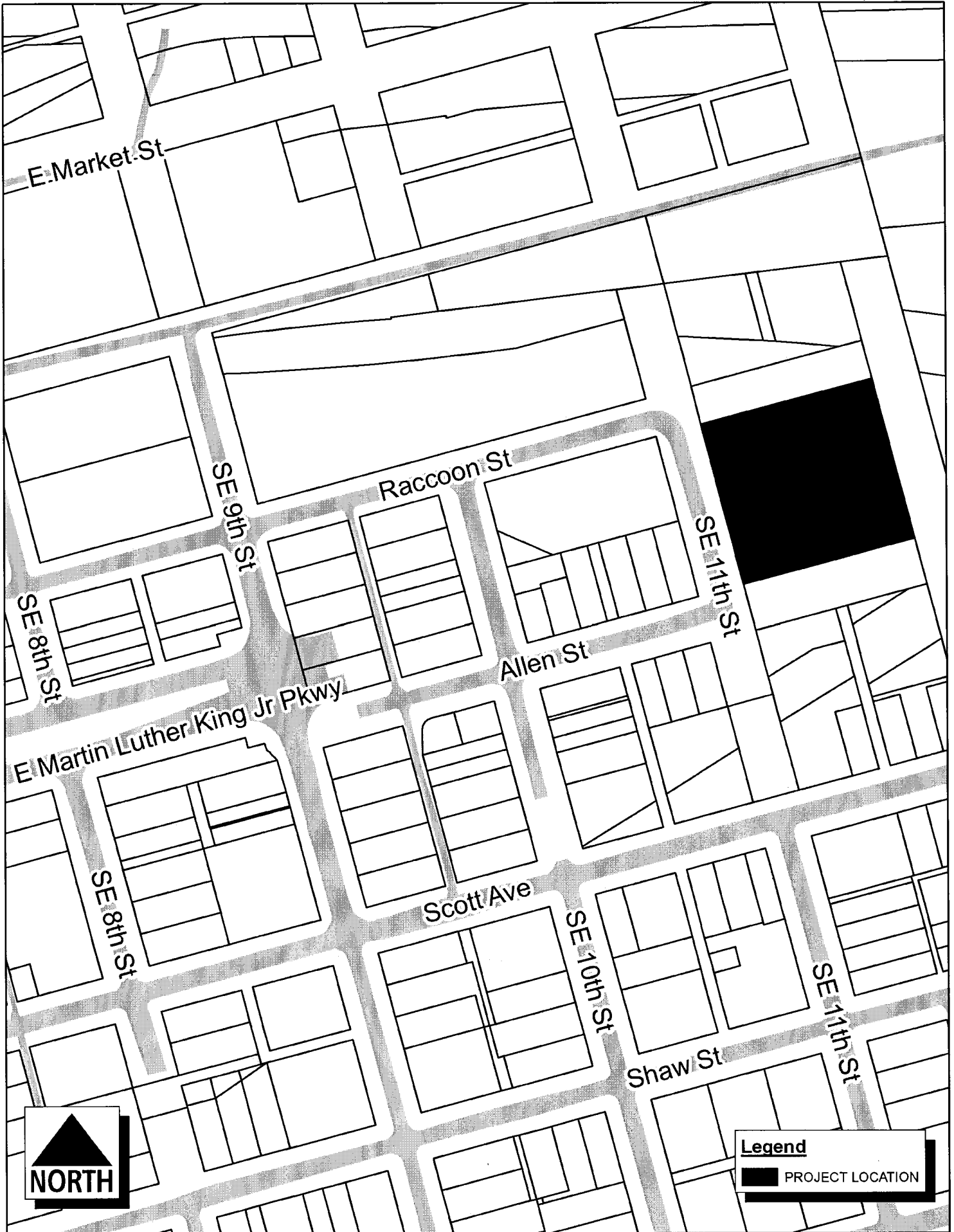
MOTION CARRIED APPROVED
Mayor

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



Legend
■ PROJECT LOCATION