

Date October 4, 2021

**AUTHORIZATION TO PROCEED WITH ACQUISITION OF THE NECESSARY
PROPERTY INTERESTS FOR THE LOWER FOURMILE CREEK GREENWAY
PROJECT BY GIFT, NEGOTIATION, OR EMINENT DOMAIN**

WHEREAS, on November 6, 2017, by Roll Call No. 17-1901, City Council approved the Lower Fourmile Creek Greenway Master Plan (“Greenway”) that was developed as a joint effort between the City of Des Moines, City of Pleasant Hill, Polk County, Polk County Conservation, Polk County Soil and Water Conservation District and the Fourmile Creek Watershed Management Authority; and

WHEREAS, on July 15, 2019, by Roll Call No. 19-1121, City Council approved the Lower Fourmile Creek Greenway Management and Maintenance Chapter 28E Agreement (“Agreement”) between the City of Des Moines and Polk County Conservation Board (“PCCB”); and

WHEREAS, on September 14, 2020, by Roll Call No. 20-1459, City Council approved an amendment to said Agreement; and

WHEREAS, in order to fully implement the Lower Fourmile Creek Greenway Project (hereinafter “Project”), it is necessary for City Council to authorize acquisition of certain private properties by gift, negotiation, or eminent domain; and

WHEREAS, the Project will include the removal or partial removal of various streets, and, with the exception of properties needed for City parkland purposes, all of the acquired properties will ultimately be conveyed to Polk County, Iowa for the use and benefit of the Polk County Conservation Board for incorporation and management of the Greenway for watershed purposes in accordance with the 28E agreement identified above, as amended; and

WHEREAS, in accordance with Iowa Code Section 6B.2D, notice of intent to approve acquisition of the necessary property interests for the Project has been sent to each property owner, contract purchaser of record and any tenant known to be occupying property proposed to be acquired for the Project, and all such persons receiving notice shall have the right to voice objection to the proposed acquisition of the property interests; and

WHEREAS, the City’s Real Estate Division of the Engineering Department will acquire the necessary property interests for this Project; and

WHEREAS, after property interest needs are determined, the proposed Fair Market Value of the property interests to be acquired will be submitted to the City Council or the City Manager, as applicable, for approval and authorization to proceed with acquisitions.

Date October 4, 2021

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

1. That all objections and endorsements having been fully reviewed and considered, the hearing providing the opportunity for input from affected property owners, contract purchasers, and tenants on the question of acquisition or condemnation of private property for the Lower Fourmile Creek Greenway Project is now concluded and closed.
2. That the location of the Project as determined by the City's Engineering Department and the PCCB is hereby approved; there is a reasonable expectation the City will be able to achieve its public purpose, comply with all applicable standards, and obtain the necessary permits; and the City of Des Moines Real Estate Division be and is hereby authorized to proceed with the necessary activities and negotiations to acquire by gift, negotiation, or condemnation the necessary property interests for construction of the Lower Fourmile Creek Greenway Project, subject to approval by this Council, or approval of the City Manager in accordance with Section 2-201 (c) and (d), of the Municipal Code of the City of Des Moines, Iowa, as applicable.
3. That the property will be acquired in accordance with the guidelines of 49 CFR Part 24 of the Uniform Relocation and Real Property Acquisition Act, as revised, and that relocation assistance is hereby authorized.
4. That the City Manager is hereby authorized to approve all Fair Market Values for all the property interests needed for the Project. If the property owners agree to convey the property to the City in an amount based on the established fair market value, including an approved administrative settlement, or if a condemnation award is based on the established fair market value or falls within an approved settlement amount, the Finance Director is authorized and directed to issue checks in the amounts necessary to carry out these 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 these transactions in accordance with standard real estate practices and state law requirements.
5. 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.
6. That the City Clerk is hereby authorized and directed to endorse upon the real estate documents for this Project the approval and acceptance of this Council, the Mayor is authorized and directed to sign all necessary real estate documents, and the City Clerk is further authorized and directed to deliver the aforementioned documents to the Real Estate Division Manager, who shall proceed to closing in accordance with standard real estate practices.

 **Roll Call Number**

Agenda Item Number

51

Date October 4, 2021

(Council Communication No. 21-421)

Moved by _____ to adopt.

APPROVED AS TO FORM:

/s/ Lisa A. Wieland
Lisa A. Wieland, Assistant City Attorney

DW

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
GRAY				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

MOTION CARRIED APPROVED

Mayor

CERTIFICATE

I, P. Kay Cmelik, 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

**NOTICE OF PUBLIC MEETING ON THE INTENT TO ACQUIRE PROPERTY FOR
WATERSHED MANAGEMENT PURPOSES AND AUTHORIZE ACQUISITION OF
THE NECESSARY PROPERTY INTERESTS FROM VARIOUS PROPERTY OWNERS
FOR THE LOWER FOURMILE CREEK GREENWAY PROJECT BY GIFT,
NEGOTIATION, OR EMINENT DOMAIN**

TO:

<u>Property Owner</u>	<u>Mailing Address</u>	<u>Location of Affected Property</u>	<u>County</u>
Michael Thomas Deaton	4033 Colfax Avenue Des Moines, IA 50317	4033 Colfax Avenue Des Moines, IA 50317	Polk
Ryan Williams	1080 NE 60 th Avenue Des Moines, IA 50313	4031 Colfax Avenue Des Moines, IA 50317	Polk
TF 59-CCSB	P.O. Box 12131 Des Moines, IA 50312	4029 Colfax Avenue Des Moines, IA 50317	Polk
Dixie L. Holdredge Lena M. Wright	2509 Lay Street Des Moines, IA 50317	Geo Parcel 7923-20-404-008 Des Moines, IA 50317	Polk
Herminio Ruiz Martinez	1438 E. 17 th Court Des Moines, IA 50316	4023 Colfax Avenue Des Moines, IA 50317	Polk
Walter D. Foley and Mary E. Foley	4017 Colfax Avenue Des Moines, IA 50317	4017 Colfax Avenue Des Moines, IA 50317	Polk
Joan E. Warne	3314 E 35 th Street Des Moines, IA 50317	3314 E. 35 th Street Des Moines, IA 50317	Polk
Stephanie L. Young	3218 E. 36 th Court Des Moines, IA 50317	Geo Parcel 7923-29-276-006 Des Moines, IA 50317	Polk
Victor Robert L. Green and Cindy L.Green	2416 E. 36 th Street Des Moines, IA 50317	2416 E. 36 th Street Des Moines, IA 50317	Polk
Michelle A. Sepich (CB) Betty Hall (CS)	2543 Des Moines Street Des Moines, IA 50317 4440 Cameron Swing Pleasant Hill, IA 50327	Geo Parcel 7923-29-477-021 Des Moines, IA 50317	Polk
Steven D. Nisser	7107 El Rancho Avenue Windsor Heights, IA 50324	Geo Parcel 7923-29-477-030 Des Moines, IA 50317	Polk
Richard M. Clark and Sherry L. Clark	2521 E. 36 th Court Des Moines, IA 50317	2521 E. 36 th Court Des Moines, IA 50317	Polk
Jacob A. Andrews and Allison S. Andrews	2505 E. 41 st Street Des Moines, IA 50317	2503 E. 36 th Court Des Moines, IA 50317	Polk
Max Scott	P.O. Box 16033 Des Moines, IA 50316	2431/2433 E. 36 th Court Des Moines, IA 50317	Polk

Todd McClish and Selena E. McClish	9828 Brookview Drive Urbandale, IA 50322	2425/2427 E. 36 th Court Des Moines, IA 50317	Polk
2Pars, LLC	6000 Grand Avenue Des Moines, IA 50312	2419/2421 E. 36 th Court Des Moines, IA 50317	Polk
Robert R. Olmsted and Helen E. Olmsted	3833 Mattern Avenue Des Moines, IA 50313	Geo Parcel 7923-33-151-001 Geo Parcel 7923-33-151-002 3807 Mattern Avenue Geo Parcel 7923-33-151-004 3827 Mattern Avenue 3833 Mattern Avenue 3845 Mattern Avenue Geo Parcel 7923-33-151-008 Des Moines, IA 50317	Polk
James W. Mikesell and Edith E. Mikesell	3846 E. Jefferson Avenue Des Moines, IA 50317	3846 E. Jefferson Avenue Geo Parcel 7923-33-151-040 Geo Parcel 7923-33-151-041 Geo Parcel 7923-33-151-042 Geo Parcel 7923-33-151-043 Geo Parcel 7923-33-151-045 Geo Parcel 7923-33-151-046 Des Moines, IA 50317	Polk
Alfredo Navarro	1816 E. 40 th Court Des Moines, IA 50317	1816 E. 40 th Court Geo Parcel 7923-33-155-002 Des Moines, IA 50317	Polk
William J. Young, Jr.	1915 E. 41 st Street Des Moines, IA 50317	Geo Parcel 7923-33-178-015 Geo Parcel 7923-33-178-016 Des Moines, IA 50317	Polk
Betty Jean Young and William J. Young	1915 E. 41 st Street Des Moines, IA 50317	Geo Parcel 7923-33-178-020 Des Moines, IA 50317	Polk
Andrew Luke Brinker	8962 NE 38 th Avenue Altoona, IA 50009	Geo Parcel 7923-33-178-021 Geo Parcel 7923-33-178-022 Geo Parcel 7923-33-178-023 Geo Parcel 7923-33-178-024 Des Moines, IA 50317	Polk
Don Young, Jr.	2520 NE 52 nd Court Des Moines, IA 50317	Geo Parcel 7923-33-178-044 Des Moines, IA 50317	Polk
AJ Drew and Lisa A. Drew	4044 E. Madison Avenue Des Moines, IA 50317	4139 Mattern Avenue Des Moines, IA 50317	Polk
Catherine L. Manhart	4147 Mattern Avenue Des Moines, IA 50317	4147 Mattern Avenue Des Moines, IA 50317	Polk

Wilda J. Snedigar

1908 E. 42nd Street
Des Moines, IA 50317

Geo Parcel 7923-33-177-014
Des Moines, IA 50317

Polk

and other Polk County Property Owners.

Under the provisions of 6B.2D of the Iowa Code, a governmental body which proposes to acquire private property by eminent domain for watershed management purposes shall send notice of a proposed resolution, motion, or other document authorizing acquisition of such property to each property owner whose property is proposed to be acquired by eminent domain, to any contract purchaser of record of the property, and to any tenant known to be occupying the property prior to the date of the meeting at which such proposed authorization will be considered for adoption by the acquiring agency.

1. DES MOINES CITY COUNCIL INTENDS TO APPROVE ACQUISITION OF PRIVATE PROPERTY FOR WATERSHED MANAGEMENT PURPOSES BY GIFT, NEGOTIATION, OR EMINENT DOMAIN.

NOTICE IS HEREBY GIVEN to the above-identified property owners, contract purchasers of record and tenants known to be occupying the property (collectively, "Property Owners") that the Des Moines City Council will consider authorizing acquisition of private property by gift, negotiation or eminent domain for the Lower Fourmile Creek Greenway Project (the "Project"). The Project requires the removal, or partial removal, of various streets for incorporation with the Project. This Project is generally located along Fourmile Creek from East Aurora Avenue to Williams Street, as depicted on the enclosed map.

The Project, if approved by the City Council, will require acquisition of private property interests for the Project. Upon review of Polk County property records, it appears that private property interests owned, leased or rented by the above-identified persons may have to be acquired in whole or in part for the Lower Fourmile Creek Greenway Project.

2. DATE, TIME, AND PLACE OF THE PUBLIC MEETING AT WHICH PROPOSED AUTHORIZATION TO ACQUIRE PROPERTY BY EMINENT DOMAIN WILL BE CONSIDERED FOR ADOPTION BY THE DES MOINES CITY COUNCIL.

The public meeting on acquisition of private property interests for the Lower Fourmile Creek Greenway Project will be held during the City Council's regularly scheduled meeting on the 4th day of October 2021, in the City Council Chamber, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa, commencing at 5:00 p.m. Persons receiving this notice have a right to attend the meeting and to voice objection to the proposed acquisition of the Project.

In addition, in order for the City of Des Moines to proceed with the Project and commence the acquisition of private property for the Project, the City Council will be required to authorize such property acquisition by gift, negotiation or eminent domain by City Council resolution. The City of Des Moines is required to send a copy of the enclosed resolution that will be considered for adoption by the City Council authorizing the acquisition of the private property for watershed management purposes by purchase, gift, negotiation or eminent domain. The City Council is scheduled to consider adoption of the enclosed resolution following the public hearing on October 4, 2021.

Following receipt of comments at the meeting, the City Council will decide whether or not to adopt the resolution and proceed with the Project by acquiring the necessary real estate interests for the Project by gift, negotiation, or eminent domain. If the resolution is approved by the City Council, an independent appraiser retained by the City of Des Moines will determine the compensation to be paid for the property interests that are needed for the Project. The City of Des Moines will offer no less than the appraised value and will attempt to purchase the property interests needed for the Project by good faith negotiations. If the City of Des Moines is unable to acquire property needed for the Project by negotiation, the City of Des Moines will acquire that property by condemnation. It is anticipated that the property acquisition process will be completed over a period of five (5) years, subject to annual funding availability.

3. STATEMENT OF RIGHTS.

Just as the law grants certain entities the right to acquire private property, you, as the owner of property, have certain rights. You have the right to:

- a. Receive just compensation for the taking of property. (Iowa Const., Article I, Section 18)
- b. An offer to purchase that may not be less than the lowest appraisal of the fair market value of the property. (Iowa Code Section 6B.45; Iowa Code Section 6B.54(3))
- c. Receive a copy of the appraisal, if an appraisal is required, upon which the acquiring agency's determination of just compensation is based not less than 10 days before being contacted by the acquiring agency's acquisition agent. (Iowa Code Section 6B.45)
- d. An opportunity to accompany at least one appraiser of the acquiring agency who appraises your property when an appraisal is required. (Iowa Code Section 6B.54(2))
- e. Participate in good-faith negotiations with the acquiring agency before the acquiring agency begins condemnation proceedings. (Iowa Code Section 6B.2B)
- f. Retain legal counsel of your choosing at your expense for the purpose of bringing a court action to challenge the exercise of eminent domain authority or the condemnation proceedings in accordance with the provisions of law. (Iowa Code Section 6B.3A; Iowa Code Section 6A.24)
- g. A determination of just compensation by an impartial compensation commission and the right to appeal its award to district court if you cannot agree on a purchase price with the acquiring agency. (Iowa Code Section 6B.4; Iowa Code Section 6B.7; and Iowa Code Section 6B.18)
- h. Payment of the agreed upon purchase price, or, if condemned, a deposit of the compensation commission award before you are required to surrender possession of the property. (Iowa Code Section 6B.25; Iowa Code Section 6B.26; Iowa Code Section 6B.54(11))
- i. Reimbursement for expenses incidental to transferring title to the acquiring agency. (Iowa Code Section 6B.33; Iowa Code Section 6B.54(10))

- j. Reimbursement of certain litigation expenses: (1) if the award of the compensation commissioners exceeds 110 percent of the acquiring agency's final offer before condemnation; and (2) if the award on appeal in court is more than the compensation commissioners' award. (Iowa Code Section 6B.33)
- k. To the greatest extent practicable, be provided at least 90 days' written notice to vacate occupied property prior to construction or development of a public improvement. (Iowa Code Section 6B.54(4))
- l. Relocation services and payments, if you are eligible to receive them, and the right to appeal your eligibility for and amount of payments. (Iowa Code Section 316.9; Iowa Code Section 6B.42)

The rights set out in this statement are not claimed to be a full and complete list or explanation of an owner's rights under the law. They are derived from Iowa Code Chapters 6A, 6B and 316. For a more thorough presentation of an owner's rights, you should refer directly to the Iowa Code or contact an attorney of your choice.

Mailed to all affected Property Owners on September 17, 2021.