

Date July 15, 2024

**HOLD HEARING FOR APPROVAL OF A LICENSE AGREEMENT WITH  
TIMBERCREST HOMES, L.L.C. FOR USE OF A PORTION OF EAST ARMY POST ROAD  
RIGHT-OF-WAY AT PLANNED SE 30<sup>TH</sup> STREET FOR PRIVATE STORMWATER  
TREATMENT IMPROVEMENTS FOR \$4,900.00**

**WHEREAS**, on April 15, 2024, Roll Call 24-0560 City Council approved a request by Timbercrest Homes, L.L.C., John W. Larson, Owner, and Legacy Excavation, LLC for a private construction contract for Sanitary and Storm Sewer Improvements to serve Three Lakes Estates Plat 13, located southeast of East Army Post Road; and

**WHEREAS**, Timbercrest Homes, L.L.C. has requested for a license agreement for adding a Downstream Defender, Vortex Separator for Stormwater Treatment, and connecting inflow and outflow pipes was request for the private stormwater treatment improvements to serve Three Lakes Estates; and

**WHEREAS**, the City's Real Estate Division has negotiated a License Agreement with Timbercrest Homes, L.L.C. for lease of a portion of East Army Post Road right-of-way at planned Se 30<sup>th</sup> Street (hereinafter Leased Premises), which Agreement will include, among other terms, a forty-nine year (49) license term, a one-time rent payment of \$4,900.00 and additional consideration including the following:

- A) The Licensee shall, at its cost, be responsible for providing any additional improvements, equipment and furnishings that it determines are necessary to provide service.
- B) Licensee shall install in a manner that will not damage the trees and shrubs on the licensed premises.
- C) Licensee accepts full responsibility for the security and protection of all of its contents, inventory, equipment, facilities, fixtures and improvements located within the licensed premises and for reasonable efforts to prevent unauthorized access to such equipment.

**WHEREAS**, there is no known current or future public need for the portion of the East Army Post Road right-of-way at planned SE 30<sup>th</sup> Street proposed to be licensed, and the City will not be inconvenienced by the vacation and lease of said property.

**WHEREAS**, on June 17, 2024, by Roll Call No. 24-0863, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed license of said street right-or way be set for hearing on July 15, 2024, at 5:00 p.m., in the City Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa; and

**WHEREAS**, due notice of said proposal to license the property was given all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

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



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**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, any and all objections to the proposed license of a portion of East Army Post Road right-of-way at planned SE 30<sup>th</sup> Street, as described herein, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the street right-of-way proposed to be licensed, and the public would not be inconvenienced by reason of the license portion of East Army Post Road right-of-way at planned SE 30<sup>th</sup> Street, legally described as follows, to Timbercrest Homes, L.L.C., subject to reservation of easements therein, and further subject to all terms and contained in the License Agreement:

That part of East Army Post right-of-way in the City of Des Moines, Polk County, Iowa, being more particularly described as follows:

A LICENSED PREMISES IN LOT 'A' OF THREE LAKES ESTATES OUTLOTS PLAT 1, AN OFFICIAL PLAT RECORDED IN BOOK 18832, PAGE 101 AT THE POLK COUNTY RECORDER'S OFFICE AND IN THE PROPERTY DESCRIBED IN THE WARRANTY DEED RECORDED IN BOOK 7686, PAGE 411 AT THE POLK COUNTY RECORDER'S OFFICE AND SHOWN ON THE ACQUISITION PLAT ON PAGE 4 OF SAID WARRANTY DEED, ALL IN THE NE1/4 NE1/4 OF SECTION 36, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE 5TH P.M., CITY OF DES MOINES, POLK COUNTY, IOWA THAT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTH 40.00 FEET OF THE NORTH 144.00 FEET OF THE EAST 40.00 FEET OF SAID NE1/4 NE1/4 AND CONTAINING 1,600 SQUARE FEET MORE OR LESS.

3. The proposed license of such East Army Post Road right-of-way, as legally described above to Timbercrest Homes, L.L.C. for \$4,900.00 and additional consideration, subject to any and all easements, restrictions and covenants of record, is hereby approved.
4. The Mayor is authorized and directed to sign the License Agreement as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. Upon proof of payment of the consideration, plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the License Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.
6. The Real Estate Division Manager is authorized and directed to forward the original of the License Agreement, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.





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- 7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Lease Agreement and a copy of the other documents to the Lessee.
- 8. Non-project related land sale and lease proceeds are used to support general operating budget expenses: Org – EG064090.

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

**APPROVED AS TO FORM:**

/s/ Mackenzie L. Moreno  
Mackenzie L. Moreno, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN				
SIMONSON				
VOSS				
COLEMAN				
WESTERGAARD				
MANDELBAUM				
GATTO				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

**CERTIFICATE**

I, Laura Baumgartner, 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.

\_\_\_\_\_  
Laura Baumgartner, City Clerk

