

Date March 24, 2025

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF AIR, SURFACE, AND SUBSURFACE RIGHTS WITHIN PORTIONS OF EAST 5<sup>TH</sup> STREET RIGHT-OF-WAY ADJOINING 106 EAST 6<sup>TH</sup> STREET AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY, A PERMANENT EASEMENT FOR SURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY AND A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY TO DES MOINES PREP FACILITIES LLC FOR \$21,596.00**

**WHEREAS**, Des Moines Prep Facilities LLC, the owner of 106 East 6<sup>th</sup> Street, Des Moines, Iowa has requested that the City of Des Moines, Iowa (“City”) vacate air, surface, and subsurface rights in portions of East 5<sup>th</sup> Street right-of-way adjoining 106 East 6<sup>th</sup> Street, which request was not presented to the City’s Plan and Zoning Commission for review and has instead been determined by the City Traffic Engineer to have no significant impact upon the public use of the right-of-way, in accordance with Municipal Code 102-286(b); and,

**WHEREAS**, Des Moines Prep Facilities LLC has offered to the City the purchase price of \$21,596.00 for the purchase of a Permanent Easement for Air Space above City-Owned Property, a Permanent Easement for Surface Building Encroachment on City-Owned Property, and a Permanent Easement for Subsurface Building Encroachment on City-Owned Property (“Easements”) over, through and across portions of East 5<sup>th</sup> Street right-of-way adjoining 106 East 6<sup>th</sup> Street (hereinafter “Easement Area”) for the purpose of constructing, operating, maintaining and repairing a canopy, door stoops, and footing encroachments for the building on the property, which price reflects the fair market value of the Easement as determined by the City’s Real Estate Division; and,

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

**WHEREAS**, on March 10, 2025, by Roll Call No. 25-0352, it was duly resolved by the City Council of the City of Des Moines, Iowa, that the proposed vacation of the street right-of-way and the conveyance of a Permanent Easement for Air Space above City-Owned Property, a Permanent Easement for Surface Building Encroachment on City-Owned Property, and a Permanent Easement for Subsurface Building Encroachment on City-Owned Property be set for hearing on March 24, 2025, 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 vacate the street right-of-way and convey the Easements was given to 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 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.

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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 vacation of air, surface, and subsurface rights in portions of East 5<sup>th</sup> Street right-of-way adjoining 106 East 6<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 right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of air, surface, and subsurface rights within portions of East 5<sup>th</sup> Street right-of-way adjoining 106 East 6<sup>th</sup> Street, legally described as follows, and said vacation is hereby approved:

**AIR RIGHTS**

A 5.75-FOOT-WIDE PORTION OF THE EAST 5TH STREET RIGHT OF WAY WEST OF AND ADJACENT TO THE SOUTH 154.00 FEET OF LOT 14 IN BLOCK 15, TOWN OF DE MOINE, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, ALL MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTH 154.00 FEET OF SAID LOT 14; THENCE S15°07'37"E ALONG THE WEST LINE OF SAID LOT 14, A DISTANCE OF 26.00 FEET; THENCE S75°03'02"W, A DISTANCE OF 5.75 FEET; THENCE N15°07'37"W, A DISTANCE OF 26.00 FEET; THENCE N75°03'02"E, A DISTANCE OF 5.75 FEET TO THE POINT OF BEGINNING. EASEMENT TO BE BETWEEN ELEVATION 34.40 FEET AND 50.40 FEET. (CITY OF DES MOINES VERTICAL DATUM) CONTAINS 1,495 SQUARE FEET.

**SURFACE RIGHTS**

A 4.50 FOOT WIDE PORTION OF THE EAST 5TH STREET RIGHT OF WAY WEST OF AND ADJACENT TO THE SOUTH 154.00 FEET OF LOT 14 IN BLOCK 15, TOWN OF DE MOINE, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, ALL MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTH 154.00 FEET OF SAID LOT 14; THENCE S15°07'37"E ALONG THE WEST LINE OF SAID LOT 14, A DISTANCE OF 5.20 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S15°07'37"E ALONG THE WEST LINE OF SAID LOT 14, A DISTANCE OF 13.43 FEET; THENCE S74°52'23"W, A DISTANCE OF 4.50 FEET; THENCE N15°07'37"W, A DISTANCE OF 13.43 FEET; THENCE N74°52'23"E, A DISTANCE OF 4.50 FEET TO THE POINT OF BEGINNING. CONTAINS 60 SQUARE FEET.

AND

A 4.50 FOOT WIDE PORTION OF THE EAST 5TH STREET RIGHT OF WAY WEST OF AND ADJACENT TO THE SOUTH 154.00 FEET OF LOT 14 IN BLOCK 15, TOWN OF



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DE MOINE, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, ALL MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTH 154.00 FEET OF SAID LOT 14; THENCE S15°07'37"E ALONG THE WEST LINE OF SAID LOT 14, A DISTANCE OF 47.71 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S15°07'37"E ALONG THE WEST LINE OF SAID LOT 14, A DISTANCE OF 19.16 FEET; THENCE S74°52'23"W, A DISTANCE OF 4.50 FEET; THENCE N15°07'37"W, A DISTANCE OF 19.16 FEET; THENCE N74°52'23"E, A DISTANCE OF 4.50 FEET TO THE POINT OF BEGINNING. CONTAINS 86 SQUARE FEET.

AND

A 4.50 FOOT WIDE PORTION OF THE EAST 5TH STREET RIGHT OF WAY WEST OF AND ADJACENT TO THE SOUTH 154.00 FEET OF LOT 14 IN BLOCK 15, TOWN OF DE MOINE, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, ALL MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 14; THENCE N15°07'37"W ALONG THE WEST LINE OF SAID LOT 14, A DISTANCE OF 15.55 FEET TO THE POINT OF BEGINNING; THENCE S74°52'23"W, A DISTANCE OF 4.50 FEET; THENCE N15°07'37"W, A DISTANCE OF 5.00 FEET; THENCE N74°52'23"E, A DISTANCE OF 4.50 FEET TO THE WEST LINE OF SAID LOT 14; THENCE S15°07'37"E ALONG THE WEST LINE OF SAID LOT 14, A DISTANCE OF 5.00 FEET; TO THE POINT OF BEGINNING. CONTAINS 22.5 SQUARE FEET.

**SUBSURFACE RIGHTS**

A 5.00 FOOT WIDE PORTION OF THE EAST 5TH STREET RIGHT OF WAY WEST OF AND ADJACENT TO THE SOUTH 154.00 FEET OF LOT 14 IN BLOCK 15, TOWN OF DE MOINE, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, ALL MORE PARTICULARLY DESCRIBED AS:

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AND

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AND

A 5.00 FOOT WIDE PORTION OF THE EAST 5TH STREET RIGHT OF WAY WEST OF AND ADJACENT TO THE SOUTH 154.00 FEET OF LOT 14 IN BLOCK 15, TOWN OF DE MOINE, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, ALL MORE PARTICULARLY DESCRIBED AS:

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3. The proposed conveyance of the Permanent Easement for Air Space above City-Owned Property, the Permanent Easement for Surface Building Encroachment on City-Owned Property, and the Permanent Easement for Subsurface Building Encroachment on City-Owned Property in such vacated street right-of-way, as legally described below, to Des Moines Prep Facilities LLC, for \$21,596.00, subject to any and all easements, restrictions and covenants of record is hereby approved:

**PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY**

A 5.75-FOOT-WIDE PORTION OF THE VACATED EAST 5TH STREET RIGHT OF WAY WEST OF AND ADJACENT TO THE SOUTH 154.00 FEET OF LOT 14 IN BLOCK 15, TOWN OF DE MOINE, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, ALL MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTH 154.00 FEET OF SAID LOT 14; THENCE S15°07'37"E ALONG THE WEST LINE OF SAID LOT 14, A DISTANCE OF 26.00 FEET; THENCE S75°03'02"W, A DISTANCE OF 5.75 FEET; THENCE N15°07'37"W, A DISTANCE OF 26.00 FEET; THENCE N75°03'02"E, A DISTANCE OF 5.75 FEET TO THE POINT OF BEGINNING. EASEMENT TO BE BETWEEN



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ELEVATION 34.40 FEET AND 50.40. FEET (CITY OF DES MOINES VERTICAL DATUM) CONTAINS 1,495 SQUARE FEET.

**PERMANENT EASEMENT FOR SURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY**

A 4.50 FOOT WIDE PORTION OF THE VACATED EAST 5TH STREET RIGHT OF WAY WEST OF AND ADJACENT TO THE SOUTH 154.00 FEET OF LOT 14 IN BLOCK 15, TOWN OF DE MOINE, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, ALL MORE PARTICULARLY DESCRIBED AS:

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AND

A 4.50 FOOT WIDE PORTION OF THE VACATED EAST 5TH STREET RIGHT OF WAY WEST OF AND ADJACENT TO THE SOUTH 154.00 FEET OF LOT 14 IN BLOCK 15, TOWN OF DE MOINE, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, ALL MORE PARTICULARLY DESCRIBED AS:

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**PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT ON CITY-OWNED PROPERTY**

A 5.00 FOOT WIDE PORTION OF THE VACATED EAST 5TH STREET RIGHT OF WAY WEST OF AND ADJACENT TO THE SOUTH 154.00 FEET OF LOT 14 IN BLOCK 15, TOWN OF DE MOINE, AN OFFICIAL PLAT, DES MOINES, POLK COUNTY, IOWA, ALL MORE PARTICULARLY DESCRIBED AS:

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4. The Mayor is authorized and directed to sign the Offer to Purchase and the Permanent Easement for Air Space above City-Owned Property, the Permanent Easement for Surface Building Encroachment on City-Owned Property, and the Permanent Easement for Subsurface Building Encroachment on City-Owned Property, as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. The City Manager is authorized to sign any minor and non-substantial amendments to the purchase agreement and is further authorized to grant any temporary rights of entry for construction-related activities prior to closing.
6. 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 Permanent Easement for Air Space above City-Owned Property, the Permanent Easement for Surface Building Encroachment on City-Owned Property, and the Permanent Easement for Subsurface Building Encroachment on City-Owned Property, 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.
7. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Air Space above City-Owned Property, the Permanent Easement for Surface Building Encroachment on City-Owned Property, and the Permanent Easement for Subsurface Building Encroachment on City-Owned Property, 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.
8. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Permanent Easement for Air Space above City-Owned Property, the Permanent Easement for Surface Building Encroachment on City-Owned Property, and the Permanent Easement for Subsurface Building Encroachment on City-Owned Property, and a copy of the other documents to the grantee.
9. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.



**Roll Call Number**

**Agenda Item Number**

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**Date** March 24, 2025

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

APPROVED AS TO FORM:

*/s/ Grant Hyland*  
\_\_\_\_\_  
Grant Hyland, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN				
SIMONSON				
VOSS				
COLEMAN				
WESTERGAARD				
MANDELBAUM				
GATTO				
TOTAL				

**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.

MOTION CARRIED APPROVED

\_\_\_\_\_  
Mayor

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



