



Roll Call Number

09-280

Agenda Item Number

21

Date February 23, 2009

**APPROVING AND AUTHORIZING THE EXECUTION OF AN AGREEMENT
BETWEEN THE CITY OF DES MOINES AND TRELEN J. WILSON AND LINDA L.
BENDER REGARDING THE PROPERTY AT 1235 DAVIS AVENUE IN DES MOINES,
AND AUTHORIZATION TO ACQUIRE NECESSARY PROPERTY INTERESTS BY
GIFT, NEGOTIATION OR CONDEMNATION**

WHEREAS, on September 22, 2008 by Roll Call No. 08-1662, Council authorized and directed the City Manager to make application with the United States Department of Agriculture (USDA) for assistance under its Emergency Watershed Protection (EWP) Program for certain property owners in the City of Des Moines who experienced issues with land sliding on their property resulting from the flooding and rain conditions of 2008; and

WHEREAS, said application was made and funding pursuant to the USDA's EWP Program is available for construction of a retaining wall and drainage improvements on the property located at 1235 Davis Avenue, Des Moines, Iowa and owned by Trelen J. Wilson and Linda L. Bender, as well as Storm Water Improvements for the City's storm sewer outlet adjacent to said property; and

WHEREAS, City staff and the property owners have negotiated an Agreement regarding the City's sponsorship to obtain financial assistance through the EWP Program with the USDA, Natural Resources Conservation Service (NRCS) for the property, which Agreement is on file in the office of the City Clerk; and

WHEREAS, the City's Legal Department and the Real Estate Division of the Engineering Department will acquire the necessary easements for this project after property needs are determined, and 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.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA:

1. That the aforementioned Agreement between the City and Trelen J. Wilson and Linda L. Bender is hereby approved, subject to review of title issues for the property by the Legal Department, and that following completion of said review by the Legal Department and receipt of necessary title clearance work acceptable to the Legal Department, the Mayor is authorized and directed to execute said Agreement, and the City Clerk is authorized and directed to attest to the Mayor's signature and return the Agreement to the Legal Department for future recording in the office of the Polk County Recorder, as applicable.
2. That the City's Legal Department and Real Estate Division be and are 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 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 appropriate.

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3. That the Fair Market Value of these parcels will be approved in accordance with established City policy. 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.
4. 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.
5. That the City Clerk is hereby authorized and directed to endorse upon the real estate documents the approval and acceptance of this Council and 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.

(Council Communication No. 09- 107)

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Kathleen Vanderpool
Kathleen Vanderpool
Deputy City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
HENSLEY	✓			
KIERNAN	✓			
MAHAFFEY	✓			
MEYER	✓			
VLASSIS	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

T. M. Franklin 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.

Diane Rauh City Clerk