

★ Roll Call Number

12-0873

Agenda Item Number

14

Date June 11, 2012

**ACCEPTANCE OF DEED RESTRICTION COVENANT ON CITY-OWNED PROPERTY AT  
6505 INDIANOLA AVENUE FOR THE EAST ARMY POST ROAD AND  
INDIANOLA AVENUE CULVERT EXTENSION PROJECT**

**WHEREAS**, the City of Des Moines is the owner of real property located southeast of Army Post Road and Indianola Avenue and locally known as 6505 Indianola Avenue ("Restricted Property"), and such property contains Waters of the United States under the regulatory jurisdiction of the Rock Island District of the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act (33 USC 1344); and

**WHEREAS**, the City of Des Moines received a Corps of Engineers permit (permit number CEMVR-OD-P-2010-1582) to place fill in Waters of the United States in accordance with plans for the East Army Post Road and Indianola Avenue Culvert Extension Project; and

**WHEREAS**, as a requirement of receiving the Corps of Engineers permit and in consideration for allowing the City of Des Moines to place fill in Waters of the United States as part of the City Project, the City of Des Moines must place a deed restriction and covenant upon the Restricted Property; and

**WHEREAS**, the deed restriction and covenant upon the Restricted Property, in substantially the form attached hereto and subject to final review and approval of the City Legal Department and the Corps of Engineers, will require the City, its successors in interest or assigns, to perpetually use the Restricted Property as a conservancy area, including a riparian buffer and subject only to construction and maintenance of utilities systems and conservation measures unless expressly approved in writing by the U.S. Army Corps of Engineers, and will require that said use restrictions can be changed, modified or revoked only upon express written approval of the Corps of Engineers, can be legally enforced by the Corps of Engineers, and the Restricted Property can be viewed, entered and inspected by the Corps to determine compliance with the restrictions.

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

1. That the Deed Restriction Covenant on property legally described below and locally known as 6505 Indianola Avenue, be and is hereby approved and accepted, subject to final review and approval as to form by the City Legal Department and the U.S. Army Corps of Engineers:

A PARCEL OF LAND LOCATED IN LOT 1 OF THE OFFICIAL PLAT OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE FIFTH PRINCIPLE MERIDIAN, IN THE CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 36, THENCE SOUTH 89°36'28" EAST, 429.27 FEET ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36; THENCE SOUTH 0°14'30" WEST, 85.21 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF EAST ARMY POST ROAD ALSO BEING THE POINT OF BEGINNING, THENCE

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SOUTH 89° 12' 26" EAST, 121.97 FEET ALONG THE SOUTH RIGHT-OF-WAY LINE OF EAST ARMY POST ROAD; THENCE SOUTH 66° 25' 30" EAST, 237.97 FEET; THENCE SOUTH 00° 19' 52" WEST, 163.25 FEET; THENCE NORTH 66° 25' 30" WEST, 370.52 FEET; THENCE NORTH 00° 14' 30" EAST, 111.93 FEET TO THE POINT OF BEGINNING, CONTAINING 52,460 SQUARE FEET OR 1.20 ACRES MORE OR LESS.

A PARCEL OF LAND LOCATED IN TRACK 1 (RECORDED IN BOOK 7746, PAGE 760) IN THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 78 NORTH, RANGE 24 WEST OF THE FIFTH PRINCIPLE MERIDIAN, IN THE CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 36, THENCE SOUTH 89°36'28" EAST, 770.02 FEET ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 36; THENCE SOUTH 0°19'52" WEST, 87.65 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF EAST ARMY POST ROAD , THENCE SOUTH 00° 19' 52" WEST, 92.10 FEET ALONG THE WEST LINE OF SAID TRACT 1 TO THE POINT OF BEGINNING, THENCE SOUTH 66° 25' 30" EAST, 59.42 FEET; THENCE SOUTH 89° 12' 29" EAST, 92.58 FEET; THENCE SOUTH 00° 10' 59" WEST, 150.01 FEET; THENCE NORTH 89° 12' 29" WEST, 124.40 FEET; THENCE NORTH 66° 25' 30" WEST, 25.22 FEET; THENCE NORTH 00° 19' 52" EAST, 163.25 ALONG THE WEST LINE OF SAID TRACT 1 FEET TO THE POINT OF BEGINNING, CONTAINING 22,620 SQUARE FEET OR 0.52 ACRES MORE OR LESS.

- 2. That, following approval as to form by the City Legal Department, the City Clerk is hereby authorized and directed to endorse upon the Deed Restriction Covenant the approval and acceptance of this Council, and is further authorized and directed to deliver said Deed Restriction Covenant to the Real Estate Division Manager, who shall proceed to record the document with the Polk County Recorder's Office in accordance with standard real estate practices.

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Glenna K. Frank

Glenna K. Frank, Assistant City Attorney

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

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

T. M. Franklin Mayor