

★ Roll Call Number

13-1313

Agenda Item Number

9

Date August 26, 2013

**ACCEPTANCE OF DEED RESTRICTION AND COVENANT ON CITY-OWNED PROPERTY  
LOCATED NORTH OF OLD ARMY POST ROAD AND EAST OF IOWA HIGHWAY 28 FOR  
THE ARMY POST BRIDGE OVER GREAT WESTERN TRAIL PROJECT**

**WHEREAS**, the City of Des Moines is the owner of real property located north of Old Army Post Road and east of Iowa Highway 28 (“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-2012-1298) to place fill within Waters of the United States in accordance with plans for the Army Post Bridge Over Great Western Trail Project (also known as the Army Post Road Bridge Replacement 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 within Waters of the United States as part of said 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 the form on file with the City Clerk, includes various requirements including, but not limited to, perpetual use of the Restricted Property as a conservancy area, including a riparian buffer; restrictions on development and construction upon the Restricted Property of only utilities systems and conservation measures unless expressly approved in writing by the U.S. Army Corps of Engineers; change, modification or revocation of the restriction and covenant only upon express written approval of the Corps of Engineers; enforcement by the Corps of Engineers of the terms of the restriction and covenant; and a right of entry to the Corps for viewing, entering upon and inspecting the Restricted Property to determine City 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 City-owned real property located north of Old Army Post Road and east of Iowa Highway 28, legally described below, be and is hereby approved and accepted:

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 26,  
TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPLE MERIDIAN, IN THE  
CITY OF DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS  
FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID  
SECTION 26, THENCE SOUTH 89°(DEGREES) 45'(MINUTES) 14”(SECONDS) EAST, 57.75

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FEET ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 26; THENCE NORTH 0° 14' 46" EAST, 41.39 FEET TO THE POINT OF BEGINNING, THENCE NORTH 87° 35' 52" WEST, 91.21 FEET; THENCE NORTH 88° 51' 25" WEST, 121.63 FEET; THENCE NORTH 87° 26' 50" WEST, 272.96 FEET; THENCE NORTH 78° 02' 56" WEST, 38.65 FEET; THENCE NORTH 39° 47' 08" WEST, 69.35 FEET; THENCE NORTH 23° 23' 38" WEST, 91.69 FEET; THENCE NORTH 61° 15' 07" WEST, 45.35 FEET; THENCE NORTH 87° 43' 59" WEST, 55.84 FEET; THENCE SOUTH 79° 40' 32" WEST, 59.01 FEET; THENCE NORTH 68° 48' 47" WEST, 20.55 FEET; THENCE NORTH 38° 28' 31" EAST, 117.92 FEET; THENCE NORTH 57° 42' 09" EAST, 115.88 FEET; THENCE NORTH 74° 00' 30" EAST, 305.13 FEET; THENCE SOUTH 43° 25' 11" EAST, 84.11 FEET; THENCE SOUTH 05° 33' 12" WEST, 83.98 FEET; THENCE SOUTH 06° 13' 16" WEST, 11.66 FEET; THENCE SOUTH 72° 59' 49" EAST, 133.90 FEET; THENCE SOUTH 79° 24' 59" EAST, 134.35 FEET; THENCE SOUTH 01° 01' 16" EAST, 202.96 FEET, TO THE POINT OF BEGINNING, CONTAINING 195,830 SQUARE FEET OR 4.50 ACRES MORE OR LESS.

- That 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.
- That the City Engineer or his designee are hereby authorized and directed to administer and monitor City compliance with the terms of the Deed Restriction/Covenant.

Moved by Mahaffey to adopt.

APPROVED AS TO FORM:

Glenna K. Frank  
Glenna K. Frank, Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE         | ✓    |      |      |        |
| COLEMAN        | ✓    |      |      |        |
| GRIESS         | ✓    |      |      |        |
| HENSLEY        | ✓    |      |      |        |
| MAHAFFEY       | ✓    |      |      |        |
| MEYER          | ✓    |      |      |        |
| MOORE          | ✓    |      |      |        |
| TOTAL          | 7    |      |      |        |

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.

T. M. Franklin Mayor

Diane Rauh City Clerk