

Date February 14, 2011

**APPROVING SETTLEMENT OF CONDEMNATION APPEAL FOR THE ACQUISITION OF PROPERTY FROM GENERAL MANUFACTURING COMPANY AND THE WITTERN PARTNERSHIP FOR PROPERTY LOCATED AT 5725 SOUTHWEST 56<sup>TH</sup> STREET AND 5041 ARMY POST ROAD IN THE AMOUNT OF \$247,630 FOR THE AIRPORT RUNWAY 13R-31L PROJECT**

**WHEREAS**, on September 3, 2003, by Resolution No. A03-226, the Airport Board of the City of Des Moines authorized the development of a voluntary acquisition program on a hardship basis for properties needed for the future construction of the initial project phase of the 13R/31L Runway Project; and

**WHEREAS**, on December 2, 2003, by Resolution No. A03-285, the Des Moines International Airport Board approved and authorized the design of a public improvement project to construct Runway 13R/31L and authorized the City Manager to proceed with the acquisition of properties needed for the Project; and

**WHEREAS**, on January 6, 2004, by Resolution No. A04-16, the Airport Board approved the Voluntary Acquisition Program on a hardship basis for the properties needed for the Project; and

**WHEREAS**, on June 1, 2004, by Resolution No. A04-103, the Airport Board approved an Acquisition Program to purchase on a voluntary basis the properties needed for the Project; and

**WHEREAS**, on March 1, 2005, by Resolution No. A05-42, the Airport Board recommended that the City Council authorize the acquisition of the remaining properties needed for the Project by gift, negotiation, or eminent domain; and

**WHEREAS**, on March 7, 2005, by Roll Call No. 05-541, the City Council authorized the acquisition of the remaining properties by gift, negotiation, or eminent domain; and

**WHEREAS**, on October 7, 2008, by Resolution No. A08-197, the Airport Board established the fair market value of the Wittern Partnership and General Manufacturing Company property in the amount of \$1,830,000; and

**WHEREAS**, the City's Real Estate Division made good faith efforts but was unable to negotiate a purchase of the property; and

**WHEREAS**, condemnation proceedings were subsequently instituted for the acquisition of the property; and

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**WHEREAS**, the Polk County Compensation Commission convened on September 14, 2009, in Des Moines, Iowa and made an award to the property owners in the amount of \$2,134,370; and

**WHEREAS**, on September 28, 2009, by Roll Call No. 09-1744, the City Council authorized payment of the award plus Sheriff's fees and jury expenses as certified by the Sheriff of Polk County; and

**WHEREAS**, General Manufacturing Company and Wittern Partnership appealed the award in *Wittern Partnership and General Manufacturing Company v. City of Des Moines and Des Moines International Airport Board*, Polk County District Court Case No. CL114705; and

**WHEREAS**, the parties have agreed to settle the case whereby General Manufacturing Company and Wittern Partnership will dismiss their case with prejudice in consideration of an additional payment of \$247,630 above the compensation commission award; and

**WHEREAS**, on February 1, 2011, by Resolution No. A11-014, the Airport Board recommended approval of the settlement to the City Council; and

**WHEREAS**, this settlement appears to be in the best interest of the City of Des Moines.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, that the City Council hereby authorizes the additional payment of \$247,630 as full and final settlement of the condemnation appeal for the property acquired from General Manufacturing Company and Wittern Partnership for the Airport Runway 13R-31L Project.

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**BE IT FURTHER RESOLVED:**

That the Real Estate Division of the Engineering Department is directed to obtain the Legal Department's review and approval of the Settlement Agreement prior to payment.


That the City Clerk is hereby authorized and directed to endorse upon the Settlement Agreement 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 in accordance with standard real estate practices.

That the Finance Director is authorized and directed to issue checks in the amounts necessary to carry out the transaction and to pay any unforeseen additional costs certified by the Legal Department and the Engineering Department.

(Council Communication No. 11- 085 )

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

APPROVED AS TO FORM:

  
 David A. Ferree,  
 Assistant City Attorney

rsu

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

MOTION CARRIED APPROVED

\_\_\_\_\_  
 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.

\_\_\_\_\_  
 City Clerk