

Date January 22, 2024

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF AIR AND SURFACE RIGHTS IN A PORTION OF 6<sup>TH</sup> AVENUE RIGHT-OF-WAY ADJOINING 3614 6<sup>TH</sup> AVENUE AND CONVEYANCE OF A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY AND A PERMANENT EASEMENT FOR BUILDING ENCROACHMENT TO 36 ON 6TH, L.L.C. FOR \$1,120.00**

**WHEREAS**, on August 7, 2023, by Roll Call No. 23-1078, the City Council of the City of Des Moines, Iowa, voted to receive and file a recommendation from the City Plan and Zoning Commission to approve a request from 36 On 6<sup>th</sup>, LLC to vacate 26 square feet of surface right-of-way and 542 square feet of air right-of-way in the vicinity of adjoining properties at 3614 6<sup>th</sup> Avenue, subject to the reservation of easements for all existing utilities in place until such time as they are abandoned or relocated; and

**WHEREAS**, 36 On 6<sup>th</sup>, LLC, the owner of 3614 6<sup>th</sup> Avenue, has offered to the City of Des Moines, Iowa (“City”) the purchase price of \$1,120.00 for the purchase of a Permanent Easement for Air Space Above City-Owned Property and a Permanent Easement for Building Encroachment (“Easements”) over through and across portions of 6<sup>th</sup> Avenue right-of-way adjoining 3614 6<sup>th</sup> Avenue (hereinafter “Easement Area”), to allow for the continued encroachment of an existing building stoop and canopy within the 6th Avenue right-of-way; which price reflects the fair market value of the Easements 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 street right-of-way and the conveyance of the Easements in such vacated right-of-way; and

**WHEREAS**, on January 8, 2024, by Roll Call No. 24-0043, 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 conveyance of the Permanent Easement for Air Space Above City-Owned Property and Permanent Easement for Building Encroachment be set for hearing on January 22, 2024, 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 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.

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

**Date**..... January 22, 2024.....

1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed vacation of the air and surface rights within portions of 6<sup>th</sup> Avenue right-of-way adjoining 3614 6<sup>th</sup> Avenue, as described herein, are hereby overruled and the hearing is closed.

2. There is no public need or benefit for the rights-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of the air and surface rights within portions of 6<sup>th</sup> Avenue right-of-way adjoining 3614 6<sup>th</sup> Avenue, legally described as follows, and said vacation is hereby approved:

AIR RIGHTS

PART OF 6<sup>TH</sup> AVENUE RIGHT-OF-WAY LYING EAST OF AND ADJOINING LOT 1 IN BLOCK 2 OF OAK PARK, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1 IN BLOCK 2 OF OAK PARK; THENCE SOUTH 00°(DEGREES) 05'(MINUTES) 05"(SECONDS) EAST (BEARING ASSUMED FOR THE PURPOSE OF THIS DESCRIPTION ONLY), 45.52 FEET ALONG THE EAST LINE OF SAID LOT 1 TO THE POINT OF BEGINNING; THENCE NORTH 89°54'55" EAST, 8.63 FEET; THENCE SOUTH 00°05'05" EAST, 62.85 FEET; THENCE SOUTH 89°54'55" WEST, 8.63 FEET TO THE EAST LINE OF SAID LOT 1; THENCE NORTH 00°05'05" WEST, 62.85 FEET ALONG THE EAST LINE OF SAID LOT 1 TO THE POINT OF BEGINNING.

LYING BETWEEN ELEVATIONS 126.50 AND 133.50 FEET, CITY OF DES MOINES DATUM (REFERENCE GROUND LEVEL ELEVATION OF 117.57 FEET, CITY OF DES MOINES DATUM, AT THE SOUTHEAST CORNER OF ABOVE-DESCRIBED LOCATION). HORIZONTALLY CONTAINING 542 SQUARE FEET.

SURFACE RIGHTS

PART OF 6<sup>TH</sup> AVENUE RIGHT-OF-WAY LYING EAST OF AND ADJOINING LOT 1 IN BLOCK 2 OF OAK PARK, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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CONTAINING 26 SQUARE FEET.

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3. The proposed conveyance of the Permanent Easement for Air Space Above City-Owned Property and Permanent Easement for Building Encroachment-Door Swing in such vacated street right-of-way, as legally described below, to 36 On 6<sup>th</sup>, LLC for \$1,120.00, and said conveyance is hereby approved:

AIR RIGHTS

PART OF VACATED 6<sup>TH</sup> AVENUE RIGHT-OF-WAY LYING EAST OF AND ADJOINING LOT 1 IN BLOCK 2 OF OAK PARK, AN OFFICIAL PLAT, NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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CONTAINING 26 SQUARE FEET.

4. The Mayor is authorized and directed to sign the Offer to Purchase and the Permanent Easement for Air Space Above City-Owned Property and Permanent Easement for Building Encroachment for the conveyance as identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.

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5. 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 and Permanent Easement for Building Encroachment, 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.
  
6. The Real Estate Division Manager is authorized and directed to forward the original of the Permanent Easement for Air Space Above City-Owned Property and Permanent Easement for Building Encroachment, 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.
  
7. 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 and Permanent Easement for Building Encroachment and a copy of the other documents to the grantee.
  
8. Non-project related land sale proceeds are used to support general operating budget expenses: Org – EG064090.

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

APPROVED AS TO FORM:

/s/ Mackenzie L. Moreno  
 Mackenzie L. Moreno, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN				
VOSS				
COLEMAN				
WESTERGAARD				
MANDELBAUM				
GATTO				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

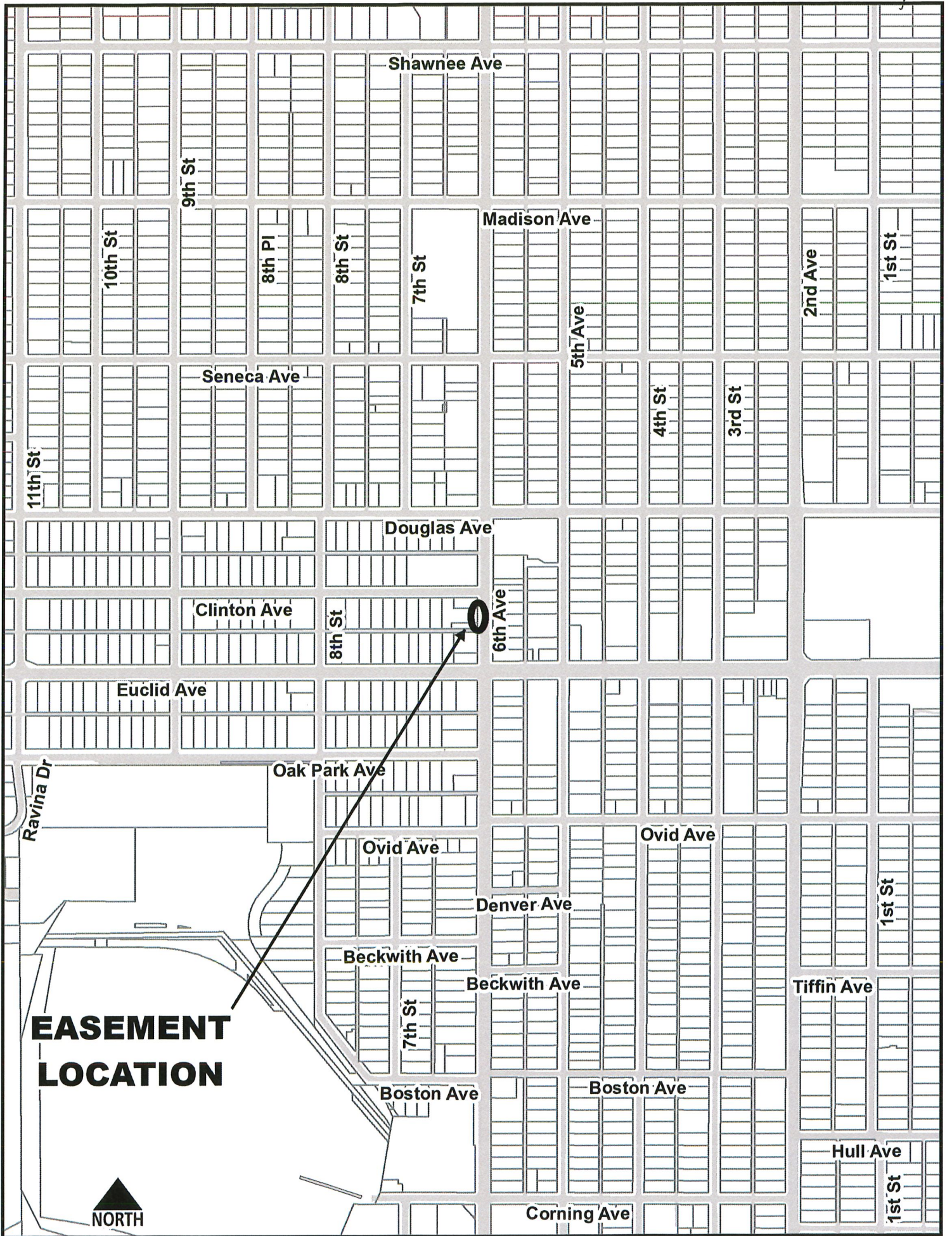
**CERTIFICATE**

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.

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

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**EASEMENT  
LOCATION**

