

# CITY OF WEST DES MOINES

## COUNCIL AGENDA

**date:** November 14, 2016

**time:** 5:30 P.M.

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MAYOR .....	STEVEN K. GAER	CITY MANAGER.....	TOM HADDEN
COUNCILMEMBER AT LARGE .....	RICK MESSERSCHMIDT	CITY ATTORNEY.....	RICHARD SCIESZINSKI
COUNCILMEMBER AT LARGE .....	JIM SANDAGER	CITY CLERK.....	RYAN JACOBSON
COUNCILMEMBER 1 <sup>ST</sup> WARD .....	KEVIN L. TREVILLYAN		
COUNCILMEMBER 2 <sup>ND</sup> WARD .....	JOHN MICKELSON		
COUNCILMEMBER 3 <sup>RD</sup> WARD.....	RUSS TRIMBLE		

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- 1. Call to Order/Pledge of Allegiance/Roll Call/Approval of Agenda**
- 2. Citizen Forum** (Pursuant to City Council Procedural Rules citizen remarks are limited to five minutes under this agenda category - if additional time is desired the Mayor/Council may allow continuation as part of the Other Matters portion of the agenda)
- 3. Mayor/Council/Manager Report/Other Entities Update**
- 4. Consent Agenda**
  - a. Motion - Approval of Minutes of October 31, 2016 and November 3, 2016 Meetings
  - b. Motion - Approval of Bill Lists
  - c. Motion - Approval of Liquor Licenses:
    1. Bonefish Grill, LLC, d/b/a Bonefish Grill, 650 South Prairie View Drive, Suite 100 - Class LC Liquor License with Sunday Sales and Outdoor Service - Renewal
    2. Kiss My Grits, LLC, d/b/a Cabaret, 560 South Prairie View Drive - Class LC Liquor License with Sunday Sales and Outdoor Services - New
    3. Kum & Go, LC, d/b/a Kum & Go #1097, 220 50<sup>th</sup> Street - Class LE Liquor License with Carryout Beer, Carryout Wine, and Sunday Sales - New
    4. Lemon Grass, LLC, d/b/a Lemon Grass, 1221 8<sup>th</sup> Street - Class BW Permit with Sunday Sales - Renewal
    5. LVP SHS Des Moines Holding Corp. d/b/a Springhill Suites Hotel, 1236 Jordan Creek Parkway - Class BC Permit with Sunday Sales - Renewal
  - d. Motion - Approval of Order for Violation of Alcohol Laws
  - e. Motion - Approval to Purchase - Fire Department "Attack" Fire Apparatus
  - f. Motion - Approval to Sell Surplus City Equipment
  - g. Motion - Approval of Contracts - Art on the Campus
  - h. Motion - Approval of Contract Agreement Renewal - Park Security Services
  - i. Motion - Approval of Amendment No. 1 to Professional Services Agreement - 2014 Street Rehabilitation Sidewalk Ramp Program

- j. Resolution - Order Preparation of Plans and Specifications - Holiday Park Baseball Field Improvements - Phases 4B and 5
- k. Resolution - Order Construction:
  - 1. 9<sup>th</sup> Street Storm Sewer Rehabilitation
  - 2. South 60<sup>th</sup> Street Improvements, Phase 2
  - 3. Grand Avenue Siphon Replacement Project
- l. Resolution - Accept Work:
  - 1. Intersection Improvements - Intersection of 92<sup>nd</sup> Street and University Avenue and Intersection of Jordan Creek Parkway and Westtown Parkway
  - 2. Veterans Parkway, Phase 4 - SE Pine Avenue Trail
- m. Resolution - Approval of Professional Services Agreement:
  - 1. Public Safety Station 21 HVAC Improvements - Commissioning
  - 2. Right-of-Way Acquisition Services
- n. Resolution - Establish Public Hearing Regarding the Final Design, Site Selection and Consideration of Acquiring Agricultural Property - Project Osmium Public Infrastructure
- o. Resolution - Approval of IEDA Economic Development Assistance Contract - ePATHUSA, Inc.
- p. Resolution - Approval and Acceptance of Condemnation Award - Grand Avenue Siphon Replacement Project
- q. Resolution - Approval of Offer to Purchase and Agreement - Madison County Property for Future Park
- r. Proclamation - Approval of Proclamations:
  - 1. World Pancreatic Cancer Day, November 17, 2016
  - 2. Small Business Saturday, November 26, 2016

**5. Old Business**

- a. Browns Woods Estates, west side of Veterans Parkway and south of SE Browns Woods Drive - Rezone from Residential Estate and Residential Medium Density to Single Family Residential - Venture Homes, LLC
  - 1. Ordinance - Approval of Second, Third Readings and Final Adoption (RE-1A and RM-8 to R-1)
  - 2. Ordinance - Approval of Second, Third Readings and Final Adoption (RE-1A and RM-8 to RS-30)
- b. Amendment to City Code - Title 9 (Zoning), Chapter 14 (Accessory Structures) - Regulate Materials Used on Fuel Pump Island Canopies - City Initiated
  - 1. Ordinance - Approval of Second, Third Readings and Final Adoption
- c. Amendment to City Code - Title 6 (Motor Vehicles and Traffic), Chapter 9 (Traffic Schedules), Section 5 (Special Restricted No Parking Areas) - 34<sup>th</sup> Street Place, Brookview Drive to Meadow Lane - City Initiated
  - 1. Ordinance - Approval of Second, Third Readings and Final Adoption

**6. Public Hearings (5:35 p.m.)**

- a. 1<sup>st</sup> Street Redevelopment PUD, 1<sup>st</sup> Street and Grand Avenue - Revise Planned Unit Development (PUD) Sketch Plan to Accommodate Building Relocation and Associated Site Design - First Street LP
  - 1. Ordinance - Approval of First Reading
- b. Whisper Ridge Plat 3, south of Bridgewood Boulevard along South 91<sup>st</sup> Street - Vacate 30 foot Buffer Park Easement along the South Lot Lines of Lots 15-18 - Hidden Creek, LLC
  - 1. Resolution - Approval of Vacation Request
- c. Amendment #2 to Alluvion Urban Renewal Area - City Initiated
  - 1. Resolution - Approval of Urban Renewal Plan Amendment
  - 2. Ordinance - Approval of First Reading (Willow Creek Plat 1, Lot 4 Parcel)
  - 3. Ordinance - Approval of First Reading (Tract 3 of Amendment No. 2 Parcel)
- d. Osmium Urban Renewal Area - City Initiated
  - 1. Resolution - Approval of Urban Renewal Plan
- e. Project Osmium - Agreement for Private Development - Microsoft Corp.
  - 1. Resolution - Approval of Agreement

**7. New Business**

- a. GeAnna Grove, west of Sedona Drive at GeAnna Drive - Subdivide Property into 20 Lots for Townhome Development and One Outlot - Jerry's Homes
  - 1. Resolution - Approval and Release of Final Plat and Acceptance of Public Improvements
- b. Country Club Office Plaza West Plat 8, 1080 Jordan Creek Parkway - Replat Lot 1 Country Club Office Plaza West Plat 3 and Outlot B, Country Club Office Plaza - Dallas County Partners
  - 1. Resolution - Approval of Preliminary Plat

**8. Receive, File and/or Refer**

**9. Other Matters**

## **CITY COUNCIL WORKSHOP**

(immediately follows Council meeting)

1. DART Forward 2035 Presentation
2. Other Matters

The City of West Des Moines is pleased to provide accommodations to disabled individuals or groups and encourages their participation in city government. Should special accommodations be required please contact the Clerk's office at least 48 hours in advance, at 222-3600 to have accommodations provided.

October 31, 2016

West Des Moines City Council Proceedings  
Monday, October 31, 2016

Mayor Steven K. Gaer opened the regularly scheduled meeting of the City Council of West Des Moines, Iowa, in the Council Chambers of the West Des Moines City Hall on Monday, October 31, 2016 at 5:30 PM. Council members present were: R. Messerschmidt, J. Mickelson, J. Sandager, K. Trevillyan, and R. Trimble.

On Item 1. Agenda. It was moved by Trimble, second by Trevillyan approve the agenda as presented.

Vote 16-431: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 2. Public Forum: No one came forward.

On Item 3. Council/Manager/Other Entities Reports

Police Chief Shaun LaDue introduced Police Lieutenant Steven Areges, who was then sworn in by Mayor Gaer.

Police Chief Shaun LaDue introduced Police Sergeants Charles Masterson, Ryan Anderson, and Ryan Purdy, who were then sworn in by Mayor Gaer.

Council member Trevillyan stated he enjoyed seeing Police Officer Nathan Ladwig handing out candy in his neighborhood during yesterday's Beggar's Night festivities. He also reported he will hold a Ward 1 quarterly town hall meeting on Saturday, November 5th.

Council member Messerschmidt reported he attended a meeting of the Greater Des Moines Convention & Visitors Bureau, where a report was given on the organization's recent audit. He also attended a meeting of the Public Art Advisory Commission, where discussion was held on plans for the 2017 Art on the Campus program. He also reported that the Art on the Trail project has been installed, and a ribbon cutting ceremony will be held in the spring.

On Item 4. Consent Agenda.

It was moved by Messerschmidt, second by Sandager to approve the consent agenda as presented.

- a. Approval of Minutes of October 17, 2016 Meeting
- b. Approval of Bill Lists
- c. Approval of Liquor Licenses:

October 31, 2016

1. Aldi, Inc. d/b/a Aldi, Inc. #40, 6050 Mills Civic Parkway - Class BC Beer Permit with Carryout Wine and Sunday Sales - Renewal
  2. On The Rise Valley West, LLC, d/b/a Blaze Pizza, 1551 Valley West Drive, Suite 225 - Class BW Permit with Sunday Sales and Outdoor Service - New
  3. Cabo Sol Mexican Restaurant, LLC d/b/a Cabo Sol Mexican Restaurant, 5010 Mills Civic Parkway, Suite 100 - Class LC Liquor License with Sunday Sales - Renewal
  4. Firebirds of West Des Moines, LLC d/b/a Firebirds Wood Fired Grill, 440 South 68th Street, Suite 101 - Class LC Liquor License with Sunday Sales - Renewal
  5. Hy-Vee, Inc., d/b/a Hy-Vee Gas, 7280 University Avenue - Class BC Beer Permit with Carryout Wine and Sunday Sales - Renewal
  6. Kum & Go, LC, d/b/a Kum & Go #532, 5901 Mills Civic Parkway, Building 2000 - Class LE Liquor License with Carryout Beer, Carryout Wine, and Sunday Sales - New
  7. Prime Restaurant Corporation d/b/a Prime Restaurant, 1261 8th Street - Class LC Liquor License with Sunday Sales and Outdoor Service - Renewal
  8. Taste of New York, Inc. d/b/a Taste of New York, 165 South Jordan Creek Parkway, Suite 160 - Class BW Permit with Sunday Sales - New
- d. Approval of Tobacco Permits
- e. Approval to Sell Surplus City Equipment
- f. Approval of Professional Services Agreement - Jordan Creek Assessment and Restoration Prioritization Analysis
- g. Approval of Change Orders:
1. 2016 Concrete Trail Renovation, #1
  2. Community Center Interior Renovations, #6
- h. Order Construction - 2016 Sewer Cleaning and Televising Program
- i. Accept Work:
1. 2015 Channel Repair Program
  2. 2015 PCC Patching Program Phase 1
  3. 2015 Sewer Lining Program
  4. 2016 Concrete Trail Renovation
  5. Frink Creek Sanitary Sewer
  6. Public Services Facility Grading
  7. SE White Crane Road, SE Soteria Avenue to Dead End
- j. Accept Public Improvements - Galleria Plat 8, Lot 3 (Sanitary Sewer)
- k. Approval and Acceptance of Easement - Grand Avenue Siphon Replacement Project
- l. Approval of High Quality Jobs Program Application - The IMT Group
- m. Approval and Acceptance of Workforce Housing Loan Agreement with Iowa Finance Authority - Phenix Elementary School Property
- n. Approval and Acceptance of Purchase Agreement and Easements - Grand Avenue Siphon Replacement Project

October 31, 2016

Vote 16-432: Messerschmidt, Mickelson, Trevillyan, Trimble...4 yes  
Motion carried.

On Item 5(a) Browns Woods Estates, west side of Veterans Parkway approx. 500 ft. south of SE Browns Woods Drive - Amend the Comprehensive Plan Land Use Designation from Low Density Residential to Single Family Residential and Rezone from Residential Estate and Residential Medium Density to Residential Single Family, initiated by Venture Homes, LLC (Continued from October 17, 2016)

Mayor Gaer stated a meeting was held regarding this proposed development with the residents, the developer, and representatives from the City, and a consensus may have been reached at that meeting.

Lynne Twedt, Development Services Director, stated the proposal brought forward at the last City Council meeting requested that the north and west portions of the development be zoned RS-20, with a minimum lot size of 20,000 sq. ft., minimum lot depth of 200 ft., a rear-yard setback of 80 ft. for primary structures, a rear-yard setback for detached accessory structures of 50 ft., and architectural standards established for the development. As a result of discussion held at the neighborhood meeting, the proposal being brought forward tonight is now requesting that the north and west portions of the development be zoned RS-30, with a minimum lot size of 30,000 sq. ft., the same depth and setback requirements, and no architectural standards.

Christine Paulson, 2210 SE Browns Woods Lane, speaking on behalf of the Juliann Homeowners Association, expressed appreciation to the City of West Des Moines for listening to their concerns and working to reach a compromise. She also expressed appreciation to the developer for assuring that they have no intention to request any additional rezoning of this property.

It was moved by Sandager, second by Trevillyan to consider the first reading of the ordinance (RE-1A and RM-8 to R-1).

Vote 16-433: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Sandager, second by Trevillyan to approve the first reading of the ordinance (RE-1A and RM-8 to R-1).

Vote 16-434: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

October 31, 2016

It was moved by Sandager, second by Messerschmidt to consider the first reading of the ordinance (RE-1A and RM-8 to RS-30).

Council member Trevillyan requested that it be included in the record that this property shall not be rezoned anything less than RS-30, as was assured by the developer.

Vote 16-435: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Sandager, second by Messerschmidt to approve the first reading of the ordinance (RE-1A and RM-8 to RS-30).

Vote 16-436: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

It was moved by Sandager, second by Trevillyan to adopt Resolution - Approval of Comprehensive Plan Amendment.

Vote 16-437: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 5(b) Amendment to City Code - Title 9 (Zoning), Chapter 2 (Zoning Rules and Definitions) and Chapter 1 (Performance Standards) - Establish Performance Standards for Snow Maintenance Facilities, initiated by the City of West Des Moines

It was moved by Trevillyan, second by Messerschmidt to consider the second reading of the ordinance.

Vote 16-438: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trevillyan, second by Messerschmidt to approve the second reading of the ordinance.

Vote 16-439: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

It was moved by Trevillyan, second by Messerschmidt to waive the third reading and adopt the ordinance in final form.



October 31, 2016

Vote 16-440: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 5(c) Amendment to City Code - Title 9 (Zoning), Chapter 6 (Commercial, Office and Industrial Zoning Districts), Section 6 (Commercial, Office and Industrial Use Regulations) - Allow Eating Places and Drinking Places Uses in Light Industrial and General Industrial Zoning Districts, initiated by the City of West Des Moines

It was moved by Trimble, second by Messerschmidt to consider the second reading of the ordinance.

Council member Trevillyan stated he did not support the first reading of this ordinance because it was regarding a speculative project, but he has learned since then that plans for that project have been submitted to the City, so he will be voting in favor of the ordinance tonight.

Vote 16-441: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trimble, second by Messerschmidt to approve the second reading of the ordinance.

Vote 16-442: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

It was moved by Trimble, second by Messerschmidt to waive the third reading and adopt the ordinance in final form.

Vote 16-443: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 5(d) Amendment to City Code - Title 6 (Motor Vehicles and Traffic), Chapter 9 (Traffic Schedules), Section 1 (Official Traffic Controls) - South 50th Street and Wistful Vista Drive, initiated by the City of West Des Moines

It was moved by Trevillyan, second by Trimble to consider the second reading of the ordinance.

Vote 16-444: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

The City Clerk read the preamble to the ordinance.

October 31, 2016

It was moved by Trevillyan, second by Trimble to approve the second reading of the ordinance.

Vote 16-445: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

It was moved by Trevillyan, second by Trimble to waive the third reading and adopt the ordinance in final form.

Vote 16-446: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 5(e) Amendment to City Code - Title 6 (Motor Vehicles and Traffic), Chapter 9 (Traffic Schedules), Section 2 (Through Streets Stop Required) - 60th Street, North Corporate Limits to Grand Avenue, initiated by the City of West Des Moines

It was moved by Trimble, second by Trevillyan to consider the second reading of the ordinance.

Vote 16-447: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trimble, second by Trevillyan to approve the second reading of the ordinance.

Vote 16-448: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

It was moved by Trimble, second by Trevillyan to waive the third reading and adopt the ordinance in final form.

Vote 16-449: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 5(f) Issuance of \$7,200,000 General Obligation Bonds, Series 2016C, initiated by the City of West Des Moines

It was moved by Trimble, second by Sandager to adopt Resolution - Appoint Paying Agent, Registrar, and Transfer Agent and Resolution - Authorizing the Issuance and Approval of Tax Exemption Certificate and Continuing Disclosure Certificate.

Vote 16-450: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

October 31, 2016

On Item 5(g) Issuance of \$10,700,000 General Obligation Urban Renewal Bonds, Series 2016D, initiated by the City of West Des Moines

It was moved by Trimble, second by Trevillyan to adopt Resolution - Appoint Paying Agent, Registrar, and Transfer Agent and Resolution - Authorizing the Issuance and Approval of Tax Exemption Certificate and Continuing Disclosure Certificate.

Vote 16-451: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 6(a) Mayor Gaer indicated this was the time and place for a public hearing to consider West Green Industrial Park, 175 South 9th Street - Vacation of a Public Sanitary Sewer Easement, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on October 21, 2016 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated none had been received.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

It was moved by Trimble, second by Messerschmidt to adopt Resolution - Approval of Vacation

Vote 16-452: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 6(b) Mayor Gaer indicated this was the time and place for a public hearing to consider Amendment to City Code - Title 9 (Zoning), Chapter 14 (Accessory Structures) - Regulate Materials Used on Fuel Pump Island Canopies, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on October 14, 2016 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated on a vote of 7-0, the Plan and Zoning Commission recommended City Council approval of the ordinance amendment.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

It was moved by Trimble, second by Messerschmidt to consider the first reading of the ordinance.

Vote 16-453: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

The City Clerk read the preamble to the ordinance.

October 31, 2016

It was moved by Trimble, second by Messerschmidt to approve the first reading of the ordinance.

Vote 16-454: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 7(a) Villas at Kierland, southeast corner of Westtown Parkway and Sedona Drive - Subdivide Property into 26 Lots for Townhome Development and Two Outlots for Private Streets and Detention, initiated by Brothers Construction

It was moved by Trimble, second by Trevillyan to adopt Resolution - Accept Public Improvements and Approval and Release of Final Plat, subject to the applicant complying with all applicable City Code requirements.

Vote 16-455: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 7(b) Majestic Oaks, northwest corner of Stagecoach Drive and South 95th Street - Subdivide Parcel into Two for Transfer of Ownership, initiated by Alex Wick

It was moved by Trimble, second by Messerschmidt to adopt Resolution - Approval and Release of Plat of Survey, subject to the applicant complying with all applicable City Code requirements and the conditions of approval listed in the Resolution.

Vote 16-456: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 7(c) Holiday Park Deep Well Pump House, 1701 Railroad Avenue, Building 4000 - Construction of a 290 sq. ft. Single Story Building for a Pump House, initiated by West Des Moines Water Works

It was moved by Trimble, second by Messerschmidt to adopt Resolution - Approval of Major Modification, subject to the applicant complying with all applicable City Code requirements.

Council member Trevillyan stated he will abstain on this item due to a potential conflict of interest.

Vote 16-457: Messerschmidt, Mickelson, Sandager, Trimble...4 yes  
Trevillyan... 1 abstain due to potential conflict of interest  
Motion carried.

On Item 7(d) Phase 1B Edgewater Building Addition, 9225 Cascade Avenue - Approval of a 98,000 sq. ft. Building Addition and Associated Landscaping, initiated by Wesley Active Life

October 31, 2016

Community, LLC

It was moved by Trimble, second by Messerschmidt to adopt Resolution - Approval of Major Modification, subject to the applicant complying with all applicable City Code requirements and the conditions of approval listed in the Resolution.

Vote 16-458: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 7(e) Amendment to City Code - Title 6 (Motor Vehicles and Traffic), Chapter 9 (Traffic Schedules), Section 5 (Special Restricted No Parking Areas) - 34th Street Place, Brookview Drive to Meadow Lane, initiated by the City of West Des Moines

It was moved by Trevillyan, second by Trimble to consider the first reading of the ordinance.

Vote 16-459: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trevillyan, second by Trimble to approve the first reading of the ordinance.

Vote 16-460: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 8 - Receive, File and/or Refer: no items

On Item 9 - Other Matters: none

The meeting was adjourned at 6:11 p.m.

Respectfully submitted,

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Ryan T. Jacobson, CMC  
City Clerk

ATTEST:

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Steven K. Gaer, Mayor

November 3, 2016

West Des Moines City Council Proceedings  
Thursday, November 3, 2016

Mayor Steven K. Gaer opened the special meeting of the City Council of West Des Moines, Iowa, in the Council Chambers of the West Des Moines City Hall on Thursday, November 3, 2016 at 7:30 a.m. Council members present were: J. Sandager, K. Trevillyan, and R. Trimble. Council members R. Messerschmidt and J. Mickelson participated via telephone.

On Item 2. Agenda. It was moved by Sandager, second by Trimble to approve the agenda as presented.

Vote 16-461: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 3. Approval of Settlement Agreement - Alice Wisner

It was moved by Trimble, second by Trevillyan to adopt Resolution - Approval of Settlement Agreement.

Vote 16-462: Messerschmidt, Mickelson, Sandager, Trevillyan, Trimble...5 yes  
Motion carried.

On Item 4. The Special Meeting Notice was Received and Filed.

The meeting was adjourned at 7:31 a.m.

Respectfully submitted,

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Ryan T. Jacobson, CMC  
City Clerk

ATTEST:

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Steven K. Gaer, Mayor

641  
4(b)

**CITY OF WEST DES MOINES**  
**CITY COUNCIL ACTION ITEM**

The following list(s) of municipal expenditures, all of which have been reviewed and authorized by the respective departments as being justified and properly due and the listing of which have been prepared by Finance departmental staff are being submitted to the City Council for approval:

Regular Bi-Weekly Claims	11/14/16		\$ 3,410,160.52
			Total \$ Amount
EFT Claims	11/14/16		\$ 1,741,679.03
			Total \$ Amount
Control Pay	11/14/16		\$ 363,562.75
			Total \$ Amount
End of Month			\$ 0.00
			Total \$ Amount
Off-Cycle Checks/EFT Claims			\$ 0.00
	Claim Listing Date		Total \$ Amount

Approved by the West Des Moines City Council this 11th day of November 2016

\_\_\_\_\_  
Tim Stiles, Finance Director

\_\_\_\_\_  
Tom Hadden, City Manager

\_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

\_\_\_\_\_  
Ryan Jacobson, City Clerk

Finance and Administration Committee acknowledgement of disbursement of expenditures:

\_\_\_\_\_  
Russ Trimble, Councilmember

\_\_\_\_\_  
Jim Sandager, Councilmember

\_\_\_\_\_  
John Mickelson (alternate)

# City of West Des Moines City Council Report

Bank Account: WB VENDOR DISB - WB Vendor Disbursement  
Batch Date: 11/14/2016

Type	Date	Number Source	Payee Name	Transaction Amount
Bank Account: WB VENDOR DISB - WB Vendor Disbursement				
Check	11/14/2016	301672	ABSOLUTE CONCRETE CONSTRUCTION	457,877.14
Check	11/14/2016	301673	ACCUCOPY	225.00
Check	11/14/2016	301674	ADAMS DOOR COMPANY INC	6,885.00
Check	11/14/2016	301675	AHLERS & COONEY	20,656.10
Check	11/14/2016	301676	AIR CLEANING TECHNOLOGIES INC	2,136.00
Check	11/14/2016	301677	ALEX AIR APPARATUS INC	472.00
Check	11/14/2016	301678	ALL AUTO GLASS	180.00
Check	11/14/2016	301679	ALLIANCE CONSTRUCTION GROUP	6,570.20
Check	11/14/2016	301680	ALVINE & ASSOCIATES INC	102.00
Check	11/14/2016	301681	AMERICAN SECURITY CORP	3,234.86
Check	11/14/2016	301682	ANIXTER INC	202.79
Check	11/14/2016	301683	ASCHEMAN , PHILIP	600.00
Check	11/14/2016	301684	ASSOCIATED COMPUTER SYSTEMS LT	4,122.07
Check	11/14/2016	301685	ATERA PRIME	7,639.00
Check	11/14/2016	301686	ATTORNEY GENERAL OF IOWA	20.00
Check	11/14/2016	301687	AUREON NETWORK SERVICES	4,346.75
Check	11/14/2016	301688	AWARDS PROGRAM SERVICES INC	19.62
Check	11/14/2016	301689	BASICLEIGH COMMUNICATIONS LLC	5,782.50
Check	11/14/2016	301690	BEGLEY , JOHN	132.00
Check	11/14/2016	301691	BFG SUPPLY COMPANY	674.85
Check	11/14/2016	301692	BOLTON & MENK INC	24,344.00
Check	11/14/2016	301693	BOUND TREE MEDICAL, LLC.	1,200.15
Check	11/14/2016	301694	BRAUCH , TERRY	200.00
Check	11/14/2016	301695	CALHOUN-BURNS & ASSOCIATES INC	3,050.88
Check	11/14/2016	301696	CAPPEL'S ACE HARDWARE	165.30
Check	11/14/2016	301697	CARPENTER UNIFORM CO	1,118.55
Check	11/14/2016	301698	CDW GOVERNMENT INC	4,031.50
Check	11/14/2016	301699	CENTRAL IOWA READY-MIX	698.00
Check	11/14/2016	301700	CHRISTIAN PRINTERS	567.00
Check	11/14/2016	301701	CITY OF DES MOINES	526,407.30
Check	11/14/2016	301702	CITY OF DES MOINES	69.15
Check	11/14/2016	301703	CITY OF URBANDALE	54.55
Check	11/14/2016	301704	CIVIL DESIGN ADVANTAGE LLC	954.19



**City of West Des Moines  
City Council Report**

Bank Account: WB VENDOR DISB - WB Vendor Disbursement  
Batch Date: 11/14/2016

Type	Date	Number Source	Payee Name	Transaction Amount
Check	11/14/2016	301705	CLIVE POWER EQUIPMENT	535.12
Check	11/14/2016	301706	CONCRETE CONNECTION,LLC	36,945.26
Check	11/14/2016	301707	CONCRETE TECHNOLOGIES	464,838.56
Check	11/14/2016	301708	CONNEXION CONSULTING,LLC	4,500.00
Check	11/14/2016	301709	CONSTRUCTION & AGGREGATE PRODUCTS,INC	191.67
Check	11/14/2016	301710	CONTECH ENGINEERED SOLUTIONS INC	1,614.78
Check	11/14/2016	301711	CONTRACTOR SALES & SERVICE	401.63
Check	11/14/2016	301712	CONVERGINIT TECHNOLOGIES LLC	956.60
Check	11/14/2016	301713	COURAGE LEAGUE SPORTS	100.00
Check	11/14/2016	301714	CUSTOM AWARDS	17.00
Check	11/14/2016	301715	DALLAS COUNTY RECORDER	257.00
Check	11/14/2016	301716	DANKO EMERGENCY EQUIPMENT CO	3,504.00
Check	11/14/2016	301717	DE LAGE LANDEN	4,562.81
Check	11/14/2016	301718	DEITCH, DALA	264.00
Check	11/14/2016	301719	DEPT OF PUBLIC DEFENSE	225.00
Check	11/14/2016	301720	DES MOINES STEEL	118.30
Check	11/14/2016	301721	DOUGLAS, JONATHAN	378.00
Check	11/14/2016	301722	DOWLING, CONNIE	442.50
Check	11/14/2016	301723	ELDER CORPORATION	5,225.00
Check	11/14/2016	301724	ELECTRICAL ENGINEERING & EQUIP	7,735.76
Check	11/14/2016	301725	EMBARC	50.00
Check	11/14/2016	301726	EMBARKIT INC	11,615.00
Check	11/14/2016	301727	FEH ASSOCIATES INC	520.52
Check	11/14/2016	301728	FERGUSON ENTERPRISES INC 226	15.47
Check	11/14/2016	301729	FORD & GARLAND RADIO	385.00
Check	11/14/2016	301730	GREEN MOUNTAIN INTL LLC	201.96
Check	11/14/2016	301731	GRIMES ASPHALT & PAVING	801.42
Check	11/14/2016	301732	HAHN, JENNIFER	3,050.52
Check	11/14/2016	301733	HAMPTON INN AND SUITES	1,179.36
Check	11/14/2016	301734	HAWKEYE PAVING CORPORATION	456,633.84
Check	11/14/2016	301735	HAWKEYE TRUCK EQUIPMENT	928.74
Check	11/14/2016	301736	HELLER AND HELLER CONSULTING	6,163.36
Check	11/14/2016	301737	HOME DEPOT CREDIT SERVICES	18.05
Check	11/14/2016	301738	HOME INC	12,463.00

# City of West Des Moines City Council Report

Bank Account: WB VENDOR DISB - WB Vendor Disbursement  
Batch Date: 11/14/2016

Type	Date	Number Source	Payee Name	Transaction Amount
Check	11/14/2016	301739 Accounts Payable	HP INC	172.00
Check	11/14/2016	301740 Accounts Payable	HUMAN RELATIONS MEDIA	164.95
Check	11/14/2016	301741 Accounts Payable	HY VEE INC	232.76
Check	11/14/2016	301742 Accounts Payable	I+S GROUP INC	9,746.50
Check	11/14/2016	301743 Accounts Payable	ICMA MEMBERSHIP RENEWALS	1,215.00
Check	11/14/2016	301744 Accounts Payable	INGAMELLS COMMERCIAL FLOORING	1,786.00
Check	11/14/2016	301745 Accounts Payable	IOWA APPRAISAL & RESEARCH CORP	812.50
Check	11/14/2016	301746 Accounts Payable	IOWA LAW ENFORCEMENT ACADEMY	6,365.00
Check	11/14/2016	301747 Accounts Payable	IOWA NAFTO	2,250.00
Check	11/14/2016	301748 Accounts Payable	IOWA NATIVE TREES & SHRUBS	200.00
Check	11/14/2016	301749 Accounts Payable	IOWA PRISON INDUSTRIES	1,759.00
Check	11/14/2016	301750 Accounts Payable	IOWACE	135.00
Check	11/14/2016	301751 Accounts Payable	J&K CONTRACTING LLC	180,311.43
Check	11/14/2016	301752 Accounts Payable	JACOBS , CARRIE GRACE	130.00
Check	11/14/2016	301753 Accounts Payable	JEFFREY L BRUCE & COMPANY LLC	4,326.07
Check	11/14/2016	301754 Accounts Payable	JIM BIRKEL	388.00
Check	11/14/2016	301755 Accounts Payable	JOINER CONSTRUCTION CO., INC.	173,573.27
Check	11/14/2016	301756 Accounts Payable	JORDAN CREEK CAR WASH	32.50
Check	11/14/2016	301757 Accounts Payable	KALDENBERG'S PBS LANDSCAPING	67.50
Check	11/14/2016	301758 Accounts Payable	KIECK'S CAREER APPAREL	338.00
Check	11/14/2016	301759 Accounts Payable	KLIMOWSKI , JARED	160.00
Check	11/14/2016	301760 Accounts Payable	LACINA , WENDY	418.00
Check	11/14/2016	301761 Accounts Payable	LASER RESOURCES	12,965.94
Check	11/14/2016	301762 Accounts Payable	LEAGUE OF IOWA HUMAN RIGHTS AGENCIES	25.00
Check	11/14/2016	301763 Accounts Payable	LEXISNEXIS RISK SOLUTIONS	223.00
Check	11/14/2016	301764 Accounts Payable	LOWE'S HOME CENTER, INC.	1,041.59
Check	11/14/2016	301765 Accounts Payable	LT LEON ASSOCIATES, INC	6,950.00
Check	11/14/2016	301766 Accounts Payable	M&M COMMERCIAL CLEANING	440.00
Check	11/14/2016	301767 Accounts Payable	MCFADDEN , HAROLD	198.00
Check	11/14/2016	301768 Accounts Payable	MEDIACOM	11.47
Check	11/14/2016	301769 Accounts Payable	MERCY WEST PHARMACY	2,815.78
Check	11/14/2016	301770 Accounts Payable	MIDAMERICAN ENERGY	98,827.38
Check	11/14/2016	301771 Accounts Payable	MIDAMERICAN-WDM-WAUKEE TL	110.38
Check	11/14/2016	301772 Accounts Payable	MILES CAPITAL	3,984.09

# City of West Des Moines City Council Report

Bank Account: WB VENDOR DISB - WB Vendor Disbursement  
Batch Date: 11/14/2016

Type	Date	Number	Source	Payee Name	Transaction Amount
Check	11/14/2016	301773	Accounts Payable	MISTER CAR WASH	909.30
Check	11/14/2016	301774	Accounts Payable	MOODY'S INVESTORS SERVICE	19,000.00
Check	11/14/2016	301775	Accounts Payable	MUNICIPAL SUPPLY INC	215.70
Check	11/14/2016	301776	Accounts Payable	NESTINGEN INC	7,920.00
Check	11/14/2016	301777	Accounts Payable	NINTH BRAIN SUITE LLC	543.00
Check	11/14/2016	301778	Accounts Payable	NORTHERN TOOL & EQUIPMENT	93.87
Check	11/14/2016	301779	Accounts Payable	OLSSON ASSOCIATES	6,850.28
Check	11/14/2016	301780	Accounts Payable	OPN ARCHITECTS	10,142.55
Check	11/14/2016	301781	Accounts Payable	OPTIMUM DATA, INC.	3,625.20
Check	11/14/2016	301782	Accounts Payable	PALMER GROUP	10,464.64
Check	11/14/2016	301783	Accounts Payable	PER MAR SECURITY	25.00
Check	11/14/2016	301784	Accounts Payable	PERFECTMIND TECHNOLOGY INC	3,600.00
Check	11/14/2016	301785	Accounts Payable	PETTY CASH	750.89
Check	11/14/2016	301786	Accounts Payable	PFM ASSET MANAGEMENT LLC	3,000.00
Check	11/14/2016	301787	Accounts Payable	PHILLIPS 66 CO	22.73
Check	11/14/2016	301788	Accounts Payable	POLICE LEGAL SCIENCES, INC	7,800.00
Check	11/14/2016	301789	Accounts Payable	POLK COUNTY RECORDER	740.00
Check	11/14/2016	301790	Accounts Payable	POLK COUNTY TREASURER	140.00
Check	11/14/2016	301791	Accounts Payable	PPG ARCHITECTURAL FINISHES	99.83
Check	11/14/2016	301792	Accounts Payable	PROVANTAGE LLC	308.78
Check	11/14/2016	301793	Accounts Payable	QUINDE, EMMELINE	280.00
Check	11/14/2016	301794	Accounts Payable	RACCOON VALLEY CONTRACTORS LLC	419,110.06
Check	11/14/2016	301795	Accounts Payable	RELIANT FIRE APPARATUS INC	485.14
Check	11/14/2016	301796	Accounts Payable	RHYTHM ENGINEERING, LLC	1,530.00
Check	11/14/2016	301797	Accounts Payable	RIGHT TURN FEED STORE	61.38
Check	11/14/2016	301798	Accounts Payable	ROTO-ROOTER CORP	540.00
Check	11/14/2016	301799	Accounts Payable	SCHILDBERG CONSTRUCTION CO	5,609.46
Check	11/14/2016	301800	Accounts Payable	SHIFT-CALENDARS INC	45.63
Check	11/14/2016	301801	Accounts Payable	SIMPLEX GRINNELL	450.00
Check	11/14/2016	301802	Accounts Payable	SIXTA, ANDREW	132.00
Check	11/14/2016	301803	Accounts Payable	SKOLD DOOR & FLOOR CO.	1,475.75
Check	11/14/2016	301804	Accounts Payable	SPECIALTY GRAPHICS INC	413.00
Check	11/14/2016	301805	Accounts Payable	STOREY-KENWORTHY CO	1,786.55
Check	11/14/2016	301806	Accounts Payable	TESKA ASSOCIATES INC	9,897.92
Check	11/14/2016	301807	Accounts Payable	THE CONCRETE COMPANY INC	132,267.22

# City of West Des Moines City Council Report

Bank Account: WB VENDOR DISB - WB Vendor Disbursement  
Batch Date: 11/14/2016

Type	Date	Number Source	Payee Name	Transaction Amount
Check	11/14/2016	301808 Accounts Payable	THE DART GROUP LLC	2,450.00
Check	11/14/2016	301809 Accounts Payable	THE UPS STORE	34.82
Check	11/14/2016	301810 Accounts Payable	TRITECH FORENSICS	211.97
Check	11/14/2016	301811 Accounts Payable	TRUE VALUE & V&S VARIETY STORE	896.75
Check	11/14/2016	301812 Accounts Payable	UNION PACIFIC RAILROAD CO	7,327.29
Check	11/14/2016	301813 Accounts Payable	UNITED PARCEL SERVICE	25.84
Check	11/14/2016	301814 Accounts Payable	VAN-WALL EQUIPMENT	33.26
Check	11/14/2016	301815 Accounts Payable	VEENSTRA & KIMM INC	30,901.21
Check	11/14/2016	301816 Accounts Payable	VERIZON WIRELESS	9,227.46
Check	11/14/2016	301817 Accounts Payable	VISION SERVICE PLAN	650.00
Check	11/14/2016	301818 Accounts Payable	WARREN COUNTY RECORDER	17.00
Check	11/14/2016	301819 Accounts Payable	WEST DES MOINES COMM SCHOOLS	2,184.00
Check	11/14/2016	301820 Accounts Payable	WEX BANK	1,348.64
Check	11/14/2016	301821 Accounts Payable	WINTERSET MADISONIAN	17.20
Check	11/14/2016	301822 Accounts Payable	WORLDATWORK	265.00
Check	11/14/2016	301823 Accounts Payable	TRAIL, CODY	9,700.00
Check	11/14/2016	301824 Accounts Payable	POLK COUNTY SHERIFF	1,526.40
Check	11/14/2016	301825 Accounts Payable	REALTY INCOME CORPORATION	68,110.00
Check	11/14/2016	301826 Accounts Payable	BECKER, STEVE	229.13
Check	11/14/2016	301827 Accounts Payable	BREWICK, MARK	78.30
Check	11/14/2016	301828 Accounts Payable	BRINKMEYER, BLAIN	33.48
Check	11/14/2016	301829 Accounts Payable	IDALS	90.00
Check	11/14/2016	301830 Accounts Payable	MANKLE, BRUCE	206.28
Check	11/14/2016	301831 Accounts Payable	OUIERSON, TRAVIS	54.82
Check	11/14/2016	301832 Accounts Payable	BROWNLEE, BRUCE	138.00
Check	11/14/2016	301833 Accounts Payable	DINNEN, STACY	270.00
Check	11/14/2016	301834 Accounts Payable	RICHARDSON, NIKKI	44.00
EFT	11/14/2016	232 Accounts Payable	ARNOLD MOTOR SUPPLY,LLP	1,173.43
EFT	11/14/2016	233 Accounts Payable	BAUER BUILT	134.18
EFT	11/14/2016	234 Accounts Payable	BAYLESS, RON	264.00
EFT	11/14/2016	235 Accounts Payable	CITY OF CLIVE	901,268.92
EFT	11/14/2016	236 Accounts Payable	CLAUDIA HENNING	6,685.00
EFT	11/14/2016	237 Accounts Payable	FINESTEAD ENTERPRISES LLC	2,737.00
EFT	11/14/2016	238 Accounts Payable	FOTH INFRASTRUCTURE & ENVIRONMENT	368,001.17

**City of West Des Moines  
City Council Report**

Bank Account: WB VENDOR DISB - WB Vendor Disbursement  
Batch Date: 11/14/2016

Type	Date	Number	Source	Payee Name	Transaction Amount
EFT	11/14/2016	239	Accounts Payable	IOWA COMMUNITIES ASSURANCE POOL	20,000.00
EFT	11/14/2016	240	Accounts Payable	KECK INC	19,617.75
EFT	11/14/2016	241	Accounts Payable	KELTEK INC	14,357.33
EFT	11/14/2016	242	Accounts Payable	KIRKHAM, MICHAEL, & ASSOC	28,844.09
EFT	11/14/2016	243	Accounts Payable	MCANINCH CORP & AFFILIATES	290,561.77
EFT	11/14/2016	244	Accounts Payable	MCCLURE ENGINEERING COMPANY	45,590.30
EFT	11/14/2016	245	Accounts Payable	MCCUBBIN, COURTNEY	66.00
EFT	11/14/2016	246	Accounts Payable	MIDWEST WHEEL	596.84
EFT	11/14/2016	247	Accounts Payable	MITCHELL, RANDY	418.00
EFT	11/14/2016	248	Accounts Payable	MOBOTREX INC	7,224.00
EFT	11/14/2016	249	Accounts Payable	ONENECK IT SOLUTIONS LLC	1,067.48
EFT	11/14/2016	250	Accounts Payable	OUTDOOR RECREATION PRODUCTS	1,652.50
EFT	11/14/2016	251	Accounts Payable	SHIELDS, CHARLES	66.00
EFT	11/14/2016	252	Accounts Payable	SPINDUSTRY SYSTEMS, INC.	23,798.00
EFT	11/14/2016	253	Accounts Payable	SWINTON, ASHLEE	1,414.00
EFT	11/14/2016	254	Accounts Payable	TRITECH SOFTWARE SYSTEMS	2,204.47
EFT	11/14/2016	255	Accounts Payable	TYLER TECHNOLOGIES INC	1,748.00
EFT	11/14/2016	256	Accounts Payable	WITTFRAF, JASON	85.80
EFT	11/14/2016	257	Accounts Payable	YEAGER, LEMAR	2,103.00
WB VENDOR DISB WB Vendor Disbursement Totals:					\$5,151,839.55
Transactions: 189					

Checks: 163 \$3,410,160.52  
EFTs: 26 \$1,741,679.03

# City of West Des Moines City Council Report

Bank Account: WB CONTROLPAY - WB ControlPay  
Batch Date: 11/14/2016

Type	Date	Number Source	Payee Name	Transaction Amount
Bank Account: WB CONTROLPAY - WB ControlPay				
EFT	11/14/2016	499 Accounts Payable	ABC ELECTRICAL CONTRACTORS	1,440.76
EFT	11/14/2016	500 Accounts Payable	ALL MAKES OFFICE INTERIORS	4,345.95
EFT	11/14/2016	501 Accounts Payable	ARAMARK UNIFORM SERVICES	922.24
EFT	11/14/2016	502 Accounts Payable	BLACKBURN MANUFACTURING CO	503.92
EFT	11/14/2016	503 Accounts Payable	CAPITAL SANITARY SUPPLY CO INC	1,286.84
EFT	11/14/2016	504 Accounts Payable	CENTURYLINK	5,168.94
EFT	11/14/2016	505 Accounts Payable	CORN STATES METAL	180.00
EFT	11/14/2016	506 Accounts Payable	DES MOINES REGISTER MEDIA	2,595.69
EFT	11/14/2016	507 Accounts Payable	DOORS INC	439.75
EFT	11/14/2016	508 Accounts Payable	ELECTRONIC ENGINEERING	1,521.00
EFT	11/14/2016	509 Accounts Payable	EXCEL MECHANICAL INC	17,953.79
EFT	11/14/2016	510 Accounts Payable	FELD FIRE	281.50
EFT	11/14/2016	511 Accounts Payable	G&L CLOTHING	1,544.33
EFT	11/14/2016	512 Accounts Payable	GALETON GLOVES	642.34
EFT	11/14/2016	513 Accounts Payable	GALLS LLC	537.65
EFT	11/14/2016	514 Accounts Payable	HALLETT MATERIALS	2,468.88
EFT	11/14/2016	515 Accounts Payable	HOWARD R. GREEN CO.	84,435.99
EFT	11/14/2016	516 Accounts Payable	IMAGETEK INC	48,413.76
EFT	11/14/2016	517 Accounts Payable	INGERSOLL-RAND CO	869.43
EFT	11/14/2016	518 Accounts Payable	INTERSTATE ALL BATTERY CENTER	93.30
EFT	11/14/2016	519 Accounts Payable	JOHNSON CONTROLS INC	6,000.00
EFT	11/14/2016	520 Accounts Payable	JOHNSTONE SUPPLY	63.24
EFT	11/14/2016	521 Accounts Payable	LOGAN CONTRACTORS SUPPLY, INC	2,897.50
EFT	11/14/2016	522 Accounts Payable	MENARDS	505.51
EFT	11/14/2016	523 Accounts Payable	METHODIST OCCUPATIONAL HEALTH	1,570.10
EFT	11/14/2016	524 Accounts Payable	METRO WASTE AUTHORITY	121,407.77
EFT	11/14/2016	525 Accounts Payable	NETMOTION WIRELESS INC	2,812.50
EFT	11/14/2016	526 Accounts Payable	NORTHLAND PRODUCTS	1,462.75
EFT	11/14/2016	527 Accounts Payable	O'REILLY AUTOMOTIVE INC	33.36
EFT	11/14/2016	528 Accounts Payable	PAY-LESS OFFICE PRODUCTS INC	3,613.34
EFT	11/14/2016	529 Accounts Payable	PRAXAIR	1,753.49
EFT	11/14/2016	530 Accounts Payable	RELIABLE PROPERTY SERVICES	10,998.00
EFT	11/14/2016	531 Accounts Payable	ROCKMOUNT RESEARCH ALLOYS	118.48
EFT	11/14/2016	532 Accounts Payable	SNYDER & ASSOCIATES	18,754.72

**City of West Des Moines  
City Council Report**

Bank Account: WB CONTROLPAY - WB ControlPay  
Batch Date: 11/14/2016

Type	Date	Number Source	Payee Name	Transaction Amount
EFT	11/14/2016	533 Accounts Payable	STIVERS FORD (CONTROL PAY)	2,561.04
EFT	11/14/2016	534 Accounts Payable	STRYKER SALES CORPORATION	550.12
EFT	11/14/2016	535 Accounts Payable	TEAM SERVICES	8,483.42
EFT	11/14/2016	536 Accounts Payable	TOMPKINS INDUSTRIES	37.81
EFT	11/14/2016	537 Accounts Payable	UNITED RENTALS	814.44
EFT	11/14/2016	538 Accounts Payable	VAISALA INC	990.00
EFT	11/14/2016	539 Accounts Payable	WALNUT CREEK PROMOTIONS INC	1,324.50
EFT	11/14/2016	540 Accounts Payable	WORLDPOINT ECC INC	523.74
EFT	11/14/2016	541 Accounts Payable	WRIGHT OUTDOOR SOLUTIONS	291.00
EFT	11/14/2016	542 Accounts Payable	ZOLL MEDICAL	349.86
WB CONTROLPAY WB ControlPay Totals:				\$363,562.75
EFTS: 44				\$363,562.75
Transactions: 44				

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**ITEM:** Approval of Liquor Licenses

**DATE:** November 14, 2016

**FINANCIAL IMPACT:** None

**BACKGROUND:** In accordance with the Iowa Code Section 123.1 and the West Des Moines City Code Title 3, Business and Licensing, Chapter 2, Beer and Liquor Control, the following licenses have been investigated and reviewed by the WDM Police Department and, when necessary, by Building Inspection and/or Fire Department staff, and are presented to the City Council for approval. Copies of license applications are available, for your review, in the Office of the City Clerk.


1. Bonefish Grill, LLC, d/b/a Bonefish Grill, 650 South Prairie View Drive, Suite 100 - Class LC Liquor License with Sunday Sales and Outdoor Service - Renewal
2. Kiss My Grits, LLC, d/b/a Cabaret, 560 South Prairie View Drive - Class LC Liquor License with Sunday Sales and Outdoor Services - New
3. Kum & Go, LC, d/b/a Kum & Go #1097, 220 50th Street - Class LE Liquor License with Carryout Beer, Carryout Wine, and Sunday Sales - New
4. Lemon Grass, LLC, d/b/a Lemon Grass, 1221 8th Street - Class BW Permit with Sunday Sales - Renewal
5. LVP SHS Des Moines Holding Corp. d/b/a Springhill Suites Hotel, 1236 Jordan Creek Parkway - Class BC Permit with Sunday Sales - Renewal

**OUTSTANDING ISSUES** (if any): None

**RECOMMENDATION:** Motion to approve the issuance of liquor licenses in the City of West Des Moines.

**Lead Staff Member:** Ryan T. Jacobson, City Clerk

**STAFF REVIEWS**

Department Director	Ryan T. Jacobson, City Clerk
Appropriations/Finance	
Legal	
Agenda Acceptance	



**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**ITEM:** Motion - Approval of Order for Violation of Alcohol Laws      **DATE:** November 14, 2016

**FINANCIAL IMPACT:**      \$500.00 (positive impact to City)

**BACKGROUND:**

Pursuant to state law, a municipality is required to assess a \$500.00 fine for a first violation against alcohol permittees who have been found in violation of providing alcoholic beverages to persons under 21 years of age at their respective places of business.

On or about the date referenced on attached Exhibit "A", an employee of the permittee, also referenced on Exhibit "A", was cited for providing alcoholic beverages to persons under 21 years of age. The City of West Des Moines Legal Department sent notice of the violation to the permittee. The permittee appealed and an administrative law judge affirmed the City's Order. Since that time, said permittee acknowledged its respective order and returned payment of the fine for the alcohol violation.




**OUTSTANDING ISSUES** (if any): None.

**RECOMMENDATION:**

It is recommended that the City Council approve the Order and accept payment of fine regarding the alcohol violation of the permittee as referenced on the attached Exhibit "A".

**Lead Staff Member:** Jason B. Wittgraf, Assistant City Attorney JBW

**STAFF REVIEWS**

Department Director	Richard J. Scieszinski, City Attorney
Appropriations/Finance	
Legal	
Agenda Acceptance	

**PUBLICATION(S)** (if applicable)

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW** (if applicable)

Committee	
Date Reviewed	
Recommendation	

**EXHIBIT "A"**

<b><u>Licensee</u></b>	<b><u>D/B/A</u></b>	<b><u>Date of Violation</u></b>	<b><u>#Violation</u></b>
Anything Improv, LLC	The Last Laugh Comedy Theater 1701 25 <sup>th</sup> Street	November 13, 2015	1st (minors)

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

4(e)

**DATE: November 14<sup>th</sup>, 2016**

**ITEM:** Purchase a wet rescue or "Attack" fire apparatus.

**FINANCIAL IMPACT:** \$163,189.00 from the vehicle replacement fund (700.150.155.5500.771). Adequate funds are available for this purchase.

1. Funds were allocated for this transaction in Budget Amendment #3 at the regular city council meeting on October 17<sup>th</sup>, 2016.

**BACKGROUND:** WDMFD has two small "Attack" apparatuses in the fleet. Both units are used on smaller fires or vegetation fires that require mobile firefighting. The units currently owned are located at WDMFD stations 17 (Railroad) and 19 (Mills Civic).

Both current units are due for replacement and are funded past their original cost. This unit will have the capability to make a structural fire attack if needed and retain the ability to address fires that require mobile firefighting operations.

The unit that this is replacing will be stripped of its firefighting equipment, pump and water tank. WDMFD will repurpose the unit to be utilized by the training division and the fire prevention bureau within the fire department.



1. Requests for proposals (RFP) were issued on October 18<sup>th</sup>, 2016 and notice published in the Des Moines Register on October 21<sup>st</sup>, 2016.
  - a. The RFP was for stock units that included a list of preferred equipment.
  - b. Two bids were received and one no-bid letter
    - i. Bid "A" was from Unruh Fire with a purchase price of \$162,494.00 and a \$695.00 delivery charge.
    - ii. Bid "B" was from Danko Emergency Equipment with a purchase price of \$170,850.00

**OUTSTANDING ISSUES** (if any): None

**RECOMMENDATION:** Approve the purchase of one stock wet rescue or "Attack" fire apparatus from Unruh Fire to include delivery at a cost of \$163,189.00.

**Lead Staff Member:** Craig Leu, Fire Chief

**STAFF REVIEWS**

Department Director	Craig Leu, Fire Chief
Appropriations/Finance	
Legal	
Agenda Acceptance	

**PUBLICATION(S)** (if applicable)

Published In	Des Moines Register
Dates(s) Published	October 21 <sup>st</sup> , 2016

**SUBCOMMITTEE REVIEW** (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

4(f)

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**DATE: November 14, 2016**

**ITEM:**

Motion - Approval to Sell Surplus City Equipment

**FINANCIAL IMPACT:**

Approximate revenue to the General Fund of \$8,260.00.

**BACKGROUND:**

On April 30, 2012, City Council approved a Disposal of Surplus Property Policy and retention of GovDeals.com for disposal of excess City property.


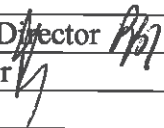


Public Works has accumulated and inventoried a list of surplus items to be sold by auction on GovDeals.com.

**RECOMMENDATION:**

City Council Approve:

- Motion authorizing the Department of Public Works to proceed with the on-line sale of accumulated surplus City equipment.

Lead Staff Member: **Rian Rasmussen, Fleet Manager**

<b>Department Director</b>	Bret Hodne, Public Works Director 
<b>Appropriations/Finance</b>	Tim Stiles, Finance Director 
<b>Legal</b>	
<b>Agenda Acceptance</b>	

PUBLICATION(S) (if applicable)		SUBCOMMITTEE REVIEW (if applicable)			
<b>Published In</b>		<b>Committee</b>	<b>Public Works Council</b>		
<b>Dates(s) Published</b>		<b>Date Reviewed</b>	November 7, 2016		
		<b>Recommendation</b>	<b>Yes</b>	<b>No</b>	<b>Split</b>

## Items to Sell on GovDeals.com:

### VEHICLES

\$2,000.00	2005 Ford Crown Victoria (Unit 550B)	2FAHP71W05X101533
\$2,000.00	2005 Ford Crown Victoria (Unit 537A)	2FAHP71W95X101532

### MISCELLANEOUS ITEMS - APPROXIMATE VALUE \$3,010.00

Qty.	Approx. Value	Description
1	\$250.00	Trailer with tarp and tie-downs
1	\$200.00	Generac 5000 Generator
1	\$20.00	Weed Eater 22" Push Mower
1	\$100.00	Fruit Bonus 2000 Ticket Game
4	\$20.00	Long Wooden Benches
1	\$100.00	MPH Radar Trailer with Tarp
1	\$10.00	Remington 115,000 BTU Heater
1	\$10.00	Old Gas Mask with Stinger Flash Light
2	\$20.00	Short Wooden Benches
1	\$20.00	Shop Source 6" Bench Grinder
1	\$200.00	Wen 5500 Generator
1	\$100.00	Board with power Converter
1	\$100.00	Excell Powerwasher – 2500 PSI
1	\$100.00	WDM PD Robot Trailer
1	\$100.00	Green Coleman 8HP Generator
1	\$100.00	Green 10 HP Generator
1	\$200.00	John Deere 325 OHV
1	\$10.00	Red Metal Gas Can with Spout
1	\$100.00	Red Dynamark 523 Snowblower
1	\$100.00	Red Snapper 20" Snowblower
1	\$20.00	Box of Shotgun Foregrips
1	\$100.00	Sauna
3	\$100.00	Softball Bats
1	\$50.00	Hako Wet Vaccum
4	\$10.00	Ammo Cans
13	\$10.00	Headphones/Ear Protection with Boom Mics
12	\$10.00	Pistol Grip Flashlights
5	\$20.00	Box of Orange and Black Shotgun Butts
10	\$10.00	Box of Sights and Mounts
1	\$10.00	Board with Two Flash Light Chargers
1	\$10.00	Gas Mask
1	\$10.00	Box of Arm Rest Printers
2	\$20.00	HP Printer
1	\$10.00	Box of Old Phones and Cables
**	\$20.00	Various Computer Parts/Monitors
34	\$10.00	Data 9-1-1 Monitors
2	\$10.00	Copier/Printers
2	\$10.00	Large Computer Monitors
3	\$10.00	Box of Cables and Parts

1	\$10.00	Box of Keyboard/Phones/Cables
7	\$10.00	Polaroid Cameras and Film
11	\$30.00	Radio Shack Scanners
1	\$20.00	Docking Station
1	\$10.00	Box of Taser Holsters
**	\$20.00	Various Car Parts
1	\$10.00	Tire Impression and Measure Master
1	\$10.00	Box of In-Car Speakers
1	\$10.00	Box of Radio Chargers
2	\$10.00	Data 9-1-1 Fans
5	\$10.00	Electronic Box
6	\$10.00	Iron Target Holders
2	\$100.00	AC Units (Industrial Size)
1	\$10.00	Box of Rifle/Shotgun Foregrips
2	\$10.00	Box of Radio Parts
17	\$10.00	In-Car Printers
1	\$10.00	Box of Light Bulbs
1	\$10.00	JVC VHS Camera
1	\$20.00	Blue Two-Wheel Dolly
2	\$20.00	Saw Horse
1	\$20.00	Cart with Charger and Tools
1	\$20.00	Craftsman 120 Volt Inflator
1	\$20.00	Everstart 6 Amp Charger
1	\$20.00	Dayton 40 2 Amp Battery Charger
1	\$100.00	Power Pal Air Compressor
1	\$100.00	DeWalt Air Compressor
1	\$10.00	Extension Cord
1	\$10.00	Jumper Cables and Floor Jack
1	\$10.00	Box of Rubber Wall Bases
10	\$10.00	Digital Eye Witness Parts
2	\$10.00	Eye Witness Control Head
13	\$10.00	12 Gauge Shotgun Barrels
3	\$10.00	Sure Fire Shotgun Foregrips with Flashlight
5	\$1,250.00	Ambulance Cots

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**ITEM:** Motion – Approval of Contracts for 2017 “Art on the Campus” **DATE:** November 14, 2016

**FINANCIAL IMPACT:** \$19,500 which is included in the FY 16-17 budget, \$1,500 per work of art.

**BACKGROUND:** The Commission is sponsoring the fifth temporary “Art on the Campus” exhibit from April 15, 2017 to November 15, 2017. An “Art on the Campus” selection committee meeting was held on Wednesday, October 11, 2016 to review and score the twenty-five proposals that were submitted by fourteen different Iowa artists. The review committee members were: Gary Hammers (Commission member), Diana Boyd (Commission member), Sheila Linskens (Citizen), Christie Engelber (Citizen), and Tina Dahl (Citizen). The Public Arts Advisory Commission approved the selection committee’s recommendation on October 27, 2016.

Thirteen entries were selected to be temporarily installed around the pond on the city campus. The recommendations include:

<u>Entry Name</u>	<u>Artist Name</u>
1. Still-Life with Birds	Hilde DeBruyne
2. WhereWeGoing	Jacob McGinn
3. PlayThings	Jacob McGinn
4. Mechanics of Grace	Kristin Garnant
5. Rotary Flower	Michael Sneller
6. Lunch Break	Nick Klepinger
7. Innocence of Peace	Ronald Dinsdale
8. Peaceful Journey	Ronald Dinsdale
9. Asteria	Tim Adams
10. Point in Time	V. Skip Willits
11. Journey	Zach Schnock
12. Channel	Brian Bickel
13. Abandoned Embrace	Zach Bowman





A map of the proposed locations is included and is part of the recommendation.

**OUTSTANDING ISSUES:** None

**RECOMMENDATION:** Motion to approve the contracts recommended by the WDM Public Arts Commission for 2017 “Art on the Campus”.

**Lead Staff Member:** Greg Hansen, Superintendent of Recreation 

**STAFF REVIEWS**

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

**PUBLICATION(S)** (if applicable)

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW** (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split



Southwood



Point in Time  
Willits



Peaceful Journey  
Dinsdale



Where We Go  
McGinn



Abandoned Embrace  
Bowman



Rotary Flower  
Sneller



Lunch Break  
Kleppinger



Astoria  
Adams



Channel  
Bickel



Play Things  
McGinn



Innocence of Peace  
Dinsdale



Still Life with Birds  
DeBruyne



Mechanics of  
Grace  
Garmant



Journey  
Schneck

**Art on the Campus N**



2017 Exhibit Map

CITY HALL

CITY OF WEST DES MOINES PUBLIC ART PROGRAM  
**2017 Art on the Campus – Art Exhibition**  
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 14th day of November, 2016, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and Hilde DeBruyne, whose principal address is 3264 Cumming Road, Cumming, Iowa 50061 (hereinafter referred to as the "Artist").

**WITNESSETH:**

**WHEREAS**, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

**WHEREAS**, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

**ARTICLE 1: SCOPE OF SERVICES**

**1.1 General**

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2017, and ending on November 15, 2017.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.

**1.2 Delivery and Installation**

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

- c) The Artist shall deliver and install the completed Art Work at the Site no later than April 15, 2017, and shall remove the Art Work from said Site no later than November 30, 2017.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

**1.3 Risk of Loss**

- a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

**1.4 Indemnity**

- a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.
- b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.
- b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

**ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE**

**2.1 Fixed Fee**

- a) The City shall pay the Artist a stipend of \$1,500 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$1,500 credit towards the final purchase price.

**2.2 Artist's Expenses**

- a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

**2.3 Invoices**

- a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

## **ARTICLE 3: TIME OF PERFORMANCE**

### **3.1 Duration**

- a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

### **3.2 Installation Delays**

- a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

### **3.3 Early Completion of Artist Services**

- a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

### **3.4 Time Extensions**

- a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

## **ARTICLE 4: WARRANTIES**

### **4.1 Warranties of Title**

- a) The Artist represents and warrants that:
  - 1) The Art Work is solely the result of the artistic effort of the Artist;
  - 2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
  - 3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
  - 4) The Art Work is free and clear of any liens from any source whatever.

### **4.2 Warranties of Quality and Condition**

- a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
  - 1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;

- 2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and
- b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

## **ARTICLE 5: INSURANCE**

### **5.1 Artist Insurance**

- a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.
- b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

### **5.2 City/Art Exhibit Insurance**

- a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of \$8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the \$8,000.00 insurance limit, whichever amount is lower.

## **ARTICLE 6: REPRODUCTION RIGHTS**

### **6.1 General**

- a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

### **6.2 Notice**

- a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

## **ARTICLE 7: ARTIST'S RIGHTS**

### **7.1 Identification**

- a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines

Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

**7.2 Maintenance**

- a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

**7.3 Alteration of the Work**

- a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

**7.4 Record**

- a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

**ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR**

- a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

**ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING**

**9.1 Transfer of Agreement**

- a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

**9.2 Subcontracting by Artist**

- a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

**ARTICLE 10: TERMINATION**

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall

refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

#### **ARTICLE 11: COMPLIANCE**

- a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

#### **Article 12: Notices**

- a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

**1) if to the City, to:**

Allison Ullestad, Recreation Coordinator  
City of West Des Moines  
P.O. Box 65320  
West Des Moines, IA 50265

**2) if to the Artist, to:**

Hilde DeBruyne  
3264 Cumming Rd.  
Cumming, IA 50061

#### **ARTICLE 13: MISCELLANEOUS**

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this

Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

**ARTIST**

\_\_\_\_\_  
Hilde DeBruyne

**CITY**

\_\_\_\_\_  
Sally Ortgies, City of West Des Moines



Exhibit A

**"Still Life with Birds" by Hilde DeBruyne**

**A streamlined composition of harmonious ceramic birds.**



CITY OF WEST DES MOINES PUBLIC ART PROGRAM  
**2017 Art on the Campus – Art Exhibition**  
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 14th day of November, 2016, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the “City”) and Jacob McGinn, whose principal address is 816 Jeroleman Street, Dunlap, Iowa 51529 (hereinafter referred to as the “Artist”).

**WITNESSETH:**

**WHEREAS**, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the “Art Work”), which has been conceived and designed by Artist, to be installed on the City’s property at the City/School Campus (hereinafter referred to as the “Site”), West Des Moines, Iowa; and

**WHEREAS**, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist’s Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City’s property, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

**ARTICLE 1: SCOPE OF SERVICES**

**1.1 General**

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2017, and ending on November 15, 2017.
- e) If the City or another buyer desires to purchase said Art Work to add to the City’s permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.

**1.2 Delivery and Installation**

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist’s intended time of delivery to determine the exact schedule of delivery and installation.

- c) The Artist shall deliver and install the completed Art Work at the Site no later than April 15, 2017, and shall remove the Art Work from said Site no later than November 30, 2017.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

**1.3 Risk of Loss**

- a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

**1.4 Indemnity**

- a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.
- b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.
- b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

**ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE**

**2.1 Fixed Fee**

- a) The City shall pay the Artist a stipend of \$3,000 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$3,000 credit towards the final purchase price.

**2.2 Artist's Expenses**

- a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

**2.3 Invoices**

- a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

## **ARTICLE 3: TIME OF PERFORMANCE**

### **3.1 Duration**

- a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

### **3.2 Installation Delays**

- a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

### **3.3 Early Completion of Artist Services**

- a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

### **3.4 Time Extensions**

- a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

## **ARTICLE 4: WARRANTIES**

### **4.1 Warranties of Title**

- a) The Artist represents and warrants that:
  - 1) The Art Work is solely the result of the artistic effort of the Artist;
  - 2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
  - 3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
  - 4) The Art Work is free and clear of any liens from any source whatever.

### **4.2 Warranties of Quality and Condition**

- a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
  - 1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;

- 2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and
- b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

## **ARTICLE 5: INSURANCE**

### **5.1 Artist Insurance**

- a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.
- b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

### **5.2 City/Art Exhibit Insurance**

- a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of \$8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the \$8,000.00 insurance limit, whichever amount is lower.

## **ARTICLE 6: REPRODUCTION RIGHTS**

### **6.1 General**

- a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

### **6.2 Notice**

- a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

## **ARTICLE 7: ARTIST'S RIGHTS**

### **7.1 Identification**

- a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines

Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

**7.2 Maintenance**

- a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

**7.3 Alteration of the Work**

- a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

**7.4 Record**

- a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

**ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR**

- a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

**ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING**

**9.1 Transfer of Agreement**

- a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

**9.2 Subcontracting by Artist**

- a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

**ARTICLE 10: TERMINATION**

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall

refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

#### **ARTICLE 11: COMPLIANCE**

- a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

#### **Article 12: Notices**

- a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

- 1) **if to the City, to:**

Allison Ullestad, Recreation Coordinator  
City of West Des Moines  
P.O. Box 65320  
West Des Moines, IA 50265

- 2) **if to the Artist, to:**

Jacob McGinn  
816 Jeroleman Street  
Dunlap, IA 51529

#### **ARTICLE 13: MISCELLANEOUS**

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this

Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

**ARTIST**

\_\_\_\_\_  
Jacob McGinn

**CITY**

\_\_\_\_\_  
Sally Orgies, City of West Des Moines



**Exhibit A**

**"WhereWeGoing" by Jacob McGinn**

**"WhereWeGoing is about how wonky/crazy life can be, however once you reach the top or achieve your goal, you've made it."**



**Exhibit B**

**"PlayThings" by Jacob McGinn**

**"Many of these "toys" are bright bold colored geometric shapes, expressed in the work."**



CITY OF WEST DES MOINES PUBLIC ART PROGRAM  
**2017 Art on the Campus – Art Exhibition**  
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 14th day of November, 2016, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and Kristin Garnant, whose principal address is 820 3<sup>rd</sup> Street, Camanche, Iowa 52730 (hereinafter referred to as the "Artist").

**WITNESSETH:**

**WHEREAS**, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

**WHEREAS**, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

**ARTICLE 1: SCOPE OF SERVICES**

**1.1 General**

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2017, and ending on November 15, 2017.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.

**1.2 Delivery and Installation**

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

- c) The Artist shall deliver and install the completed Art Work at the Site no later than April 15, 2017, and shall remove the Art Work from said Site no later than November 30, 2017.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

**1.3 Risk of Loss**

- a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

**1.4 Indemnity**

- a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.
- b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.
- b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

**ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE**

**2.1 Fixed Fee**

- a) The City shall pay the Artist a stipend of \$1,500 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$1,500 credit towards the final purchase price.

**2.2 Artist's Expenses**

- a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

**2.3 Invoices**

- a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

## **ARTICLE 3: TIME OF PERFORMANCE**

### **3.1 Duration**

- a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

### **3.2 Installation Delays**

- a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

### **3.3 Early Completion of Artist Services**

- a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

### **3.4 Time Extensions**

- a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

## **ARTICLE 4: WARRANTIES**

### **4.1 Warranties of Title**

- a) The Artist represents and warrants that:
  - 1) The Art Work is solely the result of the artistic effort of the Artist;
  - 2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
  - 3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
  - 4) The Art Work is free and clear of any liens from any source whatever.

### **4.2 Warranties of Quality and Condition**

- a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
  - 1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;

- 2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and
- b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

## **ARTICLE 5: INSURANCE**

### **5.1 Artist Insurance**

- a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.
- b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

### **5.2 City/Art Exhibit Insurance**

- a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of \$8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the \$8,000.00 insurance limit, whichever amount is lower.

## **ARTICLE 6: REPRODUCTION RIGHTS**

### **6.1 General**

- a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

### **6.2 Notice**

- a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

## **ARTICLE 7: ARTIST'S RIGHTS**

### **7.1 Identification**

- a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines

Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

**7.2 Maintenance**

- a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

**7.3 Alteration of the Work**

- a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

**7.4 Record**

- a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

**ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR**

- a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

**ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING**

**9.1 Transfer of Agreement**

- a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

**9.2 Subcontracting by Artist**

- a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

**ARTICLE 10: TERMINATION**

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall

refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

**ARTICLE 11: COMPLIANCE**

- a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

**Article 12: Notices**

- a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

**1) if to the City, to:**

Allison Ullestad, Recreation Coordinator  
City of West Des Moines  
P.O. Box 65320  
West Des Moines, IA 50265

**2) if to the Artist, to:**

Kristin Garnant  
820 3<sup>rd</sup> Street  
Camanche, IA 52730

**ARTICLE 13: MISCELLANEOUS**

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this

Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

**ARTIST**

---

Kristin Garnant

**CITY**

---

Sally Ortgies, City of West Des Moines



Exhibit A

**“Mechanics of Grace” by Kristin Garnant**

**“This towering tube is constructed of 12 gauge corten steel. The rusted patina on this 8-foot high column deepens the interior space; a hollow cylinder that unfolds as it ascends.”**



CITY OF WEST DES MOINES PUBLIC ART PROGRAM  
**2017 Art on the Campus – Art Exhibition**  
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 14th day of November, 2016, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and Mike Sneller, whose principal address is 4200 Blairs Ferry Rd. NE, Cedar Rapids, Iowa 52411 (hereinafter referred to as the "Artist").

**WITNESSETH:**

**WHEREAS**, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

**WHEREAS**, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

**ARTICLE 1: SCOPE OF SERVICES**

**1.1 General**

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2017, and ending on November 15, 2017.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.

**1.2 Delivery and Installation**

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

- c) The Artist shall deliver and install the completed Art Work at the Site no later than April 15, 2017, and shall remove the Art Work from said Site no later than November 30, 2017.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

**1.3 Risk of Loss**

- a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

**1.4 Indemnity**

- a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.
- b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.
- b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

**ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE**

**2.1 Fixed Fee**

- a) The City shall pay the Artist a stipend of \$1,500 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$1,500 credit towards the final purchase price.

**2.2 Artist's Expenses**

- a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

**2.3 Invoices**

- a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

## **ARTICLE 3: TIME OF PERFORMANCE**

### **3.1 Duration**

- a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

### **3.2 Installation Delays**

- a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

### **3.3 Early Completion of Artist Services**

- a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

### **3.4 Time Extensions**

- a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

## **ARTICLE 4: WARRANTIES**

### **4.1 Warranties of Title**

- a) The Artist represents and warrants that:
  - 1) The Art Work is solely the result of the artistic effort of the Artist;
  - 2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
  - 3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
  - 4) The Art Work is free and clear of any liens from any source whatever.

### **4.2 Warranties of Quality and Condition**

- a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
  - 1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;

- 2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and
- b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

## **ARTICLE 5: INSURANCE**

### **5.1 Artist Insurance**

- a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.
- b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

### **5.2 City/Art Exhibit Insurance**

- a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of \$8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the \$8,000.00 insurance limit, whichever amount is lower.

## **ARTICLE 6: REPRODUCTION RIGHTS**

### **6.1 General**

- a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

### **6.2 Notice**

- a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

## **ARTICLE 7: ARTIST'S RIGHTS**

### **7.1 Identification**

- a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines

Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

**7.2 Maintenance**

- a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

**7.3 Alteration of the Work**

- a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

**7.4 Record**

- a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

**ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR**

- a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

**ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING**

**9.1 Transfer of Agreement**

- a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

**9.2 Subcontracting by Artist**

- a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

**ARTICLE 10: TERMINATION**

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall

refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

#### **ARTICLE 11: COMPLIANCE**

- a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

#### **Article 12: Notices**

- a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

- 1) if to the City, to:

Allison Ullestad, Recreation Coordinator  
City of West Des Moines  
P.O. Box 65320  
West Des Moines, IA 50265

- 2) if to the Artist, to:

Mike Sneller  
4200 Blairs Ferry Rd. NE  
Cedar Rapids, IA 52411

#### **ARTICLE 13: MISCELLANEOUS**

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this

Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

**ARTIST**

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Mike Sneller

**CITY**

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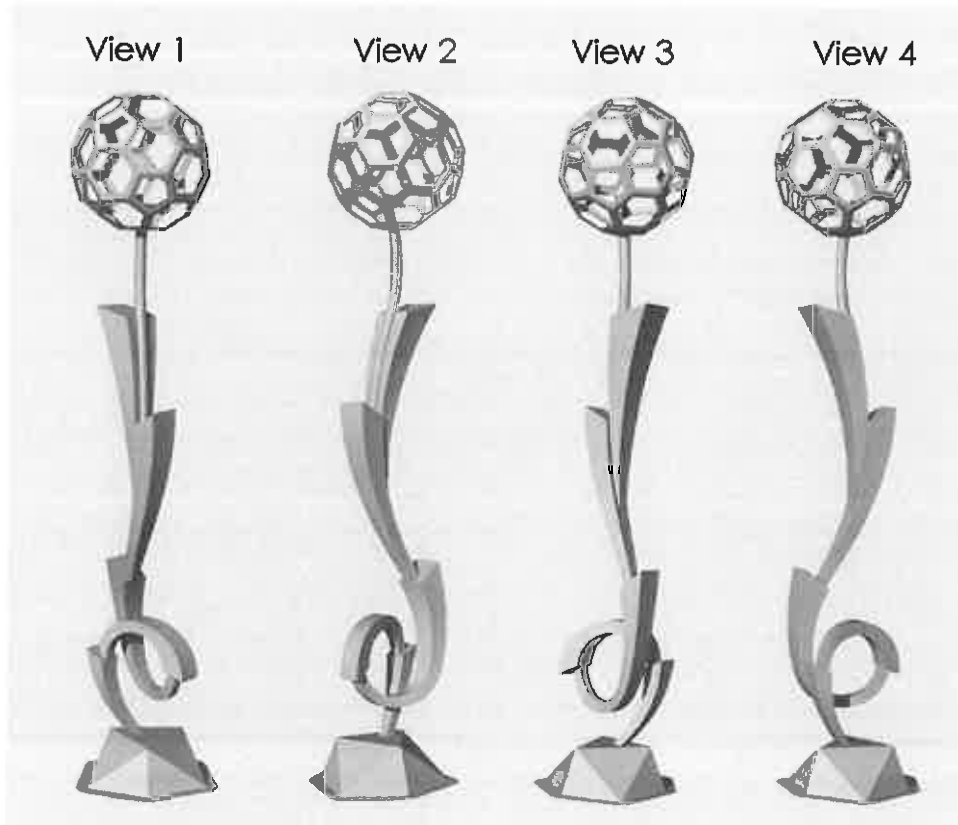
Sally Ortgies, City of West Des Moines



Exhibit A

"Rotary Flower" by Mike Sneller

"Rotary Flower is a fun piece that uses the shapes of the stem to move your eye around and up to the geometric globe flower."



CITY OF WEST DES MOINES PUBLIC ART PROGRAM  
**2017 Art on the Campus – Art Exhibition**  
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 14th day of November, 2016, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and Nick Klepinger, whose principal address is 3201 Robin Avenue, Reasnor, Iowa 50232 (hereinafter referred to as the "Artist").

**WITNESSETH:**

**WHEREAS**, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

**WHEREAS**, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

**ARTICLE 1: SCOPE OF SERVICES**

**1.1 General**

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2017, and ending on November 15, 2017.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.

**1.2 Delivery and Installation**

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

- c) The Artist shall deliver and install the completed Art Work at the Site no later than April 15, 2017, and shall remove the Art Work from said Site no later than November 30, 2017.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

**1.3 Risk of Loss**

- a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

**1.4 Indemnity**

- a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.
- b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.
- b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

**ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE**

**2.1 Fixed Fee**

- a) The City shall pay the Artist a stipend of \$1,500 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$1,500 credit towards the final purchase price.

**2.2 Artist's Expenses**

- a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

**2.3 Invoices**

- a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

## **ARTICLE 3: TIME OF PERFORMANCE**

### **3.1 Duration**

- a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

### **3.2 Installation Delays**

- a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

### **3.3 Early Completion of Artist Services**

- a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

### **3.4 Time Extensions**

- a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

## **ARTICLE 4: WARRANTIES**

### **4.1 Warranties of Title**

- a) The Artist represents and warrants that:
  - 1) The Art Work is solely the result of the artistic effort of the Artist;
  - 2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
  - 3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
  - 4) The Art Work is free and clear of any liens from any source whatever.

### **4.2 Warranties of Quality and Condition**

- a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
  - 1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;

- 2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and
- b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

## **ARTICLE 5: INSURANCE**

### **5.1 Artist Insurance**

- a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.
- b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

### **5.2 City/Art Exhibit Insurance**

- a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of \$8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the \$8,000.00 insurance limit, whichever amount is lower.

## **ARTICLE 6: REPRODUCTION RIGHTS**

### **6.1 General**

- a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

### **6.2 Notice**

- a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

## **ARTICLE 7: ARTIST'S RIGHTS**

### **7.1 Identification**

- a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines

Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

**7.2 Maintenance**

- a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

**7.3 Alteration of the Work**

- a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

**7.4 Record**

- a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

**ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR**

- a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

**ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING**

**9.1 Transfer of Agreement**

- a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

**9.2 Subcontracting by Artist**

- a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

**ARTICLE 10: TERMINATION**

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall

refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

#### **ARTICLE 11: COMPLIANCE**

- a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

#### **Article 12: Notices**

- a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

- 1) if to the City, to:

Allison Ullestad, Recreation Coordinator  
City of West Des Moines  
P.O. Box 65320  
West Des Moines, IA 50265

- 2) if to the Artist, to:

Nick Klepinger  
3201 Robin Avenue  
Reasnor, IA 50232

#### **ARTICLE 13: MISCELLANEOUS**

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this

Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

**ARTIST**

---

Nick Klepinger

**CITY**

---

Sally Orgies, City of West Des Moines



Exhibit A

"Lunch Break" by Nick Klepinger

"Life size bronze of fawn nursing its mother."



CITY OF WEST DES MOINES PUBLIC ART PROGRAM  
**2017 Art on the Campus – Art Exhibition**  
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 14th day of November, 2016, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the “City”) and Ronald Dinsdale, whose principal address is 29480 US Hwy 69, Huxley, Iowa 50124 (hereinafter referred to as the “Artist”).

**WITNESSETH:**

**WHEREAS**, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the “Art Work”), which has been conceived and designed by Artist, to be installed on the City’s property at the City/School Campus (hereinafter referred to as the “Site”), West Des Moines, Iowa; and

**WHEREAS**, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist’s Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City’s property, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

**ARTICLE 1: SCOPE OF SERVICES**

**1.1 General**

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2017, and ending on November 15, 2017.
- e) If the City or another buyer desires to purchase said Art Work to add to the City’s permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.

**1.2 Delivery and Installation**

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist’s intended time of delivery to determine the exact schedule of delivery and installation.

- c) The Artist shall deliver and install the completed Art Work at the Site no later than April 15, 2017, and shall remove the Art Work from said Site no later than November 30, 2017.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

**1.3 Risk of Loss**

- a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

**1.4 Indemnity**

- a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.
- b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.
- b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

**ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE**

**2.1 Fixed Fee**

- a) The City shall pay the Artist a stipend of \$3,000 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$3,000 credit towards the final purchase price.

**2.2 Artist's Expenses**

- a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

**2.3 Invoices**

- a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

## **ARTICLE 3: TIME OF PERFORMANCE**

### **3.1 Duration**

- a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

### **3.2 Installation Delays**

- a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

### **3.3 Early Completion of Artist Services**

- a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

### **3.4 Time Extensions**

- a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

## **ARTICLE 4: WARRANTIES**

### **4.1 Warranties of Title**

- a) The Artist represents and warrants that:
  - 1) The Art Work is solely the result of the artistic effort of the Artist;
  - 2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
  - 3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
  - 4) The Art Work is free and clear of any liens from any source whatever.

### **4.2 Warranties of Quality and Condition**

- a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
  - 1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;

- 2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and
- b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

## **ARTICLE 5: INSURANCE**

### **5.1 Artist Insurance**

- a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.
- b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

### **5.2 City/Art Exhibit Insurance**

- a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of \$8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the \$8,000.00 insurance limit, whichever amount is lower.

## **ARTICLE 6: REPRODUCTION RIGHTS**

### **6.1 General**

- a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

### **6.2 Notice**

- a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

## **ARTICLE 7: ARTIST'S RIGHTS**

### **7.1 Identification**

- a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines

Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

**7.2 Maintenance**

- a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

**7.3 Alteration of the Work**

- a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

**7.4 Record**

- a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

**ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR**

- a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

**ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING**

**9.1 Transfer of Agreement**

- a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

**9.2 Subcontracting by Artist**

- a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

**ARTICLE 10: TERMINATION**

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall

refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

**ARTICLE 11: COMPLIANCE**

- a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

**Article 12: Notices**

- a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

**1) if to the City, to:**

Allison Ullestad, Recreation Coordinator  
City of West Des Moines  
P.O. Box 65320  
West Des Moines, IA 50265

**2) if to the Artist, to:**

Ronald Dinsdale  
29480 US Hwy 69  
Huxley, IA 50124

**ARTICLE 13: MISCELLANEOUS**

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this

Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

**ARTIST**

---

Ronald Dinsdale

**CITY**

---

Sally Ortgies, City of West Des Moines



Exhibit A

**“Peaceful Journey” by Ronald Dinsdale**

**“Peace and harmony is a philosophy that I believe in and hope continues to grow. The figures of the dove relate to the balanced harmony we must have among all nations. As with many of my pieces, it is dealing with the physical, mental and emotional aspect of movement and a reckoning of all actions.”**



Exhibit B

**“Innocence of Peace” by Ronald Dinsdale**

**“Growing up on the farm is the basis of my life, my love of nature and wildlife. I always felt at ease while in nature’s presence. The three sculptured interwoven doves, forever turning, deal with the physical, mental, and emotion aspect of movement and can symbolize harmony, the freedom, and rights we cherish.”**



CITY OF WEST DES MOINES PUBLIC ART PROGRAM  
**2017 Art on the Campus – Art Exhibition**  
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 14th day of November, 2016, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and Tim Adams, whose principal address is 404 E. Second Street, Webster City, Iowa 50595 (hereinafter referred to as the "Artist").

**WITNESSETH:**

**WHEREAS**, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

**WHEREAS**, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

**ARTICLE 1: SCOPE OF SERVICES**

**1.1 General**

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2017, and ending on November 15, 2017.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.

**1.2 Delivery and Installation**

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

- c) The Artist shall deliver and install the completed Art Work at the Site no later than April 15, 2017, and shall remove the Art Work from said Site no later than November 30, 2017.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

**1.3 Risk of Loss**

- a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

**1.4 Indemnity**

- a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.
- b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.
- b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

**ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE**

**2.1 Fixed Fee**

- a) The City shall pay the Artist a stipend of \$1,500 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$1,500 credit towards the final purchase price.

**2.2 Artist's Expenses**

- a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

**2.3 Invoices**

- a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

## **ARTICLE 3: TIME OF PERFORMANCE**

### **3.1 Duration**

- a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

### **3.2 Installation Delays**

- a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

### **3.3 Early Completion of Artist Services**

- a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

### **3.4 Time Extensions**

- a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

## **ARTICLE 4: WARRANTIES**

### **4.1 Warranties of Title**

- a) The Artist represents and warrants that:
  - 1) The Art Work is solely the result of the artistic effort of the Artist;
  - 2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
  - 3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
  - 4) The Art Work is free and clear of any liens from any source whatever.

### **4.2 Warranties of Quality and Condition**

- a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
  - 1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;

- 2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and
- b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

## **ARTICLE 5: INSURANCE**

### **5.1 Artist Insurance**

- a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.
- b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

### **5.2 City/Art Exhibit Insurance**

- a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of \$8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the \$8,000.00 insurance limit, whichever amount is lower.

## **ARTICLE 6: REPRODUCTION RIGHTS**

### **6.1 General**

- a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

### **6.2 Notice**

- a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

## **ARTICLE 7: ARTIST'S RIGHTS**

### **7.1 Identification**

- a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines

Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

**7.2 Maintenance**

- a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

**7.3 Alteration of the Work**

- a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

**7.4 Record**

- a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

**ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR**

- a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

**ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING**

**9.1 Transfer of Agreement**

- a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

**9.2 Subcontracting by Artist**

- a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

**ARTICLE 10: TERMINATION**

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall

refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

**ARTICLE 11: COMPLIANCE**

- a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

**Article 12: Notices**

- a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

**1) if to the City, to:**

Allison Ullestad, Recreation Coordinator  
City of West Des Moines  
P.O. Box 65320  
West Des Moines, IA 50265

**2) if to the Artist, to:**

Tim Adams  
404 E. Second Street  
Webster City, IA 50595

**ARTICLE 13: MISCELLANEOUS**

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this

Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

**ARTIST**

---

Tim Adams

**CITY**

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Sally Ortgies, City of West Des Moines



Exhibit A

**"Asteria" by Tim Adams**

**"Greek goddess of shooting stars, astrology, and prophetic dreams. The kinetic blue aster "bouquet" represents the nocturnal oracles and astrological wizardry of Asteria. The abstract rusted steel figure conveys her dark magic of necromancy (Communicating with the dead) and foretelling the future."**



CITY OF WEST DES MOINES PUBLIC ART PROGRAM  
**2017 Art on the Campus – Art Exhibition**  
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 14th day of November, 2016, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and V. Skip Willits, whose principal address is 820 3<sup>rd</sup> Street, Camanche, Iowa 52730 (hereinafter referred to as the "Artist").

**WITNESSETH:**

**WHEREAS**, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

**WHEREAS**, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

**ARTICLE 1: SCOPE OF SERVICES**

**1.1 General**

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2017, and ending on November 15, 2017.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.

**1.2 Delivery and Installation**

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

- c) The Artist shall deliver and install the completed Art Work at the Site no later than April 15, 2017, and shall remove the Art Work from said Site no later than November 30, 2017.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

**1.3 Risk of Loss**

- a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

**1.4 Indemnity**

- a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.
- b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.
- b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

**ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE**

**2.1 Fixed Fee**

- a) The City shall pay the Artist a stipend of \$1,500 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$1,500 credit towards the final purchase price.

**2.2 Artist's Expenses**

- a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

**2.3 Invoices**

- a) The Artist shall submit an invoice a) to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

## **ARTICLE 3: TIME OF PERFORMANCE**

### **3.1 Duration**

- a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

### **3.2 Installation Delays**

- a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

### **3.3 Early Completion of Artist Services**

- a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

### **3.4 Time Extensions**

- a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

## **ARTICLE 4: WARRANTIES**

### **4.1 Warranties of Title**

- a) The Artist represents and warrants that:
  - 1) The Art Work is solely the result of the artistic effort of the Artist;
  - 2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
  - 3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
  - 4) The Art Work is free and clear of any liens from any source whatever.

### **4.2 Warranties of Quality and Condition**

- a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
  - 1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;

- 2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and
- b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

## **ARTICLE 5: INSURANCE**

### **5.1 Artist Insurance**

- a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.
- b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

### **5.2 City/Art Exhibit Insurance**

- a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of \$8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the \$8,000.00 insurance limit, whichever amount is lower.

## **ARTICLE 6: REPRODUCTION RIGHTS**

### **6.1 General**

- a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

### **6.2 Notice**

- a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

## **ARTICLE 7: ARTIST'S RIGHTS**

### **7.1 Identification**

- a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines

Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

**7.2 Maintenance**

- a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

**7.3 Alteration of the Work**

- a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

**7.4 Record**

- a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

**ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR**

- a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

**ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING**

**9.1 Transfer of Agreement**

- a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

**9.2 Subcontracting by Artist**

- a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

**ARTICLE 10: TERMINATION**

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall

refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

**ARTICLE 11: COMPLIANCE**

- a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

**Article 12: Notices**

- a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

**1) if to the City, to:**

Allison Ullestad, Recreation Coordinator  
City of West Des Moines  
P.O. Box 65320  
West Des Moines, IA 50265

**2) if to the Artist, to:**

V. Skip Willits  
820 3<sup>rd</sup> Street  
Camanche, IA 52730

**ARTICLE 13: MISCELLANEOUS**

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this

Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

**ARTIST**

---

V. Skip Willits

**CITY**

---

Sally Orgies, City of West Des Moines



**Exhibit A**

**"Point in Time" by V. Skip Willits**

**"4 pods each consisting of 3 sides. A point in the flow."**



CITY OF WEST DES MOINES PUBLIC ART PROGRAM  
**2017 Art on the Campus – Art Exhibition**  
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 14th day of November, 2016, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the “City”) and Zach Schnock, whose principal address is 277 S. 79<sup>th</sup> Street, West Des Moines, Iowa 50266 (hereinafter referred to as the “Artist”).

**WITNESSETH:**

**WHEREAS**, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the “Art Work”), which has been conceived and designed by Artist, to be installed on the City’s property at the City/School Campus (hereinafter referred to as the “Site”), West Des Moines, Iowa; and

**WHEREAS**, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist’s Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City’s property, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

**ARTICLE 1: SCOPE OF SERVICES**

**1.1 General**

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2017, and ending on November 15, 2017.
- e) If the City or another buyer desires to purchase said Art Work to add to the City’s permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.

**1.2 Delivery and Installation**

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist’s intended time of delivery to determine the exact schedule of delivery and installation.

- c) The Artist shall deliver and install the completed Art Work at the Site no later than April 15, 2017, and shall remove the Art Work from said Site no later than November 30, 2017.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

**1.3 Risk of Loss**

- a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

**1.4 Indemnity**

- a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.
- b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.
- b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

**ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE**

**2.1 Fixed Fee**

- a) The City shall pay the Artist a stipend of \$1,500 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$1,500 credit towards the final purchase price.

**2.2 Artist's Expenses**

- a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

**2.3 Invoices**

- a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

## **ARTICLE 3: TIME OF PERFORMANCE**

### **3.1 Duration**

- a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

### **3.2 Installation Delays**

- a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

### **3.3 Early Completion of Artist Services**

- a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

### **3.4 Time Extensions**

- a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

## **ARTICLE 4: WARRANTIES**

### **4.1 Warranties of Title**

- a) The Artist represents and warrants that:
  - 1) The Art Work is solely the result of the artistic effort of the Artist;
  - 2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
  - 3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
  - 4) The Art Work is free and clear of any liens from any source whatever.

### **4.2 Warranties of Quality and Condition**

- a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
  - 1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;

- 2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and
- b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

## **ARTICLE 5: INSURANCE**

### **5.1 Artist Insurance**

- a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.
- b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

### **5.2 City/Art Exhibit Insurance**

- a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of \$8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the \$8,000.00 insurance limit, whichever amount is lower.

## **ARTICLE 6: REPRODUCTION RIGHTS**

### **6.1 General**

- a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

### **6.2 Notice**

- a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

## **ARTICLE 7: ARTIST'S RIGHTS**

### **7.1 Identification**

- a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines

Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

**7.2 Maintenance**

- a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

**7.3 Alteration of the Work**

- a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

**7.4 Record**

- a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

**ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR**

- a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

**ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING**

**9.1 Transfer of Agreement**

- a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

**9.2 Subcontracting by Artist**

- a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

**ARTICLE 10: TERMINATION**

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall

refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

#### **ARTICLE 11: COMPLIANCE**

- a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

#### **Article 12: Notices**

- a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

- 1) if to the City, to:

Allison Ullestad, Recreation Coordinator  
City of West Des Moines  
P.O. Box 65320  
West Des Moines, IA 50265

- 2) if to the Artist, to:

Zach Schnock  
277 S. 79<sup>th</sup> Street  
West Des Moines, IA 50266

#### **ARTICLE 13: MISCELLANEOUS**

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this

Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

**ARTIST**

---

Zach Schnock

**CITY**

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Sally Ortgies, City of West Des Moines



Exhibit A

"Journey" by Zach Schnock

"This work accentuate multiple facets of natural river landscapes and relates them to one's own journey of life. First, I digitally extracted water stream maps and used areas that held a particular visual interest to me. These images are chaotic, but I find solace within their circular presentation. I think that aesthetic qualities of the streamlines also relate to direction and where our life path takes us."



CITY OF WEST DES MOINES PUBLIC ART PROGRAM  
**2017 Art on the Campus – Art Exhibition**  
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 14th day of November, 2016, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and Brian Bickel, whose principal address is 5275 Jordan Blvd., Pleasant Hill, Iowa 50327 (hereinafter referred to as the "Artist").

**WITNESSETH:**

**WHEREAS**, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

**WHEREAS**, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

**ARTICLE 1: SCOPE OF SERVICES**

**1.1 General**

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2017, and ending on November 15, 2017.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.

**1.2 Delivery and Installation**

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

- c) The Artist shall deliver and install the completed Art Work at the Site no later than April 15, 2017, and shall remove the Art Work from said Site no later than November 30, 2017.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

**1.3 Risk of Loss**

- a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

**1.4 Indemnity**

- a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.
- b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.
- b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

**ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE**

**2.1 Fixed Fee**

- a) The City shall pay the Artist a stipend of \$1,500 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$1,500 credit towards the final purchase price.

**2.2 Artist's Expenses**

- a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

**2.3 Invoices**

- a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

## **ARTICLE 3: TIME OF PERFORMANCE**

### **3.1 Duration**

- a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

### **3.2 Installation Delays**

- a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

### **3.3 Early Completion of Artist Services**

- a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

### **3.4 Time Extensions**

- a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

## **ARTICLE 4: WARRANTIES**

### **4.1 Warranties of Title**

- a) The Artist represents and warrants that:
  - 1) The Art Work is solely the result of the artistic effort of the Artist;
  - 2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
  - 3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
  - 4) The Art Work is free and clear of any liens from any source whatever.

### **4.2 Warranties of Quality and Condition**

- a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
  - 1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;

- 2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and
- b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

## **ARTICLE 5: INSURANCE**

### **5.1 Artist Insurance**

- a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.
- b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

### **5.2 City/Art Exhibit Insurance**

- a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of \$8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the \$8,000.00 insurance limit, whichever amount is lower.

## **ARTICLE 6: REPRODUCTION RIGHTS**

### **6.1 General**

- a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

### **6.2 Notice**

- a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

## **ARTICLE 7: ARTIST'S RIGHTS**

### **7.1 Identification**

- a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines

Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

**7.2 Maintenance**

- a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

**7.3 Alteration of the Work**

- a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

**7.4 Record**

- a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

**ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR**

- a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

**ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING**

**9.1 Transfer of Agreement**

- a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

**9.2 Subcontracting by Artist**

- a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

**ARTICLE 10: TERMINATION**

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall

refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

#### **ARTICLE 11: COMPLIANCE**

- a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

#### **Article 12: Notices**

- a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

**1) if to the City, to:**

Allison Ullestad, Recreation Coordinator  
City of West Des Moines  
P.O. Box 65320  
West Des Moines, IA 50265

**2) if to the Artist, to:**

Brian Bickel  
5275 Jordan Blvd.  
Pleasant Hills, IA 50327

#### **ARTICLE 13: MISCELLANEOUS**

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this

Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

**ARTIST**

---

Brian Bickel

**CITY**

---

Sally Orgies, City of West Des Moines



Exhibit A

"Channel" by Brian Bickel

Pipe-sphere supported by a 1-3' pedestal base made from large pipe-fittings, flanges, and a manhole cover.



CITY OF WEST DES MOINES PUBLIC ART PROGRAM  
**2017 Art on the Campus – Art Exhibition**  
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 14th day of November, 2016, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and Zach Bowman, whose principal address is 1413 SE Delaware Avenue, Ankeny, Iowa 50021 (hereinafter referred to as the "Artist").

**WITNESSETH:**

**WHEREAS**, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

**WHEREAS**, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

**ARTICLE 1: SCOPE OF SERVICES**

**1.1 General**

- a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
- b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
- c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
- d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2017, and ending on November 15, 2017.
- e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
- f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.

**1.2 Delivery and Installation**

- a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
- b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

- c) The Artist shall deliver and install the completed Art Work at the Site no later than April 15, 2017, and shall remove the Art Work from said Site no later than November 30, 2017.
- d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
- e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
- f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

**1.3 Risk of Loss**

- a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

**1.4 Indemnity**

- a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.
- b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.
- b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

**ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE**

**2.1 Fixed Fee**

- a) The City shall pay the Artist a stipend of \$1,500 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.
- b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a \$1,500 credit towards the final purchase price.

**2.2 Artist's Expenses**

- a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

**2.3 Invoices**

- a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

## **ARTICLE 3: TIME OF PERFORMANCE**

### **3.1 Duration**

- a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

### **3.2 Installation Delays**

- a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

### **3.3 Early Completion of Artist Services**

- a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

### **3.4 Time Extensions**

- a) The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Artist in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the City in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the City's control or Acts of God render timely performance of the City's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such condition.

## **ARTICLE 4: WARRANTIES**

### **4.1 Warranties of Title**

- a) The Artist represents and warrants that:
  - 1) The Art Work is solely the result of the artistic effort of the Artist;
  - 2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
  - 3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
  - 4) The Art Work is free and clear of any liens from any source whatever.

### **4.2 Warranties of Quality and Condition**

- a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
  - 1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;

- 2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and
- b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

## **ARTICLE 5: INSURANCE**

### **5.1 Artist Insurance**

- a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.
- b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

### **5.2 City/Art Exhibit Insurance**

- a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of \$8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the \$8,000.00 insurance limit, whichever amount is lower.

## **ARTICLE 6: REPRODUCTION RIGHTS**

### **6.1 General**

- a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

### **6.2 Notice**

- a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

## **ARTICLE 7: ARTIST'S RIGHTS**

### **7.1 Identification**

- a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines

Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

**7.2 Maintenance**

- a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

**7.3 Alteration of the Work**

- a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

**7.4 Record**

- a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

**ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR**

- a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

**ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING**

**9.1 Transfer of Agreement**

- a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

**9.2 Subcontracting by Artist**

- a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

**ARTICLE 10: TERMINATION**

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall

refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

**ARTICLE 11: COMPLIANCE**

- a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

**Article 12: Notices**

- a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

**1) if to the City, to:**

Allison Ullestad, Recreation Coordinator  
City of West Des Moines  
P.O. Box 65320  
West Des Moines, IA 50265

**2) if to the Artist, to:**

Zach Bowman  
1413 SE Delaware Avenue  
Ankeny, IA 50021

**ARTICLE 13: MISCELLANEOUS**

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this

Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

**ARTIST**

\_\_\_\_\_  
Zach Bowman

**CITY**

\_\_\_\_\_  
Sally Ortgies, City of West Des Moines



## Exhibit A

### "Abandoned Embrace" by Zach Bowman

"I am proposing to create a sculpture that represents the overarching sense of disconnect between different groups in today's American society. We live in a country full of people from different backgrounds, but unfortunately we don't always embrace and share in these differences. I would like to create a piece that would evoke and inspire a sense of unity amongst diversity.

The general shape of the sculpture was conceived from the idea of "open arms." From there, I manipulated the forms to create an eye-catching piece composed of two separate, yet united pieces with curving planes and intersecting spaces. In terms of the general shape of the piece, I would like to stick as close to my original design as possible, especially keeping the look of layered metals in order to bring texture to the sculpture. I also envision the ends of the forms to be enclosed. "This work accentuate multiple facets of natural river landscapes and relates them to one's own journey of life. First, I digitally extracted water stream maps and used areas that held a particular visual interest to me. These images are chaotic, but I find solace within their circular presentation. I think that aesthetic qualities of the streamlines also relate to direction and where our life path takes us."



**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

DATE: November 14, 2016

**ITEM:** Motion – Approval of Contract Agreement Renewal – Park Security Services

**FINANCIAL IMPACT:** Approximate expense of \$76,900 annually based on services identified in the Request for Proposal dated October 2013. The amount includes a contractor-supplied vehicle. This is a contract renewal, and rates are being increased by 3% or approximately an additional \$2,300 annually at the request of the contractor. Staff feels that this increase is acceptable. This amount is budgeted in the Parks cost center of the operating budget for this purpose.

**BACKGROUND:** The Council is asked to approve the renewal of an agreement with American Security for Park Security Services. American Security has done an excellent job of providing security services over the last three years. They were originally selected in 2013 using a detailed Request for Proposal (RFP) process. The RFP was sent to all area security providers. A notice of the RFP was published. Through an evaluation of written proposals and interviews, American Security was chosen. The current agreement with them expires on December 31, 2016, but the terms of the agreement allow for renewal on an annual basis for an additional two years.



This agreement covers on-site security from April 1 through October 31 and mobile patrol from November 1 through March 31. The amount of coverage varies depending on the time of the year. Security officers are responsible for patrolling, locking and unlocking parks and facilities, checking permits at the dog park and archery facility, responding to alarms at the nature lodge and softball complex, and enforcing park rules.

**OUTSTANDING ISSUES:** None

**RECOMMENDATION:** That the Council approve the agreement renewal.

**Lead Staff Member:** Sally Ortgies 

**STAFF REVIEWS**

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

**PUBLICATION(S)** (if applicable)

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW** (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split



**CITY OF WEST DES MOINES**  
**4200 Mills Civic Parkway**  
**PO Box 65320**  
**West Des Moines, Iowa 50265-0320**

**CONTRACT NO.**           -           **DATE:** 11/14/16  
**BUDGET CODE** 100.400.405.5250.450 (Security Services)

**CONTRACT AGREEMENT**

Contractor American Security & Investigations	Department Department of Parks & Recreation P.O. Box 65320 West Des Moines, Iowa 50265
Contract Period – Effective: January 1, 2017	Terminates: December 31, 2017
Annual Cost: \$76,900 (estimated)	Payable: 30 Days
<u>DESCRIPTION OF ITEMS CONTRACTED</u>	
<p>See Attached Proposal for terms and conditions with 3% rate increase in 2017 as follows:</p> <p>On-Site Security Officer = \$14.98/hour          Mobile Patrol = \$15.76/stop          Vehicle = \$367.71 bi-weekly</p>	
Contractor Greg D. Willey	<input type="checkbox"/> Approved <input type="checkbox"/> Not Approved
Authorized Signature	
Company Name (Print) American Security & Investigations	City Manager
Address 2801 Bell Avenue, Des Moines, IA 50321	Department Director

**\*\*\* CONTRACT \*\*\***

**AMERICAN SECURITY, L.L.C.**  
also d/b/a AMERICAN SECURITY & INVESTIGATIONS, L.L.C.  
**2801 Bell Avenue, Des Moines, IA 50321**  
**(515) 245 - 4370**

THIS CONTRACT entered into on December 9, 2013 between AMERICAN SECURITY, L.L.C, referred to herein as "AMERICAN SECURITY" and City of West Des Moines, Iowa referred to herein as "CLIENT." THE PARTIES AGREE TO AND UNDERSTAND THE FOLLOWING:

1. AMERICAN SECURITY hereby agrees to furnish CLIENT Security Guard Services at the location(s) listed and in the amount and rates indicated herein. This Service will be provided in accordance with mutually approved written procedures, and shall be subject to all of the items and conditions in this contract.
2. Initial Term Start Date(s): January 1, 2014
3. Service furnished at Use Exhibit A
4. Initial Term End Date(s): December 31, 2015
5. Schedule, shifts, number of Security Officers per shift: Use Exhibit A
6. The regular charge for Security Officers shall be Use Exhibit A CLIENT agrees to pay AMERICAN SECURITY a sum equal to one and one-half times the regular rate for Security Officers for any CLIENT requested service hours in excess of regularly scheduled hours and for service on the following six major holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. With the exception of holidays, if more than 3 days notice is given for extra coverage then the client rate for excess coverage will be that of the regular rate.
7. Sales taxes, if any, will be added to the total invoice and are in addition to all hourly rates, unless CLIENT is tax exempt. If tax exempt CLIENT must furnish copy of Certificate of Exemption.  
  
Federal Tax ID Number: 42-6005359
8. "Confidential Information" is information not generally known and that is proprietary to AMERICAN SECURITY or that AMERICAN SECURITY is obligated to treat as proprietary. This contract, any proposals to CLIENT and related materials are Confidential Information. Release, duplication, disclosure, or use of Confidential Information (other than in connection with fulfilling the obligations of the parties under this contract) is not permitted unless authorized in writing by authorized representative of AMERICAN SECURITY or disclosure is required pursuant to State of Iowa open records laws. CLIENT recognizes and agrees that the unauthorized use or disclosure of Confidential Information by CLIENT would cause irreparable injury to AMERICAN SECURITY and would entitle AMERICAN SECURITY to seek immediate injunctive relief, in addition to any other rights and remedies available. The obligations in this section will expressly survive the termination, cancellation, or expiration of this contract.
9. All Officers assigned to premises listed in section 3 of this contract, shall be AMERICAN

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**SECURITY employees and will not be considered employees of CLIENT.**

- 10. All AMERICAN SECURITY agents and employees are covered by Workers' Compensation insurance. AMERICAN SECURITY is an independent contractor to the CLIENT and AMERICAN SECURITY'S agents and employees shall not be entitled to any type of benefits from the CLIENT since they are not employees of the CLIENT. AMERICAN SECURITY maintains, for its own protection, comprehensive general liability insurance and automobile collision, comprehensive and liability insurance for AMERICAN SECURITY owned vehicles and/or equipment. If requested, AMERICAN SECURITY will provide CLIENT with a certificate of insurance.**
- 11. CLIENT will keep AMERICAN SECURITY furnished with a current list of names, addresses, and telephone numbers of any persons who may be contacted by AMERICAN SECURITY in case of any emergency arising under this contract. If CLIENT fails to keep AMERICAN SECURITY supplied with a current listing, or if AMERICAN SECURITY is unable to contact the persons named, AMERICAN SECURITY may take whatever action it deems reasonable and necessary to correct the emergency or to secure CLIENT'S property.**
- 12. Should AMERICAN SECURITY personnel be required and/or directed by CLIENT or CLIENT'S authorized agent to operate any equipment in the performance of AMERICAN SECURITY'S duties hereunder, CLIENT shall have in force comprehensive general liability and automobile collision, comprehensive and liability insurance for CLIENT owned and/or provided equipment and/or vehicles, with such policy limits as may be reasonably required by AMERICAN SECURITY. CLIENT shall provide AMERICAN SECURITY with insurance certificate naming AMERICAN SECURITY as an additional insured regarding use and/or operation of any such equipment. CLIENT shall defend (at AMERICAN SECURITY'S REQUEST), indemnify, and hold harmless AMERICAN SECURITY, and any of its officers, directors, agents, or employees from any claims, allegations, damages, liabilities, costs or expenses, including, without limitation, attorneys' fees and expenses, arising out of the performance of AMERICAN SECURITY'S duties, or the use or operation of CLIENT'S owned and/or provided equipment, vehicle(s), or property, unless caused by negligent, reckless, or intentional actions or omissions attributable to AMERICAN SECURITY. AMERICAN SECURITY shall defend (at CLIENT'S REQUEST), indemnify, and hold harmless CLIENT, and its officers, directors, agents, and employees from any claims, allegations, damages, liabilities, costs, or expenses, including, without limitation, attorneys' fees and expenses, arising out of the performance of AMERICAN SECURITY'S duties, or the use or operation of CLIENT'S owned and/or provided equipment, vehicle(s), or property caused by negligent, reckless, or intentional actions or omissions attributable to AMERICAN SECURITY.**
- 13. Neither party hereunder shall in any event be liable to the other for indirect or consequential, incidental, exemplary, punitive or special damages, including, without limitation, business interruption, lost business, or lost profits damages, even if such party has been advised of the possibility of such damages in advance.**
- 14. AMERICAN SECURITY is not an insurer; and consideration for this contract does not encompass any idea of AMERICAN SECURITY accepting strict liability or such insurer-type responsibilities hereunder. Any consideration for this contract is not related to the value of the personal or real property protected; and all amounts being charged by AMERICAN SECURITY are insufficient to guarantee that no loss will occur. AMERICAN SECURITY makes no guarantee, implied or otherwise, that no loss will occur, or that the service provided will detect or prevent occurrences or losses that the service may be designed to help discover or avert.**

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AMERICAN SECURITY services do not include, and AMERICAN SECURITY will not perform any duties or activities that may be construed as physical detainment/detention, arrest, custody or assault.

15. AMERICAN SECURITY and its duly authorized employees or agents are authorized to notify the appropriate police and fire agencies of situations arising at the premises described in section 3 of this contract.
16. Under no circumstance will AMERICAN SECURITY be responsible for the theft of CLIENT'S property. In the event of allegation of Officer theft(s), CLIENT waives all right of recovery unless: 1) AMERICAN SECURITY is notified of such allegations within forty-eight (48) hours after CLIENT has or should have reasonably discovered the loss; and 2) CLIENT fully cooperates with AMERICAN SECURITY in the investigation of the matter; and 3) CLIENT files a written report with the appropriate law enforcement agency.
17. If, as indicated in the description of services to be provided or by any amendment to the contract, AMERICAN SECURITY is to secure the services of any person or business entity on behalf of and for the accounts of CLIENT, the parties hereto agree that AMERICAN SECURITY assumes no liability arising from or related to said services.
18. To the fullest extent permitted by law, for their own negligence or other misconduct, AMERICAN SECURITY and CLIENT agree to indemnify, defend and hold harmless each other and any of their officers, directors, agents, subsidiaries, assigns and employees from any and all losses, liabilities, damages, claims, allegations, and expenses (including reasonable attorney's fees and costs), caused by such negligence or misconduct. In this regard, neither party shall unreasonably deny a tender of defense made under this provision. Notwithstanding anything to the contrary, nothing contained herein is intended or construed to require either party to indemnify or defend the other, or any other person, against such other party's, or such other person's own negligence, omission or misconduct in any instance or event.
19. All procedure manuals, trademarks, emblems, labels, sticker decals, signs, equipment and/or materials of any variety whatsoever furnished by AMERICAN SECURITY to CLIENT, unless specifically described in a Bill of Sale or other agreement indicating to the contrary, shall be deemed to be the property of AMERICAN SECURITY and may be removed or recovered by AMERICAN SECURITY at anytime. AMERICAN SECURITY is hereby expressly authorized to remove and/or recover its property at anytime.
20. Each party agrees that they will not hire, directly or indirectly, personnel from the other party's employment while this contract is in effect and for a period of one year from the termination date thereof, unless mutually agreed upon in writing signed by both parties. In the event such mutual consent is not obtained, the hiring party hereby agrees to compensate the other party an amount no less than thirty-three percent (33%) of the annualized wages of the person hired. This placement/retraining fee shall be immediately due and payable upon the individual's new employment date.
21. Payment for all invoices is due net 30 days after receipt of invoice. AMERICAN SECURITY shall compute invoices on a two- (2) week basis. Open invoices beyond these terms shall be assessed a credit fee of one and one half percent (1 ½%) per month of the unpaid balance equal to eighteen percent (18%) per annum. Notwithstanding the credit fee, failure to pay invoices in accordance with such terms shall be considered breach of this contract and could result in a discontinuance of our services without prior notice.

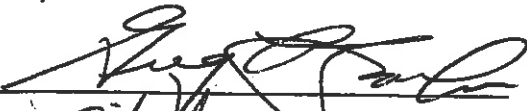
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- 22. This contract may be terminated at any time upon a thirty- (30) day written notice from either party.
- 23. This contract is entered into solely for the mutual benefit of the signatory parties, and no benefits, rights, duties, or obligations are intended or created by this contract as to any third parties.
- 24. All notices required in this contract shall be made in writing and shall be deemed effective if delivered to the receiving party by hand on the date of personal delivery, or on the fifth (5<sup>th</sup>) day after mailing if sent by mail, or on the date of facsimile transmission provided that the sender receives telephonic confirmation of receipt by the receiving party within 24 hours after receipt of notice.
- 25. It is agreed that this service will continue until the initial term end date indicated in section 4 of this contract and will remain in full force and effect thereafter, unless a notice in writing to discontinue, amend or change is sent by either party to the other at least thirty (30) days prior to expiration of the term or requested date of amendment or change by the notification method described in section 24 of this contract. Any amendment to this contract must be by an instrument in writing and signed by both parties.
- 26. Unless otherwise stated herein, or by an instrument in writing, either party may waive compliance by the other party with any term or provision of this contract; provided, however, that such waiver shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure. Any amendment or waiver on behalf of AMERICAN SECURITY will only be effective if signed by an officer or authorized representative of AMERICAN SECURITY.
- 27. The validity, interpretation, enforceability, and performance of this contract shall be governed by and construed in accordance with the laws of the State of Iowa, without regard to the principles of conflicts of law thereof.

The Request for Proposal for Park Security Services (RFP), dated October 2013, is hereby adopted by reference into this Contract and all of the language set forth in the RFP shall be considered incorporated into this Contract as though it were fully set forth herein. The language of the RFP shall control the respective obligations of the parties if there are any inconsistencies between the language of the RFP and that detailed in this Contract.

**CITY OF WEST DES MOINES  
(CLIENT)**

**AMERICAN SECURITY, L.L.C.  
(AMERICAN SECURITY)**

By:   
 Title: City Manager  
 Date: 12/12/13

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**NOTICE:** This contract is not valid unless signed by an officer or authorized representative of American Security, L.L.C. and Client.

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# EXHIBIT A





2801 Bell Avenue  
Des Moines, IA 50321  
Phone: (515) 245-4370  
Fax: (515) 245-4380

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November 13, 2013

Ms. Sally Ortgies  
Superintendent of Parks  
West Des Moines Park & Recreation  
4200 Mills Civic Parkway  
West Des Moines, IA 50265

Dear Ms. Ortgies,

We are pleased to present our Proposal for Security Services for West Des Moines Parks and Recreation as listed in your Request for Proposal. We are excited to be given the opportunity to serve the City of West Des Moines.

The following pages contain responses to your Request for Proposal for the various park locations. Our proposal addresses all of your requirements in qualifying for the contract. It is not our intent to simply meet the minimum requirements, but to greatly exceed them.

We look forward to reestablishing our partnership and building our relationship with your staff and visitors to the West Des Moines Park system. You can count on our commitment to excellence and our ability to adapt to changing environments.

We would look forward to the opportunity to present our proposal orally, if you so desire. If you have any questions or comments, please feel free to contact me at your convenience at (515)-554-1958).

Sincerely,

American Security L.L.C.

Greg D. Willey  
Regional Director of Operations

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## INTRODUCTION

- \* **Over 50 years of security experience**

American Security was founded in 1959. In 2002, American Security became American Security, L.L.C. also d/b/a/ American Security & Investigations.

- \* **The highest standards of integrity and professionalism**

Through its Uniformed Security Guard Division in the Des Moines Area, American Security provides over 1,000 service hours per week.

- \* **Expertise in all areas of security**

American Security is well managed and fiscally sound. A member of the Des Moines business community for 23 years, American Security continues to grow and strengthen its ties to the community through sound, well-established management practices. They include: (a) excellent service, (b) support of the field officer staff by experienced, trained, highly motivated management staff, and (c) sound fiscal practices.

- \* **Commitment to client satisfaction**

Our local building houses the Administrative Offices, Operations Departments, Training Center, Human Resources Department, Central Supply Distribution, and Fleet Service Operations.

\* **An essential element of American Security's quality control is effective communication**

We firmly believe in the importance of effective communications. It is a key element in any long-term relationship. There is an absolute and positive correlation between effective communications and our ability to meet your expectations. A combination of formal and informal meetings with you will assure that your objectives are met, and more importantly, any areas needing improvement are identified.

Our management group shall work with you to develop and implement specific plans to respond to and resolve any concerns. Responsiveness and effective follow-up are imperative to any quality control system. Corporate commitment to complete client satisfaction, based on a solid understanding of your needs, is the foundation for continued improvement of your security program.

\* **A thorough understanding of your needs is vital to delivering first-rate customer service**

People are our most important resource! We treat this resource with respect. The combination of proper screening and recruiting with thorough initial and ongoing training enables AMERICAN SECURITY to provide you the best private security officers in the security industry.

Consistent inspection and motivation of assigned officers, along with effective communications between the client, security company management, and the on-site security staff enables us to guarantee delivery of first rate service.

## EMPLOYMENT PRACTICES

American Security prides itself in having the most professional and progressive Human Resources Department in the industry. We have taken the time and energy to make sure our Human Resources Personnel are trained in the most current employment law as well as in human-relations techniques. The Human Resources Department has developed comprehensive employment practices and procedures throughout the Company, especially in the area of hiring.

The personal requirements/qualifications a Security Officer must possess include the following:

1. Must be a minimum of 18 years of age
2. High School Diploma or its equivalent
3. No Criminal History
4. Good background references
5. Meet our physical requirements analysis, which includes ability to walk, stand, sit, stoop/bend, kneel, climb stairs, and lift up to 50 pounds
6. Speak, write and read English
7. Conform to Company dress code
8. Remain calm and self controlled in a variety of situations, to include those which may be stressful or emergencies
9. Depending upon specific on-site or job requirements, applicant may need:
  - A. Valid driver's license and meet our driving record requirements covered in our Vehicle Driving Policy
  - B. Department of Defense security clearance
  - C. Pass a drug test
  - D. Meet qualifications to carry a firearm
10. Meet all state law requirements for Security Officers and receive Iowa Department of Public Safety certification to be a licensed Security Officer.

## HIRING PROCESS

Upon the completion of the extensive application, the applicant proceeds through a thorough screening process. This step includes review by an Administrative Assistant to determine that the appearance, demeanor, and work history of the applicant is sufficient to warrant an interview. Our HR Manager then interviews the applicant. The HR Manager goes into detail about the individual's background, verifying work history and reason for leaving, lapses of employment, prior security experience and asking pointed questions about the existence of any pending or conviction records in any court having jurisdiction. The applicant's appearance, cooperation, and attitude are noted and closely considered.

If the applicant is successful in their first interview, they will then proceed to a second interview with the Manager of Operations. A description of the position as well as physical requirements is discussed with the applicant. After a successful interview has been completed, the applicant's references are checked and the individual is called in to attend mandatory in-house training before assignment to a position.

The prospective employee is fingerprinted and that data is given to the Iowa Department of public safety and the Federal Bureau of Investigation for a criminal record check. The new employee may be offered conditional employment pending the outcome of the record checks and the ability to obtain a permanent, state licensed, security ID badge.

Following completion of the initial training program, the new employee then meets with the Manager of Operations and the Area Manager for the location that they are being assigned to for on-site training. This training course is designed to introduce the individual(s) to the facility and the philosophy of our client as well as basic security policies and procedures.

Because American Security is voluntarily an Equal Opportunity Employer, all applicants are tracked according to their sex and race. Each year this information is analyzed to verify the recruitment of females and minorities. Recruitment goals are then set for the following year. The application form, as well as other Human Resources forms, is reviewed on a regular basis. Updates are made according to State and Federal laws or changes in Company Policy. We have the appropriate Affirmative Action Certificates of Compliance from both the State and County levels.

## EMPLOYEE BENEFITS

The following minimum benefits are provided to all employees of American Security. Associates may receive additional benefits depending on their assignment and/or Client requirements.

- **Vacation:** Full time employees receive one week paid vacation after one year service; two weeks after two years of service; three weeks after eight years of service; four weeks after 15 years of service.
- **401K Plan:** All employees have the option of participating in the Plan after one year of service.
- **Health Insurance:** After 90 days of service, full-time employees may choose Blue Cross/Blue Shield as their health benefits provider. This Plan is based upon three different deductible levels for annual medical expenses. This is a Select Account Plan, which is a pretax benefit plan. Included also is an OPTUM Employee Assistance Program.
- **Life Insurance:** All American Security employees are given a \$10,000 life insurance policy during their employment.
- **Dental Coverage:** After 90 days of service, all employees have the option of purchasing dental coverage offered through American Security, L.L.C.
- **Uniforms:** All uniforms and equipment are provided at no charge to the employee.
- **Overtime:** Time and one-half for all hours worked over 40 hours in a standard pay week. This benefit is available immediately after employment with the Company.
- **Paid Holidays:** All employees are eligible for Holiday pay. During the first six months of service, employees are paid one and one-half times their regular rates if they work on the holiday. After six months of service, the employee is paid eight (8) hours of holiday pay. The six recognized Holidays are:
  - |               |                  |                  |
|---------------|------------------|------------------|
| New Years Day | Memorial Day     | Independence Day |
| Labor Day     | Thanksgiving Day | Christmas Day    |
- **Advancement Opportunities:** Each employee, based on their performance, has an opportunity for advancement within the Company.
- **Paid Funeral Leave:** For deaths of immediate family members, current in-laws, grandchildren, and grandparents.
- **Disability Pay:** Full time American Security personnel are eligible to receive disability pay after one year of employment. Benefits are \$175.00 per week up to 13 weeks pay.
- **Paid Training:** All American Security personnel receive pay if attending our in-house training courses.

## RETENTION OF VALUABLE ASSOCIATES

American Security recognizes the value of its most important resource. In our efforts to retain those individuals who have shown us their initiative and responsibility, American Security utilizes a combination of direct wage and non-wage incentives, as well as opportunities for advancement within the Company into supervisory and management positions.

American Security's plan regarding retention of valuable associates assigned to our client's accounts is based on performance and wages. Each associate shall have their performance evaluated by management 30 days after their assignment to the facility, re-evaluated again in 60 days, then once again in 90 days. There will be an opportunity for the officer to be rewarded with a significant increase in the base wage within the first six-(6) months of assignment to the facility. Additionally, the officer will then be able to expect an annual review of wages and benefits.

Our Excellence in Service program rewards officers on a continuous basis through recognition of efforts above and beyond.

American Security has a long established and highly successful Refer-A-Friend Bonus program to provide our Associates with a direct monetary reward. Other rewards include non-monetary recognition for excellent service or other achievements. Non-monetary recognition includes gifts, awards, and incentives from the Company Store. Other non-monetary recognition includes letters of recognition and commendation from our Clients and Company management group. This correspondence is placed into the employee's permanent personnel file. American Security's company newsletter is a valuable tool, used regularly, to recognize an employee for outstanding service or other achievement(s).

***Regular evaluations of performance, with immediate rewards for excellent service, are key in retaining valuable associates over the long term!***

## ALCOHOL/DRUG USE, POSSESSION AND TESTING

### *CORPORATE POLICY*

1. The use, possession, or transfer to others of alcohol or drugs while on duty or on American Security or client's premises (including American Security or client's parking facilities) is prohibited.
2. Reporting for duty or remaining on duty at American Security or client's premises (including American Security or client's parking facilities) while under the influence of or impaired by alcohol or drugs is prohibited. This includes having alcohol on the breath. If American Security representatives suspect drug or alcohol usage by one of our associates, we have the right to have the suspected person tested.
3. Drug and alcohol-related requirements and/or testing will be imposed on American Security associates who perform services for customers who insist on those requirements and/or testing. Any associate assigned to such a customer's facilities will be notified of any additional restrictions or testing requirements.
4. American Security's complete policy regarding alcohol/drug use and testing protocol is listed in the Employee Handbook, which is issued to and signed off by each American Security employee during Orientation Training.

### TESTING PROCEDURES AND COSTS

**American Security utilizes the services of Concentra Medical Centers for all drug-testing procedures. This comprehensive testing procedure includes collection, five-panel test at Concentra, and sign off by Medical Records Officer.**



## **FIRM INFORMATION**

American Security L.L.C.  
2801 Bell Avenue  
Des Moines, IA 50321

American Security is a Limited Liability Company, formed in Delaware.

For questions or additional information regarding the content of this proposal please feel free to call, e-mail, or send inquires to:

Greg Willey  
Regional Director of Operations  
American Security L.L.C.  
Phone: (515) 362-3815  
Fax: (515) 245-4380  
E-mail: [gwilley@americansecurityllc.com](mailto:gwilley@americansecurityllc.com)

## UNDERSTANDING OF SCOPE

American Security L.L.C. testifies that it will be able to provide all services outlined in the "Scope of Services" section as outlined in the Request for Proposal. American Security will complete all services as follows:

### RACCOON RIVER PARK

1. We shall provide full, continuous and consistent security coverage with one security officer on-site during these dates and scheduled times.
  - April 1 through October 31 (approx. dates) (everyday) 10am to 1:00am
2. We shall provide a second full, continuous and consistent security officer on-site during this dates and scheduled times.
  - May 15<sup>th</sup> through August 15<sup>th</sup> (approx. dates) (everyday) 12 noon to 7:00pm.

It is understood that the city reserves the right to adjust the schedule to meet changing security needs. It is also understood if a portion of time is not fully covered; the City's representative is to be immediately notified.

3. If we are not providing our own vehicle, then our officer will report to the Parks Maintenance Shop, at 1421 Maple Street, to pick up a city vehicle, keys and American Security cell phone. Officer will complete a vehicle inspection and proceed to the Raccoon River Park. At the end of their shift, the officer will return to the Parks Maintenance Shop to return the city vehicle, keys and cell phone.

### DOG PARK PATROL

1. We shall provide a security officer for dedicated duty at the dog park a minimum of 2 hours per day. We understand that a detailed schedule will be determined upon award of the contract. Below is the list of the days and times.
  - On site security-April 1 through October 31 (two hours per day)
  - Mobile Patrol-November 1 through December 15<sup>th</sup> (3 stops/day), December 16 through February 28<sup>th</sup> (1 stop/day), March 1 through March 31<sup>st</sup> (3 stops/day).

We understand that the schedule may vary depending on use levels at the dog park and we will be flexible to those changing needs.

Duties of the officer will include, but not limited to:

1. Checking for permit tags and requesting users, without permit tags, to leave the dog park.
2. Will provide information to citizens on obtaining permits and enforcing all dog park rules as listed in the West Des Moines Dog Park rules document referenced in attachment C.
3. The on-site officer will complete a report on the dog park activity and submit them to the City daily. Our mobile patrol officer will also complete daily reports to verify that permit tags are being checked with reports submitted weekly. We understand that other special events may be scheduled, at the dog park, and we will supply additional security at the request of the City.

### ARCHERY FACILITY

We understand that our on-site officer and mobile patrol officers will randomly check the archery facility. The days and times that will be generally followed is listed below, but we understand that a detailed schedule will be determined upon award of the contract.

- On-Site security-April 1 through October 31<sup>st</sup> (Randomly each day)
- Mobile Patrol-November 1 through December 15<sup>th</sup> (3 stops/day), December 16 through February 28<sup>th</sup> (1 stop/day), March 1 through March 31<sup>st</sup> (3 stops/day).

We understand that the on-site officer and mobile patrol will perform random checks for permits and request users without permits to leave the archery facility. They will also enforce all archery facility rules. The officers will also provide information to them and park visitors on how to obtain a permit. The on-site officers will complete reports and submit them to the City daily. The mobile patrol officers will also fill out reports to be submitted weekly.

### GATES

1. The security officers will lock and unlock park gates located at both Grand Avenue and 11<sup>th</sup> street.
  - Gates will be locked at 12:00am (midnight) and unlocked and opened at 6am daily. Gates will be securely fastened in the open position and inspected during

patrols. Prior to locking gates, security officers shall cover the entire park and give advance notice to park closing to any remaining visitors.

- On-site Security-April 1 through October 31 (Close Gates)
- Mobile Patrol-January 1 through March 31 (2 stops/day, open/close gates), April 1 through October 31<sup>st</sup> (1stop/day, open gates), November 1 through December 31<sup>st</sup> (2 stops/day, open/close gates)

### FACILITY LOCKUP

1. Our security officer shall be responsible for locking the following facilities and will be checked by our mobile patrol to verify that the facilities are locked.
  - Soccer Complex Restrooms (10:00pm)
  - Playground Restrooms (10:00pm)

### ALARM RESPONSE

1. We shall provide first response to alarm calls at the Raccoon River Park Nature Lodge and Softball Complex. We shall respond during our on-site security hours at no charge. Responses to alarms, outside of the on-site security hours, shall be billed separately (See fees schedule).

### FOCUS AREAS

1. During patrol of the Raccoon River Park, our security officer will give specific attention to the following areas:
  - **Softball Complex:** We will escort concession stand workers and other staff, to their cars, at their request. We will enforce park rule prohibiting the consumption of alcohol in parking areas.
  - **Nature:** We will escort staff to their cars at their requests.
  - **Beach:** We will enforce park rules that include the prohibition of consumption of alcohol, the use of glass containers and pets in the beach area. The area will be patrolled by foot or bike patrol.
  - **Dog Park:** Our on-site security officer and mobile patrol will do random checks for permits and provide information to park visitors on how to obtain a pet permit. Users without permits will be asked to leave the park. They will also enforce all dog park rules.
  - **Playground:** We will patrol the playground, on foot, and look for any obvious safety issues, such as broken equipment or trash/glass in playground area.
  - **Lake:** We will make an attempt to enforce the lake's "No-Wake" rule by communicating, from the shore, the rule to the boater once they have remove their boat from the lake.

- **Trail:** We will provide patrol of the 3.2 mile trail around Blue Heron Lake. We will drive the trail route and provide response to alarms from emergency call boxes located along the trail. We will have a bicycle available for use by our security officer.
- **Miscellaneous:** Officer will pay special attention to rules that are often violated at the park (Dogs not on leash while outside fenced dog park, glass containers in park, and other alcohol beverages. Beer, in twelve ounce cans, is allowed.

#### OTHER PARKS-Park Patrol

- We shall patrol all parks identified in (table 2), in the RFP, a minimum of once per shift per night. This will be done during the times listed below.
  1. April 1 through October 31 (approximated days) 9:30pm to 11:30pm. Every night.

#### PARK LOCKUP

- We shall lock facilities in the parks identified in (table 2), in the RFP. The parks will be locked no earlier than 9:30pm and no later than 11:30pm.
- **Park Patrol:** It is our understanding that the City may occasionally request security services in other parks or at times separate from park lockup.

#### GENERAL SCOPE REQUIREMENTS

- **Holidays:** We shall provide all services 365 days a year, as agreed in this proposal and according to all schedules within, including all holidays. In addition, we will provide an extra on-site officer at the Raccoon River Park on Memorial day from 10am to 8pm and the Fourth of July we will provide 2 additional officers 10am to 10pm.
- **Special Events:** We understand that additional officers may be required for special events run by the City. We also understand that we may need to coordinate additional security coverage with a non-city organizer.
- **Enforcement:** We shall enforce park rules and regulations as listed in (attachment B) of the RFP. We shall notify the West Des Moines Police for law enforcement assistance when necessary.
- **Public Interaction:** We shall provide security personnel who positively interacts with park visitors and will conduct themselves in a highly professional manner. We will offer assistance and distribute information to the public upon request. We will walk in and around the park facilities to demonstrate a security presence and will be utilizing a bike patrol when appropriate.
- **Uniform:** We will provide our officers American Security uniforms that will provide a clear visual identification to park visitors. We understand that the City

will need to approve these uniforms. Our basic uniform is a black shirt with black pants. The shirt has an American Security patch on both shoulder sleeves and one on the front left chest. Depending on weather conditions, in the summer, officers can be provided black shorts, per the City's approval.

- **Training:** All on-site security officers will have current certification in First Aid and adult/infant CPR. Documentation of certification shall be made available to the City upon request. Officers will also be trained on dog behavior as it relates to the dog park.
- **Communication:** We shall provide our on-site officer with a cell phone which will allow them to communicate to our 24/7 dispatch. They will also be able to contact the West Des Moines Police and City contact person. A current phone number list shall be provided to the City and written reports will be filled out daily providing the City documentation of security activity.
- **Vehicles:** We understand if we use the City provided vehicle that it shall be picked up and dropped off at the Parks Maintenance Shop at 1421 Maple Street. We shall fill out a vehicle condition report daily by each officer driving the vehicle. We understand that the vehicles for the mobile patrols will be provided by us. If we provide all vehicles, the cost will include all fuel, insurance, maintenance and other incidentals. The vehicle will be in good working condition and the appearance will be to the satisfaction of the City and be clearly identified as a security vehicle. We are looking at a Ford Fusion or Jeep Patriot.
- **Contacts:** We shall provide the City with the name, address, e-mail and phone numbers for at least two American Security contacts the will be responsible for insuring response to the City's requests.
- **Authority/Direction:** We understand that all of our security personnel will be expected to be positive, courteous and on time. We also understand that the City reserves the right to reject any security personnel from continued or further service for any reason.
- **Damages:** We understand that we will be responsible for any and all damage to public property (including vehicles), private property, or personal injury due to our employees negligence or intentional or reckless conduct in the performance of the security service.

**CONTRACT TERMS:** It is our understanding that the contract shall start on January 1, 2014 and extend through December 31, 2015. We also understand that following this initial period, the contract may be renewed at the City's sole discretion on an annual basis for an additional three years. At the end of the initial or renewal period (whichever is applicable), the contract will be re-bid.

## PRIOR EXPERIENCE

American Security L.L.C. has been providing professional security services to clients since 1959. Currently our company provides more than 128,000 hours of coverage each month to our clients.

As a result of our years of experience and the number of hours that we provide, you can be assured that American Security will be able to handle any situation that may come up at West Des Moines Park & Recreation.

The local management staff of American Security L.L.C. that is assigned to handle all occurrences at West Des Moines water works has well over 100 years of combined experience in the security field. Those management members are as follows:

- Ray Monson, Manager of Operations (9 years security experience)
- Michele Clemmons, Area Manager (5 years security experience)
- Gary Abshire, Operations Officer (25 years security experience)
- Greg Willey, Regional Director of Operations (36 years security experience)
- Jeff Allen, Manager of Human Resources (33 years in security field)
- Cory Krug, Vice President Quality Assurance (18 years of security experience)

In addition American Security employs two Certified Protection Professionals (C.P.P.) to aid in the evaluation of security needs as requested.

American Security L.L.C. had provided quality security services to West Des Moines Parks & Recreation, in the past for over 14 years and feels confident that we can again do so in the future. We are very qualified and trained on dealing with the specific needs that come from securing a public area.

In addition to having provided security to West Des Moines Parks & Recreation in the past, the following companies also experience quality service from American Security L.L.C.

- DART Central Station  
Keith Welch-Facility Manger  
620 Cherry, DM, Iowa 50309  
515-802-2087  
\*Provide security for the central bus station. Enforce policies with customers waiting and riding the city's buses. Provide physical security for the facility.
- Hubbell Realty  
John Bergman-Director of Property Management

6900 Westtown Parkway, West Des Moines, Iowa 50266  
515-280-2040

\*Provide security for several of their properties. Provide physical security along with enforcing policies with visitors and clients.

- **Methodist Plaza**

Toby George-Property Manager  
1212 Pleasant St. suite 100, DM, Iowa 50309  
515-241-5778

\*Provide physical security for the facility, along with enforcing policy and procedures with visitors and clients.

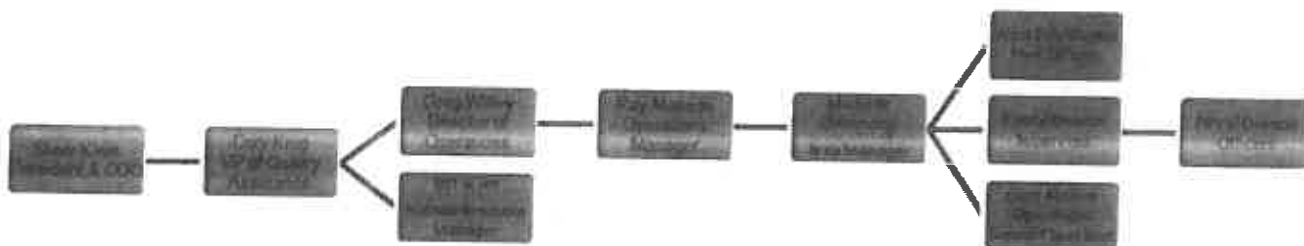
- **Knapp Realty**

Amy Darr-Property Manager  
4949 Westtown Parkway, suite 200 DM, Iowa 50266  
515-802-4900

\* Provide security for several of their properties. Provide physical security along with enforcing policies with visitors and clients.



## SUPERVISION



American Security L.L.C. utilizes an Area Manager that will oversee the account and will be in charge of scheduling and training of the security officers. They will ensure that officers are following policy and procedure by making random stops at the account during their shift. During their status, with the officer, a status sheet is filled out and signed by the officer. The Status sheet is an on the spot assessment of the officers appearance and an evaluation of their present performance. All officers are monitored by our 24/7 dispatch with a post watch to ensure they are at the location at the designated times.

The Area Manager will be trained, at your account, and will provide the follow up training to all new officers. Our Area Manager reports to the Manager of Operations with updated information after each contact with the client and officer.

The Manager of Operations will provide the Area Manager with updated account information in the form of daily briefings and written changes to the procedure manual for the account. This line of communication ensures that any concerns are dealt in a timely manner.

Our Manager of Operations then reports all account information to the Regional Director of Operations. All members of management have an ongoing commitment to provide West Des Moines Park & Recreation with highly trained and disciplined officers at all times.

# TRAINING

American Security prides itself on our on going commitment to quality training. All of our training programs are interactive. We use the principles of adult learning, which emphasizes that adults learn best by doing. Group work, independent study and classroom participation are just some of the instructional methods used in all training programs.

American Security also has established online training for our officers so that all of the courses that we offer will have expiration dates and we use a compliance tracker system to alert us when officers need additional training and this system will not allow officers to be scheduled for your account until they have completed this training.

## BASIC SECURITY COURSE OUTLINE:

### SUBJECT

#### **American Security Orientation**

- Policies/Procedures
- Uniform/ID/Fingerprints
- AMERICAN SECURITY History and Organization

#### **Communications (General)**

- Definition
- Listening Skills
- Barriers
- Nonverbal Communication
- Communicating With Different Cultures

#### **Security Overview/Ethics**

- Security Officer Roles and Responsibilities
- Industry Code of Ethics and Rules of Conduct
- Security Definitions

#### **Communications**

- Purpose of Reports
- Note taking and six (6) essential ingredients
- Security Reports
- Incident Reports Definition

### **Sexual Harassment Prevention**

- Definitions, Procedures for Prevention

### **Legal Authority**

- Security Officer's Legal Authority
- Criminal and Civil Laws
- Defamation, Assault and False Imprisonment
- Use of Force Continuum

### **Communications (Cultural Diversity)**

- Define Culture
- How To Value Differences
- Increase Respect
- Decrease Judgmental Behavior

### **Emergency Responses**

- Adult/Infant CPR
- First Aid
- AED (Automated External Defibrillator)

### **Park Specific training**

American Security will develop custom training in cooperation with local experts, of the following items to ensure proper enforcement of all rules and regulations and to provide the necessary skills needed to help our officers identify dog behaviors that could cause problems at the dog park.

This training will be a requirement before assignment to West Des Moines Parks and also be provided for the officers to have within at all times for review.

- Park Rules and Regulations
- Dog behavior training

## BASIC SECURITY COURSE-OFFICER EVALUATION

**Security/Incident Report Writing Exercise:** All participants must complete a security/incident report before completion of the course. This portion is Pass/Fail. The grade is based upon the individual's ability to properly fill in the report form's required entries, use of proper English, spelling, sentence structure, report content, and ability of the participant to communicate clearly and effectively. If the Instructor determines that a prospective Officer has failed the class, the Training Department and Human Resources Department staff will assist the individual in finding locations where English language and writing is taught. After successful completion of course work, the individual will have the opportunity to repeat the pre-assignment course.

**Participation:** During the entire orientation class, an individual's participation in group work will be evaluated by the instructor. This is a subjective evaluation based upon the participant's contribution to the class.

During the training course, the applicant fills out all pertinent company forms as well as other forms required by law, I-9, Confidential Medical History, W-4, Child Support questionnaire, & Iowa Security License Application. The prospective employee is then fingerprinted and that data is given to the Iowa Department of Public Safety for completion of the associate criminal background check to obtain their Iowa Security License.

During the training class, the applicant is still evaluated. Any inappropriate behavior could result in the individual not being placed on the job. If a prospective employee does not meet American Security's standards, the Training Director is empowered to remove the person from the training program. After successfully passing the training exam, the applicant meets with the Director of Operations for an account assignment.

Once on the job, an Area Manager reinforces what the security Officer learned in the training class and then concentrates training the new employee on the site-specific procedural manual. All security Officers, before assuming full responsibility for their posts, will complete a training checklist. The checklist is site specific, and will be developed for your location with your approval. Area Managers will be responsible for on-site training of all Security Officers assigned to your account.

## FEE

### Raccoon River Park On-Site Security

Date	Schedule	Day of Week	Billable Rate	Hours/Week	Cost per Week
SO #1 Apr 1 – Oct 31	10:00a to 1:00a	Everyday	\$14.25	105	\$1,522.50
SO #2 May15 – Aug 15	12:00p to 7:00p	Everyday	\$14.25	49	\$710.5

### Mobile Patrol of Raccoon River Park

Date	Duties	Per Stop	Stops/Week	Cost per Week
Nov 1 to Dec 15	Lock/Unlock, patrol Dog Park and Archery Facility	\$15	35	\$525
Dec 16 to Feb 28	Lock/Unlock, patrol Dog Park and Archery Facility	\$15	21	\$315
Mar 1 to Mar 31	Lock/Unlock, patrol Dog Park and Archery Facility	\$15	35	\$525

### Vehicle Cost

Due to length of time the vehicle would be needed during the 7 months of service, a separate vehicle would be purchased for the service and would be marked and include a light bar. Vehicle cost would be spread out over the year and billed bi-weekly at the rate of \$350 per bi-weekly period for a total of 26 billings per year.

### Raccoon River Park Softball Complex / Nature Lodge Alarm Response

Per Response rate = \$ 25.00

Holiday pay: The normal Bill Rate x 1.5 will be applied to all hours and patrol stops for the following holidays. New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas.

If additional hours are requested, outside the contract hours, the overtime rate of \$21.37 per hour would be applied unless American Security is able to cover the hours without paying overtime to associates. In this case the billable rate of \$14.25 per hour would apply.

## TECHNOLOGY

Included in the above listed pricing is the utilization of American Security's ASITRAC, Quality Assurance Manager, and Post Watch & Compliance Tracker. These tools are being put in place to provide better ensure high quality service at every level.

ASITRAC – This is a real time reporting system that allows the officer to take pictures, record audio and add notes to event's that occur on site during their shift.

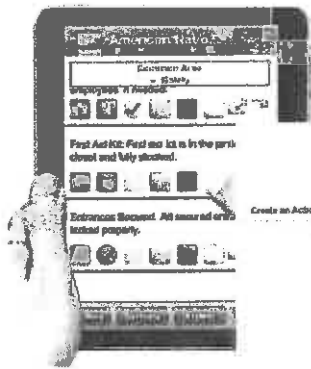


This information is available to be viewed by you at any time. Both the officer at Raccoon River Park and the patrol officers will have this technology. This system also uses QR codes to verify stops and supports that with GPS tracking of those stops. This system will also allow for paperless reporting.

QUALITY ASSURANCE MANAGER – Through designed audits, our Quality

Assurance Manager and Action Item system is set up for our management team to periodically audit the performance of the officers and site and identify deficiencies that may need

addressed. It also provides a customer URL for you to submit concerns or other items that you need managers to address.



**POST WATCH & COMPLIANCE TRACKER** – These systems are designed to ensure that Officers are on post when scheduled and that they have received all of the required training needed to be assigned to the account. Our 24/7 dispatch center monitors all shifts in post watch and our scheduling system locks out officers from being scheduled for your account unless they meet all minimum training requirements.

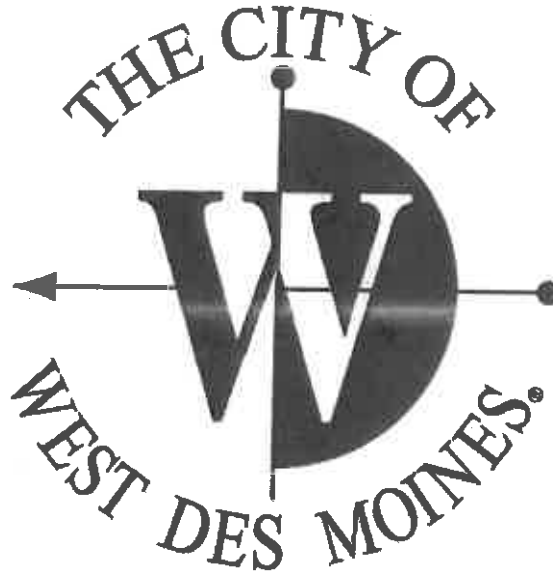
**?** The following Compliance Code(s) were not met for this Employee.

- 07/09/2013 CPR/AED/FIRST AID
- 03/06/2012 DRUG TEST U/A
- 03/06/2012 Optimal Fit Test
- 03/06/2012 VERBAL AUDO (MN - CPA 224)

Description	Open Positions			Not Clocked In				Clocked In	Missed Periodic Checkoff	Not Clocked Out				Clocked Out
	Before Toler.	Before Start	After Start	Before Toler.	Before Start	After Start	After Toler.			Before Toler.	Before End	After End	After Toler.	
▶ 10460 - Park Nicollet Clinic- Minneapolis							1	1		1				
10487 - MERCHANTS BUILDING								1		1				1
10648 - Financial Center								2		1				







**REQUEST FOR PROPOSAL**

**For**

**PARK SECURITY SERVICES**

October 2013

West Des Moines Parks & Recreation  
4200 Mills Civic Parkway  
P.O. Box 65320  
West Des Moines, IA 50265  
515-222-3447

## **Notice of Request for Proposal**

Sealed proposals for Park Security Services will be received until 2:00 p.m. local time on Wednesday, November 13, 2013, in the City Clerk's Office, West Des Moines City Hall, P.O. Box 65320, 4200 Mills Civic Parkway, West Des Moines, IA 50265. Specifications and instructions to interested parties may be obtained from West Des Moines Parks and Recreation at the above location or by calling Sally Ortgies, Superintendent of Parks, at 515-222-3447.

Published in Des Moines Register, November 1, 2013.

## ***I. Statement of Intent***

The City of West Des Moines Parks and Recreation Department is requesting that interested private security firms submit proposals for providing on-site security services for City parks, including Raccoon River Park.

## ***II. Introduction***

The City of West Des Moines currently has thirty-nine parks and greenways encompassing 1,275 acres of land. Parks range in size from Railroad Park, which is 0.38 acres, to Raccoon River Park, which is over 630 acres. The City also has 58 miles of multi-purpose trails. The estimated population of West Des Moines is 59,296 residents.

On-site security service has been provided at Raccoon River Park since 1996. This Request for Proposal (RFP) addresses this service along with additional security needed at other West Des Moines parks.

### **Raccoon River Park**

Raccoon River Park, located at 2500 Grand Avenue in West Des Moines, is a large urban park consisting of 632 total acres. The park is the City's largest single park and one of the largest municipal parks in the metro area. The park's main entrance is off Grand Avenue with a secondary entrance from S. 11<sup>th</sup> Street. Raccoon River Park is bounded by Jordan Creek, the Raccoon River, and Iowa Interstate Railroad. The park is home to the 232 acre Blue Heron Lake and acres of nature areas. The lake is used for fishing, boating (at no-wake speed), and swimming.

Developed areas of the park include the following facilities:

- Five-diamond adult softball complex
- Fenced 10 acre dog park
- Sand swimming beach
- Four reservable picnic shelters
- Large playground with water play areas
- Nature Lodge
- Accessible fishing pier
- Boat ramp
- Youth soccer complex
- 3.2 mile multipurpose trail
- Archery facility (coming in 2014)

### **Other Parks**

The West Des Moines parks system includes thirty-eight additional parks and greenways located throughout the City. In addition to the one large urban park, Raccoon River Park, classifications of parks include mini-parks, neighborhood parks, community parks, special use facilities, and greenways. Each park is described in Table 1 below.

**Table 1**

<b>Park</b>	<b>Address</b>	<b>Class</b>	<b>Size</b>	<b>Facilities</b>
50 <sup>th</sup> St. South Greenway	50 <sup>th</sup> & Cody Dr.	GW	5.95	
American Legion	301 Vine St.	NP	9.93	Open play area, softball diamond, tennis court, basketball court, shuffleboard courts, horseshoe courts, half pipe skate facility, playground, shelter, restrooms, sprayground, parking
Ashawa	4431 Waterford Dr.	NP	7	Open play area, playground, shelter, restrooms, basketball court, trail
Ashawa Greenway	Mills Civic to 50 <sup>th</sup> St.	GW	8.37	Trail
Beh Glen	1900 E.P.True Pkwy.	GW	5.18	Trail
Brookview	400 81 <sup>st</sup> St.	NSP	6.3	Open play area, playground, parking, shelter, restroom, trail
Crossroads	5205 Ashworth Rd.	CSP	17.17	Open play area, softball diamond, soccer field, 6 tennis courts, trail, playground, 2 shelters, restrooms, parking
Fairmeadows	543 22 <sup>nd</sup> St.	NP	8.13	Open play area, soccer field, sand volleyball courts, tennis court, basketball court, walks/trails, playground, shelter, restrooms, parking
Fairmeadows Greenway	1900 E.P.True Pkwy.	GW	3.96	Trail
Florer	1410 14 <sup>th</sup> St.	SUF	1.45	Walks/trails, 16 horseshoe courts, shelter
Holiday	1701 Railroad Ave.	CP	58.35	Open play area, 16 ball diamonds, walks/trails, concession/restroom/storage buildings, parking, Holiday Aquatic Center
Huston Ridge	8455 Coachlight Dr.	MP	2.43	Open play area, playground, shelter basketball court (2014)
Jaycee	5608 Center St.	NP	7.06	Open play area, softball/soccer field, tennis court, basketball court, sand volleyball court, walks/trails, playground, shelter, restroom, parking
Jordan Creek Greenway	Raccoon River Park to Brookview School	GW	141.61	Trail
Jordan Creek Park	310 50 <sup>th</sup> St.	GW	9.97	Open play area, walks/trails, parking, portable restroom
Kiwanis	3101 Maple St.	MP	1.73	Open play area, ½ basketball court, walks, playground, gazebo, portable restroom
Knolls	5150 Aspen Dr.	NP	2.06	Open play area, walks/trails, playground, portable restroom
Knolls Greenway	5150 Aspen Dr.	GW	3.18	Trail
Maple Grove	9350 Chalk St.	NP	10.37	Open play area, basketball court, tennis court, playground, shelter, restrooms, parking, trail
Meadowview	638 Prairie View Dr.	NP	6.96	Open play area, basketball court, playground, shelter, restrooms
Meadowview Greenway	638 Prairie View Dr.	GW	3.14	
Pearson	1256 19 <sup>th</sup> St.	NP	8.49	Open play area, sand volleyball court, basketball court, walks/trails, playground, shelter, restrooms, parking

Park	Address	Class	Size	Facilities
Peony	1100 63 <sup>rd</sup> St.	NP	7.8	Open play area, walks/trails, playground, shelter, restrooms, parking, basketball court
Quail Cove	1515 S. 52 <sup>nd</sup> St.	NP	9.9	Open play area, walks/trails, playground, shelter, restrooms, parking, basketball court
Raccoon River	2500 Grand Ave.	LUP	631.61	Open play area, 5 softball diamonds/complex, walks/trails, playgrounds, 4 shelters, Nature Lodge, restrooms, concessions, boat ramp, beach, parking, soccer complex, fishing pier, dog park, archery facility (2014)
Railroad	425 Railroad Ave.	SUF	0.38	Walks, pavilion/stage, portable restrooms
Scenic Valley	1223 S. 24 <sup>th</sup> Ct.	NP	8.27	Open play area, playground, walks/trails, shelter, restrooms, parking, basketball court
Southwoods	350 S. 35 <sup>th</sup> St.	NRA	128.06	Disc golf course, walks/trails, nature trails, parking, portable restroom
Valley View	255 81 <sup>st</sup> St.	CP	78.83	Valley View Aquatic Center, parking, open play area
Village of Ponderosa Greenway	Fairway Dr. to Willow Springs Park	GW	2.57	Trail
Western Hills	4115 Walnut St.	NSP	1.65	Open play area
Western Hills Greenway	Western Hills Creek (Locust to R.R. tracks)	GW	5.72	
Westridge Greenway	Ponderosa Creek (E.P. True to Wistful Vista Dr.)	GW	9.20	Trail
Wild Rose	6801 Cody Dr.	NP	8.01	Open play area, playground, parking, basketball court, shelter, restrooms, walks/trails
Willow Springs	5685 Wistful Vista Dr.	NP	7.97	Open play area, walks/trails, playground, shelter, restrooms, parking, basketball court, tennis court
Wilson	298 9 <sup>th</sup> St.	NP	3.8	Open play area, basketball court, tennis court, walks/trails, playground, shelter, restrooms, parking
Woodland Hills	1200 S. 95 <sup>th</sup> St.	NP	7.8	Open play area, playground, parking (coming 2014)
Woodland Hills Greenway	S. 95 <sup>th</sup> St. to Cascade Ave.	GW	22.18	
Woodland West	Woodland Ave. & Valley West Drive	MP	.99	Open play area, basketball court, parking

Classification Key

MP Mini-Park  
 NP Neighborhood Park  
 NSP Neighborhood School Park  
 CP Community Park  
 CSP Community School Park  
 LUP Large Urban Park

SUF Special Use Facility  
 GW Greenway

### ***III. Scope of Services***

Required services include, but may not necessarily be limited to, the following:

#### **On-Site Security**

The contractor shall guarantee full, continuous, and consistent security coverage during scheduled times. A detailed schedule will be determined upon award of contract. The following is a general timeframe for coverage:

##### **Security Officer 1**

April 1 – October 31 (approximate dates)

10:00 a.m. to 1:00 a.m.

Every Day

##### **Security Officer 2**

May 15 – August 15 (approximate dates)

12:00 p.m. to 7:00 p.m.

Every Day

The City reserves the right to adjust the schedule to meet changing security needs. The City also reserves the right to deduct payment for lack of security coverage during the scheduled hours when security personnel is late, leaves early, or is absent. In all cases, if a portion of the time cannot be fully covered, the City's representative is to be immediately notified.

#### **Mobile Patrol**

In some cases, the contractor shall provide a mobile patrol that is intended for brief stops for service, such as gate unlocking & locking, dog park permit checks, and patrols of park sites. Details regarding each service area are provided in the Responsibilities section. The following is a general timeframe for coverage:

November 1 – December 15

5 stops / day

December 16 – February 28

3 stops / day

March 1 – March 31

5 stops / day

The mobile patrol is expected to be flexible, and the City reserves the right to adjust the schedule to meet changing security needs.

#### **Responsibilities**

##### **A. Raccoon River Park**

On-site security officers shall be stationed at Raccoon River Park during the above scheduled times unless patrolling or locking up other parks. Detailed duties in Raccoon River Park shall include the following:

1. Dog Park

An on-site security officer shall be at the dog park a minimum of 2 hours per day from approximately April 1 – October 31. Mobile patrols will be utilized the remainder of the year. A detailed schedule will be determined upon award of contract, but the days and times will generally be as follows:

On-Site Security

April 1 – October 31 Minimum of 2 hours / day

Mobile Patrol

November 1 – December 15 3 stops / day

December 16 – February 28 1 stop / day

March 1 – March 31 3 stops / day

The above schedule may vary depending on use levels at the dog park. The City reserves the right to adjust the schedule to meet changing security needs. The contractor must be responsive to schedule changes.

2. Archery Facility

On-site security officers and mobile patrol officers shall randomly check the archery facility. A detailed schedule will be determined upon award of contract, but the days and times will generally be as follows:

On-Site Security

April 1 – October 31 Randomly each day

Mobile Patrol

November 1 – December 15 3 stops / day

December 16 – February 28 1 stop / day

March 1 – March 31 3 stops / day

Since the archery facility is a new addition to Raccoon River Park, the above schedule may vary depending on use levels. The City reserves the right to adjust the schedule to meet changing security needs. The contractor must be responsive to schedule changes.

3. Gates

Locking and unlocking of park gates located at both the Grand Avenue and 11<sup>th</sup> Street entrances shall be scheduled as follows:

On-Site Security

April 1 – October 31 Close Gates

Mobile Patrol

January 1 – March 31 2 stops / day (Open/Close Gates)

April 1 – October 31 1 stop / day (Open Gates)

November 1 – December 31 2 stops / day (Open/Close Gates)

Gates shall be locked by the on-site security officer, mobile patrol officer, or other company personnel at 12:00 a.m. (midnight) and shall be unlocked and opened by 6:00 a.m. daily. Gates must be securely fastened in the open position and inspected during patrols. Prior to locking gates, security personnel shall cover the entire park and give advance notice of park closing to any remaining park visitors. Padlock keys will be provided by the City.

4. Facility Lockup

On-site security officers or other company personnel shall be responsible for locking the following facilities in Raccoon River Park: soccer complex restrooms (10:00 p.m.) and playground restrooms (10:00 p.m.). Facilities will be opened each morning by City staff. Keys will be provided by the City. The contractor will be required to develop and implement a method to verify that facilities are being locked.

5. Alarm Response

The contractor shall provide first response to alarm calls at the Raccoon River Park Nature Lodge and Softball Complex. Response to alarms during On-Site Security hours shall be made by the on-site security personnel and there shall be no additional charge for this service. Responses to alarms during times outside the On-Site Security hours shall be billed separately at a per response rate.

6. Focus Areas

Although all areas of Raccoon River Park are to be patrolled, there are certain areas that will require specific attention:

○ Softball Complex

Concession stand workers and other staff are to be escorted to their vehicles at their request. Security personnel shall have a visible presence within the complex during softball games. Security personnel shall enforce the park rule prohibiting the consumption of alcohol in parking areas.

○ Nature Lodge

Nature Lodge staff are to be escorted to their vehicles at their request.

○ Beach

Security personnel shall enforce park rules that include the prohibition of the consumption of alcohol, smoking, glass bottles, and pets on the beach. Since the beach is not visible from the parking lot or roadways, frequent foot or bike patrol of this area will be expected.

○ Dog Park

An annual or daily permit is required to use the fenced dog park. The on-site security officers and mobile patrol officers will be required to



perform random checks for permit tags, request users without permits to leave the dog park, provide information to park visitors on how to obtain a permit, and enforce all dog park rules (see Attachment C).

The on-site security officers will be expected to complete reports on dog park activity and submit them to the City daily. Mobile patrol officers will also be expected to complete daily reports to verify that permit tags are being checked with reports submitted weekly. Occasional special events at the dog park will require an additional security officer to be stationed there at the request of the City.

- **Playground**  
Although the playground is regularly inspected by City staff, security personnel shall patrol the playground on foot and look for any obvious safety issues, such as broken equipment or trash/glass in the playground area. Any broken equipment shall be reported to the City immediately.
- **Lake**  
There is a no-wake restriction on the lake. Although it is rarely possible to enforce this from shore, an attempt shall be made to inform the boater of the no-wake restriction once they have removed their boat or personal water craft from the lake.
- **Trail**  
Security personnel will be required to patrol the 3.2 mile trail around Blue Heron Lake. This will involve driving the trail route, but access by vehicle will be limited during wet conditions. Use of a bicycle by the security personnel is highly recommended. The West Des Moines Police Department may request security personnel to respond to alarms from emergency call boxes located along the trail.
- **Archery Facility**  
An annual or daily permit is required to use the archery facility. The on-site security officers and mobile patrol officers will be required to perform random checks for permits, request users without permits to leave the archery facility, provide information to park visitors on how to obtain a permit, and enforce all archery facility rules (currently being developed).

The on-site security officers will be expected to complete reports on archery facility activity and submit them to the City daily. Mobile patrol officers will also be expected to complete daily reports to verify that permits are being checked with reports submitted weekly.

- o **Miscellaneous**

Security personnel shall be aware of all park rules, but the following are some that are often violated at Raccoon River Park:

Dogs are to be on-leash at all times except within the fenced dog park

No glass bottles are allowed in any park

No alcohol is allowed, other than beer in 12 ounce cans

**B. Other Parks**

1. **Park Lockup**

Facilities in identified parks (See Table 2) shall be locked up by security personnel on a nightly basis during the times shown below:

**On-Site Security**

April 1 – October 31 (approximate dates)

9:30 p.m. – 11:30 p.m.

Every Night

All facilities shall be locked no earlier than 9:30 p.m. and no later than 11:30 p.m. Keys will be provided by the City. The contractor will be required to develop and implement a method to verify that facilities are being locked each night and provide daily reports to the City. A park map is included as Attachment A.

**Table 2**

<b>Park / Site</b>	<b>Address</b>	<b>Lockup</b>	<b>Locked Facilities</b>
American Legion	301 Vine St.	X	Restrooms
Ashawa	4431 Waterford Dr.	X	Restrooms
Brookview	400 81 <sup>st</sup> St.	X	Restrooms
Crossroads	5205 Ashworth Rd.	X	Restrooms
Fairmeadows	543 22 <sup>nd</sup> St.	X	Restrooms
Holiday	1701 Railroad Ave.	X	Restrooms 4 Restrooms @ Baseball / Softball
Jaycee	5608 Center St.	X	Restrooms
Maple Grove	9350 Chalk St.	X	Restrooms
Meadowview	638 Prairie View Dr.	X	Restrooms
Parks Maintenance Shop	1421 Maple St.	X	Building doors / gate
Pearson	1256 19 <sup>th</sup> St.	X	Restrooms
Peony	1100 63 <sup>rd</sup> St.	X	Restrooms
Quail Cove	1515 S. 52 <sup>nd</sup> St.	X	Restrooms
Scenic Valley	1223 S. 24 <sup>th</sup> Ct.	X	Restrooms
Wild Rose	6801 Cody Dr.	X	Restrooms
Willow Springs	5700 Wistful Vista Dr.	X	Restrooms
Wilson	298 9 <sup>th</sup> St.	X	Restrooms

2. Park Patrol

Occasionally the City will request security services in other parks or at times separate from park lockup. This is typically in response to issues that arise on an irregular basis that could be improved with a security presence. The majority of the time, this is handled by requesting the scheduled on-site security officer to perform patrols outside Raccoon River Park in the problem areas. However, there are times where it may be necessary to utilize an additional on-site security officer or mobile patrol officer. The contractor will be expected to quickly respond to these types of requests from the City.

#### ***IV. General Scope & Performance Requirements***

##### **A. Holidays**

All services that are part of this scope shall be provided 365 days per year or according to the agreed upon schedule, including all holidays. In addition, extra on-site security officers will be required at Raccoon River Park on Memorial Day (1 additional officer 10:00 a.m. – 8:00 p.m.) and the Fourth of July (2 additional officers 10:00 a.m. – 10:00 p.m.).

##### **B. Special Events**

Additional officers may be required for special events run by the City. The contractor shall also work directly with the organizers of non-City special events conducted in parks to cover special security needs. In the past, this has included contracting with event organizers to provide overnight security for the event site.

##### **C. Enforcement**

No law enforcement capability is required, however, security personnel will be required to enforce park rules and regulations (Attachment B). They shall also be responsible for notifying the West Des Moines Police for law enforcement assistance when necessary. Security personnel shall be fully knowledgeable of all park rules and regulations.

##### **D. Public Interaction**

Security personnel shall positively interact with park visitors and will be expected to conduct themselves in a highly professional manner. They shall offer assistance and distribute information to the public upon request. Security personnel will be expected to walk in and around park facilities to demonstrate a security presence and to make assistance easily available. They may also patrol Raccoon River Park by bicycle. Security vehicles shall not be driven off hard surfaces except in the case of an emergency.

##### **E. Uniform**

The contractor shall provide uniforms for all security personnel that provide clear visual identification to park visitors. The uniform shall be approved by the City.

#### **F. Training**

All on-site security personnel shall have current certification in First Aid and adult/infant CPR. Documentation of certification shall be made available to the City upon request. It is highly recommended to also provide security personnel with training on dog behavior as it relates to the dog park.

#### **G. Communication**

The contractor shall provide all on-site security personnel with a cell phone for communication purposes. In all cases the security personnel shall be accessible to City staff directly or through a dispatch system. Current phone numbers shall be provided to the City so that security needs can be addressed quickly and efficiently. Daily reports and incident reports shall be provided to the City that document security activity.

#### **H. Vehicles**

The City will be evaluating two different security vehicle options as described below. In either case, vehicles must be operated on hard surfaces only and be kept off grass areas.

##### **Option A – City-Supplied Vehicle**

The City shall supply a vehicle and fuel for use by the on-site security personnel at Raccoon River Park and for lock up of other parks. The vehicles shall be picked up and dropped off at the Parks Maintenance Shop (1421 Maple Street) on a daily basis. Vehicle condition reports shall be filled out daily by each person driving a vehicle. The contractor shall be responsible for all damage to City-supplied vehicles caused by security personnel. Under this option, vehicles for mobile patrols shall be supplied by the contractor.

##### **Option B – Contractor-Supplied Vehicle**

The contractor shall supply all vehicles for on-site security at Raccoon River Park and for lock up of other parks including all fuel, insurance, maintenance, and other incidentals. Vehicles must be in good working condition and vehicle appearance must be to the satisfaction of the City. They must be clearly identified as a security vehicle with the contractor's logo and contact information on them. Vehicles for mobile patrols shall also be supplied by the contractor.

#### **I. Contacts**

The contractor shall provide the City with the name, address, e-mail address and telephone number(s) for at least two designated contact persons responsible for insuring response to the City's requests.

#### **J. Authority/Direction**

The contractor and security personnel shall respond to requests made by the City in a positive, courteous and timely manner. The City reserves the right to reject any security personnel from continued or further service for any reason.

**K. Damages**

The contractor shall be responsible for any and all damage to public property (including vehicles), private property, or personal injury due to its own or its employees' negligence or intentional or reckless conduct in the performance of security services.

**V. Proposal Content**

The Parks and Recreation Department is requesting a brief written proposal from interested contractors which includes the following information at a minimum:

- A. **Firm Information**  
State the full name and address of the contractor. Indicate whether the contractor operates as an individual, partnership or corporation (include State in which incorporated). Name the contact person that can answer questions about the proposal, including full mailing address, telephone number, fax number, and e-mail address. The proposal shall be signed by an individual authorized to bind the contractor.
  
- B. **Understanding of Scope**  
State in concise terms the contractor's understanding of the scope of services, including any details on how the work will be accomplished. Confirm that the work can be completed as outlined in the Scope of Services section of this RFP. Confirm that the firm can meet the terms of the contract. Provide a description of the proposed uniform. Provide a description and photograph of the vehicle to be used under Option B – Contractor-Supplied Vehicle.
  
- C. **Prior Experience**  
Describe the experience of the firm in providing security services while giving special attention to any experience in park/outdoor settings. Focus on any prior experience involving significant interaction with the general public. A minimum of three references should be identified with their name, contact person, address, phone number, and type of work performed for them.
  
- D. **Supervision**  
Describe the organization of your firm and how on-site security personnel will be supervised.
  
- E. **Training**  
Discuss the firm's procedures for training of security personnel, including safety training, first aid, CPR, public relations, dog behavior training, and training on park rules and regulations.

**F. Fee**

Include a proposed hourly rate for the services as outlined in the Scope of Services. Indicate rates for the following general categories:

- On-Site Security (Raccoon River Park, Park Patrol, Park Lockup) – Hourly Rate
  - Option A – City-Supplied Vehicle
  - Option B – Contractor-Supplied Vehicle
- Mobile Patrol (Gate Lock/Unlock, Dog Park Check, Park Patrol) – Per Stop Rate
- Alarm Response (Softball Complex, Nature Lodge, Parks Maintenance Shop) – Per Response Rate

Include rates for overtime hours and holidays (indicate specific holidays). The City reserves the right to include any or all of the above services in the final contract.

***VI. Proposal Evaluation***

All proposals received by the time and date specified under Proposal Submission will be opened and checked for conformance with the requirements of this RFP. Absence of required information may render the proposal incomplete, and the proposal may be rejected. The City’s determination of the proposal’s completeness shall be final. Representatives from the Parks and Recreation Department and Police Department will evaluate all accepted proposals based on the following criteria.

Experience in Similar Park Setting with Significant Public Interaction	20 points
Business Experience / Staff Qualifications	20 points
Ability to Perform Services	20 points
References	15 points
Fee	15 points
Training Program	5 points
Quality of Proposal	5 points

A selection may be made based on the proposal itself. If additional information or interaction with the firm(s) is desired, interviews with all or some of the firms will be held during the week of November 18, 2013. It is anticipated that a contract will be awarded to the successful firm at the December 9, 2013 meeting of the West Des Moines City Council.

## ***VII. Proposal Submission***

Deliver three (3) copies of the proposal no later than **2:00 p.m.**, local time, **Wednesday, November 13, 2013**. Proposals should be addressed to:

Mailing Address: Park Security Services Proposal  
West Des Moines City Clerk  
P.O. Box 65320  
West Des Moines, IA 50265

Delivery Address: Park Security Services Proposal  
West Des Moines City Clerk  
4200 Mills Civic Parkway, Ste. 1A  
West Des Moines, IA 50265

No late proposals will be accepted. A representative of the City Clerk will stamp all proposals with the date and time of submittal.

No costs associated with the preparation of this proposal, or incurred in any manner by the proposer, may be charged to the City of West Des Moines. All materials submitted in response to this request will be considered the property of the City of West Des Moines.

## ***VIII. Reserved Rights***

The City of West Des Moines reserves the right to:

- A. Reject any and/or all proposals and to waive any and/or all technicalities and informalities received in response to this RFP.
- B. Select and award a contract to the contractor that best meets the City's needs.

## ***IX. Form of Contract***

- A. The contract will include all terms and conditions, including the Scope of Services, as identified in this Request for Proposal and/or agreed upon following selection.
- B. **Contract Terms**  
The terms of the contract shall start on January 1, 2014 and extend through December 31, 2015. Following this initial period, the contract may be renewed at the City's sole discretion under the same terms and conditions on an annual basis for an additional three years. At the end of the initial or renewal period (whichever is applicable), the contract will be re-bid.
- C. **Payment**  
Contractor will be paid on a monthly basis in arrears. Invoices must contain detail on services provided, including dates of service and identification of personnel involved. Invoices shall be sent to: City of West Des Moines, Parks & Recreation Department, P.O. Box 65320, West Des Moines, IA 50265.

## D. Insurance

### 1. General

- a. The Contractor shall purchase and maintain insurance to protect the Contractor and City against all hazards enumerated herein. All policies shall be in the amounts, form and companies satisfactory to the City.
- b. All certificates of insurance required herein shall state that thirty (30) days written notice will be given to the City before the policy is canceled or changed. All certificates of insurance shall be delivered to the City prior to the time that any operations under this Contract are started.
- c. All of said Contractor's certificates of insurance shall be written by an insurance company authorized to do business in the State of Iowa.

### 2. The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor, or by anyone for whose acts any of them may be liable:

- a. Claims under workers' compensation, disability benefit and other similar employee benefit acts;
- b. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- c. Claims for damages because of the Contractor's injury, sickness or disease, or death of any person other than the Contractor's employees;
- d. Claims for damages insured by usual personal injury liability coverage which are sustained:
  - (1) By any person as a result of an offense directly related to the employment of such person by the Contractor, or
  - (2) By the other person;
- e. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and,
- f. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

### 3. Limits of Liability

The insurance required by Paragraph IX.D. shall be written on an occurrence form of policy for not less than any limits of liability specified herein, or required by law, whichever is greater:



General Liability; contractually, Independent Contractors Broad Form Property Damage	\$1,000,000 (including single limit per occurrence)
Personal Injury	\$1,000,000 (Aggregate hazards)
Automobile Liability (including all owned, non- owned and hired autos) Single Limit	\$500,000 Combined Single Limit
Workers Compensation  (applying directly excess of above liability coverages)	Statutory Benefits \$100,000 Coverage B  \$1,000,000 Aggregate

4. **Contractual Liability Insurance**

The insurance required by Paragraph IX.D. shall include contractual liability insurance applicable to the Contractor's obligations as follows:

- a. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City and their agents, officers and employees from and against all claims, damages, losses and expenses, including, but not limited to attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party of person described in this Paragraph.
- b. In any and all claims against the City or any of its agents, officers or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts may be liable, the indemnification obligation under this Subparagraph D shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

5. Contractor's Insurance for other Losses for the consideration in this agreement heretofore stated, in addition to the Contractor's other obligations, the Contractor assumes full responsibility for all loss or damage from any cause whatsoever to any tools owned by the mechanics, any tool machinery, equipment, or motor vehicles owned or rented by the Contractor, the Contractor's agents, Subcontractors, materials owned or rented by the Contractor, the Contractor's agents, Subcontractors, material suppliers or their employees, tool sheds or other temporary structures, scaffolding and staging, protective fences, bridges and sidewalk hooks. The Contractor shall also assume responsibility for all loss or damage caused by, arising out of or incident to larceny, theft, or any cause whatsoever (except as hereinbefore provided) to the structure on which the work of this Contract, and any modifications, alterations, enlargement thereto, is to be done, and to the following items and labor connected or to be used as a part of the permanent materials, and supplies necessary to the work.
6. Notification in Event of Liability or Damage upon the occurrence of any event, the liability for which is herein assumed, the Contractor agrees to forthwith notify the City, in writing, such happening, which notice shall forthwith give the details as to the happening, the cause as far as can be ascertained, the estimate of loss or damage done, the names of witnesses, if any, and stating the amount of any claim.

E. Further Contract Requirements

1. The contractor, in performance of their service, shall not discriminate on the basis of disability.
2. All taxes which are incurred by the contractor in connection with the services are the responsibility of the contractor.
3. The contractor will certify that all of their employees who may perform safety sensitive functions for the City are included in a substance abuse program that meets the requirements of Federal Department of Transportation Drug and Alcohol Testing Regulations (Code of Federal Regulations, 49CFR, Part 382 and Part 40).
4. The contractor will certify that each employee assigned to this contract has a valid Iowa Driver's License.
5. The contractor will certify that it has done criminal background checks on each employee assigned to this contract and that all assigned employees have no felony convictions or misdemeanor convictions involving crimes of dishonesty, violence, or sexual misconduct.

6. The contractor will be required to indemnify the City of West Des Moines for any losses caused by the contractor or its employees.
7. The contractor certifies that, in accordance with the "Hazard Communication Rule", 29 CFR 1910.120 (the "Right-To-Know" Law) employees exposed to materials on the worksite will be trained for the materials in use by the successful contractor as part of the contract. Material Safety Data Sheets (MSDS) for City materials will be supplied to the successful contractor upon request.
8. Neither the contractor nor City shall assign its rights or obligations under the contract without the prior written consent of the other party.
9. The contract, including any attached schedules and exhibits, constitutes the entire contract and understanding between the parties hereto and is the final expression of their contract and no evidence of oral or other written promises shall be binding. This contract may not be supplemented, amended, modified, or otherwise altered except by written instrument executed by both parties hereto and no course of dealing or trade usage between the parties shall be effective to supplement, amend, modify, or alter the contract.
10. The failure to enforce or to require the performance at any time of any of the provisions of this contract herein shall in no way be construed to be a waiver of such provisions, and shall not affect either the validity of this contract or any part hereof or the right of either party there after to enforce each and every provision in accordance with the terms of this contract.

## ***X. Additional Information***

Questions regarding this Request for Proposal may be addressed to:

Sally Ortgies, Superintendent of Parks

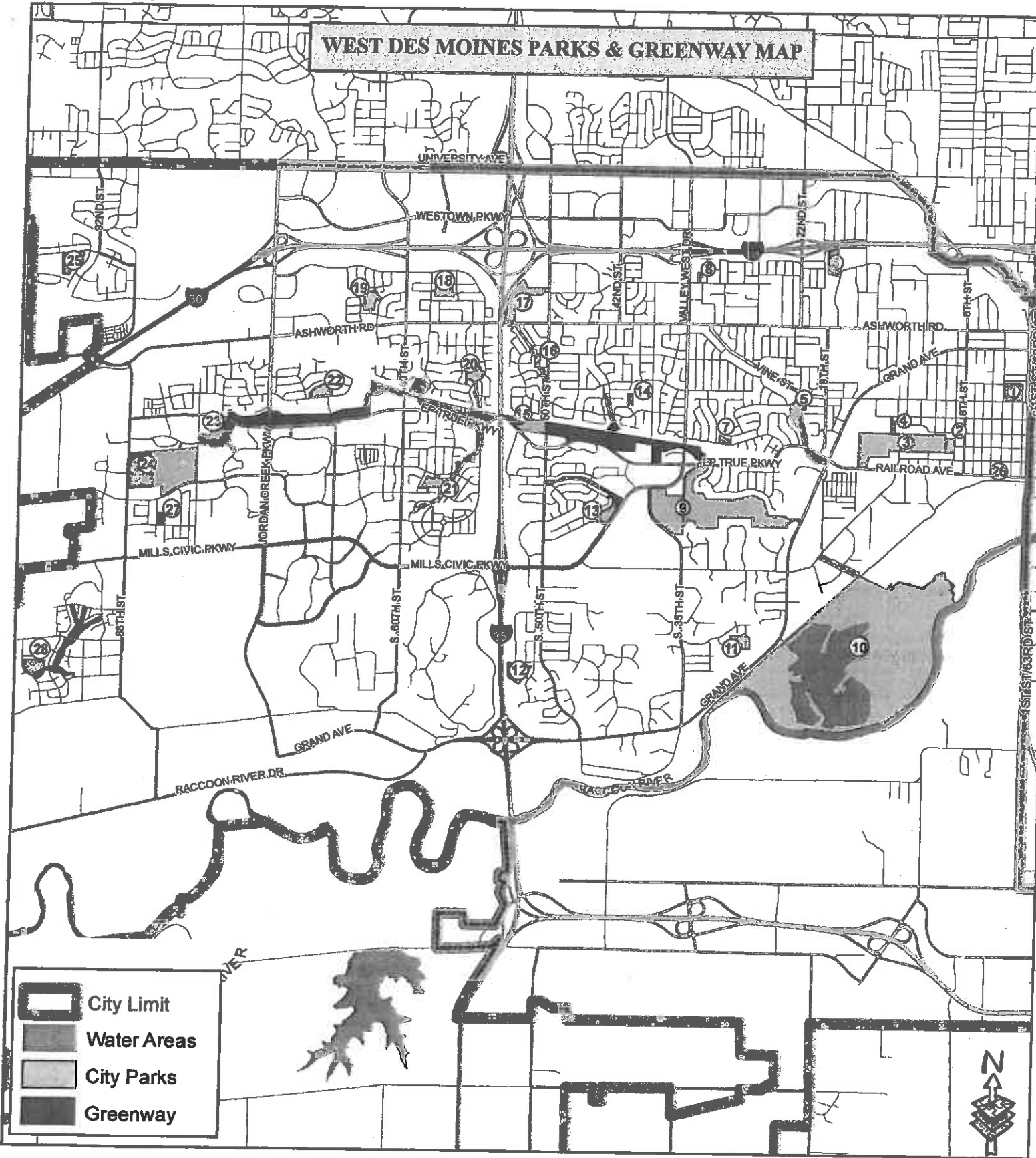
[sally.ortgies@wdm.iowa.gov](mailto:sally.ortgies@wdm.iowa.gov)

515-222-3447

# **Attachment A**

## **Park Map**

# WEST DES MOINES PARKS & GREENWAY MAP



- |                     |                        |                         |                         |
|---------------------|------------------------|-------------------------|-------------------------|
| 1. Legion Park      | 8. Woodland West Park  | 15. Jordan Creek Park   | 22. Wild Rose Park      |
| 2. Wilson Park      | 9. Southwoods Park     | 16. Knolls Park         | 23. Brookview Park      |
| 3. Holiday Park     | 10. Raccoon River Park | 17. CrossRoads Park     | 24. Valley View Park    |
| 4. Florer Park      | 11. Scenic Valley Park | 18. Jaycee Park         | 25. Maple Grove Park    |
| 5. Fairmeadows Park | 12. Quail Cove Park    | 19. Peony Park          | 26. Railroad Park       |
| 6. Pearson Park     | 13. Ashawa Park        | 20. Meadowview Park     | 27. Huston Ridge Park   |
| 7. Kiwanis Park     | 14. Western Hills Park | 21. Willow Springs Park | 28. Woodland Hills Park |



# **Attachment B**

## **Park Regulations**

## **Chapter 11 PARK REGULATIONS**

### **7-11-1: PURPOSE:**

The city council has adopted certain park rules governing the use of and conduct in city parks. The term "city park(s)" as used herein refers to the city parks, park facilities, and trails within city parks located within or without the corporation limits of the city. (Ord. 1355, 3-22-1999)

### **7-11-2: RULES AND REGULATIONS:**

The following rules and regulations are established concerning the conduct and use of city parks, also regulating traffic and parking automobiles and vehicles. Persons and vehicles authorized for activities related to public safety or maintenance are exempt from the regulations:

- A. **Use Of Roadways:** No person shall ride or drive any automobile, motorcycle, moped, snowmobile or any other motorized vehicle in any public park except on the established roads or designated areas.
- B. **Speed:** No person shall ride or drive any automobile or other vehicle in a public park at a speed in excess of fifteen (15) miles per hour<sup>1</sup>.
- C. **Parking:** Automobiles and vehicles shall park in designated parking lot areas only. No vehicle shall be parked upon the grass or along roadways where posted. The department may allow for overflow parking on grass where posted. No vehicle shall be parked or allowed to remain within or upon any park area or facility for a period in excess of twenty four (24) hours. No person(s) shall obstruct or impede the normal flow of traffic within a park.
- D. **Hitching Animals:** No person shall ride a horse or other animal or operate any type of horse or animal drawn conveyance in a public park except by permission of the director of parks and recreation.

- E. **Destruction Of Natural Environment:** No person shall in any manner deface, injure or remove any tree, shrub, or plant standing or growing in a public park or pick or destroy flowers or seeds growing therein, or remove nests or wildlife/wildfowl.
- F. **Fires:** No fires shall be lighted or made in any public park except with the permission of the director of parks and recreation, provided that this subsection does not apply to fires in stoves, ovens, grills, fire rings or fireplaces provided in any facility in the city parks for use in picnic cooking. Fires may be prohibited entirely during posted periods.
- G. **Firearms, Weapons, Or Explosives:** No person shall use firearms, explosives, weapons, firecrackers or fireworks in any public park except as otherwise provided by any other section of this code. Fireworks displays may be allowed by permission of the director of parks and recreation and the fire chief.
- H. **Litter:** No person shall deposit upon or litter the ground with any form of waste material. All waste shall be deposited in receptacles provided for such purposes. (Ord. 1355, 3-22-1999)
- I. **Language:** (Rep. by Ord. 1197, 9-9-1996)
- J. **Defacing Of Public Property:** No person shall write, mark or draw characters on or deface, injure or destroy any building, or part thereof, or improvement, apparatus or fixture, wall or fence, drain or sewer located on or in any public park. (Ord. 1355, 3-22-1999)
- K. **Posted Notices:** (Rep. by Ord. 1197, 9-9-1996)
- L. **Control Of Animals:** All animals must be under the control of a person competent to restrain and control the animal, either by leash, cord, chain, or other similar restraint not more than ten feet (10') in length, or properly restrained within a motor vehicle. The owner or person in charge of an animal shall clean up and/or remove as soon as possible any excrement or droppings deposited by the animal on park property. (Ord. 1355, 3-22-1999)
- The requirement of a restraint on an animal shall not apply to animals registered to use a designated off leash area of a park while in said off leashed area and while abiding by all the rules and regulations of such designated off leash area. (Ord. 1566, 1-5-2004)



**M. Hours:** No person shall be in any public park between the hours of ten thirty o'clock (10:30) P.M. to six o'clock (6:00) A.M. or at any time duly posted and designated by the director of parks and recreation. (Ord. 1355, 3-22-1999)

**N. Safety:** (Rep. by Ord. 1197, 9-9-1996)

**O. Compliance With Rules:** All persons shall abide by rules established by city ordinance or by the parks and recreation department and posted in park areas and facilities.

**P. Posting:** No person shall post, fasten, paint or affix any placard, bill, notice or sign upon any structure, tree, stone, directional sign, fence or enclosure along or within any park except by permission of the director of parks and recreation. (Ord. 1355, 3-22-1999)

**Q. Moving Fixtures:** (Rep. by Ord. 1197, 9-9-1996)

**R. Grounds Alteration:** No person shall cut or remove any wood, turf, grass, soil, rock, sand or gravel from any public park without written permission from the director of parks and recreation. (Ord. 1355, 3-22-1999)

**S. Consumption In Public Parks:** The department of parks and recreation may establish facility use policies regarding alcoholic beverage possession, consumption, and sales within park facilities. No person shall consume alcoholic liquor, beer, or wine while present upon Holiday pool premises, the designated beach and swimming area at Raccoon River Park, Crossroads Park, Western Hills Park, or in any parking lot, driveway, or road within a city park. However, beer may be possessed and consumed in any other public park owned or leased by the city, provided it is within individual cans not exceeding sixteen (16) ounces in size. Dispensing from kegs shall be permitted only with written permission of the director under the rules adopted by the department for the Raccoon River Park nature lodge, the Raccoon River softball complex, and during activities held pursuant to a city special event permit. Consumption of wine shall be permitted in the nature lodge in accordance with department established facility use policies. Signs prohibiting the consumption or possession of alcoholic liquors, wine, or beer shall be posted where appropriate. (Ord. 1360, 5-3-1999)

**T. Responsibility Of Adults:** (Rep. by Ord. 1197, 9-9-1996)

U. Park Roads: No park road shall be used as a through street by any vehicle where posted.

V. Golfing: No person shall play or practice golf in any city park, except during supervised activities approved by the director of parks and recreation.

W. Prohibited Activities: The following activities are specifically prohibited in any public park or greenbelt:

1. Disposing Of Material: No person shall place, store or dump any organic or inorganic materials including raked leaves, grass clippings, compost, construction material, firewood, paint, trash, debris, junk or any similar materials in park dumpsters or on park property.

2. Private Improvements: No person shall garden, mow or plant trees without written permission from the department of parks and recreation. No person shall install other private improvements such as fences, play equipment, irrigation systems, or similar encroachments on park land.

3. Miscellaneous: No person shall remove or deposit snow on park land. No person shall bury animals on park land.

The parks and recreation department is authorized to monitor and enforce such rules and regulations. Enforcement procedures shall follow city code procedures for either administrative abatement or municipal infraction as determined in the best interest of the city.

X. Swimming/Beach Use: Swimming shall be allowed in posted areas only, except for organized activities approved by the director of parks and recreation. No swimming shall be allowed from boats. Inner tubes, air mattresses, or other beach toy type items shall be allowed in posted areas only.

Y. Ice Skating: Ice skating shall be allowed in posted areas only. Ice skating shall only be allowed when posted as safe. (Ord. 1355, 3-22-1999)

Z. Boating: A boat equipped with any size motor may be operated at a no wake speed on Raccoon River Park Lake, except for in areas designated as "Non-Motorized And Electric Motors Only" zones. All other regulations under the code of Iowa, chapter 462A, shall apply. All sailboats with a mast height measuring thirty six feet (36') or greater above from the water surface are prohibited on the Raccoon River Park Lake. Additionally, all sailboats are prohibited on Raccoon River Park Lake when the lake water level reaches

an elevation of one foot (1') above the concrete dock at the boat ramp. (Ord. 1360, 5-3-1999)

AA. Fishing: Fishing activities in parks shall comply with the code of Iowa, chapter 481A.

BB. Sales In Parks: No sales activities or admissions shall be allowed in any park except with approval of the director of parks and recreation.

CC. Hunting: It shall be unlawful for any person to engage in any hunting activity on park property using a rifle, shotgun, bow and arrow or any other means on land or in the water unless approved by official action of the park and recreation advisory board and the city council.

DD. Trapping; Exceptions: It shall be unlawful for any person to place, locate, set, use or attempt to use on park property, any type of claw, spring or metal trap of any nature on land or in the water, or to set, use or maintain any snare, pitfall, deadfall, spring gun, set gun or device of similar character or purpose.

Exceptions: The city or its authorized agents are exempt from the above and may control or manage animals, birds, or insects pursuant to established policies that have been approved by the city council.

EE. Camping: All overnight camping is prohibited unless written authorization is received from the director of parks and recreation. (Ord. 1355, 3-22-1999)

### **7-11-3: PENALTY:**

Violations of this chapter are declared to be municipal infractions and may be punished as provided in title 1, chapter 4 of this code. For violations of subsections 7-11-2S, "Consumption In Public Parks", and X, "Swimming/Beach Use", of this chapter, police officers or designees shall be authorized to issue citation complaints. A one hundred dollar (\$100.00) civil penalty shall be imposed for each violation where a citation complaint has been issued. (Ord. 1955, 7-9-2012)

# **Attachment C**

## **Dog Park Rules**

## Amenities

- 10 acres of fenced, off-leash space with dual gate access
- Biodegradable waste bags provided for on-site waste disposal system
- Drinking water fountains
- Separate small dog area
- Mowed and well-kept areas
- Walking paths
- Open 365 days a year (occasional closures for maintenance)



## Fee Information

Resident Annual Permit (per dog)	..... \$20
Non-Resident Annual Permit (per dog)	..... \$40
Daily Pass (per dog)	..... \$5
Lost Tag Replacement	..... \$5

## Permit Information

Annual Permits and Daily Passes can be purchased at the following locations:

**West Des Moines Parks & Recreation Office**  
 4200 Mills Civic Pkwy, Suite 115, West Des Moines  
 Phone: 222-3444 Fax: 222-3459  
 Monday-Friday, 8:00am-5:00pm

**Raccoon River Park Nature Lodge**  
 2500 Grand Avenue, West Des Moines  
 Phone: 222-3424 Fax: 222-3658

## Vaccination Information

Verification of rabies & distemper/parvo vaccinations is required. Bring a copy of your veterinarian receipt when purchasing a permit.

## Questions???

**(515) 222-3444 or [ParkRec@wdm-ia.com](mailto:ParkRec@wdm-ia.com)**

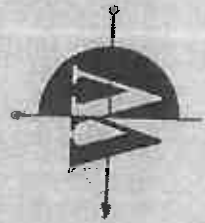
All dogs residing in the City of West Des Moines are required to have a City license. Your Dog Park permit will not cover this requirement. For your convenience, you may purchase a City license at the same time a Dog Park permit is purchased. For further information regarding City licenses, please call 222-3600.

# Raccoon River



# Dog Park

**Raccoon River Park**  
 2500 Grand Avenue  
 West Des Moines, Iowa 50265



THE CITY OF  
**West Des Moines**

# WELCOME! or should we say WOOF!

The City of West Des Moines Parks & Recreation Department would like to welcome you and your dogs to the Raccoon River Dog Park, the city's only public leash-free area.

Please assist us in keeping the Raccoon River Dog Park safe and enjoyable for all visitors by following the following:

- ◆ Please purchase an annual permit or daily pass for each dog. The funds raised help to offset the cost of operating the Dog Park. Permits also help to insure that dogs using the Dog Park have been vaccinated.
- ◆ Please help by cleaning up after your dog and using the provided biodegradable bags and waste container.
- ◆ Please abide by the rules regarding children. Although it may sound like fun, dog parks are not a place for small children.
- ◆ Please follow all of the rules in this brochure, as well as, those posted at the Dog Park.



## Raccoon River Dog Park Rules

- Use of the Dog Park is at the owner/handler's own risk. Permit/pass holders and their guests agree to hold the City of West Des Moines harmless for any injury or damages to person or property by use of the Dog Park.
- An annual permit tag is required to be worn by all dogs inside the Dog Park. Raccoon River Park personnel will perform random checks of tags.
- No permits will be issued for puppies under 16 weeks old. All dogs in the Dog Park must be at least 16 weeks old.
  - Do not bring any dog with a known history of aggression, fighting, or biting. Any dog exhibiting aggressive or unruly behavior is required to be removed by the handler immediately. If you intentionally bring a dog with known aggressive tendencies into the Dog Park your permit will be subject to revocation.
- Each handler may have only 2 dogs at any time within the Dog Park.
- For the protection of the natural environment and the safety of the dogs, no smoking is allowed in the Dog Park. No alcohol of any kind is allowed in the Dog Park.
- No children under 10 years of age are allowed within the Dog Park. Unfortunately, small children are at greater risk of being injured at a dog park than are older children or adults.
- Handlers of dogs must be over 16 years of age. Children under 16 years of age must be supervised by an adult at all times while within the Dog Park.
- Hours of the Dog Park are 6:30 a.m. to sunset (7:00 p.m. during winter). The gates will be locked after hours.
- No wheeled or motorized vehicles are allowed within the Dog Park. Exceptions to this are wheelchairs or other assistive equipment used by people with disabilities.

- Except for within the Dog Park, dogs must be on leash in all areas of the West Des Moines park system, including Raccoon River Park. You may unleash your dog only after entering the fenced Dog Park. Carry a leash for each dog at all times while in the Dog Park.

- Female dogs in heat are not allowed in the Dog Park.
- All owners/handlers must clean up after their dog in all areas of the Dog Park, including tail grass areas. Remember that this applies not only to the Dog Park, but to all public property. Please use the provided waste bags.
- Dogs shall be under visual control and voice control of the handler at all times. You must stay within close range of your dog and must never leave your dog unattended.
- Permits, passes, and tags cannot be transferred to other dogs or dog owners.
- Dogs in the Small Dog Area of the Dog Park can be no taller than 13" at the shoulder and weigh no more than 25 pounds. Small dogs can use all areas of the Dog Park, but please keep in mind that it is possible for small dogs to be accidentally injured by larger dogs.
- No animal food is allowed within the Dog Park, other than small training treats.

The permit may be permanently revoked for any violation of these rules. It is important that the dog owner, as well as any other person bringing the dog to the Dog Park, be knowledgeable of the rules.



**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**ITEM:**

**DATE: November 14, 2016**

Motion – Approving Amendment No. 1  
Professional Services Agreement  
2014 Street Rehab Sidewalk Ramp Program  
Bolton & Menk, Inc.

**FINANCIAL IMPACT:**

The original Professional Services Agreement included a maximum fee of \$34,640.00 for basic services of the consultant and \$32,640.00 for resident consultant services. Amendment No. 1 increases the resident consultant services by \$11,960.00. The new maximum not-to-exceed fee thus becomes \$79,240.00. All costs for these services will be billed at standard hourly rates plus expenses and can be paid from budgeted account no. 500.000.000.5250.495 with ultimate funding intended to come from Road Use Tax.

**BACKGROUND:**

Bolton & Menk is working under an existing agreement dated November 16, 2015 for Professional Services for the 2014 Street Rehab Sidewalk Ramp project. Amendment No. 1 includes additional resident consultant services for the construction of 11 additional sidewalk ramps. The design of these additional sidewalk ramps was taken care of as part of a separate on-call contract.

**RECOMMENDATION:**

City Council Adopt:

- Motion Approving Amendment No. 1 to the Professional Services Agreement.

**Lead Staff Member: Duane C. Wittstock, P.E., L.S., City Engineer**

**STAFF REVIEWS**

Department Director	Duane C. Wittstock, City Engineer
Appropriations/Finance	Tim Stiles, Finance Director <i>TS</i>
Legal	Richard Scieszinski, City Attorney <i>RS</i>
Agenda Acceptance	<i>HA</i>

**PUBLICATION(S) (if applicable)**

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	Public Services		
Date Reviewed	November 7, 2016		
Recommendation	Yes	No	Split



**BOLTON  
& MENK**

Real People. Real Solutions.

309 E 5th Street  
Suite 202  
Des Moines, IA 50309-1981

Ph: [515] 259-9190  
Fax: [515] 233-4430  
Bolton-Menk.com

## MEMORANDUM

**Date:** October 17, 2016  
**To:** Jason Schlickbernd P.E., City of West Des Moines  
**From:** Chadd Kahlsdorf, P.E., PMP  
**Subject:** 2014 Street Rehab Sidewalk Program  
City of West Des Moines Project #0510-028-2014  
Project No.: A13.111053

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Bolton & Menk contracted with the City of West Des Moines for the 2014 Street Rehabilitation Sidewalk Program (#0510-028-2014) to develop the design and manage construction of 45 sidewalk pedestrian ramps. Bolton & Menk completed the design of 48 ramps without seeking additional funding for design or construction administration. As this project was prepared to bid, eight additional ramps were added to the project from West Des Moines Parks and Recreation. These ramps were designed under the on call contract, which does not include a construction administration task. As a result, we spent additional time that was not programmed for those ramps. Despite our efforts, we were not able to complete the additional work under the programmed budget and would like to request additional compensation for the construction administration of those ramps. Bolton & Menk budgeted for construction administration 6 hours per ramp, at an average rate of \$115 per hour. The total adjustment requested for the construction administration of the additional ramps is \$5520.00

Additionally, due to McGreger Corporation exceeding the contract period Bolton & Menk spent additional time in performing construction administration services. As previously stated, Bolton & Menk originally planned for 6 hours per ramp. Bolton & Menk spent 8 hours per ramp to facilitate project completion do to the extended time period. Bolton & Menk is requesting additional funding for the construction administration of the project for 1 hour per ramp at an average rate of \$115 per hour for 56 ramps. The total adjustment requested is \$6440.00.

The additional scope will require the increase the contract in the following amounts:

Task 002 – Resident Consultant Services Approved Fee =	\$32,640.00
Total Requested Fee Increase (\$5520 + \$6440) =	\$11,960.00
Task 002 Total Adjusted Fee =	\$44,600.00

Please let me know if you have comment or need further clarification. Thank you.



AMENDMENT No. 1  
 TO THE AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES  
 WDM Project # 0510-028-2014  
 2014 Street Rehabilitation Sidewalk Program

This AMENDMENT made and entered into this 14 day of November, 2016, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and Bolton & Menk, Inc., (Fed. I.D. #41-0832249), a professional corporation incorporated and licensed under the laws of the State of Iowa, party of the second part, hereinafter referred to as "Consultant" as follows, hereby amends the original Agreement dated November 16, 2015:

1. SCOPE OF SERVICES

Services as described in the Agreement, Attachment 1, Scope of Services are amended as follows:

- I. Basic Services of the Consultant – No Change
- II. Resident Consultant Services – Provide resident consultant services during construction for 11 additional sidewalk ramps. Service will include construction administration and necessary resident project observation.

2. SCHEDULE

The schedule as described in the Agreement, Attachment 2 Project Schedule are amended as follows:  
 No Change.

3. COMPENSATION

In consideration of the additional professional services provided, the City agrees to pay the Consultant the additional fee to increase the original fee NOT-TO-EXCEED, including any authorized reimbursable expenses, pursuant to the Schedule of Fees set forth in The Agreement, Attachment 3.

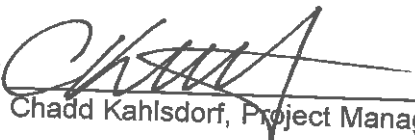
Task No.	Task Description	Original Fee	Additional Fee	Total Fee
I	Basic Services of the Consultant	\$34,640.00	\$0.00	\$34,640.00
II	Resident Consultant Services	\$ 32,640.00	\$11,960.00	\$44,600.00
	Total	\$67,280.00	\$11,960.00	\$79,240.00

This AMENDMENT is subject to all provisions of the original agreement. This AMENDMENT together with the Agreement represents the entire and integrated AGREEMENT between the City and Consultant, as executed on the date written above.

CONSULTANT

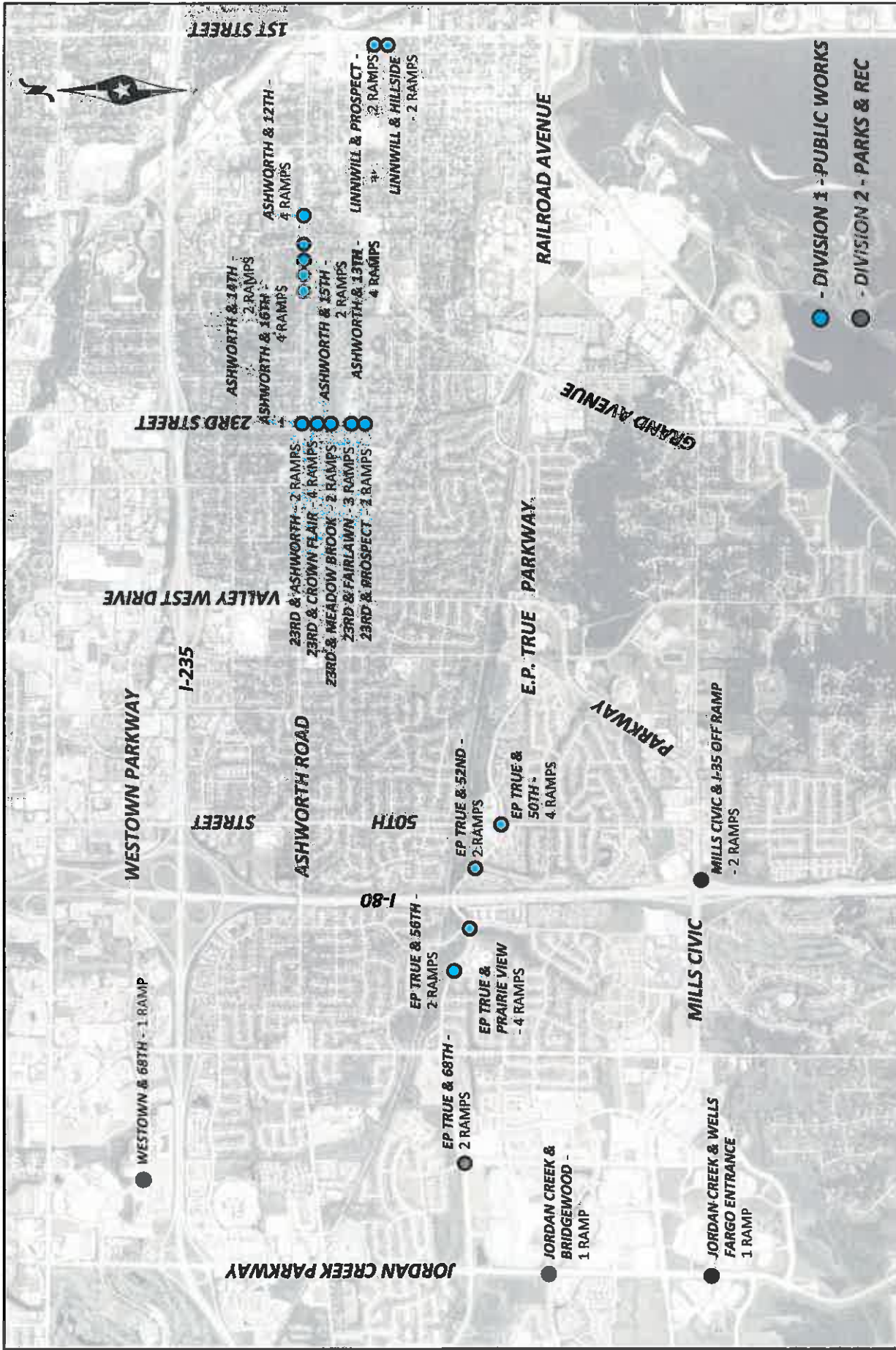
CITY OF WEST DES MOINES

BY

  
 Chadd Kahlsdorf, Project Manager

BY:

  
 Ryan T. Jacobson, City Clerk



**CITY OF WEST DES MOINES, IA**  
 2014 STREET REHAB SIDEWALK RAMP PROGRAM  
 PROJ. NO. 510-028-2014  
 VICINITY MAPS  
 FEBRUARY, 2016  
 FIGURE NO.1

**BOLTON & MENK, INC.**  
 Consulting Engineers & Surveyors  
 MANKATO, MN FAIRMONT, MN SLEEPY EYE, MN BURKSVILLE, MN WILLMAR, MN  
 CHASKA, MN RAMSEY, MN MAPLEWOOD, MN BAXTER, MN ROCHESTER, MN  
 AMES, IA SPENCER, IA DES MOINES, IA FARGO, ND

HORIZ. NOT TO SCALE  
 © Bolton & Menk, Inc. 2016. All Rights Reserved.  
 H:\WORK\2014\510-028-2014\VICINITY MAPS\_2016.02.22.dwg 2/22/16 3:31 PM

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

DATE: November 14, 2016

**ITEM:** Resolution – Order Preparation of Plans and Specifications – Holiday Park Baseball Field Improvements – Phases 4B and 5

**FINANCIAL IMPACT:** Expense of \$71,930 including reimbursables estimated to be \$4,200 to be paid from funds to be budgeted in FY 16-17 in the Holiday Park Baseball Improvements 4B project account (0510 060 2016). There is a total proposed budget of \$1,502,000 for the construction of Phase 4B (Fields #7 & #8) and Phase 5 (Fields #9 & #10). The two phases will be bid together, but are being funded over two fiscal years. There is \$540,000 available to cover design and construction in FY 16-18. An additional \$962,000 is being included in the Parks & Recreation Department's FY 17-18 budget request.

**BACKGROUND:** The Council is asked to approve an agreement with Jeffrey L. Bruce & Company, LLC (JBC) for design services for construction and bid document services for Phases 4B and 5 of the Holiday Park Baseball Field Improvement project. Phase 4B involves improvements to Fields #7 and #8 as shown on the attached plan. JBC was the consultant for Phases 1, 2, 3, and 4A and was selected for the initial project based on a Request for Proposals (RFP) process. Their work on the first phases of this multi-phase project has been acceptable, so based on their performance and familiarity with the overall project, staff recommends that they be hired to design the next phases.



The scope of services for the project includes a Field Survey & Agronomic Soil Testing, Input Process (Design Development), Construction Documentation, Bidding and Negotiation Phase, and Construction Administration. Further details on the scope can be found in the attached proposal letter from JBC dated November 9, 2016 that is included as an attachment to the City's standard agreement.

**OUTSTANDING ISSUES:** None

**RECOMMENDATION:** That the Council approve the Resolution.

**Lead Staff Member:** Sally Orgies 

**STAFF REVIEWS**

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

**PUBLICATION(S)** (if applicable)

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW** (if applicable)

Committee	N/A		
Date Reviewed			
Recommendation	Yes	No	Split

**Resolution Directing Preparation  
of Plans and Specifications, Form of Contract,  
and Estimate of Cost**

**WHEREAS**, the FY 2016-17 City Budget includes funding and the FY 2017-18 City Budget request includes a request for funding for the following described public improvement:

**Holiday Park Baseball Field Improvements  
Phases 4B & 5**

and,

**WHEREAS**, to complete said project Plans, Specifications, Form of Contract, and Estimate of Cost need to be prepared; and,

**WHEREAS**, Parks and Recreation Department staff have recommended Plans, Specifications, Form of Contract, and Estimate of Cost be prepared by Jeffrey L. Bruce & Company, LLC of West Des Moines, Iowa;

Therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA**, that Jeffrey L. Bruce & Company, LLC is hereby directed to prepare Plans, Specifications, Form of Contract, and Estimate of Cost for the above named public improvement project.

**PASSED AND APPROVED** this 14<sup>th</sup> day of November, 2016.

\_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

\_\_\_\_\_  
Ryan Jacobson, City Clerk



**Vicinity Map**



**LEGEND**

 Park Boundary



PROJECT: **HOLIDAY PARK BASEBALL IMPROVEMENTS - PHASE 4B & DESIGN OF 5**

LOCATION: **1701 RAILROAD AVE**

DRAWN BY: MAA

DATE: 11/10/2016

PROJECT NO.:

SHT. 1 of 1

## AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This Agreement is made and entered into this 14th day of November, 2016, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and Jeffrey L. Bruce & Company, LLC, (Fed. I.D. # 43-1498267 ), a professional corporation incorporated and licensed under the laws of the State of Iowa, party of the second part, hereinafter referred to as "Consultant" as follows:

THE CITY HEREBY AGREES TO RETAIN THE CONSULTANT FOR THE PROJECT AS DESCRIBED IN THIS AGREEMENT AND CONSULTANT AGREES TO PERFORM THE PROFESSIONAL SERVICES AND FURNISH THE NECESSARY DOCUMENTATION FOR THE PROJECT AS GENERALLY DESCRIBED IN THIS AGREEMENT.

### 1. SCOPE OF SERVICES

Services provided under this Agreement shall be as further described in Attachment 1, Scope of Services.

### 2. SCHEDULE

The schedule of the professional services to be performed shall conform to the Schedule set forth in Attachment 2. Any deviations from the Schedule shall be approved by the authorized City representative. The City agrees that the Consultant is not responsible for delays arising from a change in the scope of services, a change in the scale of the Project or delays resulting from causes not directly or indirectly related to the actions of the Consultant.

### 3. COMPENSATION

A. In consideration of the professional services provided herein, the City agrees to pay the Consultant the following sum, including any authorized reimbursable expenses, pursuant to the Schedule of Fees set forth in Attachment 3.

I. Basic Services of the Consultant      \$71,930.00

B. The Consultant shall invoice the City monthly for services, any reimbursable expenses and any approved amendments to this Agreement, based upon services actually completed at the time of the invoice. Final payment shall be due and payable within 30 days of the City's acceptance of Consultant's submission of final deliverables in accordance with the Scope of Services.

C. In consideration of the compensation paid to the Consultant, the Consultant agrees to perform all professional services ~~to the satisfaction of the City by performing the professional services~~ in a manner consistent with that degree of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar circumstances. If the performance of this Agreement involves the services of others or the furnishing of equipment, supplies, or materials, the Consultant agrees to pay for the same in full.

### 4. INSURANCE

A. Consultant understands and agrees that Consultant shall have no right of coverage under any and all existing or future City comprehensive, self or personal injury policies. Consultant shall provide insurance coverage for and on behalf of Consultant that will sufficiently protect Consultant or Consultant' representative(s) in connection with the professional services which are to be provided by Consultant pursuant to this Agreement, including protection from claims for bodily injury, death, property damage, and lost income. Consultant shall provide worker's compensation insurance coverage for Consultant and all Consultant's personnel. Consultant shall file applicable insurance certificates with the City, and shall also provide evidence of the following additional coverage.

- B. The Consultant shall provide evidence of comprehensive general liability coverage and contractual liability insurance by an insurance company licensed to do business in the State of Iowa in the limits of at least \$1,000,000 each personal injury accident and/or death; \$1,000,000 general aggregate personal injury and/or death; and \$1,000,000 for each property damage accident. The evidence shall designate the City as an additional insured, and that it cannot be canceled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.
- C. The Consultant shall also provide evidence of automobile liability coverage in the limits of at least \$1,000,000 bodily injury and property damage combined. The evidence shall designate the City as an additional insured, and that it cannot be cancelled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.
- D. The Consultant shall provide evidence of professional liability insurance, by an insurance company licensed to do business in the State of Iowa, in the limit of \$1,000,000 for claims arising out of the professional liability of the Consultant. Consultant shall provide City written notice within five (5) days by registered mail, return receipt requested of the cancellation or material alteration of the professional liability policy.
- E. Failure of Consultant to maintain any of the insurance coverages set forth above shall constitute a material breach of this Agreement.

5. NOTICE

Any notice to the parties required under this agreement shall be in writing, delivered to the person designated below, by United States mail or in hand delivery, at the indicated address unless otherwise designated in writing.

FOR THE CITY:

Name: City of West Des Moines  
 Attn: Ryan T. Jacobson, City Clerk  
 Address: 4200 Mills Civic Parkway  
 City, State: West Des Moines, IA 50265-0320

FOR THE CONSULTANT:

Name: Jeffrey L. Bruce & Company, LLC  
 Attn: Brian Davis  
 Address: 1907 Swift Street  
 City, State: North Kansas City, MO 64116

6. GENERAL COMPLIANCE

In the conduct of the professional services contemplated hereunder, the Consultant shall comply with applicable state, federal, and local law, rules, and regulations, technical standards, or specifications issued by the City and in effect at the time the drawings are issued. Consultant must qualify for and obtain any required licenses prior to commencement of work, including any professional licenses necessary to perform work within the State of Iowa.

7. STANDARD OF CARE

Services provided by the Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

8. INDEPENDENT CONTRACTOR

Consultant understands and agrees that the Consultant and Consultant's employees and representatives are not City employees. Consultant shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, or any other form of compensation or benefit to Consultant or Consultant's employees, representatives or other personnel performing the professional services specified herein, whether it be of a direct or indirect nature. Further, it is expressly understood and agreed that for such purposes neither Consultant nor Consultant's employees, representatives or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement, or any other benefits whatsoever.

9. NON-DISCRIMINATION

Consultant will not discriminate against any employee of applicant for employment because of race, color, sex, national origin, religion, age, handicap, or veteran status. Consultant will, where appropriate or required, take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, sex, or national origin, religion, age, handicap, or veteran status. Consultant will cooperate with the City in using Consultant's best efforts to ensure that Disadvantaged Business Enterprises are afforded the maximum opportunity to compete for subcontracts of work under this Agreement.

10. HOLD HARMLESS

Consultant agrees to indemnify and hold harmless the City, its officers, agents, and employees from any and all claims, settlements and judgments, to include all reasonable investigative fees, attorney's fees, and court costs for any damage or loss which is due to or arises from a breach of this Agreement, or from negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its sub consultants or anyone for whom Consultant is legally liable.

11. ASSIGNMENT

Consultant shall not assign or otherwise transfer this Agreement or any right or obligations therein without first receiving prior written consent of the City.

12. APPROPRIATION OF FUNDS

The funds appropriated for this Agreement are equal to or exceed the compensation to be paid to Consultant. The City's continuing obligations under this Agreement may be subject to appropriation of funding by the City Council. In the event that sufficient funding is not appropriated in whole or in part for continued performance of the City's obligations under this Agreement, or if appropriated funding is not expended due to City spending limitations, the City may terminate this Agreement without further compensation to the Consultant. To the greatest extent allowed by law, the City shall compensate Consultant as provided in Section 18(B) of this Agreement.

13. AUTHORIZED AMENDMENTS TO AGREEMENT

- A. The Consultant and the City acknowledge and agree that no amendment to this Agreement or other form, order or directive may be issued by the City which requires additional compensable work to be performed if such work causes the aggregate amount payable under the amendment, order or directive to exceed the amount appropriated for this Agreement as listed in Section 3, above, unless the Consultant has been given a written assurance by the City that lawful appropriation to cover the costs of the additional work has been made.
- B. The Consultant and the City further acknowledge and agree that no amendment to this Agreement or other form, order or directive which requires additional compensable work to be performed under this Agreement shall be issued by the City unless funds are available to pay such additional costs, and the Consultant shall not be entitled to any additional compensation for any additional compensable work performed under this Agreement. The Consultant expressly waives any right to additional compensation, whether in law or equity, unless prior to commencing the additional work the Consultant was given a written amendment, order or directive describing the additional compensable work to be performed and setting forth the amount of compensation to be paid, such amendment, order or directive to be signed by the authorized City representative. It is the Consultant's sole responsibility to know, determine, and ascertain the authority of the City representative signing any amendment, directive or order.

14. OWNERSHIP OF CONSULTING DOCUMENTS

Provided that the City complies with all obligations, including prompt payment of all sums when due under this Agreement, all sketches, tracings, plans, specifications, reports, and other data prepared under this Agreement ("Work Product") shall become the property of the City; and reproducible set



shall be delivered to the City at no additional cost to the City upon completion of the plans or termination of the services of the Consultant. All drawings and data shall be transmitted in a durable material, with electronic files provided when feasible to do so. The Consultant's liability for use of the sketches, tracings, plans, specifications, reports, and other data prepared under this Agreement shall be limited to the Project. Consultant has a non-exclusive license to use minor or standard details from the Work Product on other projects.

#### 15. INTERPRETATION

No amendment or modification of this Agreement shall be valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of the Agreement. This is a completely integrated Agreement and contains the entire agreement of the parties; any prior written or oral agreements shall be of no force or effect and shall not be binding upon either party. The laws of the State of Iowa shall govern and any judicial action under the terms of this Agreement shall be exclusively within the jurisdiction of the district court for Polk County, Iowa.

#### 16. COMPLIANCE WITH FEDERAL LAW

To the extent any federal appropriation has or will be provided for the Project, or any federal requirement is imposed on the Project, Consultant agrees that Consultant will comply with all relevant laws, rules and regulations imposed on City and/or Consultant necessary for receipt of the federal appropriation. Consultant shall provide appropriate certification regarding Consultant's compliance.

#### 17. SOLICITATION AND PERFORMANCE

- A. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that the Consultant has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or contingent fee.
- B. The Consultant shall not engage the services of any person or persons in the employ of the City at the time of commencing such services without the written consent of the City.

#### 18. SUSPENSION AND TERMINATION OF AGREEMENT

- A. The right is reserved by the City to suspend this Agreement at any time. Such suspension may be effected by the City giving written notice to the Consultant, and shall be effective as of the date established in the suspension notice. Payment for Consultant's services shall be made by the City for services performed to the date established in the suspension notice. Should the City reinstate the work after notice of suspension, such reinstatement may be accomplished by thirty (30) days written notice within a period of six (6) months after such suspension, unless this period is extended by written consent of the Consultant.
- B. Upon ten (10) days written notice to the Consultant, the City may terminate the Agreement at any time if it is found that reasons beyond the control of either the City or Consultant make it impossible or against the City's interest to complete the Agreement. In such case, the Consultant shall have no claims against the City except for the value of the work performed up to the date the Agreement is terminated.
- C. The City may also terminate this Agreement at any time if it is found that the Consultant has violated any material term or condition of this Agreement or that Consultant has failed to maintain workers' compensation insurance or other insurance provided for in this Agreement. In the event of such default by the Consultant, the City may give ten (10) days written notice to the Consultant of the City's intent to terminate the Agreement. Consultant shall have ten (10) days from notification to remedy the conditions constituting the default.
- D. In the event that this Agreement is terminated in accordance with paragraph C of this section, the City may take possession of any work and may complete any work by whatever means the City may select. The cost of completing said work shall be deducted from the balance which would

have been due to the Consultant had the Agreement not been terminated and work completed in accordance with contract documents.

E. The Consultant may terminate this Agreement if it is found that the City has violated any material term or condition of this Agreement. In the event of such default by the City, the Consultant shall give ten (10) days written notice to the City of the Consultant's intent to terminate the Agreement. City shall have ten (10) days from notification to remedy the conditions constituting the default.

F. If the City fails to make payment to the Consultant in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Consultant's option, cause for suspension of performance of service under this Agreement. If the Consultant elects to suspend or termination services, the Consultant shall give ten (10) days written notice to the City. In the event of a suspension or termination of services, the Consultant shall have no liability to the City for delay or damage caused the City because of such suspension or termination of services. Before resuming services, the Consultant shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Consultant's fees for the remaining services and the time schedule shall be equitably adjusted.

19. TAXES

The Consultant shall pay all sales and use taxes required to be paid to the State of Iowa on the work covered by this Agreement. The Consultant shall execute and deliver and shall cause any sub-consultant or subcontractor to execute and deliver to the City certificates as required to permit the City to make application for refunds of said sales and use taxes as applicable. The City is a municipal corporation and not subject to state and local tax, use tax, or federal excise taxes.

20. SEVERABILITY

If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement shall continue in full force and effect.

21. MISCELLANEOUS HEADINGS

Title to articles, paragraphs, and subparagraphs are for information purposes only and shall not be considered a substantive part of this Agreement.

22. FURTHER ASSURANCES

Each party hereby agrees to execute and deliver such additional instruments and documents and to take all such other action as the other party may reasonably request from time to time in order to effect the provisions and purposes of this Agreement.

23. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall constitute an original document, no other counterpart needing to be produced, and all of which when taken together shall constitute the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or agents on the day and year first above written.

CONSULTANT

CITY OF WEST DES MOINES

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
Ryan T. Jacobson, City Clerk

ATTACHMENT 1  
SCOPE OF SERVICES

Included with cover letter dated November 10, 2016

**ATTACHMENT 2**  
**PROJECT SCHEDULE**

Field Survey	December, 2016
Design and Input Process	January - February, 2017
Construction Documentation	February - March, 2017
Bidding	March, 2017
Construction Administration Phase 4B	May - June, 2017
Construction Administration Phase 5	July – Sept, 2017

**ATTACHMENT 3**  
**SCHEDULE OF FEES**

Included with cover letter dated November 10, 2016

Bid Documents and Construction Administration for Phases 4B and Phase 5 Improvements	\$67,740.00
Estimated Travel Reimbursable Expenses	\$ 2,700.00
Estimated Agronomic Testing Reimbursable Expenses	<u>\$ 1,500.00</u>
<b>TOTAL</b>	<b>\$71,930.00</b>



10 November 2016

David Sadler, ASLA  
Landscape Architect  
Parks & Recreation Department  
City of West Des Moines, Iowa  
4200 Mills Civic Parkway  
West Des Moines, IA 50265

Re: Proposal for Bid Documents and Construction Administration for Holiday Park – Phases IV (B) & V  
Youth Baseball Field Improvements  
West Des Moines, Iowa

Dear Mr. Sadler:

Thank you for the opportunity to provide this proposal for professional services and the opportunity to continue to serve the City of West Des Moines Park & Recreation. Jeffrey L. Bruce & Co. and our team (JBC Team) are excited about the chance to work with you and your staff and we are confident that we can be an integral part of your team.

Based on the original RFP, our previous discussions and the information you provided to our office on November 2<sup>nd</sup>, we have prepared a scope of services and proposal describing and refining the work required to provide Bid Documents and Construction Administration for the Phases IV (B) and V Youth Baseball Field Improvements at Holiday Park.

As we understand the scope of work for Phases IV (B) & V, the JBC Team is prepared to enter into an agreement with your office to provide professional services as identified below for the project aspects for which JBC would be responsible for design and oversight of the Youth Baseball Field Improvements.

#### **SCOPE OF WORK**

Provide services as hereinafter described for design and preparation of Bid Documents followed by Construction Administration for the Youth Baseball Field Improvements for Phases IV (B) and V at Holiday Park. These Improvements include:

- Field 7 – No field rotation or lighting. New dugouts, pedestrian connections, new infield, bullpens, turf area amendments, new irrigation, warning track and fencing modifications as needed. (Construction in Spring 2017)
- Field 8 – No infield improvements or lighting. New dugouts, irrigation replacement, miscellaneous fencing and concrete. (Construction in Spring 2017)
- Field 9 – New dugouts, pedestrian connections, new skinned infield, bullpens, turf area amendments, new irrigation, warning track, fencing modifications (as needed) and new lighting system. (Construction in Fall 2017)

- Field 10 – New dugouts, pedestrian connections, new skinned infield, bullpens, turf area amendments, new irrigation, warning track, fencing modifications (as needed) and new lighting system. (Construction in Fall 2017)
- Design work will include site improvements that have been addressed per phase in the previous phases of work including, storm sewer improvements, including between Fields 7 and 8, completion of the irrigation loop and batting cage upgrades.

## **SCOPE OF SERVICES**

### **Field Survey & Agronomic Soil Testing**

- Perform and prepare additions to the previously performed topographical survey for the portions of the work from Phase I through IV (A) that may affect the design of Fields #7 through #10.
- Perform and prepare additions to the previously performed site topography survey for additional areas of Fields #7, #8 #9 and #10 in Holiday Park for Phases IV (B) and V which include which will include the following specific information:
  - Provide spot elevations on the playing field side and the spectator side of the backstop on both fields mentioned above. These spot elevations will be taken approximately every 5' and at major turns or corners of the backstop/fencing.
  - Provide spot elevations of every chainlink fencing post and backstop post around the entire playing fields mentioned above. We assume that posts are +/- 10' on-center. . When providing this information, all fencing gates and openings in the fencing shall be provided as well.
  - Provide spot elevations and locations of the existing bases and apex of homeplate for all fields mentioned above.
  - Provide the location of the drip lines for the trees and spot elevations along the drip line determination of these trees to ensure that grading revisions meet the existing grades at the driplines.
- Elevations and information provided will be referenced to the City of West Des Moines datum.
- Perform soil sampling of the existing soil in the outfields and infields on Fields #7 through #10 and analyze the agronomic laboratory testing results provided to JBC after the testing to determine the soil mix to be designed for the grass areas of the fields only.

### **Input Process (Design Development)**

- Attend one (1) project site visit / kick-off meeting to validate proposed concept drawing provided and site conditions and resolve issues of design direction, programming and coordination that will impact our design development phase of work.

- During this kick-off meeting visit, members of the JBC Team will meet with Parks and Recreation staff, and other individuals and organizations to determine general existing conditions, project guidelines and goals for the project and future improvements. JBC will come prepared with questions relating to the project for this process based on Holiday Park Phases I – IV (A) and experience on similar projects.
- The JBC Team will assemble findings and recommendations based on the meeting with Parks and Recreation and others and provide these as a basis of design for the construction documents preparation of the project. Specific details of the findings and recommendations will be presented as a means of testing and validating decisions reached. The design team will receive and record comments of participants pertinent to the final resolution of the field recommendations.
- Develop and prepare a Preliminary Opinion of Probable Cost for the aspects of the work designed and impacted by the JBC Team. We will advise your office as design decisions or site conditions impact these costs.

### **Construction Documentation**

JBC will provide the following documentation, coordination and review to assist the design team in the preparation of construction documents:

- Facilitate and attend coordination/progress meetings at the Owners office (or via conference call) to review the project at 60% and 95% completion milestones.
- Update the Preliminary Opinion of Probable Cost for the aspects of the work designed and impacted by the JBC Team. We will advise your office as design decisions or site conditions impact these costs.
- Coordinate with sub-consultants to ensure that our documentation is properly integrated.
- Provide agronomic athletic turf recommendations based on the existing playing field soil testing conducting during the Input Process concerning:
  - Sand: Particle Size Analysis
  - Organic Amendment Evaluation
  - Gravel Distribution Analysis
  - Physical Evaluation of Rootzone Mixes
  - Sod: Fertility and tissue testing
  - Sod: Growing Medium Particle size Analysis
- Prepare playing field system drawings including plans and details showing the following:
  - Playing Fields Sub-Drainage System
  - Playing Field Growing Media and Turf systems
  - Skinned Infield/Warning Track materials
  - Fencing Modifications
  - Sports Specialty Items – Batting Cages, netting, foul poles, portable mounds, pitching plates, homeplate and bases, portable mounds, etc...



- Minor Electrical Improvements – Convenience Outlets, Communication to Scoreboards
  - Athletic Field Sports Lighting for Fields # 9 and #10.
  - Dugout layout and designs
  - Hardscape Sidewalks and Bleacher Pad areas
  - Other pertinent design information relating to playing field design
- Prepare playing field irrigation construction drawings to tie into the existing irrigation system components installed as part of Phases I – IV (A), including piping diagrams showing pipe sizing and point to point pipe routing, sprinkler heads, lines, valves, controllers, control systems, sensors, station volume, soil system sections, sub-drainage system, turf systems and other pertinent design information.
  - Separate specification subsections providing criteria for the purchase of equipment and materials. The subsections will comprise of the following subsections:
    - Playing Field Irrigation
    - Playing Field Grading & Construction
    - Playing Field Sub-Drainage System
    - Playing Field Turf and Sodding
    - Playing Field Fencing
    - Playing Field Dugout Specifications based on construction type
    - Playing Field Electrical Work
    - Non-Playing Field Landscaping
    - Cast-in-Place Concrete for Walkways and Bleacher Pads
    - Playing Field Athletic Field Sports Lighting
    - Minor Electrical Improvements
  - Review of the construction documents developed for the facility by your office and the design team to determine if all design work critical to the operation of the improvements designed by the JBC Team has been accomplished as necessary to produce the desired improvements. We will review and comment on the following subsections:
    - Bidding Requirements
    - Bid Proposal Form
    - Contract Forms
    - Conditions of the Contract
    - Division 1 - General Requirements

### **Bidding & Negotiation Phase**

JBC will provide the following coordination and review to assist the design team during the bid negotiation phase. Work provided would include the following:

- We will facilitate and attend one (1) Pre-Bid Meeting to be held at the project location to validate site conditions with the Bidders and help clarify the documents per the questions of the Bidders.

- Coordinate and communicate with the City of West Des Moines Parks and Recreation Department the Bidding Administration process as it relates to Addenda, RFI's and contractor questions. Our team will provide clarification or interpretation of the design team's plans.
- Provide a bid evaluation review matrix and present this information to the Owner for Contractor selection.
- Assist the Owner in the recommendation and pre-qualification of contractors and locally available materials and help coordinate the bid process review of competitive bids.
- **(\*The printing for the Issuance of the Bid Documents to Contractors/Potential Bidders shall be performed as an outside service and will be billed directly without mark-ups to Parks & Recreation as a reimbursable expense. If the Bidding Process allows the JBC Team to charge (at a fee to be determined) the Contractors to get a copy of the Plans and Project Manual for Bidding purposes, the JBC Team will issue and provide the plans and project manual, any addenda, etc... to the Contractor directly. See also the Extra Services section below.**

### **Construction Administration Phase**

The work provided by JBC will include the following:

- **JBC Team will provide a minimum of ten (10) site visits during the construction of the work to observe and assist the City of West Des Moines Parks and Recreation Department during the construction period as a part of this proposal for all aspects of the scope of work. These visits will be focused on the following:**
  - **Facilitate and attend a Pre-Construction Meeting and regular site meetings with the Contractor**
  - **Evaluate and observe the demolition, earthwork, and finished grading process**
  - **Observation of playing field construction components and irrigation piping and delivery equipment installation**
  - **Observation of Athletic Field Lighting and electrical enhancements**
  - **Observe and monitor storm water enhancements and protection during construction**
  - **Monitor the construction of the playing fields and associated items**
  - **Monitor Installation of Dugouts and Fencing Revisions**
  - **Installation of Sod**
  - **Preliminary Punch Site Visit**
  - **Final Punch Visit**
- **Evaluate completion of playing field site improvements work for general compliance with the intent of the plans and specifications.**
- **Evaluate substitutions, RFI's, requests for proposals, change orders, payment applications by the Contractor and other applicable construction administration documents.**
- **Review, document and facilitate the submittal and shop drawing process with the Contractor.**
- **Prepare reports, memos, and letters to your office documenting progress meetings and on-site observations.**

### **Out of Scope Items and Services Provided by Others**

JBC will provide the preparation of design standards to establish minimum design requirements for the design teams to follow with respect to the preparation of design documents and quality control procedures related to the facility sports fields. JBC will be available to coordinate with the efforts of others to complete the work listed below.

- Documentation services to be provided by others are anticipated to include:
  - Architectural improvements including (but not limited to) bleacher facilities, maintenance & storage buildings, and related systems and improvements.
  - Site Utility extensions to field edge including water supply, sanitary sewer including all related permitting.
  - Related off-site improvements.
  - Site hospitality improvements including water fountains, telephones, etc.
  - Compiling, printing and issuing all bid and contract documents.
  - Advertisements and notifications

### **SERVICES NOT INCLUDED**

- **Office or site visits:** The proposed scope of services includes four (4) office visits during the design phase and a minimum of ten (10) on-site construction observation visits. Services and reimbursable expenses for additional site or office visits will be billed as extra services.
- **Design and Budget Changes:** Any conceptual changes resulting in increased complexity or changes in design requiring rework once the documentation process has been authorized may be considered extra services.
- **Budget Control:** The proposed scope of services includes budget opinions and assistance with value engineering.
- **Agronomic Testing services** will be billed as a reimbursable expense. This does not include agronomic testing during construction by the Contractor.

### **EXTRA SERVICES**

- We will identify services not included in our proposed scope of work if they are requested. We will advise your office of the impact on our work, and propose an increase to the fee amount before any work is undertaken that is outside our scope of services.
- Extra services will be provided on an hourly basis at the billing rates listed below, or the current hourly rates prevailing when services are rendered.
- Reimbursable expenses associated with extra services will be billed at direct cost.

### **INFORMATION TO BE SUPPLIED BY OWNER**

- Utilities -- water, sewer, gas, storm drainage, electricity, and telephone

Bid Documents and Construction Administration for Holiday Park Youth Baseball Improvements – Phases IV (B) & IV  
West Des Moines, Iowa

- Existing hydraulic information, subsurface investigations and any other site-specific investigations.
- As-built drawings, specification, and/or construction plan of existing facility.

**FEES**

Based on the complexity of the project, our experience on this site and the amount of documentation anticipated for the Holiday Park Youth Baseball Field Improvements, the JBC Team will provide the services described as a **Phased Fixed Fee of Sixty Seven Thousand Seven Hundred Thirty dollars (\$67,730.00)**.

**Bid Documents and Construction Administration for Phases IV (B) & V Improvements**

Additional Field Survey Information (Fields #7 through #10)	\$ 4,620.00
Input Process (Fields #7 through #10)	\$ 6,750.00
Construction Documents Preparation (Fields #7 through #10)	\$ 24,990.00
Bidding* (Fields #7 through #10)	\$ 3,470.00
<u>Construction Administration (Spring 2017 and Fall 2017)</u>	<u>\$ 27,900.00</u>
<b>Total</b>	<b>\$ 67,730.00</b>

(\*The printing for the Issuance of the Bid Documents to Contractors/Potential Bidders shall be performed as an outside service and will be billed directly without mark-ups to Parks & Recreation as a reimbursable expense. If the Bidding Process allows the JBC Team to charge (at a fee to be determined) for the Contractors to get a copy of the Plans and Project Manual for Bidding purposes, the JBC Team will issue and provide the plans and project manual, any addenda, etc... to the Contractor directly.)

**Estimated Travel Reimbursable Expenses**

Travel Costs, Printing (not including documents for bidding)  
**\$2,700.00**

**Estimated Agronomic Testing Reimbursable Expenses**

Laboratory Testing and sample shipping to the laboratory  
**\$1,500.00**

- Billing for services will be based on a percent of completion of the phased fee.
- Reimbursable Travel Expenses
  - Travel time will be billed portal to portal.
  - Reimbursable expenses listed below are not included in the fee totals and will be billed at direct cost.
  - Automobile mileage from the base office of the partner or staff member traveling will be billed at the prevailing federal rate.
  - Lodging, meals and other living expenses associated with out-of-town travel.
  - The Per Diem amount to be billed as a reimbursable expense for this project is \$50.00 per day.
  - Laboratory Testing Services

- Billing rates effective through 31 December 2017
  - Principal \$165.00/hr.
  - Senior Project Manager \$120.00/hr.
  - Project Landscape Architect \$ 80.00/hr.
  - Associate Landscape Architect \$ 70.00/hr.
  - Administrative \$ 55.00/hr.
  - Agronomic Consultant \$185.00/hr.

## **PAYMENT**

- This proposal is contingent upon the following conditions relative to payment:
  - We will submit monthly invoices to your office.
  - Your office will submit our invoices for payment with your next regular billing cycle, or within 30 days, whichever is first.
  - Funds will be disbursed within 7 days of receipt of payment.
  - There will be no retention of funds due to us by either your office or your client.

## **SCHEDULE**

- Provided timely reviews and approvals, JBC assumed the production of construction documents could be completed per the schedule provided by your office (February/Early March 2017) and in previous conversations but based on the actual notice to proceed.

## **INSURANCE**

- We currently maintain the following project related insurance:
  - General liability in the amount of \$1,000,000.00
  - Professional liability in the amount of \$2,000,000.00
  - Automobile liability in the amount of \$1,000,000.00
  - Workers compensation/employer liability amount of \$500,000.00
  - Certificates of insurance will be provided upon request.

## **CONTRACT**

- This proposal is not a contract for execution. Should the terms set forth herein be agreeable and acceptable as a basis for agreement, a contract for professional services will be prepared and executed prior to beginning work. This agreement constitutes the entire agreement between JBC and the City of West Des Moines. If there are conflicts or inconsistencies between this agreement and the prime agreement, the prime agreement will control.

### **LIMIT OF LIABILITY**

- In recognition of the relative risks, rewards and benefits of the project to both the JBC Team and the City of West Des Moines, the risks have been allocated such that City of West Des Moines agrees that, to the fullest extent permitted by law, limit the JBC Team's total liability to the City of West Des Moines for any and all injuries, claims, losses, expenses, damages or claims expenses arising out of this agreement from any cause or causes and shall not exceed the lesser of JBC's professional liability insurance coverage or the professional liability insurance coverage available at the time of the settlement or judgment. Such causes include, but are not limited to, JBC's negligence, errors, omissions, strict liability, breach of contract or breach of warranty

### **CREDITS AND ACKNOWLEDGMENTS**

- Jeffrey L. Bruce & Company shall, where appropriate, be given credit and acknowledgment for natural turf system consulting by your office, your agent, and/or your client in published articles and/or promotional brochures.

### **TERMINATION**

- The Client may terminate this Agreement at any time by written notice. If JBC or the Client terminates the Agreement, the Client will pay for services provided and expenses incurred up to the time notice is either sent or received by JBC.
- This Agreement shall be severable and any provision or part hereof to be void or unenforceable under any law shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the parties.

### **APPROVAL AND ACCEPTANCE**

- Upon review of the foregoing terms, this proposal for services is approved and accepted, will Jeffrey L. Bruce & Company LLC as will prepare a contract for signature.

Please let me know if you require any further information

Sincerely,

Brian Davis  
Senior Project Manager  
JEFFREY L. BRUCE & COMPANY LLC

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**ITEM:**

**DATE: November 14, 2016**

Resolution - Ordering Construction  
9th Street Storm Sewer Rehabilitation

**FINANCIAL IMPACT:**

The Engineering Estimate of Construction Cost for the 9th Street Storm Sewer Rehabilitation is \$735,700.00. Payments will be made from budgeted account no. 660.000.000.5250.490 with the ultimate funding intended to come from Stormwater Utility Fees.

**BACKGROUND:**

A Bid Letting should be scheduled for 2:00 p.m. on Wednesday, December 7, 2016, and a Public Hearing on the project should be scheduled for 5:35 p.m. on Monday, December 12, 2016. The contract would be awarded on Monday, December 12, 2016, and work will begin shortly thereafter.

The project consists of the installation of internal mechanical joint seals and associated work necessary to repair the leaking joints of an 84-inch storm sewer along 9<sup>th</sup> Street from Elm Street to Lincoln Street. The project is anticipated to be completed by March 31, 2017.

**OUTSTANDING ISSUES:**

None.

**RECOMMENDATION:**

- City Council Adopt:
- Resolution Ordering Construction of the 9th Street Storm Sewer Rehabilitation.
  - Fixing 2:00 p.m. on Wednesday, December 7, 2016, as the time and date for project Bid Letting.
  - Ordering the City Clerk to publish notice of Letting and Public Hearing.

**Lead Staff Member: Duane C. Wittstock, P.E., L.S., City Engineer**

**STAFF REVIEWS**

Department Director	Duane C. Wittstock, P.E., L.S. <i>DCW</i> City Engineer
Appropriations/Finance	Tim Stiles, Finance Director <i>TS</i>
Legal	Richard Scieszinski, City Attorney <i>RS</i>
Agenda Acceptance	<i>AW</i>

**PUBLICATION(S) (if applicable)**

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	Public Services		
Date Reviewed	November 7, 2016		
Recommendation	Yes	No	Split

**Resolution Ordering Construction and  
Notice of Public Hearing on Plans, Specifications, Form of Contract, Estimate of Cost, and  
Directing Advertisement for Bids**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA,** that the following described public improvement:

**9th Street Storm Sewer Rehabilitation  
Project No. 0510-043-2015**

is hereby ordered to be constructed according to the Plans and Specifications prepared by the Engineering Division of the City of West Des Moines and now on file in the office of the City Clerk.

**BE IT FURTHER RESOLVED,** that the detailed Plans and Specifications, Form of Contract, Bid Security, and Notice to Bidders are hereby approved, subject to hearing thereon, and that the same are now on file in the office of the City Clerk for public inspection.

**BE IT FURTHER RESOLVED,** that the City Clerk is hereby directed to publish notice of hearing on the Plans and Specifications, Form of Contract, Bid Security and Estimate of Costs for said project to be held at 5:35 p.m. on Monday, December 12, 2016, with said notice published not less than four (4) days nor more than twenty (20) days prior to the date heretofore fixed.

**BE IT FURTHER RESOLVED,** that the City Clerk is hereby directed to publish Notice to Bidders for said project with publication not less than thirteen (13) days nor more than forty-five (45) days prior to the date for receiving bids. Said bids are to be filed prior to 2:00 p.m. on Wednesday, December 7, 2016.

**BE IT FURTHER RESOLVED,** that the bids received for construction of said improvements will be opened, publicly read and tabulated by the City Clerk, Deputy City Clerk, or City Clerk designee at 2:00 p.m. on Wednesday, December 7, 2016, and the results of said bids shall be considered at a meeting of this Council on Monday, December 12, 2016, at 5:35 p.m. and acted upon at said time, or such time as may then be fixed.

**PASSED AND APPROVED** this 14<sup>th</sup> day of November, 2016.

\_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

\_\_\_\_\_  
Ryan T. Jacobson, City Clerk



# 9TH STREET STORM SEWER REPAIRS

City Proj. No. 0510-043-2015

Preliminary Opinion of Probable Cost

West Des Moines, Iowa

November 7, 2016



Item No.	Item Code	Item	Unit	Quantity	Unit Price	Total Cost
1.01	1000-000-0-1	SECTION 1000 - GENERAL TRAFFIC CONTROL	LS	1	\$ 10,000.00	\$ 10,000.00
4.01	4050-000-0-1	SECTION 4050 - PIPE REHABILITATION INTERNAL MECHANICAL JOINT SEAL, 48 IN DIA RCP STORM SEWER	EA	5	\$ 1,700.00	\$ 8,500.00
4.02	4050-000-0-2	INTERNAL MECHANICAL JOINT SEAL, 60 IN DIA RCP STORM SEWER	EA	10	\$ 1,800.00	\$ 18,000.00
4.03	4050-000-0-3	INTERNAL MECHANICAL JOINT SEAL, 72 IN DIA RCP STORM SEWER	EA	1	\$ 2,000.00	\$ 2,000.00
4.04	4050-000-0-4	INTERNAL MECHANICAL JOINT SEAL, 84 IN DIA RCP STORM SEWER	EA	215	\$ 2,200.00	\$ 473,000.00
4.05	4050-000-0-5	LIFT HOLE SEAL, DRY PACK GROUT	EA	184	\$ 50.00	\$ 9,200.00
4.06	4050-000-0-6	STORM SEWER CLEANING	LS	1	\$ 200,000.00	\$ 200,000.00
6.01	6020-108-A-0	SECTION 6020 - REHABILITATION OF EXISTING MANHOLES INFILTRATION BARRIER, URETHANE CHIMNEY SEAL	EA	2	\$ 2,000.00	\$ 4,000.00
6.02	6020-000-0-1	WALL PENETRATION SEAL, REMOVE AND REPLACE	EA	4	\$ 2,500.00	\$ 10,000.00
6.03	6020-000-0-2	JOINT FILLING AT GATEWELL #1	LS	1	\$ 1,000.00	\$ 1,000.00
<b>Total Construction</b>						<b>\$ 735,700.00</b>

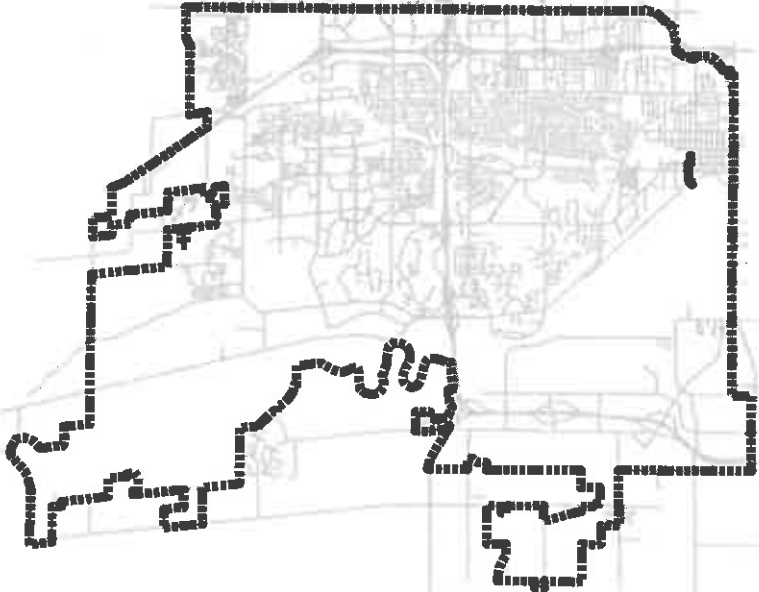
I HEREBY CERTIFY THAT THIS ENGINEERING DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF IOWA.

MY LICENSE RENEWAL DATE IS DECEMBER 31, 2016

THOMAS M. STOVIE/P.E.      LICENSE NO. 15588      DATE 11/7/16



**VICINITY MAP**



**LEGEND**

PROJECT LOCATION



PROJECT:

**9th Street Storm Sewer Rehabilitation**

LOCATION:

**9th Street - Elm Street to Lincoln Street**

DRAWN BY: JDR

DATE: 11/7/2016

PROJECT: 0510-043-2015

SHT. 1 of 1

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**ITEM:**

**DATE: November 14, 2016**

Resolution - Ordering Construction  
South 60<sup>th</sup> Street Improvements Phase 2  
Pheasant Ridge Drive to Mills Civic Parkway

**FINANCIAL IMPACT:**

The Engineering Estimate of Construction Cost for the South 60th Street Improvements Phase 2 – Pheasant Ridge Drive to Mills Civic Parkway is \$3,906,770.55. Payments will be made from budgeted account no. 500.000.000.5250.490 with the ultimate funding intended to come from General Obligation Bonds and TIF.

**BACKGROUND:**

A Bid Letting should be scheduled for 2:00 p.m. on Wednesday, December 7, 2016, and a Public Hearing on the project should be scheduled for 5:35 p.m. on Monday, December 12, 2016. The contract would be awarded on Monday, December 12, 2016, and work will begin shortly thereafter.

This is the second of two projects to complete grading, storm sewer, water, and paving of two lanes of South 60<sup>th</sup> Street from Grand Avenue to Mills Civic Parkway, with Phase 2 being on the north end from Pheasant Ridge Drive to Mills Civic Parkway. Phase 2 is anticipated to be completed by December 1, 2017.

**OUTSTANDING ISSUES:**

None.

**RECOMMENDATION:**

- City Council Adopt:
- Resolution Ordering Construction of the South 60th Street Improvements Phase 2 – Pheasant Ridge Drive to Mills Civic Parkway.
  - Fixing 2:00 p.m. on Wednesday, December 7, 2016, as the time and date for project Bid Letting.
  - Ordering the City Clerk to publish notice of Letting and Public Hearing.

**Lead Staff Member: Duane C. Wittstock, P.E., L.S., City Engineer**

**STAFF REVIEWS**

Department Director	Duane C. Wittstock, P.E., L.S., City Engineer <i>DW</i>
Appropriations/Finance	Tim Stiles, Finance Director <i>TS</i>
Legal	Richard Scieszinski, City Attorney <i>RS</i>
Agenda Acceptance	<i>RS</i>

**PUBLICATION(S) (if applicable)**

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	Public Services		
Date Reviewed	November 7, 2016		
Recommendation	Yes	No	Split

**Resolution Ordering Construction and  
Notice of Public Hearing on Plans, Specifications, Form of Contract, Estimate of Cost, and  
Directing Advertisement for Bids**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA,** that the following described public improvement:

**South 60th Street Improvements Phase 2 – Pheasant Ridge Drive to Mills Civic Parkway  
Project No. 0510-004-2015**

is hereby ordered to be constructed according to the Plans and Specifications prepared by the Engineering Division of the City of West Des Moines and now on file in the office of the City Clerk.

**BE IT FURTHER RESOLVED,** that the detailed Plans and Specifications, Form of Contract, Bid Security, and Notice to Bidders are hereby approved, subject to hearing thereon, and that the same are now on file in the office of the City Clerk for public inspection.

**BE IT FURTHER RESOLVED,** that the City Clerk is hereby directed to publish notice of hearing on the Plans and Specifications, Form of Contract, Bid Security and Estimate of Costs for said project to be held at 5:35 p.m. on Monday, December 12, 2016, with said notice published not less than four (4) days nor more than twenty (20) days prior to the date heretofore fixed.

**BE IT FURTHER RESOLVED,** that the City Clerk is hereby directed to publish Notice to Bidders for said project with publication not less than thirteen (13) days nor more than forty-five (45) days prior to the date for receiving bids. Said bids are to be filed prior to 2:00 p.m. on Wednesday, December 7, 2016.

**BE IT FURTHER RESOLVED,** that the bids received for construction of said improvements will be opened, publicly read and tabulated by the City Clerk, Deputy City Clerk, or City Clerk designee at 2:00 p.m. on Wednesday, December 7, 2016, and the results of said bids shall be considered at a meeting of this Council on Monday, December 12, 2016, at 5:35 p.m. and acted upon at said time, or such time as may then be fixed.

**PASSED AND APPROVED** this 14<sup>th</sup> day of November, 2016.

\_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

\_\_\_\_\_  
Ryan T. Jacobson, City Clerk

**South 60th Street Improvements**  
1000' North of Pheasant Ridge Drive to Mills Civic Parkway  
West Des Moines Contract No. 0510-004-2015  
Station 76+18 to Mills Civic Parkway  
(Approx. 3,054 LF)



Letting Date: December 7, 2016

ITEM NO.	ITEM CODE	ITEM	UNIT	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
<b>DIVISION 2 - EARTHWORK</b>						
2.1	2010-C-1000	CLEARING & GRUBBING	LS	1	\$ 65,000.00	\$ 65,000.00
2.2	2010-D-1000	TOPSOIL, ON SITE	CY	7,690	\$ 10.00	\$ 76,900.00
2.3	2010-E-1010	EXCAVATION, CLASS 10, ROADWAY & BORROW	CY	51,275	\$ 8.00	\$ 410,200.00
2.4	2010-E-1020	EMBANKMENT IN PLACE, CONTRACTOR FURNISH	CY	2,674	\$ 10.00	\$ 28,740.00
2.5	2010-G-1012	SUBGRADE PREPARATION, 12 IN.	SY	15,106	\$ 3.60	\$ 52,871.00
2.6	2010-H-1000	SUBGRADE TREATMENT, LIME	TON	154	\$ 300.00	\$ 46,200.00
2.7	2010-J-1100	REMOVALS, AS PER PLAN	LS	1	\$ 25,000.00	\$ 25,000.00
2.8	2010-J-2000	REMOVAL OF BOX CULVERT, CONCRETE, 4' X 3'	LS	1	\$ 20,000.00	\$ 20,000.00
2.9	2010-J-2200	REMOVAL OF CULVERT LESS THAN OR EQUAL TO 36 IN	LF	460	\$ 45.00	\$ 20,700.00
2.10	2010-J-2300	REMOVAL OF CULVERT GREATER THAN 36 IN	LF	24	\$ 60.00	\$ 1,440.00
<b>DIVISION 3 - TRENCH AND TRENCHLESS CONSTRUCTION</b>						
3.1	3010-C-1000	TRENCH FOUNDATION	TON	500	\$ 32.00	\$ 16,000.00
<b>DIVISION 4 - SEWERS AND DRAINS</b>						
4.1	4020-A-1324	STORM SEWER, TRENCHED, RCP, CLASS III, 24 IN.	LF	134	\$ 105.00	\$ 14,070.00
4.2	4020-A-1330	STORM SEWER, TRENCHED, RCP, CLASS III, 30 IN.	LF	255	\$ 115.00	\$ 29,325.00
4.3	4020-A-1336	STORM SEWER, TRENCHED, RCP, CLASS III, 36 IN.	LF	360	\$ 145.00	\$ 52,200.00
4.4	4020-A-1342	STORM SEWER, TRENCHED, RCP, CLASS III, 42 IN.	LF	456	\$ 155.00	\$ 70,680.00
4.5	4020-A-1366	STORM SEWER, TRENCHED, RCP, CLASS III, 66 IN.	LF	203	\$ 425.00	\$ 86,275.00
4.6	4020-A-1384	STORM SEWER, TRENCHED, RCP, CLASS III, 84 IN.	LF	56	\$ 730.00	\$ 42,340.00
4.7	4020-A-1390	STORM SEWER, TRENCHED, RCP, CLASS III, 90 IN.	LF	417	\$ 845.00	\$ 352,365.00
4.8	4020-A-1515	STORM SEWER, TRENCHED, RCP, CLASS V, 15 IN.	LF	1,388	\$ 70.00	\$ 97,020.00
4.9	4020-A-1518	STORM SEWER, TRENCHED, RCP, CLASS V, 18 IN.	LF	338	\$ 85.00	\$ 28,730.00
4.10	4030-B-1324	PIPE APRON, CONCRETE, 24 IN.	EA	1	\$ 2,000.00	\$ 2,000.00
4.11	4030-B-1330	PIPE APRON, CONCRETE, 30 IN.	EA	1	\$ 2,400.00	\$ 2,400.00
4.12	4030-B-1366	PIPE APRON, CONCRETE, 66 IN.	EA	1	\$ 4,500.00	\$ 4,500.00
4.13	4030-B-1384	PIPE APRON, CONCRETE, 84 IN.	EA	1	\$ 7,500.00	\$ 7,500.00
4.14	4030-B-1390	PIPE APRON, CONCRETE, 90 IN.	EA	1	\$ 9,000.00	\$ 9,000.00
4.15	SPECIAL	BEND, STORM SEWER, RCP, 18 IN.	EA	1	\$ 500.00	\$ 500.00
4.16	SPECIAL	BEND, STORM SEWER, RCP, 66 IN.	EA	1	\$ 1,200.00	\$ 1,200.00
4.17	SPECIAL	BEND, STORM SEWER, RCP, 90 IN.	EA	11	\$ 1,500.00	\$ 16,500.00
4.18	SPECIAL	INCREASER, STORM SEWER, RCP, 84" TO 90"	EA	1	\$ 1,500.00	\$ 1,500.00
4.19	SPECIAL	FIELD TILE REPAIR AND FITTINGS, PVC, UNSPECIFIED DIA.	LF	500	\$ 20.00	\$ 10,000.00
4.20	4040-A-1006	SUBDRAIN, 6" PVC, TYPE A	LF	3,667	\$ 15.00	\$ 55,005.00
4.21	4040-A-3006	SUBDRAIN, 6" PVC, BACKSLOPE	LF	1,275	\$ 20.00	\$ 25,500.00
4.22	4040-C-1000	SUBDRAIN CLEANOUT, TYPE A-1	EA	9	\$ 550.00	\$ 4,950.00
4.23	4040-D-1000	SUBDRAIN OUTLET, CMP	EA	3	\$ 600.00	\$ 1,800.00
4.24	4040-D-1010	SUBDRAIN CONNECTION TO INTAKE OR STORM SEWER	EA	39	\$ 450.00	\$ 17,550.00
4.25	4060-A-1000	VIDEO INSPECTION OF STORM SEWER AND CULVERTS	LS	1	\$ 15,000.00	\$ 15,000.00
<b>DIVISION 5 - WATER MAIN AND APPURTENANCES</b>						
5.1	5010-A-1016	WATER MAIN, TRENCHED, UNRESTRAINED JOINT, PVC C905, DR18, 16 IN.	LF	2,620	\$ 65.00	\$ 170,300.00
5.2	5010-C-2000	WATER MAIN FITTINGS	LB	356	\$ 10.00	\$ 3,560.00
5.3	5020-A-1016	VALVE, GATE, 16 IN.	EA	4	\$ 6,500.00	\$ 26,000.00
5.4	5020-C-1000	FIRE HYDRANT ASSEMBLY	EA	7	\$ 42,000.00	\$ 294,000.00
5.5	5020-C-2000	RELOCATE FIRE HYDRANT ASSEMBLY	EA	1	\$ 4,500.00	\$ 4,500.00
<b>DIVISION 6 - STRUCTURES FOR SANITARY AND STORM SEWER</b>						
6.1	6010-A-1684	MANHOLE, STORM SEWER, SW-404, 84 IN.	EA	1	\$ 12,000.00	\$ 12,000.00
6.2	6010-B-1501	INTAKE, SINGLE GRATE, SW-501	EA	15	\$ 2,700.00	\$ 40,500.00
6.3	6010-B-1503	INTAKE, SINGLE GRATE WITH MANHOLE, SW-503	EA	8	\$ 4,500.00	\$ 36,000.00
6.4	6010-B-1503B	INTAKE, SINGLE GRATE WITH MANHOLE, SW-503 MOD2 (84 IN.)	EA	3	\$ 4,900.00	\$ 14,700.00
6.5	6010-B-1505	INTAKE, DOUBLE GRATE, SW-505	EA	3	\$ 4,400.00	\$ 13,200.00
6.6	6010-B-1506	INTAKE, DOUBLE GRATE WITH MANHOLE, SW-506	EA	3	\$ 6,700.00	\$ 20,100.00
6.7	6010-B-1512	INTAKE, CIRCULAR AREA, SW-512, 24 IN.	EA	1	\$ 2,000.00	\$ 2,000.00
6.8	6010-B-1513	INTAKE, OPEN-SIDED AREA, SW-513, 4' X 4'	EA	1	\$ 4,000.00	\$ 4,000.00
6.9	6010-B-1513	INTAKE, OPEN-SIDED AREA, SW-513, 7' X 7'	EA	1	\$ 6,500.00	\$ 6,500.00
6.10	SPECIAL	CONNECTION, TEE SECTION, 90" X 30"	EA	1	\$ 2,300.00	\$ 2,300.00
6.11	6010-E-2000	MANHOLE ADJUSTMENT, STORM, MINOR	EA	3	\$ 1,500.00	\$ 4,500.00
6.12	6010-F-3000	INTAKE ADJUSTMENT, MAJOR	EA	1	\$ 2,000.00	\$ 2,000.00
6.13	6010-F-1000	MANHOLE ADJUSTMENT, SANITARY, MAJOR	EA	4	\$ 3,200.00	\$ 12,800.00
6.14	6010-F-2000	MANHOLE ADJUSTMENT, STORM, MAJOR	EA	1	\$ 3,000.00	\$ 3,000.00



ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST

**South 60th Street Improvements**  
 1000' North of Pheasant Ridge Drive to Mills Civic Parkway  
 West Des Moines Contract No. 0510-004-2015  
 Station 76+18 to Mills Civic Parkway  
 (Approx. 3,054 LF)



Letting Date: December 7, 2016

ITEM NO.	ITEM CODE	ITEM	UNIT	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
<b>DIVISION 7 - STREETS AND RELATED WORK</b>						
7.1	7010-A-2100	PAVEMENT, REINFORCED PCC, CLASS C-SUD, 10 IN.	SY	13,770	\$ 80.00	\$ 1,101,600.00
7.2	7010-G-2000	CONCRETE MEDIAN, DOWELLED	SY	433	\$ 150.00	\$ 64,950.00
7.3	7010-I-1000	PCC PAVEMENT SAMPLES AND TESTING	LS	1	\$ 5,000.00	\$ 5,000.00
7.4	7010-J-2000	GRANULAR SURFACING	TON	410	\$ 25.00	\$ 10,250.00
7.5	7030-A-1010	REMOVAL OF SIDEWALK, SHARED USE PATH OR DRIVEWAY	SY	395	\$ 10.00	\$ 3,951.11
7.6	7030-C-1006	SHARED USE PATH, REINFORCED PCC, 6 IN.	SY	3,366	\$ 40.00	\$ 134,640.00
7.7	7030-G-1000	DETECTABLE WARNINGS	SF	28	\$ 40.00	\$ 1,120.00
7.8	7030-H-1060	DRIVEWAY, PAVED, PCC, 6 IN.	SY	1,492	\$ 47.00	\$ 70,124.00
7.9	7040-H-1000	PAVEMENT REMOVAL	SY	541	\$ 8.00	\$ 4,328.89
7.10	SPECIAL	TEMPORARY GRANULAR SURFACING	TON	1,270	\$ 40.00	\$ 50,800.00
<b>DIVISION 8 - TRAFFIC SIGNALS AND TRAFFIC CONTROL</b>						
8.1	SPECIAL	TRAFFIC CONTROL	LS	1	\$ 100,000.00	\$ 100,000.00
<b>DIVISION 9 - SITE WORK AND LANDSCAPING</b>						
9.1	9010-B-1100	HYDRAULIC SEEDING, FERT. & MULCH., TYPE 1 (PERM. LAWN MIX.)	ACRE	7	\$ 2,800.00	\$ 19,600.00
9.2	9010-B-1200	HYDRAULIC SEEDING, FERT. & MULCH., TYPE 2 (PERM. COOL SEASON MIX.)	ACRE	3	\$ 2,500.00	\$ 7,500.00
9.3	9010-B-1400	MIX.)	ACRE	10	\$ 1,500.00	\$ 15,000.00
9.4	9040-A-2000	STORMWATER POLLUTION PREVENTION PLAN (SWPPP), PREP. & MANAGEMENT	LS	1	\$ 7,500.00	\$ 7,500.00
9.5	9040-D-1012	FILTER SOCKS, 12 IN., INSTALLATION	LF	1,799	\$ 3.00	\$ 5,397.00
9.6	9040-D-2012	FILTER SOCKS, 12 IN., MAINTENANCE & REMOVAL	LF	1,943	\$ 1.00	\$ 1,943.00
9.7	9040-J-3020	RIP RAP, CLASS E	TON	1,019	\$ 80.00	\$ 81,140.00
9.8	9040-N-1000	SILT FENCE, INSTALLATION	LF	4,899	\$ 2.00	\$ 9,798.00
9.9	9040-N-2000	SILT FENCE, REMOVAL OF SEDIMENT	LF	5,291	\$ 0.50	\$ 2,645.50
9.10	9040-N-3000	SILT FENCE, REMOVAL OF DEVICE	LF	5,291	\$ 0.50	\$ 2,645.50
9.11	9040-Q-1000	EROSION CONTROL MULCHING, CONVENTIONAL MULCHING	ACRE	10	\$ 450.00	\$ 4,500.00
9.12	9040-T-1000	INLET PROTECTION DEVICE, INSTALLATION	EA	37	\$ 150.00	\$ 5,550.00
9.1	9070-A-1000	MODULAR BLOCK RETAINING WALL	SF	140	\$ 35.00	\$ 4,900.00
<b>DIVISION 11 - MISCELLANEOUS</b>						
11.1	11010-A-1000	CONSTRUCTION SURVEY	LS	1	\$ 40,000.00	\$ 40,000.00
11.2	11030-B-1000	PAINTED PAVEMENT MARKINGS, WATERBORNE/SOLVENT	STA	3.06	\$ 100.00	\$ 306.00
11.3	11030-C-1000	PAINTED PAVEMENT MARKINGS, DURABLE	STA	63.03	\$ 150.00	\$ 9,454.50
11.4	11030-G-1000	PAINTED SYMBOLS & LEGENDS, WATERBORNE/SOLVENT	EA	3	\$ 100.00	\$ 300.00
11.5	11030-G-2000	PAINTED SYMBOLS & LEGENDS, DURABLE	EA	3	\$ 200.00	\$ 600.00
11.6	11030-M-1000	GROOVES CUT FOR PAVEMENT MARKINGS	STA	63.03	\$ 35.00	\$ 2,206.05
11.7	11030-N-1000	GROOVES CUT FOR SYMBOLS AND LEGENDS	EA	3	\$ 200.00	\$ 600.00
11.8	11040-A-1000	MAINTENANCE OF POSTAL SERVICE	LS	1	\$ 10,000.00	\$ 10,000.00
11.9	11040-B-1000	MAINTENANCE OF SOLID WASTE COLLECTION	LS	1	\$ 10,000.00	\$ 10,000.00
11.10	11060-A-1000	CONCRETE WASHOUT	LS	1	\$ 7,500.00	\$ 7,500.00
<b>SUBTOTAL</b>						\$ 3,906,770.55
CONTINGENCY (0%)						\$ -
<b>TOTAL ESTIMATED CONSTRUCTION COSTS</b>						\$ 3,906,770.55

**BRADLEY D. HOPKEY**  
16305

I hereby certify that this engineering document was prepared by me or under my direct personal supervision and that I am a duly licensed Professional Engineer under the laws of the State of Iowa.

*Bradley D. Hopkey*

11/8/16

Professional Engineer License No. 16305

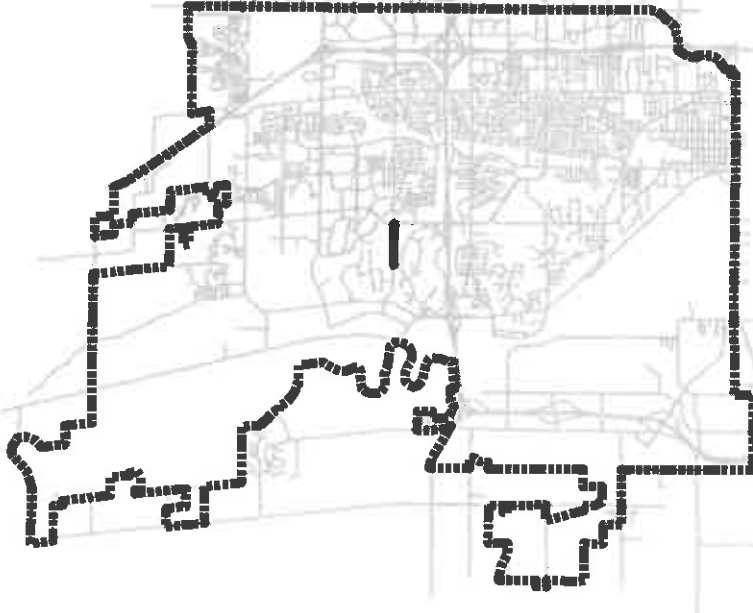
My license renewal date is NOVEMBER 11, 2018

Figure or sheets covered by this seal:

**ALL PAGES**



**VICINITY MAP**



**LEGEND**

PROJECT LOCATION 



PROJECT: **South 60th Street Improvements Phase 2**  
 LOCATION: **South 60th Street - Pheasant Ridge Drive to Mills Civic Parkway**

DRAWN BY: JDR

DATE: 11/7/2016

PROJECT: 0510-004-2015

SHT. 1 of 1

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**4(k)3**

**ITEM:**

**DATE: November 14, 2016**

Resolution – Ordering Construction  
Grand Avenue Siphon Replacement

**FINANCIAL IMPACT:**

The Engineering Estimate of Construction Cost for the Grand Avenue Siphon Replacement is \$542,594.00. Payments will be made from budgeted account no. 640.000.000.5250.490 with the ultimate funding intended to come from Sewer Fee Revenues.

**BACKGROUND:**

A Bid Letting should be scheduled for 2:00 p.m. on Wednesday, December 7, 2016, and a Public Hearing on the project should be scheduled for 5:35 p.m. on Monday, December 12, 2016. The contract would be awarded on Monday, December 12, 2016, and work will begin shortly thereafter.

The project consists of the replacement of a single-barrel sanitary sewer siphon under Walnut Creek southeast of 63<sup>rd</sup> Street & Grand Avenue in the City of Des Moines. The existing siphon was originally constructed in the 1950's and has reached the end of its useful life and in need of replacement. The replacement sewer will accommodate gravity flow and will be connected to the Wastewater Reclamation Authority's trunk sewer just east of Walnut Creek near the railroad tracks. The project is anticipated to be completed by May 15, 2017.

**OUTSTANDING ISSUES:** None.

**RECOMMENDATION:**

City Council Adopt:

- Resolution Ordering Construction of the Grand Avenue Siphon Replacement.
- Fixing 2:00 p.m. on Wednesday, December 7, 2016 as the time and date for project Bid Letting.
- Ordering the City Clerk to publish notice of Letting and Public Hearing.

**Lead Staff Member: Duane C. Wittstock, P.E., L.S., City Engineer**

**STAFF REVIEWS**

Department Director	Duane C. Wittstock, P.E., L.S., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney <b>JBW</b>
Agenda Acceptance	<b>KA</b>

**PUBLICATION(S) (if applicable)**

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	Public Services		
Date Reviewed	November 7, 2016		
Recommendation	Yes	No	Split



**Resolution Ordering Construction and  
Notice of Public Hearing on Plans, Specifications, Form of Contract, Estimate of Cost, and  
Directing Advertisement for Bids**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA,** that the following described public improvement:

**Grand Avenue Siphon Replacement  
Project No. 0510-048-2015**

is hereby ordered to be constructed according to the Plans and Specifications prepared by the Engineering Division of the City of West Des Moines and now on file in the office of the City Clerk.

**BE IT FURTHER RESOLVED,** that the detailed Plans and Specifications, Form of Contract, Bid Security, and Notice to Bidders are hereby approved, subject to hearing thereon, and that the same are now on file in the office of the City Clerk for public inspection.

**BE IT FURTHER RESOLVED,** that the City Clerk is hereby directed to publish notice of hearing on the Plans and Specifications, Form of Contract, Bid Security and Estimate of Costs for said project to be held at 5:35 p.m. on Monday, December 12, 2016 with said notice published not less than four (4) days nor more than twenty (20) days prior to the date heretofore fixed.

**BE IT FURTHER RESOLVED,** that the City Clerk is hereby directed to publish Notice to Bidders for said project with publication not less than thirteen (13) days nor more than forty-five (45) days prior to the date for receiving bids. Said bids are to be filed prior to 2:00 p.m. on Wednesday, December 7, 2016.

**BE IT FURTHER RESOLVED,** that the bids received for construction of said improvements will be opened, publicly read and tabulated by the City Clerk, Deputy City Clerk, or City Clerk designee at 2:00 p.m. on Wednesday, December 7, 2016, and the results of said bids shall be considered at a meeting of this Council on Monday, December 12, 2016, at 5:35 p.m. and acted upon at said time, or such time as may then be fixed.

**PASSED AND APPROVED** this 14th day of November, 2016.


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Steven K. Gaer, Mayor

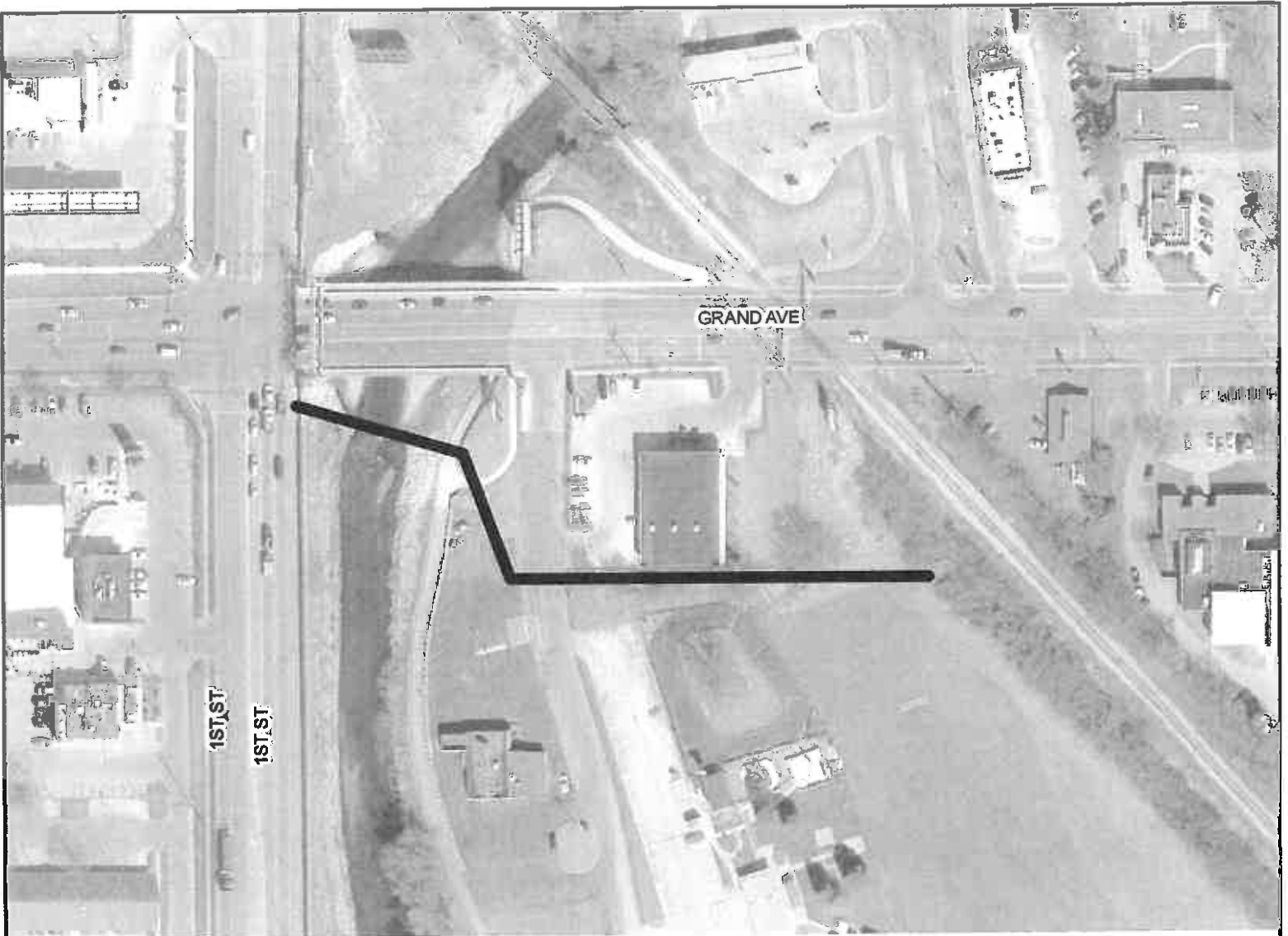
ATTEST:

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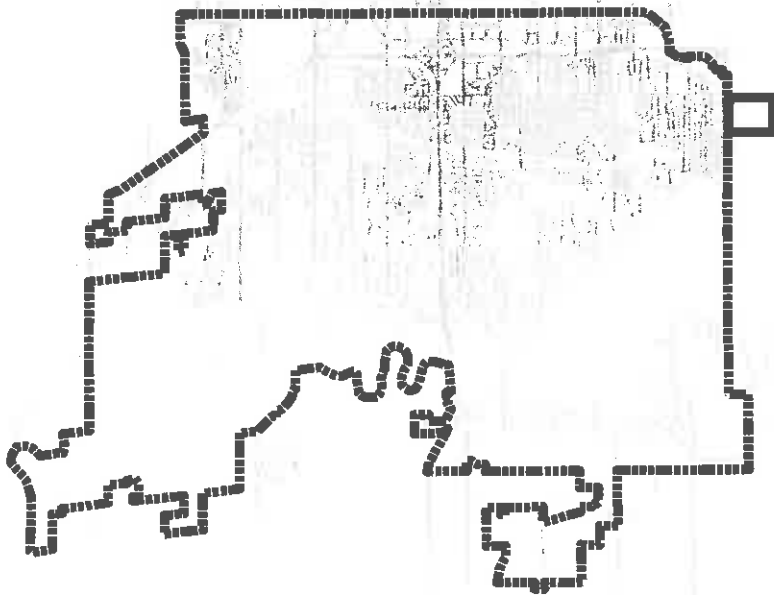
Ryan T. Jacobson, City Clerk

A	B	C	D	E	F
1	CITY OF WEST DES MOINES, IOWA				
2	GRAND AVENUE SIPHON REPLACEMENT				
3	PRELIMINARY ESTIMATE OF COST				
4	4-Nov-16				
5					
6					
7	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	EXTENDED PRICE
8					
9	1 15" Ductile Iron Sanitary Sewer In Place	LF	65	\$500.00	\$32,500.00
10	2 15" Sanitary Sewer In Place	LF	299	\$400.00	\$117,200.00
11	3 15" Sanitary Sewer Turned In Place	LF	280	\$500.00	\$140,000.00
12	4 Manhole - Type SW 303 Modified - 120"	LF	1	\$20,000.00	\$20,000.00
13	5 Manhole - Type SW 301 - 48"	EA	2	\$7,000.00	\$14,000.00
14	6 Manhole - Type SW 303 Modified - 48"	EA	1	\$7,500.00	\$7,500.00
15	7 Connection to Existing Pipe	EA	1	\$5,000.00	\$5,000.00
16	8 8" HMA Pavement	SY	450	\$90.00	\$40,500.00
17	9 9" PCC Pavement	SY	300	\$90.00	\$27,000.00
18	10 Chain Link Fence Removal and Replacement	LF	90	\$32.00	\$2,880.00
19	11 Vinyl Coated Chain Link Fence Removal and Replacement	LF	70	\$45.00	\$3,150.00
20	12 Retaining Wall Removal and Replacement	SF	350	\$20.00	\$7,000.00
21	13 Rip-Rap	TON	400	\$45.00	\$18,000.00
22	14 2" pvc Conduit	LF	220	\$30.00	\$6,600.00
23	15 Sodding	SQ	275	\$50.00	\$13,750.00
24	16 Video Inspection of Sanitary Sewer	LF	698	\$3.00	\$2,094.00
25	17 Steel Sheeting	SF	1250	\$35.00	\$44,100.00
26	18 Trail Closure Signage	LS	1	\$10,000.00	\$10,000.00
27	19 Traffic Control	LS	1	\$5,000.00	\$5,000.00
28	20 Erosion Control	LS	1	\$17,500.00	\$17,500.00
29	21 Clearing and Grubbing	LS	1	\$5,000.00	\$5,000.00
30	22 Construction Staking	LS	1	\$4,000.00	\$4,000.00
31					
32				Estimated Construction Cost:	\$542,594.00
33					
34					
35	I hereby certify that this engineering document was prepared by me				
36	or under my direct personal supervision and that I am a duly licensed				
37	Professional Engineer under the laws of the State of Iowa.				
38	Signed:			Date:	
39				December 31, 2016	
40					
41					
42	H. Robert Venestra Jr., P.E.				
43	Iowa License No. 9037				
44	My License Renewal Date is December 31, 2016				
45					
46	Parts covered by this seal:				
47					





**VICINITY MAP**



**LEGEND**

PROJECT LOCATION 



PROJECT:

**Grand Avenue Siphon Replacement**

LOCATION:

**1st Street & Grand Avenue**

DRAWN BY: JDR

DATE: 11/07/2016

PROJECT: 0510-048-2015

SHT. 1 of 1

CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION

DATE: November 14, 2016

**ITEM:**

Resolution - Accepting Work  
Intersection Improvements at 92nd Street & University Avenue and  
Jordan Creek Parkway & Westown Parkway  
Sternquist Construction

**FINANCIAL IMPACT:**

The total construction cost for the Intersection Improvements at 92nd Street & University Avenue and Jordan Creek Parkway & Westown Parkway was \$291,739.80 which was paid from budgeted Account No. 500.000.000.5250.490. The original cost of the project was \$306,942.55. There were two (2) Change Orders on the project that totaled (-\$15,202.75).

**BACKGROUND:**

Sternquist Construction was working under an agreement dated July 27, 2015, for construction services for the Intersection Improvements at 92nd Street & University Avenue and Jordan Creek Parkway & Westown Parkway. The improvement at 92nd Street & University Avenue included widening the northbound approach to accommodate a northbound right-turn lane. The improvement at Jordan Creek Parkway & Westown Parkway lengthened the westbound left-turn lane to provide more stacking capacity.

This action accepts the public improvements and authorizes staff to pay the retainage no sooner than 30 days.

**OUTSTANDING ISSUES:**

None.

**RECOMMENDATION:**

City Council Adopt:

- Resolution Accepting Work

Lead Staff Member: Duane C. Wittstock, P.E., L.S., City Engineer

**STAFF REVIEWS**

Department Director	Duane C. Wittstock, P.E., L.S., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

<b><u>PUBLICATION(S)</u></b> (if applicable)		<b><u>SUBCOMMITTEE REVIEW</u></b> (if applicable)			
Published In		Committee	Public Services		
Dates(s) Published		Date Reviewed	November 7, 2016		
		Recommendation	Yes	No	Split

**Resolution Accepting Work**

**WHEREAS**, on July 27, 2015, the City Council entered into a contract with Sternquist Construction of Indianola, Iowa for the following described public improvement:

**Intersection Improvements at 92nd Street & University Avenue and  
Jordan Creek Parkway & Westown Parkway  
Project No. 0510-043-2014 and 0510-045-2014**

And,

**WHEREAS**, said contractor has substantially completed the construction of said improvement in accordance with plans and specifications as shown by the report of the City Engineer filed with the City Clerk on November 14, 2016.

**WHEREAS**, the City has retained 5% of the construction costs,

Therefore

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA**, that said report of the City Engineer is hereby approved and said public improvement is accepted as having been substantially completed in accordance with plans and specifications and the total final construction cost of said improvement is \$291,739.80 as shown in said report, and that the Finance Director is hereby authorized to make payment to the Contractor in the amount of \$14,586.99, which includes retainage for the project, no sooner than 30 days subject to the Contractor satisfying all the conditions of the contract.

**PASSED AND APPROVED** this 14th day of November, 2016.

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Steven K. Gaer, Mayor

ATTEST:

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Ryan T. Jacobson  
City Clerk



Department of Engineering Services  
 4200 Mills Civic Pkwy, Ste 2D, PO Box 65320  
 West Des Moines, IA 50265-0320  
 (515) 222-3620 Fax (515) 273-0602

**PAY REQUEST**

Contractor: **Stemquist Construction**  
**1110 North 14th Street**  
**Indianola, IA 50125**

Project Title	Intersection Improvements - 82nd Street & University Avenue and Jordan Creek Parkway & Westown Parkway	
WDM Project File Number	0510-043-2014 and 0510-045-2014	
Purchase Order Number	2016-00000057	
Orig. Contract Amount & Date	\$306,942.55	07/27/15
Estimated Completion Date	10/30/15	
Pay Period	11/16/15 to 8/5/16	
Pay Request Number	4	
Date	08/09/16	

BID ITEMS							
Item No.	Description	Unit	Est. Qty	Unit Price	Extended Price	Quantity Completed	Value Completed
<b>DIVISION 1 - GENERAL</b>							
1.1	Mobilization	LS	1	\$15,000.00	\$15,000.00	1.00	\$15,000.00
<b>DIVISION 2 - EARTHWORK, SUBGRADE, AND SUBBASE</b>							
2.1	Topsoil, On-Site	CY	205	\$27.00	\$5,535.00	205.00	\$5,535.00
2.2	Excavation, Class 10	CY	951	\$19.00	\$18,069.00	951.00	\$18,069.00
2.3	Subgrade Preparation	SY	630	\$15.00	\$9,450.00	630.00	\$9,450.00
<b>DIVISION 4 - SEWER&amp;</b>							
4.1	Storm Sewer, Trenched, RCP, 15"	LF	21	\$245.00	\$5,145.00	21.00	\$5,145.00
<b>DIVISION 5 - WATERMAIN</b>							
5.1	Fire Hydrant Adjustment	EA	2	\$2,800.00	\$5,600.00		\$0.00
5.2	Water Valve Adjustment	EA	6	\$1,200.00	\$7,200.00	6.00	\$7,200.00
<b>DIVISION 6 - STORM/SANITARY STRUCTURES</b>							
6.1	Intake, SW-501	EA	1	\$8,000.00	\$8,000.00	1.00	\$8,000.00
6.2	Intake, SW-501, Modified Top Only	EA	1	\$6,000.00	\$6,000.00	1.00	\$6,000.00
6.3	Manhole Adjustment, Major	EA	1	\$4,000.00	\$4,000.00		\$0.00
<b>DIVISION 7 - STREETS AND RELATED WORK</b>							
7.1	Pavement, PCC, Class C, 8.0"	SY	248	\$80.00	\$19,840.00		\$0.00
7.2	Pavement, PCC, Class C, 9.5"	SY	1,348	\$87.00	\$117,102.00	1,617.80	\$140,748.80
7.3	Pavement Removal	SY	505	\$40.00	\$20,200.00	505.00	\$20,200.00
<b>DIVISION 8 - TRAFFIC SIGNALS AND TRAFFIC CONTROL</b>							
8.1	Traffic Signalization	LS	1	\$6,500.00	\$6,500.00	1.00	\$6,500.00
<b>DIVISION 9 - SITE WORK AND LANDSCAPING</b>							
9.1	Conventional Seeding, Seeding, Fertilizing, and Mulching	AC	0.507	\$13,000.00	\$6,591.00	0.46	\$5,941.00
9.2	Sodding	SQ	28	\$280.00	\$7,840.00	25.30	\$7,084.00
9.3	Filter Sock, 12"	LF	1,550	\$4.00	\$6,200.00	730.00	\$2,920.00
9.4	Filter Socks, Removal	LF	1,550	\$2.00	\$3,100.00		\$0.00
9.5	Inlet Protection Device	EA	2	\$500.00	\$1,000.00	3.00	\$1,500.00
9.6	Silt Fence	LF	870	\$5.00	\$4,350.00	370.00	\$1,850.00
9.7	Removal of Silt Fence	LF	870	\$4.00	\$3,480.00		\$0.00
<b>DIVISION 11 - CONSTRUCTION SURVEY</b>							
11.1	Construction Survey	LS	1	\$10,000.00	\$10,000.00	1.00	\$10,000.00
11.2	Painted Pavement Markings, Waterborne/Solvent	STA	4.77	\$215.00	\$1,025.55	4.68	\$1,006.20
11.3	Painter Symbols and Legends, Durable	EA	3	\$340.00	\$1,020.00	3.00	\$1,020.00
11.4	Painter Symbols and Legends, Removed	EA	3	\$165.00	\$495.00	3.00	\$495.00
11.5	Traffic Control	LS	1	\$14,000.00	\$14,000.00	1.00	\$14,000.00
Items Below By Change Order							
CO1.1	Fire Hydrant Relocation	EA	1	\$3,400.00	\$3,400.00	1.00	\$3,400.00
CO1.2	Overseeding	AC	0.44	\$400.00	\$176.00	0.44	\$176.00
CO1.3	Emergency Mobilization	EA	1	\$500.00	\$500.00	1.00	\$500.00
<b>TOTAL</b>					<b>\$311,018.55</b>		<b>\$291,739.80</b>

MATERIALS STORED SUMMARY						
			Description	# of Units	Unit Price	Extended Cost
			None			\$0.00
						\$0.00
<b>TOTAL</b>						\$0.00

PAY REQUEST SUMMARY			
		Total Approved	Total Completed
Contract Price		\$306,942.55	\$291,739.80
Approved Change Order 1		(\$1,724.00)	
Approved Change Order 2		(\$13,478.75)	
Revised Contract Price		\$291,739.80	\$291,739.80
Materials Stored			\$0.00
Retainage (5%)			\$14,588.99
Total Earned Less Retainage			\$277,152.81
Total Previously Approved (list each)	Pay Request 1	\$81,120.50	
	Pay Request 2	\$36,547.45	
	Pay Request 3	\$125,305.00	
	Pay Request 4	\$6,930.00	
	Pay Request 5	\$14,537.65	
	Pay Request 6		
	Total Previously Approved		\$286,440.61
Amount Due This Request			<b>\$10,712.20</b>
Percent Complete			100%
Percent of Contract Period Utilized			100%

The amount **\$10,712.20** is recommended for approval for payment in accordance with the terms of the Contract.

Contractor: Stemquist Construction	Recommended By: Kirkham Michael	Checked By: <i>[Signature]</i>
Signature: <i>[Signature]</i>	Signature: <i>[Signature]</i>	Signature: <i>[Signature]</i>
Name: BRAD FREEMAN	Name: Greg Cabalka, P.E.	Name: Duane Wittstock, P.E., L.S.
Title: CIM	Title: Principal Engineer	Title: City Engineer
Date: 8-15-16	Date: 8-11-16	Date:

# Location Map



**92nd & University (Northbound Right-Turn Lane)  
and Jordan Creek & Westown (Lengthening Westbound Left-Turn Lane)**  
Kirkham Michael Associates  
0510-043-2014 and 0510-045-2014



**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**DATE: November 14, 2016**

**ITEM:**

Resolution - Accepting Work  
Veterans Parkway Phase 4 – SE Pine Avenue Trail  
Veterans Parkway to SE Soteria Avenue  
IDOT No. STP-U-8260 (633) - 70-77

**FINANCIAL IMPACT:**

The total construction cost for the Veterans Parkway Phase 4 – SE Pine Avenue Trail Veterans Parkway to SE Soteria Avenue was \$354,627.00 which was paid from budgeted Account No. 500.000.000.5250.490. The original cost of the project was \$373,500.00. There was one (1) Change Order on the project that totaled (\$-18,873.00).

**BACKGROUND:**

This project is the last of four phases of construction of Veterans Parkway. A new trail was extended from Veterans Parkway to the Great Western Trail near the intersection of SE Pine Avenue and SE Soteria Avenue. Work also includes construction of a trailhead and parking area in the southwest corner of the intersection.

This action accepts the public improvements and authorizes staff to pay the retainage no sooner than 30 days.

**OUTSTANDING ISSUES:**

None.

**RECOMMENDATION:**

City Council Adopt:

- Resolution Accepting Work

**Lead Staff Member: Duane C. Wittstock, P.E., L.S., City Engineer**

**STAFF REVIEWS**

Department Director	Duane C. Wittstock, P.E., L.S., City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

*new*

PUBLICATION(S) (if applicable)		SUBCOMMITTEE REVIEW (if applicable)		
Published In		Committee	Public Services	
Dates(s) Published		Date Reviewed	November 7, 2016	
		Recommendation	Yes	No Split

**Resolution Accepting Work**

**WHEREAS**, on May 31, 2016, the City Council entered into a contract with Elder Corporation of Des Moines Iowa, for the following described public improvement:

**Veterans Parkway Phase 4 – SE Pine Avenue Trail  
Veterans Parkway to SE Soteria Avenue  
0510-021-2013**

And,

**WHEREAS**, said contractor has substantially completed the construction of said improvement in accordance with plans and specifications as shown by the report of the City Engineer filed with the City Clerk on November 14, 2016.

**WHEREAS**, the City has retained 5% of the construction costs,

Therefore

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA**, that said report of the City Engineer is hereby approved and said public improvement is accepted as having been substantially completed in accordance with plans and specifications and the total final construction cost of said improvement is \$354,627.00 as shown in said report, and that the Finance Director is hereby authorized to make payment to the Contractor in the amount of \$10,638.81, which includes retainage for the project, no sooner than 30 days subject to the Contractor satisfying all the conditions of the contract.

**PASSED AND APPROVED** this 14th day of November, 2016.

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Steven K. Gaer, Mayor

ATTEST:

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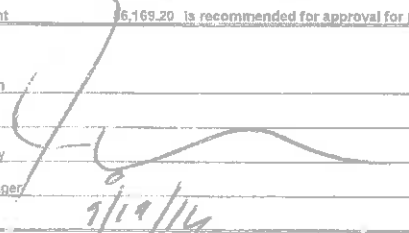


Ryan T. Jacobson  
City Clerk



MATERIALS STORED SUMMARY				
	Description	# of Units	Unit Price	Extended Cost
	None			\$0.00
				\$0.00
TOTAL				\$0.00

PAY REQUEST SUMMARY		
	Total Approved	Total Completed
Contract Price	\$373,500.00	\$354,627.00
Approved Change Order 1	-\$16,673.00	
Approved Change Order 2		
Approved Change Order 3		
Revised Contract Price	\$354,627.00	\$354,627.00
	Materials Stored	\$0.00
	Retainage (3% of first \$1.0 M)	\$10,638.81
	Total Earned Less Retainage	\$343,988.19
Total Previously Approved (list each)	Pay Request 1	\$119,817.41
	Pay Request 2	\$187,361.29
	Pay Request 3	\$21,040.76
	Pay Request 4	\$9,569.53
	Pay Request 5	
	Pay Request 6	
	Pay Request 7	
	Pay Request 8	
	Pay Request 9	
	Pay Request 10	
	Total Previously Approved	\$337,818.99
	Amount Due This Request	\$6,169.20
	Percent Complete	100%
	Percent of Contract Period Utilized	43%

The amount \$6,169.20 is recommended for approval for payment in accordance with the terms of the Contract

Contractor: Elder Corporation	Recommended By: H.R. Green, Inc.	Checked By: DWS
Signature: 	Signature: 	Signature: 
Name: Jim Mackey	Name: David J. McErmond, P.E.	Name: Duane Wittstock, P.E., L.S.
Title: Project Manager	Title: Project Manager	Title: City Engineer
Date: 9/19/14	Date: 9/19/14	Date:

SE ARMY POST RD

SE WILLOW CREEK DR

VETERANS PKWY

SE SOTERIA AVE

SE PINE AVE

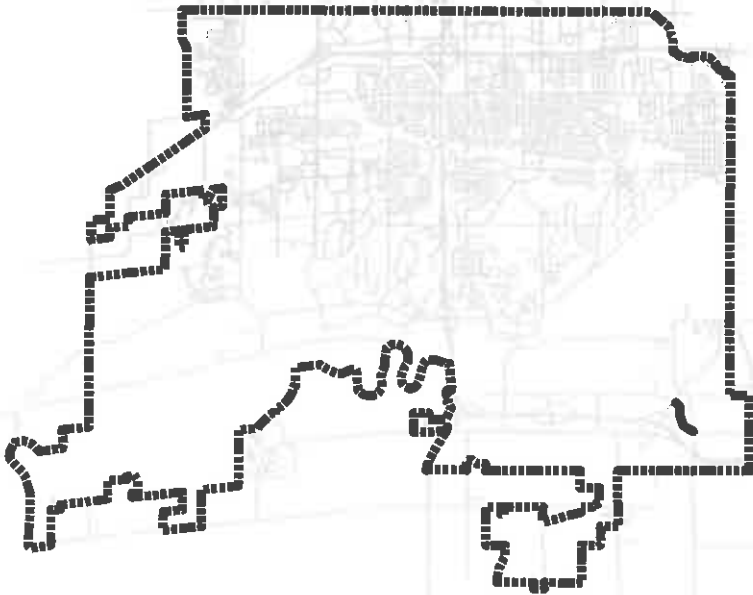
RAMP

IA 5

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### VICINITY MAP



### LEGEND

PROJECT LOCATION 



PROJECT:

**Southwest Connector - Phase 4**

LOCATION:

**Veterans Parkway to SE Soteria Avenue**

DRAWN BY: JDR

DATE: 11/7/2016

PROJECT: 0510-021-2013

SHT. 1 of 1

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**DATE: November 14, 2016**

**ITEM:**

Resolution – Approving Professional Services Agreement  
Public Safety Station 21 HVAC Improvements – Commissioning  
System Works, LLC

**FINANCIAL IMPACT:**

The cost of the Professional Services Agreement associated with the commissioning and testing/balancing of the HVAC system for Public Safety Station 21 (3421 Ashworth Road) is anticipated not to exceed \$32,540.00 for Basic Services and \$13,260.00 for Resident Consultant Services. Should the cost for the professional services be projected to exceed the amounts set forth in the contract, staff would not authorize such expenditures without further approval by the City Council. All work will be billed on an hourly basis using the established hourly fee structure as set forth in the contract. All costs for these services can be paid from budgeted account no. 500.000.000.5250.495 with the ultimate funding intended to come from General Obligation Bonds.

**BACKGROUND:**

Approval of this action authorizes System Works, LLC to perform commissioning services and testing/balancing in conjunction with the design and construction activities for replacement and upgrades to the HVAC systems for Public Safety Station 21. HVAC commissioning is a quality-focused process that involves the verification that all systems achieve the owner’s project requirements as intended by the building owner and as designed by the engineer.

The Engineering Services Department retains professional consultants based on their past work experience, qualifications of their staff, familiarity with the project, manpower availability, and past performance. Once a firm has been selected based on the above criteria, City staff then negotiates a fee with the consultant for performing the desired scope of services. City staff attempts, whenever feasible, to distribute professional services work on an equitable basis to qualified firms maintaining local metropolitan area offices who have expressed interest in working for the City of West Des Moines.

**OUTSTANDING ISSUES:** None.

**RECOMMENDATION:**

City Council Adopt:  
- Resolution Approving Professional Services Agreement.

**Lead Staff Member: Duane C. Wittstock, P.E., L.S., City Engineer**

**STAFF REVIEWS**

Department Director	Duane C. Wittstock, P.E., L.S. <i>DCW</i> / City Engineer
Appropriations/Finance	Tim Stiles, Finance Director <i>TS</i>
Legal	Richard Scieszinski, City Attorney <i>RS</i>
Agenda Acceptance	<i>RW</i>

**PUBLICATION(S) (if applicable)**

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	Public Services		
Date Reviewed	November 7, 2016		
Recommendation	Yes	No	Split

**Resolution Approving Professional Services Agreement**

**WHEREAS**, funding is available for the following described public project:

**Public Safety Station 21 HVAC Improvements - Commissioning  
Project No. 0510-058-2015**

and,

**WHEREAS**, to verify that all of the HVAC systems achieve the owner’s project requirements as intended by the building owner and as designed by the engineer for the public improvement, an independent commissioning and testing agent is required; and,

**WHEREAS**, the Engineering Services Department staff have recommended that the commissioning and testing/balancing services be provided by System Works, LLC; and,

**WHEREAS**, the Engineering Services Department has obtained a written proposal from System Works, LLC, to perform the work requested for Public Safety Station 21, which estimates the following cost to the City of West Des Moines;

<b>Basic Services of the Consultant</b>	<b>\$32,540.00</b>
<b>Resident Services of the Consultant</b>	<b><u>\$13,260.00</u></b>
<b>TOTAL</b>	<b>\$45,800.00</b>

therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA**, that System Works, LLC is hereby directed to perform the work for the above named public improvement project.

**BE IT FURTHER RESOLVED**, that the City Clerk is authorized and directed to enter into an agreement with System Works, LLC for the cost indicated above as payment by the City of West Des Moines for the services indicated.

**PASSED AND APPROVED** this 14<sup>th</sup> day of November, 2016.

\_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

\_\_\_\_\_  
Ryan T. Jacobson, City Clerk

## AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This Agreement is made and entered into this 14th day of November, 2016, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and SystemWorks LLC, (Fed. I.D. 86-1070223), a professional corporation incorporated and licensed under the laws of the State of Iowa, party of the second part, hereinafter referred to as "Consultant" as follows:

THE CITY HEREBY AGREES TO RETAIN THE CONSULTANT FOR THE PROJECT AS DESCRIBED IN THIS AGREEMENT AND CONSULTANT AGREES TO PERFORM THE PROFESSIONAL SERVICES AND FURNISH THE NECESSARY DOCUMENTATION FOR THE PROJECT AS GENERALLY DESCRIBED IN THIS AGREEMENT.

### 1. SCOPE OF SERVICES

Services provided under this Agreement for Public Safety Station 21 HVAC Improvements – Commissioning (Project No. 0510-058-2015) shall be as further described in Attachment 1, Scope of Services.

### 2. SCHEDULE

The schedule of the professional services to be performed shall conform to the Schedule set forth in Attachment 2. Any deviations from the Schedule shall be approved by the authorized City representative. The City agrees that the Consultant is not responsible for delays arising from a change in the scope of services, a change in the scale of the Project or delays resulting from causes not directly or indirectly related to the actions of the Consultant.

### 3. COMPENSATION

A. In consideration of the professional services provided herein, the City agrees to pay the Consultant the following sum NOT-TO-EXCEED, including any authorized reimbursable expenses, pursuant to the Schedule of Fees set forth in Attachment 3.

I. Basic Services of the Consultant	\$32,540.00
II. Resident Consultant Services	\$13,260.00

B. The Consultant shall invoice the City monthly for services, any reimbursable expenses and any approved amendments to this Agreement, based upon services actually completed at the time of the invoice. Final payment shall be due and payable within 30 days of the City's acceptance of Consultant's submission of final deliverables in accordance with the Scope of Services.

C. In consideration of the compensation paid to the Consultant, the Consultant agrees to perform all professional services to the satisfaction of the City by performing the professional services in a manner consistent with that degree of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar circumstances. If the performance of this Agreement involves the services of others or the furnishing of equipment, supplies, or materials, the Consultant agrees to pay for the same in full.

### 4. INSURANCE

A. Consultant understands and agrees that Consultant shall have no right of coverage under any and all existing or future City comprehensive, self or personal injury policies. Consultant shall provide insurance coverage for and on behalf of Consultant that will sufficiently protect Consultant or Consultant representative(s) in connection with the professional services which are to be provided by Consultant pursuant to this Agreement, including protection from claims for bodily injury, death, property damage, and lost income. Consultant shall provide worker's compensation



insurance coverage for Consultant and all Consultant's personnel. Consultant shall file applicable insurance certificates with the City, and shall also provide evidence of the following additional coverage.

- B. The Consultant shall provide evidence of comprehensive general liability coverage and contractual liability insurance by an insurance company licensed to do business in the State of Iowa in the limits of at least \$1,000,000 each personal injury accident and/or death; \$1,000,000 general aggregate personal injury and/or death; and \$1,000,000 for each property damage accident. The evidence shall designate the City as an additional insured, and that it cannot be canceled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.
- C. The Consultant shall also provide evidence of automobile liability coverage in the limits of at least \$1,000,000 bodily injury and property damage combined. The evidence shall designate the City as an additional insured, and that it cannot be cancelled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.
- D. The Consultant shall provide evidence of professional liability insurance, by an insurance company licensed to do business in the State of Iowa, in the limit of \$1,000,000 for claims arising out of the professional liability of the Consultant. Consultant shall provide City written notice within five (5) days by registered mail, return receipt requested of the cancellation or material alteration of the professional liability policy.
- E. Failure of Consultant to maintain any of the insurance coverages set forth above shall constitute a material breach of this Agreement.

5. NOTICE

Any notice to the parties required under this agreement shall be in writing, delivered to the person designated below, by United States mail or in hand delivery, at the indicated address unless otherwise designated in writing.

FOR THE CITY:

Name: City of West Des Moines  
Attn: Ryan T. Jacobson, City Clerk  
Address: 4200 Mills Civic Parkway  
City, State: West Des Moines, IA 50265-0320

FOR THE CONSULTANT:

Name: SystemWorks LLC  
Attn: Garry Caldbeck, Principal  
Address: 409 Fifth Street  
City, State: West Des Moines, IA 50265

6. GENERAL COMPLIANCE

In the conduct of the professional services contemplated hereunder, the Consultant shall comply with applicable state, federal, and local law, rules, and regulations, technical standards, or specifications issued by the City. Consultant must qualify for and obtain any required licenses prior to commencement of work, including any professional licenses necessary to perform work within the State of Iowa.

7. STANDARD OF CARE

Services provided by the Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

8. INDEPENDENT CONTRACTOR

Consultant understands and agrees that the Consultant and Consultant's employees and representatives are not City employees. Consultant shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, or any other form of compensation or benefit

to Consultant or Consultant's employees, representatives or other personnel performing the professional services specified herein, whether it be of a direct or indirect nature. Further, it is expressly understood and agreed that for such purposes neither Consultant nor Consultant's employees, representatives or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement, or any other benefits whatsoever.

9. NON-DISCRIMINATION

Consultant will not discriminate against any employee of applicant for employment because of race, color, sex, national origin, religion, age, handicap, or veteran status. Consultant will, where appropriate or required, take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, sex, or national origin, religion, age, handicap, or veteran status. Consultant will cooperate with the City in using Consultant's best efforts to ensure that Disadvantaged Business Enterprises are afforded the maximum opportunity to compete for subcontracts of work under this Agreement.

10. HOLD HARMLESS

Consultant agrees to indemnify and hold harmless the City, its officers, agents, and employees from any and all claims, settlements and judgments, to include all reasonable investigative fees, attorney's fees, and court costs for any damage or loss which is due to or arises from a breach of this Agreement, or from negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its sub consultants or anyone for whom Consultant is legally liable.

11. ASSIGNMENT

Consultant shall not assign or otherwise transfer this Agreement or any right or obligations therein without first receiving prior written consent of the City.

12. APPROPRIATION OF FUNDS

The funds appropriated for this Agreement are equal to or exceed the compensation to be paid to Consultant. The City's continuing obligations under this Agreement may be subject to appropriation of funding by the City Council. In the event that sufficient funding is not appropriated in whole or in part for continued performance of the City's obligations under this Agreement, or if appropriated funding is not expended due to City spending limitations, the City may terminate this Agreement without further compensation to the Consultant. To the greatest extent allowed by law, the City shall compensate Consultant as provided in Section 18(B) of this Agreement.

13. AUTHORIZED AMENDMENTS TO AGREEMENT

- A. The Consultant and the City acknowledge and agree that no amendment to this Agreement or other form, order or directive may be issued by the City which requires additional compensable work to be performed if such work causes the aggregate amount payable under the amendment, order or directive to exceed the amount appropriated for this Agreement as listed in Section 3, above, unless the Consultant has been given a written assurance by the City that lawful appropriation to cover the costs of the additional work has been made.
- B. The Consultant and the City further acknowledge and agree that no amendment to this Agreement or other form, order or directive which requires additional compensable work to be performed under this Agreement shall be issued by the City unless funds are available to pay such additional costs, and the Consultant shall not be entitled to any additional compensation for any additional compensable work performed under this Agreement. The Consultant expressly waives any right to additional compensation, whether in law or equity, unless prior to commencing the additional work the Consultant was given a written amendment, order or directive describing the additional compensable work to be performed and setting forth the amount of compensation to be paid, such amendment, order or directive to be signed by the authorized City representative.

It is the Consultant's sole responsibility to know, determine, and ascertain the authority of the City representative signing any amendment, directive or order.

14. OWNERSHIP OF CONSULTING DOCUMENTS

All sketches, tracings, plans, specifications, reports, and other data prepared under this Agreement shall become the property of the City; a reproducible set shall be delivered to the City at no additional cost to the City upon completion of the plans or termination of the services of the Consultant. All drawings and data shall be transmitted in a durable material, with electronic files provided when feasible to do so. The Consultant's liability for use of the sketches, tracings, plans, specifications, reports, and other data prepared under this Agreement shall be limited to the Project.

15. INTERPRETATION

No amendment or modification of this Agreement shall be valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of the Agreement. This is a completely integrated Agreement and contains the entire agreement of the parties; any prior written or oral agreements shall be of no force or effect and shall not be binding upon either party. The laws of the State of Iowa shall govern and any judicial action under the terms of this Agreement shall be exclusively within the jurisdiction of the district court for Polk County, Iowa.

16. COMPLIANCE WITH FEDERAL LAW

To the extent any federal appropriation has or will be provided for the Project, or any federal requirement is imposed on the Project, Consultant agrees that Consultant will comply with all relevant laws, rules and regulations imposed on City and/or Consultant necessary for receipt of the federal appropriation. Consultant shall provide appropriate certification regarding Consultant's compliance.

17. SOLICITATION AND PERFORMANCE

- A. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that the Consultant has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or contingent fee.
- B. The Consultant shall not engage the services of any person or persons in the employ of the City at the time of commencing such services without the written consent of the City.

18. SUSPENSION AND TERMINATION OF AGREEMENT

- A. The right is reserved by the City to suspend this Agreement at any time. Such suspension may be effected by the City giving written notice to the Consultant, and shall be effective as of the date established in the suspension notice. Payment for Consultant's services shall be made by the City for services performed to the date established in the suspension notice. Should the City reinstate the work after notice of suspension, such reinstatement may be accomplished by thirty (30) days written notice within a period of six (6) months after such suspension, unless this period is extended by written consent of the Consultant.
- B. Upon ten (10) days written notice to the Consultant, the City may terminate the Agreement at any time if it is found that reasons beyond the control of either the City or Consultant make it impossible or against the City's interest to complete the Agreement. In such case, the Consultant shall have no claims against the City except for the value of the work performed up to the date the Agreement is terminated.
- C. The City may also terminate this Agreement at any time if it is found that the Consultant has violated any material term or condition of this Agreement or that Consultant has failed to maintain workers' compensation insurance or other insurance provided for in this Agreement. In the event of such default by the Consultant, the City may give ten (10) days written notice to the Consultant

of the City's intent to terminate the Agreement. Consultant shall have ten (10) days from notification to remedy the conditions constituting the default.

- D. In the event that this Agreement is terminated in accordance with paragraph C of this section, the City may take possession of any work and may complete any work by whatever means the City may select. The cost of completing said work shall be deducted from the balance which would have been due to the Consultant had the Agreement not been terminated and work completed in accordance with contract documents.
- E. The Consultant may terminate this Agreement if it is found that the City has violated any material term or condition of this Agreement. In the event of such default by the City, the Consultant shall give ten (10) days written notice to the City of the Consultant's intent to terminate the Agreement. City shall have ten (10) days from notification to remedy the conditions constituting the default.

19. TAXES

The Consultant shall pay all sales and use taxes required to be paid to the State of Iowa on the work covered by this Agreement. The Consultant shall execute and deliver and shall cause any sub-consultant or subcontractor to execute and deliver to the City certificates as required to permit the City to make application for refunds of said sales and use taxes as applicable. The City is a municipal corporation and not subject to state and local tax, use tax, or federal excise taxes.

20. SEVERABILITY

If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement shall continue in full force and effect.

21. MISCELLANEOUS HEADINGS

Title to articles, paragraphs, and subparagraphs are for information purposes only and shall not be considered a substantive part of this Agreement.

22. FURTHER ASSURANCES

Each party hereby agrees to execute and deliver such additional instruments and documents and to take all such other action as the other party may reasonably request from time to time in order to effect the provisions and purposes of this Agreement.

23. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall constitute an original document, no other counterpart needing to be produced, and all of which when taken together shall constitute the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or agents on the day and year first above written.

CONSULTANT

BY: Garry Caldbeck  
Garry Caldbeck, Principal

CITY OF WEST DES MOINES

BY: \_\_\_\_\_  
Ryan T. Jacobson, City Clerk

# ATTACHMENT 1

## SCOPE OF SERVICES – PUBLIC SAFETY STATION 21 HVAC System Commissioning & Test and Balance

### SYSTEMS TO BE COMMISSIONED

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#### HVAC Systems / Controls

- HVAC Systems 100%
  - Dedicated Outdoor Air Unit
  - Fan Coil Units
  - Chiller
  - Boilers and Pumps
  - Chilled and Heating Water Pumps
  - Hot Water Cabinet Unit Heaters & Unit Heaters
  - Hot Water Radiant Panels
  - Reheat Coils
- Verification of BAS Control System Features (Graphics, Trending, Alarming, Operations, etc.)

#### Systems not included in SystemWorks Scope at this time:

- Lighting & Daylighting Controls
- Electrical Systems
- Fire Alarm and Fire / Smoke Dampers
- Duct Leakage Testing

### COMMISSIONING CLARIFICATIONS

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- SystemWorks will require assistance from the control contractor's technician testing sequences as needed.
- SystemWorks has not included time for other trades (mechanical, controls, etc.)
- Time has not been included for re-testing and confirmation of corrective action items.
- Design responsibility remains with the engineer of record.

### DESIGN PHASE SCOPE

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- SystemWorks will conduct and document the following commissioning design reviews:
  - Construction Document Review (95% CDs)
  - Back-Check Design Review (95% CDs)

These reviews will reference alignment with the owner's requirements, review the proposed systems design for function and completeness, and verify training requirements are included. SystemWorks will document and provide concerns, issues and suggestions to the design team and owner, and meet with the team as required. We ask that the design team respond to each review comment.

- Prepare and provide commissioning specifications to A/E for inclusion in the construction documents.

## CONSTRUCTION PHASE SCOPE

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- Develop Pre-Functional “Construction Checklist” forms. These forms will be submitted to the GC/CM, completed by the appropriate installing contractor and reviewed by SystemWorks. These checklists will serve as an equipment checkoff to signify the beginning of commissioning.
- Lead and document a Commissioning Kickoff Meeting with the contractors.
  - Review the Commissioning Requirements
  - Distribute Construction Checklists
- SystemWorks will review and provide written comments to the owner and A/E on the contractor submittals relative to systems being commissioned.
- Develop Functional Performance Testing Check Off Forms - SystemWorks will generate test procedures as required to verify functional performance and correct sequence of operation of the commissioned systems.
- Site Visits - SystemWorks will visit the site two (2) times during construction prior to function testing to review and observe the mechanical systems installation.
  - Emphasis will be placed on mechanical system installation details to identify potential issues during construction before installation is complete, systems are covered or filled.
  - SystemWorks will witness System Flushing or Equipment Start-Ups at discretion during site visits.
  - Site visits will be documented with a report sent to the owner, design and construction teams.

## FIELD TESTING PHASE SCOPE

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SystemWorks will verify that the building’s energy related systems are installed, calibrated and perform according to the owner’s requirements, control sequences and construction documents (CDs).

- Perform functional testing. SystemWorks will:
  - Coordinate testing with the associated contractors once start-up and TAB is complete
  - Review system installation compared with plans and approved drawings
  - Step through the controls programming to verify sequences of operation
  - Simulate alarm and failure conditions
  - Sample verification of sensor calibration and point to point mapping
  - Utilize our own NIST certified test equipment as needed during testing
- Test and Balance - Field review and verify a sampling of the TAB report data.
- Generate and utilize an Issue Log (Deficiency Report and Resolution Record) to track deficiencies and verify corrections are accomplished. This document will be continually updated.

## ACCEPTANCE PHASE SCOPE

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- Final Commissioning Report:
  - Executive Summary with the list of participants and roles, project description, overview of commissioning scope and a description of the testing and verification methods.
  - Recommendations for any improvements to equipment or operations.
  - Functional performance status including observations or conclusions from testing of the equipment.
  - Completed functional testing forms.
  - Completed Issue Log
  - One electronic copy will be provided to the owner

## TEST AND BALANCE SERVICES

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### SYSTEMS TO BE BALANCED

---

- HVAC Systems and Equipment
  - Dedicated Outdoor Air Unit
  - Fan Coil Units
  - Boilers Pumps
  - Chilled and Heating Water Pumps
  - Hot Water Cabinet Unit Heaters & Unit Heaters
  - Hot Water Radiant Panels
  - Reheat Coils

### TESTING AND BALANCING SCOPE

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SystemWorks' TAB Team will perform the test and balance services as required on the HVAC equipment. SystemWorks will provide a certified testing and balancing report upon completion as required by the project specification. This fee does not include the cost of repairing equipment, providing or installing balancing dampers, electrical or control work, sheaves/sheave changes, high lifts, bonds, and off normal working hours. All equipment is kept calibrated and is NIST traceable.

Our group of Certified TABB technicians and supervisors will set up 100% of the mechanical equipment. This includes setup of both air and water system requirements. SystemWorks will provide a TABB Certified balancing report upon completion. All equipment is calibrated and NIST traceable. Our team is very particular about flushing out any performance or operational concerns. We identify any shortcomings for the Commissioning Team to review with the Design Team for resolution.

Providing both services ensures the IECC 2012 requirements are met, and that an independent third-party has touched 100% of the equipment. SystemWorks' TAB team is trained to not only proportion the systems for proper balance but to also take the extra step and verify function, labeling and sensor locations. Any discrepancies found are provided to the commissioning team leader for review, identification and resolution tracking.

## ATTACHMENT 2

### PROJECT SCHEDULE

SystemWorks will incorporate our commissioning services within the master schedule as determined by the Engineer and Contractor.



## ATTACHMENT 3

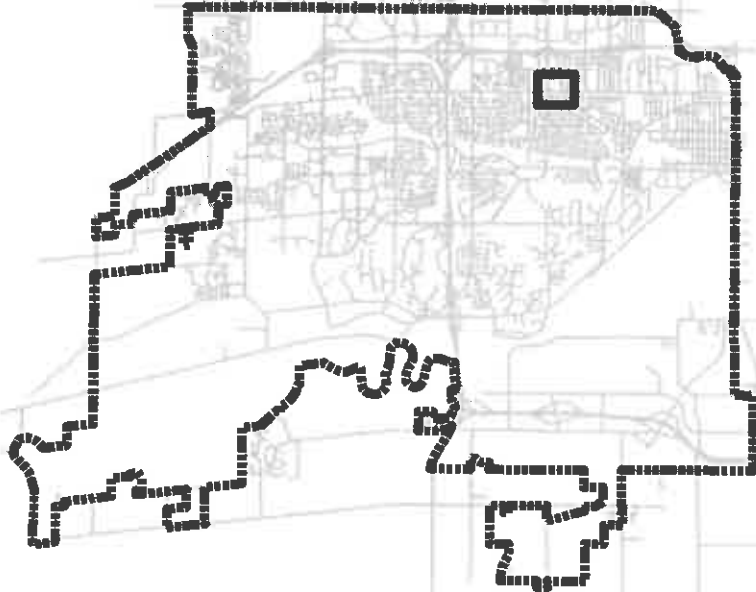
### SCHEDULE OF FEES

**Services of Consultant:**

SystemWorks will provide labor at an hourly rate of \$125 per person for the scope of services set forth in Attachment 1.



**VICINITY MAP**



**LEGEND**

PROJECT LOCATION



PROJECT:

**Public Safety Station 21 HVAC Improvements**

LOCATION:

**Valley West Drive & Ashworth Road**

DRAWN BY: JDR

DATE: 11/7/2016

PROJECT: 0510-058-2015

SHT. 1 of 1

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**4(m)2**

**ITEM:**

**DATE: November 14, 2016**

Resolution - Approving Professional Services Agreement  
Right-of-Way Acquisition Services  
JCG Land Services, Inc.

**FINANCIAL IMPACT:**

The cost of the Professional Services associated with Right-of-Way acquisition will not exceed \$510,000.00. Billings will be invoiced at the rates shown in the scope of services including expenses for ROW acquisition services and compensation estimating services. Costs for these services will be charged to the appropriate capital improvement accounts depending on the project. The accounts and ultimate funding sources will be determined by the Finance Director. Should the cost for the professional services be projected to exceed the amounts set forth in the contract, staff would not authorize such expenditures without further approval by the City Council.

**BACKGROUND:**

Approval of this action authorizes JCG Land Services, Inc. to perform the professional services necessary for property acquisitions and preparation of compensation estimates on behalf of the City for Capital Improvement Projects. Upon concurrence, the City Clerk is authorized to enter into the contract(s). The period of the contract(s) will not exceed 18 months unless agreed upon by both parties.

The Engineering Services Department retains professional consultants based on their past work experience, qualifications of their staff, familiarity with the project, manpower availability, and past performance. Once a firm has been selected based on the above criteria, City staff then negotiates a fee with the consultant for performing the desired scope of services. City staff attempts, whenever feasible, to distribute professional services work on an equitable basis to qualified firms maintaining local metropolitan area offices who have expressed interest in working for the City of West Des Moines.

**OUTSTANDING ISSUES:** None.

**RECOMMENDATION:**

City Council Adopt:  
- Resolution Approving Professional Services Agreement.

**Lead Staff Member: Duane C. Wittstock, P.E., L.S., City Engineer**

**STAFF REVIEWS**

Department Director	Duane C. Wittstock, City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	<i>(Initials)</i>

**PUBLICATION(S) (if applicable)**

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	Public Services		
Date Reviewed	November 7, 2016		
Recommendation	Yes	No	Split

## **Resolution Approving Professional Services Agreement**

**WHEREAS**, funding is available for the following described capital improvement work:

**Right-of-Way Acquisition Services  
Project No. 0030-030-2017**

**and,**

**WHEREAS**, the City from time-to-time has right-of-way acquisition needs associated with Capital Improvement Projects; and,

**WHEREAS**, Engineering Services Department staff have recommended the right-of-way acquisition and compensation estimate services be provided by a Real Estate professional, and,

**WHEREAS**, the Engineering Services Department has obtained a written proposal from JCG Land Services, Inc., to perform the work requested at an hourly rate not to exceed the amount shown below;

**Basic Services of the Consultant      \$ 510,000.00**

Therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA**, that JCG Land Services, Inc. is hereby directed to perform the work for ROW acquisition services on an as-needed basis not to exceed a period of 18 months.

**BE IT FURTHER RESOLVED**, that the City Clerk is authorized and directed to enter into an agreement with JCG Land Services, Inc. for the cost indicated above as payment by the City of West Des Moines for the services indicated.

**PASSED AND APPROVED** this 14<sup>th</sup> day of November, 2016.

\_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

\_\_\_\_\_  
Ryan T. Jacobson, City Clerk

## AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This Agreement is made and entered into this 14<sup>th</sup> day of November, 2016, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and JCG Land Services, Inc., (Fed. I.D. # 42-1448231 ), a professional corporation incorporated and licensed under the laws of the State of Iowa, party of the second part, hereinafter referred to as "Consultant" as follows:

THE CITY HEREBY AGREES TO RETAIN THE CONSULTANT FOR THE PROJECT AS DESCRIBED IN THIS AGREEMENT AND CONSULTANT AGREES TO PERFORM THE PROFESSIONAL SERVICES AND FURNISH THE NECESSARY DOCUMENTATION FOR THE PROJECT AS GENERALLY DESCRIBED IN THIS AGREEMENT.

### 1. SCOPE OF SERVICES

Services provided under this Agreement shall be as further described in Attachment 1, Scope of Services.

### 2. SCHEDULE

The schedule of the professional services to be performed shall be in general conformity with the sample tasks outlined in the Work Plan portion of the Scope of Services in Attachment 1. The City agrees that the Consultant is not responsible for delays arising from a change in the scope of services, a change in the scale of the Project or delays resulting from causes not directly or indirectly related to the actions of the Consultant.

### 3. COMPENSATION

A. In consideration of the professional services provided herein, the City agrees to pay the Consultant the following sum NOT-TO-EXCEED, including any authorized reimbursable expenses, pursuant to the Schedule of Fees set forth in Attachment 3.

I. Basic Services of the Consultant	\$ <u>510,000.00</u>
II. Resident Consultant Services	\$ _____

B. The Consultant shall invoice the City monthly for services, any reimbursable expenses and any approved amendments to this Agreement, based upon services actually completed at the time of the invoice. Final payment shall be due and payable within 30 days of the City's acceptance of Consultant's submission of final deliverables in accordance with the Scope of Services.

C. In consideration of the compensation paid to the Consultant, the Consultant agrees to perform all professional services to the satisfaction of the City by performing the professional services in a manner consistent with that degree of care and skill ordinarily exercised by members of Consultant's profession currently practicing under similar circumstances. If the performance of this Agreement involves the services of others or the furnishing of equipment, supplies, or materials, the Consultant agrees to pay for the same in full.

### 4. INSURANCE

A. Consultant understands and agrees that Consultant shall have no right of coverage under any and all existing or future City comprehensive, self or personal injury policies. Consultant shall provide insurance coverage for and on behalf of Consultant that will sufficiently protect Consultant or Consultant' representative(s) in connection with the professional services which are to be provided by Consultant pursuant to this Agreement, including protection from claims for bodily

injury, death, property damage, and lost income. Consultant shall provide worker's compensation insurance coverage for Consultant and all Consultant's personnel. Consultant shall file applicable insurance certificates with the City, and shall also provide evidence of the following additional coverage.

- B. The Consultant shall provide evidence of comprehensive general liability coverage and contractual liability insurance by an insurance company licensed to do business in the State of Iowa in the limits of at least \$1,000,000 each personal injury accident and/or death; \$1,000,000 general aggregate personal injury and/or death; and \$1,000,000 for each property damage accident. The evidence shall designate the City as an additional insured, and that it cannot be canceled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.
- C. The Consultant shall also provide evidence of automobile liability coverage in the limits of at least \$1,000,000 bodily injury and property damage combined. The evidence shall designate the City as an additional insured, and that it cannot be cancelled or materially altered without giving the City at least thirty (30) days written notice by registered mail, return receipt requested.
- D. The Consultant shall provide evidence of professional liability insurance, by an insurance company licensed to do business in the State of Iowa, in the limit of \$1,000,000 for claims arising out of the professional liability of the Consultant. Consultant shall provide City written notice within five (5) days by registered mail, return receipt requested of the cancellation or material alteration of the professional liability policy.
- E. Failure of Consultant to maintain any of the insurance coverages set forth above shall constitute a material breach of this Agreement.

5. NOTICE

Any notice to the parties required under this agreement shall be in writing, delivered to the person designated below, by United States mail or in hand delivery, at the indicated address unless otherwise designated in writing.

FOR THE CITY:

Name: City of West Des Moines  
Attn: Ryan T. Jacobson, City Clerk  
Address: 4200 Mills Civic Parkway  
City, State: West Des Moines, IA 50265-0320

FOR THE CONSULTANT:

Name: JCG Land Services, Inc.  
Attn: Jay P. Walton  
Address: 1715 South G Avenue  
City, State: Nevada, IA 50201

6. GENERAL COMPLIANCE

In the conduct of the professional services contemplated hereunder, the Consultant shall comply with applicable state, federal, and local law, rules, and regulations, technical standards, or specifications issued by the City. Consultant must qualify for and obtain any required licenses prior to commencement of work, including any professional licenses necessary to perform work within the State of Iowa.

7. STANDARD OF CARE

Services provided by the Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

8. INDEPENDENT CONTRACTOR

Consultant understands and agrees that the Consultant and Consultant's employees and representatives are not City employees. Consultant shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits, or any other form of compensation or benefit to Consultant or Consultant's employees, representatives or other personnel performing the professional services specified herein, whether it be of a direct or indirect nature. Further, it is expressly understood and agreed that for such purposes neither Consultant nor Consultant's employees, representatives or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement, or any other benefits whatsoever.

9. NON-DISCRIMINATION

Consultant will not discriminate against any employee of applicant for employment because of race, color, sex, national origin, religion, age, handicap, or veteran status. Consultant will, where appropriate or required, take affirmative action to ensure that applicants are employed, and that employees are treated, during employment, without regard to their race, color, sex, or national origin, religion, age, handicap, or veteran status. Consultant will cooperate with the City in using Consultant's best efforts to ensure that Disadvantaged Business Enterprises are afforded the maximum opportunity to compete for subcontracts of work under this Agreement.

10. HOLD HARMLESS

Consultant agrees to indemnify and hold harmless the City, its officers, agents, and employees from any and all claims, settlements and judgments, to include all reasonable investigative fees, attorney's fees, and court costs for any damage or loss which is due to or arises from a breach of this Agreement, or from negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its sub consultants or anyone for whom Consultant is legally liable.

11. ASSIGNMENT

Consultant shall not assign or otherwise transfer this Agreement or any right or obligations therein without first receiving prior written consent of the City.

12. APPROPRIATION OF FUNDS

The funds appropriated for this Agreement are equal to or exceed the compensation to be paid to Consultant. The City's continuing obligations under this Agreement may be subject to appropriation of funding by the City Council. In the event that sufficient funding is not appropriated in whole or in part for continued performance of the City's obligations under this Agreement, or if appropriated funding is not expended due to City spending limitations, the City may terminate this Agreement without further compensation to the Consultant. To the greatest extent allowed by law, the City shall compensate Consultant as provided in Section 18(B) of this Agreement.

13. AUTHORIZED AMENDMENTS TO AGREEMENT

- A. The Consultant and the City acknowledge and agree that no amendment to this Agreement or other form, order or directive may be issued by the City which requires additional compensable work to be performed if such work causes the aggregate amount payable under the amendment, order or directive to exceed the amount appropriated for this Agreement as listed in Section 3, above, unless the Consultant has been given a written assurance by the City that lawful appropriation to cover the costs of the additional work has been made.
- B. The Consultant and the City further acknowledge and agree that no amendment to this Agreement or other form, order or directive which requires additional compensable work to be performed under this Agreement shall be issued by the City unless funds are available to pay such additional costs, and the Consultant shall not be entitled to any additional compensation for any additional compensable work performed under this Agreement. The Consultant expressly

waives any right to additional compensation, whether in law or equity, unless prior to commencing the additional work the Consultant was given a written amendment, order or directive describing the additional compensable work to be performed and setting forth the amount of compensation to be paid, such amendment, order or directive to be signed by the authorized City representative. It is the Consultant's sole responsibility to know, determine, and ascertain the authority of the City representative signing any amendment, directive or order.

#### 14. OWNERSHIP OF CONSULTING DOCUMENTS

All sketches, tracings, plans, specifications, reports, and other data prepared under this Agreement shall become the property of the City; a reproducible set shall be delivered to the City at no additional cost to the City upon completion of the plans or termination of the services of the Consultant. All drawings and data shall be transmitted in a durable material, with electronic files provided when feasible to do so. The Consultant's liability for use of the sketches, tracings, plans, specifications, reports, and other data prepared under this Agreement shall be limited to the Project.

#### 15. INTERPRETATION

No amendment or modification of this Agreement shall be valid unless expressed in writing and executed by the parties hereto in the same manner as the execution of the Agreement. This is a completely integrated Agreement and contains the entire agreement of the parties; any prior written or oral agreements shall be of no force or effect and shall not be binding upon either party. The laws of the State of Iowa shall govern and any judicial action under the terms of this Agreement shall be exclusively within the jurisdiction of the district court for Polk County, Iowa.

#### 16. COMPLIANCE WITH FEDERAL LAW

To the extent any federal appropriation has or will be provided for the Project, or any federal requirement is imposed on the Project, Consultant agrees that Consultant will comply with all relevant laws, rules and regulations imposed on City and/or Consultant necessary for receipt of the federal appropriation. Consultant shall provide appropriate certification regarding Consultant's compliance.

#### 17. SOLICITATION AND PERFORMANCE

- A. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that the Consultant has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or contingent fee.
- B. The Consultant shall not engage the services of any person or persons in the employ of the City at the time of commencing such services without the written consent of the City.

#### 18. SUSPENSION AND TERMINATION OF AGREEMENT

- A. The right is reserved by the City to suspend this Agreement at any time. Such suspension may be effected by the City giving written notice to the Consultant, and shall be effective as of the date established in the suspension notice. Payment for Consultant's services shall be made by the City for services performed to the date established in the suspension notice. Should the City reinstate the work after notice of suspension, such reinstatement may be accomplished by thirty (30) days written notice within a period of six (6) months after such suspension, unless this period is extended by written consent of the Consultant.
- B. Upon ten (10) days written notice to the Consultant, the City may terminate the Agreement at any time if it is found that reasons beyond the control of either the City or Consultant make it impossible or against the City's interest to complete the Agreement. In such case, the Consultant shall have no claims against the City except for the value of the work performed up to the date the Agreement is terminated.



- C. The City may also terminate this Agreement at any time if it is found that the Consultant has violated any material term or condition of this Agreement or that Consultant has failed to maintain workers' compensation insurance or other insurance provided for in this Agreement. In the event of such default by the Consultant, the City may give ten (10) days written notice to the Consultant of the City's intent to terminate the Agreement. Consultant shall have ten (10) days from notification to remedy the conditions constituting the default.
- D. In the event that this Agreement is terminated in accordance with paragraph C of this section, the City may take possession of any work and may complete any work by whatever means the City may select. The cost of completing said work shall be deducted from the balance which would have been due to the Consultant had the Agreement not been terminated and work completed in accordance with contract documents.
- E. The Consultant may terminate this Agreement if it is found that the City has violated any material term or condition of this Agreement. In the event of such default by the City, the Consultant shall give ten (10) days written notice to the City of the Consultant's intent to terminate the Agreement. City shall have ten (10) days from notification to remedy the conditions constituting the default.

19. TAXES

The Consultant shall pay all sales and use taxes required to be paid to the State of Iowa on the work covered by this Agreement. The Consultant shall execute and deliver and shall cause any sub-consultant or subcontractor to execute and deliver to the City certificates as required to permit the City to make application for refunds of said sales and use taxes as applicable. The City is a municipal corporation and not subject to state and local tax, use tax, or federal excise taxes.

20. SEVERABILITY

If any portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Agreement shall continue in full force and effect.

21. MISCELLANEOUS HEADINGS

Title to articles, paragraphs, and subparagraphs are for information purposes only and shall not be considered a substantive part of this Agreement.

22. FURTHER ASSURANCES

Each party hereby agrees to execute and deliver such additional instruments and documents and to take all such other action as the other party may reasonably request from time to time in order to effect the provisions and purposes of this Agreement.

23. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall constitute an original document, no other counterpart needing to be produced, and all of which when taken together shall constitute the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or agents on the day and year first above written.

JCG Land Services, Inc.

CITY OF WEST DES MOINES

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Jay P. Walton, Vice President

Ryan T. Jacobson, City Clerk

# ATTACHMENT 1

## SCOPE OF SERVICES

Our tasks include the following summary of services:

### **Project Management** –

JCG's project manager and acquisition specialist(s) will attend meetings with the City to discuss project details including the purpose of the project, design, construction schedule, scope of tasks for acquisition process, number of parcels, project coordination meetings and public hearing/meeting requirements, prior correspondence with affected property owners, and other tasks requested by the City. Based on the project scope and schedule, JCG will develop a staff resource plan for review and approval by the City.

JCG will be responsible for effective staffing on the project and ensure all acquisition tasks are completed accurately and completely. The project manager will be responsible for the quality of work, compliance with all local, state and federal statutes and laws, cost control, and adherence to the project schedule per the terms of the scope of services, and will serve as the primary contact with the City and other client staff as requested. The project manager will conduct regular meetings with the City and project team, and provide progress and status reports for each parcel and overall project completion reports on a regular schedule, as requested by the City. Where appropriate, JCG will utilize a GIS Specialist to build and maintain a web-based GIS to track acquisition progress through ArcGIS Online.

### **Right of Entry Agreements** –

JCG will be responsible for obtaining written permission from affected property owners along the route for the purposes of obtaining land survey data, locating property boundaries and physical features, and soil, natural resource, environmental, and historical site investigations. At the initiation of each project, the City will provide JCG an exhibit of effected parcels that will require Right of Entry Agreements. JCG will then prepare a Right of Entry template (for review and approval by the City) to be used to negotiate, in-person, the access rights and gain permission for the City and/or its agents or contractors to enter upon private property.

### **Public Hearing / Public Information Meeting** -

If the right of way sought to be acquired is agricultural land as defined in Iowa Code Section 6A.21 *Condemnation of Agricultural Land – definitions*, JCG shall participate in the public hearing process for the purpose of implementing the requirements of Section 6B.2A *Notice of Proposed Public Improvement* of the Iowa Code, unless the acquisition is found exempt under Subsection 6B.2A(4). The City will complete and mail the Notice of Public Hearing to all property owners and contract purchasers by regular mail not less than 30 days before the date of the hearing, and publish a notice of the public hearing at least 4 but not more than 20 days before the public hearing. JCG will then participate in the Public Hearing to explain the acquisition process, the schedule, and answer questions pertaining to the impacts of the project.

### **Title Reports** -

For Fee or Permanent Easement acquisition purposes, JCG will obtain Record of Ownership and Liens report(s) from a local abstracter within the respective county the project is located, to identify all the owners, easements, other interest holders, mortgages and other lien holders, and encumbrancers needed to obtain possession of the interests in land being acquired. The costs for procuring the Record of Ownership and Liens for each parcel will be a pass-through, reimbursable expense as noted on JCG's project Invoices.

**Compensation Valuations -**

If the proposed acquisition for any parcel is complicated and/or estimated to exceed \$10,000.00, JCG will recommend to the City an experienced Eminent Domain Appraiser and Review Appraiser to prepare the appraisal products for the acquisition of right of way as required by Section 6B.54(3) of the Iowa Code. Upon approval of the appraiser by the City, JCG will make the appraisal assignments; and, upon completion, provide the appraisal and appraisal review reports to the City. The City shall approve the review appraiser's allocation of just compensation prior to JCG mailing the appraisal to the property owner(s). The costs for procuring any appraisal and review appraisal reports will be a pass-through, reimbursable expense as noted on JCG's project Invoices.

For uncomplicated acquisitions with compensation anticipated to be less than \$10,000.00 per parcel, JCG'S Acquisition Specialist will research arms-length comparable sales data to determine a range of value for just compensation to be paid. The Acquisition Specialist will then prepare Compensation Estimates to allocate just compensation for the right of way sought to be acquired, and submit them to the City for approval prior to JCG initiating negotiation with the owner(s).

**Acquisition Document and File Preparation -**

Prior to negotiations, JCG will request templates from the City to use for the preparation of temporary and permanent acquisition documents, purchase agreements, and other supporting transfer documents as required by law and required for the project. Or, upon request, we can provide document templates for each situation to submit to the City for their review and approval. Our acquisition specialists will correctly prepare all forms of conveyance documents necessary to acquire the land rights sought; and, upon completion, assemble the corresponding parcel file to be turned in to the City for the audit, payment, and closing processes. Our closed files will consist of:

- Certificate of Negotiator
- Easements, or Deeds, signed by all interest holders in the property
- An Administrative Settlement form if an amount above the appraisal is recommended
- Owner (and Tenant) Purchase Agreements
- Offers to Purchase and/or Relocation Assistance
- Record of all contacts and correspondence
- Statement Regarding Proceeds, if applicable
- W-9 form
- Disclosure of Representation
- Goundwater Hazard Statement, if applicable
- Subordinations, Releases, and Affidavits to clear title for closing
- Estimates for cost to cure damage items
- Acquisition Plat and Legal Description
- Record of Ownership and Liens Report

**Uniform Act: Acquisition, Negotiation and Relocation Assistance Services -**

JCG will follow all requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the Iowa Relocation Assistance Act

**Closing Assistance -**

It is understood and agreed that the City will complete transaction closings. However, if requested, JCG is able to provide closing assistance services including, but not limited to the following tasks:

- Complete the real estate closing processes and procedures per local regulations
- Clear title by securing judgment and lien releases, and partial mortgage releases
- Update abstracts in the cases of total takes
- Coordinate preparation for the closing - including approval by the City's attorney of all documentation that will be required for administrative approval and funding requests
- Receive and distribute acquisition payments to appropriate parties
- Assure that the closing documents are properly recorded
- Provide a completed acquisition file that will clear an audit process. If there would be any curative work requested from any audit, our team would complete those required items as needed.

### **Condemnation Support -**

In the event an impasse with negotiations is reached and condemnation should become necessary with any parcel, JCG will complete and assemble the parcel file information in an appropriate sequence to expedite the Application for Condemnation to be filed by the City's attorney. Upon request, JCG staff will attend necessary meetings in support of the condemnation proceeding and appear at the compensation hearing.

### **Work Plan**

Based on the size and description of the project and scope of work provided by the City, JCG will prepare parcel files which will include title reports, appraisals and appraisal review products and/or compensation estimates, transfer documents, correspondence with the landowners and tenants, and a final allocation of compensation. The following is a sample list of tasks that are normally followed by JCG's Acquisition Specialists to successfully complete the acquisition process:

- Meet with client and/or the City to discuss project specifics including design impacts, parcels to be included in project, results of title and appraisal work to confirm land ownership and compensation values, project schedule, complications and unexpected events, work performed to date, and cumulative acquisition costs
- Engage the services of an experienced eminent domain appraiser and review appraiser
- Order Record of Ownership and Liens Reports for all Fee and Permanent Easement acquisition parcels
- Conduct limited title search of public records for all Temporary Easement only parcels
- Prepare complete acquisition documents for all parcel files (Except Warranty Deeds)
- Review of title work to identify title holders and obtain abstracts for continuation when properties are purchased in fee
- Determine all acquisition assignments utilizing approved project plans and acquisition plats with legal descriptions provided by the City

- Mail approved appraisal reports for complex or high-value acquisitions, and provide landowner notice requirements per local, state or federal regulation
- Initiate contact with owners and any tenants to schedule face-to-face meetings whenever possible
- Review and present to the property owner the just compensation land valuation information provided by the appraiser; or uncomplicated and/or low-value compensation estimates provided by JCG staff
- JCG will provide relocation assistance where a total take is necessary
- Interview displacees subject to relocation assistance
- Inspect properties, present offers of relocation assistance
- Negotiate the acquisition with owners and tenants in a good-faith effort to reach an agreeable solution within the scope and limits of the project (including communicating any engineering or design concerns back to the appropriate staff for consideration)
- Prepare Administrative Settlements for approval by City staff for any settlement amount in excess of the approved appraisal amount
- Attend closings, and process and review relocation assistance claims
- Submit the completed files to the City for payment and closing or further processing if an impasse is reached

JCG also has the flexibility of adding supplemental staff to projects, as needed, to meet project expectations and maintain construction letting schedules.

## ATTACHMENT 3

### SCHEDULE OF FEES

JCG shall provide professional right of way services, as described in this Proposal, per the following fee schedule:

Acquisition Specialists	\$85.00/hr.
Relocation Assistance Specialists	\$85.00/hr.
Project Manager	\$95.00/hr.
GIS Specialists	\$125.00/hr.

Reimbursement for actual project related expenses include mileage within the city limits of West Des Moines at the current Federal rate, copy costs, recording or filing fees, mail and phone charges, and other similar incidental costs incurred in the performance of the work. It is understood and agreed that any mileage incurred under the scope and conditions of this contract, for any work conducted by JCG that lies outside of the City limits of West Des Moines, shall be a reimbursable expense at the Federal allowable rate and included on the project invoice during the work period in which the expense was incurred. Other expenses such as appraisal and appraisal review services, title search reports and/or abstracting costs, lodging and Per Diem require prior approval by the City prior to expenditure.

All JCG invoices for completed work will be based on a Time and Materials contract, with a total not-to-exceed amount of \$510,000.00. If requested, each independent project covered by this Agreement will be designated with a unique project number, with the respective services and expenses itemized to facilitate the budget, accounting, and payment processes.

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**DATE: November 14, 2016**

**ITEM:**

Resolution - Establishing Public Hearing  
Regarding the Final Design, Site Selection and Consideration of Acquiring Agricultural Property  
Project Osmium Public Infrastructure

**FINANCIAL IMPACT:**

None at this time.

**BACKGROUND:**

State law requires a public hearing prior to the authorization for acquisition of agricultural property necessary for a public improvement project. A Public Hearing should be scheduled for 5:35 p.m. on January 9, 2017.

A copy of the notice that will be mailed to property owners is included in the packet.

**OUTSTANDING ISSUES:**

None.

**RECOMMENDATION:**

City Council Adopt:

- Resolution Establishing Public Hearing Regarding the Final Design, Site Selection and Consideration of Acquiring Agricultural Property
- Ordering the City Clerk to publish the notice of intent to commence a Public Improvements project and to Acquire Agricultural Land

**Lead Staff Member: Duane C. Wittstock, P.E., L.S., City Engineer**

**STAFF REVIEWS**

Department Director	Duane C. Wittstock, City Engineer
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard J. Scieszinski, City Attorney
Agenda Acceptance	

**PUBLICATION(S) (if applicable)**

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	Public Services		
Date Reviewed	November 7, 2016		
Recommendation	Yes	No	Split



**RESOLUTION ESTABLISHING PUBLIC HEARING REGARDING THE FINAL DESIGN,  
SITE SELECTION AND CONSIDERATION OF ACQUIRING AGRICULTURAL PROPERTY**

**PROJECT OSMIUM PUBLIC INFRASTRUCTURE**

**WHEREAS**, the City of West Des Moines is initiating the construction of above named project (hereinafter "Project") which will include the acquisition of private property necessary for the location, construction and operation of sanitary sewer, storm sewer, streets and associated appurtenances;

**WHEREAS**, the acquisition of private property necessary for the Project includes agricultural property;  
and

**WHEREAS**, Code of Iowa Section 6B.2A requires a municipality to hold a public hearing to receive input regarding the final design and site selection for a public improvement project in which agricultural property will be acquired; and

**WHEREAS**, pursuant to state code it is necessary to set a public hearing date and provide written and published notice regarding the public hearing to each owner and contract purchaser of agricultural property which may be the subject of acquisition for the Project; and

**WHEREAS**, the City is established a public hearing date to receive public input regarding the general nature of the Project, determine the source of funding for the Project, review the site-specific design and location of the Project and determine if the acquisition of agricultural property, through voluntary purchase or condemnation, is for a public purpose and necessary for completion of the Project.

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

1. A public hearing time and date of 5:35 p.m. on January 9, 2017, is established to consider the Project.
2. Pursuant to Code of Iowa Section 6B.2A, written and published notice of the public hearing shall be made to each owner and contract purchaser of agricultural property which may be needed for construction of the Project.
3. The City Clerk is ordered to publish said notice of public hearing and provide written notice to affected property owners and contract purchaser.

**PASSED AND ADOPTED** this 14<sup>th</sup> Day of November, 2016.

\_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

\_\_\_\_\_  
Ryan T. Jacobson, City Clerk

**NOTICE OF INTENT TO COMMENCE A PUBLIC IMPROVEMENT PROJECT  
AND TO ACQUIRE AGRICULTURAL LAND FOR THE PROJECT**

**PROJECT OSMIUM PUBLIC INFRASTRUCTURE**

All or a portion of the property as shown on the Parcel Location Map attached hereto as Exhibit "A".

**TO:** Martin Marietta Materials Real Estate, Fort Wayne, Indiana; DGF Farms Warren LLC/RDF Farms Warren LLC, Cumming, Iowa; Nick A. Fasano, Indianola, Iowa; Barry L McKibben (Trustee), West Des Moines, Iowa; Raccoon River Land Co., LLC, West Des Moines, Iowa; General Manufacturing Corporation, Des Moines, Iowa; K Properties LLC, West Des Moines, Iowa; Lemar A Koethe, Des Moines, Iowa; Marcella E Cassady Harkin, Norwalk, Iowa; Tonya L Flinn, Cumming, Iowa; Barbara J Higgins Life Estate, Cumming, Iowa; Veronica A Haluska, Silver City, Iowa; Joseph G and Margaret E Van Ginkel, Cumming, Iowa; The Charles I & Ruth Colby Investment Trust, Windsor Heights, Iowa; Nancy C Deimerly, Cumming, Iowa; Marjorie A Abild and Katherine A Holzworth, Cumming, Iowa; Ernest R Fischer Jr. Trust, Cumming, Iowa; Temple Holdings Lp, Grimes, Iowa; John S and Pamela J Winslow, Cumming, Iowa; William C Knapp LC, West Des Moines, Iowa; Davis Estates Ltd, West Des Moines, Iowa; Charlotte Annette Kendall, Cumming, Iowa; Allen and Phyllis Hankins Trust, Norwalk, Iowa; Bernard R and Frankie D Webb, Cumming, Iowa; Michael A Biermann, Cumming, Iowa; Britt and Mollie Baker, Des Moines, Iowa; Mak Investments Inc., West Des Moines, Iowa; KMS Associates, West Des Moines, Iowa; and Kathy A Beck, West Des Moines, Iowa.

Under the provisions of Chapter 6B of the Iowa Code, a governmental body which proposes to acquire agricultural land under power of eminent domain for a public improvement project is required to give notice of intent to commence the project to all owners of such agricultural land whose properties may be acquired in whole or in part for the project (see Iowa Code §§ 6A.21(a) and 6B.2A)

**1. DESCRIPTION OF THE PROJECT.**

**NOTICE IS HEREBY GIVEN** to the above identified owners of agricultural land that the City Council of the City of West Des Moines, Iowa will consider authorizing the commencement of a project to acquire property and property interests for the construction of sanitary sewer, storm sewer, streets and associated appurtenances which will comprise Project Osmium Infrastructure to be located in northeast Madison County, southeast Dallas County, southwest Polk County and northwest Warren County.

**2. PRIVATE PROPERTY MAY BE ACQUIRED BY PURCHASE OR CONDEMNATION.**

If the above described project and/or acquisition of property is approved by the City Council, the City will be required to acquire property for the project improvements. Upon review of Madison, Warren, Dallas and Polk Counties' property records, it appears that agricultural land and property interests owned by the above identified persons/entities may have to be acquired in whole or in part for the Project. The City will attempt to purchase the required agricultural land and/or property interests by good faith negotiations, and it may condemn those properties which it is unable to purchase. The proposed location of the above described public improvement is shown on a conceptual drawing of the Project which is now on file in the office of the City Clerk and available for public inspection.

**3. CITY PROCESS TO DECIDE TO PROCEED WITH THE PROJECT AND TO ACQUIRE PROPERTY; CITY COUNCIL ACTION REQUIRED TO PROCEED WITH PROJECT; OPPORTUNITY FOR PUBLIC INPUT.**

In making the decision to proceed with the Project and to authorize the acquisition of property and property interests, the City Council will hold a public hearing, giving persons interested in the proposed Project the opportunity to present their views, including the proposed acquisition of property. The public hearing will be held during the City Council's regularly scheduled meeting on **the 9<sup>th</sup> day of January, 2017 in the City Council Chambers, City Hall, 4200 Mills Civic Parkway, West Des Moines, Iowa, commencing at 5:35 p.m.** In order for the City to proceed, the City Council will be required to consider and approve the Project and authorize acquisition of private property by Council resolution following the public hearing.

If the Project is approved, an appraiser retained by the City will determine the compensation to be paid for property or property interests that are needed for the Project. The City will offer no less than the appraised fair market value and will attempt to purchase only the needed property by good faith negotiations. If the City is unable to acquire property needed for the Project by negotiation, the City will acquire the property by condemnation.

#### **4. CONTACT PERSON.**

Further information regarding this proposed public improvement project or its impact on the properties identified above may be obtained by contacting **Duane Wittstock, West Des Moines City Engineer, 4200 Mills Civic Parkway, West Des Moines, Iowa 50265, or by telephone at (515) 222-3620.**

#### **5. STATEMENT OF RIGHTS.**

Just as the law grants certain entities the right to acquire private property, you as the owner of property have certain rights. You have the right to:

- a. Receive just compensation for the taking of property. (Iowa Const., Article 1, Section 18)
- b. An offer to purchase which may not be less than the lowest appraisal of the fair market value of the property. (Iowa Code §§ 6B.45, 6B54)
- c. Receive a copy of the appraisal, if an appraisal is required, upon which the acquiring agency's determination of just compensation is based, not less than ten (10) days before being contacted by the acquiring agency's acquisition agent. (Iowa Code §6B.45)
- d. When an appraisal is required, an opportunity to accompany at least one appraiser of the acquiring agency who appraises your property. (Iowa Code §6B.54)
- e. Participate in good faith negotiations with the acquiring agency before the acquiring agency begins condemnation proceedings. (Iowa Code §6B.3(1))
- f. If you cannot agree on a purchase price with the acquiring agency, a determination of just compensation by an impartial compensation commission and the right to appeal its award to district court. (Iowa Code §§ 6B.4, 6B.7, and 6B.18)
- g. A review by the compensation commission of the necessity for the condemnation if your property is agricultural land being condemned for industry. (Iowa Code § 6B.4A)
- h. Payment of the agreed upon purchase price, or if condemned, a deposit of the compensation commission award before you are required to surrender possession of the property. (Iowa Code §§ 6B.25 and 6B.54(11))

- i. Reimbursement for expenses incidental to transferring title to the acquiring agency. (Iowa Code §§ 6B.33 and 6B.54(10))
- j. Reimbursement of certain litigation expenses: (1) if the award of the compensation commissioners exceeds 110 percent of the acquiring agency's final offer before condemnation; and (2) if the award on appeal in court is more than the compensation commissioner's award. (Iowa Code § 6B.33)
- k. At least 90 days written notice to vacate occupied property. (Iowa Code § 6B.54(4))
- l. Relocation services and payments, if you are eligible to receive them, and the right to appeal your eligibility, and the amount of payments. (Iowa Code §316.9)

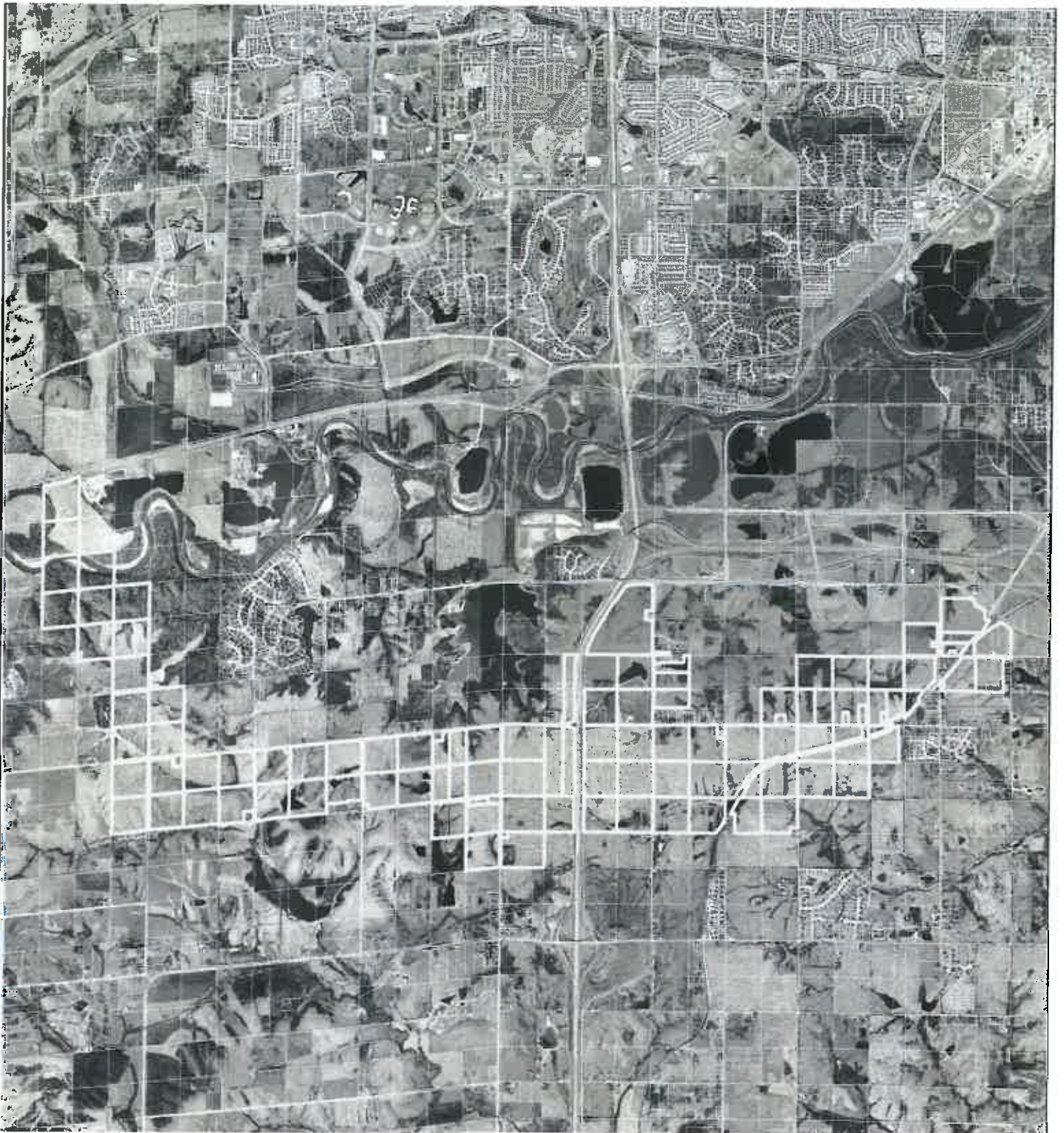
The rights set out in this Statement are not claimed to be a full and complete list or explanation of an owner's rights under the law. They are derived from Iowa Code Chapters 6A, 6B and 316. For a more thorough presentation of an owner's rights, you should refer directly to the Iowa Code or contact an attorney of your choice.

This Notice is given by authority of the City Council of the City of West Des Moines, Iowa.

/s/ Ryan T. Jacobson  
City Clerk, West Des Moines, Iowa

To be published in the Des Moines Register no less than four (4) nor more than twenty (20) days before January 9<sup>th</sup>, 2017.

Mailed to all affected Property Owners on November 16, 2016.



**LEGEND**

**PROJECT LOCATION** 



PROJECT:

**Osmium Public Infrastructure**

LOCATION:

**Dallas Madison Warren Polk Counties**

DRAWN BY: REF

DATE: 11/10/2016

PROJECT: S:\PWENGR\0030 Engineering Division\030 ROW Acquisition Services\Pinkies

SHT. 1 of 1

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**ITEM:** Approval of Economic Development Assistance Contract - **DATE:** November 14, 2016  
Iowa Economic Development Authority (IEDA), and  
ePATHUSA

Resolution - Approving the three-party IEDA contract between ePATHUSA, City of West Des Moines, and Iowa Economic Development Authority (IEDA)

**FINANCIAL IMPACT:** The City’s required match for IEDA’s financial assistance is a five year sliding scale property tax rebate. The company was able to secure a refund of the sales and use taxes on construction materials, and an investment tax credit for their project. Based upon ePATHUSA’s investment, the City’s maximum commitment for the property tax rebate will be \$23,000. The City will also need to provide the local match on the State’s direct investment of \$40,000. The City’s match requirement is \$4,000 as a zero 0% loan and \$4,000 as a forgivable loan. This will come out of the City’s Economic Development Account 486.550.700.5250.476 (Economic Development-CED-Admin-Contractual Services-Grants).

**BACKGROUND:** ePATHUSA, a software development company, has secured financial assistance from the Iowa Economic Development Authority (IEDA), which will require a local match from the City. The application indicates that ePATHUSA intends to undertake an expansion that will create 5 new jobs over the next 3 years. The City must provide a five year sliding scale property tax rebate as our local match. In addition, the State has provided a direct capital investment of \$40,000, which will require a local match of \$4,000 as a zero 0% loan and \$4,000 as a forgivable loan.

The project is located within the Ashworth Road Urban Renewal Area.

**OUTSTANDING ISSUES** (if any): There are no outstanding issues.

**RECOMMENDATION:** That the City Council pass a resolution, authorizing the Mayor Pro Tem to sign the IEDA contract.

**Lead Staff Member:** Clyde E. Evans, AICP, Community and Economic Development

**STAFF REVIEWS**

Department Director	Clyde E. Evans, Director, Community and Economic Development <span style="float: right;">C.E.E.</span>
Appropriations/Finance	Tim Stiles, Finance Director <span style="float: right;">TS</span>
Legal	<span style="float: right;">JS</span>
Agenda Acceptance	<span style="float: right;">[Signature]</span>

**PUBLICATION(S)** (if applicable)

Published In	N/A
Dates(s) Published	N/A

**SUBCOMMITTEE REVIEW** (if applicable)

Committee	F&A		
Date Reviewed	June 29, 2016		
Recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	

**Attachments:** Exhibit I – Economic Development Assistance Contract –ePATHUSA, City of West Des Moines, and IEDA  
Exhibit II – Resolution

***ECONOMIC DEVELOPMENT  
ASSISTANCE CONTRACT***

**BY**

**EPATHUSA, INC.,**

**THE CITY OF WEST DES MOINES,**

**AND THE**

**IOWA ECONOMIC DEVELOPMENT AUTHORITY**

**CONTRACT NUMBER: 17-DF/TC-001**

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ARTICLE 5:	SECURITY REQUIREMENTS
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### CONTRACT EXHIBITS

Exhibit A -	Recipient's Financial Assistance Application (on file with IEDA), Application # 17-HQJDF-001 and 17-HQJTC-001
Exhibit B-1	High Quality Jobs Program - Tax Credit Special Conditions
Exhibit B-2	High Quality Jobs Program – Project Completion Assistance Component Special Conditions
Exhibit C -	Description of the Project and Award Budget
Exhibit D -	Job Obligations
Exhibit E -	Irrevocable Letter of Credit
Exhibit F -	Promissory Note(s)



# ***Economic Development Assistance Contract***

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RECIPIENT:	EPATHUSA, INC.
COMMUNITY:	CITY OF WEST DES MOINES
CONTRACT NUMBER:	17-DF/TC-001
AWARD DATE:	JULY 22, 2016
AWARD AMT. – FINANCIAL ASSISTANCE	\$40,000
AWARD AMT. – TAX INCENTIVES	\$34,545

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This ECONOMIC DEVELOPMENT ASSISTANCE CONTRACT (Contract) is made as of the Contract Effective Date by the Iowa Economic Development Authority (IEDA or Authority), 200 East Grand Avenue, Des Moines, IA 50309, and ePATHUSA, Inc. (Recipient), 6600 Westown Parkway, Suite 245 and the City of West Des Moines (Community), 4200 Mills Civic Parkway, West Des Moines, IA 50266.

WHEREAS, the Recipient submitted an application to IEDA requesting assistance in financing its Project as more fully described in Exhibit C, *Description of the Project and Award Budget* (the Project); and

WHEREAS, the Iowa Economic Development Authority Board (IEDA Board) awarded the Recipient assistance for the Project from the funding sources identified herein (collectively, the Award), all of which are subject to the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound, the Recipient, the Community and IEDA agree to the following terms:

## ARTICLE 1: CONTRACT DURATION

This Contract shall be in effect on the Contract Effective Date and shall remain in effect until after completion of each of the following:

(a) *Through Project Completion Date.* Through the Project Completion Period and for a reasonable period of time after Project Completion Date during which IEDA will conduct Project closeout procedures to verify that the Project was completed in compliance with Contract requirements.

(b) *Through Maintenance Period Completion Date and Contract Closeout.* Through the Maintenance Period Completion Date and for a reasonable period of time after Maintenance Period Completion Date during which IEDA will conduct closeout procedures to verify that the Project was maintained in compliance with Contract requirements.

(c) *Repayment or Payment Obligation.* Until all outstanding amounts due to IEDA, if any, are received by IEDA or all outstanding obligations to IEDA are satisfied in full.

(d) *Contract End Date.* Until IEDA has completed Contract closeout procedures and provided Recipient and Community with written Notice of Final Contract Closeout. This Contract shall terminate as of the date stated in the written Notice of Final Contract Closeout. Such date shall be the Contract End Date.

## ARTICLE 2: DEFINITIONS

The following terms apply to this Contract:

*"Affiliate"* means any entity to which any of the following applies:

- a. Directly, indirectly, or constructively controls another entity.
- b. Is directly, indirectly or constructively controlled by another entity.
- c. Is subject to the control of a common entity. A common entity is one which owns directly or individually more than ten percent of the voting securities of the entity.

*"Award"* means any and all assistance provided by IEDA for the Project under this Contract.

*"Award Date"* means the date first stated in this Contract and is the date the IEDA Board approved the award of financial assistance to the Recipient for the Project.

*"Award Funds"* means the cash that is provided by IEDA for this Project as Project Completion Assistance, including loans.

*"Base Employment Level"* means the number of Full-Time Equivalent positions as established by IEDA and Recipient using Recipient's payroll records, as of the date Recipient applied for Tax Incentives or Project Completion Assistance. The number of jobs Recipient has pledged to create and retain shall be in addition to the Base Employment Level.

*"Benefits"* means nonwage compensation provided to an employee. Benefits include medical and dental insurance plans, pension, retirement, and profit-sharing plans, child care services, life insurance coverage, vision insurance coverage, and disability insurance coverage.

*"Brownfield site"* means an abandoned, idled, or underutilized property where expansion or redevelopment is complicated by real or perceived environmental contamination. A brownfield site includes property contiguous with the site on which the property is located. A brownfield site does not include property which has been placed, or is proposed for placement, on the national priorities list established

pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42, U.S.C. 9601 et seq. In order to administer similar programs in a similar manner, the IEDA will attempt to apply this definition in substantially the same way as similar definitions are applied by the Brownfield Advisory Council established in Iowa code section 15.294 and may consult members of the council or other staff as necessary.

**"Contract Effective Date"** means the latest date on the signature page of this Contract.

**"Contract End Date"** means the date stated in the Notice of Final Contract Closeout issued by IEDA pursuant to Article 1.

**"Created Job"** means a new, permanent, Full-Time Equivalent (FTE) position added to Recipient's payroll in excess of the Base Employment Level at the time of application for Tax Incentives or Project Completion Assistance.

**"Forgivable Loan"** means a form of an Award made by IEDA to the Recipient for which repayment is eliminated in part or entirely if the Recipient satisfies the terms of this Contract.

**"Full-Time Equivalent job," "FTE," or "full-time"** means the employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave; or
2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit, provided that the number of hours per week is at least 32 hours per week for 52 weeks per year including paid holidays, vacations, and other paid leave.

For purposes of this definition, "employment of one person" means the employment of one natural person and does not include "job sharing" or any other means of aggregation or combination of hours worked by more than one natural person.

**"Grayfield site"** means a property meeting all of the following requirements:

a. The property has been developed and has infrastructure in place, but the property's current use is outdated or prevents a better or more efficient use of the property. Such property includes vacant, blighted, obsolete, or otherwise underutilized property.

b. The property's improvements and infrastructure are at least twenty-five years old and one or more of the following conditions exists:

(1) Thirty percent or more of a building located on the property that is available for occupancy has been vacant or unoccupied for a period of twelve months or more.

(2) The assessed value of the improvements on the property has decreased by twenty-five percent or more.

(3) The property is currently being used as a parking lot.

(4) The improvements on the property no longer exist.

c. The Authority will attempt to apply this definition in substantially the same manner as similar definitions are applied by the Brownfield Advisory Council established in Iowa code section 15.294.

**"Job Obligations"** means the jobs that must be created or retained as a result of receipt of state or federal financial assistance, Project Completion Assistance, or Tax Incentives from IEDA and that are required to meet the Qualifying Wage Threshold requirements. Recipient's Job Obligations are specified in Exhibit D of this Contract. Jobs that do not meet the Qualifying Wage Threshold requirements shall not be counted toward Recipient's job creation or job retention obligations contained in Exhibit D. The Job Obligations in Exhibit D include Recipient's Base Employment Level and the number of new jobs required to be created above the Base Employment Level.

*"Laborshed Wage"* means the Qualifying Wage Threshold applicable to Recipient's Project as calculated pursuant to rule 261 IAC 173.2 and 261 IAC chapter 174 and as specified in Exhibit D of this Contract.

*"Loan"* means an Award of assistance with the requirement that the Award be repaid with term, interest rate, and other conditions specified as part of the conditions of the Award. "Loan" includes deferred loans, forgivable loans, and float loans. A "deferred loan" is one for which the payment for principal, interest, or both, is not required for some specified period. A "forgivable loan" is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions. A "float loan" means a short-term loan, not to exceed 30 months, made from obligated but unexpended moneys.

*"Maintenance Period"* means the period of time between the Project Completion Date and the Maintenance Period Completion Date. The Project must be maintained in Iowa for this period of time.

*"Maintenance Period Completion Date"* means the date on which the Maintenance Period ends. The specific date on which the Maintenance Period ends is identified in Exhibit D.

*"Person"* means as defined in Article 6.1(g) of this Contract.

*"Project"* means the description of the work and activities to be completed by the Recipient as outlined in Exhibit C - Description of the Project and Award Budget.

*"Project Completion Assistance"* means financial assistance or technical assistance provided to an eligible business in order to facilitate the start-up, location, modernization, or expansion of the business in this state and provided in an expedient manner to ensure the successful completion of the start-up location, modernization, or expansion project.

*"Project Completion Date"* means the date by which the Recipient of incentives or assistance has agreed to meet all the terms and obligations contained in this Contract. The Project Completion Date will be a date by which the project must be completed, all incented jobs must be created or retained, and all other applicable requirements must be met. The specific date on which the project completion period ends is identified in Exhibit D.

*"Project Completion Period"* means the period of time between the Award Date and the Project Completion Date.

*"Qualifying Jobs"* are those Created or Retained Jobs that meet or exceed the Qualifying Wage Threshold Requirement established to qualify for program funding for the programs providing assistance to this Project.

*"Qualifying Wage Threshold"* means the Laborshed Wage as calculated by IEDA pursuant to statute and rule for each program under which financial assistance or Tax Incentives for this Project are awarded. The Qualifying Wage Threshold Requirement for this Project is outlined in Exhibit D, Job Obligations.

*"Recipient's Employment Base"* means the number of jobs as stated in Exhibit D – Job Obligations that the Recipient and IEDA have established as the Base Employment Level for this Project. The number of jobs the Recipient has pledged to create shall be in addition to the Recipient's Employment Base.

*"Retained Job"* means an existing job that meets the Qualifying Wage Threshold Requirements and would be eliminated or moved to another state if the Project did not proceed in Iowa.

*"Security Documents"* means all security agreements, financing statements, mortgages, personal and/or corporate guarantees required by the IEDA Board for this Award.

*“Sufficient Benefits”* means that Recipient offers to each Full-Time Equivalent permanent position a benefits package that meets one of the following:

1. Recipient pays 80 percent of the premium costs for a standard medical plan for single employee coverage with the maximum deductible specified for this project in Exhibit D; or
2. Recipient pays 50 percent of the premium costs for a standard medical plan for employee family coverage with the maximum deductible specified for this project in Exhibit D; or
3. Recipient provides medical coverage and pays the monetary equivalent of paragraph “1” or “2” above in supplemental employee benefits. Benefits counted toward monetary equivalent could include medical coverage, dental coverage, vision insurance, life insurance, pension, retirement, 401k, profit sharing, disability insurance, and child care services.

*“Tax Incentives”* means the tax credits, refunds, or exemptions IEDA has awarded for this Project as detailed in Article 3.

*“Total Project Cost”* means the cost incurred by the Recipient to complete the Project as described in Exhibit C.

**ARTICLE 3: AWARD TERMS**

**3.1 Total Award Amount.** The IEDA Board has approved an Award to the Community an] Recipient from the funding sources and in the maximum amounts shown below:

PROJECT COMPLETION ASSISTANCE	FORM	MAXIMUM AMOUNT
High Quality Jobs Program	Loan	\$ 20,000
	Forgivable Loan	\$ 20,000
<b><i>TOTAL FINANCIAL ASSISTANCE:</i></b>		<b><i>\$ 40,000</i></b>
TAX INCENTIVES		
High Quality Jobs Program	Tax Incentives	\$ 34,545
<b><i>TOTAL STATE TAX INCENTIVES:</i></b>		<b><i>\$ 34,545</i></b>

**3.2 Terms and Conditions of Award.** The terms and conditions of the Award shall be as described in this Contract and the following incorporated exhibit(s):

- Exhibit B-1 High Quality Jobs Program – Tax Credit Component Special Conditions
- Exhibit B-2 High Quality Jobs Program – Project Completion Assistance Component Special Conditions

**ARTICLE 4: CONDITIONS TO AWARD; DISBURSEMENT AND ISSUANCE TERMS**

**4.1 Direct State Financial Assistance – Disbursements of Award Funds.**

(a) *Conditions to Disbursement.* The obligation of IEDA to disburse funds under this Contract shall be subject to the conditions described in this Article 4.

(b) *Process to Request Disbursement of Award Funds.* Recipient shall prepare, sign and submit disbursement requests and reports as specified in this Contract in the form and content required by IEDA. Recipient shall verify that claimed expenditures are allowable costs. The Recipient shall maintain documentation adequate to support the claimed costs.

(c) *Documents Submitted.* Funds will not be disbursed until IEDA has received the documents described in section 4.3 below as well as the following additional documents, properly executed and completed and approved by IEDA as to form and substance:

1. *Security Documents.* The fully executed Security Documents required in Article 5.
2. *Promissory Note(s).* The Promissory Note(s) required and described in the exhibit(s).

3. *Requests for Disbursement.* All disbursements of Award Funds shall be subject to receipt by the IEDA of requests for disbursement, in form and content acceptable to IEDA, submitted by the Recipient. All requests shall include documentation of costs that have been paid or costs to be paid immediately upon receipt of Award proceeds.

(d) *Prior Costs.* No expenditures made prior to the Award Date may be included as Project costs. No funds will be disbursed for expenditures prior to the Award Date.

(e) *Cost Variation.* In the event that the actual cost of the Project is less than the Total Project Cost specified in Exhibit C, the Award Funds specified in Article 3.1 shall be reduced at the same ratio as the reduction in the actual cost of the Project bears to the Total Project Cost specified in Exhibit B. Any funds previously disbursed by IEDA in excess of the reduced Award Funds to be provided by IEDA shall be returned to IEDA immediately upon receipt by Recipient of a written request by IEDA for repayment.

(f) *Investment of Award Funds.*

1. In the event that the Award Funds are not immediately utilized, temporarily idle Award Funds held by the Recipient may be invested, provided that such investments shall be in accordance with State law, including but not limited to the provisions of Iowa Code chapter 12C concerning the deposit of public funds. Interest accrued on temporarily idle Award Funds held by the Recipient shall be credited to and expended on the Project prior to the expenditure of other Award Funds.

2. Within ten (10) days of receipt of a written request from IEDA, Recipient shall inform IEDA in writing of the amount of unexpended Award Funds in the Recipient's possession or under the Recipient's control, whether in the form of cash on hand, investments, or otherwise. Recipient shall return to IEDA all unexpended Award Funds remaining, including accrued interest, after all allowable Project costs have been paid or obligated within thirty (30) days after the Project Completion Date.

#### **4.2 Tax Incentives—Conditions to Issuance of Tax Credit Number.**

(a) *Tax Credit Number Required to Claim Incentives.* Recipient shall not claim the Tax Incentives described in Article 3 until IEDA has issued a tax credit number for this Project and Recipient has undertaken the activities described in this Contract and the applicable law to be eligible for such Tax Incentives.

(b) *Issuance of Tax Credit Number.* Upon satisfaction of the conditions described herein, IEDA will issue a tax credit number to the Recipient for this Project. The tax credit number shall be used in preparing any claims for Tax Incentives.

(c) *Conditions to Issuance of Tax Credit Number.* The obligation of IEDA to issue a tax credit number

shall be subject to the conditions precedent described in Article 4.

(d) *Documents Submitted.* IEDA shall have received the documents described in section 4.3, properly executed and completed, and approved by IEDA as to form and substance, prior to issuing any tax credit number.

#### 4.3 Documents required.

(a) *Contract.* Fully executed Contract.

(b) *Incorporation Documents.* Copies of the Articles of Incorporation or the Articles of Organization, whichever is appropriate, of the Recipient, certified in each instance by its secretary or assistant secretary.

(c) *Certificate of Existence; Certificate of Authority.* A certificate of existence for the Recipient from the State of incorporation or organization, whichever is appropriate, and a certificate of authority authorizing the Recipient to conduct business in the state of Iowa, if it is not organized or incorporated in Iowa.

(d) *Results of Lien and Tax Search and Documentation of Satisfactory Credit History.* Financing statement, tax and judgment lien search results, in the Recipient's state of incorporation or organization, against the Recipient and/or the property serving as the Recipient's security under this Contract, and documentation of satisfactory credit history of the Recipient and guarantors, as applicable, with no judgments or unsatisfied liens or similar adverse credit actions.

(e) *Other Required Documents.* Such other contracts, instruments, documents, certificates and opinions as IEDA may reasonably request.

(f) *Solid or Hazardous Waste Audit.* To comply with Iowa Code section 15A.1(3)"b," if the Recipient generates solid or hazardous waste, it must either: a) submit a copy of the Recipient's existing in-house plan to reduce the amount of waste and safely dispose of the waste based on an in-house audit conducted within the past 3 years; or b) submit an outline of a plan to be developed in-house; or c) submit documentation that the Recipient has authorized the Iowa Department of Natural Resources or Iowa Waste Reduction Center to conduct the audit.

(g) *Release Form – Confidential Tax Information.* A signed Authorization for Release of Confidential State Tax Information form to permit IEDA to receive the Recipient's state tax information directly from the Iowa Department of Revenue for the purpose of evaluation and administration of Tax Incentives and other state financial assistance programs.

(h) *Project Financial Commitments.* The Recipient shall have submitted documentation acceptable to IEDA from the funding sources identified in Exhibit A committing to the specified financial involvement in the Project and received the IEDA's approval of the documentation. The documentation shall include the amount, terms and conditions of the financial commitment, as well as any applicable schedules and may include agreements and resolutions to that effect.

(i) *State Building Code Bureau Approval.* If any part of the Award proceeds will be used for the construction of new buildings and if any of the following applies:

1. The building or structure is located in a governmental subdivision which has not adopted a local building code; or

2. The building or structure is located in a governmental subdivision which has adopted a building code, but the building code is not enforced; or

3. Bidding for construction shall not be conducted prior to obtaining written approval of the final plans by the State Building Code Bureau of the Iowa Department of Public Safety.

**4.4 Suspension, Reduction or Delay of Award.** Any one or more of the following shall be grounds for IEDA to suspend, delay or reduce the amount of disbursement of Award Funds or delay the issuance of a tax credit number or receipt of Tax Incentives:

(a) *Unremedied event of default.* Upon the occurrence of an Event of Default, as defined in this Contract, by the Recipient, IEDA may suspend payment or issuance of the Award to the Recipient until such time as the default has been cured.

(b) *Layoff, closure or relocation.* In the event the Recipient experiences a layoff within the state of Iowa, relocates or closes any of its Iowa facilities IEDA has the discretion to reduce or eliminate some or all of the Award.

(c) *Reduction, discontinuance or alteration of state funding/programs.* Any termination, reduction, or delay of funds or Tax Incentives available due, in whole or in part, to (i) lack of, reduction in, or a deappropriation of revenues or Tax Incentives previously appropriated or authorized for this Contract, or (ii) any other reason beyond the IEDA's control may, in the IEDA's discretion, result in the suspension, reduction or delay of Award Fund or authorization or issuance of Tax Incentives to the Recipient.

**4.5 Closing Cost Fee.** Upon execution of the contract and prior to the issuance of a tax credit number or the disbursement of Award Funds, an eligible business shall remit to the Authority a one-time compliance cost fee in the amount of \$500.

## **ARTICLE 5: SECURITY REQUIREMENTS**

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**5.1 Security for Project Completion Assistance Awarded.** The Recipient shall execute in favor of the IEDA all security agreements, financing statements, mortgages, personal and/or corporate guarantees (the "Security Documents") as required by the IEDA Board for this Award.

(a) *Form of Security.* This Contract shall be secured by the collateral described below, shall be incorporated as Exhibit E of this Contract, and shall remain in effect through the Contract End Date:

- Irrevocable Letter of Credit.

(b) *Value of Collateral.* The value, as reasonably determined by IEDA, of the security shall meet or exceed the amount of Award Funds disbursed.

(c) *Additional or Substitute Collateral.* In case of a decline in the market value of the security or any part thereof, IEDA may require that additional or substitute collateral of quality and value satisfactory to IEDA be pledged as security for this Award. The Recipient shall provide such additional or substitute collateral within 20 days of the date of the request for additional or substitute collateral to secure the Award in an amount equal to or greater than the amount of outstanding Award funds.

(d) *Annual Updated Financials from Guarantor(s) Required.* If the form of security required as described in paragraph (a) above is a guarantee, the Recipient shall annually provide IEDA with current financial statements from the guarantor(s) identified in paragraph "a" above. For purposes of this paragraph, "financial statements" includes but is not limited to profit and loss statement and balance sheet; schedule of aged accounts receivable; schedule of aged accounts payable; and schedule of other debts. These financial statements shall be submitted by Recipient in connection with the Annual Project Status Report required in Article 7.5(b). Updated financial statements may be requested by IEDA more frequently than annually if IEDA has reason to believe that there has been an adverse change in the financial condition of



the guarantor(s), in which case, Recipient shall submit the requested updated financial statements within 20 days of the request.

**5.2 Security for Tax Incentives Awarded.** The Recipient shall not be required to secure any portion of the Award provided in the form of Tax Incentives.

## **ARTICLE 6: REPRESENTATIONS AND WARRANTIES**

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**6.1 Representations of Recipient.** The Recipient represents and warrants to IEDA as follows:

(a) *Organization and Qualifications.* The Recipient is duly organized, validly existing and in good standing under the state of its incorporation or organization, whichever is appropriate, and is authorized to conduct business in the state of Iowa. The Recipient has full and adequate power to own its property and conduct its business as now conducted, and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business conducted by it or the nature of the property owned or leased by it requires such licensing or qualifying, except where the failure to so qualify would not have a material adverse effect on the Recipient's ability to perform its obligations hereunder.

(b) *Authority and Validity of Obligations.* The Recipient has full right and authority to enter into this Contract. The person signing this Contract has full authority on behalf of Recipient to execute this Contract and issue, execute or otherwise secure or deliver any documents or obligations required under this Contract on behalf of the Recipient, and to perform, or cause to be performed, each and all of the obligations under the Contract.

The Contract delivered by the Recipient has been duly authorized, executed and delivered by the Recipient and constitutes the valid and binding obligations of the Recipient and is enforceable against it in accordance with its terms. This Contract and related documents do not contravene any provision of law or any judgment, injunction, order, or decree binding upon the Recipient or any provision of the corporate governance documents of the Recipient, nor does this Contract contravene or constitute a default under any covenant, indenture or contract of or affecting the Recipient or any of its properties.

(c) *Affiliates.* The Recipient has no Affiliates involved with the Project on the Contract Effective Date.

(d) *Financial Reports.* The balance sheet of the Recipient furnished to IEDA fairly presents its financial condition as of said date and is in conformity with Generally Accepted Accounting Principles (GAAP) applied on a consistent basis. The Recipient has no contingent liabilities which are material to it, other than as indicated on such financial statements or, with respect to future periods, on the financial statements furnished to IEDA.

(e) *No Material Adverse Change.* Since the Award Date, there has been no change or the Recipient foresees no change in the condition (financial or otherwise) of the Recipient or the prospects of the Recipient, except those occurring in the ordinary course of business, none of which individually or in the aggregate has been materially adverse. To the knowledge of the Recipient, there has been no material adverse change in the condition of the Recipient, financial or otherwise, or the prospects of the Recipient.

(f) *Full Disclosure; Recipient's Financial Assistance Application.* The statements and other information furnished to the IEDA by Recipient in its Financial Assistance Application and in connection with the negotiation of this Contract do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading. The IEDA acknowledges that, as to any projections furnished to the IEDA, the Recipient only represents that the same were prepared on the basis of information and estimates it believed to be reasonable.

(g) *Trademarks, Franchises and Licenses.* The Recipient owns, possesses, or has the right to use all necessary patents, licenses, franchises, trademarks, trade names, trade styles, copyrights, trade secrets, knowhow and confidential commercial and proprietary information to conduct its business as now conducted, without known conflict with any patent, license, franchise, trademark, trade name, trade style, copyright or other proprietary right of any other Person. As used in this Contract, "Person" means an individual, partnership, corporation, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

(h) *Governmental Authority and Licensing.* The Recipient has received all licenses, permits, and approvals of all Federal, state, local, and foreign governmental authorities, if any, necessary to conduct its business, in each case where the failure to obtain or maintain the same could reasonably be expected to have a material adverse effect. No investigation or proceeding which, if adversely determined, could reasonably be expected to result in revocation or denial of any material license, permit, or approval is pending or, to the knowledge of the Recipient, threatened.

(i) *Litigation and Other Controversies.* There is no litigation or governmental proceeding pending, nor to the knowledge of the Recipient, threatened, against the Recipient which, if adversely determined would result in any material adverse change in the financial condition, properties, business or operations of the Recipient, nor is the Recipient aware of any existing basis for any such litigation or governmental proceeding.

(j) *Good Title.* The Recipient has good and defensible title to or valid leasehold interests in all of its property involved with the Project including, without limitation, the Secured Property if real property is a security for this Contract reflected on the most recent balance sheets furnished to the IEDA, except for sales of assets in the ordinary course of business.

(k) *Taxes.* All tax returns the Recipient is required to file in any jurisdiction have, in fact, been filed, and all taxes, assessments, fees and other governmental charges upon the Recipient or upon any of its property, income or franchises, which are shown to be due and payable in such returns, have been paid, except such taxes, assessments, fees and governmental charges, if any, which are being contested in good faith and by appropriate proceedings which prevent enforcement of the matter under contest and as to which adequate reserves established in accordance with GAAP have been provided. The Recipient knows of no proposed additional tax assessment against it for which adequate provisions in accordance with GAAP have not been made on its accounts. Adequate provisions in accordance with GAAP for taxes on the books of the Recipient have been made for all open years, and for their current fiscal period.

(l) *Other Contracts.* The Recipient is not in default under the terms or any covenant, indenture or contract of or affecting the Recipient's business or any of its properties, which default, if uncured, would have a material adverse effect on its financial condition, properties, business or operations.

(m) *No Event of Default.* No Event of Default, as defined in Article 9, has occurred or is continuing.

(n) *Compliance with Laws.* The Recipient is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to the business operations of the Recipient and laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes or substances, non-compliance with which could have a material adverse effect on the financial condition, properties, business or operations of the Recipient. The Recipient has not received notice that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental or health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, properties, business or operations of the Recipient.

(o) *Effective Date of Representations and Warranties.* The warranties and representations of this Article are made as of the Contract Effective Date and shall be deemed to be renewed and restated by the Recipient at the time each request for disbursement of Award Funds is submitted to IEDA or each time Tax Incentives are claimed by the Recipient.

## **6.2 Representations of Community.**

(a) *Local Approvals Received; Authority and Validity of Obligations.* The Community has secured all necessary local approvals and has full right and authority to enter into this Contract. The person signing this Contract has full authority on behalf of the Community to:

1. Sign this Contract, and
2. Perform each and all of the Community's obligations under this Contract.

The Contract delivered by the Community has been duly authorized, executed and delivered by the Community and constitutes the valid and binding obligations of the Community and is enforceable against it in accordance with its terms. This Contract and related documents do not contravene any provision of law or any judgment, injunction, order or decree binding upon the Community or contravene or constitute a default under any covenant, indenture or contract of or affecting the Community or any of its properties.

(b) *Local Commitment.* The Community represents that there are legally enforceable commitments in place for the Community local commitment identified for the Project in *Exhibit C -Description of the Project and Award Budget.*

(c) *No Material Adverse Change.* Since the Award Date, there has been no material adverse change in the Community's ability to perform its obligations under this Contract.

(d) *Full Disclosure; Community's Financial Assistance Application.* The statements and other information furnished to the IEDA by the Community in the Financial Assistance Application and in connection with the negotiation of this Contract do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading. The IEDA acknowledges that, as to any projections furnished to the IEDA, the Community only represents that the same were prepared on the basis of information and estimates it believed to be reasonable.

(e) *Governmental Authority and Licensing.* The Community has received all licenses, permits, and approvals of all federal, state, local, and foreign governmental authorities, if any, necessary to perform its obligations under this Contract. No investigation or proceeding which, if adversely determined, could reasonably be expected to result in revocation or denial of any material license, permit, or approval is pending or, to the knowledge of the Community, threatened.

(f) *Litigation and Other Controversies.* There is no litigation or governmental proceeding pending, nor to the knowledge of the Community, threatened, against the Community which, if adversely determined would result in any material adverse change in the Community's ability to perform under this Contract, nor is the Community aware of any existing basis for any such litigation or governmental proceeding.

(g) *No Event of Default.* No Event of Default by the Community, as defined in Article 9, has occurred or is continuing.

(h) *Compliance with Laws.* The Community is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to the operations of the Community and laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes or substances, non-compliance with which could have a material adverse effect on the

financial condition, properties, business or operations of the Community in relation to the Community's ability to perform its obligations under this contract. The Community has not received notice that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental or health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, properties, business or operations of the Community in relation to the Community's ability to perform its obligations under this contract.

(i) *Effective Date of Representations and Warranties.* The warranties and representations of this Article are made as of the Contract Effective Date.

**ARTICLE 7: COVENANTS OF THE RECIPIENT**

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For the duration of this Contract, the Recipient covenants to IEDA as follows:

**7.1 Project Performance Obligations.**

(a) *Use Award Funds only for Project.* The Recipient shall use the Award Funds only for the Project and for the activities described in Exhibit C -Description of the Project and Award Budget and this Contract. Use of the Award Funds shall conform to the Budget for the Project as detailed in Exhibit C -Description of the Project and Award Budget. The Recipient represents that there are legally enforceable commitments in place from the funding sources identified for the Project in Exhibit C -Description of the Project and Award Budget.

(b) *Meet and Maintain Eligibility Requirements.* Recipient shall continue to meet and maintain all statutory eligibility requirements for the funding sources providing assistance under this Contract.

(c) *Project Time Period.* This Contract covers the Project time period from the Award Date through the Maintenance Period Completion Date. Recipient shall complete and maintain the Project within the Project time period shown below:

		<b>COMPLIANCE MEASUREMENT POINT</b>		<b>COMPLIANCE MEASUREMENT POINT</b>	
<b>Award Date</b>	<b>Project Completion Period</b>	<b>Project Completion Date</b>	<b>Maintenance Period</b>	<b>Maintenance Period Completion Date</b>	<b>Contract Closeout</b>

<p><b>"Award Date"</b> is the date first stated in this Contract and is the date the IEDA Board approved the awarding of financial assistance to the Recipient for the Project.</p>	<p><b>"Project Completion Period"</b> is the period of time between the Award Date and the Project Completion Date.</p>	<p><b>"Project Completion Date"</b> is the date defined in Exhibit D by which the Recipient must complete the Project.</p> <p>At this point, IEDA will review the Project to verify compliance with Contract terms and obligations.</p>	<p><b>"Maintenance Period"</b> is the period of time between the Project Completion Date and the Maintenance Period Completion Date. The Project must be maintained in Iowa for this period of time.</p>	<p><b>"Maintenance Period Completion Date"</b> is the date defined in Exhibit D on which the Maintenance Period ends.</p> <p>At this point, IEDA will review the Project to verify that it was maintained in compliance with Contract terms and obligations.</p>	<p>IEDA will conduct Contract Closeout procedures after all events described in Article 1 have been met.</p> <p><b>"Contract End Date"</b> is the date stated in IEDA's written Notice of Final Contract Closeout that is issued pursuant to Article 1.</p>
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(d) *Complete Project by Project Completion Date.* By the Project Completion Date, Recipient shall complete the Project, make the total investment it pledged for the Project and in accordance with the Award Budget as detailed in Exhibit C - Description of the Project and Award Budget, and comply with all other performance requirements described in this Contract.

(e) *Total Project Costs.* By the Project Completion Date, Recipient shall have completed the Project with a Total Project Cost as detailed in Exhibit C - Description of the Project and Award Budget.

(f) *Maintain Project through Maintenance Period Completion Date.* Recipient shall maintain the Project through the Maintenance Period Completion Date.

(g) *Maintain Project in Iowa During Contract Period.* The Recipient shall at all times preserve and maintain its existence as a corporation in good standing and maintain the Project in Iowa. The Recipient will preserve and keep in force and effect all licenses, permits, franchises, approvals, patents, trademarks, trade names, trade styles, copyrights and other proprietary rights necessary to the proper conduct of its respective business.

**7.2 Taxes and Insurance.**

(a) *Pay Taxes and Assessments.* The Recipient shall duly pay and discharge all taxes, rates, assessments, fees, and governmental charges upon or against its properties, in each case before the same become delinquent and before penalties accrue thereon, unless and to the extent that the same are being contested in good faith and by appropriate proceedings and adequate reserves are provided therefore.

(b) *Maintain Insurance.* The Recipient shall insure and keep insured in good and responsible insurance companies all insurable property owned by it which is of a character usually insured by Persons similarly situated and operating like properties against loss or damage from such hazards or risks as are insured by Persons similarly situated and operating like properties, and the Recipient shall insure such other hazards and risks, including employers' and public liability risks in good and responsible insurance companies as and to the extent usually insured by Persons similarly situated and conducting similar business. The Recipient will, upon request of IEDA, furnish a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this Article.

**7.3 Preserve Project and Protect Security.**

(a) *Maintenance of Properties.* The Recipient shall maintain, preserve and keep its properties in good

repair, working order and condition, ordinary wear and tear excepted, and will from time to time make all needful and proper repairs, renewals, replacements, additions and betterments thereto so that at all times the efficiency thereof shall be fully preserved and maintained in accordance with prudent business practices.

(b) *Restrictions on Security.* If Security is required pursuant to Article 5 of this Contract, the Recipient shall not, without prior written disclosure to IEDA and prior written consent of IEDA, which shall not be unreasonably withheld, directly or indirectly:

1. Sell, transfer, convey, assign, encumber or otherwise dispose of any of the Secured Property for this Project.
2. Place or permit any restrictions, covenants or any similar limitations on the Secured Property or in the Security Documents for the Project.
3. Remove from the Project site or the State all or any part of the Secured Property.
4. Create, incur or permit to exist any lien of any kind on the Secured Property.

**7.4 Recipient Changes.**

(a) *No Changes in Recipient Operations.* The Recipient shall not materially change the Project or the nature of the business and activities being conducted or proposed to be conducted by Recipient, as described in the Recipient's approved Financial Assistance Application, Exhibit A of this Contract, unless approved in writing by IEDA prior to the change.

(b) *Changes in Recipient Ownership, Structure and Control.* The Recipient shall not materially change the ownership, structure, or control of the business if it would adversely affect the Project. This includes, but is not limited to, entering into any merger or consolidation with any person, firm or corporation or permitting substantial distribution, liquidation or other disposal of assets directly associated with the Project. Recipient shall provide IEDA with advance notice of any proposed changes in ownership, structure or control. The materiality of the change and whether the change adversely affects the Project shall be as reasonably determined by IEDA.

**7.5 Required Reports.**

(a) *Review of Reports.* The Recipient shall prepare, sign and submit required reports, in the form and content required by IEDA, as specified in this Contract.

(b) *Reports.* The Recipient shall prepare, sign and submit the following reports to the IEDA throughout the Contract period:

<u>Report</u>	<u>Due Date</u>
<u>Annual Project Status Report</u> The Annual Project Status Report will collect information from the Recipient about the status of the Project.	July 31 <sup>st</sup> for the period ending June 30th
<u>End of Project Report</u> The End of Project Report will collect information from the Recipient about the completed Project.	Within 30 days of Project Completion Date

<p><b><u>End of Maintenance Period Report</u></b>  The End of Maintenance Period Report will collect information from the Recipient's continued maintenance of the Project.</p>	<p>Within 30 days of the end of the Maintenance Period Completion Date</p>
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(c) *Additional Reports, Financial Statements as Requested by IEDA.* The IEDA reserves the right to require more frequent submission of reports if, in the opinion of the IEDA, more frequent submissions would provide needed information about Recipient's Project performance, or if necessary in order to meet requests from the Iowa General Assembly, the Department of Management or the Governor's office. At the request of IEDA, Recipient shall submit its annual financial statements completed by an independent CPA, or other financial statements including, but not limited to, income, expense, and retained earnings statements.

**7.6 Compliance with Laws.**

(a) *State, local and federal laws.* Recipient shall comply in all material respects with the requirements of all applicable federal, state and local laws, rules, regulations and orders.

(b) *Environmental laws.* Recipient shall comply in all material respects with all applicable environmental, hazardous waste or substance, toxic substance and underground storage laws and regulations, and the Recipient shall obtain any permits or licenses and shall acquire or construct any buildings, improvements, fixtures, equipment or its property required by reason of any applicable environmental, hazardous waste or substance, toxic substance or underground storage laws or regulations.

(c) *Nondiscrimination laws.* Recipient shall comply in all material respects with all applicable federal, state, and local laws, rules, ordinances, regulations and orders applicable to the prevention of discrimination in employment, including the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action.

(d) *Worker rights and safety.* The Recipient shall comply in all material respects with all applicable federal, state and local laws, rules, ordinances, regulations and orders applicable to worker rights and worker safety.

(e) *Immigration laws.* Recipient shall only employ individuals legally authorized to work in this State. In addition to any and all other applicable penalties provided by current law, all or a portion of the Award is subject to recapture by IEDA if Recipient is found to employ individuals not legally authorized to work in the State of Iowa.

(f) *Compliance with IEDA's Administrative Rules.* Recipient shall comply with IEDA's administrative rules for the programs under which assistance is provided to the Project and rules governing administration of this Contract.

**7.7 Inspection and Audit.** The Recipient shall permit the IEDA and its duly authorized representatives, at such reasonable times and reasonable intervals as the IEDA may designate, to:

(a) Conduct site visits and inspect the Project.

(b) Audit financial records related to the Project.

(c) Examine and make copies of the books of accounts and other financial records of the Recipient related to the Project.

(d) Discuss the affairs, finances and accounts of the Recipient with, and to be advised as to the same by, its officers, and independent public accountants. By this provision, the Recipient authorizes such accountants to discuss with the IEDA and the IEDA's duly authorized representatives the finances and affairs of the Recipient.

#### **7.8 Maintenance and Retention of Records.**

(a) *Maintain Accounting Records.* The Recipient is required to maintain its books, records and all other evidence pertaining to this Contract in accordance with GAAP and such other procedures specified by IEDA.

(b) *Access to Records.* Records to verify compliance with the terms of this Contract shall be available at all times, and made available to IEDA and its designees at places and times designated by IEDA, for the duration of this Contract and any extensions thereof. Recipient shall make its records available to: (i) IEDA; (ii) IEDA's internal or external auditors, agents and designees; (iii) the Auditor of the State of Iowa; (iv) the Attorney General of the State of Iowa; (v) the Iowa Division of Criminal Investigations and any other applicable law enforcement agencies.

(c) *Records Retention Period.* Recipient shall retain the records for a period of three (3) years from the Contract End Date, unless the records are the subject of an audit, investigation, or administrative or legal proceeding. In those instances, the records shall be retained until the audit, investigation or proceeding has been resolved.

#### **7.9 Required Notices from Recipient to IEDA.**

(a) *Notice of Major Changes.* Recipient shall provide IEDA with written notice within thirty (30) days of the occurrence of: (a) any event that has a material adverse effect on Recipient's ability to complete the Project in accordance with the terms of this Contract; (b) the termination of the business conducted at the Project; (c) a material modification of the nature of the business conducted at the Project; and (d) the transfer of the Project or any material interest in the Project in connection with financing or refinancing the Project.

(b) *Notice of Proceedings.* Without limiting Section 7.9(a), Recipient shall promptly provide IEDA with written notice within ten (10) days of the occurrence of any claims, lawsuits, bankruptcy proceedings, or other proceedings brought against Recipient that have a material adverse effect on Recipient's ability to complete the Project in accordance with the terms of this Contract.

**7.10 Indemnification.** The Recipient shall indemnify, defend and hold harmless the IEDA; the State of Iowa; its departments, divisions, agencies, sections, commissions, officers, employees and agents from and against all losses, liabilities, penalties, fines, damages and claims, including taxes, and all related costs and expenses, including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties, arising from or in connection with any of the following:

- (a) Any claim, demand, action, citation or legal proceeding arising out of or resulting from the Project;
- (b) Any claim, demand, action, citation or legal proceeding arising out of or resulting from a breach by the Recipient of any representation, warranty or covenant made by the Recipient in this Contract;
- (c) Any claim, demand, action, citation or legal proceeding arising out of or related to occurrences that the Recipient is required to insure against as provided for in this Contract; and
- (d) Any claim, demand, action, citation or legal proceeding which results from an act or omission of the Recipient or any of its agents in its or their capacity as an employer of a person.



**7.11 Repayment of Unallowable Costs.** Recipient shall repay any Award received or realized that is determined by IEDA, its auditors, agents or designees, the Auditor of the State of Iowa, or similar authorized governmental entity to be unallowable under the terms of this Contract.

**7.12 Reserved.**

## **ARTICLE 8: COVENANTS OF THE COMMUNITY**

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For the duration of this Contract, the Community covenants to IEDA as follows:

**8.1 Local Match.** The Community shall provide the local financial assistance for the Project as described in Exhibit C, Project Description and Award Budget.

**8.2 Notice to IEDA.** In the event the Community becomes aware of any material alteration in the Project, initiation of any investigation or proceeding involving the Project, any change in the Recipient's ownership, structure or operation, or any other similar occurrence, the Community shall promptly provide written notice to IEDA.

## **ARTICLE 9: DEFAULTS AND REMEDIES**

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**9.1 Default by Recipient.** An unremedied Event of Default may result in termination of this Contract and repayment of all or a portion of the Award Funds disbursed to Recipient and the value of the Tax Incentives actually received, plus applicable default interest and costs.

(a) *Events of Default* Any one or more of the following shall constitute an "Event of Default" under this Contract:

1. *Nonpayment.* Failure to make a payment when due of any Loan or other payment required by this Contract whether by lapse of time, acceleration or otherwise; or

2. *Noncompliance with Covenants.* Default in the observance or performance of any covenant set forth in Article 7, for more than five (5) business days; or

3. *Noncompliance with Security Documents.* Default in the observance or performance of any term of any Security Document if required in Article 5 beyond any applicable grace period set forth therein; or

4. *Noncompliance with Contract.* Default in the observance or performance of any other provision of this Contract; or

5. *Material Misrepresentation.* Any representation or warranty made by the Recipient in this Contract or in any statement or certificate furnished by it pursuant to this Contract, or made in Exhibit A, Recipient's Financial Assistance Application, or in connection with any of the above, proves untrue in any material respect as of the date of the issuance or making thereof; or

6. *Security Deficiencies.* Any of the Security Documents that represent the Security pledged by Recipient to secure this Contract fails for any reason to create a valid and perfected priority security interest in favor of the IEDA; or

7. *Judgment.* Any judgment or judgments, writ or writs or warrant or warrants of attachment, or

any similar process or processes entered or filed against the Recipient or against any of its property and remains unvacated, unbonded or unstayed for a period of 30 days which materially and adversely affects Recipient's ability to perform its obligations under this Contract; or

8. *Adverse Change in Financial Condition.* Any change occurs in the financial condition of the Recipient which would have a material adverse effect on the ability of the Recipient to perform under this Contract; or

9. *Bankruptcy or Similar Proceedings Initiated.* Either the Recipient shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property, (v) commence any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, or (vi) fail to contest in good faith any appointments or proceeding described below; or

10. *Appointment of Officials.* A custodian, receiver, trustee, examiner, liquidator or similar official is appointed for either the Recipient or any substantial part of any of its respective property, or a proceeding described above is commenced against the Recipient and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) days; or

11. *Insecurity.* IEDA in good faith deems itself insecure and reasonably believes, after consideration of all the facts and circumstances then existing, that the prospect of payment and satisfaction of the obligations under this Contract, or the performance of or observance of the covenants in this Contract, is or will be materially impaired; or

12. *Failure to Submit Required Reports.* The Recipient fails to submit complete reports by the required due dates as outlined in Article 7; or

13. *Layoffs, Relocation or Closure.* The Recipient or any Affiliate experiences a layoff or relocates or closes any of its facilities within the state of Iowa; or

14. *Hiring workers not authorized to work in state.* The Recipient fails to only employ only individuals legally authorized to work in the state of Iowa. If Recipient is found to knowingly employ individuals not legally authorized to work in the state of Iowa then, in addition to any and all other applicable penalties provided by current law, all or a portion of the assistance received is subject to repayment; or

15. *Failure to Maintain Program Eligibility Requirements.* Recipient fails to maintain a statutory eligibility requirement for a program providing assistance under this Contract.

(a) *Notice of Default and Opportunity to Cure.* If IEDA has reasonable cause to believe that an Event of Default has occurred under this Contract, IEDA shall issue a written Notice of Default to the Recipient setting forth the nature of the alleged default in reasonable specificity and providing therein a reasonable period of time, which shall not be fewer than thirty (30) days from the date of the Notice of Default, during which the Recipient shall have an opportunity to cure, provided that cure is possible and feasible.

(b) *Remedies Available to IEDA.* When an Event of Default has occurred and is not cured within the required time period, IEDA may, after written notice to Recipient:

1. Terminate this Contract.
2. Suspend or reduce pending and future disbursements.
3. Declare immediately due and payable without further demand, presentment, protest or notice of any kind the principal and any accrued interest on any outstanding Promissory Notes issued pursuant to this Contract, including both principal and interest and all fees, charges and other amounts payable under this Contract.
4. Require repayment of all or a portion of Award Funds disbursed.
5. Revoke or reduce authorized Tax Incentives.
6. Require full repayment of all or a portion of the value of Tax Incentives received.

(c) **Pro Rata Repayment Permitted in Certain Circumstances.** Barring any other Event of Default, IEDA may permit pro rata repayment of the Project Completion Assistance received if the default is due solely to one of the following circumstances:

1. *Failure to Meet Job Obligations by Project Completion Date.* If the Recipient does not meet its Job Obligations as detailed in Exhibit D, Job Obligations, by the Project Completion Date, Recipient shall repay a portion of the Project Completion Assistance received. The amount to be repaid is calculated based on the number of jobs that are at or above the Qualifying Wage Threshold Requirement. Repayment of any amounts due will be at the rate of **\$4,000.00 per unfilled job**. This per job rate is calculated as follows: \$20,000 Forgivable Loan Award Amount divided by 5 jobs to be created.

For example, if the Recipient is short by 10 jobs the amount to be repaid is \$4,000.00 per job multiplied by 10, for a total due of \$40,000.00. Interest shall apply as described in paragraph 9.1(e).

Upon repayment of the amount due, IEDA will reduce the Recipient's Job Obligations. The reduced Job Obligations must be maintained through the Maintenance Period Completion Date.

2. *Job shortfall at Maintenance Period Completion Date.* If the Recipient does not maintain its adjusted Job Obligations through the Maintenance Period Completion Date, Recipient shall repay an additional portion of the Project Completion Assistance received for the number of jobs it failed to maintain. The amount to be repaid will be calculated as described in subsection 1 above.

3. *Less than Total Project Cost at Project Completion Date.* If the Recipient does not complete the Project with a Total Project Cost as stated in Exhibit C, Description of Project and Award Budget, by the Project Completion Date, Recipient shall repay a portion of the Project Completion Assistance received based on the amount of shortfall in comparison to the required Total Project Cost. For example, if the Recipient's required Total Project Cost is 10% less than pledged, 10% of the Award amount received must be repaid, plus 6% interest calculated from the date of first disbursement of Award Funds.

4. *Repayment Amount If Both Shortfall In Job Obligations and Less Than Total Project Cost.* If the Recipient experiences a shortfall in its Job Obligations and the Total Project Cost is less than required, Recipient shall repay to IEDA the greater of the amount owed for the job shortfall or the amount owed for the investment shortfall.

(d) *Default Interest Rate.* If an Event of Default occurs and remains uncured, a default interest rate of 6% shall apply to repayment of amounts due under this Contract. The default interest rate shall accrue from the first date Award Funds are disbursed or Tax Incentives are received.

(e) *Expenses.* The Recipient agrees to pay to the IEDA all expenses reasonably incurred or paid by IEDA, including reasonable attorneys' fees and court costs, in connection with any Default or Event of Default by the Recipient or in connection with the enforcement of any of the terms of this Contract.

**9.2 Default by Community.** An unremedied Event of Default may result in termination of this Contract and repayment by Community of all or a portion of the pledged local match, plus applicable default interest and costs.

(a) *Events of Default.* Any one or more of the following shall constitute an "Event of Default by Community" under this Contract:

1. *Noncompliance with Covenants.* Default in the observance or performance of any covenants of the Community set forth in Article 8, for more than five (5) business days; or

2. *Material Misrepresentation.* Any representation or warranty made by the Community in this Contract or in any statement or certificate furnished by it pursuant to this Contract, or made by Community in Exhibit A, Recipient's Financial Assistance Application, or in connection with any of the above, proves untrue in any material respect as of the date of the issuance or making thereof.

(b) *Notice of Default and Opportunity to Cure.* If IEDA has reasonable cause to believe that an Event of Default has occurred under this Contract, IEDA shall issue a written Notice of Default to the Community setting forth the nature of the alleged default in reasonable specificity and providing therein a reasonable period of time, which shall not be fewer than thirty (30) days from the date of the Notice of Default, during which the Community shall have an opportunity to cure, provided that cure is possible and feasible.

(c) *Remedies Available to IEDA.* When an Event of Default by Community has occurred and is not cured within the required time period, IEDA may, after written notice to Community:

1. Suspend or reduce pending and future disbursements to Community.

2. Require payment by Community of the amount of local financial assistance pledged to the Project but not provided.

(d) *Expenses.* The Community agrees to pay to the IEDA all expenses reasonably incurred or paid by IEDA including reasonable attorneys' fees and court costs, in connection with any Default or Event of Default by the Community or in connection with the enforcement of any of the terms of this Contract.

## **ARTICLE 10: MISCELLANEOUS.**

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### **10.1 Choice of Law and Forum; Governing Law.**

(a) In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, the proceeding shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if such court has jurisdiction. If, such court lacks jurisdiction and jurisdiction lies only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division.

(b) This provision shall not be construed as waiving any immunity to suit or liability, in state or federal

court, which may be available to the IEDA, the State of Iowa or its members, officers, employees or agents.

(c) This Contract and the rights and duties of the parties hereto shall be governed by, and construed in accordance with, the internal laws of the State of Iowa without regard to principles of conflicts of laws.

**10.2 Contract Amendments.** Neither this Contract nor any documents incorporated by reference in connection with this Contract, may be changed, waived, discharged or terminated orally, except as provided below:

(a) *Writing required.* The Contract may only be amended if done so in writing and signed by all the parties. Examples of situations requiring an amendment include, but are not limited to, time extensions, budget revisions, and significant alterations of existing activities or beneficiaries.

(b) *IEDA review.* Requests to amend this Contract shall be processed by IEDA in compliance with the IEDA's rules and procedures applicable to contract amendments.

**10.3 Notices.** Except as otherwise specified herein, all notices hereunder shall be in writing, including, without limitation by fax, and shall be given to the relevant party at its address, e-mail address, or fax number set forth below, or such other address, e-mail address, or fax number as such party may hereafter specify by notice to the other parties provided by United States mail, by fax or by other telecommunication device capable of creating a written record of such notice and its receipt. Notices hereunder shall be addressed:

*To the Recipient at:*

ePATHUSA, Inc.  
Hari Nallure  
6600 Westown Parkway, Suite 245  
West Des Moines, IA 50266

E-mail: hnallure@epathusa.net  
Telephone: 515.974.6778 ext 4  
Facsimile: 630.884.3700

*To the IEDA at:*

Iowa Economic Development Authority  
Compliance  
200 East Grand Avenue  
Des Moines, Iowa 50309  
Attention: Business Development - Compliance

E-mail: Compliance@iowa.gov  
Telephone: 515.725.3000  
Facsimile: 515.725.3010

*To the Community at:*

City of West Des Moines  
Clyde Evans  
4200 Mills Civic Parkway  
West Des Moines, IA 50266

E-mail: clyde.evans@wdm.iowa.gov  
Telephone: 515.222.3623

Each such notice, request or other communication shall be effective (i) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this Article and a confirmation of such facsimile has been received by the sender, (ii) if given by e-mail, when such e-mail is transmitted to the e-mail address specified in this Article and a confirmation of such e-mail has been received by the sender, (iii) if given by mail, five (5) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iv) if given by any other means, when delivered at the addresses specified in this Article.

**10.4 Headings.** Article headings used in this Contract are for convenience of reference only and are not a part of this Contract for any other purpose.

**10.5 Final Authority.** The IEDA shall have the authority to reasonably assess whether the Recipient has complied with the terms of this Contract. Any IEDA determinations with respect to compliance with the provisions of this Contract shall be deemed final determinations pursuant to Iowa Code Chapter 17A, Iowa Administrative Procedure Act.

**10.6 Waivers.** No waiver by IEDA of any default hereunder shall operate as a waiver of any other default or of the same default on any future occasion. No delay on the part of the IEDA in exercising any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy by IEDA shall preclude future exercise thereof or the exercise of any other right or remedy.

**10.7 Counterparts.** This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

**10.8 Survival of Representations.** All representations and warranties made herein or in any other Contract document or in certificates given pursuant hereto or thereto shall survive the execution and delivery of this Contract and the other Contract documents and shall continue in full force and effect with respect to the date as of which they were made until all of Recipient's obligations or liabilities under this Contract have been satisfied.

**10.9 Severability of Provisions.** Any provision of this Contract which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. All rights, remedies and powers provided in this Contract or any other Contract document may be exercised only to the extent that the exercise thereof does not violate any applicable mandatory provisions of law, and all the provisions of this Contract and any other Contract document are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Contract or any other Contract document invalid or unenforceable.

**10.10 Successors and Assigns.** This Contract shall be binding upon the Recipient and IEDA and their respective successors and assigns, and shall inure to the benefit of the IEDA and Recipient and their successors and assigns.

**10.11 Nonassignment.** This Contract shall not be assigned, in whole or in part, by Recipient unless approved in writing by IEDA.

**10.12 Termination.** This Contract can be terminated under any of the following circumstances:

(a) *Agreement of the Parties.* Upon written agreement of the Recipient, the Community and IEDA.

(b) *Unremedied Event of Default.* As a result of the Recipient's or Community's unremedied Event of

Default pursuant to Article 9.

(c) *Termination or reduction in funding to IEDA.* As a result of the termination or reduction of funding to IEDA as provided in Article 4.4(c).

**10.13 Documents Incorporated by Reference.** The following documents are incorporated by reference and considered an integral part of this Contract:

1. Exhibit A - Recipient's Financial Assistance Application (on file with IEDA), Application # 17-HQJDF-001 and 17-HQJTC-001
2. Exhibit B-1 High-Quality Jobs Program – Tax Credit Component Special Conditions
3. Exhibit B-2 High-Quality Jobs Program – Project Completion Assistance Component Special Conditions
4. Exhibit C - Description of the Project and Award Budget
5. Exhibit D - Job Obligations
6. Exhibit E- Irrevocable Letter of Credit
7. Exhibit F - Promissory Note(s)

**10.14 Order of Priority.** In the case of any inconsistency or conflict between the specific provisions of this document and the exhibits, the following order of priority shall control:

1. Article 1 - 10 of this Contract.
2. Exhibit A - Recipient's Financial Assistance Application (on file with IEDA), Application # 17-HQJDF-001 and 17-HQJTC-001
3. Exhibit B-1 High-Quality Jobs Program – Tax Credit Component Special Conditions
4. Exhibit B-2 High-Quality Jobs Program – Project Completion Assistance Component Special Conditions
5. Exhibit C - Description of the Project and Award Budget
6. Exhibit D - Job Obligations
7. Exhibit E - Irrevocable Letter of Credit
8. Exhibit F - Promissory Note(s)

**10.15 Integration.** This Contract contains the entire understanding between the Parties relating to the Project and any representations that may have been made before or after signing this Contract, which are not contained herein, are nonbinding, void and of no effect. None of the Parties has relied on any such prior representation in entering into this Contract.

IN WITNESS WHEREOF in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into this Contract and have caused their duly authorized representatives to execute this Contract, effective as of the latest date stated below (Contract Effective Date).

**10.15 Integration.** This Contract contains the entire understanding between the Parties relating to the Project and any representations that may have been made before or after signing this Contract, which are not contained herein, are nonbinding, void and of no effect. None of the Parties has relied on any such prior representation in entering into this Contract.

IN WITNESS WHEREOF in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into this Contract and have caused their duly authorized representatives to execute this Contract, effective as of the latest date stated below (Contract Effective Date).

**FOR IEDA:**


BY:

\_\_\_\_\_  
Deborah V. Durham, Director

\_\_\_\_\_  
Date

**FOR RECIPIENT:**

BY:

  
\_\_\_\_\_  
Signature  
HARI NALLURE, president  
\_\_\_\_\_  
Typed Name and Title

10/14/16  
\_\_\_\_\_  
Date

**FOR THE COMMUNITY:**

BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed Name and Title

\_\_\_\_\_  
Date



## LIST OF EXHIBITS

- Exhibit A - Recipient's Financial Assistance Application (on file with IEDA), Application # 17-HQJDF-001 and 17-HQJTC-001
- Exhibit B-1 High Quality Jobs Program – Tax Credit Component Special Conditions
- Exhibit B-2 High Quality Jobs Program – Project Completion Assistance Component Special Conditions
- Exhibit C - Description of the Project and Award Budget
- Exhibit D - Job Obligations
- Exhibit E - Irrevocable Letter of Credit
- Exhibit F - Promissory Note(s)

**EXHIBIT B – 1**  
**High Quality Jobs Program – Tax Credit Component**

**Special Conditions to Contract # 17-DF/TC-001**

The following additional terms shall apply to the Contract:

**SECTION 1: ADDITIONAL DEFINITIONS.**

---

The following additional terms are defined in this Contract as follows:

“*Capital Investment*” means the investment spent on depreciable assets. The minimum Capital Investment required for this Project is as stated in Section 2 of this Exhibit. The allowable categories of expenditures for purposes of calculating Capital Investment are described in IEDA’s administrative rule 261 IAC 174.10.

“*Investment Qualifying for the Tax Credit*” means new investment directly related to jobs created or retained by the start-up, location, expansion or modernization for this Project.

“*Qualifying Investment*” means the statutorily-required minimum investment amount that must be made and maintained by the Recipient to receive High Quality Jobs Program Tax Incentives for this Project. This amount is as stated in Section 2 of this Exhibit. Not all expenditures count toward meeting the required Qualifying Investment. The categories of expenditures that can be included for purposes of meeting and maintaining statutorily-required investment requirements are described in 261 IAC 174.10.

“*Economically Distressed Area*” means a county that ranks among the bottom 33 of all Iowa counties, as measured by either the average monthly unemployment level for the most recent 12-month period or the average annualized unemployment level for the most recent five-year period.

**SECTION 2: TERMS AND CONDITIONS OF THE AWARD**

---

**2.1 Award.** The Recipient is awarded the following Tax Incentives through the High Quality Jobs Program, based on the minimum investment requirements described herein: \$34,545.

**2.2 Minimum Investment Requirements.** As a condition of receiving Tax Incentives, the Recipient shall meet the following minimum investment requirements:

- |     |  |            |
|-----|--|------------|
| (a) | Capital Investment.                    | \$ 405,750 |
| (b) | Qualifying Investment.                 | \$ 702,750 |
| (c) | Investment Qualifying for Tax Credits. | \$ 607,250 |

**2.3 Additional Tax Incentives.** The Recipient is eligible for additional incentives pursuant to Iowa Code section 15.326, et. seq. The following Tax Incentives, in the maximum amounts shown for each authorized incentive, are so available to the Recipient:

Authorized Incentives	Included in Award	Maximum Amt.
<i>Refund of Sales, Service, and Use Taxes.</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$ 6,150
<i>Refund of Sales Taxes Attributable to Racks, Shelving, and Conveyor Equipment.</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$ 0

Authorized Incentives	Included in Award	Maximum Amt.
<i>Corporate Tax Credit For Certain Sales Taxes Paid By Third Party Developer.</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$ 0
<i>Investment Tax Credit (up to 2%)</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$ 12,145
<i>Research Activities Credit.</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$ 16,250
<i>Local Property Tax Exemption Provided by Community</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	\$ 0

**2.4 Conditions for Authorized Incentives.** The Recipient is responsible to seek these additional incentives through processes described in the applicable statutes and corresponding administrative rules, ordinances and procedures. The following conditions shall apply to the incentives described in section 2.3 of this Exhibit.

(a) *Refund Of Sales, Service And Use Taxes Paid To Contractors Or Subcontractors.* The Recipient is eligible for a refund of sales, service and use taxes paid to contractors and subcontractors as authorized in Iowa Code section 15.331A (2011 Supplement).

1. The Recipient may apply for a refund of the sales and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility of the Recipient.
2. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.
3. To receive a refund of the sales, service and use taxes paid to contractors or subcontractors, the Recipient must:
  - i. Inform the Iowa Department of Revenue (IDR) in writing within two weeks of project completion. For purposes of claiming this refund, "project completion" means the first date upon which the average annualized production of finished product for the preceding ninety-day period at the manufacturing facility operated by the Recipient is at least fifty percent of the initial design capacity of the facility.
  - ii. Make an application to IDR within one year after "project completion," as defined in sub-paragraph i above.

(b) *Reserved.*

(c) *Reserved.*

(d) *Investment Tax Credit.*

1. The Recipient may claim an investment tax credit as provided in Iowa Code section 15.333. Such credit may be claimed for a portion of the Qualifying Expenditures, as defined below in

subparagraph (3), directly related to Job Obligations, as described in Exhibit D, of the start-up or location, expansion, or modernization of the business under this program. The credit shall be earned when the qualifying asset is placed in service. The Recipient shall not claim more than the amount authorized for this incentive as stated above and in Article 3 of the Contract. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

2. The tax credit shall be amortized equally over a five-year period as specified below:

July 1, 2015 – June 30, 2016	\$ 2,429
July 1, 2016 – June 30, 2017	\$ 2,429
July 1, 2017 – June 30, 2018	\$ 2,429
July 1, 2018 – June 30, 2019	\$ 2,429
July 1, 2019 – June 30, 2020	\$ 2,429

3. Only Qualifying Expenditures are eligible for the investment tax credit. For purposes of this incentive, "Qualifying Expenditures" means:
- i. The purchase price of real property and any buildings and structures located on the real property.
  - ii. The cost of improvements made to real property which is used in operation of the business.
  - iii. The costs of machinery and equipment, as defined in Iowa Code section 427A.1(1) "e" and "j" purchased for use in the operation of the business and for which the purchase price may have been depreciated in accordance with GAAP.
4. If the Project includes leasing of new construction or major renovation of an existing building, the annual base rent paid to a third-party developer by Recipient must be for a period equal to the term of the lease agreement but can not exceed the maximum term of the agreement, provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land or the third-party developer's costs to build or renovate the building for the Recipient. Limitations to annual base rent shall only be considered when the Project includes the construction of a new building or the major renovation of an existing building. The Recipient shall enter into a lease agreement with the third-party developer for a minimum of five years.

(e) *Reserved.*

(f) *Reserved.*

### SECTION 3: ADDITIONAL COVENANTS

In addition to the Covenants described in Article 7 of the Contract, the Recipient shall be bound to the additional covenants:

**3.1 Job Obligations.** By the Project Completion Date, the Recipient shall create and/or retain the number of FTE Created Jobs and Retained Jobs included in, for Retained Jobs, and above, for Created Jobs,

the Recipient's Base Employment Level, as detailed in Exhibit D – Job Obligations, and maintain the jobs through the Maintenance Period.

**3.2 Wage Obligations.** The Qualifying Wage Threshold rates specific to this Contract that must be met are stated in Exhibit D, Job Obligations. By the Project Completion Date and through the Maintenance Completion Period Date, the Recipient shall:

(a) For Projects in Economically Distressed Areas or at a designated Grayfield Site, the Qualifying Wage Threshold requirement applicable to all phases of the Project is 100% of the Qualifying Wage Threshold.

(b) For Projects at a designated Brownfield Site, the Qualifying Wage Threshold requirement applicable to all phases of the Project is 90% of the Qualifying Wage Threshold.

(c) For all other Projects:

1. For the *Created Jobs*, pay 100% of the Qualifying Wage Threshold at the start of the Project Completion Period, at least 120% of the Qualifying Wage Threshold by the Project Completion Date, and at least 120% of the Qualifying Wage Threshold until the Maintenance Period Completion Date.

2. For the *Retained Jobs*, pay at least 120% of the Qualifying Wage Threshold throughout both the Project Completion Period and the Maintenance Period.

**3.3 Provide Sufficient Benefits.** The Recipient shall provide Sufficient Benefits to all employees included as part of the job and wage obligations.

#### **SECTION 4: ADDITIONAL DEFAULT PROVISIONS**

In addition to the default provisions included in Article 9 of the Contract, the following default provisions shall apply:

**4.1 Repayment of Tax Incentives Received - High Quality Jobs Program.** IDR is the state agency responsible for collecting the value of any Tax Incentives received in violation of the terms of this Contract. The Community is the party responsible for collecting the value of the local tax incentives received in violation of this Contract. IEDA will determine if the Recipient has met the terms of this Contract. If there is an unremedied Event of Default, IEDA will provide written notice to IDR and the Community. Calculation of the amount owed may be based on a sliding scale in certain circumstances and may include interest assessed by IDR. Those circumstances are as follows:

(a) Failure to Meet Job Obligations by Project Completion Date. If the Recipient does not meet its Job Obligations as detailed in Exhibit D, Job Obligations by the Project Completion Date, the repayment amount shall be the same proportion as the amount of the shortfall in created jobs. For example, if the Recipient creates 50 percent of the jobs required, the Recipient shall repay 50 percent of the incentives received.

Upon repayment of the amount due, IEDA will reduce the Recipient's Job Obligations. The reduced Job Obligations must be maintained through the Maintenance Period Completion Date.

(b) Job shortfall at Maintenance Period Completion Date. If the Recipient does not maintain its adjusted Job Obligations through the Maintenance Period Completion Date, Recipient shall repay an additional percentage of the Tax Incentives it has received. The amount to be repaid will be calculated as

described in subsection (a) above.

(c) **Qualifying Investment.** If the Recipient does not meet its Qualifying Investment requirement as defined in Section 2 of this Exhibit, the repayment amount shall be the same proportion as the amount of the shortfall in required Qualifying Investment. For example, if the Recipient meets 75 percent of the amount of required Qualifying Investment, the Recipient shall repay 25 percent of the amount of the incentives received.

(d) **Less than Total Project Cost at Project Completion Date.** If the Recipient does not complete the Project with a Total Project Cost as stated in Exhibit C, Project Description and Award Budget, by the Project Completion Date Recipient shall repay a portion of the Tax Incentives received.

For example, if the Recipient's actual Total Project Cost is 10% less than pledged, 10% of the value of the Tax Incentives received, plus any interest assessed by IDR, must be repaid.

(e) **Repayment Amount If Shortfall in Job Obligations, Qualifying Investment and/or Less Than Total Project Cost.** If the Recipient experiences a shortfall in two or more of its requirements related to Job Obligations, Qualifying Investment, or the Total Project Cost, IEDA will calculate the percentage owed for the Recipient's failure to meet each of the requirements. The higher of these amounts shall be the amount Recipient shall repay to IDR.

(f) **Selling, Disposing, or Razing of Property.** If, within five years of purchase, the Recipient sells, disposes of, razes, or otherwise renders unusable all or a part of the land, building, or other existing structures for which an investment tax credit was claimed, the income tax liability of the Recipient for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts, plus any interest assessed by IDR:

1. 100% of the tax credit claimed if the property ceases to be approved for the tax credit within one full year after being placed in service.
2. 80% of the tax credit claimed if the property ceases to be approved for the tax credit within two full years after being placed in service.
3. 60% of the tax credit claimed if the property ceases to be approved for the tax credit within three full years after being placed in service.
4. 40% of the tax credit claimed if the property ceases to be approved for the tax credit within four full years after being placed in service.
5. 20% of the tax credit claimed if the property ceases to be approved for the tax credit within five full years after being placed in service.

- End of Exhibit B - 1 -

**EXHIBIT B – 2**  
**High Quality Jobs Program – Project Completion Assistance Component**

**Special Conditions to Contract # 17-DF/TC-001**

The following additional terms shall apply to the Contract:

**SECTION 1: ADDITIONAL DEFINITIONS.**

---

The following additional terms are defined in this Contract as follows:

*“Economically Distressed Area”* means a county that ranks among the bottom 25 of all Iowa counties, as measured by either the average monthly unemployment level for the most recent 12-month period or the average annualized unemployment level for the most recent five-year period.

**SECTION 2 : TERMS OF THE AWARD.**

---

**2.1 Description of Award.** \$40,000 of the Award shall be from the High Quality Jobs Program - Project Completion Assistance Component.

**2.2 Form of Assistance.** The Award, or portion thereof, made through the High Quality Jobs Program - Project Completion Assistance Component shall be in the following form(s):

(a) *Loan.* The Loan shall be awarded to Recipient on the following terms and conditions:

1. Amount: \$ 20,000.
2. Interest Rate: 0 %; interest shall accrue from the date of first disbursement of funds.
3. Term: 60 months.
4. *Promissory Note.* The obligation to repay the Loan shall be evidenced by a Promissory Note executed by the Recipient.
5. *Prepayment.* The outstanding principal and accrued interest of this Loan may be prepaid in part or in full at any time without penalty.
6. *Acceleration upon Default.* If there is a failure to pay any installment of principal and interest when due, or only a portion is paid, or in the event of any other Event of Default under this Contract, the IEDA may declare the entire unpaid principal and all accrued interest immediately due and payable.

(b) *Forgivable Loan.* The Forgivable Loan shall be awarded to Recipient on the following terms and conditions:

1. Amount: \$ 20,000r.
2. Interest Rate: 0 %; Interest accrues from the date of first disbursement of funds.
3. Term: 60 months.

4. *Promissory Note.* The obligation to repay the Forgivable Loan shall be evidenced by a Promissory Note executed by the Recipient.

5. *Terms of Forgiveness.* This Forgivable Loan will be forgiven if the Recipient:

(i) Completes the Project Performance Obligations in Article 7 of the Contract by the Project Completion Date, and

(ii) Maintains the Project Performance Obligations in Article 7 through the Maintenance Period Completion Date, and

(iii) Satisfies all other terms and of this Contract, and

(iv) Is not in default under this Contract.

6. *Prepayment.* The outstanding principal and accrued interest of this Forgivable Loan, or any part thereof that is not forgiven, may be prepaid in part or in full at any time without penalty.

7. *Acceleration upon Default.* If there is a failure to pay any installment of principal and interest when due, or only a portion is paid, or in the event of any other Event of Default under this Contract, the IEDA may declare the entire unpaid principal and all accrued interest immediately due and payable.

(c) *Reserved.*

2.3 **Additional Special Terms and Conditions.** The Recipient shall comply with the additional terms and conditions as a requirement of the Award, or portion thereof, described in this Exhibit:

- None.

### **SECTION 3: ADDITIONAL COVENANTS**

---

In addition to the Covenants described in Article 7 of the Contract, the Recipient shall be bound to the additional covenants:

3.1 **Job Obligations.** By the Project Completion Date, the Recipient shall create and/or retain the number of FTE Created Jobs and Retained Jobs included in, for Retained Jobs, and above, for Created Jobs, the Recipient's Base Employment Level, as detailed in Exhibit D – Job Obligations, and maintain the jobs through the Maintenance Period.

3.2 **Wage Obligations.** The Qualifying Wage Threshold rates specific to this Contract that must be met are stated in Exhibit D, Job Obligations. By the Project Completion Date and through the Maintenance Completion Period Date, the Recipient shall:

(a) For Projects in Economically Distressed Areas or at a designated Grayfield Site the Qualifying Wage Threshold requirement applicable to all phases of the Project is 100% of the Qualifying Wage Threshold.



(b) For Projects at a designated Brownfield Site, the Qualifying Wage Threshold requirement applicable to all phases of the Project is 90% of the Qualifying Wage Threshold.

(c) For all other Projects:

1. For the *Created Jobs*, pay 100% of the Qualifying Wage Threshold at the start of the Project Completion Period, at least 120% of the Qualifying Wage Threshold by the Project Completion Date, and at least 120% of the Qualifying Wage Threshold until the Maintenance Period Completion Date.

2. For the *Retained Jobs*, pay at least 120% of the Qualifying Wage Threshold throughout both the Project Completion Period and the Maintenance Period.

**3.3 Provide Sufficient Benefits.** The Recipient shall provide Sufficient Benefits to all employees included as part of the job and wage obligations.

- End of Exhibit B - 2 -

**DESCRIPTION OF THE PROJECT AND AWARD BUDGET  
(EXHIBIT C)**

**Name of Recipient:** ePATHUSA, Inc.  
**Name of Community:** City of West Des Moines  
**Contract Number:** 17-DF/TC-001

**PROJECT DESCRIPTION**

ePATHUSA, Inc. will relocate into a new 4,500 s.f. office building to accommodate the expansion and future growth of the company.

**AWARD BUDGET**

SOURCE OF FUNDS	AMOUNT	FORM	USE OF FUNDS	COST
IEDA Programs			*Land Acquisition	
HQJP Financial Assistance	\$20,000	Loan	*Site Preparation	
HQJP Financial Assistance	\$20,000	Forgivable Loan	*Building Acquisition	
HQJP Tax Credit		<sup>1</sup> See Below	*Building Construction	
			*Building Remodeling	
City of West Des Moines	\$8,000	Forgivable Loan/Loan	Base Rent 3 years	\$297,000
Company	\$775,250	Cash/Equity	*Mfg Machinery and Equipment	
Bank	\$250,000	Loan	Other Machinery and Equipment	
			Racking, Shelving, etc.	
			*Computer Hardware	\$105,250
			Computer Software	\$45,500
			*Furniture and Fixtures	\$95,500
			Working Capital	
			Research and Development	\$325,000
			Tenant Improvements	\$205,000
			*included as capital investment if awarded tax credit program	
<b>Total</b>	<b>\$1,073,250</b>		<b>Total</b>	<b>\$1,073,250</b>

<sup>1</sup>\$34,545 estimated benefit value

**OTHER FUNDING**

SOURCE OF FUNDS	TOTAL AMOUNT	FORM/TERM	USED AS MATCH
WDSM/Property Tax Rebate	\$23,000	427B	YES
Tax Abatement			
260E Job Training			
In-Kind Contributions			
RISE			
RED			

Other			
-------	--	--	--

## EXHIBIT D – JOB OBLIGATIONS

**Recipient: ePATHUSA, Inc.**  
**Community: City of West Des Moines**  
**Contract Number: 17-DF/TC-001**

This Project has been awarded Project Completion Assistance and Tax Incentives from the High Quality Jobs Program (HQJP) – Tax Credit Component, High Quality Jobs Program (HQJP) – Financial Assistance Component. The chart below outline the contractual job obligations related to this Project.

Data in the “Employment Base” column has been verified by IEDA and reflects the employment characteristics of the facility receiving funding before this award was made. Jobs to be retained as a part of this Project must be included in these calculations.

Data in the “Jobs To Be Created” column outlines the new full-time jobs (including their wage characteristics) that must be added to the employment base and, if applicable, statewide employment base as a result of this award.

At the Project Completion Date and through the Maintenance Period Completion Date, the Recipient must achieve, at a minimum, the numbers found in the “Total Job Obligations” column.

HQJP JOB OBLIGATIONS		Employment Base	Jobs To Be Created	Total Job Obligations
Project Completion Date:	July 31, 2019			
Maintenance Period Completion Date:	July 31, 2021			
<b>Total employment at project location</b>		10	5	15
<b>Average wage of total employment at project location</b>		\$30.55		
<b>Qualifying Laborshed Wage threshold requirement (per hr)</b>		\$26.72		
<b>Number of jobs at or above qualifying wage</b>		4	5	9
<b>Average Wage of jobs at or above qualifying wage</b>		\$48.25		

**Notes re: Job Obligations**

1. When determining the number of jobs at or above the qualifying wage, wages will include only the regular hourly rate that serves as the base level of compensation. The wage will not include nonregular forms of compensation such as bonuses, unusual overtime pay, commissions, stock options, pension, retirement or death benefits, unemployment benefits or other insurance, or other fringe benefits.
2. Employment Base includes 0 “Retained Jobs”.

If the Recipient uses or proposes to use a non-standard work week (8 hours a day, 5 days a week, 52 weeks a year including holidays, vacation and other paid leave), check the box below and describe that alternative schedule. The alternative schedule must meet the requirements of 261 IAC 173.2. ) If the box is not checked or if no alternative schedule is provided, IEDA will consider “Full-time Equivalent (FTE) Job” to mean the employment of one person for 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave.

The Recipient shall use an alternative work week for purposes of its employees described in the Contract. The alternative work week is as follows: [description].

**Sufficient Benefits Deductible Requirements**

Recipient shall provide Sufficient Benefits with a maximum deductible of \$2,000 for single coverage or \$4,000 for family coverage.

**EXHIBIT E**

**Security**

The Irrevocable Letter of Credit shall follow this page and shall be Exhibit E to the Contract.

**EXHIBIT F – PROMISSORY NOTE  
LOAN**

**Recipient: ePATHUSA, Inc.  
Community: City of West Des Moines  
Contract Number: 17-DF/TC-001**

**PROMISSORY NOTE**

FOR VALUE RECEIVED, the undersigned promises to pay to the order of the **IOWA ECONOMIC DEVELOPMENT AUTHORITY**, at its office at 200 East Grand Avenue, Des Moines, Iowa 50309, the sum of **TWENTY THOUSAND DOLLARS (\$20,000)** with interest thereon at **ZERO PERCENT (0%)** to be paid as follows:

**SIXTY (60)** monthly payments of **(\$333.33)** beginning on the first day of the fourth month from the date Award funds are disbursed. Final payment may vary depending upon dates payments are received.

Interest shall first be deducted from the payment and any balance shall be applied on principal.

Upon default in payment of any interest, or any installment of principal, the whole amount then unpaid shall become immediately due and payable at the option of the holder.

The undersigned, in case of suit on this note, agrees to pay on demand all costs of collection, maintenance of collateral, legal expenses, and attorneys' fees incurred or paid by the holder in collecting and/or enforcing this Promissory Note on default.

This Promissory Note shall be secured by the Security specified in the Contract.

Makers, endorsers and sureties waive demand of payment, notice of non-payment, protest and notice. Sureties, endorsers and guarantors agree to all of the provisions of this Promissory Note, and consent that the time or times of payment of all or any part hereof may be extended after maturity, from time to time, without notice.

**EPATHUSA, INC.**

By: 

MARK NALLURE, President  
Print or Type Name, Title

Address: 6600 WESTOWN PARKWAY SUITE  
245  
WEST DES MOINES, IA 50266

Date: 10/11/16

**EXHIBIT F – PROMISSORY NOTE  
FORGIVABLE LOAN  
Recipient: ePATHUSA, Inc.  
Community: City of West Des Moines  
Contract Number: 17-DF/TC-001**

**PROMISSORY NOTE**

FOR VALUE RECEIVED, the undersigned promises, in the event this Forgivable Loan is not forgiven, to pay to the order of the **IOWA ECONOMIC DEVELOPMENT AUTHORITY**, at its office at 200 East Grand Avenue, Des Moines, Iowa 50309, the sum of **TWENTY THOUSAND DOLLARS (\$20,000)** with interest at a rate of **0%** unless an Event of Default occurs, in which case interest shall be at the default rate set forth in Contract number 17-DF/TC-001 (“Contract”). The terms and conditions by which forgiveness of this Loan may occur are as specified in the Contract.

Interest shall first be deducted from the payment and any balance shall be applied on principal. Upon default in payment of any interest, or any installment of principal, the whole amount then unpaid shall become immediately due and payable at the option of the holder.

The undersigned, in case of suit on this note, agrees to pay on demand all costs of collection, maintenance of collateral, legal expenses, and attorneys' fees incurred or paid by the holder in collecting and/or enforcing this Promissory Note on default.

This Promissory Note shall be secured by the Security specified in the Contract.

Makers, endorsers and sureties waive demand of payment, notice of non-payment, protest and notice. Sureties, endorsers and guarantors agree to all of the provisions of this Promissory Note, and consent that the time or times of payment of all or any part hereof may be extended after maturity, from time to time, without notice.

**EPATHUSA, INC.**

By: \_\_\_\_\_

HARRISON, President  
Print or Type Name, Title

Address: 6600 WESTOWN PARKWAY  
SUITE 245  
WEST DES MOINES, IA 50266

Date: 10/11/16

Prepared by: C. Evans, City of West Des Moines Community and Economic Dev. PO Box 65320, WDM, IA 50265-0320 515-273-0770  
When Recorded Return to: City Clerk, City of West Des Moines, 4200 Mills Civic Parkway, PO Box 65320, West Des Moines, IA 50265-0320

**RESOLUTION**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA, AUTHORIZING THE MAYOR PRO TEM TO SIGN THE ECONOMIC DEVELOPMENT ASSISTANCE CONTRACT WITH ePATHUSA, AND THE IOWA ECONOMIC DEVELOPMENT AUTHORITY(IEDA) FOR ASSISTANCE UNDER THE HIGH QUALITY JOBS PROGRAM (HQJP)**

**WHEREAS**, ePATHUSA, a software development company, proposes to undertake a major expansion of their operation;

**WHEREAS**, the City Council of the City of West Des Moines on July 11, 2016, directed staff to file a formal application with the IEDA for financial assistance in support of ePATHUSA's expansion within West Des Moines, Iowa;

**WHEREAS**, the City is prepared to offer up to \$23,000 in property tax rebates and \$8,000 in loans half of which is forgivable and half is at zero 0% interest rate to meet the local match requirements for the IEDA's High Quality Jobs Program:

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT** the Mayor Pro Tem is authorized to sign the IEDA Economic Development Assistance Contract on behalf of the City.

**PASSED AND ADOPTED** this 14<sup>th</sup> day of November, 2016

\_\_\_\_\_  
James Sandager, Mayor Pro Tem

Attest:

\_\_\_\_\_  
Ryan T. Jacobson, City Clerk



**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**DATE: November 14, 2016**

**ITEM:** Resolution - Approval and Acceptance of Condemnation Award for the Grand Avenue Siphon Replacement Project, Project Number 0510-048-2015

**FINANCIAL IMPACT:** \$68,110.00 (previously budgeted)

**BACKGROUND:** The City of West Des Moines is acquiring property necessary for the Grand Avenue Siphon Replacement Project. Due to the inability of the parties to reach a negotiated settlement, the City has condemned property owned by Realty Income Properties 25, LLC, necessary for the Project. On November 4, 2016, the Polk County Compensation Commission made an award of \$68,110.00 for property necessary for the Project. Approval of the Condemnation Award will authorize deposit with the Polk County Sheriff. Costs associated with acquisition of the property interests and easements will be paid from Account No. 640.000.000.5550.735.



**OUTSTANDING ISSUES** (if any): None

**RECOMMENDATION:**

Approve the Condemnation Award for the acquisition of property necessary for the Grand Avenue Siphon Replacement Project.

**Lead Staff Member:** Jason B. Wittgraf, Assistant City Attorney JBW

**STAFF REVIEWS**

Department Director	Richard J. Scieszinski, City Attorney
Appropriations/Finance	
Legal	
Agenda Acceptance	

**PUBLICATION(S)** (if applicable)

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW** (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

**RESOLUTION NO. \_\_\_\_\_**

**AUTHORIZING APPROVAL OF CONDEMNATION AWARD REGARDING THE  
GRAND AVENUE SIPHON REPLACEMENT PROJECT, PROJECT NUMBER 0510-  
048-2015**

**WHEREAS**, on December 14, 2015, the City Council approved the acquisition of property for the project; and

**WHEREAS**, it is the policy of the City of West Des Moines, Iowa, to approve the conveyance of all property interests to the City; and

**WHEREAS**, the City of West Des Moines has condemned property necessary for the construction of the improvements for the project; and

**WHEREAS**, the property owner and the condemnation award are shown on the attached Exhibit "A" and made a part of this resolution; and

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

1. The condemnation award made for the acquisition of property necessary for the Grand Avenue Siphon Replacement Project, Project Number 0510-048-2015, is hereby approved.
2. The Mayor is authorized to sign and the City Clerk is directed to attest to the Mayor's signature on all documents necessary for the acquisition of property for the project.
3. The City's Legal Department is authorized to take all steps necessary and consistent with the condemnation award to acquire the property interests.
4. The documents shall be filed with the county recorder as appropriate.
5. The City's Finance Director is authorized to pay the condemnation award as shown on the attached Exhibit "A".

**PASSED AND ADOPTED** this 14<sup>th</sup> day of November, 2016.

\_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

\_\_\_\_\_  
Ryan T. Jacobson  
City Clerk

BEFORE THE SHERIFF OF POLK COUNTY, IOWA

IN THE MATTER OF THE CONDEMNATION )  
 OF LAND FOR DEVELOPMENT PURSUANT )  
 TO THE **GRAND AVENUE SIPHON** )  
**REPLACEMENT PROJECT**, CITY PROJECT )  
 NUMBER **0510-048-2015**, LOCATED AT THE )  
 SOUTHEAST CORNER OF GRAND AVENUE ) **NOTICE OF APPRAISEMENT OF DAMAGES**  
 AND 63<sup>rd</sup> STREET (a/k/a 1<sup>st</sup> STREET), DES ) **AND TIME FOR APPEAL**  
 MOINES, IOWA, AND LOCALLY KNOWN AS )  
**6222 GRAND AVENUE**, DES MOINES, IOWA, )  
**TITLE HELD BY REALTY INCOME** )  
**PROPERTIES 25, LLC** )  
 )  
 by the )  
 )  
 CITY OF WEST DES MOINES, IOWA, )  
 )  
 Applicant. )  
 )  
 )

TO:

**Titleholders:** Realty Income Properties 25, LLC  
 PM Dept #4398  
 11995 El Camino Real  
 San Diego, CA 92130

**Possible**  
**Encumbrancers and**  
**Lienholders:**

Advance Stores Company, Incorporated,  
 d/b/a Advance Auto Parts  
 c/o National Registered Agents, Inc.  
 400 E. Court Ave.  
 Des Moines, IA 50309

MidAmerican Energy Company,  
 f/k/a Iowa Power and Light Company  
 c/o Paul J. Leighton, Registered Agent  
 4299 NW Urbandale Drive  
 Urbandale, IA 50322

City of Des Moines  
 c/o Lisa Wieland, City Attorney's Office  
 Des Moines City Hall, 1st Floor  
 400 Robert D. Ray Drive  
 Des Moines, IA 50309

CLM, Inc.  
 c/o Cheryl L. Moss Hood, Registered Agent  
 1165 2nd Avenue  
 Des Moines, IA, 50303-0681

**Taxing Authority:**

Polk County, Iowa  
Administration Bldg.  
Office of the Treasurer  
111 Court Avenue  
Des Moines, IA 50309

**PROPERTY ADDRESS:**

6222 Grand Avenue,  
Des Moines, Polk County, Iowa

The City of Des Moines' easement interest is not being acquired or eliminated pursuant to these condemnation proceedings.

TOTAL AWARD \$ 68,110.00

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that the duly appointed and qualified commissioners assessed and appraised the damages sustained by reason of the condemnation as set out above, and that pursuant to Section 6B.18 of the Code of Iowa, you may within thirty (30) days from the date of mailing this Notice, appeal to the District Court as by law provided.

Dated this 4th day of November, 2016.

SHERIFF, POLK COUNTY, IOWA

By \_\_\_\_\_  
Deputy

*Bill McCarthy* AS

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**DATE: November 14, 2016**

**ITEM:** Resolution - Approval of Offer to Purchase and Agreement and Real Estate Installment Contract between the City of West Des Moines and the Loren H. Boughton Trust and Garnetta M. Boughton – Property for future community park

**FINANCIAL IMPACT:** \$2,114,404.00

**BACKGROUND:** In 2010 the City Council adopted the West Des Moines Master Parks & Trails Plan which identified two areas south of the Raccoon River and west of Interstate 35 for the development of a community park. In furtherance of the Master Park Plan, two properties were subsequently identified for possible acquisition. However, the overall topography of the first site was not suitable for park purposes and the second site was purchased by a developer as discussions between the owner and the City were occurring. A third site that is highly suitable for future use as a community park has now been identified.

The proposed property is a 141.95 acre tract of land located along the east side of Union Lane between 105<sup>th</sup> Street (Adams Street) and Madison Avenue in Madison County (Attachments A & B). The Madison/Dallas county line is located along the north boundary of the property. The property is not currently within the city but the northwest corner of the property is directly adjacent to the corporate limits. The property is gently rolling and the northeast and northwest portions are heavily treed with several quality tree species. The remaining area comprising approximately 100 acres is currently being farmed, which will continue by the Seller until the City takes possession in 2021.

The location of the property allows it to serve all of the planned residential areas north of future Veterans Parkway. The property has access from Adams Street, which is a major collector, without being directly located on a major arterial. It is anticipated that the property will accommodate community park-level facilities such as an aquatic center, sports fields and courts, larger shelters and playgrounds and a dog park. There are slopes of two percent to five percent over a large portion of the property and the soils are suitable for park development. The existing treed areas will provide a beneficial natural resource and will serve to buffer the existing residential subdivision to the north. In addition, beginning in 2022, the higher than average Corn Suitability Rating (CSR) will provide an estimated \$17,000-\$18,000 in annual income to the City from farmland rental until park development occurs, anticipated to be ten to twenty years from the date of possession.

The appraised value of the property is \$12,500/acre. The Seller initially presented an offer to the City of \$14,500/acre. The attached Offer to Purchase and Agreement provides for payment by the City of \$14,000/acre, for a total payment of \$1,988,000.00, plus three (3) percent interest per annum on the unpaid balance, for a total purchase price of \$2,114,404.00. Payments will be made over five years, with the first payment of \$397,600.00 (twenty percent of purchase price) due upon execution of the contract. Five remaining and equal payments of \$318,080.00 will be made each July thereafter, with possession by the City occurring upon final payment in July, 2021.




**OUTSTANDING ISSUES** (if any): None

**RECOMMENDATION:**

Adopt Resolution approving the Offer to Purchase and Agreement and Real Estate Installment Contract between the City of West Des Moines, the Loren H. Boughton Trust and Garnetta M. Boughton

**Lead Staff Member:** Sally Orgies, Interim Parks Director

**STAFF REVIEWS**

Department Director	Richard J. Scieszinski, City Attorney 
Appropriations/Finance	
Legal	
Agenda Acceptance	

**PUBLICATION(S)** (if applicable)

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW** (if applicable) None

Committee	
Date Reviewed	
Recommendation	

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION APPROVING THE OFFER TO PURCHASE AND AGREEMENT AND REAL ESTATE INSTALLMENT CONTRACT BETWEEN THE CITY OF WEST DES MOINES, IOWA, THE LOREN H. BOUGHTON TRUST AND GARNETTA M. BOUGHTON**

**WHEREAS**, the City of West Des Moines has identified property located in Madison County, Iowa that is suitable for development of a community park as provided in the West Des Moines Master Parks and Trails Plan; and

**WHEREAS**, the Loren H. Boughton Trust and Garnetta M. Boughton, as owners of the property, have negotiated an Offer to Purchase and Agreement and Real Estate Installment Contract with the City for acquisition of the property for development as a community park; and

**WHEREAS**, approval of the Offer to Purchase and Agreement and Real Estate Installment Contract is in the best interest of the City of West Des Moines.

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

1. The Offer to Purchase and Agreement and Real Estate Installment Contract for the acquisition of approximately 142 acres of property in Madison County, Iowa by the City of West Des Moines from the Loren H. Boughton Trust and Garnetta M. Boughton is approved.
2. The Mayor is authorized to sign the necessary documents and the City Clerk is directed to attest to the Mayor's signature.
3. The Legal Department is authorized to take all steps necessary and consistent with the Offer to Purchase and Agreement and Real Estate Installment Contract to acquire the property.
4. The Director of Finance is authorized to make payment to the property owner pursuant to the terms and conditions of the Purchase Agreement.
5. The documents shall be filed with the county recorder as appropriate.

**PASSED AND ADOPTED** this 14th day of November, 2016.

\_\_\_\_\_  
Steven K. Gaer, Mayor

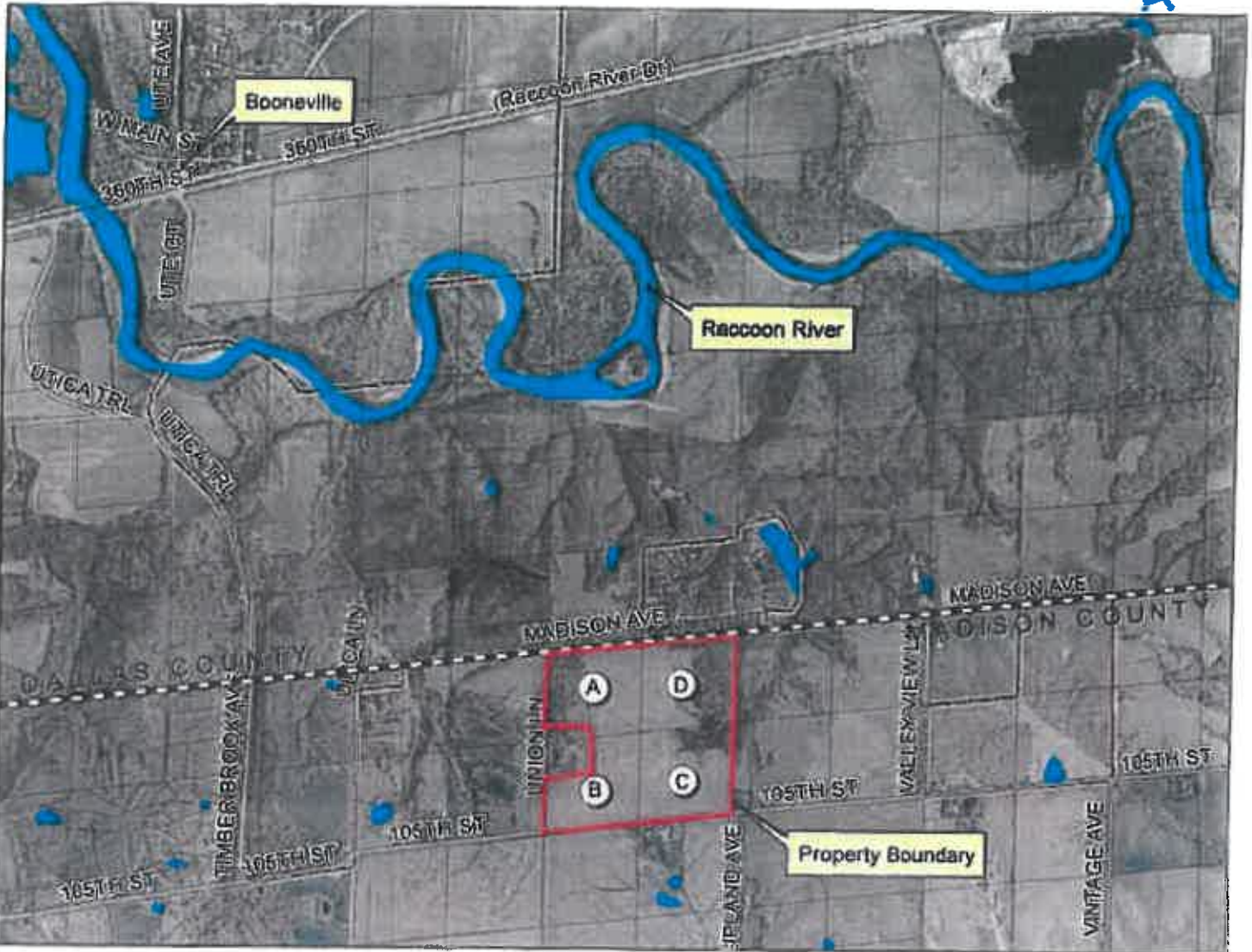
ATTEST:

\_\_\_\_\_  
Ryan T. Jacobson  
City Clerk

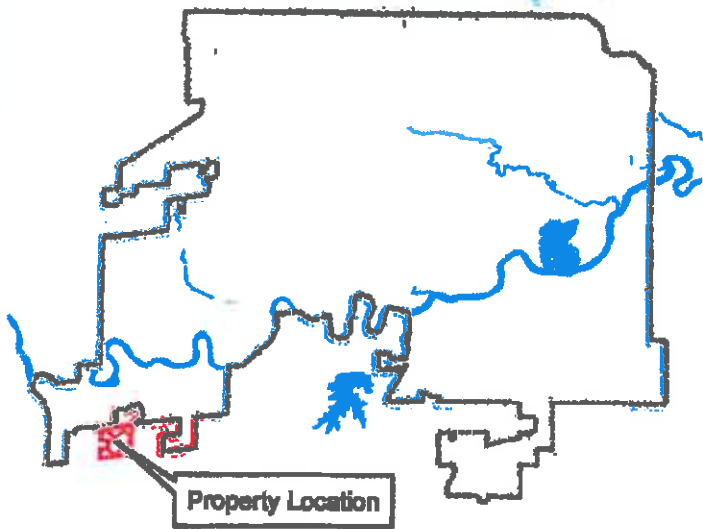




A



**VICINITY MAP**



**LEGAL DESCRIPTION**

- PARCEL A: FRL NW NW EX PAR C (33.27 ACRES)
- PARCEL B: SW NW EX PAR D 7.16A (31.23 ACRES)
- PARCEL C: SE NW (39 ACRES)
- PARCEL D: FRL NE NW (38.46 ACRES)
- OWNERS: Boughton, Loren H Trust 1/2 & Boughton, Garnetta M 1/2



	PROJECT:	<b>BOUGHTON PROPERTY</b>		
	LOCATION:	<b>MADISON COUNTY</b>		
	DRAWN BY: MAA	DATE: 8-08-18	SHEET: 1 OF 1	

**OFFER TO PURCHASE AND AGREEMENT BETWEEN THE CITY OF WEST  
DES MOINES, IOWA AND THE LOREN H. BOUGHTON TRUST AND  
GARNETTA M. BOUGHTON**

TO: LOREN H. BOUGHTON TRUST AND GARNETTA M. BOUGHTON  
("Owner" or "Seller")

**THE CITY OF WEST DES MOINES, IOWA**, a municipal corporation of the State of Iowa (herein referred to as "City") hereby offers to buy the real estate situated in Madison County, Iowa, and legally described as follows:

Fractional NW  $\frac{1}{4}$  of NW  $\frac{1}{4}$  except Parcel C, comprising 33.27 acres,  
SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  except Parcel D (7.16 acres), comprising 31.23 acres,  
SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ , comprising 39 acres, and  
Fractional NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ , comprising 38.45 acres,

the total of which comprises 142 acres, more or less,

all in Section Four (4), Township Seventy-seven (77) North, Range  
Twenty-six West of the 5<sup>th</sup> P.M., Madison County, Iowa,

hereinafter collectively referred to as "the Property," together with any easements, restrictions or covenants of record, and servient estates appurtenant thereto, buildings and improvements, subject to the terms and conditions as set forth below.

**ARTICLE I**

Section 1.1. Subject to the terms of this Article I, including the City obtaining at its expense a plat of survey of the Property, the City agrees to acquire the Property legally described above from the Owner on or about July 9, 2021 ("Closing Date").

Section 1.2. Subject to all of the terms, covenants and conditions of this Agreement, the Owner agrees to sell and the City agrees to purchase the Property for the total purchase price of \$1,988,000.00 plus three (3) percent per annum interest on the outstanding balance of the purchase price, all as shown on the attached Exhibit "A" and payable as follows:

\$397,600.00 on or before November 18, 2016;

\$318,080.00 plus interest of 3% per annum on unpaid balance on  
July 10, 2017;

\$318,080.00 plus interest of 3% per annum on unpaid balance on July 10, 2018;

\$318,080.00 plus interest of 3% per annum on unpaid balance on July 10, 2019;

\$318,080.00 plus interest of 3% per annum on unpaid balance on July 10, 2020;

\$318,080.00 plus interest of 3% per annum on unpaid balance on July 9, 2021.

Subject to Buyer making all payments prescribed herein, Seller shall deliver possession of the property to the Buyer on July 9, 2021, which shall be the date of Closing. Buyer has no right to prepay the payments prescribed in this contract. Buyer has no right to accelerate payments or to accelerate the delivery of possession prescribed in this Contract.

The Seller shall be entitled to possession of the property until Closing pending fulfillment of the payment terms prescribed in Section 1.2. Seller shall be entitled to all rents, issues and profits on the real estate for crop year 2021 and all prior years. The Buyer's possessory rights shall commence July 9, 2021 and shall be subject to the farm tenant's rights through March 1, 2022. Seller shall provide termination notice to the tenant prior to September 1, 2021.

On or before November 18, 2016, the parties shall execute a contract in recordable form providing for sale of the Property. When all payments have been made in full, the Owner shall convey possession and marketable title to the Property to the City by warranty deed (hereinafter called the "Property Warranty Deed") in recordable form, free and clear of all liens and encumbrances including leasehold interests and leasehold claims, reservations or modifications except as in this instrument otherwise expressly provides. All warranties shall extend to time of closing, with special warranties as to acts of Owner up to time of delivery of the warranty deed. Owner agrees that amounts payable by Owner for real estate taxes, special assessments, mortgage payoffs, liens, or judgments shall be deducted at closing from the Property Purchase Price.

Section 1.3. Notwithstanding the provisions of Section 3.2, below, the City, at its sole expense, shall have the right to conduct such studies, investigations, inspections or tests of the Property, including subsurface test, test borings and soil analysis as it deems reasonable or necessary, prior to the Closing Date. The Owner hereby grants City, its officers, agents, employees and independent contractors, the right to enter upon the Property at reasonable times upon reasonable notice, oral or written, from time to time

after the date of this Agreement and prior to the Closing Date for the purpose of investigating, inspecting and testing the Property and for other purposes consistent with the City's interest under this Agreement. If, as a result of such studies, investigations, inspections or tests, the City discovers that there is a substantial likelihood that a hazardous substance is present or that a material structural defect exists on any portion of the Property, the City shall have the absolute right to terminate this Agreement effective immediately by delivering to Owner a written notice of such election. Upon delivery of such notice, this Agreement shall be null and void and all further obligations, duties, claims, rights and liabilities of the parties shall be extinguished.

Section 1.4. Owner shall provide the abstract of title to the City for continuation at Owner's expense. The abstract shall become the property of the City when the purchase price is paid in full, and shall show marketable title in conformity with this Agreement, the land title law of the State of Iowa and Iowa Title standards of the Iowa State Bar Association. Owner shall pay costs of additional abstracting and/or title work due to any act or omission of Owner, including transfer upon death of Owner or assigns.

Section 1.5. Any outstanding property taxes attributable to the period of Owner's ownership of the Property and any outstanding taxes from prior years shall be the responsibility of the Owner. The Owner shall pay all special assessments on the Property which have been certified to the county treasurer for collection prior to the Closing Date.

## ARTICLE II

Section 2.1. All personal property that integrally belongs to or is part of said real estate, whether attached or detached such as fencing, gates and other attached fixtures, trees, bushes, shrubs and plants shall be considered a part of real estate and included in this sale.

Section 2.2. Owner shall maintain fire, windstorm and extended coverage insurance in an amount not less than the full insurable replacement value of all buildings and personal property included in this Agreement until the Closing Date.

Section 2.3. Owner will preserve the property in its present condition as of the date of this Offer and will deliver it intact at the time possession is given; in case of loss or destruction of part or all of said premises from causes covered by insurance, City agrees to accept such insurance recovery (proceeds to be applied as the interests of the parties appear) in lieu of that part of the damaged or destroyed improvements and Owner shall not be required to repair or replace same.

Section 2.4. The City shall have the right to assign its right and obligation to purchase the Property from Owner to another party with the written consent of Owner,

which consent shall not be unreasonably withheld. Notwithstanding any such assignment, City shall remain liable for the full payment to Owner of all sums due hereunder.

### ARTICLE III

#### Section 3.1.

##### A. For Purposes of this Agreement.

- 1) The term "Environmental Laws" shall mean and include (i) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901-6987, as amended by the Hazardous and Solid Waste Amendments of 1984; (ii) the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601-9657; (iii) the Hazardous Materials Transportation Act of 1975, 49 U.S.C. § 1801-1812; (iv) the Toxic Substances Control Act, 15 U.S.C. § 2601, et. seq.; (v) the Clear Air Act, 42 U.S.C. § 7401, et. seq.; (vi) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136, et. seq.; (vii) Chapters 455B and 455E of Iowa Code; and all similar federal, state, or local environmental laws, ordinances, rules, codes and regulations, and any other federal, state and local laws, ordinances, rules, codes and regulations, as any of the foregoing may have been from time to time amended, supplemented or supplanted and any other federal, state or local laws, ordinances, rules, codes and regulations now existing relating to the environment or the regulation or control or imposing liability or standards of conduct concerning toxic or hazardous waste, substances or materials; and
- 2) The term "Hazardous Substances" shall mean and include any, each and all substances or materials regulated pursuant to any Environmental Laws, including, but not limited to, any such substance, emission or material now defined as or deemed to be a regulated substance, hazardous substance, toxic substance, pesticide, explosives, radioactive materials, hazardous waste or any similar or like classification or categorization thereunder, provided, however, that Hazardous Substances shall not include materials used or stored in connection with the operation or maintenance of the Property and in compliance in all material respects with all Environmental Laws, including petroleum products and any waste products generated therefrom.

B. The Owner hereby represents and warrants to the City in regard to the Property, to the best knowledge and belief of Owner without any investigation, as follows:

- 1) No notices, complaints or orders of violation or noncompliance with Environmental Laws have been received by Owner, by any tenant of the Property, and no federal, state or local environmental investigation is pending or has been threatened against Owner, or against any tenants of the Property with regard to (i) the Property or any use thereof; (ii) any alleged violation of Environmental Laws with regard to the Property; (iii) any failure by Owner or any tenant of the Property to have any environmental permit, certificate, approval, registration or authorization required to the conduct of its business; or (iv) the generation, treatment, storage, recycling, transportation, disposal or Release (each a "Regulated Activity") of any Hazardous Substances on, at or under the Property. For purposes hereof, "Release" shall have the meaning given to that term in 42 U.S. C. § 9601(22).
- 2) The Property has not been used by Owner for the conduct of any Regulated Activity other than in compliance in all material respects with Environmental Laws.
- 3) That it has not done, caused or allowed any of the following to occur, and has no knowledge that any other person has done, caused or allowed any of the following to occur on the Property (except as stated below):
  - a) The erection and existence of any wells;
  - b) The existence of any underground storage tanks as defined in Iowa Code Section 455B.471;
  - c) The location of any disposal sites for solid waste, as defined by Iowa Code Section 455B.301;
  - d) Disposal or location of hazardous wastes as defined by Iowa Code Section 455B.411 or as listed by the Iowa Department of Natural Resources pursuant to Iowa Code Section 455B.412(2) or 455B.464;
  - e) Activity which has or would cause (A) a release or threat of release of any Hazardous Substance or waste from the property within the meaning of, or otherwise bring any portion of the property within the ambit of any Environmental Law; (B) the Property to be deemed a hazardous waste treatment storage or disposal facility within the meaning of, or otherwise bring any of its Parcels within the purview of the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 et. seq., as amended, or any similar state law or local ordinance.

- 4) There exists no petroleum contamination to the Property in violation of applicable Environmental Laws which originated on or off the Property, and there exists no underground storage tanks, surface impoundments, or solid waste disposal sites, active or abandoned, at, on or under the Property in violation of applicable Environmental Laws.
  - 5) Neither Owner nor any third party acting by or on behalf of Owner has caused a release of any Hazardous Substance, nor is there any friable asbestos, polychlorinated biphenyls, formaldehyde or lead at, on or under the Property, the removal of which is required by an Environmental Law or the maintenance of which constitutes a violation of any Environmental Law.
- C. The Owner represents and the Buyer acknowledges that the tillable acres contained in the Property have been used in a customary farming operation and that customary farm chemicals have been applied and used in the course of those operations.
- D. The foregoing representations and warranties with respect to the Property shall survive the Closing on July 9, 2021, and shall be subject to any knowledge and disclosures resulting from the study, investigation, or inspection of the Property by the City within the scope of Article III, but in all events such representations and warranties shall lapse and be of no further legal effect on or after July 1, 2022. Upon Seller's request Buyer shall provide Seller information and copies of documents related to the study, investigation or inspection of the Property by the City within the scope of Article III.

Section 3.2. The Owner agrees to indemnify, defend, and hold harmless the City from and against any and all claims, demands, fines, penalties, causes of action, losses, damages, liabilities, expenses and costs, including court costs and reasonable attorney fees, (including costs and fees incurred to enforce this provision) incurred by the City or asserted against the City by any third party by reason of or arising out of the breach of any representation, warranty, or agreement of the Owner as set forth above in Section 3.1.

Nothing in this Agreement shall be deemed to be or constitute a waiver by the City of any defense available to it as a governmental entity pursuant to 42 U.S.C. §§ 9601(35)(A)(ii) and 9607(b)(3).

Section 3.3. Notices, demands, or other communications under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally:

- (a) In the case of the City, to City of West Des Moines, Iowa, 4200 Mills Civic Parkway, West Des Moines, Iowa 50265, Attn: City Manager; and
- (b) In the case of the Owner, to Garnetta Boughton, 1650 Holiday Crest Circle #212, Waukee, IA 50263-8861 and Ronald Boughton, 14961 Woodcreek Lane, Clive, IA 50325-4511

or to such other designated individual or officer or to such other address as either party shall have furnished to the other in writing in accordance herewith.

Section 3.4. This Agreement shall be governed and construed under the laws of the State of Iowa.

Section 3.5. This Agreement and the Exhibits here referenced, if any, shall constitute the entire agreement between the City and the Owner and supersedes all other written and oral agreements, discussions and negotiations.

Section 3.6. This Agreement may not be amended or assigned by either party without the express written permission of the other party.

Section 3.7. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

Section 3.8. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

Section 3.9. This Agreement is subject to the approval of the City of West Des Moines City Council and shall be of no force or effect unless and until approved by the City Council.

**IN WITNESS WHEREOF**, the City and Owner have caused this Agreement to be duly executed as of the day first above written.

**CITY OF WEST DES MOINES, IOWA**

\_\_\_\_\_  
Steven K. Gaer, Mayor



ATTEST:

---

Ryan T. Jacobson, City Clerk

**LOREN H. BOUGHTON TRUST**

By: \_\_\_\_\_  
Jack L. Boughton, Co-Trustee

By: \_\_\_\_\_  
Ronald G. Boughton, Co-Trustee

**GARNETTA M. BOUGHTON**

By: \_\_\_\_\_  
Garnetta M. Boughton

STATE OF IOWA            )  
  ) ss  
COUNTY OF POLK        )

BE IT REMEMBERED, on this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me the undersigned, a Notary Public in and for Polk County, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who, being by me duly sworn, did say that they are Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa; that said instrument was signed and sealed on behalf of said City of West Des Moines, Iowa, pursuant to Resolution No. \_\_\_\_\_ of the City Council adopted \_\_\_\_\_, 2016, and that the said Steven K. Gaer and Ryan T. Jacobson acknowledged execution of said instrument to be the voluntary act and deed of said City of West Des Moines, Iowa, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public

STATE OF IOWA            )  
                                  ) ss  
COUNTY OF \_\_\_\_\_ )

This record was acknowledged before me on \_\_\_\_\_,  
2016 by Jack L. Boughton and Ronald G. Boughton, Co-Trustees of the Loren H.  
Boughton Trust, on behalf of whom the record was executed.

\_\_\_\_\_  
Notary Public

STATE OF IOWA            )  
                                  ) ss  
COUNTY OF \_\_\_\_\_ )

This record was acknowledged before me on \_\_\_\_\_,  
2016 by Garnetta M. Boughton.

\_\_\_\_\_  
Notary Public

**EXHIBIT "A"**

**City of West Des Moines - Boughton Property Acquisition  
Amortization Schedule  
3% interest per year (1st year calculated at 237 days)**

<b>Date</b>	<b>Beginning Balance</b>	<b>Payment</b>	<b>Interest</b>	<b>Ending Balance</b>
<b>11/15/16 Contract Amount</b>	\$1,988,000.00	\$397,600.00	\$0.00	\$1,590,400.00
07/10/17	\$1,590,400.00	\$318,080.00	\$30,980.12	\$1,272,320.00
07/10/18	\$1,272,320.00	\$318,080.00	\$38,169.60	\$954,240.00
07/10/19	\$954,240.00	\$318,080.00	\$28,627.20	\$636,160.00
07/10/20	\$636,160.00	\$318,080.00	\$19,084.80	\$318,080.00
07/09/21	\$318,080.00	\$318,080.00	\$9,542.40	\$0.00
<b>Total</b>		\$1,988,000.00	\$126,404.12	

## REAL ESTATE CONTRACT- INSTALLMENTS

**IT IS AGREED** this \_\_\_\_ day of November, 2016 by and between the Loren H. Boughton Trust and Garnetta M. Boughton, Seller(s) and/or Owner(s), and the City of West Des Moines, a municipal corporation organized under the laws of the State of Iowa, Buyer, that the Seller as in this Contract provided agrees to sell to the Buyer, and the Buyer in consideration of the premises, hereby agrees with the Seller to purchase the following described real estate situated in the County of Madison, State of Iowa, to-wit:

Fractional NW  $\frac{1}{4}$  of NW  $\frac{1}{4}$  except Parcel C, comprising 33.27 acres,  
SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  except Parcel D (7.16 acres), comprising 31.23 acres,  
SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ , comprising 39 acres, and  
Fractional NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ , comprising 38.45 acres,

the total of which comprises 142 acres, more or less,

all in Section Four (4), Township Seventy-seven (77) North, Range Twenty-six West of the 5<sup>th</sup> P.M., Madison County, Iowa, (hereinafter "Property"),

together with any easements and servient estates appurtenant thereto, but with such reservations and exceptions of title as may be below stated, and certain personal property if and as may be herein described all upon the terms and conditions following:

**1. TOTAL PURCHASE PRICE.** The Buyer agrees to pay for said property the total of \$1,988,000.00 plus three (3) percent per annum interest on the outstanding balance of the purchase price, all as shown on the attached Exhibit "A" and payable as follows:

\$397,600.00 on or before November 18, 2016;

\$318,080.00 plus interest of 3% per annum on unpaid balance on July 10, 2017;

\$318,080.00 plus interest of 3% per annum on unpaid balance on July 10, 2018;

\$318,080.00 plus interest of 3% per annum on unpaid balance on July 10, 2019;

\$318,080.00 plus interest of 3% per annum on unpaid balance on July 10, 2020;

\$318,080.00 plus interest of 3% per annum on unpaid balance on July 9, 2021.

**2. POSSESSION.** Subject to Buyer making all payments prescribed herein, Seller shall deliver possession of the property to the Buyer on July 9, 2021, which shall be the Closing Date. Buyer has no right to prepay the payments prescribed in this contract or to accelerate payments or to accelerate the delivery of possession prescribed in this Contract. The Seller shall be entitled to maintain possession of the Property until the Closing Date pending fulfillment of the payment terms prescribed in Section 1.

Seller shall be entitled to all rents, issues and profits on the real estate for crop year 2021 and all prior years. The Buyer's possessory rights shall commence July 9, 2021 and shall be subject to the farm tenant's rights through March 1, 2022. Seller shall provide termination notice to the tenant prior to September 1, 2021. The Seller agrees to indemnify, defend, and hold harmless the City from and against any and all claims, demands, fines, penalties, causes of action, losses, damages, liabilities, expenses and costs, including court costs and reasonable attorney fees, (including costs and fees incurred to enforce this provision) incurred by any third party by reason of the exercise of the farm tenant's rights from the date of possession by City through March 1, 2022.

When all payments have been made in full, the Owner shall convey possession and marketable title to the Property to the City by warranty deed (hereinafter called the "Property Warranty Deed") in recordable form, free and clear of all liens and encumbrances including leasehold interests and leasehold claims, reservations or modifications except as in this instrument otherwise expressly provides. All warranties shall extend to time of closing, with special warranties as to acts of Owner up to time of delivery of the warranty deed. Owner agrees that amounts payable by Owner for real estate taxes, special assessments, mortgage payoffs, liens, or judgments shall be deducted at closing from the Property Purchase Price if not paid prior to the Closing Date.

**3. MORTGAGE.** Any mortgage or encumbrance of a similar nature against the said property shall be timely paid by Seller so as not to prejudice the Buyer's equity herein. Should Seller fail to pay, Buyer may pay any such sums in default and shall receive credit on this contract for such sums so paid. SELLER AS TRUSTEE. Seller agrees that it will collect no money hereunder in excess of the amount of the unpaid balance under the terms of this contract less the total amount of the encumbrance on the interest of Seller or its assigns in said real estate; and if Seller shall hereafter collect or receive any moneys hereunder beyond such amount, it shall be considered and held as collecting and receiving said money as the agent and trustee of the Buyer for the use and benefit of the Buyer.

**4. INSURANCE.** Owner will preserve the property in its present condition as of the date of this Contract and will deliver it intact at the time possession is given; in case of loss or destruction of part or all of said premises from causes covered by insurance, City agrees to accept such insurance recovery (proceeds to be applied as the interests of the parties appear) in lieu of that part of the damaged or destroyed improvements and Owner shall not be required to repair or replace same.

**5. DEED AND ABSTRACT, BILL OF SALE.** If all said sums of money and interest are paid to Sellers during the life of this contract, and all other agreements for performance by Buyers have been complied with, Sellers will execute and deliver to Buyers a Warranty Deed conveying said premises in fee simple pursuant to and in conformity with this contract and Sellers will at this time deliver to Buyers an abstract showing merchantable title, in conformity with this contract. Such abstract shall begin with the government patent (unless pursuant to the Iowa State Bar Association title standards there is a lesser requirement as to period of abstracting) to said premises and shall show title thereto in Sellers as of the date of this contract; or as of such earlier date if and as designated in the next sentence. Sellers shall also pay the cost

of any abstracting due to any act or change in the personal affairs of Sellers resulting in a change of title by operation of law or otherwise. If any personal property is a part of this agreement, then upon due performance by Buyers, Sellers shall execute and deliver a Bill of Sale consistent with the terms of this contract. Sellers shall pay all taxes on any such personal property payable in 2013, and all taxes thereon payable prior thereto. Buyer has not examined the abstract of title to this property and such abstract is not accepted.

**6. EXCEPTIONS TO WARRANTIES OF TITLE.** The warranties of title in any Deed made pursuant to this contract (See paragraph 5) shall be without reservation or qualification EXCEPT: (a) Zoning ordinances; (b) Such restrictive covenants as may be shown of record; (c) Easements of record, if any; (d) Sellers shall give Special Warranty as to the period after equitable title passes to Buyers; (e) Spouse if not titleholder, need not join in any warranties of the deed unless otherwise stipulated.

**7. FORFEITURE.** If Buyer (a) fails to make the payments aforesaid, or any part thereof, as same become due or fails to perform any of the agreements as herein made or required, then Seller, in addition to any and all other legal and equitable remedies which it may have, at its option, may proceed to forfeit and cancel this contract as provided by law (Chapter 656 Code of Iowa).

**8. ATTORNEY FEES.** Either party may enforce this instrument by appropriate action, and should they prevail they shall recover as part of their costs the reasonable attorney's fees incurred in such action.

**9. ASSIGNMENT.** The City shall have the right to assign its right and obligation to purchase the Property from Owner to another party with the written consent of Owner, which consent shall not be unreasonably withheld. Notwithstanding any such assignment, City shall remain liable for the full payment to Owner of all sums due hereunder.

**10. CONSTRUCTION.** Words and phrases herein, including acknowledgements hereof, shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

## **11. SPECIAL PROVISIONS.**

Plat of Survey. The City shall obtain at its expense a plat of survey of the Property legally-described above and which shall particularly describe the Property to be conveyed by Seller to City in accordance with the terms and conditions of this Contract.

Access for Environmental Testing. The City, at its sole expense, shall have the right to conduct such studies, investigations, inspections or tests of the Property, including subsurface test, test borings and soil analysis as it deems reasonable or necessary, prior to the Closing Date. The Owner hereby grants City, its officers, agents, employees and independent contractors, the right to enter upon the Property at reasonable times upon reasonable notice, oral or written, from

time to time after the date of this Agreement and prior to the Closing Date for the purpose of investigating, inspecting and testing the Property and for other purposes consistent with the City's interest under this Agreement. If, as a result of such studies, investigations, inspections or tests, the City discovers that there is a substantial likelihood that a hazardous substance is present or that a material structural defect exists on any portion of the Property, the City shall have the absolute right to terminate this Agreement effective immediately by delivering to Owner a written notice of such election. Upon delivery of such notice, this Agreement shall be null and void and all further obligations, duties, claims, rights and liabilities of the parties shall be extinguished.

**11. NON-MERGER.** This Installment Contract shall be read in conjunction with the Purchase Agreement for sale of the Property executed by the Parties on or about November 14, 2016 and, to the extent not restated herein, the terms and conditions of the Purchase Agreement shall be incorporated herein.

**IN WITNESS WHEREOF,** the City and Owner have caused this Agreement to be duly executed as of the day first above written.

**CITY OF WEST DES MOINES, IOWA**

**ATTEST:**

\_\_\_\_\_  
Steven K. Gaer, Mayor

\_\_\_\_\_  
Ryan T. Jacobson, City Clerk

**LOREN H. BOUGHTON TRUST**

**GARNETTA M. BOUGHTON**

\_\_\_\_\_  
Jack L. Boughton, Co-Trustee

\_\_\_\_\_  
Garnetta M. Boughton

\_\_\_\_\_  
Ronald G. Boughton, Co-Trustee



STATE OF IOWA            )  
                                  ) ss  
COUNTY OF POLK        )

BE IT REMEMBERED, on this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me the undersigned, a Notary Public in and for Polk County, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who, being by me duly sworn, did say that they are Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa; that said instrument was signed and sealed on behalf of said City of West Des Moines, Iowa, pursuant to Resolution No. \_\_\_\_\_ of the City Council adopted \_\_\_\_\_, 2016, and that the said Steven K. Gaer and Ryan T. Jacobson acknowledged execution of said instrument to be the voluntary act and deed of said City of West Des Moines, Iowa, by it and by them voluntarily executed.

STATE OF IOWA            )  
                                  ) ss  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_  
Notary Public

This record was acknowledged before me on \_\_\_\_\_, 2016 by Jack L. Boughton and Ronald G. Boughton as Co-Trustees of the Loren H. Boughton Trust, on behalf of whom the record was executed.

STATE OF IOWA            )  
                                  ) ss  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_  
Notary Public

This record was acknowledged before me on \_\_\_\_\_, 2016 by Garnetta M. Boughton.

\_\_\_\_\_  
Notary Public

Executed in duplicate.

EXHIBIT "A"

City of West Des Moines - Boughton Property Acquisition  
Amortization Schedule  
3% interest per year (1st year calculated at 237 days)

Date	Beginning Balance	Payment	Interest	Ending Balance
11/15/16 Contract Amount	\$1,988,000.00	\$397,600.00	\$0.00	\$1,590,400.00
07/10/17	\$1,590,400.00	\$318,080.00	\$30,980.12	\$1,272,320.00
07/10/18	\$1,272,320.00	\$318,080.00	\$38,169.60	\$954,240.00
07/10/19	\$954,240.00	\$318,080.00	\$28,627.20	\$636,160.00
07/10/20	\$636,160.00	\$318,080.00	\$19,084.80	\$318,080.00
07/09/21	\$318,080.00	\$318,080.00	\$9,542.40	\$0.00
	Total	\$1,988,000.00	\$126,404.12	

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**ITEM:** Approval of Proclamation  
World Pancreatic Cancer Day

**DATE:** November 14, 2016

**FINANCIAL IMPACT:** None

**BACKGROUND:**

In 2016, an estimated 53,070 people in the United States will be diagnosed with pancreatic cancer, and 41,780 will die from the disease.

The good health and well-being of the residents of West Des Moines are enhanced as a direct result of increased awareness about pancreatic cancer and research into early detection, causes, and effective treatments

**OUTSTANDING ISSUES (if any):** None

**RECOMMENDATION:**

Approval of Proclamation declaring November 17, 2016 as "World Pancreatic Cancer Day"

**Lead Staff Member:** Ryan T. Jacobson, City Clerk

**STAFF REVIEWS**

Department Director	Ryan T. Jacobson, City Clerk
Appropriations/Finance	
Legal	
Agenda Acceptance	

**PUBLICATION(S) (if applicable)**

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW (if applicable)**

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

*Proclamation*  
*World Pancreatic Cancer Day*  
*November 17, 2016*

*Whereas*, in 2016, an estimated 53,070 people in the United States will be diagnosed with pancreatic cancer, one of the deadliest cancers, and 41,780 will die from the disease, and;

*Whereas*, pancreatic cancer surpassed breast cancer this year to become the third leading cause of cancer death in the United States, and it is projected to become the second leading cause by 2020, and;

*Whereas*, pancreatic cancer is the only major cancer with a five-year relative survival rate in the single digits at just eight percent, and;

*Whereas*, when symptoms of pancreatic cancer present themselves, it is generally in later stages, and 71 percent of pancreatic cancer patients die within the first year of their diagnosis, and;

*Whereas*, approximately 430 deaths will occur in Iowa in 2016, and;

*Whereas*, pancreatic cancer is the seventh most common cause of cancer-related death in men and women across the world, and;

*Whereas*, there will be an estimated 418,451 new pancreatic cancer cases diagnosed worldwide in 2020, and;

*Whereas*, the good health and well-being of the residents of West Des Moines are enhanced as a direct result of increased awareness about pancreatic cancer and research into early detection, causes and effective treatments;

***NOW, THEREFORE***, I, Steven K. Gaer, Mayor of the City of West Des Moines, Iowa, do hereby proclaim November 17, 2016, as “World Pancreatic Cancer Day” in the City of West Des Moines, Iowa.

Signed this 14th day of November, 2016.

ATTEST:

\_\_\_\_\_  
Steven K. Gaer, Mayor

\_\_\_\_\_  
Ryan T. Jacobson, City Clerk

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**ITEM:** Approval of Proclamation  
Small Business Saturday

**DATE:** November 14, 2016

**FINANCIAL IMPACT:** None

**BACKGROUND:**

Small Business Saturday was founded by American Express in 2010 as a way to promote holiday shopping at small, locally-owned businesses across the United States. The day is celebrated each year on the Saturday after Thanksgiving. In 2011, the U.S. Senate officially recognized Small Business Saturday. In 2012, the estimated consumer spending on Small Business Saturday was \$5.5 billion. Now in 2016, in an effort to recognize the many small businesses in West Des Moines – whether in Valley Junction, West Glen, Valley West Mall, Governor’s Square, Clocktower Square, Westowne Shopping Center, and many other locations – the City of West Des Moines would like to lend its voice in support of Small Business Saturday.


**OUTSTANDING ISSUES (if any):** None

**RECOMMENDATION:**

Approval of Proclamation declaring November 26, 2016 as “Small Business Saturday”

**Lead Staff Member:** Ryan T. Jacobson, City Clerk

**STAFF REVIEWS**

Department Director	Ryan T. Jacobson, City Clerk
Appropriations/Finance	
Legal	
Agenda Acceptance	

**PUBLICATION(S) (if applicable)**

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW (if applicable)**

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

# PROCLAMATION

**Small Business Saturday  
November 26, 2016**

**WHEREAS**, small businesses form the backbone of our local economy, generating jobs and improving the quality of life for citizens; and

**WHEREAS**, the City of West Des Moines supports the efforts of local small businesses and recognizes the critical role they play in keeping our economy strong; and

**WHEREAS**, the City of West Des Moines wishes to celebrate the accomplishments of small business owners and their employees and encourage the development of new small businesses; and

**WHEREAS**, Small Business Saturday is a nationwide campaign to cultivate business for small businesses on the Saturday after Thanksgiving; and

**WHEREAS**, Small Business Saturday will stimulate economic growth locally for small businesses; and

**WHEREAS**, the City of West Des Moines encourages citizens to consider shopping at small, locally-owned establishments on Small Business Saturday as a way to boost the local economy and to strengthen our small business community.

**NOW THEREFORE**, I, Steven K. Gaer, Mayor, City of West Des Moines, in celebration and recognition of the contributions of small businesses do hereby proclaim Saturday, November 26, 2016 as

**Small Business Saturday**

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the seal of West Des Moines to be affixed at City Hall on the 14th day of November 2016.

---

Steven K. Gaer, Mayor

**ATTEST:**

---

Ryan T. Jacobson, City Clerk

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**Date: November 14, 2016**

**ITEM:** Browns Woods Estates – West of Veterans Parkway and South of Browns Woods Drive – Rezone property from Residential Estate (RE-1A) and Residential Medium Density (RM-8) to Single Family Residential (RS-30) and Single Family Residential (R-1) – Venture Homes LLC – ZC-003167-2016/CPA-003244-2016

**ORDINANCE:** Approval of Second Reading, Waive Third Reading, and Adopt in Final Form to Change Zoning from RE-1A and RM-8 to R-1

**ORDINANCE:** Approval of Second Reading, Waive Third Reading, and Adopt in Final Form to Change Zoning from RE-1A and RM-8 to RS-30

**FINANCIAL IMPACT:** Undetermined.

**BACKGROUND:** Venture Homes LLC is seeking approval to change the zoning of property that lies about 500 feet south of Browns Woods Drive on the west side of Veterans Parkway. The proposed change would include the property zoned Residential Estate (RE-1A) and Residential Medium Density (RM-8) being changed to Residential Single Family RS-30 and Single Family Residential R-1 zoning

**Previous Council Action:**

Vote: 5-0 approval

Date: October 31, 2016

Motion: Approval of the First Reading of the ordinance

The City Council approved a revised ordinance from that recommended by the Plan & Zoning Commission to change the zoning of the proposed RS-20 along the north and west sides of the development to RS-30 (minimum lot size of 30,000 sq. ft.) The approval also conditioned the zoning of the RS-30 area to minimum lot depths of 200 feet, a rear yard setback of 80 feet, and rear yard setbacks for detached accessory structures of 50 feet.

**OUTSTANDING ISSUES:** There are no outstanding issues.

**RECOMMENDATION – REZONING REQUEST RE-1A & RM-8 to R-1:** Based upon the preceding review and a finding of consistency with the goals and policies of the Comprehensive Plan, the Plan and Zoning Commission recommends the City Council approve the Rezoning Request to change the zoning of the property from Residential Estate (RE-1A) and Residential Medium Density (RM-8) to Residential Single Family (R-1), subject to the applicant meeting all City Code requirements and the following:

1. As part of the platting process, the developer conducting the necessary storm water studies and preparing the required Storm Water Management Plan that demonstrates existing ponds located to the west and north will not be adversely affected; and,

**RECOMMENDATION – REZONING REQUEST RE-1A & RM-8 to RS-30:** Based upon the preceding review and a finding of consistency with the goals and policies of the Comprehensive Plan, the Plan and Zoning Commission recommends the City Council approve the Rezoning Request to change the zoning of the property from Residential Estate (RE-1A) and Residential Medium Density (RM-8) to Residential Single Family (RS-30) subject to the applicant meeting all City Code requirements and the following.

1. As part of the platting process, the developer conducting the necessary storm water studies and preparing the required Storm Water Management Plan that demonstrates existing ponds located to the west and north will not be adversely affected; and,
2. That platting of the Residential Single Family (RS-30) lots within the subject property which share a boundary with existing adjacent RE-1A zoned property be a minimum of 30,000sf in size, be a minimum of 200' in depth, require an 80' rear yard setback for the primary dwelling structure, and require a 50' rear yard setback for all detached accessory structures.

Lead Staff Member: Kara Tragesser, AICP

*KAR*

**Staff Reviews:**

Department Director	<i>CS</i>
Appropriations/Finance	
Legal	<i>CS</i>
Agenda Acceptance	<i>CS</i>

**PUBLICATION(S) (if applicable)**

Published In	Des Moines Register
Date(s) Published	September 16, 2016
Letter sent to surrounding property owners	September 9, 2016

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	Development & Planning		
Date Reviewed	July 11, 2016/August 8, 2016		
Recommendation	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Split <input type="checkbox"/>

**ATTACHMENT:**

Exhibit I – ORDINANCE: Change Zoning from RE-1A and RM-8 to R-1

Exhibit II - ORDINANCE: Change Zoning from RE-1A and RM-8 to RS-30



Prepared by: K Tragesser, Development Services, P.O. Box 65320, West Des Moines, IA 50265-0320, (515)222-3620  
When Recorded, Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines, IA 50265-0320

**ORDINANCE NO.**

**AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP AND THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2014, BY AMENDING TITLE 9: ZONING, CHAPTER 4: ZONING DISTRICTS AND MAP**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:**

**SECTION 1. AMENDMENT:** The Zoning Map of the City of West Des Moines, Iowa, is hereby amended by changing the zoning of property on the west side of Veterans Parkway approximately 500 feet south of SE Browns Woods Drive and legally described below from Residential Estate Single Family (RE-1A) district and Residential Medium Density (RM-8) district to approximately 24.047 acres of Residential Single Family (R-1), as legally described and as illustrated in Exhibit A;

**Legal Descriptions**

**SEE EXHIBIT A**

**SECTION 2. SAVINGS CLAUSE.** If any section, provision, sentence, clause, phrase or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase or part hereof not adjudged invalid or unconstitutional.

**SECTION 3. VIOLATIONS AND PENALTIES.** Any person who violates the provisions of this Ordinance upon conviction shall be punished as set forth in title 1, Chapter 4, Section 1 and Section 2 of the City Code of the City of West Des Moines, Iowa.

**SECTION 4. OTHER REMEDIES.** In addition to the provisions set out in the Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm, or corporation for violation of any section or subsection of this Ordinance.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.

Approved and passed by the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Steven K. Gaer, Mayor

**ATTEST:**

\_\_\_\_\_  
Ryan T. Jacobson  
City Clerk

I certify that the foregoing was published as Ordinance No. \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 2016.

\_\_\_\_\_  
Ryan T. Jacobson  
City Clerk

**EXHIBIT A**  
**Legal Description**

A tract of land being a part of the Northwest  $\frac{1}{4}$  of Section 26, Township 78 North, Range 25 West of the 5<sup>th</sup> P.M., West Des Moines, Polk County, Iowa. Said tract of land being more particularly described as follows:

Commencing at Northwest Corner of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 26, Township 78 North, Range 25 West of the 5<sup>th</sup> P.M., West Des Moines, Polk County, Iowa; thence N00°18'26"W, 54.40 feet along the West Line of the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of said Section 26; thence S89°42'48"E, 1829.08 feet to the Westerly Right-of-Way of Veterans Parkway as it is presently established; thence S04°34'23"W, 149.57 feet along said Westerly Right-of-Way Line, to the Point of Beginning; thence S81°47'02"W, 286.30 feet to a non-tangent 500.00 feet radius curve concave to the Southeast; thence Southwesterly, 277.94 feet along said curve, said curve has a chord length of 274.38 feet and chord bearing of S51°59'38"W; thence S36°04'09"W, 55.00 feet to a non-tangent 800.00 feet radius curve concave to the Southwest; thence Northwesterly, 499.63 feet along said curve, said curve has a chord length of 491.55 feet and a chord bearing of N71°49'21"W; thence N89°42'51"W, 139.20 feet to an 800.00 feet radius curve concave to the Southeast; thence Southwesterly, 311.63 feet along said curve, said curve has a chord length of 309.66 feet and a chord bearing of S79°07'35"W, to an 800.00 feet radius reverse curve concave to the Northwest; thence Southwesterly, 175.74 feet along said reverse curve, said reverse curve has a chord length of 175.39 feet and a chord bearing of S74°15'37"W; thence S09°26'47"E, 308.66 feet; thence S89°34'08"E, 37.52 feet; thence S00°23'18"E, 290.00 feet; thence S89°34'26"E, 1426.50 feet to the Westerly Right-of-Way Line of said Veterans Parkway and to a non-tangent 1554.42 feet radius curve concave to the Northwest; thence Northeasterly, 303.06 feet along said Westerly Right-of-Way and said curve, said curve has a chord length of 302.58 feet and a chord bearing of N10°09'30"E; thence N04°34'23"E, 515.43 feet along said Westerly Right-of-Way to the Point of Beginning.

Said tract of land contains 24.047 acres more or less.

Said tract of land being subject to all easements of record.



Prepared by: K. Tragesser, Development Services, P.O. Box 65320, West Des Moines, IA 50265-0320, (515)222-3620  
When Recorded, Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines, IA 50265-0320

**ORDINANCE NO.**

**AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP AND THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2014, BY AMENDING TITLE 9: ZONING, CHAPTER 4: ZONING DISTRICTS AND MAP**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:**

**SECTION 1. AMENDMENT:** The Zoning Map of the City of West Des Moines, Iowa, is hereby amended by changing the zoning of property on the west side of Veterans Parkway approximately 500 feet south of SE Browns Woods Drive and legally described below from Residential Estate Single Family (RE-1A) district and Residential Medium Density (RM-8) district to approximately 15.25 acres of Residential Single Family (RS-30), as legally described and as illustrated in Exhibit A;

**Legal Descriptions**

**SEE EXHIBIT A**

**SECTION 2. SAVINGS CLAUSE.** If any section, provision, sentence, clause, phrase or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase or part hereof not adjudged invalid or unconstitutional.

**SECTION 3. VIOLATIONS AND PENALTIES.** Any person who violates the provisions of this Ordinance upon conviction shall be punished as set forth in title 1, Chapter 4, Section 1 and Section 2 of the City Code of the City of West Des Moines, Iowa.

**SECTION 4. OTHER REMEDIES.** In addition to the provisions set out in the Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm, or corporation for violation of any section or subsection of this Ordinance.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.

Approved and passed by the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Steven K. Gaer, Mayor

**ATTEST:**

\_\_\_\_\_  
Ryan T. Jacobson  
City Clerk

I certify that the foregoing was published as Ordinance No. \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 2016.

\_\_\_\_\_  
Ryan T. Jacobson  
City Clerk

**EXHIBIT A**  
**Legal Description**

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Beginning at Northwest Corner of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 26, Township 78 North, Range 25 West of the 5<sup>th</sup> P.M., West Des Moines, Polk County, Iowa; thence N00°18'26"W, 54.40 feet along the West Line of the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of said Section 26; thence S89°42'48"E, 1829.08 feet to the Westerly Right-of-Way of Veterans Parkway as it is presently established; thence S04°34'23"W, 149.57 feet along said Westerly Right-of-Way Line; thence S81°47'02"W, 286.30 feet to a non-tangent 500.00 foot radius curve concave to the Southeast; thence Southwesterly, 277.94 feet along said curve, said curve has a chord length of 274.38 feet and chord bearing of S51°59'38"W; thence S36°04'09"W, 55.00 feet to a non-tangent 800.00 foot radius curve concave to the Southwest; thence Northwesterly, 499.63 feet along said curve, said curve has a chord length of 491.55 feet and a chord bearing of N71°49'21"W; thence N89°42'51"W, 139.20 feet to an 800.00 foot radius curve concave to the Southeast; thence Southwesterly, 311.63 feet along said curve, said curve has a chord length of 309.66 feet and a chord bearing of S79°07'35"W, to an 800.00 foot radius reverse curve concave to the Northwest; thence Southwesterly, 175.74 feet along said reverse curve, said reverse curve has a chord length of 175.39 feet and a chord bearing of S74°15'37"W; thence S09°26'47"E, 308.66 feet; thence S89°34'08"E, 37.52 feet; thence S00°23'18"E, 290.00 feet; thence N89°34'26"W, 290.03 feet, to the West Line of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of said Section 26; thence N00°22'28"W, 902.73 feet along said West Line, to the Northwest Corner of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of said Section 26 and to the Point of Beginning.

Said tract of land contains 15.250 acres more or less.

Said tract of land being subject to all easements of record.





**NO CHANGE FROM PREVIOUS READING**

**5(b)**

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**Date: November 14, 2016**

**ITEM:** Fuel Pump Island Canopies – Amend Title 9, Zoning, Chapter 14, Accessory Structures to Revise Regulations for Fuel Pump Canopy Materials – City Initiated – AO-003237-2016

**ORDINANCE: Approval of Second Reading, Waive Third Reading and Adopt in Final Form**

**FINANCIAL IMPACT:** Undetermined.

**BACKGROUND:** Staff requests an amendment to City Code, Title 9, Zoning, Chapter 14 Accessory Structures to revise the language related to materials to be used on the canopy support columns.

**Previous Council Action:**

Vote: 5-0 approval

Date: October 31, 2016

Motion: Approval of the First Reading of the ordinance

**OUTSTANDING ISSUES:** There are no outstanding issues.

**RECOMMENDATION:** Based upon the preceding review and a finding of consistency with the goals and policies of the Comprehensive Plan, staff recommends the City Council approved the second reading of the ordinance, waive the third reading of the ordinance and adopt the ordinance in final form to amend Title 9, Zoning, Chapter 14, Accessory Structures to Revise Regulations for Fuel Pump Canopy Materials.

Lead Staff Member: Kara Tragesser, AICP

**Staff Reviews:**

Department Director	<i>[Signature]</i>
Appropriations/Finance	<i>[Signature]</i>
Legal	<i>[Signature]</i>
Agenda Acceptance	<i>[Signature]</i>

**PUBLICATION(S) (if applicable)**

Published In	Des Moines Register
Date(s) Published	October 14, 2016
Letter sent to surrounding property owners	N/A

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	Development & Planning		
Date Reviewed	October 17, 2016		
Recommendation	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Split <input type="checkbox"/>

**ATTACHMENT:**

Exhibit I - Proposed Ordinance

Prepared by: KTragesser, West Des Moines Development Services, PO Box 65320, West Des Moines, IA 50265, 515-222-3620  
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

**ORDINANCE NO.**

**AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2014, TITLE 9 (ZONING), CHAPTER 14 (ACCESSORY STRUCTURES), SECTION 9 (FUEL PUMP ISLANDS AND ISLAND CANOPIES) TO REVISE THE DESIGN STANDARDS FOR FUEL PUMP CANOPIES**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:**

**Section 1. Amendment.** Title 9 (Zoning), Chapter 14 (Accessory Structures), Section 9 (Fuel Pump Islands and Island Canopies), Paragraph F (Design Standards for Fuel Pump Island Canopies) is hereby amended by adding the text in bold lettering and deleting the text in strikethrough, highlighted lettering:

F. Design Standards for Fuel Pump Island Canopies: The intent of the following design standards is to promote an appealing structure that is architecturally consistent with the principal structure, provides visual interest, and balances the mass of the canopy between the elements of the structure such as the canopy and the support structure. For all fuel pump canopies the following design elements must be present:

1. ~~All pump island canopy supports shall be trimmed in brick, stone, or split face masonry consistent with the majority of material used for the primary structure. The brick, stone, or split face masonry materials shall extend up the entire height of the support column.~~

**All canopy supports shall be designed to be in proportion with the canopy size and height, and that dimension shall extend the full height of the support. Supports shall be clad with materials consistent with the materials used for the primary structure and be a hard surface material such as brick or stone that can provide durability against impacts typical of being in close proximity to vehicles. Less durable hard surface materials such as EIFS and composite materials if consistent with the primary building, may be utilized for the cladding on the upper portion of the column, above the height of the tallest fuel pump.**

2. Pump island canopies one hundred (100) linear feet long or greater shall be designed to provide visual interest and break the straight line appearance of the length of the canopy by utilizing changes in massing and materials.
3. The color of the canopy shall be consistent with the color of the materials used to construct the primary structure. The color shall not be consistent with the signage colors unless considered part of the signage allowance for the primary structure as noted elsewhere in this title.

**Section 2. Repealer.** All ordinances or parts of ordinances in conflict with the provision of this ordinance are hereby repealed.

**Section 3. Savings Clause.** If any section, provision, sentence, clause, phrase or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase or part hereof not adjudged invalid or unconstitutional.

**Section 4. Violations and Penalties.** Any person who violates the provisions of this Ordinance upon conviction shall be punished as set forth in Section 1-4-1 of the City Code of the City of West Des Moines, Iowa.

**Section 5. Other Remedies.** In addition to the provisions set out in the Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm or corporation for violation of any section or subsection of this Ordinance.

**Section 6. Effective Date.** This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

Passed by the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

\_\_\_\_\_  
Ryan T Jacobson, City Clerk

The foregoing Ordinance No. \_\_\_\_\_ was adopted by the Council for the City of West Des Moines, Iowa, on \_\_\_\_\_, 2016, and was published in the Des Moines Register on \_\_\_\_\_, 2016.

\_\_\_\_\_  
Ryan T. Jacobson, City Clerk

**NO CHANGE FROM PREVIOUS READING**  
**CITY OF WEST DES MOINES**  
**CITY COUNCIL MEETING COMMUNICATION**

DATE: November 14, 2016

**ITEM:** Ordinance – Approval of the second reading, waiver of the third reading, and final approval of an ordinance to amend Special Restricted No Parking Areas by allowing parking during school days on 34<sup>th</sup> St. Place.

**FINANCIAL IMPACT:** Expense of removing signs

**BACKGROUND:** This action amends the City traffic code regarding Special Restricted No Parking Areas by allowing parking on 34<sup>th</sup> St. Place in the 700 block between Meadow Lane and Brookview Drive on school days, (August 15-June 15) between 8:00 a.m. to 4:00 p.m., Monday – Friday.

**OUTSTANDING ISSUES** (if any): The request for the amendment comes from the residents in the affected area. A petition to de-certify the area was approved by 75 percent of the resident in the segment involved in their request to reinstate parking during school days (see attached petition).

**RECOMMENDATION:** Approve the second reading, waiver of the third, and final approval of the ordinance.

**Lead Staff Member:** Shaun LaDue, Chief of Police

**STAFF REVIEWS**

Department Director	<i>[Signature]</i> CPT EXEC. OFF.
Appropriations/Finance	
Legal	
Agenda Acceptance	<i>[Initials]</i>

**PUBLICATION(S)** (if applicable)

Published In	
Dates(s) Published	

**SUBCOMMITTEE REVIEW** (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	

**ORDINANCE NO.**

**AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2014, BY AMENDING PROVISION PERTAINING TO THE TRAFFIC CODE RELATING TO OFFICIAL TRAFFIC CONTROLS.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.**

**SECTION 1: TITLE 6 (MOTOR VEHICLES AND TRAFFIC), CHAPTER 9, SECTION 6-9-5-4: SPECIAL RESTRICTED NO PARKING AREAS:** is hereby amended by the following changes:

**Delete:**

<u>Street</u>	<u>Side</u>	<u>From</u>	<u>To</u>
Thirty Fourth Street Place	West	Brookview Drive	Meadow Lane

**SECTION 2. REPEALER.** All Ordinances or parts of Ordinances in conflict with the provision of this Ordinance are hereby repealed.

**SECTION 3. SEVERABILITY.** If any section, provisions, sentence, clause, phrase or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase or part hereof not adjudged invalid or unconstitutional.

**SECTION 4. VIOLATION.** Any person who violates the provisions of this Ordinance, upon conviction, shall be punished with a fine not to exceed \$100.00 plus applicable surcharge and court costs.

**SECTION 5. WHEN EFFECTIVE.** This Ordinance shall be in full force and effect from and after its passage, adoption, and publication as required by law.

**PASSED AND APPROVED** this 14th day of November, 2016.

\_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

\_\_\_\_\_  
Ryan T. Jacobson  
City Clerk

Published in the Des Moines Register this \_\_\_\_\_ day of \_\_\_\_\_, 2016

# PETITION

## DE-CERTIFYING THE "NO SCHOOL PARKING" BAN NEIGHBORHOOD

We the undersigned agree and hereby consent to de-certifying the "No School Parking" ban which was established in our neighborhood in April, 2001. The original petition was created to promote public safety and insure the orderly flow of traffic within our neighborhood.

Over the last few years, Valley High School has made an enormous amount of improvements to their facility, to include increased parking for students and staff. These improvements have provided adequate parking upon the school grounds for students and a reduction in their needs for on-street parking within the area neighborhoods.

The residents within our neighborhood wish to re-established normal on-street parking regulations which allow for parking between the hours of 8:00 A.M. to 4:00 P.M. Monday through Friday the entire year.

The boundaries of our petition include:

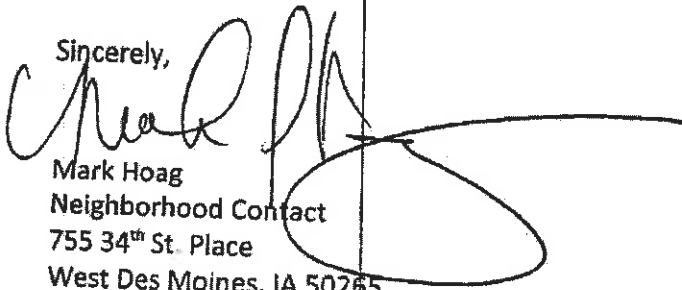
- 700 block of 34<sup>th</sup> St. Place which encompasses the 24 homes with addresses between 700-767.

This petition to de-certify is in accordance with School Related Neighborhood Parking Issues as established by the City of West Des Moines and revised August 29, 2000.

Attached is the petition for signatures by the neighborhood residents reflecting those who wish to de-certify the "no school parking" ban and those who choose to leave the parking regulations as they currently stand!

If you have any questions, please contact me at the below information.

Sincerely,



Mark Hoag  
Neighborhood Contact  
755 34<sup>th</sup> St. Place  
West Des Moines, IA 50265  
515-255-1295

Numerical Address	Street Name	Residents Name: Printed	Residents Signature	Telephone Number	Residents Choice	
					De-certify No Parking School Days	Do Not Change Current Parking Ordinance
755	34th	MARK HOAG		515 255 1295	✓	
755	34th	Becky Hoag		515 255 1295	✓	
767	34th	Sim Asbille		515 758 0425	✓	
767	34th	Monica Asbille		515 482 4226	X	
767	34th	Jill Ashih		515 556 1111	✓	
737	34th	Michelle Berman		636-734-1691	✓	
737	34th	Scott Davis		641-414-6869	✓	
719	34th	Jeff Brown		515-240-9609	✓	
719	34th	Lynette Lamb Brown		515 240 2065	✓	
729	34th	Rob Knebel		(515) 419-2500	✓	
701	34th	Andrew Wolanzen		515 323 5959	✓	
700	34th	Branion Hill		515-778-6571	✓	
708	34th	Stacy Hall		515-321-3000	✓	
712	34th	Erin Fidler		515-321-5574	✓	
730	34th	Inge Hagen		515-225-2674	✓	
742	34th	Shaunda Murphy		515-221-0714	✓	
742	34th	Nate Murphy		515-221-0714	✓	
766	34th	Wendel Bachmann		515-222-6975	✓	
766	34th	Emma Bachmann		" "	✓	
749	34th	Patricia Gery		515-225-9730	✓	
742	34th	Chris Murphy		515-221-0714	✓	
730	34th	AMY NEHRING		515-770-1205	✓	
730	34th	Osmir Callison		515-447-2093	✓	
718-354	34th	James Baker		515-221-1117	✓	
748	34th	Matt O'Neil		515 321 2122	✓	
724	34th	GRANT JOHNSON		515-979-1279	✓	





**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

Date: November 14, 2016

**ITEM:** 1<sup>st</sup> Street Redevelopment PUD, SW corner of 1<sup>st</sup> Street and Grand Avenue – Amend PUD sketch to allow adjustments to buildings and the associated site modifications – First Street, LP – ZC-003246-2016

**ORDINANCE: Approval of First Reading of the Ordinance to Amend the  
1<sup>st</sup> Street Redevelopment Planned Unit Development**

**FINANCIAL IMPACT:** Undetermined.

**BACKGROUND:** The applicant is requesting an amendment to the PUD sketch plan that was approved in November of 2015 as a part of the 1<sup>st</sup> Street Redevelopment PUD. Specifically, the potential developer of lot 4 on the PUD sketch is proposing to move the building on this lot to the north side of the lot instead of the south side of the lot as shown on the approved PUD sketch to avoid an existing storm sewer line that crosses the parcel. This results in modifications to the site to accommodate traffic circulation changes as well as the need to move the existing northern driveway from 1<sup>st</sup> Street further to the south than originally planned.

In addition, the applicant has also amended the layout of Lot 6 to show a possible drive through restaurant and associated site circulation and modifications. The approved PUD Sketch indicates a retail/office building for this lot. A traffic study has been conducted for the potential allowance of a drive through restaurant on Lot 6. The traffic study shows that the trip generation of the development with a drive through restaurant on lot 6 is expected to generate less traffic than previously estimated for the full 1<sup>st</sup> Street Redevelopment project. Recommendations given in previous traffic studies for the major roadway network remain adequate to allow for this potential change in land use for lot 6.

The precedent images for the buildings on lots 3 and 6 will also be updated due to possible changes in the types of uses for the buildings and modifications to the site layout. Specifically, to allow for a possible drive through restaurant on lot 6 and potentially a different type of user for lot 3 other than an Irish pub as currently shown.

No changes to the PUD ordinance text are necessary with this proposed amendment.

**Plan and Zoning Commission Action:**

Vote: 6-0 Approval, with Commissioner Brown absent

Date: November 7, 2016

Motion: Adopt a resolution recommending the City Council approve the PUD Ordinance Amendment.

**OUTSTANDING ISSUES:** There are no outstanding issues. The following items of interest are noted in the attached Plan and Zoning Commission report (see Exhibit I):

- Applicant's Request
- History
- City Council Subcommittee – *Development and Planning: October 17, 2016*
- Staff Review and Comment
  - *Individual Lot Development*
  - *Precedent Images*
  - *Access from 1<sup>st</sup> Street*
- Comprehensive Plan Consistency
- Staff Recommendations and Conditions of Approval
- Noticing Information
- Owner Information

**RECOMMENDATION:** Based upon the preceding review and a finding of consistency with the Comprehensive Plan, the Plan and Zoning Commission recommends the City Council approve rezoning request to amend the PUD sketch to relocated buildings on the property and the associated site modifications, subject to the applicant meeting all City Code requirements and the following:

1. The applicant submitting written confirmation from the Iowa Department of Transportation that they approve of the relocated 1<sup>st</sup> Street driveway.
2. The applicant continuing to work with staff to address comments on the material palette shown on the precedent image for parcel 6 and provide an updated exhibit for the November 14<sup>th</sup> City Council meeting. (Addressed - updated exhibit has been provided and is attached as Exhibit C)

Lead Staff Member: Brian Portz

**STAFF REVIEWS:**

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

**PUBLICATION(S) (if applicable)**

Published In	<i>Des Moines Register</i>
Date(s) Published	October 28, 2016
Letter sent to surrounding property owners	October 25, 2016

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	Development and Planning		
Date Reviewed	October 17, 2016		
Recommendation	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Split <input type="checkbox"/>

**ATTACHMENTS:**

- Exhibit I - Plan and Zoning Communication
  - Attachment A - Plan and Zoning Commission Resolution
  - Exhibit A - Conditions of Approval
  - Attachment B - Location Map
- Exhibit II - Proposed Ordinance Amendment
  - Exhibit A - Revised PUD Sketch
  - Exhibit B - Revised Precedent Image for Parcel 3
  - Exhibit C - Revised Precedent Image for Parcel 6

**CITY OF WEST DES MOINES  
PLAN AND ZONING COMMISSION COMMUNICATION**

**Meeting Date:** November 7, 2016

**Item:** 1<sup>st</sup> Street Redevelopment PUD, SW corner of 1<sup>st</sup> Street and Grand Avenue – Amend PUD sketch to allow the adjustments to buildings and the associated site modifications – First Street, LP – ZC-003246-2016

**Requested Action:** Resolution: Approval of a PUD Amendment

**Case Advisor:** Brian Portz, Planner

**Applicant's Request:** The applicant is requesting an amendment to the PUD sketch plan that was approved in November of 2015 as a part of the 1<sup>st</sup> Street Redevelopment PUD. Specifically, the potential developer of lot 4 on the PUD sketch is proposing to move the building on this lot to the north side of the lot instead of the south side of the lot as shown on the approved PUD sketch to avoid an existing storm sewer line that crosses the parcel. This results in modifications to the site to accommodate traffic circulation changes as well as the need to move the existing northern driveway from 1<sup>st</sup> Street further to the south than originally planned.

In addition, the applicant has also amended the layout of Lot 6 to show a possible drive through restaurant and associated site circulation and modifications. The approved PUD Sketch indicates a retail/office building for this lot. A traffic study has been conducted for the potential allowance of a drive through restaurant on Lot 6. The traffic study shows that the trip generation of the development with a drive through restaurant on lot 6 is expected to generate less traffic than previously estimated for the full 1<sup>st</sup> Street Redevelopment project. Recommendations given in previous traffic studies for the major roadway network remain adequate to allow for this potential change in land use for lot 6.

The precedent images for the buildings on lots 3 and 6 will also be updated due to possible changes in the types of uses for the buildings and modifications to the site layout. Specifically, to allow for a possible drive through restaurant on lot 6 and potentially a different type of user for lot 3 other than an Irish pub as currently shown.

No changes to the PUD ordinance text are necessary with this proposed amendment.

**History:** The PUD area includes 7 parcels, which will eventually contain 7 buildings. This includes True Value Hardware, Blue Tomato, Dollar Tree, 820 1<sup>st</sup> Street building (currently under construction), and 3 more future buildings. Two of the existing buildings within the PUD were recently demolished. These buildings were originally constructed from the mid 1950's to the mid 1990's. The City Council reviewed and approved a Site Plan for The Blue Tomato building on October 9, 1995. A Minor Modification for the True Value site was approved by City Staff on November 19, 1998. The City Council also reviewed and approved a Minor Modification to a Site Plan that included various site modifications and façade improvements for the True Value Store and Scooters Coffee House (former Bruegger's Bagels, now Blue Tomato) on April 5, 2010. A Master Plan for the 1<sup>st</sup> Street Redevelopment area specifying the proposed building and infrastructure modifications for the development was approved by the City Council on October 5, 2015. On November 2, 2015, the City Council approved the Rezoning to create the 1<sup>st</sup> Street Redevelopment PUD. In October of 2015, the site plan for the Dollar Tree store was approved. In December of 2015, an amendment to the PUD was approved by the City Council adding additional property to the PUD and amending setback requirements. In August of 2016, a site plan was approved for the building currently under construction at 820 1<sup>st</sup> Street.

**City Council Subcommittee:** This item was presented to the Development and Planning City Council Subcommittee at the October 17, 2016 meeting. The item was presented as an informational item only and there was no discussion.

**Staff Review and Comment:** This request was distributed to other City departments and other agencies for their review and comment. There are no outstanding issues. Staff would note the following items of interest:

- **Individual Lot Development:** The PUD sketch is a concept level plan that shows how the lots on the site may develop in the future. The specific development of each lot depicted on the PUD sketch will still proceed through the City's site plan review process, which will include the review of the proposed land uses, site circulation, building architecture, landscaping, utilities, etc.
- **Precedent Images:** The precedent images for the buildings on lots 3 and 6 are also proposed to be revised with this amendment. The current precedent images contained within the PUD show an Irish pub design for lot 3 and a bank/sit down restaurant design for lot 6. The applicant would like to allow for the possible use of a drive through restaurant for the building on lot 6 and to allow for the possible change to a different type of use (other than an Irish pub) for the building on lot 3. The proposed modifications to the precedent images are attached for review and can be considered alternate images for each lot to allow for flexibility in tenants. Staff has some concerns on the material palette for lot 6 and would like to continue working with the applicant on the building materials in the precedent image for lot 6 and therefore recommends a condition of approval that the applicant work with staff to modify the proposed materials.
- **Access from 1<sup>st</sup> Street:** With the relocation of the building on lot 4 to the north side of the lot, the proposed access drive to lot 4 from 1<sup>st</sup> Street will be located further south than originally planned. The applicant will be required to verify that the the Iowa Department of Transportation (IDOT) is in agreement with this new access location since 1<sup>st</sup> Street is a State Highway. Staff recommends a condition of approval that the amendment to the PUD sketch is contingent upon IDOT's written approval of the revised driveway location.

**Comprehensive Plan Consistency:** The proposed PUD amendment has been reviewed for consistency with the Comprehensive Plan. Based upon that review, a finding has been made that the proposed amendment is consistent with the Comprehensive Plan in that the project is consistent with all of the goals and policies of the Comprehensive Plan and the land use map of the Comprehensive Plan.

**Staff Recommendations and Conditions of Approval:** Based upon the preceding review and a finding of consistency with the Comprehensive Plan, staff recommends that the Plan and Zoning Commission adopt a resolution recommending the City Council approve the Rezoning Request to amend the PUD sketch plan to illustrate a drive-through and modify building locations and associated site improvements and modify precedent images included in the ordinance exhibits, subject to the applicant meeting all City Code requirements and the following:

1. The applicant submitting written confirmation from the Iowa Department of Transportation that they approve of the relocated 1<sup>st</sup> Street driveway.
2. The applicant continuing to work with staff to address comments on the material palette shown on the precedent image for parcel 6 and provide an updated exhibit for the November 14<sup>th</sup> City Council meeting.

**Noticing Information:** On October 28, 2016, notice for the November 7, 2016, Plan and Zoning Commission and November 14, 2016, City Council Public Hearings on this project was published in the Des Moines Register Community Section. . Notice of these public hearings was also mailed to all surrounding property owners within 370 feet of the subject property on October 25, 2016.

**Property Owner:** First Street, LP  
 John Mandelbaum  
 4500 Westown Parkway  
 West Des Moines, IA 50266  
[john@mandelbaumproperties.com](mailto:john@mandelbaumproperties.com)  
 515-222-6200

**Attachments:**

- |              |   |                                       |
|--------------|---|---------------------------------------|
| Attachment A | - | Plan and Zoning Commission Resolution |
| Exhibit A    | - | Conditions of Approval                |
| Attachment B | - | Location Map                          |
| Attachment C | - | Proposed Ordinance Amendment          |
| Exhibit A    | - | Revised PUD Sketch                    |
| Exhibit B    | - | Revised Precedent Image for Parcel 3  |
| Exhibit C    | - | Revised Precedent Image for Parcel 6  |

## RESOLUTION NO. PZC-16-067

**A RESOLUTION OF THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES, RECOMMENDING TO THE CITY COUNCIL THAT IT APPROVE THE REZONING REQUEST (ZC-003246-2016) FOR THE PURPOSE OF AMENDING THE 1<sup>ST</sup> STREET REDEVELOPMENT PUD BY AMENDING THE PUD SKETCH AND EXHIBITS**

**WHEREAS**, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, the applicant, First Street, LP has requested approval for an Amendment to the 1<sup>st</sup> Street Redevelopment PUD (ZC-003246-2016) for that approximately 5.37 acre site located at the southwest corner of 1<sup>st</sup> Street and Grand Avenue for the purpose of amending the PUD sketch to illustrate a drive-through and modify building locations and associated site improvements and modify precedent images included in the ordinance exhibits ;

**WHEREAS**, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference;

**WHEREAS**, on November 7, 2016 this Commission held a duly-noticed hearing to consider the application for a Rezoning Request (ZC-003246-2016);

**NOW, THEREFORE, THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:**

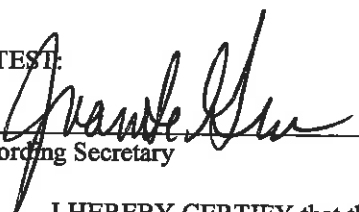
SECTION 1. The findings, for approval, in the staff report, dated November 7, 2016, or as amended orally at the Plan and Zoning Commission hearing of November 7, 2016, are adopted.

SECTION 2. REZONING REQUEST (ZC-003246-2016) to amend the 1<sup>st</sup> Street Redevelopment PUD for the purpose of amending the PUD sketch to illustrate a drive-through and modify building locations and associated site improvements and modify precedent images included in the ordinance exhibits is recommended to the City Council for approval, subject to compliance with all the conditions in the staff report, dated November 7, 2016, including conditions added at the Hearing, and attached hereto as Exhibit "A", if any. Violation of any such conditions shall be grounds for revocation of the permit, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on November 7, 2016.

  
 Craig Erickson, Chairperson  
 Plan and Zoning Commission

ATTEST:

  
 Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on November 7, 2016, by the following vote:

AYES: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth

NAYS:

ABSTENTIONS:

ABSENT:  Brown

ATTEST:

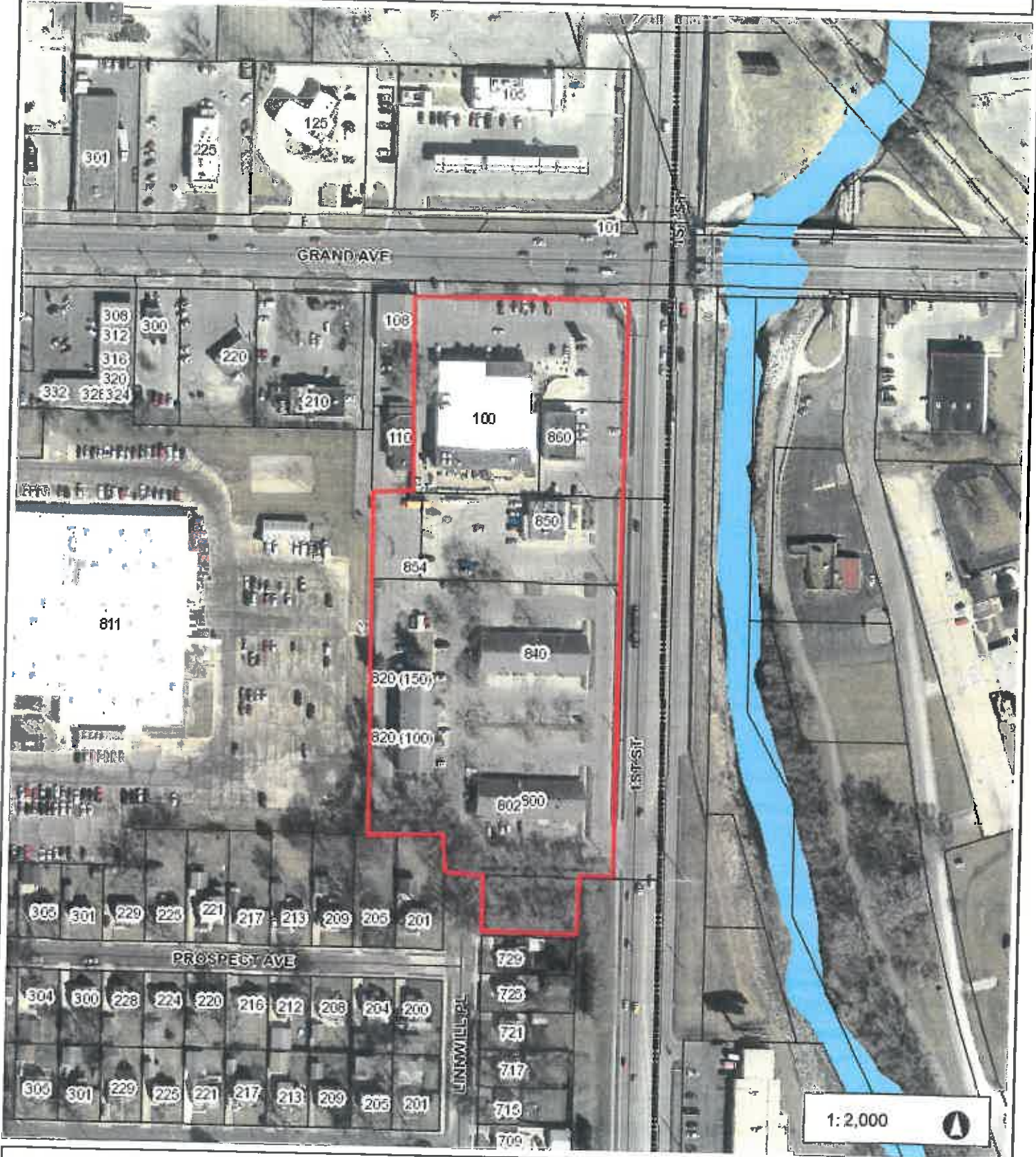
  
 Recording Secretary

**EXHIBIT A**  
**CONDITIONS OF APPROVAL**

1. The applicant submitting written confirmation from the Iowa Department of Transportation that they approve of the relocated 1<sup>st</sup> Street driveway.
2. The applicant continuing to work with staff to address comments on the material palette shown on the precedent image for parcel 6 and provide an updated exhibit for the November 14<sup>th</sup> City Council meeting.



# 1st Street Redevelopment PUD



1:2,000

333.3 0 166.67 333.3 Feet

NAD\_1983\_StatePlane\_Iowa\_South\_FIPS\_1402\_Feet  
© City of West Des Moines, Iowa

Disclaimer: The City of West Des Moines makes no warranties regarding the accuracy or completeness of the data provided herein.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Prepared by: B. Portz, Development Services, PO Box 65320, West Des Moines, IA 50265-0320, 515-222-3620  
When Recorded, Return to: City Clerk, City of West Des Moines, PO Box 65320, West Des Moines, IA 50265-0320

**ORDINANCE NO.**

**AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2014, AND ORDINANCES #2122, AND ORDINANCE #2135 PERTAINING TO P.U.D. (PLANNED UNIT DEVELOPMENT) DISTRICT REGULATIONS AND GUIDELINES.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:**

**SECTION 1. AMENDMENT.** Ordinance #2122 and #2135 pertaining to the 1<sup>st</sup> Street Redevelopment PUD, complete ordinance; is hereby amended by replacing the PUD sketch plan with Exhibit A.

**SECTION 2. AMENDMENT.** Ordinance #2122 and #2135 pertaining to the 1<sup>st</sup> Street Redevelopment PUD, complete ordinance; is hereby amended by replacing the precedent image for parcel 3 and parcel 6 within exhibit F of the 1<sup>st</sup> Street Redevelopment PUD with Exhibit B and C.

**SECTION 3. SAVINGS CLAUSE.** If any section, provision, sentence, clause, phrase or part of the Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase or part hereof not adjudged invalid or unconstitutional.

**SECTION 4. VIOLATIONS AND PENALTIES.** Any person who violates the provisions of this Ordinance upon conviction shall be punished as set forth in 1-4-1 of the City Code of the City of West Des Moines, Iowa.

**SECTION 5. OTHER REMEDIES.** In addition to the provisions set out in the Violations and Penalties Section herein, the City may proceed in law or equity against any person, firm or corporation for violation of any section or subsection of this Ordinance.

**SECTION 6. EFFECTIVE DATE.** This Ordinance shall be in full force and effect after its passage, approval and publication as provided by law.



Passed and approved by the City Council on the \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Steven K. Gaer, Mayor

**ATTEST:**

\_\_\_\_\_  
Ryan T. Jacobson  
City Clerk

I certify that the foregoing was published as Ordinance No. \_\_\_\_\_ on the \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Ryan T. Jacobson  
City Clerk

P U D S K E T C H P L A N  
 REVISED: OCT 31, 2016

# FIRST STREET REDEVELOPMENT

FIRST STREET & GRAND, WEST DES MOINES, IOWA 50265

**OWNER:** FIRST STREET LP  
 4500 WESTOWN PKWY, SUITE 115  
 WEST DES MOINES, IOWA 50265  
 PHONE: 515-222-6201 | FAX: 515-265-8702

**ARCHITECT:** STUDIO MELEE  
 1312 LOCUST, SUITE 100Z, DES MOINES, IOWA 50309  
 PHONE: 515-314-9852 | PHONE: 515-493-0003

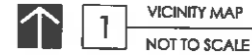
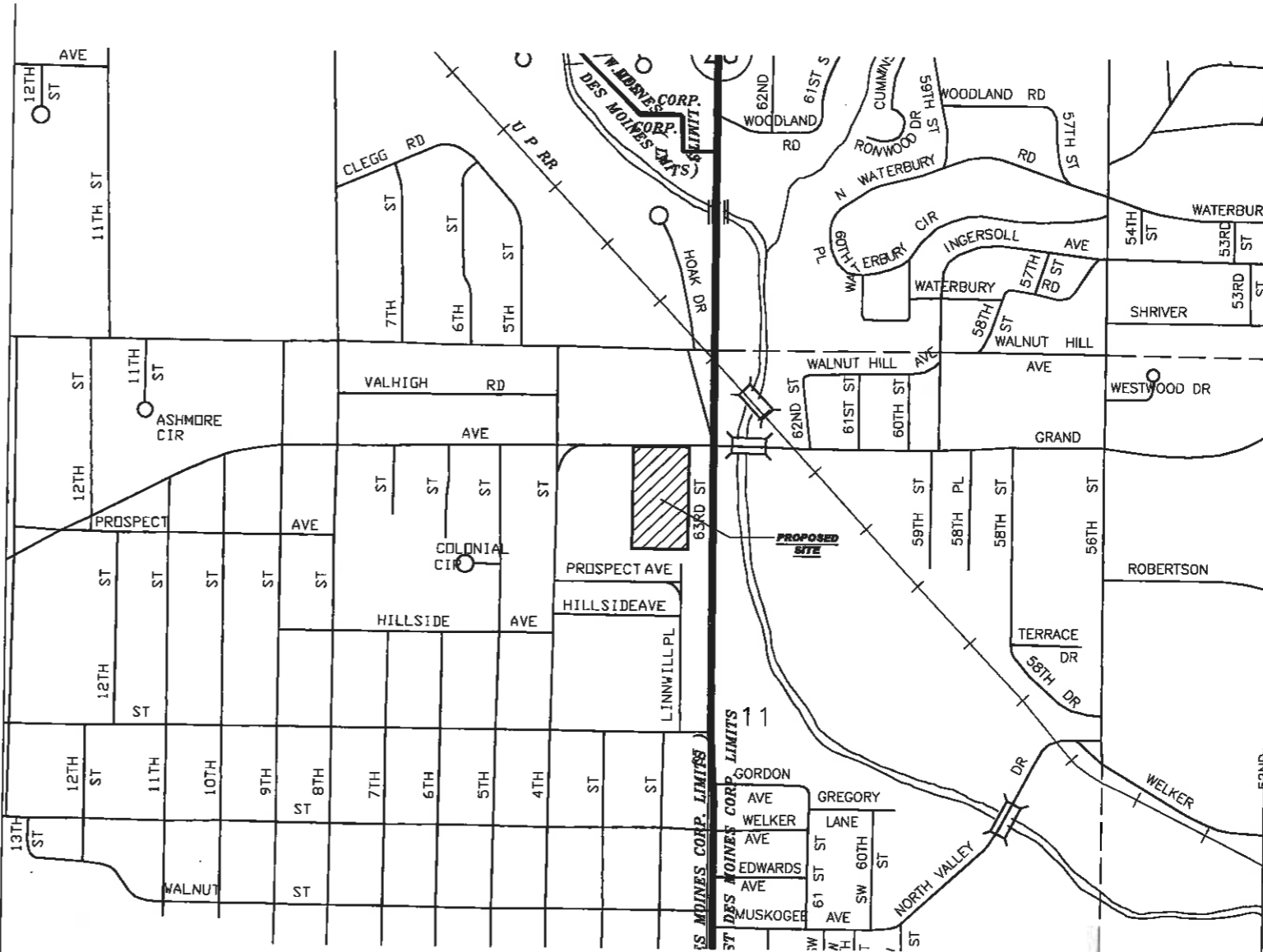


CIVIL/SITE: BISHOP ENGINEERING

**Bishop Engineering Company, Inc.**  
 3501 104th Street  
 Des Moines, Iowa 50322  
 PHONE: (515)276-0467 FAX: (515)276-0217

## SYMBOLS LEGEND

PROPERTY CORNER— FOUND AS NOTED		BOUNDARY LINE	
MEASURED DISTANCE	0.00' M	LOT LINE	
PLATTED DISTANCE	0.00' P	CENTER LINE	
DEEDED DISTANCE	0.00' D	EASEMENT LINE	
RIGHT-OF-WAY	R.O.W.	BUILDING LINE	
SANITARY SEWER MANHOLE		FENCE LINE	
STORM SEWER MANHOLE		SANITARY SEWER	
UTILITY MANHOLE		STORM SEWER	
SIGNAL POLE		GAS LINE	
LIGHT POLE		WATER LINE	
POWER POLE		UNDERGROUND ELECTRIC	
CURB INTAKE		OVERHEAD ELECTRIC	
SURFACE INTAKE		TELEPHONE LINE	
FIRE HYDRANT			
WATER VALVE			
GAS VALVE			
CLEAN OUT			



## CERTIFICATIONS

I HEREBY CERTIFY THAT THE PORTION OF THIS TECHNICAL SUBMISSION DESCRIBED BELOW WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND RESPONSIBLE CHARGE. I AM A DULY REGISTERED ARCHITECT UNDER THE LAWS OF THE STATE OF IOWA.

PRINTED OR TYPED NAME \_\_\_\_\_  
 SIGNATURE & DATE \_\_\_\_\_  
 DISCIPLINE & REGISTRATION NO. \_\_\_\_\_  
 PAGES OR SHEETS COVERED \_\_\_\_\_

I HEREBY CERTIFY THAT THE PORTION OF THIS TECHNICAL SUBMISSION DESCRIBED BELOW WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND RESPONSIBLE CHARGE. I AM A DULY REGISTERED ENGINEER UNDER THE LAWS OF THE STATE OF IOWA.

PRINTED OR TYPED NAME \_\_\_\_\_  
 SIGNATURE & DATE \_\_\_\_\_  
 DISCIPLINE & REGISTRATION NO. \_\_\_\_\_  
 PAGES OR SHEETS COVERED \_\_\_\_\_

## INDEX OF DRAWINGS

- SPC REZONING PUD COVER SHEET
- SP1 EXISTING SITE & PARCEL PLAN
- SP2 PUD & FINAL BUILD-OUT PLAN
- SP3 PUD GRADING & UTILITY PLAN
- SP4 EASEMENT PLAN



PRELIMINARY NOT FOR CONSTRUCTION  
 PUD SKETCH PLAN

STUDIO MELEE  
 1312 LOCUST, SUITE 100Z  
 DES MOINES, IOWA 50309  
 (515) 314-9852  
 (515) 493-0003

FIRST STREET REDEVELOPMENT  
 PUD SKETCH  
 P L A N  
 FIRST STREET AND GRAND AVENUE  
 WEST DES MOINES, IOWA 50265

PRINT DATE:  
 31 OCT, 2016  
 SHEET NAME:  
 PUD COVER

SPC

**LAND OWNER & APPLICANT:**

FIRST STREET LP  
4500 WESTOWN PKWY, SUITE 115  
WEST DES MOINES, IOWA 50266

**CONTACT (PREPARED BY):**

STUDIO MELEE  
1312 LOCUST, SUITE 100Z  
DES MOINES, IOWA 50309  
PH: 515-314-9852

BISHOP ENGINEERING  
3501 104TH STREET  
URBANDALE, IOWA 50322  
PH: 515-276-0467

**EXISTING LEGAL DESCRIPTIONS:**

- EX N 115F LT 1 LINNWILL PLAT 2 (VJ PLAZA)
- EX W 66F N 115F LT 1 LINNWILL PLAT 2 (FORMER LJS)
- EX E 60F & W 168F LOT 96 LINNWILL (BLUE TOMATO)
- EX E 60F LOT 95 & W 168F LOT 96 LINNWILL (TRUE VALUE)
- LOT 3 LINNWILL PLAT 2 (GRAND AVE VET)
- LOT 2 LINNWILL PLAT 2 (SULLY'S)
- LOT 1 LINNWILL (CITY OF WDM PROPERTY)

**PROPOSED COMBINED LEGAL DESCRIPTION:**

LOTS 85 & 86 OF LINNWILL PLAT 1, AN OFFICIAL PLAT IN THE CITY OF WEST DES MOINES, POLK COUNTY, IA, EXCEPT FOR THE EAST 60 FEET.

AND

LOT 1 OF LINNWILL PLAT 2, AN OFFICIAL PLAT IN THE CITY OF WEST DES MOINES, POLK COUNTY, IA

CONTAINING APPROXIMATELY 5.37 ACRES

**SITE AREA:**

EXISTING: 5.37 acres, (234,012 sqft)  
PROPOSED: 6.07 acres, (264,403 sqft)

**DISTURBED AREA:**

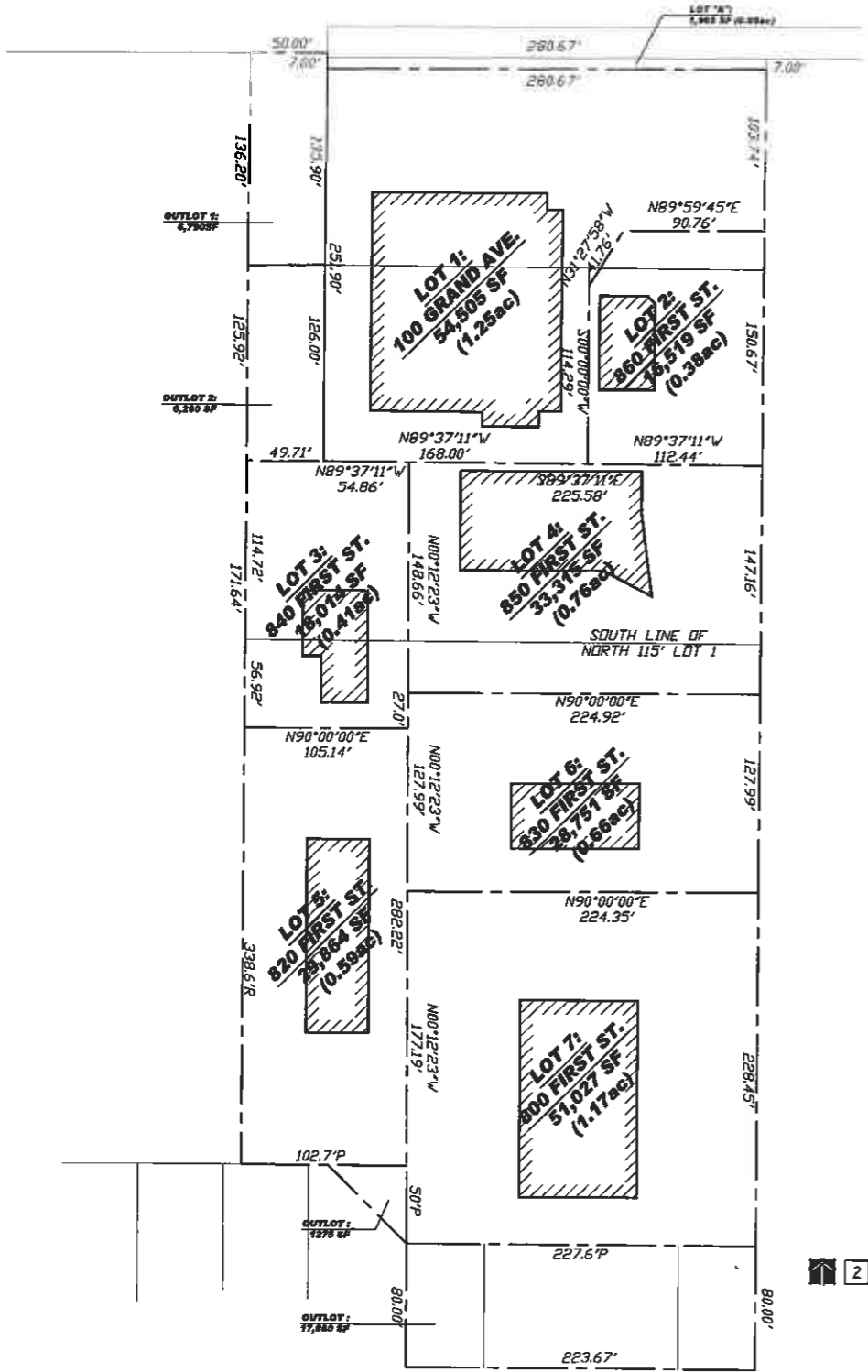
4.41 acres, (192,091 sqft)

**BUILDING AREA:**

EXISTING: 38,100 SQFT  
PROPOSED: 47,350 SQFT

**FERTIVIOUS AREA:**

EXISTING: 35,958 SQFT (15%)  
PROPOSED: 71,135 SQFT (27%)



**2 NEW PARCEL PLAN**  
SCALE: 1" = 50'-0"

**210 GRAND AVE**  
HURD INDIANOLA LLC  
25,281 SF (CMC)

**100 GRAND AVE**  
GRAND AVE VET  
7,500 SF (CMC)

**700 GRAND AVE**  
FIRST STREET LP  
56,804 SF (CMC)

**110 GRAND AVE**  
AMY BOGGS  
5,600 SF (CMC)

**800 FIRST STREET**  
FIRST STREET LP  
24,891 SF (CMC)

**VACANT**  
FIRST STREET LP  
7,475 SF (CMC)

**850 FIRST STREET**  
FIRST STREET LP  
30,510 SF (CMC)

**811 FOURTH ST**  
UNITED TECHNOLOGIES  
381,923 SF (L1)

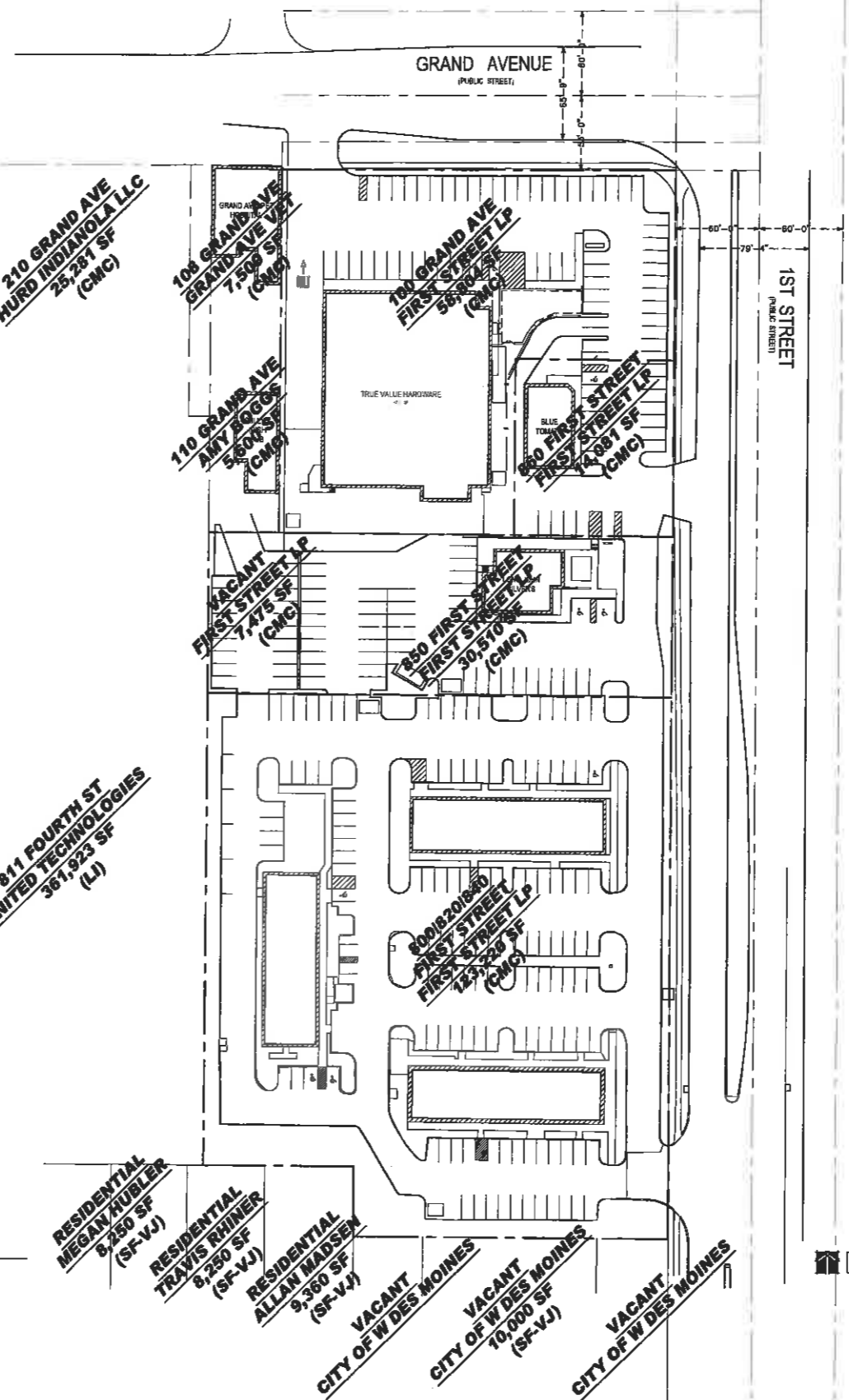
**RESIDENTIAL**  
MEGAN HUBLER  
8,280 SF (SF-VJ)

**RESIDENTIAL**  
TRAVIS RHINER  
8,250 SF (SF-VJ)

**RESIDENTIAL**  
ALLAN MADSEN  
9,360 SF (SF-VJ)

**VACANT**  
CITY OF W DES MOINES  
70,000 SF (SF-VJ)

**VACANT**  
CITY OF W DES MOINES



**1 EXISTING SITE PLAN**  
SCALE: 1" = 50'-0"



PRELIMINARY NOT FOR CONSTRUCTION  
P U D S K E T C H P L A N

PRINT DATE: 31 OCT, 2016  
 SHEET NAME: EXISTING & PARCEL PLAN  
 FIRST STREET REDEVELOPMENT  
 FIRST STREET AND GRAND AVENUE  
 WEST DES MOINES, IOWA 50265  
 P U D S K E T C H P L A N  
 STUDIO MELEE  
 1312 LOCUST, SUITE 100Z  
 DES MOINES, IOWA 50309  
 (515) 314-9852  
 (515) 493-0003

SP1

**LAND OWNER & APPLICANT:**

FIRST STREET LP  
4500 WESTOWN PKWY, SUITE 115  
WEST DES MOINES, IOWA 50266

**CONTACT (PREPARED BY):**

STUDIO MELEE  
1312 LOCUST, SUITE 100Z  
DES MOINES, IOWA 50309  
PH: 515-314-9852

BISHOP ENGINEERING  
3501 104TH STREET  
URBANDALE, IOWA 50322  
PH: 515-276-0487

**EXISTING ZONING:**

CMC COMMUNITY COMMERCIAL

**PROPOSED LAND USE & ZONING:**

FIRST STREET PUD, UNDERLYING ZONING CMC

**BULK REGULATIONS:**

THE INTENT OF THIS MASTER PLAN IS TO PERMIT REDEVELOPMENT OF THE AREA INTO A UNIQUE AND IDENTIFIABLE AREA AND TO RESPOND TO THE CONSTRAINTS OF AN INFILL SITE. AS PARCELS ARE BROUGHT FORTH FOR REDEVELOPMENT, THEY WILL NEED TO BE IN GENERAL CONFORMANCE WITH THE MASTER PLAN, THE GRAND AVENUE REDEVELOPMENT PLAN AND THE ESTABLISHED PUD. PROPOSED USES, BUILDING SIZES AND LOCATIONS INDICATED ON THE MASTER PLAN MAY CHANGE SLIGHTLY TO ACCOMMODATE PROPOSED INFRASTRUCTURE IMPROVEMENTS AND SPECIFIC USER NEEDS.

THE PARCELS WITHIN THE MASTER PLAN ARE GOVERNED BY THE PHASING PLAN AGREED UPON BETWEEN THE CITY OF WDM AND THE PROPERTY OWNER.

**OPEN SPACE REQUIREMENTS:**

AS EACH PARCEL MOVES FORWARD TO REDEVELOP, IT IS EXPECTED THAT THE SITE DESIGN WILL COME AS CLOSE TO 25% OPEN SPACE AS POSSIBLE AND MITIGATE THE LOSS OF OPEN SPACE WITH PROVISION OF SITE AMENITIES AS NOTED IN THE GRAND AVENUE REDEVELOPMENT PLAN. HOWEVER, NO SITE SHALL BE PERMITTED TO HAVE MORE THAN 85% IMPERVIOUS SURFACE AND THE ENTIRE SITE SHALL HAVE NO MORE THAN 82% IMPERVIOUS SURFACE.

**PARKING REQUIREMENTS:**

IT'S UNDERSTOOD THAT INDIVIDUAL PARCELS WITHIN THE REDEVELOPMENT MAY NOT BE ABLE TO PROVIDE ALL REQUIRED PARKING ON SITE AND SOME SHARED PARKING WILL BE REQUIRED. RECIPROCAL INGRESS AND EGRESS PARKING EASEMENTS WILL BE REQUIRED FOR ALL PARCELS IN THE DEVELOPMENT.

OFFICE AND RETAIL USES SHALL PROVIDE A MINIMUM OF 1 PARKING SPACE PER 300SF GROSS FLOOR AREA. RESTAURANTS (BOTH SIT-DOWN AND DRIVE-THRU) AND DRINKING ESTABLISHMENTS SHALL PROVIDE A MINIMUM OF 1 PARKING SPACE PER 150SF GROSS FLOOR AREA. ANY USES WITH DRIVE-THRU FACILITIES MUST PROVIDE QUEUE SPACES AS NOTED IN CITY CODE AT THE TIME OF SITE PLAN APPROVAL.

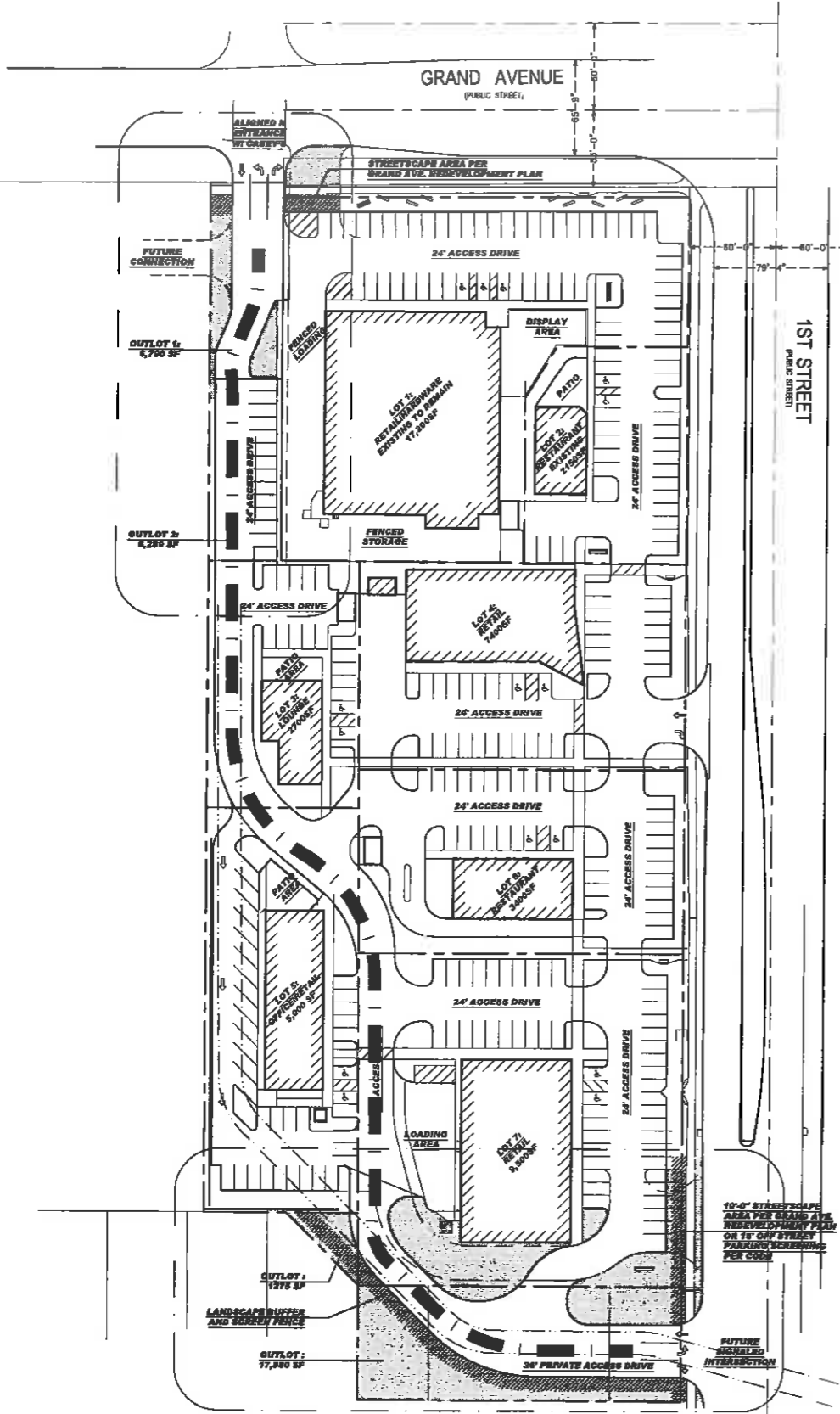
**LANDSCAPING REQUIREMENTS:**

AS EACH PARCEL MOVES FORWARD TO REDEVELOP, IT IS EXPECTED THAT SITE DESIGN WILL COME AS CLOSE AS POSSIBLE TO PLANTING STANDARDS FOR 25% OPEN SPACE. IT'S UNDERSTOOD THAT INDIVIDUAL PARCELS WITHIN THE REDEVELOPMENT MAY NOT BE ABLE TO PROVIDE ALL REQUIRED LANDSCAPING ON SITE AND ADDITIONAL PLANT MATERIAL CAN BE PROVIDED ON OTHER PARCELS, AS LONG AS THE ENTIRE DEVELOPMENT MEETS THE MINIMUM PLANTING STANDARDS FOR 25% OPEN SPACE.

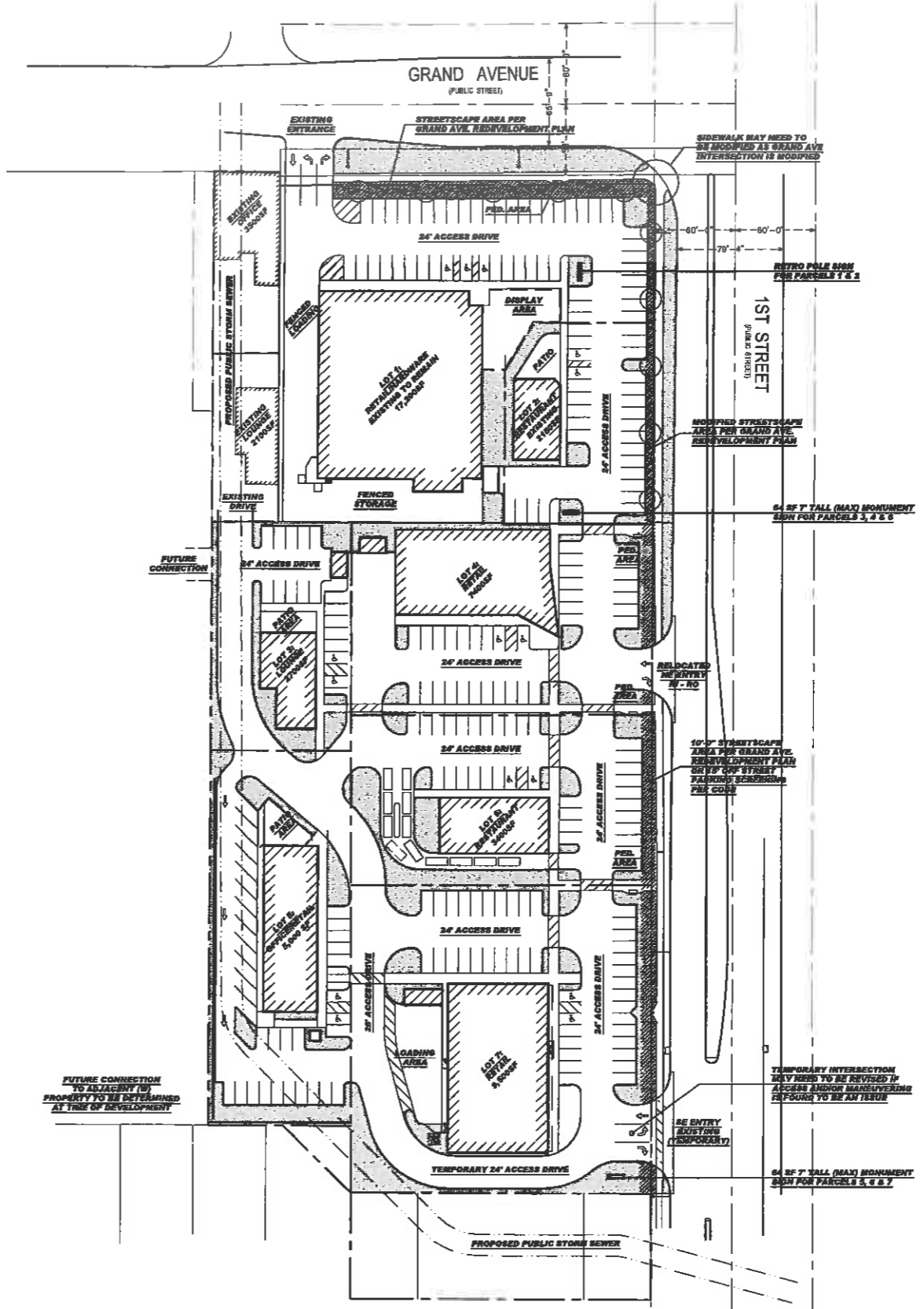
IN ADDITION TO OPEN SPACE PLANTINGS, STREETScape AND PEDESTRIAN AREAS AS NOTED IN THE GRAND AVENUE REDEVELOPMENT PLAN MUST BE PROVIDED ALONG GRAND AVENUE FRONTAGE AND THE NORTH SECTION OF THE DEVELOPMENT FRONTAGE ALONG FIRST STREET AS INDICATED ON THE PLAN. THE SOUTH SECTION OF THE FRONTAGE ALONG FIRST STREET CAN BE STANDARD OFF-STREET PARKING SCREENING PER CODE OR A CONTINUATION OF THE STREETScape.

REQUIRED BUFFERS ALONG THE ADJACENT RESIDENTIAL AREAS MAY BE PROVIDED WITH A COMBINATION OF FENCING AND PLANTINGS.

SCREENING FOR MECHANICAL UNITS (GROUND AND ROOFTOP) AS WELL AS OTHER OUTDOOR STORAGE YARDS MUST MEET SCREENING REQUIREMENTS AS NOTED IN CITY CODE AT THE TIME OF SITE PLAN APPROVAL.



**2 FULL BUILD OUT PLAN**  
SCALE: 1/4" = 5'-0"



**1 OVERALL SITE PLAN**  
SCALE: 1/4" = 5'-0"



PRELIMINARY NOT FOR CONSTRUCTION  
P U D S K E T C H P L A N

PRINT DATE: 31 OCT, 2016  
 SHEET NAME: PUD SKETCH PLAN  
 FIRST STREET AND GRAND AVENUE WEST DES MOINES, IOWA 50266  
 PUD SKETCH PLAN  
 FIRST STREET REDEVELOPMENT  
 STUDIO MELEE  
 1312 LOCUST, SUITE 100Z  
 DES MOINES, IOWA 50309  
 (515) 314-9852  
 (515) 493-0003  
 SP2

**LAND OWNER & APPLICANT:**  
 FIRST STREET LP  
 4500 WESTOWN PKWY, SUITE 115  
 WEST DES MOINES, IOWA 50266

**CONTACT (PREPARED BY):**  
 STUDIO MELEE  
 1312 LOCUST, SUITE 1002  
 DES MOINES, IOWA 50309  
 PH: 515-314-9852

BISHOP ENGINEERING  
 3501 104TH STREET  
 URBANDALE, IOWA 50322  
 PH: 515-276-0467

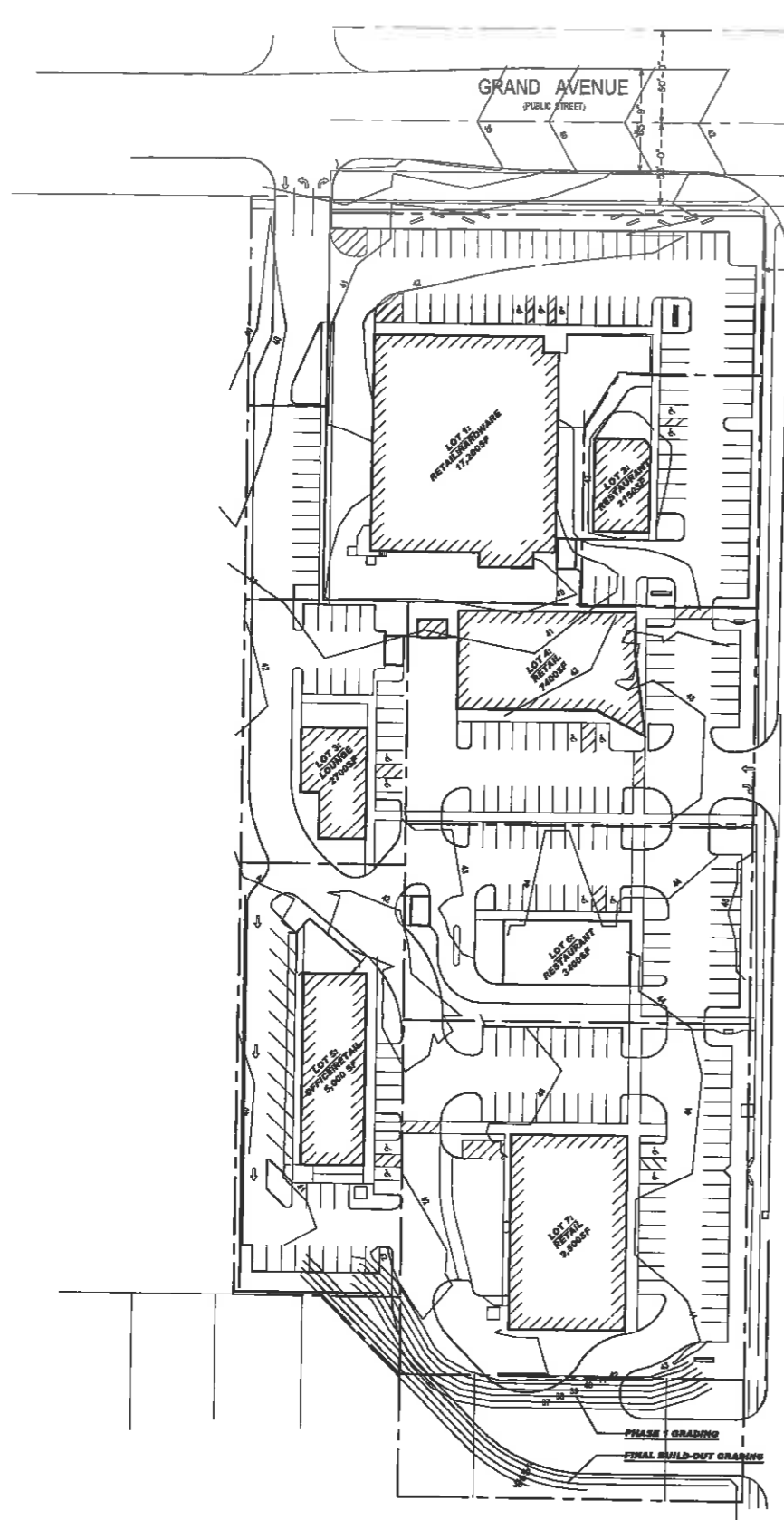
**STORMWATER MANAGEMENT:**  
 AS PART OF THE PUD, THE APPLICANT WILL BE REQUIRED TO PERFORM A STORMWATER MANAGEMENT PLAN TO DETERMINE STORMWATER FLOWS AND DOWNSTREAM CAPACITY. IN LIEU OF ON-SITE DETENTION, INDIVIDUAL PROPERTIES WILL BE EXPECTED TO PARTICIPATE IN THE GRAND AVENUE STORMWATER FEE DISTRICT. THE CITY OF WEST DES MOINES SHALL DETERMINE THE ULTIMATE STORMWATER MANAGEMENT SOLUTION FOR THE AREA. COORDINATION OF ANY CONNECTIONS REQUIRED FOR ON-SITE STORMWATER INFRASTRUCTURE WILL BE NEEDED IN CONJUNCTION WITH THE WANUT CREEK OUTFALL PROJECT.

**SITE UTILITIES NOTES:**

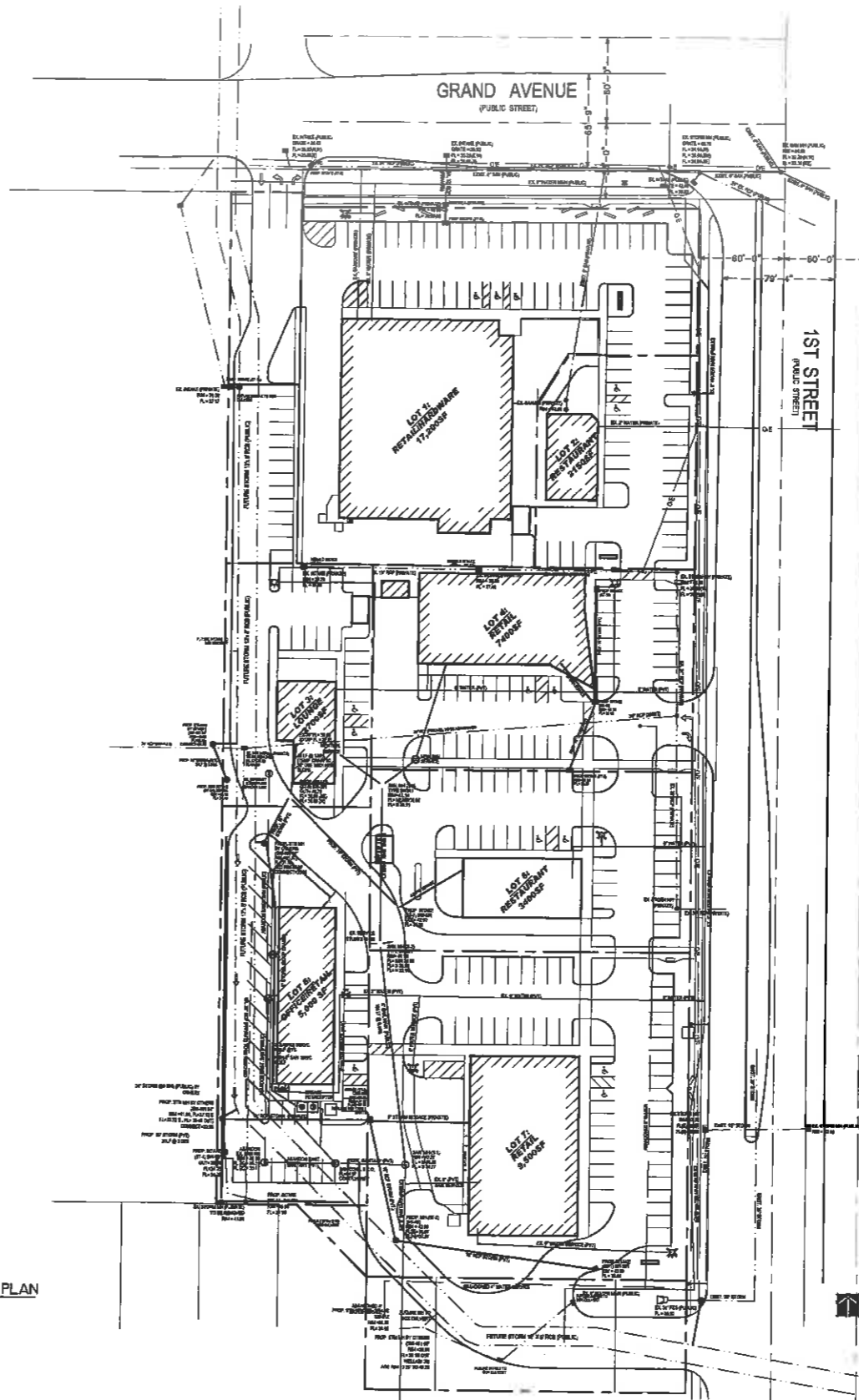
1. THE UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION AND/OR RECORDS OBTAINED. THE SURVEYOR MAKES NO GUARANTEE THAT THE UTILITIES OR SUBSURFACE FEATURES SHOWN COMPRISE ALL SUCH ITEMS IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UTILITIES OR SUBSURFACE FEATURES SHOWN ARE IN THE EXACT LOCATION INDICATED.
2. CONTRACTOR SHALL VERIFY ALL ELEVATIONS FOR ALL EXISTING UTILITIES PRIOR TO STARTING WORK, INCLUDING ELEVATIONS OF EXISTING LINES CROSSING NEW LINES.
3. CONTRACTOR SHALL FIELD ADJUST ALL SITE UTILITIES (NEW AND EXISTING) TO MATCH PROPOSED FINISH GRADES, INCLUDING HYDRANTS, VALVES, MANHOLE RIMS, INLETS AND POLE BASES.
4. ALL SANITARY SEWER, STORM SEWER MATERIALS AND INSTALLATION SHALL BE BUILT IN ACCORDANCE WITH THE CITY OF WEST DES MOINES' URBAN STANDARD SPECIFICATIONS FOR PUBLIC IMPROVEMENTS, 1998 BY THE URBAN STANDARDS SPECIFICATIONS AND COMMITTEE- CENTRAL IOWA METROPOLITAN AREAS AND MUNICIPALITIES.

**SITE GRADING NOTES:**

1. TAKE ALL NECESSARY MEASURES TO PROTECT AGAINST EROSION AND DUST POLLUTION ON AND AROUND THE PROJECT SITE TO INCLUDE ALL OFF-SITE BORROW AND SPOIL AREAS.
2. FOR ALL AREAS INDICATING PROPOSED CONSTRUCTION, STRIP AND HAUL AWAY ALL ORGANIC MATERIAL TO A 2" MINIMUM DEPTH. UPON COMPLETION OF WORK, A MINIMUM OF 6-INCHES OF TOPSOIL SHALL BE PLACED ON ALL NON-PAVED DISTURBED SURFACES. SOIL STOCKPILE AREA MAY NOT BE AVAILABLE ON-SITE, HAUL AWAY AND BRING BACK AS REQUIRED.
3. NATIVE SOILS MAY BE REUSED FOR COMMON FILL (OUTSIDE OF BUILDINGS) AFTER THEY ARE SORTED TO REMOVE ALL DELETERIOUS MATERIALS SUCH AS CONCRETE, BRICKS AND OTHER RUBBLE. DELETERIOUS MATERIALS SHALL BE REMOVED FROM PROJECT SITE. ALL EXCESS MATERIAL SHALL BE REMOVED FROM THE SITE BY THE CONTRACTOR.
4. SUBGRADE FOR PAVEMENTS SHALL BE PROOF ROLLED AND CHECKED FOR SOFT SPOTS. ANY SOFT SPOTS FOUND SHALL HAVE UNACCEPTABLE MATERIAL REMOVED AND REPLACED WITH SELECT MATERIAL.
5. PROPOSED CONTOURS AND SPOT ELEVATIONS REPRESENT FINISHED GRADE. CONTRACTOR SHALL ENSURE POSITIVE DRAINAGE (1/2" PER FOOT MIN.) AWAY FROM ALL BUILDINGS TO A DISTANCE OF 10'-0" OR MORE.
6. ALL SIDEWALKS SHALL HAVE 1/4" PER FOOT TRANSVERSE SLOPE IN THE DIRECTION OF NATURAL DRAINAGE AWAY FROM THE BUILDING.
7. MATCH EXISTING GRADES AT INTERFACE OF NEW AND EXISTING GRADES OR PAVING.
8. CONTRACTOR SHALL REVIEW AND FOLLOW THE GEOTECHNICAL SOILS REPORT IN THE PROJECT MANUAL.



**2 MASTER GRADING PLAN**  
 SCALE 1" = 50'-0"



**1 MASTER UTILITY PLAN**  
 SCALE 1" = 50'-0"

PRELIMINARY NOT FOR CONSTRUCTION  
 P U D S K E T C H P L A N

PRINT DATE: 31 OCT. 2016  
 SHEET NAME: GRADING & UTILITIES  
 SP3

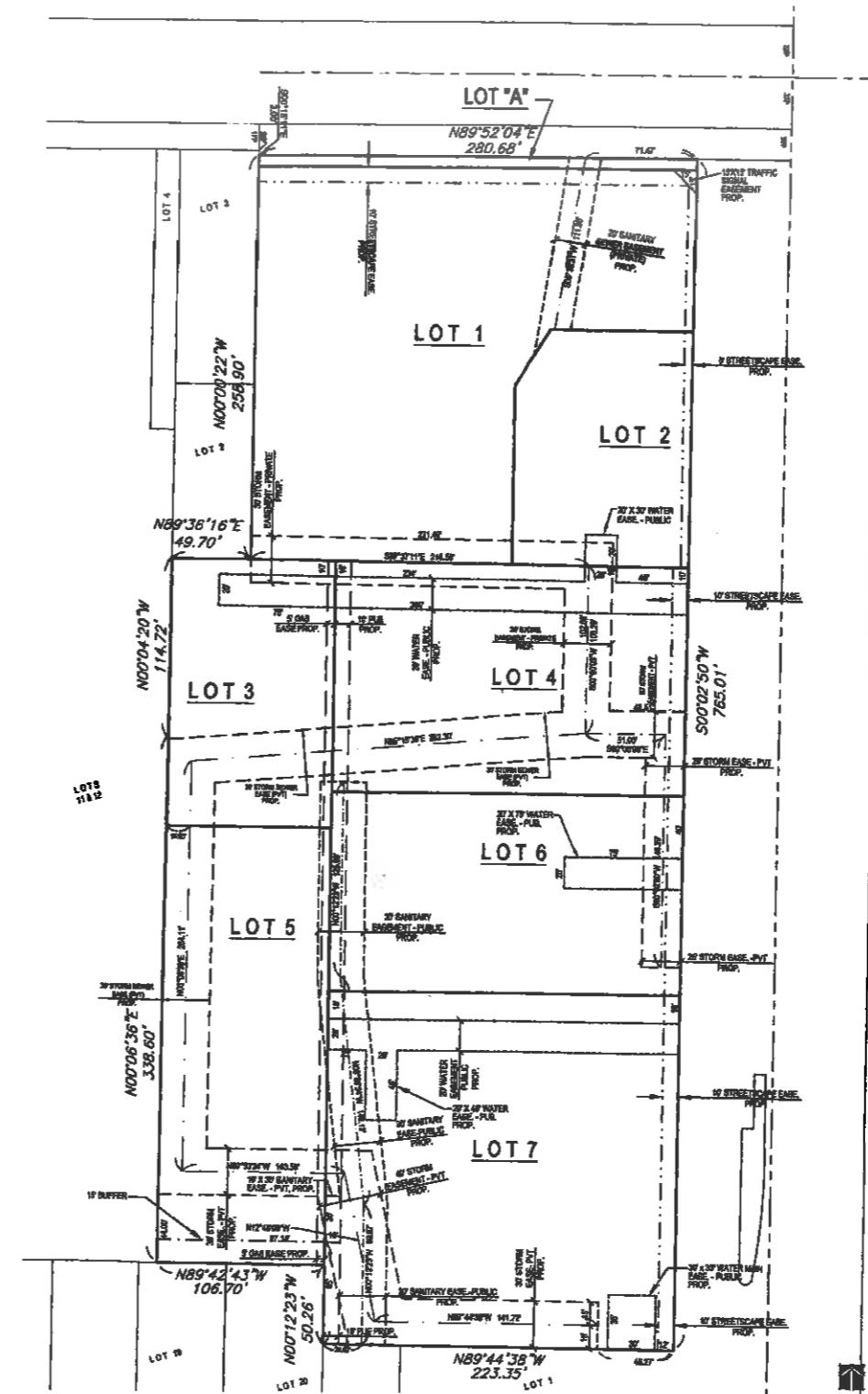
FIRST STREET REDEVELOPMENT  
 FIRST STREET AND GRAND AVENUE  
 WEST DES MOINES, IOWA 50265  
 P U D S K E T C H P L A N

STUDIO MELEE  
 1312 LOCUST, SUITE 1002  
 DES MOINES, IOWA 50309  
 (515) 314-9852  
 (515) 493-0003

**LAND OWNER & APPLICANT:**  
 FIRST STREET LP  
 4500 WESTOWN PKWY, SUITE 115  
 WEST DES MOINES, IOWA 50266

**CONTACT (PREPARED BY):**  
 STUDIO MELEE  
 1312 LOCUST, SUITE 100Z  
 DES MOINES, IOWA 50309  
 PH: 515-314-8852

**BISHOP ENGINEERING**  
 3501 104TH STREET  
 URBANDALE, IOWA 50322  
 PH: 515-278-0467



**EASEMENT PLAN**  
 SCALE 1" = 50'-0"



**PRELIMINARY NOT FOR CONSTRUCTION**  
**PUD SKETCH PLAN**

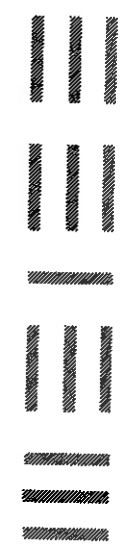
PRINT DATE: 31 OCT, 2016  
 SHEET NAME: EASEMENT PLAN

SP4

**FIRST STREET REDEVELOPMENT**  
 FIRST STREET AND GRAND AVENUE  
 WEST DES MOINES, IOWA 50265

STUDIO MELEE  
 1312 LOCUST, SUITE 100Z  
 DES MOINES, IOWA 50309

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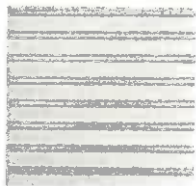


PARCEL 3: TAVERN/LOUNGE

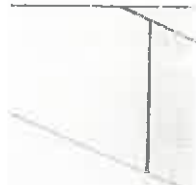
DRAUGHT HOUSE



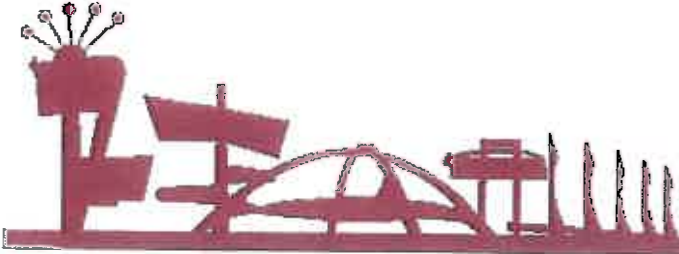
SOARING ROOF FORM  
WOOD OR WOOD PATTERN SIDING



PEDESTRIAN STOREFRONT  
METAL PATTERN ACCENTS



THIN CANOPY, PIPE COLUMNS  
CEMENT BOARD PANELS



PARCEL 6: RETAIL/OFFICE/RESTAURANT



BRIGHT, DEFINED ENTRY  
STACK BOND MASONRY



MIDCENTURY COLOR PALETTE  
ASSMETRICAL SIGN BAND



PIPE COLUMNS  
METAL PATTERN ACCENTS



MANDELBAUM PROPERTIES ||| ||| ||| |||  
STUDIO MELEE



**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

DATE: November 14, 2016

**ITEM:** Whisper Ridge Buffer Vacation Plat 3, Lots 15-18, 9104, 9110, 9116 and 9124  
Autumn Court – Vacate 30 foot buffer park easement along the rear (south) lot lines of  
Lots 15-18 Whisper Ridge Plat 3 – Hidden Creek, L.L.C. – VAC-003253-2016

**RESOLUTION:**                   **Approval of Vacation Request**

**FINANCIAL IMPACT:** Undetermined.

**BACKGROUND:** Hidden Creek, L.L.C., represented by Marcus Abels of Simpson, Jensen, Abels, Fischer and Bouslog, P.C. is requesting approval of the vacation of a 30 foot buffer park easement along the rear (south) lot lines of Lots 15-18 Whisper Ridge Plat 3.

**Plan and Zoning Commission Action:**

Vote: 6-0 approval with Commissioner Brown absent

Date: November 7, 2016

Motion: Adopt a resolution recommending the City Council approve the Buffer Vacation request without the proposed condition of approval placing restrictions on fencing.

**Plan & Zoning Commission Discussion:** Richard Santi, representing the property owners in Hickory Knolls, indicated that one of their concerns was the placement of fences and structures within the existing 30' buffer area and potential lack of landscaping that would no longer be required. It was indicated that the Rockwood Lane homeowners prefer that a restriction be placed along these lots prohibiting placement of fences and structures within the original 30' buffer area (see Attachment C of the Plan and Zoning Communication). The applicant (Mr. Abels) did acknowledge the concerns expressed and noted that the owner's association may be agreeable to addressing the concerns on fences or accessory structures in the rear yard within the association covenants.

Mr. Santi also submitted at the meeting another letter for the record responding to a letter from City Staff on an issue discovered regarding the City's notification process. It was discovered that the public meeting notice did not reach all the owners within Hickory Knolls as the Dallas County land records, which the City uses to identify ownership, does not have any parcel, ownership or tax id information associated with the private portion of Rockwood Lane, which is located on an easement owned by all five Hickory Knolls homeowners. When Staff was made aware of this, written notice of the meeting was mailed to each Hickory Knolls homeowner within the statutory timeframe, as well as notifying them of the land record issue and encouraging them to contact the county to fix the problem. (See Exhibit III for the letter to the property owners and the response letter submitted at the meeting.)

**OUTSTANDING ISSUES:** Determination of whether the restrictions on fencing and/or structures in the 30' buffer area should be placed is the only outstanding issue.

Once a buffer park easement is removed, regulations for fences and accessory structures default to the zoning code which would allow fences, open or opaque to be constructed on the rear lot line and/or accessory buildings to be constructed at a 5' side or rear yard setback. This would be consistent with any other RS zoned lot not otherwise restricted by a buffer or specific zoning regulations applied through the PUD process or platting. As mentioned above, the applicant may be able to address any concerns expressed on fences or structures in the rear yard along Rockwood Lane through their covenants; however, it should be realized that private agreements such as covenants are not enforced by the City.

The following items of interest are noted in the attached Plan and Zoning Commission report (see Exhibit I):

- Applicant's Request
- History
- City Council Subcommittee – *Development & Planning Subcommittee, October 3, 2016*
- Staff Review and Comment
  - *Neighbors' Concerns*
  - *Plat Documents*
- Comprehensive Plan Consistency
- Staff Recommendation and Conditions of Approval
- Noticing Information

**RECOMMENDATION:** Based upon the preceding review and a finding of consistency with the goals and policies of the Comprehensive Plan, the Plan and Zoning Commission recommends the City Council approve a Vacation request to vacate a 30 foot buffer park easement along the rear (south) lot lines of Lots 15-18 Whisper Ridge Plat 3, subject to the applicant meeting all City Code requirements.

Lead Staff Member: J Bradley Munford

**STAFF REVIEWS**

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

**PUBLICATION(S) (if applicable)**

Published In	Des Moines Register Community Section
Date(s) Published	October 28, 2016
Letter sent to surrounding property owners	October 25, 2016, November 3, 2016

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	Development and Planning		
Date Reviewed	October 3, 2016		
Recommendation	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Split <input type="checkbox"/>

**ATTACHMENTS:**

- Exhibit I - Plan and Zoning Commission Communication
  - Attachment A - Plan and Zoning Commission Resolution
  - Exhibit A - Conditions of Approval
  - Attachment B - Location Maps
  - Attachment C - Letter from Hickory Knolls property owners
- Exhibit II - City Council Resolution
  - Exhibit A - Conditions of Approval
- Exhibit III - City's Notification Letter and Property Owners Response Letter

**CITY OF WEST DES MOINES  
PLAN AND ZONING COMMISSION COMMUNICATION**

**Meeting Date:** November 7, 2016

**Item:** Whisper Ridge Buffer Vacation Plat 3, Lots 15-18, 9104, 9110, 9116 and 9124 Autumn Court – Vacate 30 foot buffer park easement along the rear (south) lot lines of Lots 15-18 Whisper Ridge Plat 3 – Hidden Creek, L.L.C. – VAC-003253-2016

**Requested Action:** Approval of a Vacation Requests

**Case Advisor:** J. Bradley Munford 

**Applicant's Request:** Hidden Creek, L.L.C., represented by Marcus Abels of Simpson, Jensen, Abels, Fischer and Bouslog, P.C. is requesting approval of the vacation of a 30 foot buffer park easement along the rear (south) lot lines of Lots 15-18 Whisper Ridge Plat 3.

**History:** The Whisper Ridge Plat 3 property was annexed into the City as a part of the 88th Street Annexation in 2000. The Preliminary Plat for this subdivision was approved by the City in 2013. The associated Final Plat was approved by the City on October 31, 2014.

The buffer easement in question was included in the platting of Whisper Ridge Plat 3 in order to be in compliance with Title 9, Chapter 19, Section 8, Subsection E, of the Zoning code. The code requires a rear yard 60 or 30 foot landscape buffer easements for single-family lots that have double frontage (both its front and rear lines abutting a public street or a private street). The rear of the lots in question abut Rockwood Lane - currently a private drive serving several single family homes, but anticipated to become a public or private street as areas to the west further develop. Within single family developments, buffer easements are in addition to the required rear yard setback. Lots 15-18 Whisper Ridge Plat 3 were platted with a 30 foot buffer easement and a 35 foot rear yard setback (Noted on the plat as a combined rear setback of 65 feet). The applicant was approached by a buyer that wanted to place a home on one of the lots but, the proposed home would be 12 feet over the rear yard setback. The applicant made staff aware of the situation and requested to vacate the buffer easement. The rationale for the applicant's request is that Rockwood Lane is currently a private drive which does not trigger the buffer requirement and current development does not generate traffic heavy enough for the buffer to be necessary.

**City Council Subcommittee:** This item was presented to the Development and Planning City Council Subcommittee on October 3, 2016. The Subcommittee expressed support of the proposed vacation as long as solid fences are not installed in the vacated buffer.

**Staff Review and Comment:**

- **Neighbors' Concerns:** The neighbors in the Hickory Knolls Place subdivision expressed concern with the proposal to vacate. Hickory Knolls Place is made up of 5 property owners that access their property from the Rockwood Lane private drive (Rockwood Lane becomes private at the intersection of S91st Street). Their concerns revolve around the point that Rockwood Lane from 88<sup>th</sup> street west was originally their private drive and that during the development of Whisper Ridge, they agreed to help with the development by allowing Whisper Ridge to access Rockwood Lane and turn the section between 88<sup>th</sup> street and 91<sup>st</sup> into a street public. They did this with the understanding that they would not see solid fences or accessory buildings because a buffer park easement was required by code for the lots that back to Rockwood Lane. In a letter that is attached at the end of this report, they state that if a buffer was not part of the understanding they would have voiced objection during the approval discussions for Whisper Ridge. They also stated that with everything considered, they would have no objection to this application if both fences and structure would not be allowed in the 30 foot buffer area.

Under the direction of the Subcommittee, staff is recommending a stipulation that restrict solid fences from the south 30 feet of lots 15-18.

- **Plat Documents:** The plat documents do note the rear yard setback for these lots as 65 feet from the property line (not 35 feet from the 30 foot buffer park). Staff consulted with the City Attorney's office questioning if the plat document would need to be modified as the resulting setback without a buffer would be different than indicated in the plat documents. The City Attorney indicated that modification of the plat would not be necessary and a 35 foot rear yard setback as noted in the Zoning Ordinance would be applied to the subject lots once the easement was vacated.

**Comprehensive Plan Consistency:** The project has been reviewed for consistency with the Comprehensive Plan. Based upon that review, a finding has been made that the proposed project is consistent with the Comprehensive Plan in that the project is consistent with all of the goals and policies of the Comprehensive Plan and the land use map of the Comprehensive Plan.

**Staff Recommendations and Conditions of Approval:** Based upon the preceding review and a finding of consistency with the Comprehensive Plan, staff recommends the Plan and Zoning Commission adopt a resolution recommending the City Council approve the Vacation Requests to vacate a 30 foot buffer park easement along the rear (south) lot lines of Lots 15-18 Whisper Ridge Plat 3, subject to the applicant meeting all City Code requirements and the following Conditions of Approval:

1. Fences that are more than 50% opaque are prohibited within the south 30 feet of Lots 15-18 Whisper Ridge Plat 3.

**Noticing Information:** On October 28, 2016, notice for the November 7, 2016, Plan and Zoning Commission and November 14, 2016, City Council Public Hearings on this project was published in the Des Moines Register. Notice of these public hearings was also mailed to those property owners adjacent to the areas subject to vacation on October 25, 2016 and November 3, 2016.

**Property Owner/Applicant:**

William Lowry  
Hidden Creek, LLC  
36539 Meadowbrook Circle  
Cumming, Iowa 50061  
[Wklowry@aol.com](mailto:Wklowry@aol.com)

**Applicant's Representatives:**

Marcus F. Abels  
Simpson, Jensen, Abels, Fischer & Bouslog, P.C.  
400 Locust Street, Suite 400  
Des Moines, Iowa 50309  
[Mabels@iowafirm.com](mailto:Mabels@iowafirm.com)

**Attachments:**

Attachment A	-	Plan and Zoning Commission Resolution
Exhibit A	-	Conditions of Approval
Attachment B	-	Location Maps
Attachment C	-	Letter from Hickory Knolls property owners

## RESOLUTION NO. PZC -16-066

**A RESOLUTION OF THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES, RECOMMENDING TO THE CITY COUNCIL THAT IT APPROVE THE VACATION REQUEST (VAC-003253-2016) FOR THE PURPOSE OF VACATING A 30 FOOT BUFFER PARK EASEMENT ALONG THE REAR (SOUTH) LOT LINES OF LOTS 15-18 WHISPER RIDGE PLAT 3**

**WHEREAS**, pursuant to the provisions of Title 7, Chapter 1 et seq, of the West Des Moines Municipal Code, the applicant, Hidden Creek, L.L.C, has requested approval of a Vacation Request (VAC-003253-2016) for a 30 foot buffer park easement along the rear (south) lot lines of Lots 15-18 Whisper Ridge Plat 3 and as legally described as follows:

All of the south 30 feet of Lots 15-18, Whisper Ridge Plat 3, , an Official Plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa.

**WHEREAS**, pursuant to City code, vacation of the buffer park easement will reduce the required set-back, as measured from the south property line of each lot, from 65 feet to 35 feet;

**WHEREAS**, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference;

**WHEREAS**, on November 7, 2016, this Commission held a duly-noticed hearing to consider the Vacation Requests;

**NOW, THEREFORE, THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:**

**SECTION 1.** The findings, for approval, in the staff report, dated November 7, 2016, or as amended orally at the Plan and Zoning Commission hearing of November 7, 2016, are adopted.

**SECTION 2.** The VACATION REQUESTS are recommended to the City Council for approval, subject to compliance with all the conditions in the staff report, dated November 7, 2016, including conditions added at the Hearing. Violation of any such conditions shall be grounds for revocation of the permit, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on November 7, 2016.

  
 Craig Erickson, Chair  
 Plan and Zoning Commission

ATTEST:

  
 Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on November 7, 2016 by the following vote:

AYES: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth

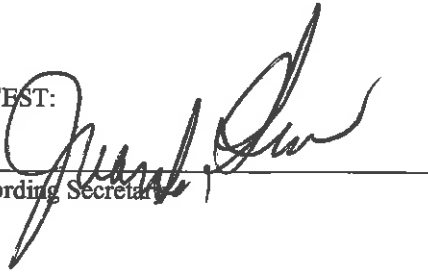
NAYS:

ABSTENTIONS:

ABSENT: Brown

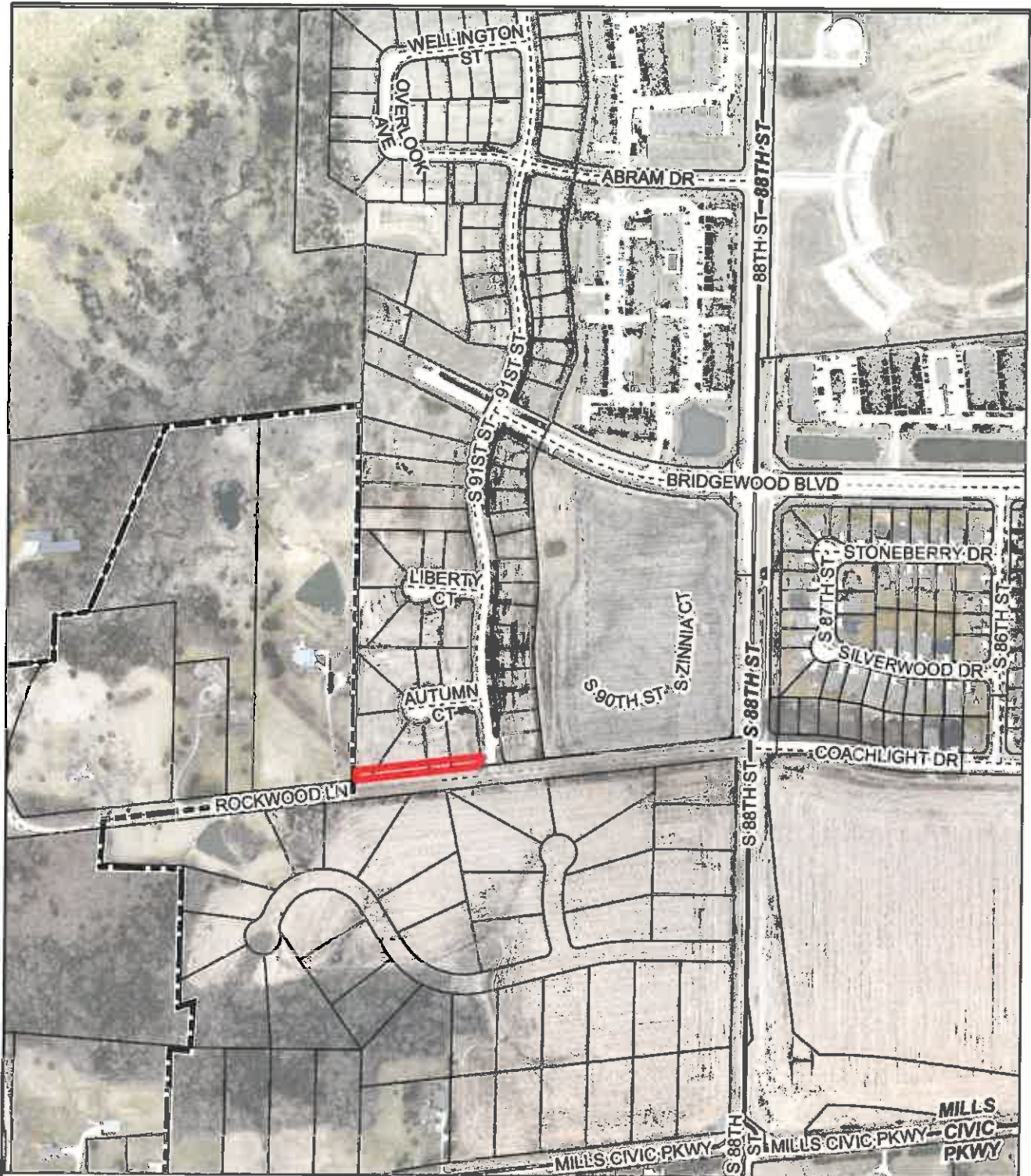
ATTEST:

Recording Secretary

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read "J. [unclear]".

**Exhibit A  
Conditions of Approval**

1. **Fences that are more than 50% opaque are prohibited within the south 30 feet of Lots 15-18 Whisper Ridge Plat 3.**



**Whisper Ridge Buffer Vacation Plat 3,  
9104, 9110, 9116 and 9124 Autumn Court**



NOT TO SCALE





**Whisper Ridge Buffer Vacation Plat 3,  
9104, 9110, 9116 and 9124 Autumn Court**



NOT TO SCALE

TO: WEST DES MOINES PLAN AND ZONING COMMISSION AND  
WDM CITY COUNCIL

FROM: RESIDENT OWNERS OF ROCKWOOD LANE (DAVID AND  
SARAH LACEY, STEVE AND MIKI CUNNINGHAM, CONRAD AND  
ROSEMARY JUNGSMANN, RICHARD AND CAROLYN SANTI)

RE: REQUEST BY HIDDEN CREEK TO VACATE BUFFER PARK  
EASEMENT ON LOTS 15-18, WHISPER RIDGE PLAT 3

DATE: NOVEMBER 1, 2016

The resident owners of Rockwood Lane (RL), a private roadway, submit the following comments and proposed resolution in connection with the subject application:

1. Notice of Public Hearing. Notice of public hearings on the application "was sent by regular mail to all property owners within 370 feet of the subject properties." However, only two of the RL owners received this notice-the Cunninghams whose lot is adjacent to Whisper Ridge and the Santis who own a lot in Cedar Ridge. Despite the fact that (1) RL lies immediately to the south adjacent to the WR lots in question, (2) that RL is a privately owned roadway with each lot owner in Hickory Knolls Place Replat owning a 1/5 undivided interest, (3) and that the parties most adversely affected by the vacation request are the owners of RL, no notice was sent to these owners in that capacity by the city. The RL owners believe this was an error and that each RL owner should have received the notice.

The resident owners of RL hereby request that the WDM P&Z in the future provide notice to each of them with respect to any similar requests coming before them concerning properties adjacent to or within 370 feet of RL and that RL be recognized as a parcel for purposes of the required notice.

## 2. The Vacation Application

A. Public vs. private street distinction. RL west of South 91<sup>st</sup> to the east lot line of lot 1 of Hickory Knolls Place Replat, is currently a privately owned roadway serving the 5 lots in HKPR. However, as noted in the minutes of the WDM Development and Planning City Council

Subcommittee Meeting of October 3, 2016, the potential for development of one or more of these 5 large lots (8-10 acres each in size) which comprise HKPR given their proximity to WDM can not be disregarded such that in the future RL could well become a public street.

B. RL Owners' Reliance on Whisper Ridge Plat 3. The plat of WR Plat 3, specifically as it pertains to lots 15-18, provide for a 30 foot Buffer Park Easement (BPE) along their south lot lines adjacent to RL. This BPE was important to the RL owners as it prevented the erection of any fences or other structures except for trees and shrubs within the buffer area and thus protected RL by providing an aesthetically pleasing landscape adjacent to RL. Because of this protection, the owners of RL had no reason to and did not object to the plat when submitted. Had there been no buffer provided, the resident owners of RL would have voiced objection.

The resident owners of RL still have that same concern if the buffer is removed as requested in the application.

C. Suggested Resolution. Consistent with the discussion at the October 16 meeting by Marcus Abels and Mr. Sandager, and consistent with recent discussion between Mr. Abels and Mr. Santi concerning this matter, the resident owners of RL have no objection to the application as long as granting of the application is conditioned upon the binding imposition on lots 15-18 of a no build 30-35 foot set back buffer area adjacent to the north boundary line of RL. This no build area would include both fences and structures including buildings but would permit trees and shrubs as long as they did not encroach onto or over RL at any time.

Respectfully submitted by:

Steve and Miki Cunningham  
Conrad and Rosemary Jungmann  
Richard and Carolyn Santi  
David and Sarah Lacey

Cc. Marcus Abels

Prepared by: J. B. Munford, Development Services, P.O. Box 65320 West Des Moines, IA 50265-0320, (515)222-3620  
When Recorded, Return to: City Clerk, City of West Des Moines, P.O. Box 65320, West Des Moines, IA 50265-0320

**RESOLUTION**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST DES MOINES,  
APPROVING THE VACATION REQUEST (VAC-003253-2016) FOR THE PURPOSE OF  
VACATING AN EXISTING BUFFER PARK EASEMENT**

**WHEREAS**, pursuant to the provisions of Title 10, Chapter 1 et seq, of the West Des Moines Municipal Code, the City of West Des Moines Development Services Department has requested approval of a Vacation Request (VAC-003253-2016) for a 30 foot buffer park easement along the rear (south) lot lines of Lots 15-18 Whisper Ridge Plat 3 and as legally described as follows:

All of the south 30 feet of Lots 15-18, Whisper Ridge Plat 3, an Official Plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa.

**WHEREAS**, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference;

**WHEREAS**, on November 7, 2016, the Plan and Zoning Commission did recommend to the City Council approval of the Vacation Request (VAC-003253-2016) with no condition of approval restricting fencing;

**WHEREAS**, on November 14, 2016 this City Council held a duly-noticed public hearing to consider the application for Vacation Request (VAC-003253-2016);

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:**

**SECTION 1.** The findings for approval in the staff report dated November 14, 2016, or as amended orally at the City Council hearing of November 14, 2016, are adopted.

**SECTION 2. VACATION REQUEST (VAC-003253-2016)** to vacate the 30 foot buffer park easement located along the rear (south) lot lines of Lots 15-18 Whisper Ridge Plat 3, is approved subject to compliance with all the conditions in the staff report, dated November 14, 2016, including conditions added at the Hearing. Violation of any such conditions shall be grounds for any remedy, legal or equitable, which is available to the City.

PASSED AND ADOPTED on November 14, 2016.

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Steven K. Gaer, Mayor

ATTEST:

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Ryan T. Jacobson  
City Clerk

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the City Council of the City of West Des Moines, Iowa, at a regular meeting held on November 14, 2016 by the following vote:

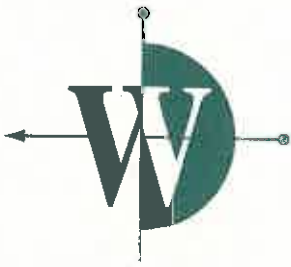
ATTEST:

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Ryan T. Jacobson  
City Clerk

**Exhibit A**  
**Conditions of Approval**

1. **No conditions of approval.**



THE CITY OF  
**West Des Moines®**  
www.wdm.iowa.gov

**Development Services**

4200 Mills Civic Parkway, Suite 2D  
P.O. Box 65320  
West Des Moines, IA 50265-0320

**Building Inspection**  
515-222-3630

**Planning and Engineering**  
515-222-3620

FAX 515-273-0602  
TDD/TTY 515-222-3334

E-mail  
developmentservices@wdm.iowa.gov

**EXHIBIT III**

November 3, 2016

**To:** Owners of Rockwood Lane Private Drive.

**RE:** Mailed Notification of Hearing

This correspondence is in response to your letter to the Plan and Zoning Commission and City Council dated November 1, 2016. In your letter you expressed a concern that some of the owners of the Rockwood Lane private drive was not notified by mail regarding a buffer park vacation request made by Hidden Creek, LLC. Attached you will find your notice of the request.

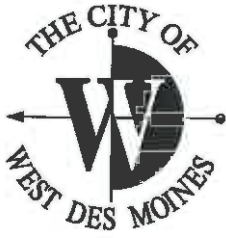
I would like to take this time to explain what happened and suggest a solution for the future. Our mailed notifications are automated and uses information provided from the Dallas County Assessor's records. While researching this issue, we discovered that Dallas County does not have any parcel, ownership or tax id information associated with Rockwood Lane west of 88<sup>th</sup> street. This lack of information created a hole that could not be automatically selected by our GIS software. I respectfully suggest that you contact the Dallas County GIS Department at the information below so that this issue can be resolved in the future:

Dallas County GIS Department  
Dallas County Courthouse  
801 Court Street  
Adel, IA 50003  
Phone: 515.993.6990  
E-Mail: [GeoDallas@co.dallas.ia.us](mailto:GeoDallas@co.dallas.ia.us)

Please feel free to contact me with any questions at 222-3620 or via email at [Brad.Munford@wdm.iowa.gov](mailto:Brad.Munford@wdm.iowa.gov)

Respectfully,

J. Bradley Munford  
Planner



## NOTICE OF PUBLIC HEARINGS

The West Des Moines Plan and Zoning Commission and the City Council will hold separate public hearings to review and consider a request by Hidden Creek, L.L.C. for approval of a Vacation Request to vacate the 30' buffer park easement situated adjacent to the rear (South) lot line of 9104, 9110, 9116 and 9124 Autumn Court, legally platted as Lots 15-18, Whisper Ridge Plat 3.

The public hearing by the Plan and Zoning Commission will be held at the Commission's regularly scheduled meeting on **Monday, November 7, 2016, at 5:30 P.M.** in the Council Chambers of the West Des Moines City Hall located at 4200 Mills Civic Parkway, West Des Moines, Iowa. Upon their review the Commission will make a recommendation that will be forwarded to the City Council.

The City Council will then hold a public hearing to review this request at their regularly scheduled meeting on **Monday, November 14, 2016, at 5:30 P.M.** in the Council Chambers of the West Des Moines City Hall located at 4200 Mills Civic Parkway, West Des Moines, Iowa.

Comments may be given in person to the Commission and/or the City Council during their respective public hearings, or written comments regarding this request may be submitted prior to the hearings to the Development Services Department, 4200 Mills Civic Parkway, Suite 2D, PO Box 65320, West Des Moines, IA, 50265-0320. If you have any questions regarding this request, please contact **Brad Munford**, the case planner assigned to this project, at 515-222-3620 or [brad.munford@wdm.iowa.gov](mailto:brad.munford@wdm.iowa.gov).

This notice is sent by regular mail to all property owners of record that are within 370 feet of the subject properties.

Lynne Twedt  
Development Services Director

Published on October 28, 2016, in the Community Section of the Des Moines Register.



November 7, 2016

To: City of West Des Moines

Re: Response to Munford letter of 11-3-16 re Notice of Hearing

Mr. Munford's letter of 11-3-16 implies that the city of WDM had no actual knowledge of the identity of the owners of Rockwood Lane west of 91<sup>st</sup> street in October 2016 when the notices were sent. The letter also states that Dallas County records show no ownership information associated with Rockwood Lane(RL).

Before October 19, 2015, RL was a privately owned roadway serving as the sole access road from 88<sup>th</sup> street for Lots 1-5 in the Hickory Knolls Place Replat, Dallas County. The legal description of RL for Dallas County purposes and land records, as shown by the deeds recorded in Dallas County, is the "South 66 feet of the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$ " of Section 15-78-26. Effective October 19, 2015, the 5 owners of RL transferred ownership of that portion of RL east of 91<sup>st</sup> street to 88<sup>th</sup> street to WDM as shown by the attached Dedication Agreement and the subsequent delivery of warranty deeds effectuating the transfer of ownership. The agreement and attached Acquisition Plat clearly identify the owners of RL.

It is respectfully submitted that the city of WDM, including the Mayor, the City Council, the City Attorney, the City Engineer and several, if not most, of the city planners within the WDM Development Services, have had actual knowledge for the past several years, based on the numerous interactions between the owners of RL and the city, culminating in the execution of the October 2015 Dedication Agreement, as to the identity of the owners of RL. A simple inquiry to any of these persons or entities would have revealed the pertinent information as would a search in the Dallas County records for the owners of the south 66 feet of the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of section 15-78-26. Obviously, in addition, the Dedication Agreement signed by the City on October 19, 2015, also contained this pertinent information.

Thus, there was no "lack of information" as to the identity of the owners of RL as stated in the letter of 11-3-2016 but rather a disregard of the actual knowledge possessed by the city in October 2016 regarding ownership of RL coupled with a flawed search by the city of the Dallas County land records.

Carolyn and Richard Santi  
33681 Rockwood Lane  
West Des Moines, Iowa 50266

Cc: David and Sarah Lacey  
Conrad and Rosemary Jungmann  
Steve and Miki Cunningham

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## AGREEMENT FOR DEDICATION OF ROCKWOOD LANE

This Agreement for Dedication of Rockwood Lane ("Agreement") is made among the City of West Des Moines ("City"), Hidden Creek, L.L.C. ("Hidden Creek") and Stephen P. Cunningham and Mi Kyung Z. Cunningham; Conrad L. Jungmann and Rosemary Jungmann, as Trustees of the Conrad L. and Rosemary Jungmann Revocable Trust; David L. Lacey and Sarah E. Lacey; Carolyn A. Santi; and William O. Rice and Elaine R. Rice (collectively the "Hickory Knolls Owners").

### RECITALS

WHEREAS, Hickory Knolls Owners are gifting the following described real estate to the City of West Des Moines, subject to the existing terms of this Agreement:

A PART OF THE SOUTH 66.00 FEET OF NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE SOUTH  $83^{\circ}12'37''$  WEST ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER, 888.06 FEET; THENCE NORTH  $6^{\circ}52'42''$  WEST, 66.00 FEET TO THE NORTH LINE OF SAID SOUTH 66.00 FEET OF NORTHEAST QUARTER OF THE NORTHEAST QUARTER, SAID POINT ALSO BEING ON THE SOUTH LINE OF WHISPER RIDGE PLAT 3, AN OFFICIAL PLAT IN SAID CITY OF WEST DES MOINES; THENCE NORTH  $83^{\circ}12'37''$  EAST ALONG SAID NORTH LINE, 896.49 FEET TO THE EAST LINE OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE SOUTH  $0^{\circ}23'58''$  WEST ALONG SAID EAST LINE, 66.52 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.35 ACRES (58,890 SQUARE FEET) (as shown on the attached Acquisition Plat); and

WHEREAS, City will construct Coachlight Drive on the Rockwood Lane Segment in accordance with plans and specifications approved by the City and the terms of this Agreement; and

WHEREAS, Hidden Creek and Hickory Knolls Owners will benefit from the construction of Coachlight Drive.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The parties agree that the Recitals set forth above are true and correct. The Recitals are incorporated into the Agreement and made a part hereof.

2. City will construct Coachlight Drive on the Rockwood Lane Segment pursuant to the following terms:

- a. Construction shall be completed within one (1) year of this Agreement, subject to weather and other circumstances beyond its control;
- b. City shall provide continuous access to Hickory Knolls Owners' properties and S 88<sup>th</sup> Street or S 91<sup>st</sup> Street during construction of Coachlight Drive as shown in the construction documents;
- c. City, at its expense, is responsible for relocating existing utilities buried under the Rockwood Lane Segment;
- d. Construction of Coachlight Drive shall be in accordance with the existing plans and specifications previously approved by the City on or about April 7, 2015, including realignment and grade change west of 91<sup>st</sup> Street;
- e. Hickory Knolls Owners will not now or in the future be responsible for any cost or expense in connection with construction, repair, or maintenance of Coachlight Drive from S 88<sup>th</sup> Street to S 91<sup>st</sup> Street; and
- f. City will pay the cost of filing the Warranty Deeds received from the Hickory Knolls Owners and perform such other actions as may be required by a donee with respect to Hickory Knolls Owners filing for a charitable gift tax deduction for income tax purposes.

3. Hidden Creek, at its expense, is responsible for relocating Hickory Knolls Owners' mail boxes.

4. Hickory Knolls Owners agree that:

- a. Each will gift marketable title to their 1/5<sup>th</sup> undivided interest in the Rockwood Lane Segment to the City by Warranty Deed within ninety (90) days after the effective date of this Agreement; and
- b. Each will execute and deliver the Temporary Slope and Grading Easement attached to this Agreement to the City within thirty (30) days of the effective date of this Agreement.

c. Hidden Creek and its successors will not be held responsible for the cost of extending Coachlight west of S 91<sup>st</sup> Street should Hickory Knolls Owners, or their successors, petition City to extend Coachlight.

5. Hidden Creek will release the existing easement over Rockwood Lane upon Hickory Knolls Owners completing their gift of the Rockwood Lane Segment to the City of West Des Moines.

6. The effective date of this Agreement will be the date it is signed on behalf of the City.

This Agreement constitutes the entire agreement of the parties. All understandings and agreements heretofore between the parties are merged in this Agreement which alone fully and completely expresses their understanding. Handwritten and initialed provisions shall supersede typewritten provisions. This Agreement may not be amended, modified, altered or changed in any respect whatsoever except in writing duly executed by the parties hereto. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against whom it is asserted and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed or deleted as such authority determines, and the remainder of this Agreement shall remain in full force and effect. Whenever used, the singular number shall include the plural; the plural number shall include the singular; and the use of any gender shall include all genders. This Agreement shall be governed by the laws of the State of Iowa. This document may be executed in counterparts and facsimile or electronic scanned documents shall be treated as originals. Either party will accept delivery of a fully executed agreement by electronic mail.

HIDDEN CREEK, L.L.C.

By: Lowry & Hodge, L.L.C., Manager

By:   
William K. Lowry, Manager


Dated: October 13, 2015

SIGNATURE PAGE FOR AGREEMENT FOR DEDICATION  
OF ROCKWOOD LAND

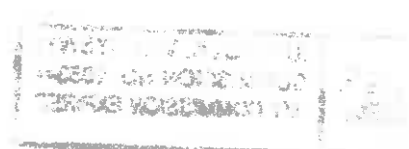
CITY OF WEST DES MOINES, IOWA

  
Steven K. Gaer, Mayor

ATTEST:

  
Ryan T. Jacobson  
City Clerk

Dated: October 19, 2015




[ SIGNATURE PAGE FOR AGREEMENT FOR DEDICATION  
OF ROCKWOOD LANE ]



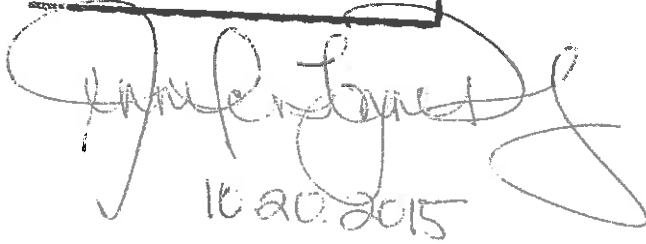
Stephen P. Cunningham  
Dated: Oct. 20, 2015, 2015



Mi Kyung Z. Cunningham  
Dated: Oct 20, 2015




JENNIFER LYNNE PUTZ  
Commission Number 776139  
My Commission Expires  
December 15, 2015



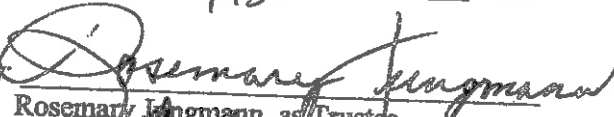
10.20.2015

[ SIGNATURE PAGE FOR AGREEMENT FOR DEDICATION  
OF ROCKWOOD LANE ]

CONRAD L. AND ROSEMARY JUNGMANN  
REVOCALBE TRUST

By:   
Conrad L. Jungmann, as Trustee

Dated: 10/20/15, 2015

By:   
Rosemary Jungmann, as Trustee

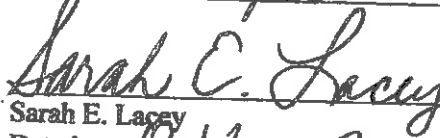
Dated: Oct 20, 2015

[ SIGNATURE PAGE FOR AGREEMENT FOR DEDICATION  
OF ROCKWOOD LANE ]



David L. Lacey

Dated: 10/26, 2015



Sarah E. Lacey

Dated: October 26, 2015



[ SIGNATURE PAGE FOR AGREEMENT FOR DEDICATION  
OF ROCKWOOD LANE ]

*Carolyn A. Santi*

Carolyn A. Santi

Dated: Oct. 21, \_\_\_\_\_, 2015

[ SIGNATURE PAGE FOR AGREEMENT FOR DEDICATION  
OF ROCKWOOD LANE ]

William O. Rice  
William O. Rice  
Dated: October 25, 2015

Elaine R. Rice  
Elaine R. Rice  
Dated: 10/25, 2015

# ACQUISITION PLAT

## AREA SUMMARY

EXISTING 86TH ST ROADWAY EASEMENT AREA 2,185 SQUARE FEET  
 NEW RIGHT OF WAY 56,685 SQUARE FEET  
 TOTAL RIGHT OF WAY AREA 58,890 SQUARE FEET

## DATE OF SURVEY

NOVEMBER, 2014

## FEE TITLE DESCRIPTION

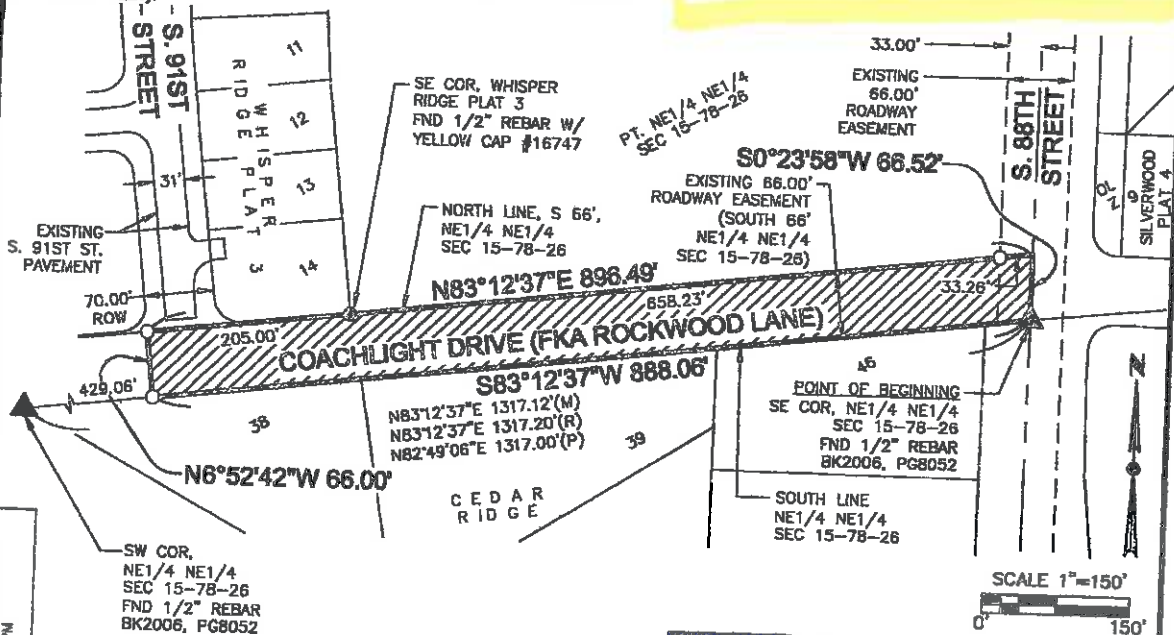
A PART OF THE SOUTH 66.00 FEET OF NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 78 NORTH, RANGE 28 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE SOUTH 83°12'37" WEST ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER, 888.06 FEET; THENCE NORTH 6°52'42" WEST, 66.00 FEET TO THE NORTH LINE OF SAID SOUTH 66.00 FEET OF NORTHEAST QUARTER OF THE NORTHEAST QUARTER, SAID POINT ALSO BEING ON THE SOUTH LINE OF WHISPER RIDGE PLAT 3, AN OFFICIAL PLAT IN SAID CITY OF WEST DES MOINES; THENCE NORTH 83°12'37" EAST ALONG SAID NORTH LINE, 896.49 FEET TO THE EAST LINE OF SAID NORTHEAST QUARTER OF THE NORTHEAST QUARTER; THENCE SOUTH 0°23'58" WEST ALONG SAID EAST LINE, 66.52 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.35 ACRES (58,890 SQUARE FEET).

## TITLEHOLDERS

THE TITLEHOLDERS LISTED BELOW HAVE AN UNDIVIDED ONE-FIFTH INTEREST IN AND TO THE SOUTH 66' OF THE NE1/4 OF THE NE1/4 OF SECTION 15-78-26

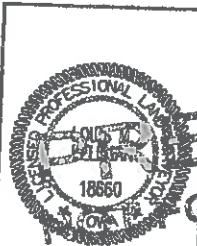
- STEPHEN P. & MI KYUNG Z. CUNNINGHAM JTRS
- CONRAD L. JUNGSMANN REVOCABLE TRUST  
12/23/2005 CONRAD L. & ROSEMARY JUNGSMANN TRUSTEES
- CAROLYN A. SANTI
- DAVID L. & SARAH E. LACEY JTRS
- WILLIAM O. & ELAINE R. RICE JTRS



## LEGEND

	FOUND	SET
SECTION CORNER AS NOTED	▲	△
1/2" REBAR, CAP #18880 (UNLESS OTHERWISE NOTED)	●	○
PLATTED BEARING & DISTANCE	P	
MEASURED BEARING & DISTANCE	M	
RECORDED BEARING & DISTANCE	R	
DEEDED BEARING & DISTANCE	D	
ARC LENGTH	A	
CENTERLINE	---	
SECTION LINE	---	
EASEMENT LINE	---	

FEE TITLE R.O.W. ACQUISITION



I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

**LIMITARY**  
**OR CONSTRUCTION**

MY LICENSE RENEWAL DATE IS DECEMBER 31, 2015  
 PAGES OR SHEETS COVERED BY THIS SEAL:

SHEET 1

PART OF THE SOUTH 66' OF THE NE1/4 OF THE NE1/4 OF SECTION 15-78-26

PREPARED: 08/27/15

SHEET 1 OF 1

FILE: H:\2014\1488392\DWG\1488392-ADD-PLAT-COACHLIGHT-68FT.DWG  
 FILE DATE: 8/27/15 DATE PLOTTED: 8/27/2015 3:38 PM  
 PLOTTED BY: LOUIS KELENAN

1408.392



CIVIL DESIGN ADVANTAGE

3405 CROSSROADS DRIVE, SUITE G,  
 GRIMES, IOWA 50111  
 PH: (515) 389-4400 Fax: (515) 389-4410

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**ITEM:** Amendment No.2 for the Alluvion Urban Renewal Area - City Initiated      **DATE:** November 14, 2016

- RESOLUTION:** Approval of the Resolution amending the boundary of the urban renewal area and plan
- ORDINANCE:** Approval of First Reading of the TIF Ordinance for Willow Creek Plat 1, Lot 4 parcel
- ORDINANCE:** Approval of First Reading of the TIF Ordinance for Tract 3 of Amendment No. 2 parcel

**FINANCIAL IMPACT:** The City anticipates spending approximately \$9.5-11.5 million which will include construction of public improvements, primarily Veterans Parkway, trails, and water lines.

**BACKGROUND:** Staff has initiated the process to amend the Alluvion Urban Renewal Plan. The Alluvion Urban Renewal Plan was originally adopted in 2014 and amended in 2015, and is now being amended by this Amendment No. 2 to add land to the Urban Renewal Area boundary; and update the previously identified urban renewal projects. The Area does have a frozen base value as debt was certified for this Urban Renewal Area.

The project boundaries includes land area that is presently unincorporated Warren County and a portion of the City of Norwalk. Both the City and the County have signed-off on the inclusion of those areas. An October 17, 2016, a consultation meeting was established by the City Council and there was only one person in attendance besides City staff, and they were from the Winterset Community School District, and they had no comments. Staff has not received any comments following the consultation meeting. Only tax increment revenues generated from the Microsoft project will be included within the Osmium Tax Increment Financing District.

The original TIF Ordinance was only for Lot 1 of Willow Creek Plat 1, which has recently been built out. On September 19, 2016, the Council passed an ordinance adding Lots 2 and 3 of Willow Creek Plat 1. As was noted in the staff report on the recent additions to the Alluvion TIF district, as future phases are constructed new TIF ordinances would need to be enacted to cover areas of the site that either are under construction or are nearing completion.

Since the Microsoft Alluvion project is a 4-phased project, there is the need now to enact a new TIF Ordinance based upon how construction is proceeding within the Willow Creek Plat 1 on Lot 4. In addition, staff is proposing that the Council enact an ordinance for Tract 3 of Amendment No. 2 parcel. Staff is anticipating a new economic development project for this site in the near future.

**OUTSTANDING ISSUES:** There are no outstanding issues regarding this proposed amendment.

**RECOMMENDATION:** Staff recommends the approval of the Resolution amending the boundary of the urban renewal plan and approval of the first reading of the Ordinances amending the TIF District.

Lead Staff Member: Clyde E. Evans, AICP

**STAFF REVIEWS**

Department Director	Clyde E. Evans, Community and Economic Development Department	<i>CEV</i>
Appropriations/Finance	Tim Stiles, Director of Finance	<i>TS</i>
Legal		
Agenda Acceptance	<i>[Signature]</i>	

**PUBLICATION(S) (if applicable)**

Published In	DM Register
Date(s) Published	November 4, 2016
Letter sent to surrounding property owners	NA

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	
Date Reviewed	
Recommendation	Yes <input type="checkbox"/> No <input type="checkbox"/> Split <input type="checkbox"/>

**ATTACHMENTS:**

**ATTACHMENTS:**

- Exhibit I Alluvion Urban Renewal Plan Amendment #2
- Exhibit II - Resolution
- Exhibit III TIF Ordinance for Willow Creek Plat 1, Lot 4
- Exhibit IV TIF Ordinance for Tract 3 Of Amendment No. 2 Parcel

RESOLUTION NO. \_\_\_\_\_

RESOLUTION DETERMINING AN AREA OF THE CITY TO BE AN ECONOMIC DEVELOPMENT AREA, AND THAT THE REHABILITATION, CONSERVATION, REDEVELOPMENT, DEVELOPMENT, OR A COMBINATION THEREOF, OF SUCH AREA IS NECESSARY IN THE INTEREST OF THE PUBLIC HEALTH, SAFETY OR WELFARE OF THE RESIDENTS OF THE CITY; DESIGNATING SUCH AREA AS APPROPRIATE FOR URBAN RENEWAL PROJECTS; AND ADOPTING AMENDMENT NO. 2 TO THE ALLUVION URBAN RENEWAL PLAN

WHEREAS, by Resolution No. 14-05-19-14, adopted May 19, 2014, this Council found and determined that certain areas located within the City are eligible and should be designated as an urban renewal area under Iowa law, and approved and adopted the Alluvion Urban Renewal Plan (the "Plan") for the Alluvion Urban Renewal Area (the "Urban Renewal Area" or "Area") described therein, which Plan is on file in the office of the Recorder of Polk and Warren Counties; and

WHEREAS, by Resolution No. 15-03-23-19, adopted March 23, 2015, this City Council approved and adopted an Amendment No. 1 to the Plan;

WHEREAS, this Urban Renewal Area currently includes and consists of:

ORIGINAL URBAN RENEWAL AREA

THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, POLK COUNTY, IOWA, LYING SOUTH OF THE NORTHERLY RIGHT-OF-WAY LINE OF ARMY POST ROAD AS IT IS PRESENTLY ESTABLISHED;

AND,

THE SOUTH ONE-HALF OF SECTION 27, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, POLK COUNTY, IOWA, LYING SOUTH OF THE NORTHERLY RIGHT-OF-WAY LINE OF ARMY POST ROAD AS IT IS PRESENTLY ESTABLISHED;

AND,

THE EAST ONE-HALF OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, POLK COUNTY, IOWA, LYING SOUTH OF THE NORTHERLY RIGHT-OF-WAY LINE OF ARMY POST ROAD AS IT IS PRESENTLY ESTABLISHED;

AND,

THE EAST ONE-HALF OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, POLK COUNTY, IOWA;

AND,

SECTION 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, POLK COUNTY, IOWA;

AND,

THE WEST ONE-HALF OF SECTION 35, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, POLK COUNTY, IOWA;

AND,

THE WEST ONE-HALF OF THE EAST ONE-HALF OF SAID SECTION 35;

AND,

THE EAST ONE-HALF OF THE NORTHEAST FRACTIONAL QUARTER OF SECTION 4, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, WARREN COUNTY, IOWA;

AND,

THE NORTH ONE-HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 4;

AND,

AN IRREGULAR SHAPED PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST FRACTIONAL QUARTER OF SAID SECTION 4;

AND,

AN IRREGULAR SHAPED PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST FRACTIONAL QUARTER OF SECTION 4, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, WARREN COUNTY, IOWA ALSO KNOWN AS TAX PARCEL ID No. 93025040263 FORMALLY ALL OR IN PART OF THE CHICAGO & NORTHWESTERN TRANSPORTATION CO. RIGHT-OF-WAY.

ALL OF WHICH IS DESCRIBED AS:

BEGINNING AT SOUTHWEST CORNER OF THE EAST ONE-HALF OF THE SOUTHEAST QUARTER (E.1/2-SE.1/4) OF SECTION 28, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, POLK COUNTY, IOWA, SAID CORNER ALSO BEING THE NORTHWEST CORNER OF THE EAST ONE-HALF OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, POLK COUNTY, IOWA; THENCE NORTH ALONG THE WEST LINE OF THE E.1/2-SE.1/4 OF SAID SECTION 28 TO THE INTERSECTION OF THE WEST LINE OF THE E.1/2-SE.1/4 OF SAID SECTION 28 AND THE NORTHERLY RIGHT-OF-WAY LINE OF ARMY POST ROAD AS IT IS PRESENTLY ESTABLISHED; THENCE EASTERLY ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF SAID ARMY POST ROAD THROUGH THE SOUTH ONE-HALF OF SECTIONS 28 AND 27, AND THE SOUTHWEST QUARTER OF SECTION 26, ALL IN TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, POLK

COUNTY, IOWA, TO THE EAST LINE OF THE SOUTHWEST QUARTER (SW.1/4) OF SAID SECTION 26; THENCE SOUTH ALONG THE EAST LINE OF THE SW.1/4 OF SAID SECTION 26 TO THE NORTHWEST CORNER OF THE WEST ONE-HALF OF THE NORTHEAST QUARTER (W.1/2-NE.1/4) OF SECTION 35, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, POLK COUNTY, IOWA; THENCE EAST ALONG THE NORTH LINE OF THE W.1/2-NE.1/4 TO THE NORTHEAST CORNER OF THE WEST ONE-HALF OF THE NORTHEAST QUARTER (W.1/2-NE.1/4) OF SECTION 35, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, POLK COUNTY, IOWA; THENCE SOUTH ALONG THE EAST LINE OF THE W.1/2-NE.1/4 OF SAID SECTION 35 AND ALONG THE EAST LINE OF THE WEST ONE-HALF OF THE SOUTHEAST QUARTER (W.1/2-SE.1/4) OF SAID SECTION 35 TO THE SOUTHEAST CORNER OF THE W.1/2-SE.1/4 OF SAID SECTION 35; THENCE WEST ALONG THE SOUTH LINE OF SECTIONS 35, AND 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, POLK COUNTY, IOWA TO THE NORTHEAST CORNER OF THE NORTHEAST FRACTIONAL QUARTER (NE.FRAC.1/4) OF SECTION 4, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, WARREN COUNTY, IOWA; THENCE SOUTH ALONG THE EAST LINE OF THE NE.FRAC.1/4 OF SAID SECTION 4 TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER (SE.1/4) OF SAID SECTION 4; THENCE SOUTH ALONG THE EAST LINE OF THE SE.1/4 OF SAID SECTION 4 AND ALONG THE EAST LINE OF FOX VALLEY PLAT 1, AN OFFICIAL PLAT, WEST DES MOINES, WARREN COUNTY, IOWA TO THE SOUTHEAST CORNER OF SAID FOX VALLEY PLAT 1; THENCE WEST ALONG THE SOUTH LINE OF SAID FOX VALLEY PLAT 1 AND ALONG THE SOUTH LINE OF THE NORTH ONE-HALF OF THE SOUTHEAST QUARTER (N.1/2-SE.1/4) OF SAID SECTION 4 TO THE SOUTHWEST CORNER OF THE N.1/2-SE.1/4 OF SAID SECTION 4; THENCE NORTH ALONG THE WEST LINE OF THE SOUTHEAST QUARTER (SE.1/4) OF SAID SECTION 4 TO THE NORTHWEST CORNER OF THE SE.1/4 OF SAID SECTION 4; THENCE EAST ALONG THE NORTH LINE OF THE SE.1/4 OF SAID SECTION 4 TO THE SOUTHWEST CORNER OF AN IRREGULAR SHAPED PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER (SW.1/4-NE.1/4) OF SAID SECTION 4, ALSO KNOWN AS TAX PARCEL ID No. 93025040263 FORMERLY ALL OR IN PART A PORTION OF THE CHICAGO & NORTHWESTERN TRANSPORTATION CO. RIGHT-OF-WAY AS IT WAS PREVIOUSLY ESTABLISHED; THENCE NORTHEASTERLY ALONG SAID TAX PARCEL No. 93025040263 TO THE WEST LINE OF THE EAST ONE-HALF OF THE NORTHEAST FRACTIONAL QUARTER (E.1/2-NE.FRAC.1/4) OF SAID SECTION 4; THENCE NORTH ALONG THE WEST LINE OF THE E.1/2-NE.FRAC.1/4 OF SAID SECTION 4 TO THE SOUTHWEST CORNER OF EAST ONE-HALF OF SOUTHEAST QUARTER (E.1/2-SE.1/4) OF SAID SECTION 33; THENCE NORTH ALONG THE WEST LINE OF THE E.1/2-



SE.1/4 OF SAID SECTION 33 TO THE SOUTHWEST CORNER OF THE EAST ONE-HALF OF THE NORTHEAST QUARTER (E.1/2-NE.1/4) OF SAID SECTION 33; THENCE NORTH ALONG THE WEST LINE OF THE E.1/2-NE.1/4 OF SAID SECTION 33 TO THE POINT OF BEGINNING;

**EXCEPT,**

A PORTION OF LOTS 3 AND 5, BRUBAKER ESTATE, AN OFFICIAL PLAT, WEST DES MOINES, POLK COUNTY, IOWA, IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 3; THENCE S 00°12'58" E ALONG THE EAST LINE OF SAID LOT 3 A DISTANCE OF 60.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF MAFFITT LAKE COURT, AS IT IS PRESENTLY ESTABLISHED (FORMERLY KNOWN AS S.W. 72<sup>ND</sup> AVENUE), AND TO THE POINT OF BEGINNING; THENCE CONTINUING S 00°12'58" E ALONG THE EAST LINE OF SAID LOT 3 A DISTANCE OF 592.08 FEET; THENCE S 32°34'31" W A DISTANCE OF 166.81 TO A POINT ON THE SOUTH LINE OF SAID LOT 3; THENCE N 89°54'37" W ALONG THE SOUTH LINE OF SAID LOT 3 A DISTANCE OF 193.33 FEET; THENCE NORTHWESTERLY ALONG A 1886.50 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY WHOSE CHORD HAS A BEARING OF N 48°10'18" W AND A CHORD LENGTH OF 444.51 FEET, A DISTANCE OF 445.55 FEET; THENCE N 40°01'54" W, A DISTANCE OF 73.68 FEET TO A POINT ON THE WEST LINE OF SAID LOT 3, SAID POINT BEING 440.54 FEET SOUTH OF THE N.W. CORNER OF SAID LOT 3, SAID POINT ALSO BEING ON THE EAST LINE OF SAID LOT 5; THENCE CONTINUING N 40°01'54" W, A DISTANCE OF 394.62 FEET; THENCE N 03°09'43" E, A DISTANCE OF 78.90 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF SAID MAFFITT LAKE COURT, SAID POINT BEING 60.00 FEET SOUTH OF THE NORTH LINE OF SAID LOT 5; THENCE S 89°54'30" E ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID MAFFITT LAKE COURT, PARALLEL WITH AND 60.00 FEET SOUTH OF THE NORTH LINE OF SAID LOTS 5 AND 3, A DISTANCE OF 909.00 FEET TO THE POINT OF BEGINNING;

**AND EXCEPT,**

AN IRREGULAR SHAPED PORTION OF LOT 8, BRUBAKER ESTATE DESCRIBED AS;

LOT 8 (8) BRUBAKER ESTATE, AN OFFICIAL PLAT, POLK COUNTY, IOWA EXCEPT: COMMENCING AT THE SW CORNER OF SAID SECTION 34 WITH THE SOUTH LINE OF SAID SECTION HAVING AN ASSUMED TRUE BEARING OF N 90°00' E, WITH ALL SUBSEQUENT BEARINGS REFERENCED THEREFROM; THENCE N 0°23' W, A DISTANCE OF 33 FEET; THENCE N 90°00' E, A DISTANCE OF 33 FEET TO THE POINT OF BEGINNING; THENCE N 0°23' W, A DISTANCE OF 488.6 FEET; THENCE N 90°00' E, A DISTANCE OF 1,104 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE CHICAGO, GREAT WESTERN RAILROAD; THENCE SOUTHWESTERLY ALONG THE SAID RAILROAD NORTHWESTERLY RIGHT-OF-WAY LINE FORMED BY A SPIRAL

CURVE CONCAVE SOUTHEASTERLY, A DISTANCE OF 233.8 FEET TO THE POINT OF CURVE (PC); THENCE S 40°35' W, A DISTANCE OF 409.5 FEET; THENCE N 90°00' W, A DISTANCE OF 680.5 FEET TO THE POINT OF BEGINNING; SAID PARCEL CONTAINING 10.0 ACRES MORE OR LESS;

**AND EXCEPT,**

THE SOUTH 36.50 ACRES OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>th</sup> P.M., WEST DES MOINES, POLK COUNTY, IOWA, EXCEPT THE NORTH 150 FEET OF THE SOUTH 532.2 FEET OF THE EAST 290 FEET THEREOF;

AMENDMENT NO. 1 AREA

PART 1

A TRACT OF LAND IN SECTIONS 28 AND 33 IN TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF WEST DES MOINES, POLK COUNTY, IOWA , IS INCLUDED IN AMENDMENT NO. 1 OF THE ALLUVION URBAN RENEWAL PLAN AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 33, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>TH</sup> PRINCIPAL MERIDIAN, POLK COUNTY, IOWA;

THENCE SOUTH, ALONG THE EAST LINE OF SAID NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 33, TO THE SOUTH RIGHT-OF-WAY LINE OF MAFFITT LAKE ROAD;

THENCE WEST, ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID MAFFITT LAKE ROAD, A DISTANCE OF 465.89 FEET;

THENCE NORTH, A DISTANCE OF 33 FEET, TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33;

THENCE NORTH 10°36'53" EAST (ASSUMED BEARING), A DISTANCE OF 957.67 FEET, TO THE SOUTH RIGHT-OF-WAY LINE OF RELOCATED HIGHWAY 5;

THENCE WEST, ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID RELOCATED HIGHWAY 5, TO THE WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 33;

THENCE NORTH, ALONG THE WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 33, TO THE NORTH RIGHT-OF-WAY LINE OF RELOCATED HIGHWAY 5;

THENCE EAST, ALONG NORTH RIGHT-OF-WAY LINE OF RELOCATED HIGHWAY 5, TO THE WEST RIGHT-OF-WAY LINE OF SOUTH 22<sup>ND</sup> STREET;

THENCE NORTH, ALONG THE WEST RIGHT-OF-WAY LINE OF SOUTH 22<sup>ND</sup> STREET, TO THE SOUTH RIGHT-OF-WAY LINE OF ARMY POST ROAD;

THENCE CONTINUING NORTH, NORMAL TO THE CENTERLINE OF SAID ARMY POST ROAD, TO THE NORTH RIGHT-OF-WAY LINE OF SAID ARMY POST ROAD;

THENCE EAST, ALONG THE NORTH RIGHT-OF-WAY LINE OF ARMY POST ROAD, TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 28, TOWNSHIP 78 NORTH, RANGE 25 NORTH OF THE 5<sup>TH</sup> PRINCIPAL MERIDIAN;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 28, TO THE NORTHEAST CORNER OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 33, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>TH</sup> PRINCIPAL MERIDIAN;

THENCE SOUTH, ALONG THE EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 33, TO THE POINT OF BEGINNING.

## PART 2

A TRACT OF LAND IN SECTIONS 26 AND 27 IN TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF WEST DES MOINES, POLK COUNTY, IOWA , IS INCLUDED IN AMENDMENT No. 1 TO THE ALLUVION URBAN RENEWAL PLAN AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH RIGHT-OF-WAY LINE OF ARMY POST ROAD AND THE WEST LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 27; TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>TH</sup> PRINCIPAL MERIDIAN, CITY OF WEST DES MOINES, POLK COUNTY, IOWA;

THENCE EAST, ALONG THE NORTH RIGHT-OF-WAY LINE OF SAID ARMY POST ROAD, TO THE WEST RIGHT-OF-WAY LINE OF FORMER SOUTH 11<sup>TH</sup> STREET;

THENCE NORTH, ALONG THE WEST RIGHT-OF-WAY LINE OF FORMER SOUTH 11<sup>TH</sup> STREET, TO A POINT LOCATED 685 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 27;

THENCE EAST, TO A POINT 685 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 27 LOCATED ON THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 27;

THENCE SOUTH 89°33'31" EAST (ASSUMED BEARING), A DISTANCE OF 445.00 FEET;

THENCE SOUTH 00°00'00" EAST (ASSUMED BEARING), A DISTANCE OF 360.00 FEET;

THENCE NORTH 89°33'31" WEST (ASSUMED BEARING), A DISTANCE OF 400.00 FEET, TO THE EAST RIGHT-OF-WAY LINE OF FORMER SOUTH 11<sup>TH</sup> STREET;

THENCE SOUTH, ALONG THE EAST RIGHT-OF-WAY LINE AND THE EAST RIGHT-OF-WAY LINE EXTENDED OF FORMER SOUTH 11<sup>TH</sup> STREET, TO THE NORTH RIGHT-OF-WAY LINE OF ARMY POST ROAD, SAID LINE IS ALSO THE NORTH LINE OF THE ORIGINAL ALLUVION URBAN RENEWAL PLAN;

THENCE WEST, ALONG THE NORTH RIGHT-OF-WAY LINE OF ARMY POST ROAD (NORTH LINE OF ORIGINAL ALLUVION URBAN RENEWAL PLAN), TO THE POINT OF BEGINNING.

### PART 3

A TRACT OF LAND IN SECTIONS 35 AND 36 IN TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF DES MOINES, POLK COUNTY, IOWA, IS INCLUDED IN AMENDMENT NO. 1 TO THE ALLUVION URBAN RENEWAL PLAN AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 78 NORTH RANGE 25 WEST OF THE 5<sup>TH</sup> PRINCIPAL MERIDIAN, CITY OF DES MOINES, POLK COUNTY, IOWA;

THENCE EAST, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER OF SAID SECTION 35, TO THE NORTHEAST CORNER OF SAID SECTION 35;

THENCE SOUTH 00°13'15" EAST (ASSUMED BEARING), ALONG THE WEST LINE OF SECTION 36, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>TH</sup> PRINCIPAL MERIDIAN, POLK COUNTY, IOWA, A DISTANCE OF 254.16 FEET;

THENCE NORTH 73°58'30" EAST (ASSUMED BEARING), A DISTANCE OF 526.10 FEET;

THENCE SOUTH 89°58'00" EAST (ASSUMED BEARING), A DISTANCE OF 50.00 FEET;

THENCE SOUTH 00°02'00" WEST (ASSUMED BEARING), A DISTANCE OF 37.64 FEET;

THENCE SOUTH 73°58'30" WEST (ASSUMED BEARING), A DISTANCE OF 577.89 FEET, TO THE EAST LINE OF SECTION 35, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE 5<sup>TH</sup> PRINCIPAL MERIDIAN;

THENCE SOUTH 00°13'15" EAST (ASSUMED BEARING), A DISTANCE OF 398.04 FEET ALONG THE EAST LINE OF SAID SECTION 35;

THENCE SOUTH 89°46'45" WEST (ASSUMED BEARING), A DISTANCE OF 450.00 FEET;

THENCE NORTH 00°13'15" WEST (ASSUMED BEARING), A DISTANCE OF 423.04 FEET, TO THE SOUTH RIGHT-OF-WAY LINE OF THE GREAT WESTERN TRAIL;

THENCE SOUTHWESTERLY, ALONG THE SOUTH LINE OF SAID GREAT WESTERN TRAIL, TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 35;

THENCE NORTH, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 35, TO THE POINT OF BEGINNING

WHEREAS, a proposed Amendment No. 2 to the Alluvion Urban Renewal Plan ("Amendment No. 2" or "Amendment") for the Alluvion Urban Renewal Area described above has been prepared, which proposed Amendment has been on file in the office of the City Clerk and which is incorporated herein by reference, the purpose of which is to add land and revise the list of proposed urban renewal projects to be undertaken within the Area; and

WHEREAS, this proposed Amendment No. 2 to the Urban Renewal Area adds land, as follows:

FOUR TRACTS OF LAND IN SECTIONS 3 AND 4 IN TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF NORWALK AND WARREN COUNTY, IOWA, AND SECTIONS 26, 27 AND 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF WEST DES MOINES, POLK COUNTY, IOWA ARE INCLUDED IN AMENDMENT NO. 2 OF THE ALLUVION URBAN RENEWAL PLAN AND ARE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT 1

BEGINNING AT THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF NORWALK, WARREN COUNTY, IOWA;

THENCE EAST, ALONG THE NORTH LINE OF SAID SECTION 3, TO THE INTERSECTION OF THE NORTH LINE OF SAID SECTION 3 AND A LINE 250 FEET SOUTHEASTERLY OF THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE GREAT WESTERN TRAIL;

THENCE SOUTHWESTERLY, ALONG A LINE 250 FEET SOUTHEASTERLY OF AND PARALLEL TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE GREAT WESTERN TRAIL, TO A POINT 250 FEET EAST OF THE WEST LINE OF SAID SECTION 3;

THENCE SOUTH, ALONG A LINE 250 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SECTION 3, TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

THENCE WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3, TO SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

THENCE NORTH, ALONG THE WEST LINE OF SAID SECTION 3, TO THE POINT OF BEGINNING.

TRACT 2

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA;

THENCE EAST, ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 4, A DISTANCE OF 617.05 FEET, SAID POINT BEING THE POINT OF BEGINNING;

THENCE NORTH 01°40'20" EAST, A DISTANCE OF 195.00 FEET;

THENCE SOUTH 88°19'40" EAST, A DISTANCE OF 10.00 FEET;

THENCE SOUTH 88°19'40" EAST, A DISTANCE OF 170.00 FEET;

THENCE NORTHEASTERLY, TO THE NORTHWEST CORNER OF PARCEL "B" AS DESCRIBED IN A WARRANTY DEED RECORDED IN BOOK 1999, PAGE 3597 AND DEPICTED ON A PLAT OF SURVEY RECORDED IN IRREGULAR PLAT BOOK 12, PAGE 2 OF 77-25 IN THE OFFICE OF THE WARREN COUNTY RECORDER;

THENCE NORTH 62°17'33" EAST (ASSUMED BEARING), ALONG THE NORTHWESTERLY BOUNDARY OF SAID PARCEL "B", A DISTANCE OF 291.2 FEET;

THENCE NORTH 04°12'35" EAST (ASSUMED BEARING), ALONG THE WESTERLY BOUNDARY OF SAID PARCEL "B", A DISTANCE OF 97.08 FEET;

THENCE SOUTH 89°58'00" EAST (ASSUMED BEARING), ALONG THE NORTHERLY BOUNDARY OF SAID PARCEL "B", A DISTANCE OF 230.57 FEET TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 4;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 4, A DISTANCE OF 122.74 FEET, TO A POINT OF NON-TANGENCY;

THENCE SOUTHWESTERLY, ALONG A 2,814.83 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY WITH A CHORD BEARING OF SOUTH 51°01'01" WEST (PLATTED ASSUMED BEARING), A DISTANCE OF 225.85 FEET (PLATTED), SAID LINE BEING THE NORTH LINE OF THE GREAT WESTERN TRAIL;

THENCE NORTH 36°41'04" WEST (PLATTED), A DISTANCE OF 50.00 FEET TO A POINT OF NON-TANGENCY ON A CURVE;

THENCE SOUTHWESTERLY, ALONG A 2,764.83 RADIUS CURVE CONCAVE NORTHWESTERLY WITH A CHORD BEARING OF SOUTH 56°55'33" WEST (ASSUMED BEARING), A DISTANCE OF 353.69 FEET, TO

THE SOUTHWEST CORNER OF SAID PARCEL "B", SAID LINE BEING THE NORTH LINE OF THE GREAT WESTERN TRAIL;

THENCE SOUTHWESTERLY, ALONG A 2,764.83 RADIUS CURVE CONCAVE NORTHWESTERLY WITH A CHORD BEARING OF SOUTH 60°51'42" WEST (ASSUMED BEARING), A DISTANCE OF 26.17 FEET, TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 4;

THENCE WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 4, TO THE POINT OF BEGINNING.

### TRACT 3

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 27, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, POLK COUNTY, IOWA;

THENCE NORTH, ALONG THE EAST LINE OF SAID SECTION 27, TO THE NORTH RIGHT OF WAY LINE OF SE WILLOW CREEK DRIVE, SAID POINT BEING THE POINT OF BEGINNING;

THENCE WEST, ALONG THE NORTH RIGHT OF WAY LINE AND RIGHT OF WAY LINE EXTENDED OF SE WILLOW CREEK DRIVE ROAD (FORMERLY ARMY POST ROAD), TO THE EAST RIGHT OF WAY LINE OF FORMER SE 11<sup>TH</sup> STREET, SAID POINT BEING ON THE EAST LINE OF AMENDMENT NUMBER 1 OF THE ALLUVION URBAN RENEWAL PLAN;

THENCE NORTH, ALONG THE EAST RIGHT OF WAY LINE EXTENDED AND THE EAST RIGHT OF WAY LINE OF FORMER SE 11<sup>TH</sup> STREET, SAID LINE BEING ON THE EAST LINE OF AMENDMENT NUMBER 1 OF THE ALLUVION URBAN RENEWAL PLAN, TO A POINT 325 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 27, SAID POINT BEING ON THE EAST LINE OF AMENDMENT NUMBER 1 OF THE ALLUVION URBAN RENEWAL PLAN;

THENCE NORTH 89°33'31" EAST (ASSUMED BEARING), SAID LINE BEING ON THE SOUTH LINE OF AMENDMENT NUMBER 1 OF THE ALLUVION URBAN RENEWAL PLAN, A DISTANCE OF 400 FEET;

THENCE NORTH 00°00'00" WEST, SAID LINE BEING ON THE EAST LINE OF AMENDMENT NUMBER 1 OF THE ALLUVION URBAN RENEWAL PLAN, TO THE NORTHWESTERLY RIGHT OF WAY LINE OF VETERANS PARKWAY;



THENCE NORTHEASTERLY, ALONG THE NORTHWESTERLY RIGHT OF WAY LINE OF VETERANS PARKWAY, TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE EAST, ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 26, TO THE NORTHWEST CORNER OF PLEASANT RIDGE HEIGHTS, AN OFFICIAL SUBDIVISION NOW IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA;

THENCE EAST, ALONG THE NORTH LINE OF SAID PLEASANT RIDGE HEIGHTS, TO THE NORTHEAST CORNER OF LOT 6 OF SAID PLEASANT RIDGE HEIGHTS;

THENCE SOUTH, ALONG THE EAST LINE OF LOT 6 OF SAID PLEASANT RIDGE HEIGHTS, TO THE NORTH RIGHT OF WAY LINE OF SE WILLOW CREEK DRIVE;

THENCE WEST, ALONG THE NORTH RIGHT OF WAY LINE OF SE WILLOW CREEK DRIVE, TO THE POINT OF BEGINNING.

#### TRACT 4

COMMENCING AT THE NORTHWEST CORNER OF LOT 8, BRUBAKER ESTATE, AN OFFICIAL SUBDIVISION NOW IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA;

THENCE EAST, ALONG THE NORTH LINE OF SAID LOT 8, A DISTANCE OF 1,247.86 FEET, TO THE POINT OF BEGINNING;

THENCE EAST, ALONG THE NORTH LINE OF SAID LOT 8, TO THE NORTHEAST CORNER OF SAID LOT 8;

THENCE SOUTHWESTERLY, ALONG THE EAST LINE OF SAID LOT 8, A DISTANCE OF 533.41 FEET;

THENCE NORTH 89°50'46" WEST (ASSUMED BEARING), A DISTANCE OF 163.45 FEET;

THENCE NORTHEASTERLY ALONG A 2,867.50 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY WITH A CHORD BEARING NORTH 36°34'30" EAST (ASSUMED BEARING) AND A CHORD DISTANCE OF 458.91 FEET, A DISTANCE OF 423.63 FEET, TO A POINT OF TANGENCY;

THENCE NORTH 32°40'20" EAST (ASSUMED BEARING), A DISTANCE OF 35.76 FEET, TO THE POINT OF BEGINNING.

WHEREAS, the proposed Amendment No. 2 to the Urban Renewal Area includes land classified as agricultural land and consequently written permission of the current owners has been obtained; and

WHEREAS, some of the property to be added to the Urban Renewal Area includes land outside but within two miles of the City boundary, and consent from the City of Norwalk and Warren County, where the property is located, has been obtained; and

WHEREAS, it is desirable that the Area be redeveloped as part of the activities described within the proposed Amendment No. 2 to the Alluvion Urban Renewal Plan; and

WHEREAS, by resolution adopted on October 17, 2016, this Council directed that a consultation be held with the designated representatives of all affected taxing entities to discuss the proposed Amendment No. 2 to the Alluvion Urban Renewal Plan and the division of revenue described therein, and that notice of the consultation and a copy of the proposed Amendment No. 2 to the Alluvion Urban Renewal Plan be sent to all affected taxing entities; and

WHEREAS, pursuant to such notice, the consultation was duly held as ordered by the City Council and all required responses to the recommendations made by the affected taxing entities, if any, have been timely made as set forth in the report of the Director of Community and Economic Development, or his delegate, filed herewith and incorporated herein by this reference, which report is in all respects approved; and

WHEREAS, by resolution this Council also set a public hearing on the adoption of the proposed Amendment No. 2 to the Alluvion Urban Renewal Plan for this meeting of the Council, and due and proper notice of the public hearing was given, as provided by law, by timely publication in the Des Moines Register, which notice set forth the time and place for this hearing and the nature and purpose thereof; and

WHEREAS, in accordance with the notice, all persons or organizations desiring to be heard on the proposed Amendment No. 2 to the Alluvion Urban Renewal Plan, both for and against, have been given an opportunity to be heard with respect thereto and due consideration has been given to all comments and views expressed to this Council in connection therewith and the public hearing has been closed.

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

Section 1. That the findings and conclusions set forth or contained in Amendment No. 2 concerning the area of the City of West Des Moines, State of Iowa, described in the preamble hereof, be and the same are hereby ratified and confirmed in all respects as the findings of this Council for this area.

Section 2. This Council further finds:

a) Although relocation is not expected, a feasible method exists for the relocation of any families who will be displaced from the Alluvion Urban Renewal Area into decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families;

b) The Plan, as amended, and Amendment No. 2 to the Alluvion Urban Renewal Plan conform to the general plan for the development of the City as a whole; and

c) Acquisition by the City is not immediately expected, however, as to any areas of open land to be acquired by the City included within the Alluvion Urban Renewal Area:

i. Residential use is not expected, however, with reference to any portions thereof which are to be developed for residential uses, this City Council hereby determines that a shortage of housing of sound standards and design with decency, safety and sanitation exists within the City; that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality; and that one or more of the following conditions exist:

a. That the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas, including other portions of the urban renewal area.

b. That conditions of blight in the municipality and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime, so as to constitute a menace to the public health, safety, morals, or welfare.

c. That the provision of public improvements related to housing and residential development will encourage housing and residential development which is necessary to encourage the retention or relocation of industrial and commercial enterprises in this state and its municipalities.

d. The acquisition of the area is necessary to provide for the construction of housing for low and moderate income families.

ii. Non-residential use is expected and with reference to those portions thereof which are to be developed for non-residential uses, such non-residential uses are necessary and appropriate to facilitate the proper growth and development of the City in accordance with sound planning standards and local community objectives.

Section 3. That the Alluvion Urban Renewal Area, as amended, continues to be an economic development area within the meaning of Iowa Code Chapter 403; that such area is eligible for designation as an urban renewal area and otherwise meets all requisites under the provisions of Chapter 403 of the Code of Iowa; and that the rehabilitation, conservation, redevelopment, development, or a combination thereof, of such area is necessary in the interest of the public health, safety or welfare of the residents of this City.

Section 4. That Amendment No. 2 to the Alluvion Urban Renewal Plan of the City of West Des Moines, State of Iowa, attached hereto as Exhibit 1 and incorporated herein by reference, be and the same is hereby approved and adopted as "Amendment No. 2 to the Alluvion Urban Renewal Plan for the City of West Des Moines, State of Iowa"; Amendment No. 2 to the Alluvion Urban Renewal Plan of the City of West Des Moines, State of Iowa, is hereby in all respects approved; any Consents from owners of Agricultural Land or Joint Agreements from other municipalities attached to the Amendment as exhibits are hereby approved and shall be executed by the Mayor or the presiding officer; and the City Clerk is hereby directed to file a certified copy of the Amendment No. 2 with the proceedings of this meeting.

Section 5. That, notwithstanding any resolution, ordinance, plan, amendment or any other document, Amendment No. 2 to the Alluvion Urban Renewal Plan shall be in full force and effect from the date of this Resolution until the Council amends or repeals the Plan. The proposed Amendment No. 2 to the Alluvion Urban Renewal Plan shall be forthwith certified by the City Clerk, along with a copy of this Resolution, to the Recorder for Polk and Warren Counties, Iowa, to be filed and recorded in the manner provided by law.

Section 6. That all other provisions of the Plan not affected or otherwise revised by the terms of Amendment No. 2, as well as all resolutions previously adopted by this City Council related to the Plan be and the same are hereby ratified, confirmed and approved in all respects.

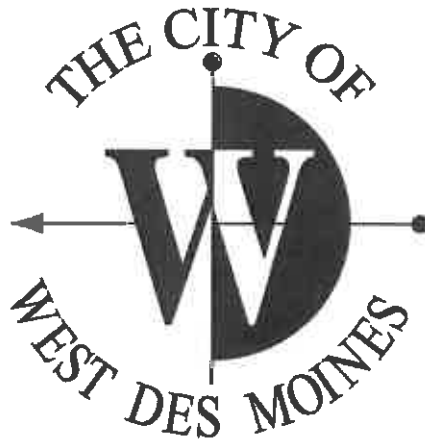
PASSED AND APPROVED this 14<sup>th</sup> day of November, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

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

*Label the Amendment as Exhibit 1 (with all exhibits) and attach it to this Resolution.*



**AMENDMENT NO. 2**

**to the**

**ALLUVION**

**URBAN RENEWAL PLAN**

**City of West Des Moines, Iowa**

**Original Area Adopted – 2014**

**Amendment No. 1 – 2015**

**Amendment No. 2 – 2016**

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**AMENDMENT NO. 2  
to the  
ALLUVION  
URBAN RENEWAL PLAN  
CITY OF WEST DES MOINES, IOWA**

**I. INTRODUCTION**

The **Alluvion** Urban Renewal Plan ("Plan" or "Urban Renewal Plan") for the **Alluvion** Urban Renewal Area ("Area" or "Urban Renewal Area"), originally adopted in 2014, and amended by Amendment No. 1 in 2015, is being amended by this Amendment No. 2 to the Alluvion Urban Renewal Plan ("Amendment No. 2" or "Amendment") to add land and revise the list of proposed urban renewal projects to be undertaken within the Urban Renewal Area.

The material changes by this Amendment include the following:

1. Legal description for the property added by this Amendment No. 2. See Exhibit A.
2. New map showing Original Area and Amendment Areas (including Amendment No. 2 Area). See Exhibit B.
3. Update the Eligible Urban Renewal Projects. See Pages 2-3.
4. Update Financial Data. See Page 3.

Except as modified by this Amendment, the provisions of the original **Alluvion** Urban Renewal Plan, as previously amended, are hereby ratified, confirmed, and approved and shall remain in full force and effect as provided herein. In case of any conflict or uncertainty, the terms of this Amendment shall control. Any subsections or language not mentioned in this Amendment shall continue to apply to the Plan unless the subsection or language is changed by this Amendment.

**II. DESCRIPTION OF URBAN RENEWAL AREA**

The legal description of the property being added to the Urban Renewal Area by this Amendment, called the Amendment No. 2 Area, is attached hereto as Exhibit "A". A map of the entire Urban Renewal Area (Original Area, Amendment No. 1 Area, and Amendment No. 2 Area) is attached as Exhibit "B".

**III. AREA DESIGNATION**

The City continues to designate the Urban Renewal Area, as amended, as an economic development area that is appropriate for the promotion of new commercial and/or industrial development.

**IV. PLAN OBJECTIVES**

The objectives of the Plan are unchanged.

**V. TYPES OF RENEWAL ACTIVITIES**

The types of renewal activities previously described continue.

**VI. PREVIOUSLY APPROVED URBAN RENEWAL PROJECTS**

Numerous urban renewal projects were authorized prior to the date of this Amendment; and are continuing. Such projects are not listed in this Amendment but consist of a variety of urban renewal projects.

**VII. ELIGIBLE URBAN RENEWAL PROJECTS**

Although certain project activities may occur over a period of years, in addition to the projects previously proposed in the Alluvion Urban Renewal Plan, as previously amended, the Eligible Urban Renewal Projects under this Amendment include:

**A. Public Improvements:**

Description of Urban Renewal Project	Est. Time Period	Estimated cost to be reimbursed by tax increment financing	Rationale (why economic development is promoted)
Veterans Parkway – SE Maffitt Lake Road to west of SE Adams Street  Public street construction, reconstruction, and/or widening and related activities including right-of-way acquisition, related utilities and sewers, storm water conveyance structures, bridges, railroad crossings, bike/pedestrian trails and under crossings, traffic signals and signage, turn lanes, medians, landscaping, street lights, and related items.	2016-2020	\$9,500,000 - \$11,500,000	The improvements to Veterans Parkway will provide direct paved access to the Microsoft Project described in the original Plan, and will also provide access to any additional development that may take place between SE Maffitt Lake Road and SE Adams Street.



Note: It may be that the above costs will be reduced by the application of state and/or federal grants or programs; cost-sharing agreements with other entities; or other available sources of funds.

- B. Future Development Agreements:** The City expects to consider requests for Development Agreements for projects that are consistent with this Plan, in the City's sole discretion. Such Agreements are unknown at this time, but based on past history, and dependent on development opportunities and climate, the City expects to consider a broad range of incentives as authorized by this Plan, including, but not limited to, land, loans, grants, tax rebates, public infrastructure assistance, and other incentives. The costs of such Development Agreements will not exceed \$4,000,000.
- C. Planning, engineering fees (for urban renewal plans), attorney fees, other related costs to support urban renewal projects and planning**

Project	Date	Estimated Cost
Fees and costs	Undetermined	\$50,000

**VIII. DEBT**

1.	July 1, 2016 constitutional debt limit:	\$212,760,921
2.	Outstanding general obligation debt:	\$132,715,000
3.	Proposed amount of indebtedness to be incurred: A specific amount of debt to be incurred for the Eligible Urban Renewal Projects described in this Amendment No. 2 has not yet been determined. This document is for planning purposes. The estimated project costs in this Amendment are estimates only and will be incurred and spent over a number of years. In no event will the City's constitutional debt limit be exceeded. The City Council will consider each project proposal on a case-by-case basis to determine if it is in the City's best interest to participate before approving an urban renewal project or expense. It is further expected that such indebtedness, including interest on the same, may be financed in whole or in part with tax increment revenues from the Urban Renewal Area. Subject to the foregoing, it is estimated that the cost of the Urban Renewal Projects as described above in this Amendment No. 2 to be funded with tax increment funds will be approximately as stated in the next column:	<p>\$13,550,000 - \$15,550,000</p> <p>This does not include financing costs related to debt issuance, which may be incurred over the life of the area.</p>

**IX. PROPERTY ACQUISITION/DISPOSITION**

While the City does not expect it, in the event acquisition/disposition of property does occur, the City will follow any applicable requirements for the acquisition and disposition of property.

**X. LAND USES AND DEVELOPMENT PLAN**

The Area is currently planned for the following land uses: Business Park, Medium Density Residential, Single Family Residential, Office, Open Space, Light Industrial, Neighborhood Commercial, Highway Commercial, Community Commercial, and Support Office.

The Alluvion Urban Renewal Plan, as amended, is consistent with the existing West Des Moines Comprehensive Plan adopted on September 20, 2010. The West Des Moines Comprehensive Plan is the City's general plan for the development of the City as a whole. In addition, the proposed urban renewal projects as described in this Amendment are consistent with the West Des Moines Comprehensive Plan. This Urban Renewal Plan does not change or in any way replace the City's current land use planning or zoning regulation process.

Any urban renewal projects related to the need for improved traffic, public transportation, public utilities, recreational and community facilities, or other public improvements within the Urban Renewal Area are set forth in this Plan, as amended. As the Area develops, the need for public infrastructure extensions and upgrades will be evaluated and planned for by the City.

**XI. URBAN RENEWAL PLAN AMENDMENTS**

The Alluvion Urban Renewal Plan may be amended from time to time for a variety of reasons, including but not limited to, adding or deleting land, adding urban renewal projects, or to modify goals or types of renewal activities.

The City Council may amend this Plan in accordance with applicable state law.

**XII. EFFECTIVE PERIOD**

This Amendment No. 2 will become effective upon its adoption by the City Council. Notwithstanding anything to the contrary in the Urban Renewal Plan, any prior amendment, resolution, or document the Urban Renewal Plan, as amended, shall remain in effect until terminated by the City Council, and the use of incremental property tax revenues, or the "division of revenue," as those words are used in Chapter 403 of the Code of Iowa, will continue for the maximum time allowed by law.

**XIII. REPEALER**

Any parts of the previous Plan, as previously amended, in conflict with this Amendment are hereby repealed.

**XIV. SEVERABILITY CLAUSE**

If any part of the Amendment is determined to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the previously adopted Plan as a whole or the previous amendment to the Plan, or any part of the Plan or this Amendment not determined to be invalid or unconstitutional.

**XV. CITY OF NORWALK CONSENT**

Some of the property to be added to the Alluvion Urban Renewal Area by Amendment No. 2 includes land outside but within two miles of the West Des Moines boundary, and is located within the City of Norwalk. In accordance with paragraph 4 of Section 403.17 of the Code of Iowa, a city may exercise urban renewal powers with respect to property which is located outside but within two miles of the boundary of a city only if the other city within which the property is located adopts a resolution declaring a need to be included in the area. The City of Norwalk has adopted a resolution declaring a need for its land to be included in the Alluvion Urban Renewal Area. No TIF Ordinance will be placed on the property located in the City of Norwalk that is included within the Alluvion Urban Renewal Area. A copy of the City of Norwalk resolution will be retained on file at the West Des Moines City Clerk's office. The City of Norwalk also executed a Joint Agreement with the city of West Des Moines which gives the City of West Des Moines permission to include property within the City of Norwalk in the Urban Renewal Area. A copy of the Joint Agreement is attached as Exhibit "D". The original agreement is on file at the West Des Moines City Clerk's office.

**XVI. AGREEMENT TO INCLUDE AGRICULTURAL LAND.**

Because some of the area being added to the Alluvion Urban Renewal Area by Amendment No. 2 contains land that may be defined as "agricultural land" under Iowa Code Section 403.17(3), the City and each property owner of land that may qualify as agricultural land have entered into an agreement in which the property owner agrees to allow the City to include real property defined as "Agricultural Land" in the Urban Renewal Area. Copies of the agreements executed by the property owners are attached as Exhibit "E". The original agreements executed by the property owners and the City will be retained on file at the West Des Moines City Clerk's office.

**XVII. WARREN COUNTY CONSENT**

Some of the property to be added to the Alluvion Urban Renewal Area by Amendment No. 2 includes land outside but within two miles of the West Des Moines boundary, and is located within unincorporated Warren County. In accordance with paragraph 4 of Section

403.17 of the Code of Iowa, a city may exercise urban renewal powers with respect to property which is located outside but within two (2) miles of the boundary of a city only if the city obtains the consent of the county within which such property is located. A Joint Agreement, which gives the City of West Des Moines permission to include property outside the City limits in the Urban Renewal Area through this Amendment No. 2 has been executed by the City of West Des Moines and Warren County. A copy of the Joint Agreement is attached as Exhibit "C". The original agreement is on file at the West Des Moines City Clerk's office.

## **EXHIBIT A**

### **AMENDMENT NO. 2 AREA**

#### **LEGAL DESCRIPTION AMENDMENT NO. 2 TO THE ALLUVION URBAN RENEWAL PLAN WEST DES MOINES, IOWA**

FOUR TRACTS OF LAND IN SECTIONS 3 AND 4 IN TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF NORWALK AND WARREN COUNTY, IOWA, AND SECTIONS 26, 27 AND 34, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF WEST DES MOINES, POLK COUNTY, IOWA ARE INCLUDED IN AMENDMENT NO. 2 OF THE ALLUVION URBAN RENEWAL PLAN AND ARE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

#### **TRACT 1**

BEGINNING AT THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF NORWALK, WARREN COUNTY, IOWA;

THENCE EAST, ALONG THE NORTH LINE OF SAID SECTION 3, TO THE INTERSECTION OF THE NORTH LINE OF SAID SECTION 3 AND A LINE 250 FEET SOUTHEASTERLY OF THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE GREAT WESTERN TRAIL;

THENCE SOUTHWESTERLY, ALONG A LINE 250 FEET SOUTHEASTERLY OF AND PARALLEL TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF THE GREAT WESTERN TRAIL, TO A POINT 250 FEET EAST OF THE WEST LINE OF SAID SECTION 3;

THENCE SOUTH, ALONG A LINE 250 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SECTION 3, TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

THENCE WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3, TO SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

THENCE NORTH, ALONG THE WEST LINE OF SAID SECTION 3, TO THE POINT OF BEGINNING.

#### **TRACT 2**

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA;

THENCE EAST, ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 4, A DISTANCE OF 617.05 FEET, SAID POINT BEING THE POINT OF BEGINNING;

THENCE NORTH 01°40'20" EAST, A DISTANCE OF 195.00 FEET;

THENCE SOUTH 88°19'40" EAST, A DISTANCE OF 10.00 FEET;

THENCE SOUTH 88°19'40" EAST, A DISTANCE OF 170.00 FEET;

THENCE NORTHEASTERLY, TO THE NORTHWEST CORNER OF PARCEL "B" AS DESCRIBED IN A WARRANTY DEED RECORDED IN BOOK 1999, PAGE 3597 AND DEPICTED ON A PLAT OF SURVEY RECORDED IN IRREGULAR PLAT BOOK 12, PAGE 2 OF 77-25 IN THE OFFICE OF THE WARREN COUNTY RECORDER;

THENCE NORTH 62°17'33" EAST (ASSUMED BEARING), ALONG THE NORTHWESTERLY BOUNDARY OF SAID PARCEL "B", A DISTANCE OF 291.2 FEET;

THENCE NORTH 04°12'35" EAST (ASSUMED BEARING), ALONG THE WESTERLY BOUNDARY OF SAID PARCEL "B", A DISTANCE OF 97.08 FEET;

THENCE SOUTH 89°58'00" EAST (ASSUMED BEARING), ALONG THE NORTHERLY BOUNDARY OF SAID PARCEL "B", A DISTANCE OF 230.57 FEET TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 4;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 4, A DISTANCE OF 122.74 FEET, TO A POINT OF NON-TANGENCY;

THENCE SOUTHWESTERLY, ALONG A 2,814.83 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY WITH A CHORD BEARING OF SOUTH 51°01'01" WEST (PLATTED ASSUMED BEARING), A DISTANCE OF 225.85 FEET (PLATTED), SAID LINE BEING THE NORTH LINE OF THE GREAT WESTERN TRAIL;

THENCE NORTH 36°41'04" WEST (PLATTED), A DISTANCE OF 50.00 FEET TO A POINT OF NON-TANGENCY ON A CURVE;

THENCE SOUTHWESTERLY, ALONG A 2,764.83 RADIUS CURVE CONCAVE NORTHWESTERLY WITH A CHORD BEARING OF SOUTH 56°55'33" WEST (ASSUMED BEARING), A DISTANCE OF 353.69 FEET, TO THE SOUTHWEST CORNER OF SAID PARCEL "B", SAID LINE BEING THE NORTH LINE OF THE GREAT WESTERN TRAIL;

THENCE SOUTHWESTERLY, ALONG A 2,764.83 RADIUS CURVE CONCAVE NORTHWESTERLY WITH A CHORD BEARING OF SOUTH 60°51'42" WEST (ASSUMED BEARING), A DISTANCE OF 26.17 FEET, TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 4;

THENCE WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 4, TO THE POINT OF BEGINNING.

### TRACT 3

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 27, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, POLK COUNTY, IOWA;

THENCE NORTH, ALONG THE EAST LINE OF SAID SECTION 27, TO THE NORTH RIGHT OF WAY LINE OF SE WILLOW CREEK DRIVE, SAID POINT BEING THE POINT OF BEGINNING;

THENCE WEST, ALONG THE NORTH RIGHT OF WAY LINE AND RIGHT OF WAY LINE EXTENDED OF SE WILLOW CREEK DRIVE ROAD (FORMERLY ARMY POST ROAD), TO THE EAST RIGHT OF WAY LINE OF FORMER SE 11<sup>TH</sup> STREET, SAID POINT BEING ON THE EAST LINE OF AMENDMENT NUMBER 1 OF THE ALLUVION URBAN RENEWAL PLAN;

THENCE NORTH, ALONG THE EAST RIGHT OF WAY LINE EXTENDED AND THE EAST RIGHT OF WAY LINE OF FORMER SE 11<sup>TH</sup> STREET, SAID LINE BEING ON THE EAST LINE OF AMENDMENT NUMBER 1 OF THE ALLUVION URBAN RENEWAL PLAN, TO A POINT 325 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 27, SAID POINT BEING ON THE EAST LINE OF AMENDMENT NUMBER 1 OF THE ALLUVION URBAN RENEWAL PLAN;

THENCE NORTH 89°33'31" EAST (ASSUMED BEARING), SAID LINE BEING ON THE SOUTH LINE OF AMENDMENT NUMBER 1 OF THE ALLUVION URBAN RENEWAL PLAN, A DISTANCE OF 400 FEET;

THENCE NORTH 00°00'00" WEST, SAID LINE BEING ON THE EAST LINE OF AMENDMENT NUMBER 1 OF THE ALLUVION URBAN RENEWAL PLAN, TO THE NORTHWESTERLY RIGHT OF WAY LINE OF VETERANS PARKWAY;

THENCE NORTHEASTERLY, ALONG THE NORTHWESTERLY RIGHT OF WAY LINE OF VETERANS PARKWAY, TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE EAST, ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 26, TO THE NORTHWEST CORNER OF PLEASANT RIDGE HEIGHTS, AN OFFICIAL SUBDIVISION NOW IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA;

THENCE EAST, ALONG THE NORTH LINE OF SAID PLEASANT RIDGE HEIGHTS, TO THE NORTHEAST CORNER OF LOT 6 OF SAID PLEASANT RIDGE HEIGHTS;

THENCE SOUTH, ALONG THE EAST LINE OF LOT 6 OF SAID PLEASANT RIDGE HEIGHTS, TO THE NORTH RIGHT OF WAY LINE OF SE WILLOW CREEK DRIVE;

THENCE WEST, ALONG THE NORTH RIGHT OF WAY LINE OF SE WILLOW CREEK DRIVE, TO THE POINT OF BEGINNING.

#### TRACT 4

COMMENCING AT THE NORTHWEST CORNER OF LOT 8, BRUBAKER ESTATE, AN OFFICIAL SUBDIVISION NOW IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA;

THENCE EAST, ALONG THE NORTH LINE OF SAID LOT 8, A DISTANCE OF 1,247.86 FEET, TO THE POINT OF BEGINNING;

THENCE EAST, ALONG THE NORTH LINE OF SAID LOT 8, TO THE NORTHEAST CORNER OF SAID LOT 8;

THENCE SOUTHWESTERLY, ALONG THE EAST LINE OF SAID LOT 8, A DISTANCE OF 533.41 FEET;

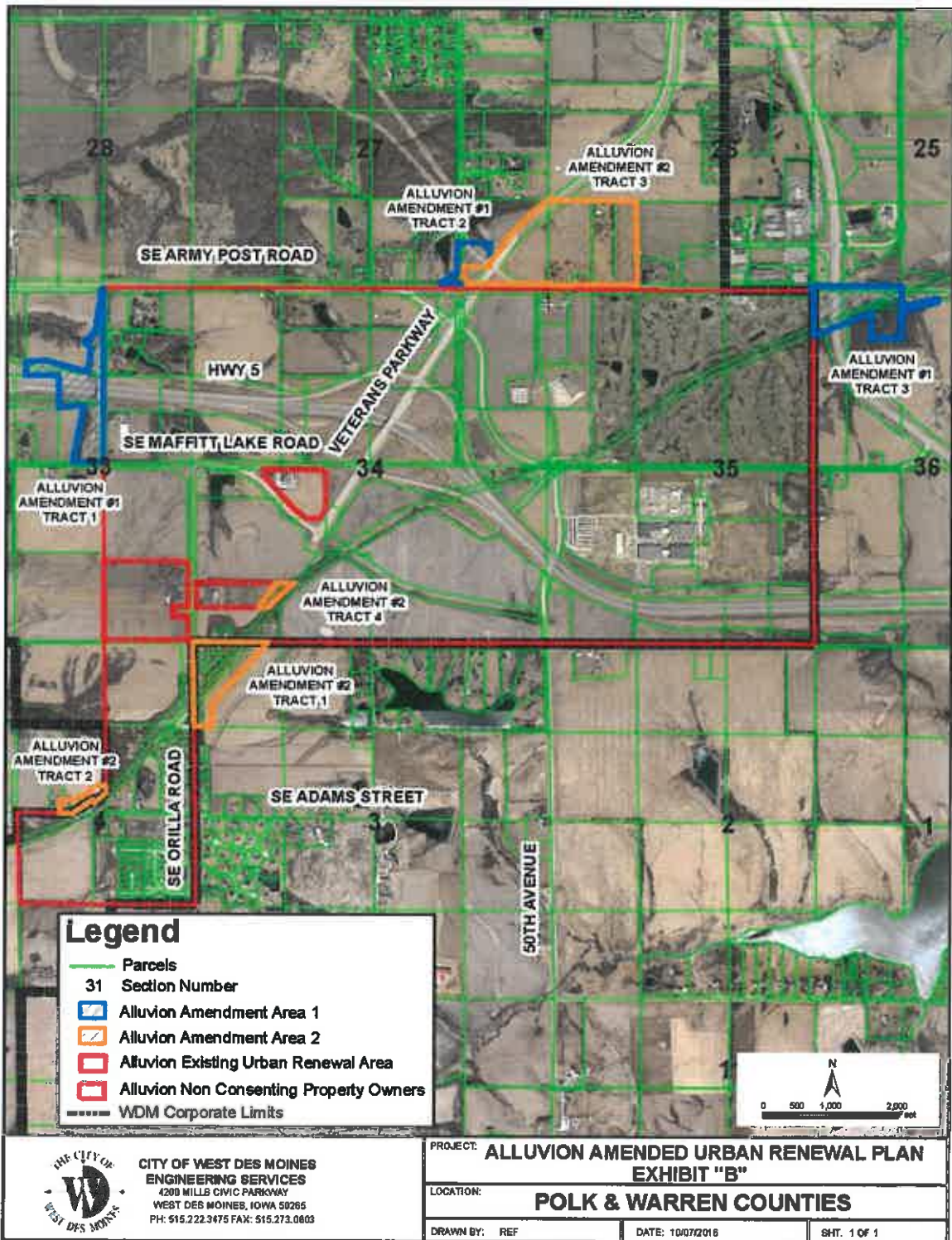
THENCE NORTH  $89^{\circ}50'46''$  WEST (ASSUMED BEARING), A DISTANCE OF 163.45 FEET;

THENCE NORTHEASTERLY ALONG A 2,867.50 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY WITH A CHORD BEARING NORTH  $36^{\circ}34'30''$  EAST (ASSUMED BEARING) AND A CHORD DISTANCE OF 458.91 FEET, A DISTANCE OF 423.63 FEET, TO A POINT OF TANGENCY;

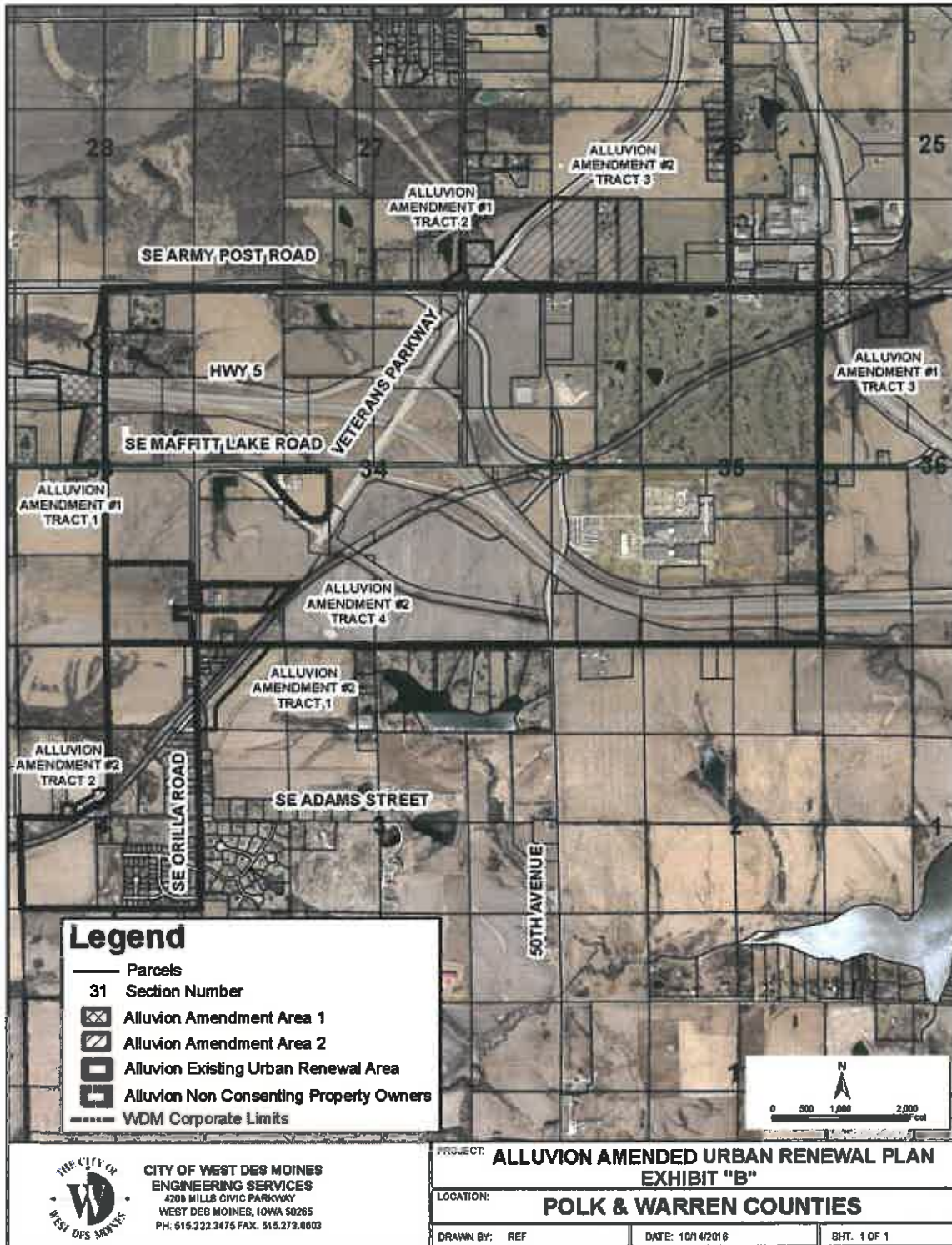
THENCE NORTH  $32^{\circ}40'20''$  EAST (ASSUMED BEARING), A DISTANCE OF 35.76 FEET, TO THE POINT OF BEGINNING.



**Exhibit B**  
**Original Area and Amendment Areas**  
**(color)**



**Original Area and Amendment Areas  
(black and white)**



## EXHIBIT C

### JOINT CITY/COUNTY AGREEMENT (WARREN COUNTY)

WHEREAS, the City of West Des Moines, State of Iowa, (the "City") has proposed to amend the Alluvion Urban Renewal Area to include property within two miles of the City of West Des Moines, State of Iowa, for the purpose of participating in eligible urban renewal projects; and

WHEREAS, the City Council of the City of West Des Moines, State of Iowa, has reviewed the Amendment No. 2 to the Alluvion Urban Renewal Plan for said Urban Renewal Area and has determined that the proposed Urban Renewal Plan, as amended, and completion of the eligible projects are in the best interests of the City of West Des Moines, State of Iowa; and

WHEREAS, Iowa Code Section 403.17(4) requires a "joint agreement" between the City and the County before the City can proceed with said projects in the portion of the Urban Renewal Area outside City boundaries but within two miles thereof.

NOW THEREFORE, WARREN COUNTY, STATE OF IOWA, AND THE CITY OF WEST DES MOINES, STATE OF IOWA, AGREE AS FOLLOWS:

1. The Board of Supervisors of Warren County, State of Iowa, hereby agrees and authorizes the City of West Des Moines, State of Iowa, to proceed with the Amendment No. 2 to the Alluvion Urban Renewal Plan, and the undertaking of the eligible urban renewal projects therein which are located within two miles of the City of West Des Moines and in such locations as is identified in the Urban Renewal Plan, as amended.
2. This "joint agreement" is intended to meet the requirements of Iowa Code Section 403.17(4) with respect to the portions of the Alluvion Urban Renewal Area outside the current boundaries of the City but within two miles thereof.
3. This Joint Agreement has been duly authorized by the governing bodies of Warren County, State of Iowa, and the City of West Des Moines, State of Iowa.

PASSED AND APPROVED this 4<sup>th</sup> day of October, 2016.

WARREN COUNTY, STATE OF IOWA

Doug Skell  
Chairperson, Board of Supervisors

ATTEST:

Traci Vander Linden  
Secretary

STATE OF IOWA            )  
  ) SS  
COUNTY OF WARREN    )

On this 4<sup>th</sup> day of October, 2016, before me a Notary Public in and for the State of Iowa, personally appeared Doug Skell and Traci Vander Linden to me personally known, who being duly sworn, did say that they are the Chairperson and Secretary, respectively, of Warren County, State of Iowa, a political subdivision, and that the seal affixed to the foregoing instrument is the seal of said political subdivision, and that said instrument was signed and sealed on behalf of said political subdivision by authority and resolution of its Board of Supervisors, and said Chairperson and Secretary acknowledged said instrument to be the free act and deed of said political subdivision by it voluntarily executed.



Melanie M. Combs  
Notary Public in and for Warren County, Iowa



**EXHIBIT D  
JOINT AGREEMENT  
(CITY OF NORWALK)**

**JOINT AGREEMENT**

WHEREAS, the City of West Des Moines, Iowa, ("West Des Moines") is proposing an Amendment No. 2 to the West Des Moines Alluvion Urban Renewal Plan ("Plan") for the West Des Moines Alluvion Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa (the Urban Renewal Chapter), in order to undertake activities authorized by that Chapter; and

WHEREAS, Amendment No. 2 to the Plan is expected to authorize an extension of Veterans Parkway as an urban renewal project, which project is expected to be constructed by the City of West Des Moines in part within the City of Norwalk, Iowa; and

WHEREAS, it is expected that the extension of the Parkway will benefit Microsoft Corporation's construction of a regional data center within the West Des Moines Alluvion Urban Renewal Area; and

WHEREAS, this Parkway extension is also expected to provide benefits to the residents and businesses of the City of Norwalk, the City of West Des Moines, and surrounding municipalities; and

WHEREAS, it is expected that the cost of constructing the Parkway extension within the City of Norwalk will be funded in part from incremental tax revenue generated by the Microsoft Corporation regional data center located within the Alluvion Urban Renewal Area, which revenues are expected to be collected by the County and provided to West Des Moines under the Urban Renewal Chapter; and

WHEREAS, in order to allow incremental tax revenues to be used to fund the Parkway extension within the City of Norwalk, such property must be added to and included in the West Des Moines Alluvion Urban Renewal Area by the proposed Amendment No. 2 to the Plan; and

WHEREAS, Amendment No. 2 proposes that a small piece of property within the corporate boundaries of the City of Norwalk be included in the land to be added to the West Des Moines Alluvion Urban Renewal Area by Amendment No. 2 (see attached map); and

WHEREAS, the City of West Des Moines will not adopt a TIF Ordinance covering the property located within the City of Norwalk; and

WHEREAS, Section 403.17(4) of the Code of Iowa provides that no property may be included in a City's urban renewal area that lies in a neighboring city "unless a resolution has been adopted by the governing body of the [neighboring] City declaring a need to be included in the area"; and

WHEREAS, in addition to the City of Norwalk adopting the aforementioned resolution ("Resolution"), the City of Norwalk and the City of West Des Moines have decided to further document the arrangement through this Joint Agreement.

**NOW THEREFORE, THE CITY OF NORWALK, STATE OF IOWA, AND THE CITY OF WEST DES MOINES, STATE OF IOWA, AGREE AS FOLLOWS:**

1. The City Council of the City of Norwalk, State of Iowa hereby agrees and authorizes the City of West Des Moines, State of Iowa, to proceed with adopting Amendment No. 2 to the Alluvion Urban Renewal Plan, and the undertaking of the eligible urban renewal projects within the Alluvion Urban Renewal Area, including that portion of the Area within the boundaries of the City of Norwalk. This Agreement is contingent on the City of West Des Moines not adopting an ordinance pursuant to Iowa Code Section 403.19 implementing tax increment financing on property within the corporate boundaries of the City of Norwalk, absent express written permission from the City Council in the form of an amendment to this Agreement.

2. This Joint Agreement and the aforementioned Resolution are intended to meet the requirements of Iowa Code Chapter 403.17(4) with respect to the Alluvion Urban Renewal Area established by City of West Des Moines, State of Iowa.

3. This Joint Agreement has been duly authorized by the governing bodies of the City of Norwalk, State of Iowa and the City of West Des Moines, State of Iowa.

PASSED AND APPROVED this 15 day of Sept, 2016.

CITY OF NORWALK, STATE OF IOWA

Tom Phillips  
Mayor

ATTEST:

Jodi Edleman  
City Clerk

STATE OF IOWA            )  
  ) SS  
COUNTY OF WARREN    )

On this 12<sup>th</sup> day of October, 2016, before me a Notary Public in and for the State of Iowa, personally appeared Tom Phillips and Jodi Edleman to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Norwalk, State of Iowa, a Municipal Corporation, and that the seal affixed to the foregoing instrument is the seal of said Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

Amy M. Mock  
Notary Public in and for Warren County, Iowa







**EXHIBIT E**  
**AGREEMENTS TO INCLUDE AGRICULTURAL LAND**  
**IN THE ALLUVION URBAN RENEWAL AREA**

**LILLIS O'MALLEY OLSON MANNING POSE TEMPLEMAN LLP**

WILLIAM J. LILLIS  
MICHAEL W. O'MALLEY  
EUGENE E. OLSON  
DANIEL L. MANNING, SR.  
CHRISTOPHER R. POSE  
JOEL B. TEMPLEMAN\*  
BRIDGET O'MALLEY KAUTZKY  
DANIEL M. MANNING, JR.  
\*LICENSED IN IOWA & ILLINOIS

ATTORNEYS AT LAW  
(ESTABLISHED 1917)  
317 SIXTH AVENUE, SUITE 300  
DES MOINES, IOWA 50309-4127  
TELEPHONE (515) 243-8157  
FAX (515) 243-3919  
WWW.LILLISOMALLEY.COM

JOHN CONNOLLY, JR. (1891-1975)  
GEORGE E. O'MALLEY (1908-1982)  
JOHN CONNOLLY III (1918-1988)  
BERNARD J. CONNOLLY (1920-1970)  
C. I. MCNUITT (1901-1938)  
STREETAR CAMERON (1957-2008)

Writer's Direct Email Address: [dmanning@lolaw.com](mailto:dmanning@lolaw.com)

October 12, 2016

*Via Email Clyde.Evans@wdm.iowa.gov*

Clyde Evans  
Director of Community and  
Economic Development  
City of West Des Moines  
P. O. Box 65320  
4200 Mills Civic Parkway, Suite 2E  
West Des Moines, IA 50265-0320

RE: Amendment No. 2 to the City of West Des Moines' Alluvion Urban Renewal Plan

Dear Mr. Evans:

I am writing this letter to you to clarify that our clients, Britt Baker and Molly Baker, have provided you with a consent to allow a certain portion of their real property to be included in Amendment No. 2 to the Alluvion Urban Renewal Plan.

The consent that we had previously submitted to you inadvertently refers to a different Urban Renewal Plan known as the Osmium Urban Renewal Plan. The purpose of this letter is to clarify our clients' intent to have their property placed in the Alluvion Urban Renewal Plan not the Osmium Plan. Should you need any further clarification please advise.

Very truly yours,

  
Daniel L. Manning, Sr.  
For the Firm

DLM/dj

cc: Britt and Mollie Baker (via email)

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 21<sup>st</sup> day of September, 2016.

**Agricultural Land Owner's Name:**

Britt W. Baker

Signature: *Britt Baker*

Date: 9/29/16

Witness: *Patty Skk*

Mollie Baker

Signature: *Mollie Baker*

Date: 9/29/16

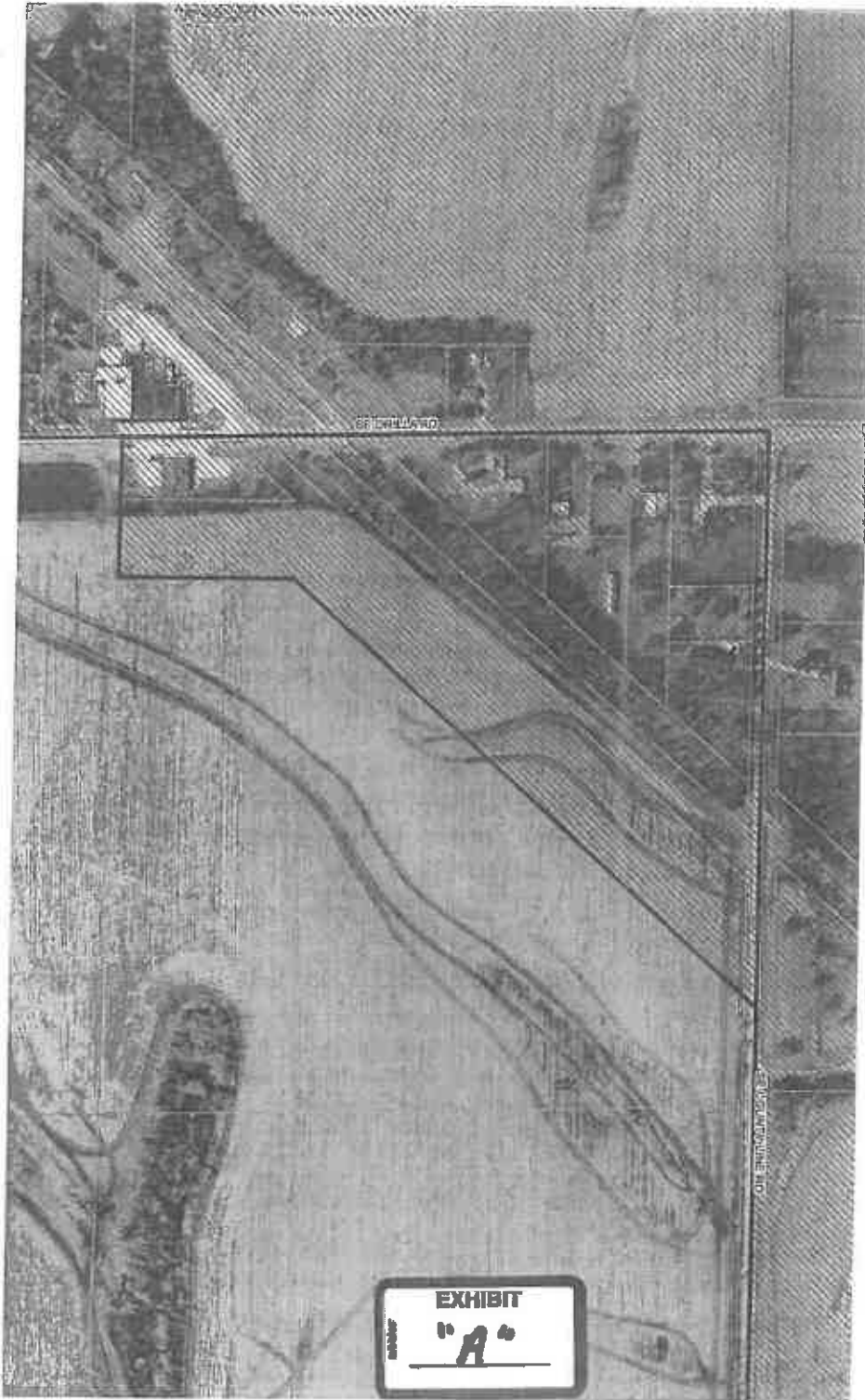
Witness: *Patty Skk*

Approved by the West Des Moines City Council on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

\_\_\_\_\_  
Parcels: (W) 91-64025030448



**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE ALLUVION URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Amendment No. 2 to the Alluvion Urban Renewal Plan ("Plan") for the Alluvion Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Amendment No. 2 to the Alluvion Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibits 1-P and 1-T) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 11 day of October, 2016.

Agricultural Land Owner's Name(s):

Kathy A. Book

Signature: Kathy A. Book

Date: 10-11-16

Witness: [Signature]

Approved by the West Des Moines City Council on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

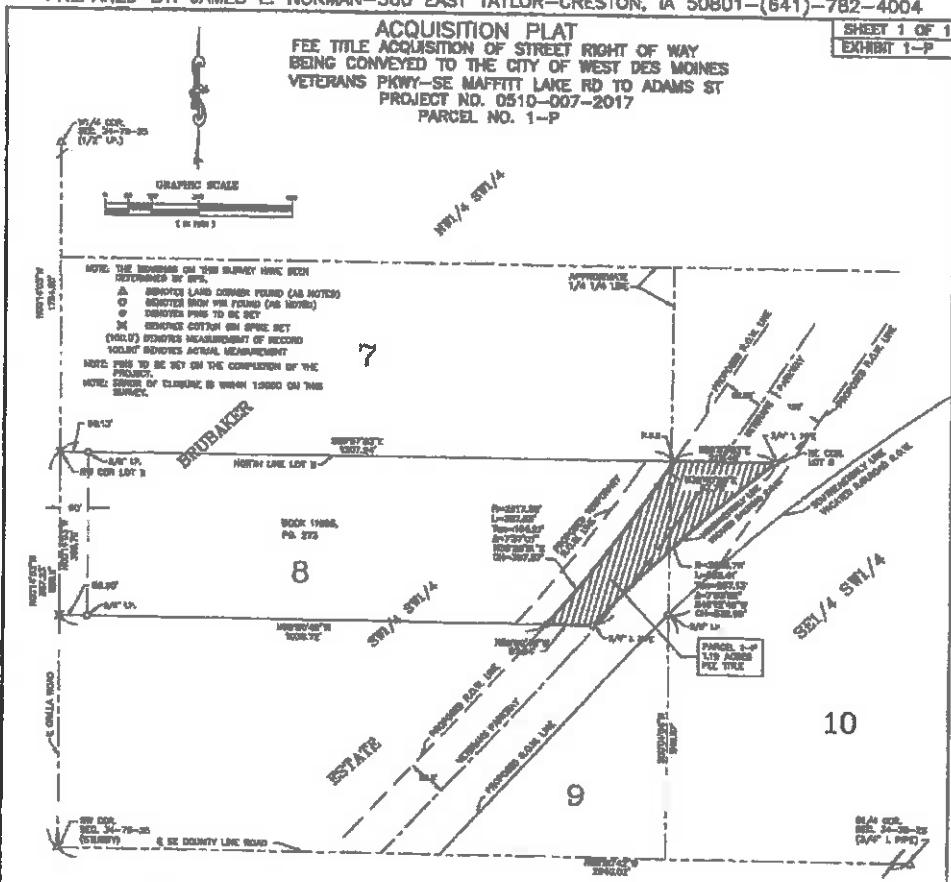
Attest: City Clerk

\_\_\_\_\_  
Parcels: 320/00681-508-002

PREPARED BY: JAMES E. NORMAN-500 EAST TAYLOR-CRESTON, IA 50801-(641)-782-4004

SHEET 1 OF 1  
EXHIBIT 1-P

**ACQUISITION PLAT**  
**FEE TITLE ACQUISITION OF STREET RIGHT OF WAY**  
**BEING CONVEYED TO THE CITY OF WEST DES MOINES**  
**VETERANS PKWY-SE MAFFITT LAKE RD TO ADAMS ST**  
**PROJECT NO. 0510-007-2017**  
**PARCEL NO. 1-P**



NOTE: THE CORNERS ON THIS SURVEY HAVE BEEN RE-ESTABLISHED BY GPS.  
 A) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 B) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 C) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 D) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 E) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 F) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 G) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 H) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 I) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 J) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 K) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 L) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 M) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 N) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 O) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 P) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 Q) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 R) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 S) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 T) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 U) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 V) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 W) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 X) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 Y) RE-ESTABLISHED CORNER FOUND (AS NOTED)  
 Z) RE-ESTABLISHED CORNER FOUND (AS NOTED)

**DESCRIPTION PARCEL 1-P:**  
 A PARCEL OF LAND LOCATED IN THAT PORTION OF LOT 8 OF DRUBAKER ESTATE DESCRIBED IN BOOK 11895 AT PAGE 273 IN THE RECORDS OF THE POLK COUNTY RECORDER IN THE SW1/4 OF THE SW1/4 OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 22 WEST OF THE 6TH P.M., IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS:  
 COMMENCING AT THE NW CORNER OF SAID LOT 8, THENCE S89°57'45"E ALONG THE NORTH LINE OF SAID LOT 8 A DISTANCE OF 1307.24' TO THE POINT OF BEGINNING, THENCE S89°57'45"E ALONG THE NORTH LINE OF SAID LOT 8 A DISTANCE OF 215.40' TO THE NE CORNER OF SAID LOT 8, THENCE SOUTHWESTERLY ALONG THE NORTHWESTERLY LINE OF THE VACATED RAILROAD RIGHT OF WAY RUNNING THROUGH SAID LOT 8 AND A 2000.70' RADIUS CURVE TO THE LEFT A DISTANCE OF 333.41', SAID CURVE HAVING A CHORD WHICH BEARS S49°12'45"W AND A LENGTH OF 532.08', THENCE N89°57'45"W A DISTANCE OF 87.64', THENCE NORTHEASTERLY ALONG A 2017.80' RADIUS CURVE TO THE LEFT A DISTANCE OF 307.05', SAID CURVE HAVING A CHORD WHICH BEARS N32°29'31"E AND A LENGTH OF 357.57', THENCE N32°40'20"E A DISTANCE OF 67.75' TO THE POINT OF BEGINNING, CONTAINING 1.19 ACRES SUBJECT TO ANY EASEMENTS OF RECORD.

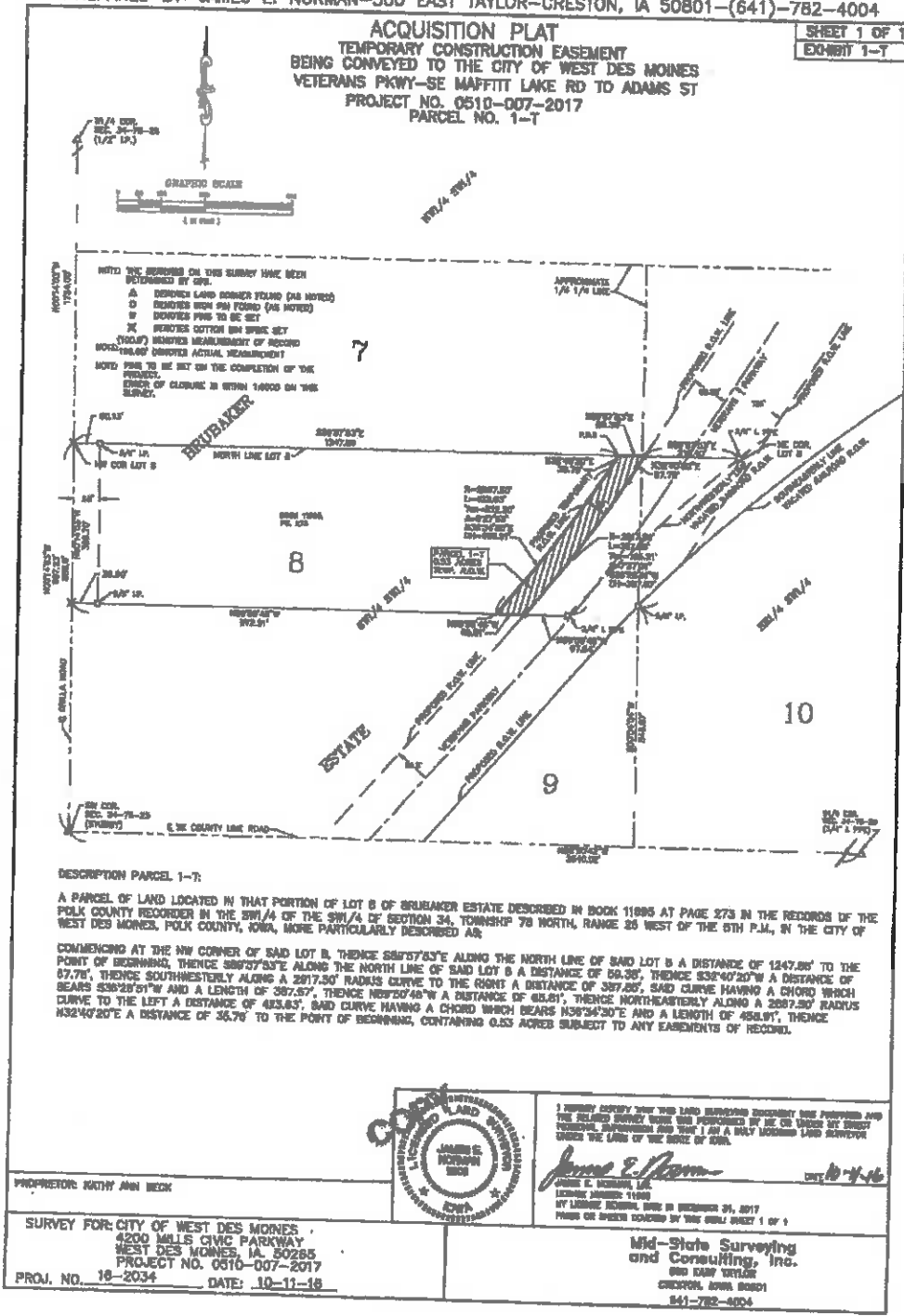


I HEREBY CERTIFY THAT THIS LAND ACQUISITION DOCUMENT WAS PREPARED AND THE RELATED SURVEY THEREON WAS PERFORMED BY ME OR UNDER MY SUPERVISION AND THAT I AM A FULLY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.  
 James E. Norman  
 JAMES E. NORMAN, L.S.  
 LICENSE NUMBER 11000  
 BY ELECTRONIC SIGNATURE DATE OF RECORDING 06/21/2017  
 CHECK OR CHECK NUMBER OF THIS SHEET 0001 OF 1

PROPRIETOR: WENDY ANN BECK  
 SURVEY FOR: CITY OF WEST DES MOINES  
 4200 MILLS CIVIC PARKWAY  
 WEST DES MOINES, IA 50285  
 PROJECT NO. 0510-007-2017  
 PROJ. NO. 16-2034 DATE: 10-11-18

Mid-State Surveying and Consulting, Inc.  
 500 EAST TAYLOR  
 CRESTON, IOWA 50801  
 641-782-4004

PREPARED BY: JAMES E. NORMAN-500 EAST TAYLOR-CRESTON, IA 50801-(641)-782-4004

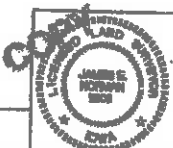


**ACQUISITION PLAT**  
 TEMPORARY CONSTRUCTION EASEMENT  
 BEING CONVEYED TO THE CITY OF WEST DES MOINES  
 VETERANS PKWY-SE MAFFITT LAKE RD TO ADAMS ST  
 PROJECT NO. 0510-007-2017  
 PARCEL NO. 1-T

SHEET 1 OF 1  
 EXHIBIT 1-T

NOTES:  
 1. ALL MONUMENTS ON THIS SURVEY HAVE BEEN DISTURBED BY ONE:  
 A. REMOVED LAND CORNER PILING (AS NOTED)  
 B. REMOVED IRON PIN FORD (AS NOTED)  
 C. REMOVED PINS TO BE SET  
 D. REMOVED COTTON PIN SPINE SET  
 E. REMOVED MEASUREMENTS OF RECORD  
 F. REMOVED 100.00' MONUMENT ACTUAL MEASUREMENT  
 MONUMENTS TO BE SET ON THE COMPLETION OF THE PROJECT.  
 CORNER OF CLASIFIC IS WITHIN 10000 ON THIS SURVEY.

**DESCRIPTION PARCEL 1-T:**  
 A PARCEL OF LAND LOCATED IN THAT PORTION OF LOT 8 OF BRUBAKER ESTATE DESCRIBED IN BOOK 11985 AT PAGE 273 IN THE RECORDS OF THE POLK COUNTY RECORDER IN THE SW1/4 OF THE SW1/4 OF SECTION 34, TOWNSHIP 78 NORTH, RANGE 28 WEST OF THE 6TH P.M., IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA, MORE PARTICULARLY DESCRIBED AS:  
 COMMENCING AT THE NW CORNER OF SAID LOT 8, THENCE S89°57'43"E ALONG THE NORTH LINE OF SAID LOT 8 A DISTANCE OF 1247.85' TO THE POINT OF BEGINNING, THENCE S89°57'43"E ALONG THE NORTH LINE OF SAID LOT 8 A DISTANCE OF 59.38', THENCE S32°40'20"W A DISTANCE OF 67.78', THENCE S36°28'51"W AND A LENGTH OF 397.57', THENCE N82°07'46"W A DISTANCE OF 93.61', THENCE NORTHEASTERLY ALONG A 2087.30' RADIUS CURVE TO THE LEFT A DISTANCE OF 483.63', SAID CURVE HAVING A CHORD WHICH BEARS N57°34'20"E AND A LENGTH OF 458.91', THENCE N32°40'20"E A DISTANCE OF 36.76' TO THE POINT OF BEGINNING, CONTAINING 0.53 ACRES SUBJECT TO ANY EASEMENTS OF RECORD.



I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.  
 James E. Norman  
 JAMES E. NORMAN, L.S.  
 LICENSE NUMBER 11985  
 BY LETTERS RECEIVED 2016 08 08  
 PLANS OR INSTRUMENTS DRAWN BY THIS SURVEYOR SHEET 1 OF 1

PROPRIETOR: KATHY ANN BECK  
 SURVEY FOR: CITY OF WEST DES MOINES  
 4200 MILLS CIVIC PARKWAY  
 WEST DES MOINES, IA 50265  
 PROJECT NO. 0510-007-2017  
 PROJ. NO. 18-2034 DATE: 10-11-18

Mid-State Surveying  
 and Consulting, Inc.  
 600 EAST TAYLOR  
 CRESTON, IOWA 50801  
 641-782-4004

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE ALLUVION URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Amendment No. 2 to the Alluvion Urban Renewal Plan ("Plan") for the Alluvion Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Amendment No. 2 to the Alluvion Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 10<sup>th</sup> day of August 2016.

Agricultural Land Owner's Name(s):

Hurd Windsor, LLC  
Hurd West Glen, LLC  
Hurd Real Estate Services, Inc.

Signature: 

Date: August 10, 2016

Witness:   
SARA MURRAIN

Approved by the West Des Moines City Council on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

\_\_\_\_\_  
Parcels: 320/03910-606-000 320/03910-607-000 320/00370-306-002 320/00370-703-007



**CERTIFICATION:**

**NOTE: ALL APPLICATIONS MUST HAVE SIGNATURE(S) OF THE CURRENT PROPERTY OWNER(S) OR INDIVIDUAL WITH THE PROPER POWER OF ATTORNEY, NOTARIZED BY A CERTIFIED NOTARY PUBLIC (attach if necessary)**

**Part A: Owner's Signature and Consent**

I/we, HURO MILLS LLC, being duly sworn, depose and say that I/we am/are the owner, owners, authorized representative for a corporate owner, person with power of attorney for the owner/owners, or a non residential tenant of said property. I/we personally swear and affirm that this application has been prepared in compliance with the requirements of the City of West Des Moines Municipal code as printed herein and that the statements and information above referred to are in all respects true and correct to the best of my/our knowledge and belief. Further, I/we hereby submit this development application for review and consideration by the City of West Des Moines, Iowa in compliance with the requirements of the City of West Des Moines Municipal Code.

I/we, HURO MILLS LLC, agree to grant the City permission to access said property for purposes of installing Public Notice sign(s) and completing the necessary on-site inspections, if applicable.

x [Signature] \_\_\_\_\_ Date 8/10/16  
Signature of Legal Property Owner

< EIN (Employer Identification Number) 26-3277580

State of: Iowa  
County of: Folk

The above signed applicant appeared before me and personally subscribed and sworn before me on this 11<sup>th</sup> day of August, 2016.  
My commission expires on the 30<sup>th</sup> day of September, 2016.

Signature of Notary Public: [Signature]



**Part B: Applicant's Signature and Consent**  
(Use only if the applicant is different from Property Owner)

I/we, \_\_\_\_\_ being duly sworn, depose and say that I/we hold legal interest in this property and do hereby submit this development application for review and consideration by the City of West Des Moines, Iowa in compliance with the requirements of the City of West Des Moines Municipal Code.

I/we, \_\_\_\_\_ agree to grant the City permission to access said property for purposes of installing Public Notice sign(s) and completing the necessary on-site inspections, if applicable.

\_\_\_\_\_  
Signature of Applicant Date

EIN (Employer Identification Number) \_\_\_\_\_

State of: \_\_\_\_\_  
County of: \_\_\_\_\_

The above signed applicant appeared before me and personally subscribed and sworn before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
My commission expires on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature of Notary Public: \_\_\_\_\_

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE ALLUVION URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Amendment No. 2 to the Alluvion Urban Renewal Plan ("Plan") for the Alluvion Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Amendment No. 2 to the Alluvion Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 12<sup>th</sup> day of October, 2016.

Agricultural Land Owner's Name(s):

Bernard R. Webb

Signature: Bernard R. Webb

Date: 10-12-16

Witness: Frankie D. Webb

Approved by the West Des Moines City Council on the \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

\_\_\_\_\_  
Parcels: 91-15000040262

CERTIFICATE

STATE OF IOWA )  
 ) SS  
COUNTIES OF POLK )

I, the undersigned City Clerk of the City of West Des Moines, State of Iowa, do hereby certify that attached is a true and complete copy of the portion of the corporate records of the City showing proceedings of the Council, and the same is a true and complete copy of the action taken by the Council with respect to the matter at the meeting held on the date indicated in the attachment, which proceedings remain in full force and effect, and have not been amended or rescinded in any way; that meeting and all action thereat was duly and publicly held in accordance with a notice of public hearing and tentative agenda, a copy of which was timely served on each member of the Council and posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the Council (a copy of the face sheet of the agenda being attached hereto) pursuant to the local rules of the Council and the provisions of Chapter 21, Code of Iowa, upon reasonable advance notice to the public and media at least twenty-four hours prior to the commencement of the meeting as required by law and with members of the public present in attendance; I further certify that the individuals named therein were on the date thereof duly and lawfully possessed of their respective city offices as indicated therein, that no vacancy existed except as may be stated in the proceedings, and that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization, existence or boundaries of the City or the right of the individuals named therein as officers to their respective positions.

WITNESS my hand and the seal of the Council hereto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
City Clerk, City of West Des Moines, State of Iowa

(SEAL)

## ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE PROVIDING THAT GENERAL PROPERTY TAXES LEVIED AND COLLECTED EACH YEAR ON CERTAIN PROPERTY LOCATED WITHIN THE ALLUVION URBAN RENEWAL AREA, IN THE CITY OF WEST DES MOINES, COUNTY OF POLK, STATE OF IOWA, BY AND FOR THE BENEFIT OF THE STATE OF IOWA, CITY OF WEST DES MOINES, COUNTY OF POLK, WEST DES MOINES COMMUNITY SCHOOL DISTRICT, AND OTHER TAXING DISTRICTS, BE PAID TO A SPECIAL FUND FOR PAYMENT OF PRINCIPAL AND INTEREST ON LOANS, MONIES ADVANCED TO AND INDEBTEDNESS, INCLUDING BONDS ISSUED OR TO BE ISSUED, INCURRED BY THE CITY IN CONNECTION WITH THE ALLUVION URBAN RENEWAL AREA (**WILLOW CREEK PLAT 1, LOT 4 PARCEL**)

WHEREAS, the City Council of the City of West Des Moines, State of Iowa, after public notice and hearing as prescribed by law and pursuant to Resolution No. 14-05-19-14 passed and approved on the 19th day of May, 2014, adopted an Urban Renewal Plan (the "Urban Renewal Plan") for an urban renewal area known as the Alluvion Urban Renewal Area (the "Urban Renewal Area"), and amended said Plan by Resolution No. 15-03-23-19 on March 23, 2015 ("Amendment No. 1") and Resolution No. \_\_\_\_\_ on November 14, 2016 ("Amendment No. 2"), which Urban Renewal Area, as amended, includes the lots and parcels located within the area legally described as follows ("**Willow Creek Plat 1, Lot 4 Parcel**"):

Lot 4 of Willow Creek Plat 1, an Official Plat, now included in and forming a part of the City of West Des Moines, Polk County, Iowa; and

WHEREAS, expenditures and indebtedness are anticipated to be incurred by the City of West Des Moines, State of Iowa, to finance urban renewal project activities carried out in furtherance of the objectives of the Urban Renewal Plan; and

WHEREAS, the City Council of the City of West Des Moines, State of Iowa, desires to provide for the division of revenue from taxation on the **Willow Creek Plat 1, Lot 4 Parcel** in the Urban Renewal Area, as above described, in accordance with the provisions of Section 403.19 of the Code of Iowa, as amended. [Note: The **Willow Creek Plat 1, Lot 4 Parcel** is the only portion of the Urban Renewal Area that will be included in this TIF Ordinance. The City has previously adopted separate ordinances which provide for the division of revenue with respect to other portions of the Urban Renewal Area. Nothing in this Ordinance shall amend the other ordinances nor shall this Ordinance impact the base value or division of revenue already established in the previously approved ordinances. The City anticipates that as other parcels develop (increase in value) in the future, the City will adopt additional, separate TIF ordinance(s) on other parcels/areas within the Urban Renewal Area. Therefore, the various TIF ordinances in this Urban Renewal Area will have different frozen bases and different expiration dates.]

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, STATE OF IOWA:

Section 1. That the taxes levied on the taxable property in the **Willow Creek Plat 1, Lot 4 Parcel** of the Urban Renewal Area legally described in the preamble hereof, by and for the benefit of the State of Iowa, City of West Des Moines, County of Polk, West Des Moines Community School District, and all other taxing districts from and after the effective date of this Ordinance shall be divided as hereinafter in this Ordinance provided.

Section 2. That portion of the taxes which would be produced by the rate at which the tax is levied each year by or for each of the taxing districts upon the total sum of the assessed value of the taxable property in the **Willow Creek Plat 1, Lot 4 Parcel** of the Urban Renewal Area, as shown on the assessment roll as of January 1 of the calendar year preceding the first calendar year in which the City of West Des Moines, State of Iowa, certifies to the Auditor of Polk County, Iowa the amount of loans, advances, indebtedness, or bonds payable from the division of property tax revenue described herein, shall be allocated to and when collected be paid into the fund for the respective taxing district as taxes by or for the taxing district into which all other property taxes are paid.

Section 3. That portion of the taxes each year in excess of the base period taxes determined as provided in Section 2 of this Ordinance shall be allocated to and when collected be paid into a special tax increment fund of the City of West Des Moines, State of Iowa, hereby established, to pay the principal of and interest on loans, monies advanced to, indebtedness, whether funded, refunded, assumed or otherwise, including bonds or obligations issued under the authority of Section 403.9 or 403.12 of the Code of Iowa, as amended, incurred by the City of West Des Moines, State of Iowa, to finance or refinance, in whole or in part, urban renewal projects undertaken anywhere within the Urban Renewal Area pursuant to the Urban Renewal Plan, except that (i) taxes for the regular and voter-approved physical plant and equipment levy of a school district imposed pursuant to Iowa Code Section 298.2 and taxes for the instructional support program of a school district imposed pursuant to Iowa Code Section 257.19 (but in each case only to the extent required under Iowa Code Section 403.19(2)); (ii) taxes for the payment of bonds and interest of each taxing district; (iii) taxes imposed under Iowa Code Section 346.27(22) related to joint county-city buildings; and (iv) any other exceptions under Iowa Code Section 403.19 shall be collected against all taxable property within the **Willow Creek Plat 1, Lot 4 Parcel** of the Urban Renewal Area without any limitation as hereinabove provided.

Section 4. Unless or until the total assessed valuation of the taxable property in the **Willow Creek Plat 1, Lot 4 Parcel** of the Urban Renewal Area exceeds the total assessed value of the taxable property in the **Willow Creek Plat 1, Lot 4 Parcel** of the Urban Renewal Area as shown by the assessment roll referred to in Section 2 of this Ordinance, all of the taxes levied and collected upon the taxable property in the **Willow Creek Plat 1, Lot 4 Parcel** of the Urban Renewal Area shall be paid into the funds for the respective taxing districts as taxes by or for the taxing districts in the same manner as all other property taxes.

Section 5. At such time as the loans, advances, indebtedness, bonds and interest thereon of the City of West Des Moines, State of Iowa, referred to in Section 3 hereof have been paid, all

monies thereafter received from taxes upon the taxable property in the **Willow Creek Plat 1, Lot 4 Parcel** of the Urban Renewal Area shall be paid into the funds for the respective taxing districts in the same manner as taxes on all other property.

Section 6. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed. The provisions of this Ordinance are intended and shall be construed so as to fully implement the provisions of Section 403.19 of the Code of Iowa, as amended, with respect to the division of taxes from property within the **Willow Creek Plat 1, Lot 4 Parcel** of the Urban Renewal Area as described above. In the event that any provision of this Ordinance shall be determined to be contrary to law, it shall not affect other provisions or application of this Ordinance which shall at all times be construed to fully invoke the provisions of Section 403.19 of the Code of Iowa with reference to the **Willow Creek Plat 1, Lot 4 Parcel** of the Urban Renewal Area and the territory contained therein.

Section 7. This Ordinance shall be in effect after its final passage, approval and publication as provided by law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

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

Read First Time: \_\_\_\_\_, 2016

Read Second Time: \_\_\_\_\_, 2016

Read Third Time: \_\_\_\_\_, 2016

PASSED AND APPROVED: \_\_\_\_\_, 2016.

I, \_\_\_\_\_, City Clerk of the City of West Des Moines, State of Iowa, hereby certify that the above and foregoing is a true copy of Ordinance No. \_\_\_\_\_ passed and approved by the City Council of the City at a meeting held \_\_\_\_\_, 2016, signed by the Mayor on \_\_\_\_\_, 2016, and published in the Des Moines Register on \_\_\_\_\_, 2016.

\_\_\_\_\_  
City Clerk, City of West Des Moines, State of  
Iowa

(SEAL)

01297389-1\11333-293

## ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE PROVIDING THAT GENERAL PROPERTY TAXES LEVIED AND COLLECTED EACH YEAR ON CERTAIN PROPERTY LOCATED WITHIN THE ALLUVION URBAN RENEWAL AREA, IN THE CITY OF WEST DES MOINES, COUNTY OF POLK, STATE OF IOWA, BY AND FOR THE BENEFIT OF THE STATE OF IOWA, CITY OF WEST DES MOINES, COUNTY OF POLK, WEST DES MOINES COMMUNITY SCHOOL DISTRICT, AND OTHER TAXING DISTRICTS, BE PAID TO A SPECIAL FUND FOR PAYMENT OF PRINCIPAL AND INTEREST ON LOANS, MONIES ADVANCED TO AND INDEBTEDNESS, INCLUDING BONDS ISSUED OR TO BE ISSUED, INCURRED BY THE CITY IN CONNECTION WITH THE ALLUVION URBAN RENEWAL AREA (**TRACT 3 OF AMENMDENT NO. 2 PARCEL**)

WHEREAS, the City Council of the City of West Des Moines, State of Iowa, after public notice and hearing as prescribed by law and pursuant to Resolution No. 14-05-19-14 passed and approved on the 19th day of May, 2014, adopted an Urban Renewal Plan (the "Urban Renewal Plan") for an urban renewal area known as the Alluvion Urban Renewal Area (the "Urban Renewal Area"), and amended said Plan by Resolution No. 15-03-23-19 on March 23, 2015 ("Amendment No. 1") and Resolution No. \_\_\_\_\_ on November 14, 2016 ("Amendment No. 2"), which Urban Renewal Area, as amended, includes the lots and parcels located within the area legally described as follows ("**Tract 3 of Amendment No. 2 Parcel**");

## TRACT 3

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 27, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, POLK COUNTY, IOWA;

THENCE NORTH, ALONG THE EAST LINE OF SAID SECTION 27, TO THE NORTH RIGHT OF WAY LINE OF SE WILLOW CREEK DRIVE, SAID POINT BEING THE POINT OF BEGINNING;

THENCE WEST, ALONG THE NORTH RIGHT OF WAY LINE AND RIGHT OF WAY LINE EXTENDED OF SE WILLOW CREEK DRIVE ROAD (FORMERLY ARMY POST ROAD), TO THE EAST RIGHT OF WAY LINE OF FORMER SE 11<sup>TH</sup> STREET, SAID POINT BEING ON THE EAST LINE OF AMENDMENT NUMBER 1 OF THE ALLUVION URBAN RENEWAL PLAN;

THENCE NORTH, ALONG THE EAST RIGHT OF WAY LINE EXTENDED AND THE EAST RIGHT OF WAY LINE OF FORMER SE



11<sup>TH</sup> STREET, SAID LINE BEING ON THE EAST LINE OF AMENDMENT NUMBER 1 OF THE ALLUVION URBAN RENEWAL PLAN, TO A POINT 325 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 27, SAID POINT BEING ON THE EAST LINE OF AMENDMENT NUMBER 1 OF THE ALLUVION URBAN RENEWAL PLAN;

THENCE NORTH 89°33'31" EAST (ASSUMED BEARING), SAID LINE BEING ON THE SOUTH LINE OF AMENDMENT NUMBER 1 OF THE ALLUVION URBAN RENEWAL PLAN, A DISTANCE OF 400 FEET;

THENCE NORTH 00°00'00" WEST, SAID LINE BEING ON THE EAST LINE OF AMENDMENT NUMBER 1 OF THE ALLUVION URBAN RENEWAL PLAN, TO THE NORTHWESTERLY RIGHT OF WAY LINE OF VETERANS PARKWAY;

THENCE NORTHEASTERLY, ALONG THE NORTHWESTERLY RIGHT OF WAY LINE OF VETERANS PARKWAY, TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE EAST, ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 26, TO THE NORTHWEST CORNER OF PLEASANT RIDGE HEIGHTS, AN OFFICIAL SUBDIVISION NOW IN AND FORMING A PART OF THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA;

THENCE EAST, ALONG THE NORTH LINE OF SAID PLEASANT RIDGE HEIGHTS, TO THE NORTHEAST CORNER OF LOT 6 OF SAID PLEASANT RIDGE HEIGHTS;

THENCE SOUTH, ALONG THE EAST LINE OF LOT 6 OF SAID PLEASANT RIDGE HEIGHTS, TO THE NORTH RIGHT OF WAY LINE OF SE WILLOW CREEK DRIVE;

THENCE WEST, ALONG THE NORTH RIGHT OF WAY LINE OF SE WILLOW CREEK DRIVE, TO THE POINT OF BEGINNING; and

WHEREAS, expenditures and indebtedness are anticipated to be incurred by the City of West Des Moines, State of Iowa, to finance urban renewal project activities carried out in furtherance of the objectives of the Urban Renewal Plan; and

WHEREAS, the City Council of the City of West Des Moines, State of Iowa, desires to provide for the division of revenue from taxation on the **Tract 3 of Amendment No. 2 Parcel** in the Urban Renewal Area, as above described, in accordance with the provisions of Section

403.19 of the Code of Iowa, as amended. [Note: The **Tract 3 of Amendment No. 2 Parcel** is the only portion of the Urban Renewal Area that will be included in this TIF Ordinance. The City has previously adopted separate ordinances which provide for the division of revenue with respect to other portions of the Urban Renewal Area. Nothing in this Ordinance shall amend the other ordinances nor shall this Ordinance impact the base value or division of revenue already established in the previously approved ordinances. The City anticipates that as other parcels develop (increase in value) in the future, the City will adopt additional, separate TIF ordinance(s) on other parcels/areas within the Urban Renewal Area. Therefore, the various TIF ordinances in this Urban Renewal Area will have different frozen bases and different expiration dates.]

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, STATE OF IOWA:

Section 1. That the taxes levied on the taxable property in the **Tract 3 of Amendment No. 2 Parcel** of the Urban Renewal Area legally described in the preamble hereof, by and for the benefit of the State of Iowa, City of West Des Moines, County of Polk, West Des Moines Community School District, and all other taxing districts from and after the effective date of this Ordinance shall be divided as hereinafter in this Ordinance provided.

Section 2. That portion of the taxes which would be produced by the rate at which the tax is levied each year by or for each of the taxing districts upon the total sum of the assessed value of the taxable property in the **Tract 3 of Amendment No. 2 Parcel** of the Urban Renewal Area, as shown on the assessment roll as of January 1 of the calendar year preceding the first calendar year in which the City of West Des Moines, State of Iowa, certifies to the Auditor of Polk County, Iowa the amount of loans, advances, indebtedness, or bonds payable from the division of property tax revenue described herein, shall be allocated to and when collected be paid into the fund for the respective taxing district as taxes by or for the taxing district into which all other property taxes are paid.

Section 3. That portion of the taxes each year in excess of the base period taxes determined as provided in Section 2 of this Ordinance shall be allocated to and when collected be paid into a special tax increment fund of the City of West Des Moines, State of Iowa, hereby established, to pay the principal of and interest on loans, monies advanced to, indebtedness, whether funded, refunded, assumed or otherwise, including bonds or obligations issued under the authority of Section 403.9 or 403.12 of the Code of Iowa, as amended, incurred by the City of West Des Moines, State of Iowa, to finance or refinance, in whole or in part, urban renewal projects undertaken anywhere within the Urban Renewal Area pursuant to the Urban Renewal Plan, except that (i) taxes for the regular and voter-approved physical plant and equipment levy of a school district imposed pursuant to Iowa Code Section 298.2 and taxes for the instructional support program of a school district imposed pursuant to Iowa Code Section 257.19 (but in each case only to the extent required under Iowa Code Section 403.19(2)); (ii) taxes for the payment of bonds and interest of each taxing district; (iii) taxes imposed under Iowa Code Section 346.27(22) related to joint county-city buildings; and (iv) any other exceptions under Iowa Code Section 403.19 shall be collected against all taxable property within the **Tract 3 of Amendment No. 2 Parcel** of the Urban Renewal Area without any limitation as hereinabove provided.

Section 4. Unless or until the total assessed valuation of the taxable property in the **Tract 3 of Amendment No. 2 Parcel** of the Urban Renewal Area exceeds the total assessed value of the taxable property in the **Tract 3 of Amendment No. 2 Parcel** of the Urban Renewal Area as shown by the assessment roll referred to in Section 2 of this Ordinance, all of the taxes levied and collected upon the taxable property in the **Tract 3 of Amendment No. 2 Parcel** of the Urban Renewal Area shall be paid into the funds for the respective taxing districts as taxes by or for the taxing districts in the same manner as all other property taxes.

Section 5. At such time as the loans, advances, indebtedness, bonds and interest thereon of the City of West Des Moines, State of Iowa, referred to in Section 3 hereof have been paid, all monies thereafter received from taxes upon the taxable property in the **Tract 3 of Amendment No. 2 Parcel** of the Urban Renewal Area shall be paid into the funds for the respective taxing districts in the same manner as taxes on all other property.

Section 6. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed. The provisions of this Ordinance are intended and shall be construed so as to fully implement the provisions of Section 403.19 of the Code of Iowa, as amended, with respect to the division of taxes from property within the **Tract 3 of Amendment No. 2 Parcel** of the Urban Renewal Area as described above. In the event that any provision of this Ordinance shall be determined to be contrary to law, it shall not affect other provisions or application of this Ordinance which shall at all times be construed to fully invoke the provisions of Section 403.19 of the Code of Iowa with reference to the **Tract 3 of Amendment No. 2 Parcel** of the Urban Renewal Area and the territory contained therein.

Section 7. This Ordinance shall be in effect after its final passage, approval and publication as provided by law.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

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

Read First Time: \_\_\_\_\_, 2016

Read Second Time: \_\_\_\_\_, 2016

Read Third Time: \_\_\_\_\_, 2016

PASSED AND APPROVED: \_\_\_\_\_, 2016.

I, \_\_\_\_\_, City Clerk of the City of West Des Moines, State of Iowa, hereby certify that the above and foregoing is a true copy of Ordinance No. \_\_\_\_\_ passed and approved by the City Council of the City at a meeting held \_\_\_\_\_, 2016, signed by the Mayor on \_\_\_\_\_, 2016, and published in the Des Moines Register on \_\_\_\_\_, 2016.

\_\_\_\_\_  
City Clerk, City of West Des Moines, State of  
Iowa

(SEAL)

01297391-1\11333-293

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**ITEM:** Osmium Urban Renewal Area - City Initiated      **DATE:** November 14, 2016

**RESOLUTION:** Approval of the Resolution adopting the boundary of the urban renewal area and plan

**FINANCIAL IMPACT:** The City anticipates spending approximately \$94-122 million which will include construction of public improvements, primarily Veterans Parkway, Grand Prairie Parkway, Adams Street, SE 50<sup>th</sup> Street, SW 60<sup>th</sup> Street, sanitary sewer lines, water lines; and an economic development grant.

**BACKGROUND:** Staff has initiated the process to create the Osmium Urban Renewal Plan (URP). The Osmium URP is being created to support the Microsoft Osmium data center project. The plan incorporates infrastructure projects that are directly related to the Microsoft project. The Area does not have a frozen base value.

The project boundaries includes land area that is presently unincorporated Warren County and Madison County. Both counties have signed-off on the inclusion of those areas. An October 17, 2016, a consultation meeting was established by the City Council and there was only one person in attendance besides City staff, and they were from the Winterset Community School District, and they had no comments. Staff has not received any comments following the consultation meeting. Only tax increment revenues generated from the Microsoft project will be included within the Osmium Tax Increment Financing District.

The Plan and Zoning Commission found the Osmium Urban Renewal Plan consistent with the Comprehensive Plan at their November 7, 2016 meeting.

**OUTSTANDING ISSUES:** There are no outstanding issues regarding this proposed amendment.

**RECOMMENDATION:** Staff recommends the approval of the Resolution creating the plan and the boundaries of the urban renewal area.

Lead Staff Member: Clyde E. Evans, AICP

**STAFF REVIEWS**

Department Director	Clyde Evans, Community and Economic Development Department
Appropriations/Finance	Tim Stiles, Director of Finance
Legal	
Agenda Acceptance	

**PUBLICATION(S) (if applicable)**

Published In	DM Register
Date(s) Published	November 4, 2016
Letter sent to surrounding property owners	NA

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	
Date Reviewed	
Recommendation	Yes <input type="checkbox"/> No <input type="checkbox"/> Split <input type="checkbox"/>

**ATTACHMENTS:**

- Exhibit I - Osmium Urban Renewal Plan
- Exhibit II - Resolution
- Exhibit III Commission resolution of Comprehensive Plan consistency

RESOLUTION NO. \_\_\_\_\_

RESOLUTION DETERMINING AN AREA OF THE CITY TO BE AN ECONOMIC DEVELOPMENT AREA, AND THAT THE REHABILITATION, CONSERVATION, REDEVELOPMENT, DEVELOPMENT, OR A COMBINATION THEREOF, OF SUCH AREA IS NECESSARY IN THE INTEREST OF THE PUBLIC HEALTH, SAFETY OR WELFARE OF THE RESIDENTS OF THE CITY; DESIGNATING SUCH AREA AS APPROPRIATE FOR URBAN RENEWAL PROJECTS; AND ADOPTING THE OSMIUM URBAN RENEWAL PLAN

WHEREAS, this Council has reasonable cause to believe that the area described below satisfies the eligibility criteria for designation as an urban renewal area under Iowa law; and

WHEREAS, a proposed Osmium Urban Renewal Plan ("Plan" or "Urban Renewal Plan") for the Osmium Urban Renewal Area described below has been prepared, which proposed Plan has been on file in the office of the City Clerk and which is incorporated herein by reference; and

WHEREAS, this proposed Osmium Urban Renewal Area includes and consists of:

A TRACT OF LAND IN DALLAS, MADISON, POLK AND WARREN COUNTIES, IOWA IS INCLUDED IN THE OSMIUM URBAN RENEWAL PLAN AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

DALLAS COUNTY

A TRACT OF LAND IN SECTIONS 23, 26, 27, 28, 33 AND 34 IN TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF WEST DES MOINES AND DALLAS COUNTY, IOWA , IS INCLUDED IN THE OSMIUM URBAN RENEWAL PLAN AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, DALLAS COUNTY, IOWA;

THENCE NORTH, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 28, TO THE NORTH RIGHT OF WAY LINE OF THE IOWA INTERSTATE RAILROAD COMPANY;

THENCE EAST, ALONG THE NORTH RIGHT OF WAY LINE OF THE IOWA INTERSTATE RAILROAD COMPANY, TO THE WEST LINE OF

SECTION 26, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, DALLAS COUNTY IOWA;

THENCE NORTH, ALONG THE WEST LINE OF SAID SECTION 26, A DISTANCE OF 61.81 FEET;

THENCE SOUTH  $83^{\circ}53'23''$  WEST (ASSUMED BEARING), A DISTANCE OF 493.70 FEET;

THENCE NORTH  $00^{\circ}42'13''$  EAST (ASSUMED BEARING), A DISTANCE OF 1,593.01 FEET,

THENCE NORTH  $89^{\circ}59'09''$  EAST (ASSUMED BEARING, A DISTANCE OF 1,763.44 FEET;

THENCE SOUTH  $86^{\circ}12'46''$  EAST (ASSUMED BEARING), A DISTANCE OF 112.82 FEET;

THENCE NORTH  $88^{\circ}58'59''$  EAST (ASSUMED BEARING), A DISTANCE OF 2.03 FEET;

THENCE SOUTH  $00^{\circ}02'55''$  EAST (ASSUMED BEARING), A DISTANCE OF 1,255.46 FEET, TO THE NORTH RIGHT OF WAY LINE OF THE INTERSTATE RAILROAD;

THENCE SOUTH  $00^{\circ}02'55''$  EAST (ASSUMED BEARING), TO THE SOUTH RIGHT OF WAY LINE OF RACCOON RIVER DRIVE;

THENCE WEST, ALONG THE SOUTH RIGHT OF WAY LINE OF RACCOON RIVER DRIVE, TO THE EAST LINE OF SECTION 28, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, DALLAS COUNTY, IOWA;

THENCE SOUTH, ALONG THE EAST LINE OF SAID SECTION 28, TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28;

THENCE SOUTH  $83^{\circ}41'06''$  WEST (ASSUMED BEARING), ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 637.97 FEET;

THENCE SOUTH  $00^{\circ}05'24''$  EAST (ASSUMED BEARING), A DISTANCE OF 974.65 FEET, TO A POINT OF CURVATURE;

THENCE SOUTHEASTERLY, ALONG A 2,350.00 RADIUS CURVE CONCAVE NORTHEASTERLY, A DISTANCE OF 307.59 FEET;

THENCE SOUTH 07<sup>0</sup>35'22" EAST (ASSUMED BEARING), A DISTANCE OF 215.67 FEET;

THENCE NORTH 82<sup>0</sup>24'38" EAST (ASSUMED BEARING), A DISTANCE OF 35.00 FEET;

THENCE SOUTH 10<sup>0</sup>44'59" EAST (ASSUMED BEARING), A DISTANCE OF 816.24 FEET;

THENCE SOUTH 83<sup>0</sup>52'57" EAST (ASSUMED BEARING), A DISTANCE OF 211.01 FEET;

THENCE SOUTH 62<sup>0</sup>01'19" EAST (ASSUMED BEARING), A DISTANCE OF 453.81 FEET;

THENCE SOUTH 61<sup>0</sup>10'39" WEST (ASSUMED BEARING), A DISTANCE OF 637.41 FEET;

THENCE SOUTH 09<sup>0</sup>28'41" WEST (ASSUMED BEARING), A DISTANCE OF 157.96 FEET;

THENCE SOUTH 19<sup>0</sup>58'52" EAST (ASSUMED BEARING), A DISTANCE OF 191.49 FEET;

THENCE SOUTH 38<sup>0</sup>52'19" EAST (ASSUMED BEARING), A DISTANCE OF 157.01 FEET;

THENCE SOUTH 02<sup>0</sup>57'50" EAST (ASSUMED BEARING), A DISTANCE OF 118.81 FEET;

THENCE SOUTH 80<sup>0</sup>57'51" EAST (ASSUMED BEARING), A DISTANCE OF 205.82 FEET;

THENCE SOUTH 59<sup>0</sup>53'57" EAST (ASSUMED BEARING), A DISTANCE OF 202.91 FEET;

THENCE SOUTH 50<sup>0</sup>10'56" EAST (ASSUMED BEARING), A DISTANCE OF 740.00 FEET;

THENCE SOUTH 20<sup>0</sup>06'49" EAST (ASSUMED BEARING), A DISTANCE OF 219.54 FEET;

THENCE SOUTH 74<sup>0</sup>57'26" EAST (ASSUMED BEARING), A DISTANCE OF 71.59 FEET;



THENCE SOUTH 50°10'56" EAST (ASSUMED BEARING), A DISTANCE OF 60.00 FEET;

THENCE SOUTH 26°13'11" EAST (ASSUMED BEARING), A DISTANCE OF 49.24 FEET;

THENCE SOUTH 67°42'28" EAST (ASSUMED BEARING), A DISTANCE OF 99.62 FEET;

THENCE SOUTH 60°36'58" EAST (ASSUMED BEARING), A DISTANCE OF 105.32 FEET;

THENCE SOUTH 49°47'31" EAST (ASSUMED BEARING), A DISTANCE OF 127.77 FEET;

THENCE SOUTH 17°37'05" EAST (ASSUMED BEARING), A DISTANCE OF 178.50 FEET;

THENCE SOUTH 33°50'14" WEST (ASSUMED BEARING), A DISTANCE OF 16.07 FEET;

THENCE SOUTH 22°29'24" EAST (ASSUMED BEARING), A DISTANCE OF 267.14 FEET;

THENCE SOUTH 17°24'32" EAST (ASSUMED BEARING), A DISTANCE OF 83.06 FEET;

THENCE SOUTH 14°27'34" EAST (ASSUMED BEARING), A DISTANCE OF 19.61 FEET;

THENCE NORTH 83°46'32" EAST (ASSUMED BEARING), A DISTANCE OF 104.30 FEET;

THENCE SOUTH 19°13'23" EAST (ASSUMED BEARING), A DISTANCE OF 986.91 FEET;

THENCE SOUTH 70°46'37" WEST (ASSUMED BEARING), A DISTANCE OF 75.00 FEET;

THENCE SOUTH 19°13'23" EAST (ASSUMED BEARING), TO A POINT LOCATED 75 FEET NORTH OF THE SOUTH LINE OF SECTION 34; TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, DALLAS COUNTY, IOWA;

THENCE EAST, ALONG A LINE 75 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SECTION 34, TO THE EAST LINE OF THE

SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 34;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 34, TO THE SOUTH LINE OF SAID SECTION 34;

THENCE WEST, ALONG THE SOUTH LINE OF SAID SECTION 34, TO THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 34;

THENCE NORTH, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION, A DISTANCE OF 75.34 FEET;

THENCE EAST, ALONG A LINE 75 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SECTION 34, A DISTANCE OF 685.52;

THENCE NORTH  $19^{\circ}13'23''$  WEST (ASSUMED BEARING), A DISTANCE OF 1,531.39 FEET;

THENCE SOUTH  $70^{\circ}46'37''$  WEST (ASSUMED BEARING), A DISTANCE OF 75.00 FEET;

THENCE NORTH  $19^{\circ}13'23''$  WEST (ASSUMED BEARING), A DISTANCE OF 1,036.61 FEET;

THENCE NORTHWESTERLY, ALONG A 875.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY, WITH A CHORD BEARING OF NORTH  $21^{\circ}00'39''$  WEST (ASSUMED BEARING), A DISTANCE OF 54.60 FEET TO A POINT OF NON-TANGENCY;

THENCE NORTH  $83^{\circ}46'32''$  EAST (ASSUMED BEARING), A DISTANCE OF 103.31 FEET;

THENCE NORTH  $16^{\circ}55'44''$  WEST (ASSUMED BEARING), A DISTANCE OF 142.73 FEET;

THENCE NORTH  $43^{\circ}37'42''$  WEST (ASSUMED BEARING), A DISTANCE OF 290.02 FEET;

THENCE NORTH  $64^{\circ}18'42''$  WEST (ASSUMED BEARING), A DISTANCE OF 115.51 FEET;

THENCE NORTH  $38^{\circ}34'18''$  EAST (ASSUMED BEARING), A DISTANCE OF 60.52 FEET;

THENCE NORTH 50°10'56" WEST (ASSUMED BEARING), A DISTANCE OF 477.28 FEET;

THENCE NORTH 71°59'01" WEST (ASSUMED BEARING), A DISTANCE OF 80.78 FEET;

THENCE NORTH 28°55'54" WEST (ASSUMED BEARING), A DISTANCE OF 96.57 FEET;

THENCE NORTH 54°34'51" WEST (ASSUMED BEARING), A DISTANCE OF 586.73 FEET;

THENCE NORTH 41°54'05" WEST (ASSUMED BEARING), A DISTANCE OF 452.06 FEET;

THENCE NORTH 83°51'35" WEST (ASSUMED BEARING), A DISTANCE OF 40.93 FEET, TO A POINT OF NON-TANGENCY ON A CURVE;

THENCE NORTHWESTERLY, ALONG A 1,240.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, WITH A CHORD BEARING OF NORTH 21°49'51" WEST (ASSUMED BEARING), A DISTANCE OF 616.42 FEET;

THENCE NORTH 07°35'22" WEST (ASSUMED BEARING), A DISTANCE OF 38.17 FEET;

THENCE SOUTH 62°34'47" WEST (ASSUMED BEARING), A DISTANCE OF 327.71 FEET;

THENCE NORTH 36°04'17" WEST (ASSUMED BEARING), A DISTANCE OF 15.71 FEET;

THENCE NORTH 26°00'56" WEST (ASSUMED BEARING), A DISTANCE OF 424.67 FEET;

THENCE NORTH 48°05'06" EAST (ASSUMED BEARING), A DISTANCE OF 460.13 FEET;

THENCE NORTH 07°35'22" WEST (ASSUMED BEARING), A DISTANCE OF 70.00 FEET;

THENCE NORTH 82°24'38" EAST (ASSUMED BEARING), A DISTANCE OF 85.00 FEET;

THENCE NORTH 07°35'22" WEST (ASSUMED BEARING), A DISTANCE OF 1,104.40 FEET;

THENCE NORTH 00°05'24" WEST (ASSUMED BEARING), TO THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 28;

THENCE WEST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 28, TO THE POINT OF BEGINNING;

MADISON COUNTY

A TRACT OF LAND IN SECTIONS 1, 2, 3 AND 12 IN TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF WEST DES MOINES AND MADISON COUNTY, IOWA, IS INCLUDED IN THE OSMIUM URBAN RENEWAL PLAN AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA;

THENCE WEST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 12, A DISTANCE OF 700 FEET;

THENCE NORTH, ALONG A LINE 700 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 12, TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 12;

THENCE WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 12, TO THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 12;

THENCE WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 12, A DISTANCE OF 175 FEET;

THENCE NORTH, ALONG A LINE 175 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 12, TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF

SECTION 1, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE NORTH, ALONG A LINE 175 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, TO A POINT 350 FEET SOUTH OF THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1;

THENCE WEST, ALONG A LINE 350 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1;

THENCE NORTH, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 25 FEET;

THENCE WEST, ALONG A LINE 325 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1;

THENCE NORTH, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 50 FEET;

THENCE WEST, ALONG A LINE 275 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO A POINT 75 FEET EAST OF THE WEST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1;

THENCE SOUTH, ALONG A LINE 75 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 225 FEET;

THENCE WEST, ALONG A LINE 500 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA;

THENCE WEST, ALONG A LINE 500 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2, A DISTANCE OF 75 FEET;

THENCE NORTH, ALONG A LINE 75 FEET EAST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2, TO A POINT 275 FEET SOUTH OF THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2;

THENCE WEST, ALONG A LINE 275 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2, TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2,

THENCE WEST, ALONG A LINE 275 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2, TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 325 FEET;

THENCE WEST, ALONG A LINE 600 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2; TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 100 FEET;

THENCE WEST, ALONG A LINE 700 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA;

THENCE NORTH, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 100 FEET;

THENCE WEST, ALONG A LINE 600 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3, TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3;

THENCE NORTH, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 350 FEET;

THENCE WEST, ALONG A LINE 250 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3, TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3;

THENCE WEST, ALONG A LINE 250 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3, A DISTANCE OF 200 FEET;

THENCE NORTH, ALONG A LINE 200 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3, TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3;

THENCE NORTH, ALONG A LINE 200 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3, TO THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

THENCE NORTH, ALONG A LINE 200 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3, TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

THENCE WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3, A DISTANCE OF 350 FEET;

THENCE NORTH, ALONG A LINE 550 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHEAST QUARTER OF THE

NORTHWEST QUARTER OF SAID SECTION 3, TO A POINT 175 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 3;

THENCE WEST, ALONG A LINE 175 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID SECTION 3, TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

THENCE NORTH, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3, TO THE NORTH LINE OF SAID SECTION 3;

THENCE EAST, ALONG THE NORTH LINE OF SAID SECTION 3, TO A POINT 200 FEET EAST OF THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 3;

THENCE SOUTH, ALONG A LINE 200 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 3, TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 3;

THENCE EAST, ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 100 FEET;

THENCE SOUTH, ALONG A LINE 300 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 3, TO THE NORTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3;

THENCE SOUTH, ALONG A LINE 300 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3, TO A POINT 250 FEET NORTH OF THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3;

THENCE EAST, ALONG A LINE 250 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3, TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3;

THENCE EAST, ALONG A LINE 250 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE



SOUTHEAST QUARTER OF SAID SECTION 3, TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA;

THENCE SOUTH, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;

THENCE EAST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, TO THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;

THENCE NORTH, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 250 FEET;

THENCE EAST, ALONG A LINE 250 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;

THENCE NORTH, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 250 FEET;

THENCE EAST, ALONG A LINE 500 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;

THENCE NORTH, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 250 FEET;

THENCE EAST, ALONG A LINE 750 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, TO A POINT 75 FEET WEST OF THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;

THENCE NORTH, ALONG A LINE 75 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2, TO THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2;

THENCE EAST, ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2, TO THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE EAST, ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 75 FEET;

THENCE SOUTH, ALONG A LINE 75 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO A POINT 750 FEET NORTH OF THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1;

THENCE EAST, ALONG A LINE 750 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1;

THENCE SOUTH, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 200 FEET;

THENCE EAST, ALONG A LINE 550 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1;

THENCE SOUTH, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, A DISTANCE OF 400 FEET;

THENCE EAST, ALONG A LINE 150 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, TO A POINT 175 FEET

WEST OF THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1;

THENCE NORTH, ALONG A LINE 175 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 1;

THENCE NORTH, ALONG A LINE 175 FEET EAST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 1, A DISTANCE OF 75 FEET;

THENCE EAST, ALONG A LINE 75 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 1, TO THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 1;

THENCE EAST, ALONG A LINE 75 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 1, TO THE EAST LINE OF SAID SECTION 1;

THENCE SOUTH, ALONG THE EAST LINE OF SAID SECTION 1, A DISTANCE OF 150 FEET;

THENCE WEST, ALONG A LINE 75 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, TO A POINT 175 FEET EAST OF THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1;

THENCE SOUTH, ALONG A LINE 175 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, TO A POINT 75 FEET NORTH OF THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1;

THENCE EAST, ALONG A LINE 75 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, TO A POINT 75 FEET WEST OF THE EAST LINE OF SAID SECTION 1;

THENCE NORTH, ALONG A LINE 75 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID SECTION 1, TO A POINT 75 FEET SOUTH OF

THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1;

THENCE EAST, ALONG A LINE 75 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, TO THE EAST LINE OF SAID SECTION 1;

THENCE SOUTH, ALONG THE EAST LINE OF SAID SECTION 1, TO THE NORTHEAST CORNER OF SECTION 12, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA;

THENCE SOUTH, ALONG THE EAST LINE OF SAID SECTION 12, TO THE POINT OF BEGINNING.

#### POLK COUNTY

A TRACT OF LAND IN SECTIONS 31 AND 32 IN TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF WEST DES MOINES AND POLK COUNTY, IOWA , IS INCLUDED IN THE OSMIUM URBAN RENEWAL PLAN AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 31, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, POLK COUNTY, IOWA;

THENCE WEST, ALONG THE SOUTH LINE OF SAID SECTION 31, A DISTANCE OF 100 FEET;

THENCE NORTH, ALONG A LINE 100 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID SECTION 31, A DISTANCE OF 320 FEET;

THENCE EAST, TO THE WEST LINE OF SECTION 32, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, POLK COUNTY, IOWA;

THENCE EAST, A DISTANCE OF 100 FEET;

THENCE SOUTH, ALONG A LINE 100 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SECTION 32, TO THE SOUTH LINE OF SAID SECTION 32;

THENCE WEST, ALONG THE SOUTH LINE OF SAID SECTION 32, TO THE POINT OF BEGINNING.

WARREN COUNTY

A TRACT OF LAND IN SECTIONS 4, 5, 6, 7 AND 8 IN TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF WEST DES MOINES AND WARREN COUNTY, IOWA , IS INCLUDED IN THE OSMIUM URBAN RENEWAL PLAN AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 4, TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 4;

THENCE WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER SAID SECTION 4, TO THE NORTHEAST CORNER OF SECTION 8, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE SOUTH, ALONG THE EAST LINE OF SAID SECTION 8, A DISTANCE OF 800 FEET;

THENCE NORTHWESTERLY, TO A POINT LOCATED 850 FEET WEST OF THE EAST LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 8 AND 200 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 8;

THENCE WEST, ALONG A LINE 200 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID SECTION 8, TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 8;

THENCE NORTH, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER SAID SECTION 8, TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE WEST, ALONG THE SOUTH LINE OF SAID SECTION 5, TO THE SOUTHWEST CORNER OF SAID SECTION 5;

THENCE NORTH, ALONG THE WEST LINE OF SAID SECTION 5, A DISTANCE OF 200 FEET;

THENCE EAST, ALONG A LINE 200 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SECTION 5, TO THE EAST LINE OF SAID SECTION 5;

THENCE NORTH, ALONG THE EAST LINE OF SAID SECTION 5, TO A POINT 225 FEET SOUTH OF THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5;

THENCE WEST, ALONG A LINE 225 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5, TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5, A DISTANCE OF 50 FEET;

THENCE WEST, ALONG A LINE 275 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5, TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, A DISTANCE OF 25 FEET;

THENCE WEST, ALONG A LINE 300 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, A DISTANCE OF 75 FEET;

THENCE WEST, ALONG A LINE 375 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, TO A POINT 75 FEET EAST OF THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 5;

THENCE SOUTH, ALONG A LINE 75 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SECTION 5, A DISTANCE OF 200 FEET;

THENCE WEST, ALONG A LINE 575 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, TO THE EAST LINE OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE WEST, ALONG A LINE 575 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 6, TO THE WEST RIGHT OF WAY LINE OF SE 50<sup>TH</sup> STREET (20<sup>th</sup> AVENUE WARREN COUNTY);

THENCE NORTH, ALONG THE WEST RIGHT OF WAY LINE OF SE 50<sup>TH</sup> STREET (20<sup>th</sup> AVENUE WARREN COUNTY), TO THE SOUTH RIGHT OF WAY LINE OF SE ADAMS STREET (ADAMS STREET WARREN COUNTY);

THENCE WEST, ALONG THE SOUTH RIGHT OF WAY LINE OF ADAMS STREET (WARREN COUNTY), TO THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6;

THENCE NORTH, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6, TO A POINT 75 FEET SOUTH OF THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6;

THENCE WEST, ALONG A LINE 75 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6, TO THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6;

THENCE WEST, ALONG A LINE 75 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6, TO A POINT 75 FEET EAST OF THE WEST LINE OF SAID SECTION 6;

THENCE SOUTH, ALONG A LINE 75 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SECTION 6, TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6;

THENCE EAST, ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6, TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6;

THENCE EAST, ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6, TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6;

THENCE EAST, ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6, TO THE EAST RIGHT OF WAY LINE OF INTERSTATE 35;

THENCE SOUTH, ALONG THE EAST RIGHT OF WAY LINE OF INTERSTATE 35, TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7, TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7;

THENCE WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7, TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7;

THENCE WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7, TO THE WEST LINE OF SAID SECTION 7;

THENCE NORTH, ALONG THE WEST LINE OF SAID SECTION 7, TO THE SOUTHWEST CORNER OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA;

THENCE NORTH, ALONG THE WEST LINE OF SAID SECTION 6, TO A POINT 75 FEET NORTH OF THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 6;

THENCE EAST, ALONG A LINE 75 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 6, TO THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 6;



THENCE EAST, ALONG A LINE 75 FEET NORTH OF THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 6, TO A POINT 175 FEET WEST OF THE EAST LINE OF SAID SECTION 6;

THENCE NORTH, ALONG A LINE 175 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID SECTION 6, TO THE NORTH LINE OF SAID SECTION 6;

THENCE EAST, ALONG THE NORTH LINE OF SAID SECTION 6, TO THE NORTHWEST CORNER OF SECTION 5, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE EAST, ALONG THE NORTH LINE OF SAID SECTION 5, A DISTANCE OF 175 FEET;

THENCE SOUTH, ALONG A LINE 175 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SECTION 5, TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5;

THENCE EAST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5;

THENCE NORTH, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, A DISTANCE OF 100 FEET;

THENCE EAST, ALONG A LINE 100 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5;

THENCE EAST, ALONG A LINE 100 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5;

THENCE NORTH, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, A DISTANCE OF 300 FEET;

THENCE EAST, ALONG A LINE 400 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5, TO A POINT 75 FEET WEST OF THE EAST LINE OF SAID SECTION 5;

THENCE NORTH, ALONG A LINE 75 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID SECTION 5, TO A POINT 500 FEET NORTH OF THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5;

THENCE EAST, ALONG A LINE 500 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5, TO THE WEST LINE OF SECTION 4, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA;

THENCE EAST, ALONG A LINE 500 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 4, A DISTANCE OF 75 FEET;

THENCE SOUTH, ALONG A LINE 75 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SECTION 4, TO A POINT 250 FEET NORTHWESTERLY OF THE SOUTH RIGHT OF WAY LINE OF THE GREAT WESTERN TRAIL;

THENCE NORTHEASTERLY, ALONG A LINE 250 FEET NORTHWESTERLY OF AND PARALLEL TO THE SOUTH RIGHT OF WAY LINE OF THE GREAT WESTERN TRAIL, TO THE WEST LINE OF PARCEL "C" AS DEPICTED ON A PLAT OF SURVEY DATED JANUARY 14, 2004 RECORDED IN PLAT BOOK 2004, PAGE 20 OF 77-25 IN THE OFFICE OF THE WARREN COUNTY RECORDER;

THENCE NORTH, ALONG THE WEST LINE OF SAID PARCEL "C", TO THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 4;

THENCE EAST, ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 4, TO THE POINT OF BEGINNING.

WHEREAS, the proposed Osmium Urban Renewal Area includes land classified as agricultural land and consequently written permission of the current owners has been obtained; and

WHEREAS, some of the property to be included in the Area is outside but within two miles of the City boundary, and consent from the City of Cumming, Warren County, and Madison County, where the property is located, has been obtained; and

WHEREAS, it is desirable that the Urban Renewal Area be redeveloped as described in the proposed Osmium Urban Renewal Plan to be known hereafter as the "Osmium Urban Renewal Plan"; and

WHEREAS, the Iowa statutes require the City Council to submit the proposed Osmium Urban Renewal Plan to the Planning and Zoning Commission for review and recommendation as to its conformity with the general plan for development of the City as a whole, prior to City Council approval thereof; and

WHEREAS, creation of the Osmium Urban Renewal Area and adoption of the Osmium Urban Renewal Plan therefore has been approved by the Planning and Zoning Commission for the City as being in conformity with the general plan for development of the City as a whole, as evidenced by its written report and recommendation filed herewith, which report and recommendation is hereby accepted, approved in all respects and incorporated herein by this reference; and

WHEREAS, by resolution adopted on October 17, 2016, this Council directed that a consultation be held with the designated representatives of all affected taxing entities to discuss the proposed Osmium Urban Renewal Plan and the division of revenue described therein, and that notice of the consultation and a copy of the proposed Osmium Urban Renewal Plan be sent to all affected taxing entities; and

WHEREAS, pursuant to such notice, the consultation was duly held as ordered by the City Council and all required responses to the recommendations made by the affected taxing entities, if any, have been timely made as set forth in the report of the Director of Community and Economic Development, or his delegate, filed herewith and incorporated herein by this reference, which report is in all respects approved; and

WHEREAS, by resolution this Council also set a public hearing on the adoption of the proposed Osmium Urban Renewal Plan for this meeting of the Council, and due and proper notice of the public hearing was given, as provided by law, by timely publication in the Des Moines Register, which notice set forth the time and place for this hearing and the nature and purpose thereof; and

WHEREAS, in accordance with the notice, all persons or organizations desiring to be heard on the proposed Osmium Urban Renewal Plan, both for and against, have been given an opportunity to be heard with respect thereto and due consideration has been given to all comments and views expressed to this Council in connection therewith and the public hearing has been closed.

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

Section 1. That the findings and conclusions set forth or contained in the proposed "Osmium Urban Renewal Plan" for the area of the City of West Des Moines, State of Iowa, legally described and depicted in the Plan and incorporated herein by reference (which area shall hereinafter be known as the "Osmium Urban Renewal Area"), be and the same are hereby adopted and approved as the findings of this Council for this area.

Section 2. This Council further finds:

a) Although relocation is not expected, a feasible method exists for the relocation of any families who will be displaced from the Osmium Urban Renewal Area into decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families;

b) The Urban Renewal Plan conforms to the general plan for the development of the City as a whole; and

c) Acquisition by the City is not immediately expected, however, as to any areas of open land to be acquired by the City included within the Osmium Urban Renewal Area:

i. Residential use is not expected, however, with reference to any portions thereof which are to be developed for residential uses, this City Council hereby determines that a shortage of housing of sound standards and design with decency, safety and sanitation exists within the City; that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality; and that one or more of the following conditions exist:

a. That the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas, including other portions of the urban renewal area.

b. That conditions of blight in the municipality and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime, so as to constitute a menace to the public health, safety, morals, or welfare.

c. That the provision of public improvements related to housing and residential development will encourage housing and residential development which is necessary to encourage the retention or relocation of industrial and commercial enterprises in this state and its municipalities.

d. The acquisition of the area is necessary to provide for the construction of housing for low and moderate income families.

ii. Non-residential use is expected and with reference to those portions thereof which are to be developed for non-residential uses, such non-residential uses are necessary and appropriate to facilitate the proper growth and

development of the City in accordance with sound planning standards and local community objectives.

Section 3. That the Osmium Urban Renewal Area is an economic development area within the meaning of Iowa Code Chapter 403; that such area is eligible for designation as an urban renewal area and otherwise meets all requisites under the provisions of Chapter 403 of the Code of Iowa; and that the rehabilitation, conservation, redevelopment, development, or a combination thereof, of such area is necessary in the interest of the public health, safety or welfare of the residents of this City.

Section 4. That the Osmium Urban Renewal Plan, attached hereto as Exhibit 1 and incorporated herein by reference, be and the same is hereby approved and adopted as the "Osmium Urban Renewal Plan for the Osmium Urban Renewal Area"; the Osmium Urban Renewal Plan for such area is hereby in all respects approved; any Consents from owners of Agricultural Land or Joint Agreements from other municipalities attached to the Plan as exhibits are hereby approved and shall be executed by the Mayor or the presiding officer; and the City Clerk is hereby directed to file a certified copy of the Osmium Urban Renewal Plan with the proceedings of this meeting.

Section 5. That, notwithstanding any resolution, ordinance, plan, amendment or any other document, the original Osmium Urban Renewal Plan shall be in full force and effect from the date of this Resolution until the Council amends or repeals the Plan. Said Osmium Urban Renewal Plan shall be forthwith certified by the City Clerk, along with a copy of this Resolution, to the Recorders for Dallas, Madison, Polk, And Warren Counties, Iowa, to be filed and recorded in the manner provided by law.

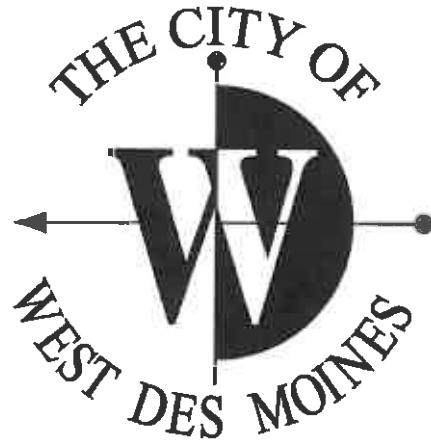
PASSED AND APPROVED this 14<sup>th</sup> day of November, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

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

*Label the Plan as Exhibit 1 (with all exhibits) and attach it to this Resolution.*



**OSMIUM  
URBAN RENEWAL PLAN**

**FOR THE  
OSMIUM URBAN RENEWAL AREA**

**NOVEMBER 2016**

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## I. INTRODUCTION

This Osmium Urban Renewal Plan (the "Plan") has been prepared to provide for the development and redevelopment of the Osmium Urban Renewal Area (the "Urban Renewal Area" or "Area" or "Plan Area"). The City is using its power and authority under the Plan to stimulate economic development. It is anticipated and intended that the public investment made as a result of this Plan will not only result in redevelopment of the Area, but also that such development and investment will serve as a catalyst for additional development in the surrounding area. Investment by the private sector as a result of this public action will expand the City's tax base and improve and maintain the quality of life in the community, and thereby achieve these public purposes and goals.

The proposed Urban Renewal Plan activities will serve as an economic catalyst for development within the Plan Area. The additional commercial and industrial development will provide local employment opportunities. The projects listed in the Plan provide for economic use of land, resulting in private investment that may not otherwise occur and thereby significantly increasing the taxable value of the property. It will also create a higher level of investment in the surrounding commercial and industrial properties both in the total amount of development and in the value of existing or future individual commercial and industrial structures, thus substantially increasing the tax base beyond that which would otherwise be probable for the Area.

The main impetus for the Plan is the pending decision of Microsoft Corporation to expand its presence in West Des Moines with a another data center site ("Microsoft Project"), which would be located within this Area. Microsoft's current facilities are in the Mills Parkway Urban Renewal Area, Subdistrict #7, and the Alluvion Urban Renewal Area. Those facilities have generated increased taxable value and jobs within the City. Microsoft develops, manufactures, licenses and supports a range of services, devices, and software products which include operating systems for servers, personal computers; server applications for distributed computing environments; information worker productivity applications; business solution applications; high-performance computing applications; and software development tools. In the web search portal business, Microsoft provides access to the Internet and operates web sites that provide access to a wide variety of online services that include Azure (Cloud services), Office365, XBox Live, Telecommunications, and many other businesses. As of 2016, Microsoft Corporation was #25 on the Fortune 500 list; employed over 118,000 people; and was estimated to be worth over \$200 billion. The total investment by Microsoft for the newest data center within this community is expected to be at least \$980,000,000. This total includes extensive equipment and other costs that are not subject to property tax. Microsoft has verbally agreed to at least a \$307 million minimum assessment agreement for the facilities constructed related to the newest data center, meaning that the minimum valuation for property tax purposes shall be at least \$307 million when the facilities are all completed, which will have a significant impact on the tax base. In addition, the infrastructure required for the Microsoft Project (roads, water, sewer, fiber, and related activities), will open up surrounding property for future development because these facilities are in an undeveloped part of the City.



The City intends to apply for Iowa Department of Transportation RISE grant(s) to support some of the Urban Renewal projects. Microsoft has been approved for financial assistance under the Iowa Economic Development Authority's High Quality Jobs Program. The City intends to provide any required local match obligation through the provision of incentives pursuant to a development agreement.

II. AUTHORITY TO ADOPT AND IMPLEMENT PLAN-AREA DESIGNATION

Authority and powers to undertake this Plan are granted to the City of West Des Moines by Chapters 15, 15A and 403 of the 2015 Code of Iowa.

The City Council finds the Area to be suitable for designation as an economic development area, including but not limited to the following: to encourage the location and expansion of certain commercial and industrial enterprises to more conveniently provide needed employment services and facilities to the residents of the City, to alleviate and prevent conditions of unemployment by assisting and retaining local industries and commercial and industrial enterprises and to strengthen and revitalize the economy of the State and the City.

III. AREA DESCRIPTION

The property or Area included in this Plan is legally described in Exhibit "A" and depicted on the Urban Renewal Area maps in Exhibits "B" and "C". Exhibits "A," "B," and "C" are incorporated into and made a part of this Plan.

IV. PLAN OBJECTIVES

The objectives of the Plan are to rectify the inadequacies in the infrastructure system as identified elsewhere in the Plan and promote economic development and optimal growth of the tax base.

It is contemplated that urban renewal activities will include construction of new public and private infrastructure, including roads, water, and sewer; reconstruction and improvement of existing infrastructure; installation of fiber; and relocation of power lines. In addition, economic development grants may also be used to promote economic development and optimal growth of the tax base.

Generally, renewal activities are designed to provide opportunities, incentives, and sites for new and expanded commercial and industrial development. More specific objectives for development within the Urban Renewal Area are as follows:

1. To stimulate through public action and commitment, private investment in new development.
2. To provide a more marketable and attractive investment climate.
3. To achieve a diversified, well-balanced economy, improving the standard of living, creating job opportunities, and strengthening the tax base.

4. To help develop a sound economic base that will serve as the foundation for future growth and development.
5. To support and provide for currently planned and potential future development in an undeveloped area of City.

The City does not currently contemplate acquisition of any land to be developed for residential use or economic development (except for the installation of public improvements), but rather anticipates that such development will be an undertaking of the private sector.

#### V. DESCRIPTION OF TYPES OF URBAN RENEWAL ACTIVITIES

To meet the objectives of this Urban Renewal Plan and to encourage the development of the Area, the City intends to utilize the powers conferred under Chapters 403, 15 and 15A, Code of Iowa including, but not limited to, tax increment financing. Some of the renewal activities anticipated include the following:

1. Improvement, installation, construction, relocation, and reconstruction of public infrastructure, including but not limited to roads and streets, utilities (water storage, wells, distribution lines); sanitary sewer; storm sewer; electric (installation, distribution, relocation); fiber optics, public facilities, bike/pedestrian trails, traffic signals and signage, turn lanes and activities related or associated with the foregoing.
2. To provide for the construction of site improvements including, but not limited to grading and site preparation activities, access roads, fencing, utility connections, and related activities.
3. To provide for relocation benefits as required by law.
4. To make loans, grants, rebates, or other incentives to private persons or businesses for economic development purposes on such terms as may be determined by the City Council.
5. To borrow money and to provide security therefore.
6. To make or have made surveys and plans necessary for the implementation of the urban renewal program or specific urban renewal projects.
7. To use tax increment financing for a variety of purposes.
8. Insure or provide for the insurance of any real or personal property or operations of the City against any risks or hazards, including payment of premiums on any such insurance.

9. To acquire property through a variety of means (purchase, lease, option, etc.) and to hold, clear, or prepare the property for development, and to dispose of said property.
10. Enter into any contracts necessary to effectuate the purposes of this Plan.
11. The use of any or all other powers granted by Chapters 15, 15A or 403, Code of Iowa to develop and provide for improved economic conditions for the City of West Des Moines and State of Iowa.

## VI. LAND USE PLAN AND CONSISTENCY WITH COMPREHENSIVE PLAN

The Area is currently planned for the following land uses: Light Industrial, Office, Open Space, Single Family Residential, Medium Density Residential, High Density Residential, Business Park, Warehouse Retail, Neighborhood Commercial, Highway Commercial, Community Commercial, and Support Office.

The City Council finds that the Plan is in conformity with the existing West Des Moines Comprehensive Plan adopted on September 20, 2010. The West Des Moines Comprehensive Plan is the City's general plan for the development of the City as a whole. In addition, the proposed urban renewal projects as described in this Plan conform with the West Des Moines Comprehensive Plan. This Urban Renewal Plan does not change or in any way replace the City's current land use planning or zoning regulation process.

Any urban renewal projects related to the need for improved traffic, public transportation, public utilities, recreational and community facilities, or other public improvements within the Urban Renewal Area are set forth in this Plan. As the Area develops, the need for public infrastructure extensions and upgrades will be evaluated and planned for by the City.

## VII. URBAN RENEWAL FINANCING

The City of West Des Moines intends to utilize various financing tools such as those described below to successfully undertake the proposed urban renewal actions. The City of West Des Moines has the statutory authority to use a variety of tools to finance physical improvements within the Area. These include:

### A. Tax Increment Financing

Under Section 403.19 of the Iowa Code, urban renewal areas may utilize the tax increment financing (T.I.F.) mechanism to finance the costs of public improvements or economic development incentives associated with redevelopment projects. Upon creation of a tax increment district within the Area, by ordinance, the assessment base is frozen and the amount of tax revenue available from taxes paid on the difference between the frozen base and the increased value, if any, is segregated into a separate fund for the use by the City to pay costs of the proposed urban renewal projects, etc. The increased taxes generated by any new development, above the base value, are distributed to the taxing entities, if not requested by the City and in any event upon the expiration of the T.I.F. district.

**B. General Obligation Bonds**

Under Division III of Chapter 384 and Chapter 403 of the Iowa Code, the City has the authority to issue and sell General Obligation bonds for specified essential and general corporate purposes, including the acquisition and construction of certain public improvements within the Area or incenting development consistent with this Plan. Such bonds are payable from the levy of unlimited ad valorem taxes on all the taxable property within the City of West Des Moines. It is the City's intent to abate the debt service on these bonds with incremental taxes from this Area.

**C. Tax Abatement**

Under Section 403.6 subsection 18 of the Iowa Code, the City has the authority to abate taxation of value added to real estate within the Area during the process of construction for development or redevelopment for up to two years, as an incentive for redevelopment of the property.

**D. Special Assessments**

Under Division IV of Chapter 384 of the Iowa Code, the City has the authority to assess the partial or total cost of various public improvements to benefitted properties within the Area.

The City may also determine to use tax increment financing to provide incentives such as cash grants, loans, tax rebates or other incentives to developers or private entities in connection with the urban renewal projects identified in this Plan related to commercial or industrial development and other urban renewal projects. In addition, the City may determine to issue general obligation bonds, tax increment revenue bonds or such other obligations, or loan agreements for the purpose of making loans or grants of public funds to private businesses located in the Area. Alternatively, the City may determine to use available funds for making such loans or grants or other incentives related to urban renewal projects.

Nothing herein shall be construed as a limitation on the power of the City to exercise any lawful power granted to the City under Chapter 15, Chapter 15A, Chapter 403, Chapter 427B, or any other provision of the Code of Iowa in furtherance of the objectives of this Urban Renewal Plan.

**VIII. IMPLEMENTATION**

Implementation of the activities in this Plan is at the City Council's discretion.

**IX. PROPERTY ACQUISITION/DISPOSITION/RELOCATION**

Any property acquisition/disposition necessary to accomplish the objectives of this Plan will be carried out, without limitation, in accordance with any required statutory procedures.

The City will comply with any required applicable State or Federal laws governing the relocation of persons displaced from the Area as a result of urban renewal projects

undertaken pursuant to this Plan, although no such relocation is expected to be required at this time.

X. PROPOSED URBAN RENEWAL PROJECTS

It is anticipated that the newest data center ("Microsoft Project" or "Project") will consist of a regional datacenter and associated support infrastructure to house servers and computer equipment to operate large-scale web portal services as part of Microsoft's on-line services businesses. There will be an expected investment of at least \$980,000,000. The Project is expected to add at least 132 new data center positions.

At this time, the urban renewal projects ("Proposed Projects" or "Proposed Urban Renewal Projects") to be undertaken within the Area are generally shown in the following section and may include other such improvements deemed appropriate and necessary by the City for furtherance of the urban renewal project.

A. Public Improvements

Some of the costs for the Public Improvements may be covered by a RISE grant(s), pursuant to which the State will provide partial funding, potentially resulting in a decreased amount of tax increment needed for the project. Any local match requirement for a RISE grant for road improvements under the Plan is expected to be funded/reimbursed from tax increment.

<b>Description of Urban Renewal Project</b>	<b>Est. Time Period</b>	<b>Estimated cost to be reimbursed by tax increment financing</b>	<b>Rationale (why economic development is promoted)</b>
<p>Veterans Parkway – West of SE Adams Street to SW Grand Prairie Parkway Public street construction, reconstruction, and/or widening and related activities including right-of-way acquisition, related utilities and sewers, storm water conveyance structures, bridges, railroad crossings, bike/pedestrian trails and under crossings, traffic signals and signage, turn lanes, medians, landscaping, street lights, and related items.</p>	<p>2016 - 2020</p>	<p>\$35,000,000- \$45,000,000.</p>	<p>The improvements to Veterans Parkway will provide direct paved access to Microsoft Project, and will also provide access to any additional development that may take place between SE Adams Street and SW Grand Prairie Parkway.</p>
<p>S/SW Grand Prairie Parkway – Veterans Parkway to Raccoon River Drive Public street construction, reconstruction, and/or widening and related activities including right-of-way acquisition, related utilities and sewers, storm water conveyance structures, bridges, railroad crossings, bike/pedestrian trails and under crossings, traffic signals and signage, turn lanes, medians, landscaping, street lights, and related items.</p>	<p>2016- 2020</p>	<p>\$20,000,000- \$25,000,000</p>	<p>The improvements to S/SW Grand Prairie Parkway will allow paved access to Microsoft Project, and will also provide access to any additional development that may take place between Veterans Parkway and Raccoon River Drive.</p>

<b>Description of Urban Renewal Project</b>	<b>Est. Time Period</b>	<b>Estimated cost to be reimbursed by tax increment financing</b>	<b>Rationale (why economic development is promoted)</b>
<p>SW 60<sup>th</sup> Street* (WDM)– North of G14 to SW Adams Street</p> <p>Public street construction, reconstruction, and/or widening and related activities including right-of-way acquisition, related utilities and sewers, storm water conveyance structures, bridges, railroad crossings, bike/pedestrian trails and under crossings, traffic signals and signage, turn lanes, medians, landscaping, street lights, and related items.</p>	<p>2016-2020</p>	<p>\$5,000,000-\$7,000,000</p>	<p>The improvements to SW 60<sup>th</sup> Street will allow paved access to Microsoft Project, and will also provide access to any additional development that may take place between G14 and SW Adams Street.</p>
<p>SE 50<sup>th</sup> Street* (WDM) – Veterans Parkway to north of Polk County Line</p> <p>Public street construction, reconstruction, and/or widening and related activities including right-of-way acquisition, related utilities and sewers, storm water conveyance structures, bridges, railroad crossings, bike/pedestrian trails and under crossings, traffic signals and signage, turn lanes, medians, landscaping, street lights, and related items.</p>	<p>2016-2020</p>	<p>\$2,000,000-\$5,000,000</p>	<p>The improvements to SE 50<sup>th</sup> Street allow paved access to Microsoft Project, and will also provide access to any additional development that may take place between Veterans Parkway and Polk County Line.</p>

<b>Description of Urban Renewal Project</b>	<b>Est. Time Period</b>	<b>Estimated cost to be reimbursed by tax increment financing</b>	<b>Rationale (why economic development is promoted)</b>
SE and SW Adams Street – SE 50 <sup>th</sup> Street* to SW 60 <sup>th</sup> Street*  Public street construction, reconstruction, and/or widening and related activities including right-of-way acquisition, related utilities and sewers, storm water conveyance structures, bridges, railroad crossings, bike/pedestrian trails and under crossings, traffic signals and signage, turn lanes, medians, landscaping, street lights, and related items.	2016-2020	\$2,000,000 - \$5,000,000	The improvements to SE and SW Adams Street will allow paved access to Microsoft Project, and will also provide access to any additional development that may take place between SE 50 <sup>th</sup> Street and SW 60 <sup>th</sup> Street.
Water System Improvements- West of SE and SW Adams Street to Grand Avenue. Extend and construct water lines to connect existing water supply distribution system to new areas of development.	2016-2020	\$17,000,000 - \$21,000,000	The extension of water lines would allow for commercial and industrial development in the Area.
Sanitary Sewer Improvements - Middle Creek Sewer to west of I-35 Extend and construct sewer lines to connect existing sanitary sewer system to new areas of development; may also entail other effluent “treatment” options.	2016-2020	\$3,000,000 - \$4,000,000	The extension of sewer lines would allow for commercial and industrial development in the Area.
Financing of debt/debt issuance costs.	2016-2037	\$7,000,000- \$10,000,000	Required costs of borrowing money for urban renewal projects.
Subtotal**		\$91,000,000– \$122,000,000	

\*Note: The Plan reflects anticipated street names for proposed streets to be located in the Area as depicted in Exhibit C.

\*\*Note: It may be that the above costs will be reduced by the application of state and/or federal grants or programs; cost-sharing agreements with other entities; or other available sources of funds.



**B. Tax Rebate or Other Development Agreements**

The City plans to enter into a development agreement with Microsoft related to the Microsoft Project whereby Microsoft would agree to a minimum assessment agreement setting a minimum assessed value of the Microsoft Project and the creation of at least 132 jobs. Subject to the terms and conditions of the future development agreement, the City expects to construct road improvements, which will total up to \$87,000,000 million, water distribution of up to \$21 million, and sanitary sewer improvements of up to \$4 million, (all described above under "Public Improvements"). In addition, the City expects to provide economic development grants of up to \$14,600,000 to incent private investment in the Microsoft Project. Project amounts and terms and conditions may vary upon completion of a development agreement.

**C. Planning, engineering fees (for urban renewal plans), attorney fees, other related costs to support urban renewal projects and planning**

Project	Date	Estimated Cost
Fees and costs	Undetermined	\$100,000

**XI. CITY INDEBTEDNESS AND FINANCIAL DATA**

1.	July 1, 2016 constitutional debt limit:	\$212,760,921
2.	Outstanding general obligation debt:	\$132,715,000
3.	A specific amount of debt to be incurred for the Proposed Urban Renewal Projects has not yet been determined. At no time will the City exceed its constitutional debt limit. The Projects authorized in this Plan are only proposed projects at this time. The City Council will consider each Project proposal on a case-by-case basis to determine if it is consistent with the Plan and in the public's best interest to participate in the Project. These Projects will commence and be concluded over a number of years. The City expects to issue bond indebtedness for the engineering and administration, construction of the Proposed Urban Renewal Projects, economic development grants, and possible land acquisitions related to the Proposed Projects. It is further expected that such indebtedness, including interest and costs on the same, will be financed in whole or in part with tax increment revenues from the Urban Renewal Area over the statutorily available period. Subject to the foregoing, it is estimated that the cost of the Proposed Urban Renewal Projects as described above could be up to this amount:	\$105,700,000- \$136,700,000

## XII. PUBLIC BUILDING ANALYSIS

When a project involves the use of taxes resulting from a division of revenue under Iowa Code section 403.19 for a public building, chapter 403 requires that the City provide an analysis of alternate development options and funding sources and why those options are less feasible than using tax increment revenues to help fund the project. The City has not identified a public building as an Urban Renewal Project in this Plan.

## XIII. AGREEMENTS TO INCLUDE AGRICULTURAL LAND

Because some of the property being included in the Osmium Urban Renewal Area may be defined as “agricultural land” under Iowa Code Section 403.17(3), the City and each owner of property that may qualify as agricultural land have entered into an agreement in which the property owner agrees to allow the City to include real property defined as “Agricultural Land” in the Urban Renewal Area. A copy of the agreements executed by the property owners are attached as Exhibit D. The original agreements (with exhibits) executed by the property owner and the City will be retained on file at the West Des Moines City Clerk’s office.

## XIV. CITY OF CUMMING CONSENT

Some of the property included in the Osmium Urban Renewal Area includes land outside but within two miles of the West Des Moines boundary, and is located within the City of Cumming. In accordance with paragraph 4 of Section 403.17 of the Code of Iowa, a city may exercise urban renewal powers with respect to property which is located outside but within two (2) miles of the boundary of a city and within the boundaries of another city, but only if the other city adopts a resolution declaring the need for a portion of its property to be included in the urban renewal area. The City of Cumming has adopted a resolution declaring a need for its land to be included in the Area. A copy of the resolution will be retained on file with the West Des Moines City Clerk’s office. The City of Cumming also executed a Joint Agreement with the city of West Des Moines which gives the City of West Des Moines permission to include property within the City of Cumming in the Urban Renewal Area. A copy of the Joint Agreement is attached as Exhibit “G.” The original agreement is on file with the West Des Moines City Clerk’s office.

## XV. CONSENT OF WARREN COUNTY AND MADISON COUNTY

Some of the property included in the Osmium Urban Renewal Area includes land outside but within two miles of the West Des Moines boundary, and is located within unincorporated Warren and Madison Counties. In accordance with paragraph 4 of Section 403.17 of the Code of Iowa, a city may exercise urban renewal powers with respect to property which is located outside but within two (2) miles of the boundary of a city only if the city obtains the consent of the county within which such property is located. A Joint Agreement, which gives the City permission to include property outside the City limits in the Urban Renewal Area, has been executed by the City of West Des Moines and Warren County. A copy of the Joint Agreement is attached as Exhibit “E”. Likewise, a Joint Agreement, which gives the City permission to include property outside the City limits in the Urban Renewal Area, has been executed by the City of West Des Moines and Madison County. A copy of the Joint

Agreement is attached as Exhibit "F". The original agreements are on file with the West Des Moines City Clerk's office.

**XVI. STATE AND LOCAL REQUIREMENTS**

The City will comply with all provisions necessary to conform with State and local laws in implementing this Plan and its supporting documents.

**XVII. AMENDMENTS**

This Plan may be amended or revoked at any time by resolution of the West Des Moines City Council in accordance with the provisions of Chapter 403, Code of Iowa, 2015, and in any manner deemed appropriate to accomplish the objectives of the Plan.

**XVIII. APPLICABILITY AND EFFECTIVE PERIOD**

This Plan will become effective upon its adoption by the City Council and will remain in effect until terminated by the City Council.

With respect to any property covered by this Plan which is included in an ordinance which designates that property as a tax increment area, the use of incremental property tax revenues, or the "division of revenue" as those words are used in Chapter 403 of the Code of Iowa, currently is limited to twenty (20) years from the calendar year following the calendar year in which the City (following adoption of a TIF ordinance) first certifies to the County Auditor the amount of any loans, advances, indebtedness, or bonds which qualify for payment from the incremental property tax revenues attributable to that property. The division of revenues shall continue pursuant to the terms of each TIF ordinance for the maximum period allowed by law. However, the use of tax increment financing revenues (including the amount of loans, advances, indebtedness or bonds which qualify for payment from the division of revenue provided in Section 403.19 of the Iowa Code) by the City for activities carried out under this Plan shall be limited as deemed appropriate by the City Council and consistent with all applicable provisions of law. The City will most likely use several TIF ordinances within the Plan, based on when development occurs, and each TIF ordinance will have its own base value date and expiration or sunset date.

**XIX. SEVERABILITY**

If any section, provision, or part of this Plan is adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the Plan as a whole or any action, provision, or part hereof not adjudged to be invalid or unconstitutional.

**EXHIBIT A**

**LEGAL DESCRIPTION  
OSMIUM URBAN RENEWAL AREA  
WEST DES MOINES, IOWA**

A TRACT OF LAND IN DALLAS, MADISON, POLK AND WARREN COUNTIES, IOWA IS INCLUDED IN THE OSMIUM URBAN RENEWAL PLAN AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**DALLAS COUNTY**

A TRACT OF LAND IN SECTIONS 23, 26, 27, 28, 33 AND 34 IN TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF WEST DES MOINES AND DALLAS COUNTY, IOWA , IS INCLUDED IN THE OSMIUM URBAN RENEWAL PLAN AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, DALLAS COUNTY, IOWA;

THENCE NORTH, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 28, TO THE NORTH RIGHT OF WAY LINE OF THE IOWA INTERSTATE RAILROAD COMPANY;

THENCE EAST, ALONG THE NORTH RIGHT OF WAY LINE OF THE IOWA INTERSTATE RAILROAD COMPANY, TO THE WEST LINE OF SECTION 26, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, DALLAS COUNTY IOWA;

THENCE NORTH, ALONG THE WEST LINE OF SAID SECTION 26, A DISTANCE OF 61.81 FEET;

THENCE SOUTH 83°53'23" WEST (ASSUMED BEARING), A DISTANCE OF 493.70 FEET;

THENCE NORTH 00°42'13" EAST (ASSUMED BEARING), A DISTANCE OF 1,593.01 FEET,

THENCE NORTH 89°59'09" EAST (ASSUMED BEARING, A DISTANCE OF 1,763.44 FEET;

THENCE SOUTH 86°12'46" EAST (ASSUMED BEARING), A DISTANCE OF 112.82 FEET;

THENCE NORTH 88°58'59" EAST (ASSUMED BEARING), A DISTANCE OF 2.03 FEET;

THENCE SOUTH 00°02'55" EAST (ASSUMED BEARING), A DISTANCE OF 1,255.46 FEET, TO THE NORTH RIGHT OF WAY LINE OF THE INTERSTATE RAILROAD;

THENCE SOUTH 00°02'55" EAST (ASSUMED BEARING), TO THE SOUTH RIGHT OF WAY LINE OF RACCOON RIVER DRIVE;

THENCE WEST, ALONG THE SOUTH RIGHT OF WAY LINE OF RACCOON RIVER DRIVE, TO THE EAST LINE OF SECTION 28, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, DALLAS COUNTY, IOWA;

THENCE SOUTH, ALONG THE EAST LINE OF SAID SECTION 28, TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28;

THENCE SOUTH 83°41'06" WEST (ASSUMED BEARING), ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 637.97 FEET;

THENCE SOUTH 00°05'24" EAST (ASSUMED BEARING), A DISTANCE OF 974.65 FEET, TO A POINT OF CURVATURE;

THENCE SOUTHEASTERLY, ALONG A 2,350.00 RADIUS CURVE CONCAVE NORTHEASTERLY, A DISTANCE OF 307.59 FEET;

THENCE SOUTH 07°35'22" EAST (ASSUMED BEARING), A DISTANCE OF 215.67 FEET;

THENCE NORTH 82°24'38" EAST (ASSUMED BEARING), A DISTANCE OF 35.00 FEET;

THENCE SOUTH 10°44'59" EAST (ASSUMED BEARING), A DISTANCE OF 816.24 FEET;

THENCE SOUTH 83°52'57" EAST (ASSUMED BEARING), A DISTANCE OF 211.01 FEET;

THENCE SOUTH 62°01'19" EAST (ASSUMED BEARING), A DISTANCE OF 453.81 FEET;

THENCE SOUTH 61°10'39" WEST (ASSUMED BEARING), A DISTANCE OF 637.41 FEET;

THENCE SOUTH 09°28'41" WEST (ASSUMED BEARING), A DISTANCE OF 157.96 FEET;

THENCE SOUTH 19°58'52" EAST (ASSUMED BEARING), A DISTANCE OF 191.49 FEET;

THENCE SOUTH 38°52'19" EAST (ASSUMED BEARING), A DISTANCE OF 157.01 FEET;

THENCE SOUTH 02°57'50" EAST (ASSUMED BEARING), A DISTANCE OF 118.81 FEET;

THENCE SOUTH 80°57'51" EAST (ASSUMED BEARING), A DISTANCE OF 205.82 FEET;

THENCE SOUTH 59°53'57" EAST (ASSUMED BEARING), A DISTANCE OF 202.91 FEET;

THENCE SOUTH 50°10'56" EAST (ASSUMED BEARING), A DISTANCE OF 740.00 FEET;

THENCE SOUTH 20°06'49" EAST (ASSUMED BEARING), A DISTANCE OF 219.54 FEET;

THENCE SOUTH 74°57'26" EAST (ASSUMED BEARING), A DISTANCE OF 71.59 FEET;

THENCE SOUTH 50°10'56" EAST (ASSUMED BEARING), A DISTANCE OF 60.00 FEET;

THENCE SOUTH 26°13'11" EAST (ASSUMED BEARING), A DISTANCE OF 49.24 FEET;

THENCE SOUTH 67°42'28" EAST (ASSUMED BEARING), A DISTANCE OF 99.62 FEET;

THENCE SOUTH 60°36'58" EAST (ASSUMED BEARING), A DISTANCE OF 105.32 FEET;

THENCE SOUTH 49°47'31" EAST (ASSUMED BEARING), A DISTANCE OF 127.77 FEET;

THENCE SOUTH 17°37'05" EAST (ASSUMED BEARING), A DISTANCE OF 178.50 FEET;

THENCE SOUTH 33°50'14" WEST (ASSUMED BEARING), A DISTANCE OF 16.07 FEET;

THENCE SOUTH 22°29'24" EAST (ASSUMED BEARING), A DISTANCE OF 267.14 FEET;

THENCE SOUTH 17°24'32" EAST (ASSUMED BEARING), A DISTANCE OF 83.06 FEET;

THENCE SOUTH 14°27'34" EAST (ASSUMED BEARING), A DISTANCE OF 19.61 FEET;

THENCE NORTH 83°46'32" EAST (ASSUMED BEARING), A DISTANCE OF 104.30 FEET;

THENCE SOUTH 19°13'23" EAST (ASSUMED BEARING), A DISTANCE OF 986.91 FEET;

THENCE SOUTH 70°46'37" WEST (ASSUMED BEARING), A DISTANCE OF 75.00 FEET;

THENCE SOUTH 19°13'23" EAST (ASSUMED BEARING), TO A POINT LOCATED 75 FEET NORTH OF THE SOUTH LINE OF SECTION 34; TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, DALLAS COUNTY, IOWA;

THENCE EAST, ALONG A LINE 75 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SECTION 34, TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 34;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 34, TO THE SOUTH LINE OF SAID SECTION 34;

THENCE WEST, ALONG THE SOUTH LINE OF SAID SECTION 34, TO THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 34;

THENCE NORTH, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION, A DISTANCE OF 75.34 FEET;

THENCE EAST, ALONG A LINE 75 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SECTION 34, A DISTANCE OF 685.52;

THENCE NORTH 19°13'23" WEST (ASSUMED BEARING), A DISTANCE OF 1,531.39 FEET;

THENCE SOUTH 70°46'37" WEST (ASSUMED BEARING), A DISTANCE OF 75.00 FEET;

THENCE NORTH 19°13'23" WEST (ASSUMED BEARING), A DISTANCE OF 1,036.61 FEET;

THENCE NORTHWESTERLY, ALONG A 875.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY, WITH A CHORD BEARING OF NORTH 21°00'39" WEST (ASSUMED BEARING), A DISTANCE OF 54.60 FEET TO A POINT OF NON-TANGENCY;

THENCE NORTH 83°46'32" EAST (ASSUMED BEARING), A DISTANCE OF 103.31 FEET;

THENCE NORTH 16°55'44" WEST (ASSUMED BEARING), A DISTANCE OF 142.73 FEET;

THENCE NORTH 43°37'42" WEST (ASSUMED BEARING), A DISTANCE OF 290.02 FEET;

THENCE NORTH 64°18'42" WEST (ASSUMED BEARING), A DISTANCE OF 115.51 FEET;

THENCE NORTH 38°34'18" EAST (ASSUMED BEARING), A DISTANCE OF 60.52 FEET;  
THENCE NORTH 50°10'56" WEST (ASSUMED BEARING), A DISTANCE OF 477.28 FEET;  
THENCE NORTH 71°59'01" WEST (ASSUMED BEARING), A DISTANCE OF 80.78 FEET;  
THENCE NORTH 28°55'54" WEST (ASSUMED BEARING), A DISTANCE OF 96.57 FEET;  
THENCE NORTH 54°34'51" WEST (ASSUMED BEARING), A DISTANCE OF 586.73 FEET;  
THENCE NORTH 41°54'05" WEST (ASSUMED BEARING), A DISTANCE OF 452.06 FEET;  
THENCE NORTH 83°51'35" WEST (ASSUMED BEARING), A DISTANCE OF 40.93 FEET, TO A POINT OF NON-TANGENCY ON A CURVE;  
THENCE NORTHWESTERLY, ALONG A 1,240.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, WITH A CHORD BEARING OF NORTH 21°49'51" WEST (ASSUMED BEARING), A DISTANCE OF 616.42 FEET;  
THENCE NORTH 07°35'22" WEST (ASSUMED BEARING), A DISTANCE OF 38.17 FEET;  
THENCE SOUTH 62°34'47" WEST (ASSUMED BEARING), A DISTANCE OF 327.71 FEET;  
THENCE NORTH 36°04'17" WEST (ASSUMED BEARING), A DISTANCE OF 15.71 FEET;  
THENCE NORTH 26°00'56" WEST (ASSUMED BEARING), A DISTANCE OF 424.67 FEET;  
THENCE NORTH 48°05'06" EAST (ASSUMED BEARING), A DISTANCE OF 460.13 FEET;  
THENCE NORTH 07°35'22" WEST (ASSUMED BEARING), A DISTANCE OF 70.00 FEET;  
THENCE NORTH 82°24'38" EAST (ASSUMED BEARING), A DISTANCE OF 85.00 FEET;  
THENCE NORTH 07°35'22" WEST (ASSUMED BEARING), A DISTANCE OF 1,104.40 FEET;  
THENCE NORTH 00°05'24" WEST (ASSUMED BEARING), TO THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 28;  
THENCE WEST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 28, TO THE POINT OF BEGINNING;

MADISON COUNTY

A TRACT OF LAND IN SECTIONS 1, 2, 3 AND 12 IN TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF WEST DES MOINES AND MADISON COUNTY, IOWA, IS INCLUDED IN THE OSMIUM URBAN RENEWAL PLAN AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA;

THENCE WEST, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 12, A DISTANCE OF 700 FEET;

THENCE NORTH, ALONG A LINE 700 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 12, TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 12;

THENCE WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 12, TO THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 12;

THENCE WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 12, A DISTANCE OF 175 FEET;

THENCE NORTH, ALONG A LINE 175 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 12, TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE NORTH, ALONG A LINE 175 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, TO A POINT 350 FEET SOUTH OF THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1;

THENCE WEST, ALONG A LINE 350 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1;

THENCE NORTH, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 25 FEET;

THENCE WEST, ALONG A LINE 325 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1;

THENCE NORTH, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 50 FEET;

THENCE WEST, ALONG A LINE 275 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO A POINT 75 FEET EAST OF THE WEST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1;

THENCE SOUTH, ALONG A LINE 75 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 225 FEET;

THENCE WEST, ALONG A LINE 500 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA;



THENCE WEST, ALONG A LINE 500 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2, A DISTANCE OF 75 FEET;

THENCE NORTH, ALONG A LINE 75 FEET EAST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2, TO A POINT 275 FEET SOUTH OF THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2;

THENCE WEST, ALONG A LINE 275 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2, TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2,

THENCE WEST, ALONG A LINE 275 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2, TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 325 FEET;

THENCE WEST, ALONG A LINE 600 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2; TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 100 FEET;

THENCE WEST, ALONG A LINE 700 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA;

THENCE NORTH, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 100 FEET;

THENCE WEST, ALONG A LINE 600 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3, TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3;

THENCE NORTH, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 350 FEET;

THENCE WEST, ALONG A LINE 250 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3, TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3;

THENCE WEST, ALONG A LINE 250 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3, A DISTANCE OF 200 FEET;

THENCE NORTH, ALONG A LINE 200 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3, TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3;

THENCE NORTH, ALONG A LINE 200 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 3, TO THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

THENCE NORTH, ALONG A LINE 200 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3, TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

THENCE WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3, A DISTANCE OF 350 FEET;

THENCE NORTH, ALONG A LINE 550 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3, TO A POINT 175 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 3;

THENCE WEST, ALONG A LINE 175 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID SECTION 3, TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3;

THENCE NORTH, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3, TO THE NORTH LINE OF SAID SECTION 3;

THENCE EAST, ALONG THE NORTH LINE OF SAID SECTION 3, TO A POINT 200 FEET EAST OF THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 3;

THENCE SOUTH, ALONG A LINE 200 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 3, TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 3;

THENCE EAST, ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 100 FEET;

THENCE SOUTH, ALONG A LINE 300 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 3, TO THE NORTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3;

THENCE SOUTH, ALONG A LINE 300 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3, TO A POINT 250 FEET NORTH OF THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3;

THENCE EAST, ALONG A LINE 250 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3, TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3;

THENCE EAST, ALONG A LINE 250 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 3, TO THE WEST LINE OF

THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA;

THENCE SOUTH, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;

THENCE EAST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, TO THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;

THENCE NORTH, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 250 FEET;

THENCE EAST, ALONG A LINE 250 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;

THENCE NORTH, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 250 FEET;

THENCE EAST, ALONG A LINE 500 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;

THENCE NORTH, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 250 FEET;

THENCE EAST, ALONG A LINE 750 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, TO A POINT 75 FEET WEST OF THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;

THENCE NORTH, ALONG A LINE 75 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, TO THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2;

THENCE EAST, ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 2, TO THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 78 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE EAST, ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 75 FEET;

THENCE SOUTH, ALONG A LINE 75 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO A POINT 750 FEET NORTH OF THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1;

THENCE EAST, ALONG A LINE 750 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1;

THENCE SOUTH, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 200 FEET;

THENCE EAST, ALONG A LINE 550 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1;

THENCE SOUTH, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF 400 FEET;

THENCE EAST, ALONG A LINE 150 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO A POINT 175 FEET WEST OF THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1;

THENCE NORTH, ALONG A LINE 175 FEET WEST OF AND PARALLEL TO THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 1;

THENCE NORTH, ALONG A LINE 175 FEET EAST OF AND PARALLEL TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 1, A DISTANCE OF 75 FEET;

THENCE EAST, ALONG A LINE 75 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 1, TO THE WEST LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 1;

THENCE EAST, ALONG A LINE 75 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 1, TO THE EAST LINE OF SAID SECTION 1;

THENCE SOUTH, ALONG THE EAST LINE OF SAID SECTION 1, A DISTANCE OF 150 FEET;

THENCE WEST, ALONG A LINE 75 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO A POINT 175 FEET EAST OF THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1;

THENCE SOUTH, ALONG A LINE 175 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO A POINT 75 FEET NORTH OF THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1;

THENCE EAST, ALONG A LINE 75 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, TO A POINT 75 FEET WEST OF THE EAST LINE OF SAID SECTION 1;

THENCE NORTH, ALONG A LINE 75 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID SECTION 1, TO A POINT 75 FEET SOUTH OF THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1;

THENCE EAST, ALONG A LINE 75 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, TO THE EAST LINE OF SAID SECTION 1;

THENCE SOUTH, ALONG THE EAST LINE OF SAID SECTION 1, TO THE NORTHEAST CORNER OF SECTION 12, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE FIFTH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA;

THENCE SOUTH, ALONG THE EAST LINE OF SAID SECTION 12, TO THE POINT OF BEGINNING.

#### POLK COUNTY

A TRACT OF LAND IN SECTIONS 31 AND 32 IN TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF WEST DES MOINES AND POLK COUNTY, IOWA , IS INCLUDED IN THE OSMIUM URBAN RENEWAL PLAN AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 31, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, POLK COUNTY, IOWA;

THENCE WEST, ALONG THE SOUTH LINE OF SAID SECTION 31, A DISTANCE OF 100 FEET;

THENCE NORTH, ALONG A LINE 100 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID SECTION 31, A DISTANCE OF 320 FEET;

THENCE EAST, TO THE WEST LINE OF SECTION 32, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, POLK COUNTY, IOWA;

THENCE EAST, A DISTANCE OF 100 FEET;

THENCE SOUTH, ALONG A LINE 100 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SECTION 32, TO THE SOUTH LINE OF SAID SECTION 32;

THENCE WEST, ALONG THE SOUTH LINE OF SAID SECTION 32, TO THE POINT OF BEGINNING.

#### WARREN COUNTY

A TRACT OF LAND IN SECTIONS 4, 5, 6, 7 AND 8 IN TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CITY OF WEST DES MOINES AND WARREN COUNTY, IOWA , IS INCLUDED IN THE OSMIUM URBAN RENEWAL PLAN AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 4, TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 4;

THENCE WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER SAID SECTION 4, TO THE NORTHEAST CORNER OF SECTION 8, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE SOUTH, ALONG THE EAST LINE OF SAID SECTION 8, A DISTANCE OF 800 FEET;

THENCE NORTHWESTERLY, TO A POINT LOCATED 850 FEET WEST OF THE EAST LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 8 AND 200 FEET SOUTH OF THE NORTH LINE OF SAID SECTION 8;

THENCE WEST, ALONG A LINE 200 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID SECTION 8, TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 8;

THENCE NORTH, ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER SAID SECTION 8, TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 78 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE WEST, ALONG THE SOUTH LINE OF SAID SECTION 5, TO THE SOUTHWEST CORNER OF SAID SECTION 5;

THENCE NORTH, ALONG THE WEST LINE OF SAID SECTION 5, A DISTANCE OF 200 FEET;

THENCE EAST, ALONG A LINE 200 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SECTION 5, TO THE EAST LINE OF SAID SECTION 5;

THENCE NORTH, ALONG THE EAST LINE OF SAID SECTION 5, TO A POINT 225 FEET SOUTH OF THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5;

THENCE WEST, ALONG A LINE 225 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5, TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5, A DISTANCE OF 50 FEET;

THENCE WEST, ALONG A LINE 275 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5, TO THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, A DISTANCE OF 25 FEET;

THENCE WEST, ALONG A LINE 300 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5;

THENCE SOUTH, ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, A DISTANCE OF 75 FEET;

THENCE WEST, ALONG A LINE 375 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, TO A POINT 75 FEET EAST OF THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 5;

THENCE SOUTH, ALONG A LINE 75 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SECTION 5, A DISTANCE OF 200 FEET;

THENCE WEST, ALONG A LINE 575 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, TO THE EAST LINE OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE WEST, ALONG A LINE 575 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 6, TO THE WEST RIGHT OF WAY LINE OF SE 50<sup>TH</sup> STREET (20<sup>TH</sup> AVENUE WARREN COUNTY);

THENCE NORTH, ALONG THE WEST RIGHT OF WAY LINE OF SE 50<sup>TH</sup> STREET (20<sup>TH</sup> AVENUE WARREN COUNTY), TO THE SOUTH RIGHT OF WAY LINE OF SE ADAMS STREET (ADAMS STREET WARREN COUNTY);

THENCE WEST, ALONG THE SOUTH RIGHT OF WAY LINE OF ADAMS STREET (WARREN COUNTY), TO THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6;

THENCE NORTH, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6, TO A POINT 75 FEET SOUTH OF THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6;

THENCE WEST, ALONG A LINE 75 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6, TO THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6;

THENCE WEST, ALONG A LINE 75 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6, TO A POINT 75 FEET EAST OF THE WEST LINE OF SAID SECTION 6;

THENCE SOUTH, ALONG A LINE 75 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SECTION 6, TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6;

THENCE EAST, ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6, TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6;

THENCE EAST, ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 6, TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 6;

THENCE EAST, ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 6, TO THE EAST RIGHT OF WAY LINE OF INTERSTATE 35;

THENCE SOUTH, ALONG THE EAST RIGHT OF WAY LINE OF INTERSTATE 35, TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE WEST, ALONG THE SOUTH LINE OF THE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 7, TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7;

THENCE WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7, TO THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7;

THENCE WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7, TO THE WEST LINE OF SAID SECTION 7;

THENCE NORTH, ALONG THE WEST LINE OF SAID SECTION 7, TO THE SOUTHWEST CORNER OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA;

THENCE NORTH, ALONG THE WEST LINE OF SAID SECTION 6, TO A POINT 75 FEET NORTH OF THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 6;

THENCE EAST, ALONG A LINE 75 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 6, TO THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 6;

THENCE EAST, ALONG A LINE 75 FEET NORTH OF THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 6, TO A POINT 175 FEET WEST OF THE EAST LINE OF SAID SECTION 6;

THENCE NORTH, ALONG A LINE 175 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID SECTION 6, TO THE NORTH LINE OF SAID SECTION 6;

THENCE EAST, ALONG THE NORTH LINE OF SAID SECTION 6, TO THE NORTHWEST CORNER OF SECTION 5, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN;

THENCE EAST, ALONG THE NORTH LINE OF SAID SECTION 5, A DISTANCE OF 175 FEET;

THENCE SOUTH, ALONG A LINE 175 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SECTION 5, TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5;

THENCE EAST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5;

THENCE NORTH, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, A DISTANCE OF 100 FEET;

THENCE EAST, ALONG A LINE 100 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5, TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 5;



THENCE EAST, ALONG A LINE 100 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5, TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5;

THENCE NORTH, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5, A DISTANCE OF 300 FEET;

THENCE EAST, ALONG A LINE 400 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5, TO A POINT 75 FEET WEST OF THE EAST LINE OF SAID SECTION 5;

THENCE NORTH, ALONG A LINE 75 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID SECTION 5, TO A POINT 500 FEET NORTH OF THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5;

THENCE EAST, ALONG A LINE 500 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 5, TO THE WEST LINE OF SECTION 4, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE FIFTH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA;

THENCE EAST, ALONG A LINE 500 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 4, A DISTANCE OF 75 FEET;

THENCE SOUTH, ALONG A LINE 75 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID SECTION 4, TO A POINT 250 FEET NORTHWESTERLY OF THE SOUTH RIGHT OF WAY LINE OF THE GREAT WESTERN TRAIL;

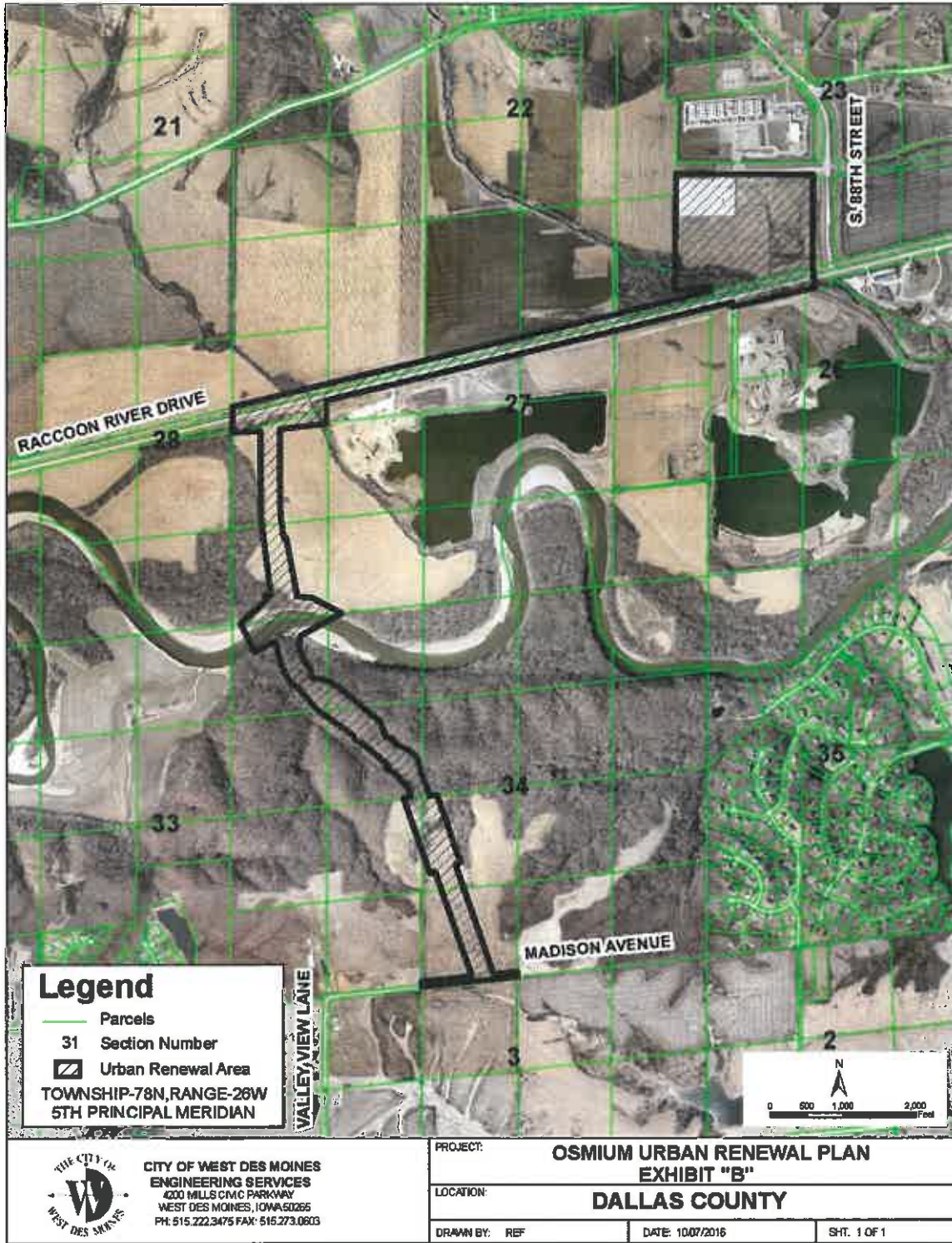
THENCE NORTHEASTERLY, ALONG A LINE 250 FEET NORTHWESTERLY OF AND PARALLEL TO THE SOUTH RIGHT OF WAY LINE OF THE GREAT WESTERN TRAIL, TO THE WEST LINE OF PARCEL "C" AS DEPICTED ON A PLAT OF SURVEY DATED JANUARY 14, 2004 RECORDED IN PLAT BOOK 2004, PAGE 20 OF 77-25 IN THE OFFICE OF THE WARREN COUNTY RECORDER;

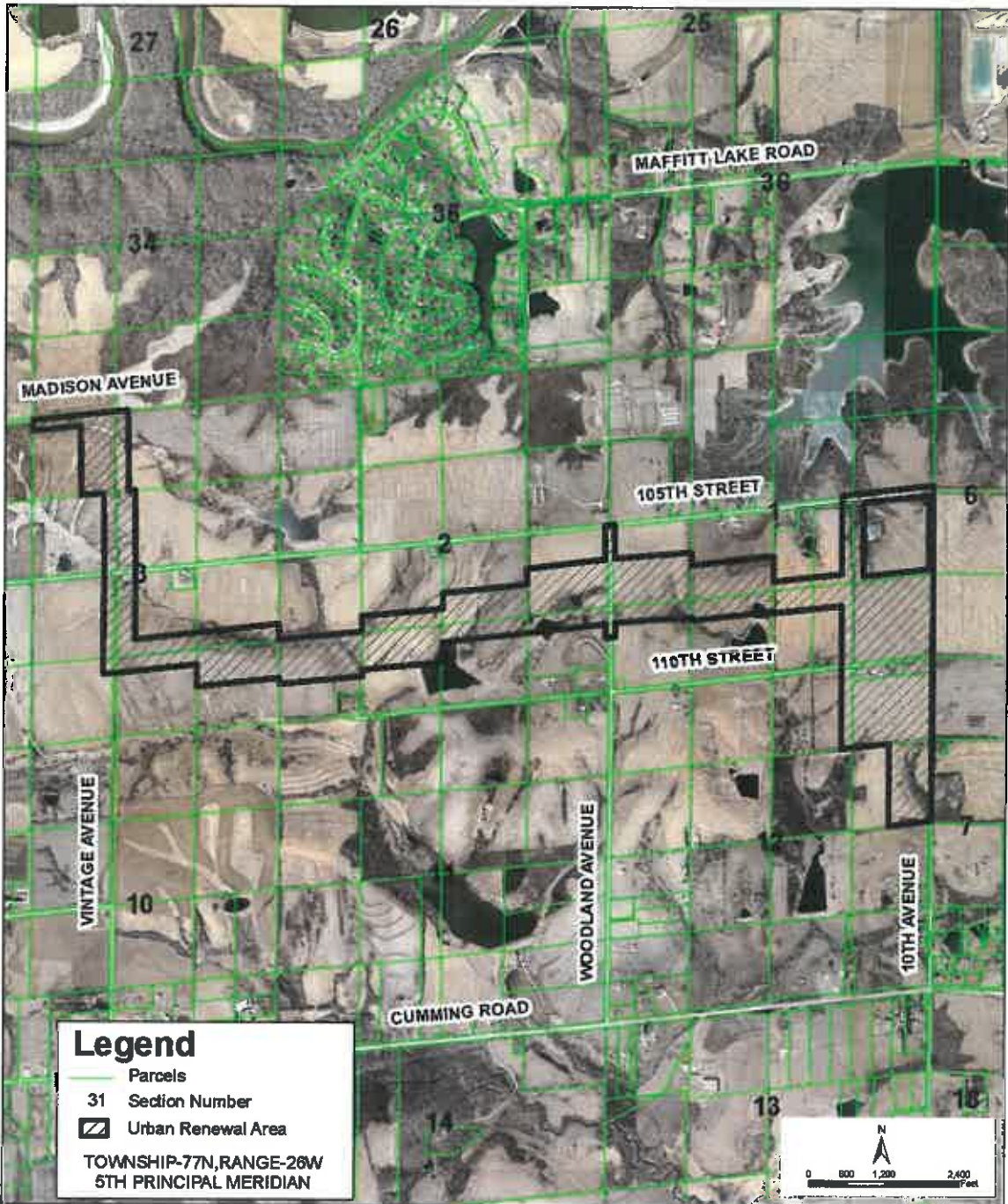
THENCE NORTH, ALONG THE WEST LINE OF SAID PARCEL "C", TO THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 4;

THENCE EAST, ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 4, TO THE POINT OF BEGINNING.

**EXHIBIT B**

**BOUNDARY MAP  
OSMIUM URBAN RENEWAL AREA  
(Individual Maps By County)**





**Legend**

- Parcels
- 31** Section Number
- Urban Renewal Area

TOWNSHIP-77N, RANGE-26W  
5TH PRINCIPAL MERIDIAN



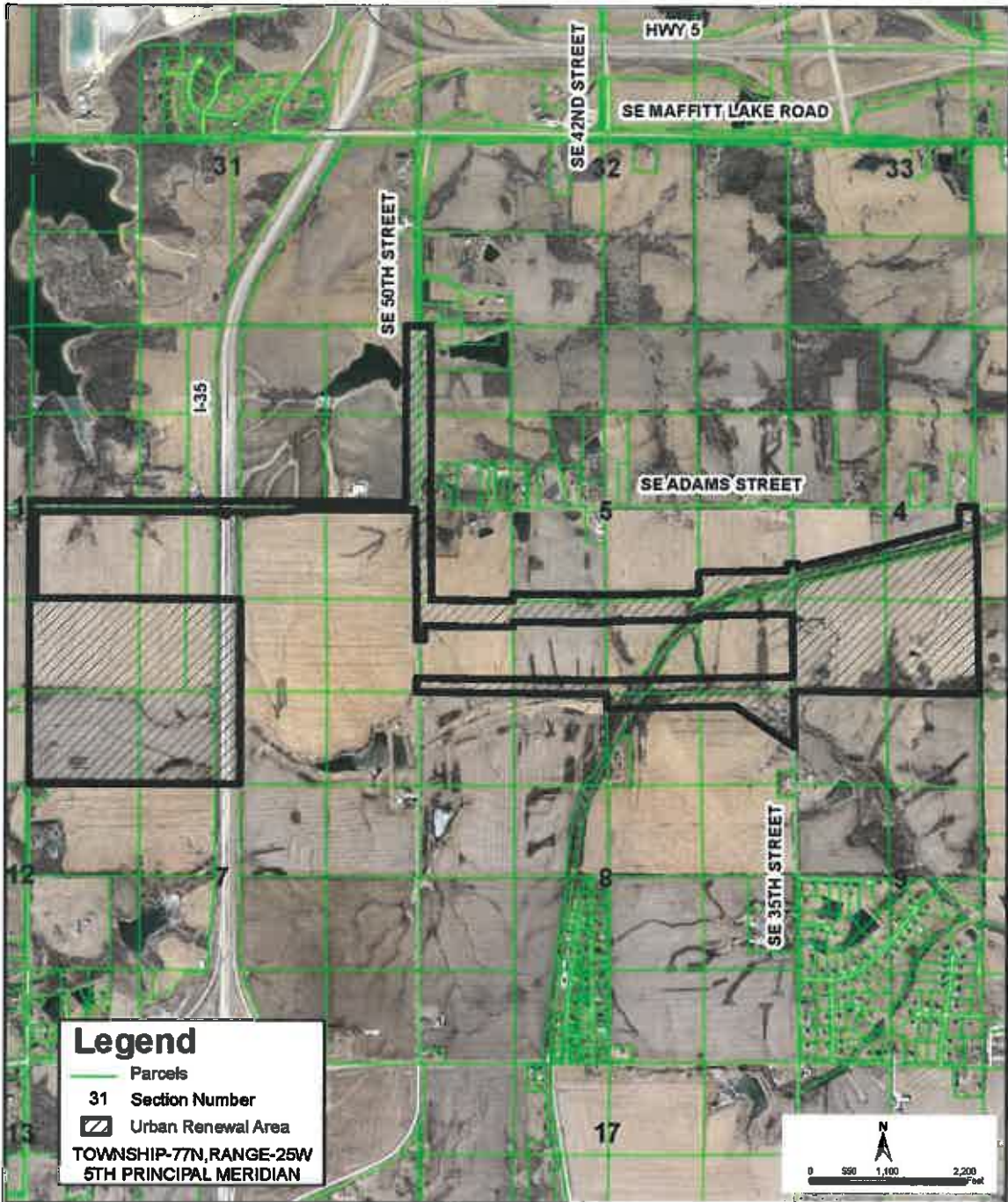
**CITY OF WEST DES MOINES**  
**ENGINEERING SERVICES**  
 4200 MILLS CIRC PARKWAY  
 WEST DES MOINES, IOWA 50265  
 PH: 515.222.3475 FAX: 515.273.0603

PROJECT: <b>OSMIUM URBAN RENEWAL PLAN</b>		
EXHIBIT "B"		
LOCATION: <b>MADISON COUNTY</b>		
DRAWN BY: REF	DATE: 10/07/2016	SHT. 1 OF 1



**CITY OF WEST DES MOINES  
ENGINEERING SERVICES**  
4200 MILLS CIVIC PARKWAY  
WEST DES MOINES, IOWA 50265  
PH: 515.222.3620 FAX: 515.273.0602

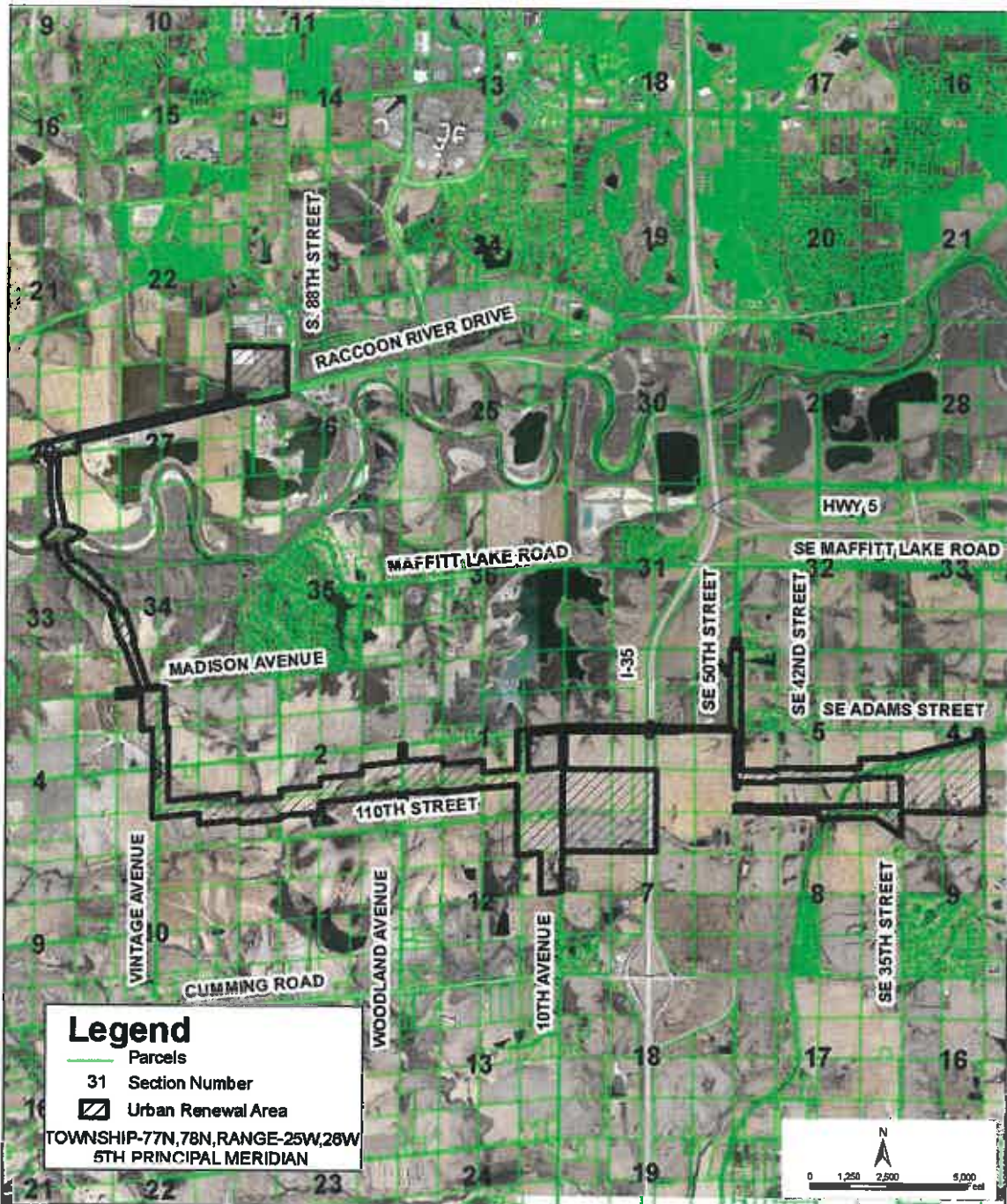
PROJECT:	<b>OSMIUM URBAN RENEWAL PLAN EXHIBIT "B"</b>		
LOCATION:	<b>POLK COUNTY</b>		
DRAWN BY: REF	DATE: 10/07/2016	SHT. 1 OF 1	



**CITY OF WEST DES MOINES**  
**ENGINEERING SERVICES**  
 4200 MILLS CIVIC PARKWAY  
 WEST DES MOINES, IOWA 50265  
 PH. 515.222.3475 FAX. 515.273.0603

PROJECT:	<b>OSMIUM URBAN RENEWAL PLAN EXHIBIT "B"</b>		
LOCATION:	<b>WARREN COUNTY</b>		
DRAWN BY: REF	DATE: 10/07/2018	SHT. 1 OF 1	

**EXHIBIT C  
LOCATION MAP  
OSMIUM URBAN RENEWAL AREA  
(IN ITS ENTIRETY)**



<p style="font-size: 8px; margin-top: 5px;">CITY OF WEST DES MOINES ENGINEERING SERVICES 4200 MILLS CIVIC PARKWAY WEST DES MOINES, IOWA 50266 PH: 515.222.3475 FAX: 515.273.0603</p>	PROJECT: <b>OSMIUM URBAN RENEWAL PLAN EXHIBIT "B" ALL COUNTIES</b>		
	LOCATION: <b>POLK WARREN MADISON DALLAS COUNTIES</b>		
	DRAWN BY: REF	DATE: 10/07/2016	SHT. 1 OF 1

EXHIBIT D

AGREEMENTS TO INCLUDE AGRICULTURAL LAND IN THE OSMIUM URBAN RENEWAL AREA

AGREEMENT TO INCLUDE AGRICULTURAL LAND IN THE OSMIUM URBAN RENEWAL AREA

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

- 1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 9th day of August, 2016.

Agricultural Land Owner's Name:

Charles I. and Ruth Colby Investment Trust

Signature: [Handwritten Signature]

Date: 8-9-16

Witness: [Handwritten Signature]

Signature: [Handwritten Signature]

Date: 8-9-16

Witness: [Handwritten Signature]

Approved by the West Des Moines City Council on the \_\_\_ day of \_\_\_, 2016.

Mayor

Attest: City Clerk

Parcels: (W) 91-15000060615 91-93025050880 91-93025050860 91-15000070420
91-15000060490 91-15000060611 91-15000060640 91-15000070440
91-15000060660 91-93025050840 91-93025050820 (M) 61-011011228000000

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 10 day of September 2016.

Agricultural Land Owner's Name:

Davis Estates, Ltd.

Signature: Luinda Griffith, Pres. Signature: \_\_\_\_\_

Date: 9-10-16 Date: \_\_\_\_\_

Witness: [Signature] Witness: \_\_\_\_\_

Approved by the West Des Moines City Council on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk  
  
\_\_\_\_\_

Parcels: (W) 91-93025080220 91-93025080240



**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.
3. Owner enters into this Agreement with the understanding that the newly constructed roadway known as "Veteran's Parkway" will be aligned as depicted in Exhibit "B" attached hereto.

DATED this 11<sup>th</sup> day of September, 2016.

Agricultural Land Owner's Name: Nick A. Fusaro

Signature: 

Date: 9/11/16

Witness: 

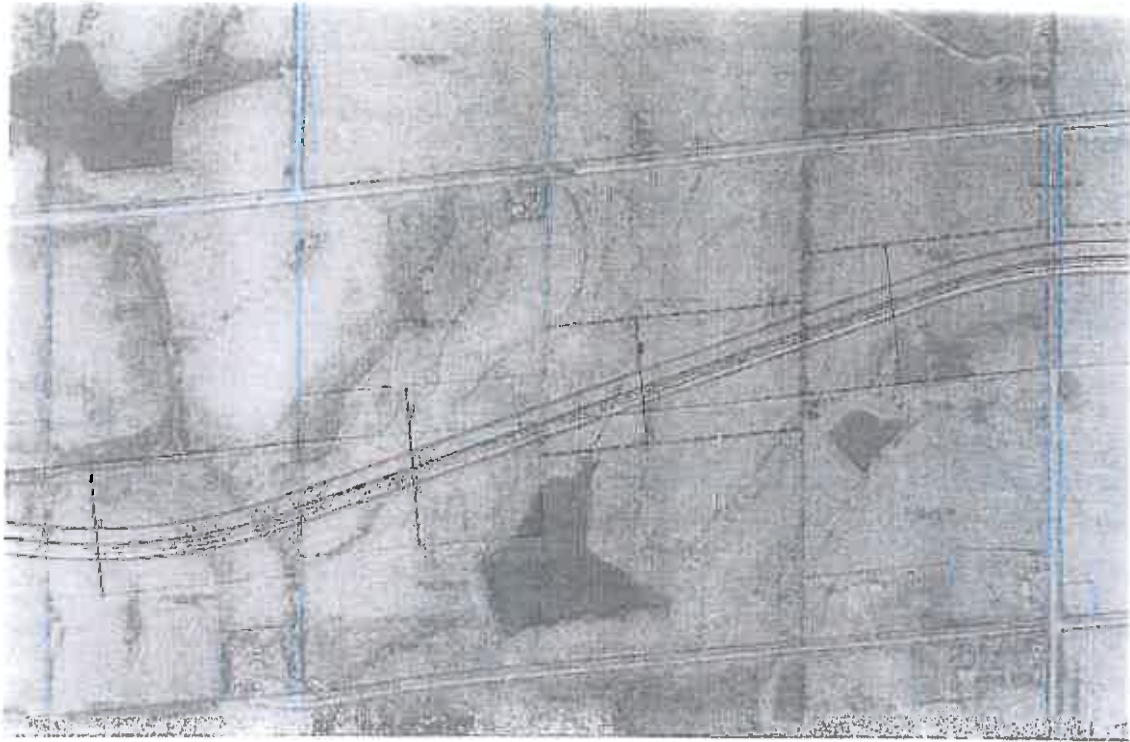
Approved by the West Des Moines City Council on the \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

Parcel(s): (61) 61-01 10102E8003000

# EXHIBIT "B"



**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 14<sup>th</sup> day of October, 2016.

Agricultural Land Owner's Name:

Dollie M. Fischer & Gary R. Fischer, Co-Trustees of  
the Ernest R. Fischer, Jr. Trust

Signature: *Dollie M. Fischer*  
Dollie M. Fischer, Co-Trustee

Date: 10/14/16

Witness: *Shawn A. Murphy*

Signature: *Gary R. Fischer*  
Gary R. Fischer, Co-Trustee

Date: 10-14-16

Witness: *Shawn A. Murphy*

Approved by the West Des Moines City Council on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

\_\_\_\_\_  
Parcels: (W) 91-15000050660 91-15000050640

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 11<sup>th</sup> day of October, 2016.

Agricultural Land Owner's Name:

Flinn Farms, LLC

Signature: *Stacy Flinn, member*

Date: October 11, 2016

Witness: *[Signature]*

Approved by the West Des Moines City Council on the \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

Parcels: (P) 77-32000401178000 (M) 61-011010282000000 61-011010166010000 61-010010164000000  
61-011010168000000 61-010010162000000

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2016.

Agricultural Land Owner's Name:

General Manufacturing Corporation

Signature: Misty Ditter VP

Signature: \_\_\_\_\_

Date: Sept 18 2016

Date: \_\_\_\_\_

Witness: Deborah Doughty

Witness: \_\_\_\_\_

Approved by the West Des Moines City Council on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

Parcels: (W) 91-15000060260 91-15000060220 (M) 61-011010384000000 61-011010386000000  
61-011010388000000 61-011010266010000 61-011010382000000

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 31 day of August, 2016.

Agricultural Land Owner's Name:

Hallett Construction Company

Signature: [Signature]

Signature: \_\_\_\_\_

Date: 8/31/16

Date: \_\_\_\_\_

Witness: [Signature]

Witness: \_\_\_\_\_

Approved by the West Des Moines City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

\_\_\_\_\_

Parcels: (D) 25-1626100003    25-1626100005    25-1626300006    25-1627200006  
                    25-1626300001

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

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WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 17<sup>th</sup> day of August, 2016.

Agricultural Land Owner's Name:

Veronica A. Haluska

Signature: Veronica A. Haluska

Date: 8-17-16

Witness: Jordan T Breitbach  
JORDAN T BREITBACH

Agricultural Land Owner's Name:

John O. Tank

Signature: John O. Tank

Date: April 22/16

Witness: Denise D. Donald

Approved by the West Des Moines City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

Parcels: (M) 61-010010188000000

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 6th day of September, 2016.

Agricultural Land Owner's Name:

K. Allen Hankins and Phyllis Hankins, Trustees of  
the Allen and Phyllis Hankins Trust U/T/A dated  
January 5, 1998

Signature: <u>K. Allen Hankins, trustee</u>	Signature: <u>Phyllis Hankins, Trustee</u>
<small>K. Allen Hankins, Trustee</small>	<small>Phyllis Hankins, Trustee</small>
Date: <u>9/6/16</u>	Date: <u>9/6/2016</u>
Witness: <u>Duane Hankins</u>	Witness: <u>Duane Hankins</u>

Approved by the West Des Moines City Council on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

Parcels: (W) 91-93025040660

91-93025040647

91-93025040627



**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(9) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 10<sup>th</sup> day of October, 2016.

Agricultural Land Owner's Name:  
Barbara J. Higgins (Life Estate)

Kristin Jean Higgins

Signature: K. Higgins

Date: 10-10-16

Witness: Doel Gilman

Kelly Higgins Turner

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Michael Andrew Higgins

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Barbara J. Higgins

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 28 day of Sep, 2016.

Agricultural Land Owner's Name:  
Barbara J. Higgins (Life Estate)

Kristin Jean Higgins

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Kelly Higgins Turner

Signature: 

Date: 9/28/16

Witness:  9/28/16

Michael Andrew Higgins

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Barbara J. Higgins

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

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WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 9 day of 28<sup>th</sup>, 2016.

Agricultural Land Owner's Name:  
Barbara J. Higgins (Life Estate)

Kristin Jean Higgins

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Kelly Higgins Turner

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Michael Andrew Higgins

Signature: [Handwritten Signature]

Date: 9/28/2016

Witness: [Handwritten Signature]

Barbara J. Higgins

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2016.

Agricultural Land Owner's Name:  
Barbara J. Higgins ( Life Estate)

Kristin Jean Higgins

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Kelly Higgins Turner

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Michael Andrew Higgins

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Barbara J. Higgins

Signature: *Barbara J. Higgins*

Date: *Oct 7-2016*

Witness: *[Signature]*

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 29<sup>th</sup> day of August, 2016.

Agricultural Land Owner's Name:

K Properties, LLC Signature: <u>[Handwritten Signature]</u> Date: <u>8/29/16</u> Witness: <u>[Handwritten Signature]</u>	Signature: _____ Date: _____ Witness: _____
---	---

Approved by the West Des Moines City Council on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk  
  
\_\_\_\_\_

Parcels: (M) 61-011010284000000    61-011010262010000    61-011010264000000  
                   61-011010268000000    61-011010286000000

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

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WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 26 day of September, 2016.

Agricultural Land Owner's Name:

Charlotte A. Kendall

Signature: Charlotte A. Kendall

Date: 9-20-16

Witness: Susan T. Conway

Susan Ilene Conway

Signature: Susan T. Conway

Date: 9-20-16

Witness: Charlotte A. Kendall

Gregory Paul Webb

Signature: Gregory Paul Webb

Date: 9-20-16

Witness: Charles E. Webb

Sharon Marie Schnese

Signature: Sharon M. Schnese

Date: 9-22-2016

Witness: Wm. J. Schnese

Charles E. Webb

Signature: Charles E. Webb

Date: 9-20-16

Witness: Charlotte A. Kendall

Approved by the West Des Moines City Council on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

\_\_\_\_\_  
Parcels: (W) 91-15000040622      91-15000040643

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 14<sup>th</sup> day of September, 2016.

Agricultural Land Owner's Name:

William C. Knapp, L.C.  
*By: Gerard D. Neugeb, Manager*

Signature: *Gerard D. Neugeb* Signature: \_\_\_\_\_

Date: 9/14/2016 Date: \_\_\_\_\_

Witness: *Stuart Ruddy* Witness: \_\_\_\_\_

Approved by the West Des Moines City Council on the \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

\_\_\_\_\_

Parcels: (W) 91-15000050447 91-15000050460



**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

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1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 11<sup>th</sup> day of August, 2016.

Agricultural Land Owner's Name:

LeMar A. Koethe

Signature: 

Date: 8/11/16

Witness: Daniel Deans

Approved by the West Des Moines City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

Parcels: (W) 91-93025050680    91-93025050621  
(M) 61-010010180040000    61-010010180030000    61-010010180022000    61-010010180010000

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

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2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 24<sup>th</sup> day of August, 2016.

Agricultural Land Owner's Name:

Martin Marietta Materials Real Estate Investments, Inc.

Signature: William J. Galan

Signature: \_\_\_\_\_

Date: 8/24/16

Date: \_\_\_\_\_

Witness: Calougan

Witness: \_\_\_\_\_

Approved by the West Des Moines City Council on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

\_\_\_\_\_

Parcels: (D) 25-1627300003 25-1627200005 25-1628400004 25-1628400002

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

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DATED this 14<sup>th</sup> day of September, 2016.

**RACCOON RIVER LAND CO., L.L.C.**  
an Iowa limited liability company

By: William C. Knapp, L.C.  
an Iowa limited liability company  
Managing Member

By:   
Gerard D. Neugent, Manager

By: **RACCOON RIVER INVESTORS, LLC**  
Managing Member

By: **JSC TRUST**  
Member

By:   
Paul D. Hayes, Trustee

ACKNOWLEDGEMENTS

State of Iowa )  
 )ss:  
County of Polk )

This record was acknowledged before me on September 14, 2016 by Gerard D. Neugent, Manager of William C. Knapp, L.C., Member of Raccoon River Land Co., L.L.C.



Stuart Ruddy  
Notary Public

(Stamp or Seal)

State of Iowa )  
 )ss:  
County of Polk )

This record was acknowledged before me on September 15, 2016 by Paul D. Hayes, Trustee of JSC Trust, Member in Raccoon River Investors, LLC, Member of Raccoon River Land Co., L.L.C.



Stuart Ruddy  
Notary Public

(Stamp or Seal)

Approved by the West Des Moines City Council on the \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

\_\_\_\_\_

Parcels: (D) 25-1634100004 25-1633200004 25-1634300001 25-1634100003  
25-1634100001 25-1634300004 25-1633200002 25-1634300002  
(W) 61-78501034800000 61-78501034200000

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

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2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 5<sup>th</sup> day of October, 2016.

Agricultural Land Owner's Name:

RACCOON RIVER LAND CO., L.L.C.  
an Iowa limited liability company

By: William C. Knapp, L.C.  
an Iowa limited liability company  
Managing Member

By:   
Gerard D. Neugent, Manager

By: RACCOON RIVER INVESTORS, LLC  
Managing Member

By: JSC TRUST  
Member

By:   
Paul D. Hayes, Trustee

STATE OF IOWA    )  
                          ) SS  
COUNTY OF POLK    )

This record was acknowledged before me on October 3, 2016 by Gerard D. Neugent, Manager of William C. Knapp, L.C. Member of Raccoon River Land Co., L.L.C.



Kelly Dolinar  
Notary Public in and for the State of Iowa

My Commission Expires:

STATE OF IOWA    )  
                          ) SS  
COUNTY OF POLK    )

This record was acknowledged before me on October 5, 2016 by Paul D. Hayes, Trustee of JSC Trust, Member in Raccoon River Investors, LLC, Member of Raccoon River Land Co., L.L.C.



Kelly Dolinar  
Notary Public in and for the State of Iowa

My Commission Expires:

Approved by the West Des Moines City Council on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

\_\_\_\_\_

Parcels: (M) 61-021010362000000    61-021010368000000

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 7 day of SEPT, 2016.

Agricultural Land Owner's Name:

Temple Holdings, LP

Signature: [Signature]

Signature: \_\_\_\_\_

Date: 9/7/16

Date: \_\_\_\_\_

Witness: [Signature] 09/07/16

Witness: \_\_\_\_\_

Approved by the West Des Moines City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk  
  
\_\_\_\_\_

Parcels: (W) 91-1500050442

**AGREEMENT TO INCLUDE AGRICULTURAL LAND  
IN THE OSMIUM URBAN RENEWAL AREA**

WHEREAS, the City of West Des Moines, Iowa, (the "City") has proposed the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa, in order to undertake activities authorized by that Chapter; and

WHEREAS, it has been proposed that the boundaries of the Area will include certain property designated in the Osmium Urban Renewal Plan ("Property"); and

WHEREAS, Section 403.17(10) of the Code of Iowa provides that no property may be included in an urban renewal area which meets the definition in that Section of "agricultural land," until the owners of such property agree to include such property in such urban renewal area; and

WHEREAS, it has been determined that a portion of the property owned by the Agricultural Land Owner below within the Urban Renewal Area meets the definition of "agricultural land" in Section 403.17(3) of the Code of Iowa;

NOW, THEREFORE, it is hereby certified and agreed by the Agricultural Land Owner as follows:

1. The Agricultural Land Owner hereby certifies that he/she is the owner of certain property within the proposed Urban Renewal Area (Exhibit A) and agrees that the City of West Des Moines, Iowa, may include such property within the Urban Renewal Area.
2. The Agricultural Land Owner further authorizes the governing body of the City of West Des Moines, Iowa, to pass any resolution or ordinance necessary to designate said property as part of the Urban Renewal Area under Chapter 403 of the Code of Iowa, and to proceed with activities authorized under said Chapter.

DATED this 6 day of OCTOBER, 2016.

Agricultural Land Owner's Name:

Joseph G. Van Ginkel, III Revocable Trust

Signature: *Joseph G. Van Ginkel, III*

Date: 10/6/2016

Witness: *Margaret Van Ginkel*

Approved by the West Des Moines City Council on the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor

Attest: City Clerk

\_\_\_\_\_  
Parcels: (M) 61-011011224000000 61-011011222004000 61-011011222003000



**EXHIBIT E  
JOINT CITY/COUNTY AGREEMENT  
(WARREN COUNTY)**

**JOINT CITY/COUNTY AGREEMENT**

WHEREAS, the City of West Des Moines, State of Iowa, (the "City") has proposed to establish the Osmium Urban Renewal Area within two miles of the City of West Des Moines, State of Iowa, for the purpose of participating in eligible urban renewal projects; and

WHEREAS, the City Council of the City of West Des Moines, State of Iowa, has reviewed the Osmium Urban Renewal Plan for said Urban Renewal Area and has determined that the proposed Urban Renewal Plan and completion of the eligible projects are in the best interests of the City of West Des Moines, State of Iowa; and

WHEREAS, Iowa Code Section 403.17(4) requires a "joint agreement" between the City and the County before the City can proceed with said projects.

NOW THEREFORE, WARREN COUNTY, STATE OF IOWA, AND THE CITY OF WEST DES MOINES, STATE OF IOWA, AGREE AS FOLLOWS:

1. The Board of Supervisors of Warren County, State of Iowa, hereby agrees and authorizes the City of West Des Moines, State of Iowa, to proceed with the Osmium Urban Renewal Plan, and the undertaking of the eligible urban renewal projects therein which are located within two miles of the City of West Des Moines and in such locations as is identified in the Osmium Urban Renewal Plan.
2. This "joint agreement" is intended to meet the requirements of Iowa Code Section 403.17(4) with respect to the portions of the Osmium Urban Renewal Area outside the current boundaries of the City but within two miles thereof.
3. This Joint Agreement has been duly authorized by the governing bodies of Warren County, State of Iowa, and the City of West Des Moines, State of Iowa.

PASSED AND APPROVED this 29th day of September, 2016.

WARREN COUNTY, STATE OF IOWA

Doug Spurr  
Chairperson, Board of Supervisors

ATTEST:

Traci Vanderlinden  
Secretary

STATE OF IOWA            )  
  ) SS  
COUNTY OF WARREN    )

On this 29th day of September, 2016, before me a Notary Public in and for the State of Iowa, personally appeared Doug Spurr and Traci Vanderlinden to me personally known, who being duly sworn, did say that they are the Chairperson and Secretary, respectively, of Warren County, State of Iowa, a political subdivision, and that the seal affixed to the foregoing instrument is the seal of said political subdivision, and that said instrument was signed and sealed on behalf of said political subdivision by authority and resolution of its Board of Supervisors, and said Chairperson and Secretary acknowledged said instrument to be the free act and deed of said political subdivision by it voluntarily executed.



Megan R. Andrew  
Notary Public in and for Warren County, Iowa

PASSED AND APPROVED this 3rd day of October, 2016.

CITY OF WEST DES MOINES, STATE OF IOWA

[Signature]  
Mayor

ATTEST:

[Signature]  
City Clerk

STATE OF IOWA            )  
  ) SS  
COUNTY OF POLK        )

On this 3rd day of October, 2016, before me a Notary Public in and for said          County, personally appeared Steven Gaer and Ryan Jacobson to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, State of Iowa, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

[Signature]  
Notary Public in and for Polk County, Iowa

01279277-1U1333-280



**EXHIBIT F**  
**JOINT CITY/COUNTY AGREEMENT**  
**(MADISON COUNTY)**

WHEREAS, the City of West Des Moines, State of Iowa, (the "City") has proposed to establish the Osmium Urban Renewal Area within two miles of the City of West Des Moines, State of Iowa, for the purpose of participating in eligible urban renewal projects; and

WHEREAS, the City Council of the City of West Des Moines, State of Iowa, has reviewed the Osmium Urban Renewal Plan for said Urban Renewal Area and has determined that the proposed Urban Renewal Plan and completion of the eligible projects are in the best interests of the City of West Des Moines, State of Iowa; and

WHEREAS, Iowa Code Section 403.17(4) requires a "joint agreement" between the City and the County before the City can proceed with said projects.

NOW THEREFORE, MADISON COUNTY, STATE OF IOWA, AND THE CITY OF WEST DES MOINES, STATE OF IOWA, AGREE AS FOLLOWS:

1. The Board of Supervisors of Madison County, State of Iowa, hereby agrees and authorizes the City of West Des Moines, State of Iowa, to proceed with the Osmium Urban Renewal Plan, and the undertaking of the eligible urban renewal projects therein which are located within two miles of the City of West Des Moines and in such location as is identified in the Osmium Urban Renewal Plan.
2. This "joint agreement" is intended to meet the requirements of Iowa Code Section 403.17(4) with respect to the portions of the Osmium Urban Renewal Area outside the current boundaries of the City but within two miles thereof.
3. This Joint Agreement has been duly authorized by the governing bodies of Madison County, State of Iowa, and the City of West Des Moines, State of Iowa.

PASSED AND APPROVED this 20<sup>th</sup> day of September, 2016.

MADISON COUNTY, STATE OF IOWA

  
Chairperson, Board of Supervisors

ATTEST:

  
Heidi L. Burhans, Madison County Auditor

STATE OF IOWA            )  
  ) SS  
COUNTY OF MADISON    )

On this 20<sup>th</sup> day of September, 2016, before me a Notary Public in and for the State of Iowa, personally appeared Phillip Clifton and Heidi L. Burhans to me personally known, who being duly sworn, did say that they are the Chairperson and Auditor, respectively, of Madison County, State of Iowa, a political subdivision, and that the seal affixed to the foregoing instrument is the seal of said political subdivision, and that said instrument was signed and sealed on behalf of said political subdivision by authority and resolution of its Board of Supervisors, and said Chairperson and Auditor acknowledged said instrument to be the free act and deed of said political subdivision by it voluntarily executed.

  
Notary Public in and for Madison County, Iowa



PASSED AND APPROVED this 3rd day of October, 2016.

CITY OF WEST DES MOINES, STATE OF IOWA

  
\_\_\_\_\_  
Mayor

ATTEST:

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

STATE OF IOWA            )  
                                  ) SS  
COUNTY OF POLK        )

On this 3rd day of October, 2016, before me a Notary Public in and for said \_\_\_\_\_ County, personally appeared Steven Gaer and Ryan Jacobson to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, State of Iowa, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

  
\_\_\_\_\_  
Notary Public in and for Polk County, Iowa

01279276-1\11393-280



**EXHIBIT G  
JOINT AGREEMENT  
(CITY OF CUMMING)**

**JOINT AGREEMENT**

WHEREAS, the City of West Des Moines, Iowa, ("West Des Moines") is proposing to adopt the Osmium Urban Renewal Plan ("Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area"), pursuant to Chapter 403 of the Code of Iowa (the Urban Renewal Chapter), in order to undertake activities authorized by that Chapter; and

WHEREAS, the Plan is expected to authorize, among other things, construction of infrastructure (including a sewer line) as urban renewal projects, and a portion of said infrastructure is expected to be constructed by the City of West Des Moines within the City of Cumming, Iowa; and

WHEREAS, it is expected that the infrastructure will benefit Microsoft Corporation's construction of a regional data center within the Osmium Urban Renewal Area; and

WHEREAS, this infrastructure is also expected to provide benefits to the residents and businesses of the City of Cumming, the City of West Des Moines, and surrounding municipalities; and

WHEREAS, it is expected that the cost of constructing the infrastructure within the City of Cumming will be funded in part from incremental tax revenue generated by the Microsoft Corporation regional data center located within the Osmium Urban Renewal Area, which revenues are expected to be collected by the County and provided to West Des Moines under the Urban Renewal Chapter; and

WHEREAS, in order to allow incremental tax revenues to be used to fund the construction of the infrastructure within the City of Cumming, property where the Microsoft Corporation regional data center will be located as well as property where the infrastructure will be constructed must be included in the Osmium Urban Renewal Area by the Plan; and

WHEREAS, the Plan proposes that property within the corporate boundaries of the City of Cumming be included in the land to be included in the Osmium Urban Renewal Area by the Plan (see attached map); and

WHEREAS, the City of West Des Moines will not adopt a TIF Ordinance covering the property located within the City of Cumming; and

WHEREAS, Section 403.17(4) of the Code of Iowa provides that no property may be included in a City's urban renewal area that lies in a neighboring city "unless a resolution has been adopted by the governing body of the [neighboring] City declaring a need to be included in the area"; and

WHEREAS, in addition to the City of Cumming adopting the aforementioned resolution ("Resolution"), the City of Cumming and the City of West Des Moines have decided to further document the arrangement through this Joint Agreement.

NOW THEREFORE, THE CITY OF CUMMING, STATE OF IOWA, AND THE CITY OF WEST DES MOINES, STATE OF IOWA, AGREE AS FOLLOWS:

1. The City Council of the City of Cumming, State of Iowa hereby agrees and authorizes the City of West Des Moines, State of Iowa, to proceed with adopting the Osmium Urban Renewal Plan, and the undertaking of the eligible urban renewal projects and the exercise of urban renewal powers within the Osmium Urban Renewal Area, including that portion of the Area within the boundaries of the City of Cumming. This Agreement is contingent on the City of West Des Moines not adopting an ordinance pursuant to Iowa Code Section 403.19 implementing tax increment financing on property within the corporate boundaries of the City of Cumming, absent express written permission from the City of Cumming in the form of an amendment to this Agreement.

2. This Joint Agreement and the aforementioned Resolution are intended to meet the requirements of Iowa Code Chapter 403.17(4) with respect to the Osmium Urban Renewal Area established by City of West Des Moines, State of Iowa.

3. This Joint Agreement has been duly authorized by the governing bodies of the City of Cumming, State of Iowa and the City of West Des Moines, State of Iowa.



PASSED AND APPROVED this 29<sup>th</sup> day of September, 2016.

CITY OF CUMMING, STATE OF IOWA

Tom Becker  
Tom Becker, Mayor

ATTEST:

Rachelle Swisher  
Rachelle Swisher, City Clerk

STATE OF IOWA            )  
  ) SS  
COUNTY OF WARREN    )

On this 29 day of September, 2016, before me a Notary Public in and for the State of Iowa, personally appeared Tom Becker and Rachelle Swisher to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Cumming, State of Iowa, a Municipal Corporation, and that the seal affixed to the foregoing instrument is the seal of said Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

Geri D. Nuber  
Notary Public in and for Warren County, Iowa



PASSED AND APPROVED this 3rd day of October, 2016.

CITY OF WEST DES MOINES, STATE OF IOWA

[Signature]  
Mayor

ATTEST:

Ryan T. Jordan  
City Clerk

STATE OF IOWA            )  
  ) SS  
COUNTY OF POLK        )

On this 3d day of October, 2016, before me a Notary Public in and for said County, personally appeared Steven Gaer and Ryan Jackson to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, State of Iowa, a Municipal Corporation, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipal Corporation, and that said instrument was signed and sealed on behalf of said Municipal Corporation by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipal Corporation by it voluntarily executed.

Katie Walters  
Notary Public in and for Polk County, Iowa

01284590-1\11333-280



01238295-1\11333-280

CERTIFICATE

STATE OF IOWA )  
 ) SS  
COUNTIES OF POLK )

I, the undersigned City Clerk of the City of West Des Moines, State of Iowa, do hereby certify that attached is a true and complete copy of the portion of the corporate records of the City showing proceedings of the Council, and the same is a true and complete copy of the action taken by the Council with respect to the matter at the meeting held on the date indicated in the attachment, which proceedings remain in full force and effect, and have not been amended or rescinded in any way; that meeting and all action thereat was duly and publicly held in accordance with a notice of public hearing and tentative agenda, a copy of which was timely served on each member of the Council and posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the Council (a copy of the face sheet of the agenda being attached hereto) pursuant to the local rules of the Council and the provisions of Chapter 21, Code of Iowa, upon reasonable advance notice to the public and media at least twenty-four hours prior to the commencement of the meeting as required by law and with members of the public present in attendance; I further certify that the individuals named therein were on the date thereof duly and lawfully possessed of their respective city offices as indicated therein, that no vacancy existed except as may be stated in the proceedings, and that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization, existence or boundaries of the City or the right of the individuals named therein as officers to their respective positions.

WITNESS my hand and the seal of the Council hereto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
City Clerk, City of West Des Moines, State of Iowa

(SEAL)

RESOLUTION NO. PZC -16- 070

**A RESOLUTION OF THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES, FINDING THE PROPOSED OSMIUM URBAN RENEWAL PLAN CONFORMS WITH THE GENERAL PLAN FOR DEVELOPMENT**

**WHEREAS**, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, the applicant, The City of West Des Moines, has requested approval for the creation of the Osmium Urban Renewal Plan for that property located at the southwest quadrant of I-35 and future Veterans Parkway for the purpose of creating the Osmium Urban Renewal Plan;

**WHEREAS**, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference;

**WHEREAS**, on November 7, 2016, this Commission held a duly-noticed public meeting to consider the application for the creation of a new Urban Renewal Plan;

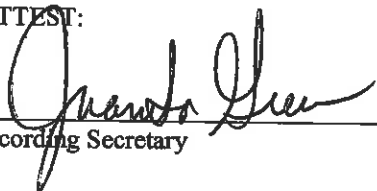
**NOW, THEREFORE**, THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:

**SECTION 1.** The finding, of consistency, in the staff report, dated November 7, 2016, or as amended orally at the Plan and Zoning Commission hearing of November 7, 2017, is adopted.

**SECTION 2.** In accordance with applicable State statutory provisions, the proposed creation of the Osmium Urban Renewal Plan is found to be in conformity with the general plan for development of the City and recommended to the City Council for approval.

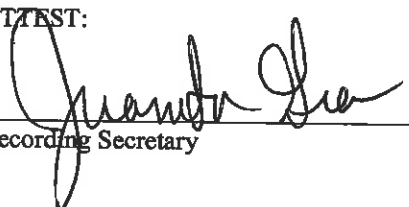
**PASSED AND ADOPTED** on November 7, 2016.

  
\_\_\_\_\_  
Craig Erickson, Chairperson  
Plan and Zoning Commission

ATTEST:  
  
\_\_\_\_\_  
Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on November 7, 2016, by the following vote:

- AYES: Andersen, Costa, Crowley, Erickson, Hatfield, Southworth
- NAYS:
- ABSTENTIONS:
- ABSENT: Brown

ATTEST:  
  
\_\_\_\_\_  
Recording Secretary

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**ITEM:** Approval to execute a Development Agreement between Microsoft Corporation and the City of West Des Moines **DATE:** November 14, 2016

**RESOLUTION:** Approval of Development Agreement

**FINANCIAL IMPACT:** Based on the recently amended Alluvion Urban Renewal Plan and the new Osmium Urban Renewal Plan and the attached development agreement with the Microsoft Corporation, the City anticipates providing incentives in the form of public infrastructure and an economic development grant, all totaling \$94-112 million. These costs will be funded by incremental property tax revenues generated by the current Alluvion project site for public improvements being undertaken within the Alluvion Urban Renewal Area; and the Osmium project site for the economic development grant and public improvements being undertaken within the Osmium Urban Renewal Area. Microsoft intends to undertake approximately \$1.5-2 billion in improvements to their Osmium project site located on a 200-acre site within Warren County and Madison County on SE 60<sup>th</sup>.

**BACKGROUND:** On November 14, 2016, the City Council is scheduled to approve an amendment to the Alluvion Urban Renewal Plan to allow tax increment funds to be spent on certain public improvements related to the Osmium project. Likewise, the Council is also scheduled to approve the Osmium Urban Renewal Area to allow tax increment funds to be dispersed for eligible projects and an economic development grant. The development agreement outlines those actions required of each party.

**OUTSTANDING ISSUES:** There are no outstanding issues.

**RECOMMENDATION:** Adopt the resolution approving the Development Agreement and authorizing the Mayor to sign the Agreement on behalf of the City.

Lead Staff Member: Clyde E. Evans, AICP, Planner

**STAFF REVIEWS**

Department Director	Clyde Evans, Community and Economic Development Director	<i>CE</i>
Appropriations/Finance	Tim Stiles, Finance Director	<i>TS</i>
Legal		<i>JS</i>
Agenda Acceptance		<i>ME</i>

**PUBLICATION(S) (if applicable)**

Published In	Des Moines Register
Date(s) Published	November 4, 2016
Letter sent to surrounding property owners	N/A

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	
Date Reviewed	
Recommendation	No <input type="checkbox"/> Split <input type="checkbox"/>

**ATTACHMENTS:**

- Exhibit I - Development Agreement
- Exhibit II - Resolution

**DEVELOPMENT AGREEMENT**

**By and Between**

**CITY OF WEST DES MOINES, IOWA**

**and**

**MICROSOFT CORPORATION**

**(Osmium Project)**

\_\_\_\_\_, 2016

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## **DEVELOPMENT AGREEMENT**

This Development Agreement ("Agreement" or "Development Agreement") is made as of the day this Agreement is signed by both Parties (the "Effective Date"), by and between the City of West Des Moines, Iowa, a municipal corporation with its principal offices located at 4200 Mills Civic Parkway, West Des Moines, Iowa 50265 (the "City"), and Microsoft Corporation, a Washington corporation, with its principal offices located at One Microsoft Way, Redmond, Washington ("Developer"). The Parties are the City and the Developer.

### **WITNESSETH:**

WHEREAS, in furtherance of the objectives of Chapter 403 and Chapter 15A of the Code of Iowa, 2015, as amended (the "Urban Renewal Act"), the City is engaged in carrying out urban renewal project activities in an area known as the Osmium Urban Renewal Area ("Urban Renewal Area"); and

WHEREAS, the Developer has acquired or is in the process of acquiring the right to develop certain property located within the Urban Renewal Area, as more particularly described in Exhibit A attached hereto and made a part hereof (which property as so described is hereinafter referred to as the "Development Property"); and

WHEREAS, the Developer is willing to cause certain Minimum Improvements to be constructed on the Development Property and to operate such Minimum Improvements for its business, including creation and retention of employment; and

WHEREAS, the City is willing to provide certain public improvements and an economic development grant to Developer to assist in the development of the Minimum Improvements; and

WHEREAS, the City believes that the development of the Minimum Improvements on the Development Property is in the vital and best interests of the City and in accordance with the public purposes and provisions of the applicable State and local laws and requirements under which the project has been undertaken and is being assisted; and;

WHEREAS, the State of Iowa ("State"), the Developer and the City plan to enter into one or more Economic Development Assistance Contracts ("State Contract(s)"), including but not limited to Contract No. 17-TC-005, which contract(s) provide for State assistance/incentives in support of the Project; the incentives provided in this Agreement by the City shall serve as the "local match" for any or all such State Contract(s).

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

**ARTICLE 1.  
DEFINITIONS**

Section 1.1 Definitions. In addition to other definitions set forth in this Agreement, all capitalized terms used and not otherwise defined in this Agreement shall have the following meanings unless a different meaning clearly appears from the context:

Agreement or Development Agreement means this Agreement and all Exhibits hereto, as the same may be from time to time modified, amended or supplemented.

Annual Certification Form is the annual form submitted by Developer to document the monthly average of Full Time Equivalent Jobs in the form of Exhibit H.

Assessment Agreement or Minimum Assessment Agreement means the minimum assessment agreement in the form of Exhibit D attached hereto.

City means the City of West Des Moines, Iowa.

City Bonds, or Bonds, mean the general obligation bonds to be issued by the City in one or more series for the purpose of funding the Public Use Improvements and the payment of the Economic Development Grant to the Developer. The City Bonds shall be issued in an aggregate principal amount estimated to be approximately \$97,165,000, subject to satisfaction of the conditions precedent set forth in this Agreement, and also may be used to pay capitalized interest and costs of issuance of the City Bonds. Such aggregate principal amount may change depending on a variety of factors, such as the costs of projects, actual Bond sale terms, tax rates and levies, the timing of the sale, inclusion of capitalized interest, as necessary, and other factors. Developer recognizes and agrees that the City will use the Tax Increment generated by the construction of the Minimum Improvements to pay all of the Debt Service coming due on the City Bonds. The estimated repayment schedule(s) for the City Bonds will be attached hereto as Exhibit E and incorporated herein by reference. The current version of Exhibit E proposes four series of City Bonds; however, the number of series of City Bonds and amounts of such Bonds will necessarily change according to the City's borrowing decisions and other factors. Following each issuance of the City Bonds, the City shall deliver a copy of the final debt service schedule to the Developer, and such debt service schedule thereafter shall be substituted for and become part of Exhibit E to this Agreement. In addition, the parties acknowledge that if the City Bonds are refinanced in the future, Exhibit E shall be updated and such debt service schedule thereafter shall be substituted for and become Exhibit E to this Agreement.

Code means the Code of Iowa, 2015, as amended.

Conceptual Site Plan means the conceptual site plan for the Minimum Improvements on the Development Property, attached to this Agreement as Exhibit B and incorporated herein by reference. Individual site plans for each phase of the Minimum Improvements on the Development Property, which are consistent with this Agreement and the Conceptual Site Plan, shall be prepared and filed by the Developer with the appropriate City official under the provisions of the City Code, as the same may be amended from time to time. Each individual site plan for each phase shall be

processed through the normal City procedures of Planning and Zoning Commission, City Council review/approval and any other requirements per city regulations and City Code.

**Conditions Precedent** mean the conditions that must be satisfied by Developer under this Agreement as a precedent to the City taking action under this Agreement.

**Construction Plans** means the plans, specifications, drawings and related documents reflecting the construction work to be performed by the Developer on the Development Property in accordance with the individual site plans for the Minimum Improvements on the Development Property and this Agreement. The Construction Plans will contain sufficient detail as required by the building inspector of the City or as required by applicable City codes. The Construction Plans may be amended by Developer in its sole discretion as long as Developer obtains the City's approval when required by the City Code and the Plans are consistent with this Agreement.

**Debt Service** means the scheduled principal and interest payments (including capitalized interest) related to the City Bonds.

**Developer** means Microsoft Corporation.

**Development Property** means the property within the Urban Renewal Plan and described in Exhibit A hereto and depicted in Exhibit A-1.

**Economic Development Grant** means the economic development grant to be made by the City to the Developer under Article IV. The Economic Development Grant shall be in the aggregate amount of \$10,050,000 and shall be funded solely and only from the proceeds of the City Bonds.

**Effective Date** means the date the last party signs the Agreement, including all applicable Exhibits.

**Event of Default** means any of the events described in Section 9.1 of this Agreement.

**Full Time Equivalent Jobs** means the job created by Developer located at the Minimum Improvements. The definition of "Full Time Equivalent Jobs" shall be identical to the definition of "Full Time Equivalent Jobs" in the 2016 IEDA Contract. For greater certainty, any jobs created by the Developer (regardless of whether Developer staffs its operations through direct hire by Developer or vendor resource) shall be considered as Full Time Equivalent Jobs as long as the definition of "Full Time Equivalent Jobs" in the 2016 IEDA Contract is met.

**IEDA** means Iowa Economic Development Authority.

**Indemnified Parties** means the City and the governing body members, officers, agents, servants and employees thereof. See Article VII.

**Minimum Actual Value(s)** means the minimum actual value of the Minimum Improvements on the Development Property (land and building(s)) as set forth in the Minimum Assessment Agreement (Exhibit D).

**Minimum Improvements** shall mean the Minimum Improvements on the Development Property further described in Exhibits B and C.

**Monthly Average** means the average Full Time Equivalent Jobs as calculated in the Annual Certification Form (Exhibit H).

**Mortgage** means any mortgage or security agreement in which the Developer has granted a mortgage or other security interest in the Development Property, or any portion or parcel thereof, or any improvements constructed thereon.

**Mortgagee** means any lender secured by a Mortgage.

**Ordinance(s)** means the respective ordinances of the City, under which the taxes levied on the taxable property in the Urban Renewal Area shall be divided and a portion paid into the Osmium Urban Renewal Tax Increment Revenue Fund.

**Osmium Urban Renewal Tax Increment Revenue Fund(s)** means the special funds of the City created under the authority of Section 403.19(2) of the Code and the Ordinance(s), which funds were created in order to pay the principal of and interest on loans, monies advanced or indebtedness, whether funded, refunded, assumed or otherwise, including bonds or other obligations issued under the authority of Section 403.9 or 403.12 of the Code, incurred by the City to finance or refinance in whole or in part projects undertaken pursuant to the Urban Renewal Plan for the Urban Renewal Area.

**Phase 1 Minimum Improvements** means the value of the land, the construction of a regional data center and associated support infrastructure to house servers and computer equipment to operate large scale web portal services of approximately 425,250 square feet on the Development Property to be constructed in accordance with the individual site plan for the Phase 1 Minimum Improvements and the Construction Plans as further described in Exhibit C and depicted in Exhibit B. The completion date is expected to be around September 30, 2018.

**Phase 2 Minimum Improvements** means the value of the land, the construction of a regional data center and associated support infrastructure to house servers and computer equipment to operate large scale web portal services of approximately 425,250 square feet on the Development Property to be constructed in accordance with the individual site plan for the Phase 2 Minimum Improvements and the Construction Plans as further described in Exhibit C and depicted in Exhibit B. The completion date is expected to be around May 31, 2020.

**Phase 3 Minimum Improvements** means the value of the land, the construction of a regional data center and associated support infrastructure to house servers and computer equipment to operate large scale web portal services of approximately 425,250 square feet on the Development Property to be constructed in accordance with the individual site plan for the Phase 3 Minimum Improvements and the Construction Plans as further described in Exhibit C and depicted in Exhibit B. The completion date is expected to be around September 30, 2021.

**Phase 4 Minimum Improvements** means the value of the land, construction of a regional data center and associated support infrastructure to house servers and computer equipment to operate large scale web portal services of approximately 425,250 square feet on the Development Property to be constructed in accordance with the individual site plan for the Phase 4 Minimum Improvements and the Construction Plans as further described in Exhibit C and depicted in Exhibit B. The completion date is expected to be around May 31, 2023.

**Prime Rate** means the interest rate quoted by the Wall Street Journal as the prime rate for the banking industry.

**Project** shall mean the construction of the Minimum Improvements on the Development Property and the operation of such Minimum Improvements for Developer's business, including creation and retention of employment, as described in this Agreement.

**Public Use Improvements** means the Public Use Improvements listed in Exhibit G. Such Public Use Improvement shall be built over a period of years.

**RISE Contract** means any contract(s) between the City and the Iowa Department of Transportation that may provide a grant towards the costs of some of the Public Use Improvements.

**Shortfall Payment(s)** means the payment(s) defined in Section 6.2(d) of this Agreement.

**State** means the State of Iowa.

**State Contract** means one or more Economic Development Assistance Contract(s) among the State, the Developer and the City, including but not limited to Contract No. 17-TC-005, which contract(s) provide for State assistance/incentives in support of the Project.

**Tax Increment** means the tax increment revenues received by the City from Warren County or Madison County pursuant to Iowa Code Section 403.19, and the City's Ordinances implementing the division of taxes under Iowa Code Section 403.19, as such Code and Ordinances may be amended, generated by the construction of the Minimum Improvements on the Development Property within the Osmium Urban Renewal Area.

**Termination Date** means the date of termination of this Agreement, as defined in the Minimum Assessment Agreement, Exhibit D, Section 1.

**Unavoidable Delays** means delays resulting from acts or occurrences outside the reasonable control of the party claiming the delay, including but not limited to, storms, floods, fires, explosions or other casualty losses, unusual weather conditions, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, the acts of any federal, State or local governmental unit (other than the City).

**Urban Renewal Area** means the property within the Osmium Urban Renewal Area as described by the Osmium Urban Renewal Plan, as amended from time to time.

**Urban Renewal Plan** means the Urban Renewal Plan for the Osmium Urban Renewal Area approved by the City Council on November 14, 2016 by Resolution No. \_\_\_\_\_, as may be amended from time to time.

**2016 IEDA Contract** means the contract among the City, the Developer and the Iowa Economic Development Authority (17-TC-005).

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

Section 2.1 **Representations and Warranties of the City.** The City makes the following representations and warranties as of the Effective Date:

(a) The City is a municipal corporation organized under the provisions of the Constitution and the laws of the State and has the power to enter into this Agreement and carry out its obligations under this Agreement and has taken all actions required to authorize this Agreement.

(b) The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a breach of, the terms, conditions or provisions of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the City is now a party or by which it is bound, nor do they constitute a default under any of the foregoing, nor do they conflict with or contravene any laws, order, rule or regulation applicable to the City.

(c) There is no litigation, proceeding, initiative, referendum, or investigation currently pending or, to the knowledge of the City Attorney, any threat of any of the same, contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to the Developer.

(d) This Agreement constitutes a valid and binding obligation of the City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity

Section 2.2 **Representations and Warranties of the Developer.** The Developer makes the following representations and warranties as of the Effective Date:

(a) Microsoft Corporation is a corporation duly organized and validly existing under the laws of the State of Washington, is qualified to do business in the State of Iowa, and it has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under the Agreement.

(b) This Agreement has been duly and validly authorized, executed and delivered by the Developer and, assuming due authorization, execution and delivery by the City, is in full force and effect and is a valid and legally binding instrument of the Developer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a violation or breach of, the terms, conditions or provisions of the articles of incorporation or bylaws of the Developer or of any governing document, contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it or its property is bound, nor do they constitute a default under any of the foregoing.

(d) There are no actions, suits or proceedings pending or to Developer's knowledge, threatened against or affecting the Developer in any court or before any arbitrator or before or by any governmental body in which there is a reasonable possibility of an adverse decision which could materially adversely affect the business (present or prospective), financial position or results of operations of the Developer or which in any manner raises any questions affecting the validity of the Agreement or the Developer's ability to perform its obligations under this Agreement.

(e) The Developer has not received any notice from any local, State or federal official that the activities of the Developer with respect to the Development Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously been notified in writing). The Developer is not currently aware of any State or federal claim filed or planned to be filed by any party relating to any violation of any local, State or federal environmental law, regulation or review procedure applicable to the Development Property, and the Developer is not currently aware of any violation of any local, State or federal environmental law, regulation or review procedure which would give any person a valid claim under any State or federal environmental statute with respect thereto.

(f) Upon acquisition of the Development Property by Developer, Developer shall consent to the annexation of the Development Property by the City and take all reasonable actions to assist the City in said annexation.

(f) The Developer expects that, barring Unavoidable Delays, the Minimum Improvements will be substantially completed by the schedule set forth in Exhibit C.

(g) The Developer would not undertake its obligations under this Agreement without the construction by the City of the Public Use Improvements and the Economic Development Grant being made to the Developer by the City pursuant to this Agreement.

**ARTICLE III**  
**CONSTRUCTION OF MINIMUM IMPROVEMENTS**

Section 3.1 Construction of Minimum Improvements. The Developer agrees that it will cause the Minimum Improvements to be constructed on the Development Property in conformance with this Agreement, the Conceptual Site Plan, the individual site plans for the Minimum Improvements on the Development Property, and the Construction Plans submitted to the City. The Developer agrees that the scope and scale of the Minimum Improvements to be constructed shall not be materially less than the scope and scale of the Minimum Improvements as detailed and outlined in the Conceptual Site Plan and the individual site plans for the Minimum Improvements on the Development Property. The Developer reasonably expects that the construction of the Minimum Improvements (land, buildings and equipment) will require an approximate investment of Nine Hundred Eighty One Million Two Hundred Forty Thousand Dollars (\$981,240,000).

Section 3.2 Site Plans. The Developer shall file with the City, and amend as necessary, the individual site plan for each phase of the Minimum Improvements on the Development Property, in accordance with the City Code. Any changes to the individual site plan must be approved by the City to the extent required under the City Code. The Conceptual Site Plan for all phases is attached and incorporated herein as Exhibit B. See also definition of Conceptual Site Plan.

Section 3.3 Construction Plans. The Developer shall cause Construction Plans to be provided for each building to be constructed as part of the Minimum Improvements, which shall be in conformity in all material respects with the Conceptual Site Plan and the respective individual site plans for the Minimum Improvements on the Development Property, this Agreement, and all applicable State and local laws and regulations. The City agrees that the construction plans and specifications submitted to the building official of the City for the Development Property are adequate to be the Construction Plans, if such plans and specifications are approved by the City building official. The Construction Plans may be amended by Developer in accordance with the City's requirements for amending construction plans as long as the Construction Plans remain consistent with the terms of this Agreement.

Section 3.4 Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Developer shall cause construction of the Minimum Improvements with expected completion dates of September 30, 2018 for Phase 1 Minimum Improvements (minimum of 425,250 square feet); May 31, 2020 for Phase 2 Minimum Improvements (minimum of 425,250 additional square feet); September 30, 2021 for Phase 3 Minimum Improvements (minimum of 425,250 additional square feet); and May 31, 2023 for Phase 4 Minimum Improvements (minimum of 425,250 additional square feet); or (ii) by such other date(s) as the parties shall mutually agree upon in writing. Time lost as a result of Unavoidable Delays shall be added to extend this date by a number of days equal to the number of days lost as a result of Unavoidable Delays. However, regardless of the actual completion date of each Phase, the Minimum Improvements shall have an assessed valuation in the amounts and dates as listed below in



subsection 3.4(b), which are the same as the dates and amounts in the Minimum Assessment Agreement (Exhibit D). All work with respect to the Minimum Improvements to be constructed or provided by the Developer shall be in conformity with the individual site plans for the Minimum Improvements on the Development Property and the Construction Plans.

(b) The Minimum Improvements shall have at least the assessed valuations reflected in the "Total Actual Valuation Column" of Exhibit E as of the corresponding "Assessed Valuation Date" set forth in Exhibit E (the "Minimum Actual Value").

The Minimum Actual Value is the value before commercial rollback.

Section 3.5. Certificate of Completion. Subject to the issuance of occupancy permit for each phase of the Minimum Improvements by the City, and upon written request of the Developer, the City will furnish the Developer with a Certificate of Completion in the recordable form, in substantially the form set forth in Exhibits I-1 through I-4 attached hereto. Such Certificate of Completion shall be conclusive determination of satisfactory termination of the covenants and conditions of this Agreement with respect to the obligations of the Developer to construct the particular phase of the Minimum Improvements.

The Certificate of Completion may be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property at the Developer's sole expense. If the City shall refuse or fail to provide a Certificate of Completion in accordance with the provisions of this Section 3.5, the City shall, within twenty (20) days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in what respects the Developer has failed to complete the particular phase of the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default under the terms of this Agreement, and what measures or acts it will be necessary, in the opinion of the City, for the Developer to take or perform in order to obtain such Certificate of Completion.

#### **ARTICLE IV ECONOMIC DEVELOPMENT GRANT**

Section 4.1 Economic Development Grant. For and in consideration of the obligations being assumed by the Developer as set forth in this Agreement, and as a necessary means of achieving the goals and objectives of the Urban Renewal Plan, the City agrees (subject to the conditions set forth in this Article) to make an Economic Development Grant in the amount of \$10,050,000 to Developer. The Economic Development Grant shall be disbursed to the Developer no later than December 31, 2018, subject to the provisions of Section 4.3. Proceeds of the Economic Development Grant shall be used by Developer solely and only for the purposes of paying costs of constructing the Minimum Improvements described on Exhibit C.

Section 4.2 Source of Economic Development Grant Funds Limited. The Economic Development Grant shall be payable solely and only from the proceeds of the City Bonds, and

shall not be payable in any manner by general taxation or from any other City funds. The parties further acknowledge and agree that, notwithstanding the estimated repayment schedule attached as Exhibit E, the City Bonds shall be sold at such times, on such terms and conditions, bear such interest rates, and mature at such times and in such amounts as the City, in its sole discretion, shall determine to be acceptable to it.

**Section 4.3 Conditions Precedent to Funding Economic Development Grant by City.**

(a) The City's obligation to disburse the Economic Development Grant as described in this Article shall be subject in all respects to Unavoidable Delays, the provisions of this Article, and to the satisfaction of all conditions and procedures required (in the judgment of bond counsel for the City) by Chapters 384 and 403 of the Code with respect to the issuance of the City Bonds, including the holding of all required public hearings relating to the same. It is recognized and agreed that the ability of the City to perform the obligations as described in this Agreement, including the payment of the Economic Development Grant, is subject to completion and satisfaction of certain separate City Council actions and required legal proceedings relating to the issuance of City Bonds. In addition, all obligations of City to fund the Economic Development Grant are subject to fulfillment of each of the following Conditions Precedent:

(i) The representations and warranties made by Developer in Section 2.2 shall be true and correct as of a Developer recertification statement that may be requested by the City at or near the time of the issuance of City Bonds; such recertification statement of the representations and warranties made by Developer in Section 2.2 shall have the same force and effect as if made on the Effective Date;

(ii) The City shall have successfully annexed the Development Property;

(iii) The City shall have approved all applicable zoning, subdivision, or platting of the Development Property necessary for development and construction of the Phase 2, Phase 3 and Phase 4 Minimum Improvements and the individual site plan for the Phase 1 Minimum Improvements;

(iv) The City shall have adopted the Urban Renewal Plan to include the Economic Development Grant and Public Use Improvements as urban renewal projects;

(v) The Developer shall be in compliance with all the terms and provisions of this Agreement and all exhibits;

(vi) Each phase of the Project will be approved incrementally with future project expenditure requests (PERs) issued for design and construction of those improvements. However, regardless of the actual completion date of each Phase, the Minimum Improvements shall have an assessed valuation in the

amounts and dates as listed in subsection 3.4(b), which are the same as the dates and amounts in the Minimum Assessment Agreement (Exhibit D);

(vii) Execution by Developer of the Assessment Agreement between the City and the Developer substantially in the form of Exhibit D, pursuant to Section 6.2 of this Agreement;

(viii) There has not been a substantial change for the worse in the financial resources and ability of the Developer, or a substantial decrease in the financing commitments secured by the Developer for construction of the Minimum Improvements, which change(s) make it likely, in the reasonable judgment of the City, that the Developer will be unable to fulfill its covenants and obligations under this Agreement; and

(ix) The Developer has completed the Phase 1 Minimum Improvements.

## **ARTICLE V PUBLIC USE IMPROVEMENTS**

Section 5.1 Public Use Improvements. Contingent on the Developer's compliance with the terms of this Agreement, including but not limited to continued compliance with the covenants in Section 6.1 and the execution of the Assessment Agreement as set forth in Section 6.2, and contingent upon satisfaction of the Conditions Precedent set forth below in Section 5.1(a), the City intends to issue City Bonds to fund, and then construct, certain Public Use Improvements associated with the construction of the Minimum Improvements. The City's obligation to issue the City Bonds to construct the Public Use Improvements as described in this Article shall be subject in all respects to Unavoidable Delays, the provisions of this Article, and to the satisfaction of all conditions and procedures required (in the judgment of bond counsel for the City) by Chapters 384 and 403 of the Code with respect to the issuance of the City Bonds, including the holding of all required public hearings relating to the same. The description of the Public Use Improvements to be funded by the City Bonds and other related information is contained in Exhibit G.

(a) Conditions Precedent to Issuing City Bonds for Public Use Improvements. It is recognized and agreed that the ability of the City to perform the obligations described in this Agreement, is subject to completion and satisfaction of certain separate City Council actions and required legal proceedings relating to the issuance of the City Bonds. Specifically, all obligations of City and Developer to issue the City Bonds whose proceeds shall be used to construct Public Use Improvements are subject to each of the following Conditions Precedent:

(i) The representations and warranties made by Developer in Section 2.2 shall be true and correct as of a Developer recertification statement that maybe requested by the City at or near the time of the issuance of City Bonds; such recertification statement of the representations and warranties

made by Developer in Section 2.2 shall have the same force and effect as if made on the Effective Date;

(ii) The City shall have successfully annexed the Development Property;

(iii) The City shall have approved all applicable zoning, subdivision, or platting of the Development Property necessary for development and construction of the Phase 2, Phase 3 and Phase 4 Minimum Improvements and the individual site plan for the Phase 1 Minimum Improvements;

(iv) The City shall have adopted an Urban Renewal Plan to include the Economic Development Grant and Public Use Improvements as urban renewal projects;

(v) The Developer shall be in compliance with all the terms and provisions of this Agreement;

(vi) Each phase of the Project will be approved incrementally with future project expenditure requests (PERs) issued for design and construction of those improvements. However, regardless of the actual completion date of each Phase, the Minimum Improvements shall have an assessed valuation in the amounts and dates as listed in subsection 3.4(b), which are the same as the dates and amounts in the Minimum Assessment Agreement (Exhibit D);

(vii) Execution by Developer of the Assessment Agreement between the City and the Developer substantially in the form of Exhibit D, pursuant to Section 6.2 of this Agreement;

(viii) There has not been a substantial change for the worse in the financial resources and ability of the Developer, or a substantial decrease in the financing commitments secured by the Developer for construction of the Minimum Improvements, which change(s) make it likely, in the reasonable judgment of the City, that the Developer will be unable to fulfill its covenants and obligations under this Agreement.

(b) Other Improvements. The City may determine to construct additional infrastructure improvements, in its sole discretion, when undertaking the construction of any of the Public Use Improvements, provided the additional infrastructure improvements do not materially adversely affect the development of the Minimum Improvements or the completion of the Public Use Improvements.

(c) Completion Date for Public Use Improvements. The City agrees to use its best efforts, consistent with its obligations under Chapter 26 of the Code of Iowa, to cause all of the Public Use Improvements related to roads to be substantially functional and/or substantially open to traffic by December 31, 2018, subject to Unavoidable Delays.

(d) Authority to Design, Engineer and Construct. The City shall design, engineer and construct the Public Use Improvements in accordance with current City standards and design guidelines, other applicable design standards, the terms of this Agreement, and in accordance with the provisions of the Iowa Code, including required public notice and hearing on the proposed public improvements.

(e) Right of Way and Easements. Except as set forth below, the City shall obtain, through condemnation if necessary and available, all required property and rights of way (including, without limitation, grading easements) necessary for construction of the Public Use Improvements, as determined by final engineering design. The City shall be responsible, at its sole cost and expense, for the vacation of any existing roadway or rights of way that will no longer be required as the result of construction of the Public Use Improvements. Developer shall convey, at no cost to the City, such easements as may be necessary for the construction and operation of all Public Use Improvements and cooperate with the City in the construction and operation of the Public Use Improvements. Developer shall also assist the City in clearing any and all existing easements.

(f) Non-responsibility of Developer. The City acknowledges and agrees that Developer has no obligation or responsibility or liability whatsoever with respect to the design or quality of construction of the Public Use Improvements.

(g) No Special Assessment. The Development Property shall not be specially assessed for any of the Public Use Improvements to be constructed by City pursuant to this Agreement, but nothing in this Section shall preclude the City from specially assessing such property for improvements other than the Public Use Improvements constructed by the City pursuant to this Agreement.

(h) No Special Legal Entitlements. Developer recognizes and agrees that all of the Public Use Improvements shall be owned and maintained by the City for the benefit of the general public; that all use thereof by Developer and its employees, customers and suppliers shall be on the same basis as the general public; and that Developer shall have no special legal entitlements or other rights not held by members of the general public with respect to ownership, maintenance or use of the Public Use Improvements.

## ARTICLE VI COVENANTS

Section 6.1 Covenants of the Developer. The Developer agrees with the City as follows:

(a) The Developer shall acquire the Development Property and consent to the annexation of the Development Property by the City.

(b) The Developer will maintain, preserve and keep the Development Property (whether owned in fee or a leasehold interest), including but not limited to the Minimum Improvements, in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs.

(c) In carrying out the construction and operation of the Minimum Improvements, the Developer shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, religion, marital status, familial status, or physical disability. The Developer shall ensure that applicants for employment are considered, and that employees are treated during employment, without regard to their race, creed, color, sex, national origin, age, religion, marital status, familial status, or physical disability.

(d) The Developer will comply with all applicable land development laws and City ordinances, and all laws, rules and regulations relating to its businesses, other than laws, rules and regulations the failure to comply with which or the sanctions and penalties resulting therefrom, would not have a material adverse effect on the business, property, operations, or condition, financial or otherwise, of the Developer.

(e) The Developer shall pay, or cause to be paid, when due, all real property taxes and assessments payable with respect to all and any parts of the Development Property. The Developer agrees that (i) it will not seek administrative review or judicial review of the applicability or constitutionality of any Iowa tax statute relating to the taxation of property contained on the Development Property determined by any tax official to be applicable to the Development Property, or the Developer or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings, and (ii) it will not seek any tax deferral or abatement, either presently or prospectively authorized under Iowa Code Chapter 403 or 404, or any other chapter of the Code, of the taxation of real property contained in the Development Property. See also Exhibit D, Minimum Assessment Agreement.

(f) The Developer agrees during construction of the Minimum Improvements and during its ownership of the Minimum Improvements to keep the Minimum Improvements insured in a commercially reasonable manner. For so long as the Developer is Microsoft Corporation, or an entity owned 50% or more by Microsoft Corporation, the requirements of this Section shall be satisfied by the inclusion of the Development Property in the self-insurance program of Microsoft Corporation. Upon any damage, Developer shall complete the repair, reconstruction, and restoration of the Minimum Improvements to the pre-damage condition, whether or not the net proceeds of insurance received by Developer for such purposes are sufficient.

(g) The Developer shall employ a Monthly Average (as defined in Exhibit H) of at least the following number of Full Time Equivalent Jobs at the Minimum Improvements as of October 1 of the indicated years:

<u>Reference year</u>	<u>Monthly Average</u>
2016	N/A
2017-2018	57
2019	65
2020-2021	76
2022 through Termination Date	97

(h) A duly authorized representative of the Developer shall certify to the City, on an annual basis, (i) proof of payment of all ad valorem taxes due on the Development Property; (ii) the total assessed valuation of the Development Property and the Minimum Improvements as of the preceding January 1, as determined by the Assessor(s) of the County where the Minimum Improvements are located; and (iii) the number of Full Time Equivalent Jobs employed at the Minimum Improvements as of the date of the certification and as the first day of each of the preceding eleven (11) months. The first such certification shall be provided by October 15, 2018, with subsequent certifications being provided by October 15 of each year until the Termination Date. Developer shall provide an annual certification by October 15 of each year on the Annual Certification Form attached as Exhibit H. A "Full Time Equivalent Job" shall meet the definition in the 2016 IEDA Contract.

(i) The Developer will use its best efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

(j) The Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Minimum Improvements that are a direct result of Developer's activities on the Development Property.

(k) The parties agree that the Minimum Actual Values set forth in the Assessment Agreement takes into account the expectation that Developer will avail itself of the property tax exemptions provided by the State of Iowa's web search portal exemption (Iowa Code Sections 423.3(92) and 427.1(35)). In order to allow Developer to do so, Developer agrees not to claim the exemption provided by Section 1.10A-3 of the Municipal Code of the City (regarding Industrial Tax Abatement).

(l) The Developer has been awarded an IEDA Contract (17-TC-005) from the Iowa Economic Development Authority through the High Quality Jobs Program ("2016 IEDA Contract"). The incentives provided under this Agreement are intended to constitute (and exceed) the local community match described in the 2016 IEDA Contract

(or any future or amended State Contract associated with the Project). Should the City fail to perform under the 2016 IEDA Contract (or any future or amended State Contract associated with this Project) or RISE Contract due to the Developer's non-compliance with this Agreement, the Developer shall pay to the City any amounts the City is required to pay the State for any loss, including repayment of any grant monies, arising out of or related to the City's failure to fulfill the terms of the 2016 IEDA Contract (or any future or amended State Contract associated with this Project) or RISE Contract.

(m) Developer agrees to provide information and data to the City or State required to secure such contract(s).

(n) Developer will maintain its operations at the Minimum Improvements on the Development Property, including the employee obligations in Section 6.1(g), until the Termination Date of this Agreement.

(o) By signing this Agreement, Developer hereby agrees to comply with all the terms and provisions of this Agreement pertaining to Developer's obligations with respect to the construction of the Minimum Improvements. Without limiting the generality of the foregoing, Developer agrees that: (a) construction of the Minimum Improvements shall commence and be completed within the time limits set forth herein; (b) the Minimum Improvements shall be constructed and completed in accordance with the individual Site Plans and Construction Plans; (c) the Minimum Improvements shall be constructed and completed free and clear of any mechanic's liens, materialman's liens and equitable liens; and (d) all costs of constructing the Minimum Improvements shall be paid when due.

#### Section 6.2 Execution of Assessment Agreement.

(a) The Developer shall agree to, and with the City shall execute, an Assessment Agreement ("Minimum Assessment Agreement" or "Assessment Agreement") pursuant to the provisions of Section 403.6(19) of the Code specifying the Minimum Actual Value of the Development Property and the Minimum Improvements located thereon for calculation of real property taxes. The Assessment Agreement shall be in the form of Exhibit D.

(b) The Developer shall agree to the Minimum Actual Value for the Minimum Improvements and the Development Property, commencing with the assessment as of January 1, 2018 and continuing each year thereafter during the term of this Agreement until the City Bonds are paid in full.

(c) Nothing in the Assessment Agreement shall limit the discretion of the Warren County or Madison County Assessor to assign an actual value to the property in excess of the applicable Minimum Actual Value nor prohibit the Developer from seeking through the exercise of legal or administrative remedies a reduction in such actual value for property tax purposes; provided, however, that the Developer shall not seek a reduction of such actual value below the applicable Minimum Actual Value in any year so long as



the Assessment Agreement shall remain in effect. The Assessment Agreement shall remain in effect until the Termination Date as defined in Section 1 of the Assessment Agreement. The Assessment Agreement shall be certified by the Warren County and Madison County Assessor as provided in Code Section 403.6(19) and shall be filed for record in the office of the County Recorder of Warren and Madison Counties, and such filing shall constitute notice to any subsequent encumbrancer or purchaser of the property (or part thereof), whether voluntary or involuntary, and such Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent purchaser or encumbrancer.

(d) In the event that for any reason whatsoever, including but not limited to, a change in the tax laws of the State of Iowa (for example, a change in commercial rollback to determine taxable value or a change in the manner in which incremental taxes are calculated under Iowa Code Section 403.19), the Tax Increment forecast to be received by the City from Warren County and Madison County in each upcoming fiscal year generated from the Development Property and the Minimum Improvements, pursuant to Iowa Code Section 403.19, is not sufficient to fully pay the upcoming fiscal year's annual Debt Service for the City Bonds issued to pay the Economic Development Grant and to construct the Public Use Improvements, Developer agrees to promptly make a payment to the City equal to the difference between the amount of the available Tax Increment and the upcoming fiscal year's annual Debt Service for the City Bonds issued to pay the Economic Development Grant and construct the Public Use Improvements (the "Shortfall Payment"). The intent of this provision is to ensure if, for any reason, the Tax Increment is not sufficient to make the annual Debt Service payments on the City Bonds, the Developer shall promptly make a Shortfall Payment to the City so that it can make all Debt Service payments when due. Further:

(i) "Debt Service" means the scheduled principal and interest payments (including capitalized interest) related to the City Bonds.

(ii) The City shall give reasonable notice of Developer's obligation to pay a Shortfall Payment, in which case Developer shall pay the Shortfall Payment to the City no later than thirty days after the City's written request. If the Shortfall Payment is not made when due, interest at a rate of Prime Rate plus 1% per annum shall accrue from the due date of the Shortfall Payment. The City shall notify the Developer by the March 31 before the fiscal year in which the City forecasts that a Shortfall Payment may become due. The City shall send a written request for payment 90 days before the date the City's semi-annual Debt Service payment is due. Such notice by the City shall be deemed reasonable notice.

For example, assume the City's Debt Service payments are due December 1, 2019 and June 1, 2020 (semi-annually). If the City forecasts that the Tax Increment will be insufficient to fully fund the Debt Service schedule, the City shall notify the Developer no later than March 31, 2019 of the amount of the Shortfall Payment. In this case, for the Debt Service Payment due December 1, 2019, the City shall send a written request for the Shortfall Payment by September 1, 2019 and Developer shall make the Shortfall Payment no later than October 1, 2019. Likewise, for the

Debt Service Payment due June 1, 2020, the City shall send a written request for a Shortfall Payment by March 1, 2020 and Developer shall make the payment no later than April 1, 2020.

(iii) Microsoft's Credit Rating. Subject to the terms of this Agreement, the City will issue debt for the Economic Development Grant and Public Use Improvements. The City is relying on the provisions of this Agreement, including but not limited to, the Minimum Assessment Agreement and the Shortfall Payment to provide the funds necessary to make all Debt Service Payments for the City Bonds. Microsoft hereby represents its current credit rating for long-term debt is "AAA", as determined by Standard & Poors Financial Services, LLC (S&P). Annually and continuing until the Bonds are paid off, Microsoft shall re-certify to the City its credit rating on Exhibit H. Additionally, Microsoft covenants to notify the City within 30 days of any future rating change. As long as Microsoft Corporation retains a credit rating of at least "AA-" (the lowest rating for long-term debt that is classified as "High Grade") as determined by Standard & Poors Financial Services, LLC (S&P) (or the equivalent rating schedule if an alternative rating agency is utilized in the future), no further security is required to secure the Shortfall Payment. However, if at any time before the City Bonds are paid off, Microsoft Corporation's credit rating falls below "AA-", Microsoft Corporation will, within 30 days of written demand by the City, contribute an amount equivalent to the next fiscal year's Debt Service into a City fund. Such City fund will be treated as an escrow account held solely to secure the payment of the Debt Service on the City Bonds ("Debt Service Escrow Account"). Once the Bonds are paid off, any remaining balance, plus interest earned, in the Debt Service Escrow Account will be returned to Microsoft Corporation. As an alternative to contribution of a cash amount to the City in the foregoing sentences, if Developer's credit rating drops below AA- during the term of this Agreement under the conditions specified above, Developer can elect to issue a bond ("Surety Bond") in the City's favor, in order to secure Shortfall Payments, in an amount equivalent to the aggregate remaining Debt Service of the City Bonds, including interest, contingent on the City's prior review and approval of the terms and conditions of such Surety Bond.

(iv) Debt Service Escrow Account. If Microsoft contributes money into the Debt Service Escrow Account under paragraph 6.2(d)(iii), such a contribution by Microsoft shall not relieve Microsoft of its independent obligation to make Shortfall Payments described in Section 6.2(d). Rather, Microsoft's obligation to make a Shortfall Payment shall continue until the Termination Date defined in Section 1 of the Minimum Assessment Agreement (Exhibit D). If, however, Microsoft fails to timely make a Shortfall Payment, then in addition to any other remedies available to the City, the City may use any funds in the Debt Service Escrow Account to pay Debt Service when due. The City will provide Microsoft with written notice of any withdrawal from the Escrow Account (and the amount of said draw). Within 30 calendar days of written notice of such withdrawal by the

City, Microsoft shall replenish the Debt Service Escrow Account so that the Account contains the equivalent of the next fiscal year's Debt Service.

(v) Exhibit E contains a proposed schedule for the payment of the City Bonds, but such schedule will vary based on actual sale costs, refinancing, if applicable, and other factors. Exhibit E shall be updated with actual debt service for City Bonds and if any refinancing for City Bonds occurs. When updated, such updated Exhibit E shall be substituted for and become Exhibit E to this Agreement.

(vi) The Developer's obligation to make a Shortfall Payment shall continue until the Termination Date defined in Section 1 of the Minimum Assessment Agreement (Exhibit D).

(vii) The City will provide an annual report to Developer of the status of the City Bonds.

## ARTICLE VII INDEMNIFICATION

### Section 7.1 Release and Indemnification Covenants.

(a) The Developer releases the City and the governing body members, officers, agents, servants and employees thereof (hereinafter, for purposes of this Article, the "Indemnified Parties") from, covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify, defend and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements on the Development Property. Notwithstanding the foregoing, the Developer shall not provide such indemnification if the damage or injuries are caused by the negligence of the Indemnified Parties.

(b) Except for any willful misrepresentation or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now or forever, and further agrees to hold the Indemnified Parties harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from (i) the acquisition and condition of the Development Property and the construction, installation, ownership and operation of the Minimum Improvements or (ii) any hazardous substance or environmental contamination in or on the Development Property.

(c) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, and not of any governing body member, officer, agent, servant or employee of the City in the individual capacity thereof.

(d) The provisions of this Article shall survive the termination of this Agreement.

## **ARTICLE VIII ASSIGNMENT OR TRANSFER**

Section 8.1 Status of the Developer; No Transfer or Assignment. As security for the obligations of the Developer under this Agreement, the Developer represents and agrees that, prior to the Termination Date, the Developer will maintain its existence as a corporation and will not wind up or otherwise dispose of all or substantially all of the Development Property or Minimum Improvements, or assign, participate, or otherwise act in such manner as to convey to any third party any interest in this Agreement to any other party unless: (a) the transferee, partnership, corporation, limited liability company or individual assumes in writing all of the obligations of the Developer under this Agreement arising after the transfer of this Agreement; and (b) the City consents thereto in writing in advance, such consent not to be unreasonably withheld.

Section 8.2 Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, Developer, or its permitted successors or assigns, agree that the Development Property or Minimum Improvements cannot be transferred or sold to a non-profit entity or used for a purpose that would exempt the Development Property or Minimum Improvements from property tax liability. Nor can the Development Property or Minimum Improvements be used as centrally assessed property (including but not limited to, Iowa Code § 428.24 to 428.29 (Public Utility Plants and Related Personal Property); Chapter 433 (Telegraph and Telephone Company Property); Chapter 434 (Railway Property); Chapter 437 (Electric Transmission Lines); Chapter 437A (Property Used in the Production, Generation, Transmission or Delivery of Electricity or Natural Gas); and Chapter 438 (Pipeline Property)).

## **ARTICLE IX DEFAULT AND REMEDIES**

Section 9.1 Events of Default Defined. The following shall be Events of Default under this Agreement and the term Event of Default shall mean, whenever it is used in this Agreement, any one or more of the following events:

(a) Failure by the Developer to cause the construction of the Minimum Improvements to be commenced and completed pursuant to the terms, conditions and limitations of this Agreement;

(b) Transfer of any controlling interest (either directly or indirectly) in this Agreement or the Development Property or Minimum Improvements in violation of Article VIII or that is not consented to by the City;

(c) Failure by the Developer to timely pay (before delinquency) any ad valorem taxes levied on the Development Property and Minimum Improvements;

(d) The holder of any Mortgage on the Development Property, or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default by Developer under the applicable Mortgage documents and such foreclosure proceedings are not dismissed within sixty (60) days of filing;

(e) Failure by the Developer to substantially observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement;

(f) The Developer shall:

(i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or

(ii) make an assignment for the benefit of its creditors; or

(iii) admit in writing its inability to pay its debts generally as they become due; or

(iv) be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as a bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of the Developer or part thereof, shall be appointed in any proceedings brought against the Developer and shall not be discharged within ninety (90) days after such appointment, or if the Developer shall consent to or acquiesce in such appointment;

(g) Any representation or warranty made by the Developer in this Agreement, or made by the Developer in any written statement or certificate furnished by the Developer pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof;

(h) Any representation or warranty made by the City in this Agreement shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance; or

(i) The City fails to pay to Developer the Economic Development Grant and all of the condition precedents set forth in Section 4.3 have occurred or been satisfied as set forth in Section 4.3.

Section 9.2 City's Remedies on Default. Whenever any Event of Default referred to in Section 9.1 of this Agreement occurs and is continuing, the City, as specified below, may take any one or more of the following actions after (except in the case of an Event of Default under

subsections (d) or (f) of said Section 9.1) the giving of thirty (30) days written notice by the City to the Developer and the holder of the Mortgage (but only to the extent the City has been informed in writing of the existence of a Mortgage and been provided with the address of the holder thereof) of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days, or if the Event of Default cannot reasonably be cured within thirty (30) days and the Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

(a) The City may suspend its performance under this Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement;

(b) The City may terminate this Agreement;

(c) The City shall be entitled to recover, and the Developer shall pay to the City, an amount equal to the present value of the remaining principal and interest payments due on the City Bonds as of the date of the City's notice to Developer of the Event of Default (as reasonably determined by the City), and the City may take any action, including any legal action, it considers necessary or desirable to recover such amount from the Developer; or

(d) The City may take any other action, including legal, equitable or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 9.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 9.4 Developer's Remedies on Default. Whenever any Event of Default occurs by the City, the Developer may terminate this Agreement, and the Developer may take any legal action it considers necessary to recover damages from the City or to enforce this Agreement, subject to a 120 day written notice to the City with an opportunity for the City to cure the Event of Default during the 120 day notice period.

Section 9.5 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by the Developer and thereafter waived by the City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.6 Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and either party employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the other party, the non-prevailing party shall pay to the prevailing party its attorneys' fees and costs.

## ARTICLE X MISCELLANEOUS

Section 10.1. Conflict of Interest. Developer represents and warrants that, to its best knowledge and belief after due inquiry, no officer or employee of the City, or their designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Development Property during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Development Property, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Development Property, or in any activity, or benefit therefrom, which is part of the Development Property at any time during or after such person's tenure.

Section 10.2 Notices. Any notice, demand, or other communication under this Agreement by either party to the other shall be effective upon receipt or refusal of receipt to the following addresses:

- (a) in the case of Developer, is addressed or delivered personally to Developer at:

Microsoft Corporation  
One Microsoft Way  
Redmond, WA 99052  
Attention: General Manager, Cloud Infrastructure, Strategy and  
Architecture, MCIO

with a copy to:  
Microsoft Corporation  
Corporate, External and Legal Affairs  
One Microsoft Way  
Redmond, WA 98052  
Attention: MCIO CELA

(b) In the case of the City, is addressed to or delivered personally to the City at:

City of West Des Moines, Iowa  
4200 Mills Civic Parkway  
P.O. Box 65320  
West Des Moines, Iowa 50265-0320  
Attn: City Clerk

Any party may change the address for notices to be delivered to it, and copies thereof to any address other than a post office box by serving not less than ten (10) days prior written notice to the other party in accordance with the provisions contained in this paragraph.

Section 10.3 Governing Law. The parties intend that this Agreement and the relationship of the parties shall be governed by the laws of the State of Iowa applicable to contracts wholly to be performed therein. The parties agree that any action, suit or proceeding based upon any matter, claim or controversy arising hereunder or relating hereto shall be brought solely in the state or federal courts located in Polk County, Iowa. The parties irrevocably waive objection to the venue of the above-mentioned courts, including any claim that such action, suit or proceeding has been brought in an inconvenient forum.

Section 10.4 Entire Agreement. This Agreement and exhibits attached constitute the entire agreement of the parties and supersedes all prior offers, agreements, arrangements and contracts, whether oral or written, concerning the subject matter hereof.

Section 10.5 Severability. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby and the parties shall thereupon amend this Agreement to legally and most closely embody the spirit and intent of the invalid provisions.

Section 10.6 Performance by City. Developer acknowledges and agrees that all of the obligations of the City under this Agreement shall be subject to, and performed by the City in accordance with, all applicable statutory, common law or constitutional provisions and procedures consistent with the City's lawful authority.

Section 10.7 No Third Party Beneficiaries. No rights or privileges of any party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

Section 10.8 Interpretation. Section headings are for convenience of reference only and are in no way intended to interpret, define or limit the scope or content of this Agreement or any provision hereof and shall be given no legal effect in the interpretation of this Agreement. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being



recognized that the City and Developer and their respective attorneys, have contributed substantially and materially to the preparation of each and every provision of this Agreement.

Section 10.9 Amendment; Waiver. This Agreement may not be amended, waived or modified in any respect unless the same shall be in writing and signed by all parties. No waiver by a party of any default by another party shall constitute a waiver of any other breach or default by another party, whether of the same or any other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give another party any contractual right by custom, estoppel, or otherwise.

Section 10.10 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the City and Developer and their affiliates, and their respective permitted successors and assigns, including any and all covenants and conditions contained in this Agreement.

Section 10.11 Agreement. The parties may agree to record a Memorandum of Development Agreement in the form attached as Exhibit F, or in a form and content to be mutually agreed upon by the parties, and such Memorandum may be recorded in lieu of recording this Agreement. If no such memorandum can be mutually agreed upon, then this Agreement may be recorded in its entirety.

Section 10.12 Termination Date. Unless this Agreement has been terminated in accordance with the terms and conditions of this Agreement, this Agreement will terminate on the Termination Date defined in Section 1 of the Assessment Agreement (Exhibit D).

Section 10.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and Developer has caused this Agreement to be duly executed in its names and on behalf by its authorized representatives, all on or as of the day first above written (Effective Date).

*[The remainder of this page was intentionally left blank. Signatures begin on next page.]*

CITY OF WEST DES MOINES, IOWA

\_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

\_\_\_\_\_  
Ryan T. Jacobson, City Clerk

STATE OF IOWA                    )  
  ) SS  
COUNTY OF POLK                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

MICROSOFT CORPORATION

By: \_\_\_\_\_  
Suresh Kumar  
Corporate VP, Cloud Infrastructure &  
Operations

STATE OF WASHINGTON        )  
  ) SS  
COUNTY OF KING            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me the undersigned, a Notary Public in and for said State, personally appeared Suresh Kumar, to me personally known, who, being by me duly sworn, did say that he is the Corporate VP, Cloud Infrastructure & Operations of Microsoft Corporation, and that said instrument was signed on behalf of said corporation; and that the said Suresh Kumar, Corporate VP, as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington

**EXHIBIT A**  
**LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY**

**THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE1/4SE1/4) SECTION 1, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE 5TH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA.**

**AND**

**PARCEL 1:**

**THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (NW1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

**PARCEL 2:**

**THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER (NE1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA; EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 121; AND EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.**

**PARCEL 3:**

**THE EAST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (E1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA; EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 122; AND EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.**

**PARCEL 4:**

**THE WEST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (W1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

**PARCEL 5:**

**THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW1/4SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

**EXHIBIT A-1  
DEPICTION OF ENTIRE DEVELOPMENT PROPERTY**



**EXHIBIT B**  
**Conceptual Site Plan**



## EXHIBIT C

### MINIMUM IMPROVEMENTS

The Minimum Improvements shall consist of a regional data center and associated support infrastructure to house servers and computer equipment to operate large scale web portal services, with an expected investment of approximately \$981,240,000, with 97 jobs created within 7 seven years of the 2016 IEDA Contract award date as set forth in Section 6.1(g).

Generally, the Minimum Improvements are intended to be constructed in phases, with the following square footage of Minimum Improvements completed on the following schedule:

<u>Phase</u>	<u>Approximate square footage per Phase (minimum)</u>	<u>Cumulative square footage (minimum)</u>	<u>Estimated Completion Date</u>
Phase 1 Minimum Improvements	425,250	425,250	September 30, 2018
Phase 2 Minimum Improvements	425,250	850,500	May 31, 2019
Phase 3 Minimum Improvements	425,250	1,275,750	September 30, 2021
Phase 4 Minimum Improvements	425,250	1,701,000	May 31, 2023

Prepared by: \_\_\_\_\_  
Return to: \_\_\_\_\_

#### EXHIBIT D

#### **Minimum Assessment Agreement between the City of West Des Moines and Microsoft Corporation (Osmium)**

THIS MINIMUM ASSESSMENT AGREEMENT ("Minimum Assessment Agreement" or "Assessment Agreement"), is dated as of the \_\_\_ day of \_\_\_\_\_ 2016, by and between the CITY OF WEST DES MOINES, IOWA (the "City"), an Iowa municipal corporation, acting under the authorization of Chapter 403 of the Code of Iowa, 2015, as amended, and MICROSOFT CORPORATION, a Washington corporation, having an office for the transaction of business at One Microsoft Way, Redmond, Washington ("Developer").

#### RECITALS

WHEREAS, the City and Developer have entered into a Development Agreement dated as of \_\_\_ day of \_\_\_\_\_ 2016 ("Agreement" or "Development Agreement") regarding certain real property located in the City, which is legally described as follows:

**THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE1/4SE1/4) SECTION 1, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE 5TH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA.**

AND



**PARCEL 1:**

**THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (NW1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA,**

**PARCEL 2:**

**THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (NE1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA; EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 121; AND EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.**

**PARCEL 3:**

**THE EAST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (E1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA; EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 122; AND EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.**

**PARCEL 4:**

**THE WEST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (W1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

**PARCEL 5:**

**THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW1/4SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

(the "Development Property");

WHEREAS, the defined terms in the Development Agreement will also apply to this Minimum Assessment Agreement; and

WHEREAS, it is contemplated that Developer undertake the construction of certain building improvements (as described in the Development Agreement) (together, the "Minimum Improvements") on the Development Property, as provided in the Development Agreement; and

WHEREAS, pursuant to Section 403.6(19) of the Code of Iowa, as amended, the City and Developer desire to establish a minimum actual value for the Minimum Improvements to be constructed on the Development Property by Developer pursuant to the Development Agreement; and

WHEREAS, the City, the Warren County Assessor, and the Madison County Assessor have reviewed the preliminary plans and specifications for the Minimum Improvements that are contemplated to be constructed; and

WHEREAS, the City expects to authorize the issuance of general obligation bonds (the "City Bonds") the proceeds of which will be used to fund an Economic Development Grant to the Developer and the construction of Public Use Improvements; the principal and interest on which City Bonds are expected to be paid from the real property taxes paid with respect to the Development Property and the Minimum Improvements located thereon.

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

1. Upon substantial completion of construction of the above-referenced Minimum Improvements but no later than the dates set forth below, the minimum actual value, which shall be fixed for assessment purposes for the Minimum Improvements on the Development Property (building and land), shall be not less than the following:

<u>Assessment Date</u> <u>(January 1)</u>	<u>Minimum Actual</u> <u>Value (Aggregate</u> <u>Values for all</u> <u>Phases)(land and</u> <u>buildings)</u>
<u>2018</u>	<u>\$88,775,649</u>
<u>2019</u>	<u>\$125,819,474</u>
<u>2020</u>	<u>\$236,345,067</u>
<u>2021</u>	<u>\$307,200,052</u>
<u>2022</u>	<u>\$310,346,247</u>
<u>2023</u>	<u>\$313,495,409</u>
<u>2024</u>	<u>\$313,527,482</u>
<u>2025</u>	<u>\$313,435,439</u>
<u>2026</u>	<u>\$313,214,304</u>
<u>2027</u>	<u>\$312,858,948</u>
<u>2028</u>	<u>\$308,988,076</u>
<u>2029</u>	<u>\$308,280,763</u>
<u>2030</u>	<u>\$307,421,562</u>
<u>2031</u>	<u>\$302,822,025</u>
<u>2032</u>	<u>\$297,915,537</u>
<u>2033</u>	<u>\$296,419,057</u>
<u>2034</u>	<u>\$290,941,608</u>

<u>2035</u>	<u>\$285,126,493</u>
<u>2036</u>	<u>\$278,962,397</u>
<u>2037</u>	<u>\$268,403,034</u>

(herein referred to as the "Minimum Actual Value.") The Minimum Actual Value is the value before commercial rollback.

The Minimum Actual Value(s) shall continue to be effective from the date of this Assessment Agreement and shall terminate and be of no further force or effect upon the earlier of (i) the end of the last fiscal year the City can legally collect incremental taxes from the Osmium Urban Renewal Area (to be clear, this terminating event shall not occur so long as the City can collect incremental taxes from any portion of the Osmium Urban Renewal Area); and (ii) the date that the City has received tax increment reimbursement of all remaining Debt Service for the City Bonds issued to pay the Economic Development Grant and to construct the Public Use Improvements ("Termination Date"). Upon the occurrence of the Termination Date, the City shall certify to the Warren County Assessor, the Madison County Assessor, and to the Developer that the Termination Date has occurred and this Minimum Assessment Agreement shall no longer control the assessment of the Development Property.

The Minimum Actual Value shall be maintained until the Termination Date regardless of (a) any failure to complete the Minimum Improvements; (b) destruction of all or any portion of the Minimum Improvements; (c) diminution in value of the Development Property or the Minimum Improvements; or (d) any other circumstance, whether known or unknown and whether now existing or hereafter occurring.

2. Developer shall pay or cause to be paid when due all real property taxes and assessments payable with respect to all and any parts of the Development Property and the Minimum Improvements pursuant to the provisions of this Minimum Assessment Agreement and the Development Agreement. Such tax payments shall be made without regard to any loss, complete or partial, to the Development Property or the Minimum Improvements, any interruption in, or discontinuance of, the use, occupancy, ownership or operation of the Minimum Improvements by Developer, or any other matter or thing which for any reason interferes with, prevents or renders burdensome the use or occupancy of the Development Property or the Minimum Improvements.

3. Developer agrees that its obligations to make the tax payments required hereby, to pay the other sums provided for herein, and to perform and observe its other agreements contained in this Minimum Assessment Agreement shall be absolute and unconditional obligations of Developer (not limited to the statutory remedies for unpaid taxes) and that Developer shall not be entitled to any abatement or diminution thereof, or set off therefrom, nor to any early termination of this Minimum Assessment Agreement for any reason whatsoever.

4. Developer agrees that, prior to the termination of this Assessment Agreement, it will not:

(a) seek administrative review or judicial review of the applicability or constitutionality of any Iowa tax statute relating to the taxation of property contained as a part of the Development Property or the Minimum Improvements determined by any tax official to be applicable to the Development Property or the Minimum Improvements, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; or

(b) seek any tax deferral or abatement, either presently or prospectively authorized under Iowa Code Chapter 403 or 404, or any other local, City, or State law or regulation, of the taxation of real property, including improvements and fixtures thereon, contained on the Development Property or the Minimum Improvements; or

(c) request any Assessor to reduce the Minimum Actual Value; or

(d) appeal to the board of review of Warren or Madison County, State, District Court, or to the Director of Revenue of the State to reduce the Minimum Actual Value; or

(e) cause a reduction in the actual value or the Minimum Actual Value through any other proceedings.

5. The parties agree that the Minimum Actual Values set forth in this Assessment Agreement takes into account the expectation that Developer will avail itself of the property tax exemptions provided by the State of Iowa's web search portal exemption (Iowa Code Sections 423.3(92) and 427.1(35)), and that such exemptions shall not reduce the property tax assessments for the Development Property and Minimum Improvements (land and buildings) below the Minimum Actual Values set forth herein. In order to allow Developer to do so, Developer agrees not to claim the exemption provided by Section 1.10A-3 of the Municipal Code of the City (regarding Industrial Tax Abatement).

6. This Minimum Assessment Agreement shall be promptly recorded by the City with the Recorder of Warren County, Iowa and the Recorder of Madison County, Iowa. Such filing shall constitute notice to any subsequent encumbrancer of the Development Property (or part thereof), whether voluntary or involuntary, and this Minimum Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent encumbrancer, including the holder of any mortgage. The City shall pay all costs of recording.

7. Neither the preambles nor provisions of this Minimum Assessment Agreement are intended to, or shall be construed as, modifying the terms of the Development Agreement.

8. This Minimum Assessment Agreement shall not be assignable without the written consent of the City and shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

9. Nothing herein shall be deemed to waive the rights of Developer under Iowa Code Section 403.6(19) to contest that portion of any actual value assignment made by the Warren Assessor in excess of the Minimum Actual Values established herein. In no event, however, shall Developer seek to reduce the actual value to an amount below the Minimum Actual Values established herein during the term of this Agreement. This Minimum Assessment Agreement may be amended or modified and any of its terms, covenants, representations, warranties or conditions waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance.

10. If any term, condition or provision of this Minimum Assessment Agreement is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder hereof, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained herein.

11. The Minimum Actual Values herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Termination Date set forth in Section 1 above.

12. Developer has provided a title opinion or lien or title search/certificate to City listing all lienholders of record as of the date of this Assessment Agreement and all such lienholders have signed a consent to this Assessment Agreement substantially in the form of the Lienholder Consent set forth in this Exhibit D, which consents are attached hereto and made a part hereof.

*Remainder of this page is blank. Signatures start on the next page.*

CITY OF WEST DES MOINES, IOWA

\_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

\_\_\_\_\_  
Ryan T. Jacobson, City Clerk

(SEAL)

STATE OF IOWA            )  
                                  ) SS  
COUNTY OF POLK        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa, and that the seal affixed to the foregoing instrument is the seal of the City of West Des Moines, Iowa, and that said instrument was signed and sealed on behalf of said City of West Des Moines, Iowa by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said City of West Des Moines, Iowa, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

MICROSOFT CORPORATION,  
a Washington corporation

By: \_\_\_\_\_  
Suresh Kumar  
Corporate VP, Cloud Infrastructure &  
Operations

STATE OF WASHINGTON        )  
  ) SS  
COUNTY OF KING            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me the undersigned, a Notary Public in and for said State, personally appeared Suresh Kumar, who, being by me duly sworn, did say that he is the Corporate VP, Cloud Infrastructure & Operations of Microsoft Corporation, and that said instrument was signed on behalf of said corporation; and that the said Suresh Kumar, Corporate VP, as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by him voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington





**EXHIBIT D (Cont.)**  
**CERTIFICATION OF WARREN COUNTY ASSESSOR**

The undersigned, having reviewed the plans and specifications for the Minimum Improvements already constructed or to be constructed and the market value assigned to the land upon which the Minimum Improvements are constructed, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certifies as follows: The undersigned Assessor, being legally responsible for the assessment of a portion of the Development Property described in the foregoing Minimum Assessment Agreement, certifies that the actual value assigned to the land and improvements located in Warren County upon completion, but no later than the effective dates set forth below, shall be at least as follows until the Termination Date contained in Section 1 of the Assessment Agreement:

<u>Assessment Date (January 1)</u>	<u>Minimum Actual Value (Aggregate Values for all Phases)(land and buildings)</u>
<u>2018</u>	<u>\$88,775,649</u>
<u>2019</u>	<u>\$125,819,474</u>
<u>2020</u>	<u>\$236,345,067</u>
<u>2021</u>	<u>\$307,200,052</u>
<u>2022</u>	<u>\$310,346,247</u>
<u>2023</u>	<u>\$313,495,409</u>
<u>2024</u>	<u>\$313,527,482</u>
<u>2025</u>	<u>\$313,435,439</u>
<u>2026</u>	<u>\$313,214,304</u>
<u>2027</u>	<u>\$312,858,948</u>
<u>2028</u>	<u>\$308,988,076</u>
<u>2029</u>	<u>\$308,280,763</u>

<u>2030</u>	<u>\$307,421,562</u>
<u>2031</u>	<u>\$302,822,025</u>
<u>2032</u>	<u>\$297,915,537</u>
<u>2033</u>	<u>\$296,419,057</u>
<u>2034</u>	<u>\$290,941,608</u>
<u>2035</u>	<u>\$285,126,493</u>
<u>2036</u>	<u>\$278,962,397</u>
<u>2037</u>	<u>\$268,403,034</u>

The Minimum Actual Value is the value before commercial rollback.

\_\_\_\_\_  
Assessor for the County of Warren, Iowa

\_\_\_\_\_  
Date

STATE OF IOWA            )  
  ) SS  
COUNTY OF WARREN    )

Subscribed and sworn to before me by \_\_\_\_\_, Assessor for the County of Warren, Iowa on this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public for the State of Iowa

**EXHIBIT D (Cont.)  
CERTIFICATION OF MADISON COUNTY ASSESSOR**

The undersigned, having reviewed the plans and specifications for the Minimum Improvements already constructed or to be constructed and the market value assigned to the land upon which the Minimum Improvements are constructed, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certifies as follows: The undersigned Assessor, being legally responsible for the assessment of a portion of the Development Property described in the foregoing Minimum Assessment Agreement, certifies that the actual value assigned to the land and improvements located in Madison County upon completion, but no later than the effective dates set forth below, shall be at least as follows until the Termination Date contained in Section 1 of the Assessment Agreement:

<u>Assessment Date (January 1)</u>	<u>Minimum Actual Value (Aggregate Values for all Phases)(land and buildings)</u>
<u>2018</u>	<u>\$88,775,649</u>
<u>2019</u>	<u>\$125,819,474</u>
<u>2020</u>	<u>\$236,345,067</u>
<u>2021</u>	<u>\$307,200,052</u>
<u>2022</u>	<u>\$310,346,247</u>
<u>2023</u>	<u>\$313,495,409</u>
<u>2024</u>	<u>\$313,527,482</u>
<u>2025</u>	<u>\$313,435,439</u>
<u>2026</u>	<u>\$313,214,304</u>
<u>2027</u>	<u>\$312,858,948</u>
<u>2028</u>	<u>\$308,988,076</u>
<u>2029</u>	<u>\$308,280,763</u>

<u>2030</u>	<u>\$307,421,562</u>
<u>2031</u>	<u>\$302,822,025</u>
<u>2032</u>	<u>\$297,915,537</u>
<u>2033</u>	<u>\$296,419,057</u>
<u>2034</u>	<u>\$290,941,608</u>
<u>2035</u>	<u>\$285,126,493</u>
<u>2036</u>	<u>\$278,962,397</u>
<u>2037</u>	<u>\$268,403,034</u>

The Minimum Actual Value is the value before commercial rollback.

\_\_\_\_\_  
Assessor for the County of Madison, Iowa

\_\_\_\_\_  
Date

STATE OF IOWA            )  
  ) SS  
COUNTY OF MADISON    )

Subscribed and sworn to before me by \_\_\_\_\_, Assessor for the County  
of Warren, Iowa on this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public for the State of Iowa

**EXHIBIT D (cont.)**

Consistent with Iowa Code §403.6(19)(b), filed with this assessor certification is a copy of subsection 19 as follows:

19. a. A municipality, upon entering into a development or redevelopment agreement pursuant to section 403.8, subsection 1, or as otherwise permitted in this chapter, may enter into a written assessment agreement with the developer of taxable property in the urban renewal area which establishes a minimum actual value of the land and completed improvements to be made on the land until a specified termination date which shall not be later than the date after which the tax increment will no longer be remitted to the municipality pursuant to section 403.19, subsection 2. The assessment agreement shall be presented to the appropriate assessor. The assessor shall review the plans and specifications for the improvements to be made and if the minimum actual value contained in the assessment agreement appears to be reasonable, the assessor shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made on it, certifies that the actual value assigned to that land and improvements upon completion shall not be less than \$ .....

b. This assessment agreement with the certification of the assessor and a copy of this subsection shall be filed in the office of the county recorder of the county where the property is located. Upon completion of the improvements, the assessor shall value the property as required by law, except that the actual value shall not be less than the minimum actual value contained in the assessment agreement. This subsection does not prohibit the assessor from assigning a higher actual value to the property or prohibit the owner from seeking administrative or legal remedies to reduce the actual value assigned except that the actual value shall not be reduced below the minimum actual value contained in the assessment agreement. An assessor, county auditor, board of review, director of revenue, or court of this state shall not reduce or order the reduction of the actual value below the minimum actual value in the agreement during the term of the agreement regardless of the actual value which may result from the incomplete construction of improvements, destruction or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording of an assessment agreement complying with this subsection constitutes notice of the assessment agreement to a subsequent purchaser or encumbrancer of the land or any part of it, whether voluntary or involuntary, and is binding upon a subsequent purchaser or encumbrancer.

**EXHIBIT E**

**Projected Cash Flow Based on Minimum Assessment Amounts and Projected City Debt Service**

	<b>Assessed Valuation Date</b>	<b>Year</b>	<b>Total Actual Valuation (Note 1)</b>	<b>Taxable Valuation (Note 1)</b>	<b>Net TIF Tax Rate (Note 2)</b>	<b>Total TIF Tax Collected</b>	<b>City Debt Service (Exhibit E.1) (Note 3)</b>
1	1/1/2018	FY 19-20	88,775,649	79,898,084	30.80619	2,461,356	(1,950,189)
2	1/1/2019	FY 20-21	125,819,474	113,237,526	30.80619	3,488,417	(3,704,208)
3	1/1/2020	FY 21-22	236,345,067	212,710,560	30.80619	6,552,802	(6,389,268)
4	1/1/2021	FY 22-23	307,200,052	276,480,047	30.80619	8,517,297	(8,040,578)
5	1/1/2022	FY 23-24	310,346,247	279,311,622	30.80619	8,604,527	(8,037,585)
6	1/1/2023	FY 24-25	313,495,409	282,145,868	30.80619	8,691,839	(8,035,763)
7	1/1/2024	FY 25-26	313,527,482	282,174,734	30.80619	8,692,728	(8,038,291)
8	1/1/2025	FY 26-27	313,435,439	282,091,895	30.80619	8,690,177	(8,034,105)
9	1/1/2026	FY 27-28	313,214,304	281,892,873	30.80619	8,684,045	(8,037,769)
10	1/1/2027	FY 28-29	312,858,948	281,573,054	30.80619	8,674,193	(8,033,623)
11	1/1/2028	FY 29-30	308,988,076	278,089,269	30.80619	8,566,871	(8,036,366)
12	1/1/2029	FY 30-31	308,280,763	277,452,687	30.80619	8,547,260	(8,035,859)
13	1/1/2030	FY 31-32	307,421,562	276,679,406	30.80619	8,523,438	(8,032,380)
14	1/1/2031	FY 32-33	302,822,025	272,539,822	30.80619	8,395,914	(8,036,212)
15	1/1/2032	FY 33-34	297,915,537	268,123,984	30.80619	8,259,878	(8,036,719)
16	1/1/2033	FY 34-35	296,419,057	266,777,151	30.80619	8,218,388	(8,033,836)
17	1/1/2034	FY 35-36	290,941,608	261,847,447	30.80619	8,066,522	(8,037,093)
18	1/1/2035	FY 36-37	285,126,493	256,613,843	30.80619	7,905,295	(5,921,001)
19	1/1/2036	FY 37-38	278,962,397	251,066,157	30.80619	7,734,392	(810,030)
20	1/1/2037	FY 39-39	268,403,034	241,562,730	30.80619	7,441,627	0
						154,716,966	(131,280,875)

**Note 1** - For purposes of this projection, valuation is based on minimum assessment agreements and assumes commercial property rates will be adjusted to 90% of actual valuation.

**Note 2** - Net TIF Tax Rate reflects anticipated TIF rate for FY 17-18 per \$1,000 valuation. Future rates are unknown but remain level for purposes of this projection.

**Note 3** - See Exhibit E.1 for projected City Debt Service.

**Total TIF Tax Collected will change due to a variety of factors, including but not limited to, changes in tax levies or rates, changes in tax laws, changes in assessed values, and other factors. City Bond issuance costs will change due to a variety of factors, including but not limited to, actual project costs, interest rates and other changes associated with the actual sales terms of the City Bonds. Per the Agreement, this projection shall be updated upon the issuance or refinancing of City Bonds. See definition of City Bonds.**

**EXHIBIT E.1**

**Projected City Debt Service**

			<i>Par</i>	25,875,000	30,795,000	29,860,000	10,635,000	97,165,000
			<i>Proceeds</i>	23,760,380	28,047,928	27,476,000	10,050,000	89,334,308
	Assessed Valuation Date	Tax Payment Year	Proposed Tax-Exempt Bonds (March 2017) (Note 1)	Proposed Tax-Exempt Bonds (Dec 2017) (Note 1)	Proposed Tax-Exempt Bonds (March 2018) (Note 1)	Proposed Taxable Bonds (Dec 2018) (Note 1)	Total City Bond Payments	
	1/1/2016	FY 17-18						
	1/1/2017	FY 18-19						
1	1/1/2018	FY 19-20	(1,122,097)	(650,751)	0	(177,341)	(1,950,189)	
2	1/1/2019	FY 20-21	(1,114,337)	(1,199,783)	(835,406)	(554,682)	(3,704,208)	
3	1/1/2020	FY 21-22	(1,906,257)	(2,097,903)	(1,335,406)	(1,049,702)	(6,389,268)	
4	1/1/2021	FY 22-23	(2,116,057)	(2,657,503)	(2,455,306)	(811,712)	(8,040,578)	
5	1/1/2022	FY 23-24	(2,114,774)	(2,657,743)	(2,456,076)	(808,992)	(8,037,585)	
6	1/1/2023	FY 24-25	(2,116,225)	(2,654,144)	(2,454,779)	(810,615)	(8,035,763)	
7	1/1/2024	FY 25-26	(2,114,925)	(2,656,244)	(2,455,849)	(811,273)	(8,038,291)	
8	1/1/2025	FY 26-27	(2,116,090)	(2,653,445)	(2,453,741)	(810,829)	(8,034,105)	
9	1/1/2026	FY 27-28	(2,114,510)	(2,655,201)	(2,458,707)	(809,351)	(8,037,769)	
10	1/1/2027	FY 28-29	(2,115,097)	(2,656,325)	(2,455,395)	(806,806)	(8,033,623)	
11	1/1/2028	FY 29-30	(2,112,787)	(2,656,586)	(2,458,832)	(808,161)	(8,036,366)	
12	1/1/2029	FY 30-31	(2,112,831)	(2,655,930)	(2,458,827)	(808,271)	(8,035,859)	
13	1/1/2030	FY 31-32	(2,115,181)	(2,654,315)	(2,455,667)	(807,217)	(8,032,380)	
14	1/1/2031	FY 32-33	(2,114,795)	(2,656,921)	(2,454,467)	(810,029)	(8,036,212)	
15	1/1/2032	FY 33-34	(2,116,607)	(2,653,341)	(2,455,207)	(811,564)	(8,036,719)	
16	1/1/2033	FY 34-35	(2,115,584)	(2,653,801)	(2,457,659)	(806,792)	(8,033,836)	
17	1/1/2034	FY 35-36	(2,111,667)	(2,657,679)	(2,456,809)	(810,938)	(8,037,093)	
18	1/1/2035	FY 36-37	0	(2,654,808)	(2,457,588)	(808,605)	(5,921,001)	
19	1/1/2036	FY 37-38	0	0	0	(810,030)	(810,030)	
20	1/1/2037	FY 39-39	0	0	0	0	0	
			(33,749,821)	(43,782,423)	(39,015,721)	(14,732,910)	(131,280,875)	

**Note 1 -** The Bond issue proceeds projected above are estimated to total \$89.334 million, not including interest or financing expenses. Proceeds of these Bonds are estimated to pay for the Public Improvements in Exhibit G, plus the Economic Development Grant.

**Total TIF Tax Collected will change due to a variety of factors, including but not limited to, changes in tax levies or rates, changes in tax laws, changes in assessed values, and other factors. City Bond issuance costs will change due to a variety of factors, including but not limited to, actual project costs, interest rates and other changes associated with the actual sales terms of the City Bonds. Per the Agreement, this projection shall be updated upon the issuance or refinancing of City Bonds. See definition of City Bonds.**

**EXHIBIT F**

**MEMORANDUM OF AGREEMENT**

WHEREAS, the City of West Des Moines, Iowa (the "City") and Microsoft Corporation, a Washington corporation ("Developer"), did on or about the \_\_\_\_ day of \_\_\_\_\_, 2016, make, execute and deliver, each to the other, a Development Agreement (the "Agreement"), wherein and whereby Developer agreed, in accordance with the terms of the Agreement and the Osmium Urban Renewal Plan (the "Plan"), to develop and operate certain real property located within the City and within the Osmium Urban Renewal Area.

The Development Property is described as follows:

**THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE1/4SE1/4) SECTION 1, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE 5TH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA.**

AND

**PARCEL 1:**

**THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (NW1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

**PARCEL 2:**

**THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER (NE1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA; EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 121; AND EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.**

**PARCEL 3:**

**THE EAST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (E1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA; EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 122; AND EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.**

**PARCEL 4:**

**THE WEST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (W1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

**PARCEL 5:**

**THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW1/4SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

(the "Development Property"); and

WHEREAS, the Development Agreement contains a Minimum Assessment Agreement at Exhibit "D", wherein the term of the Development Agreement is identified as effective from the date of the Minimum Assessment Agreement and will terminate upon the earlier of (i) the end of the last fiscal year the City can legally collect incremental taxes from the Osmium Urban Renewal Area; and (ii) the date that the City has received tax increment reimbursement of all



remaining Debt Service for the City Bonds issued to pay the Economic Development Grant and to construct the Public Use Improvements; and

WHEREAS, the City and Developer desire to record a Memorandum of Agreement referring to the Development Property and their respective interests therein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. That the recording of this Memorandum of Agreement shall serve as notice to the public that the Agreement contains provisions restricting development and use of the Development Property and the improvements located and operated on such Development Property.

2. That all of the provisions of the Agreement and any subsequent amendments thereto, if any, even though not set forth herein, are by the filing of this Memorandum of Agreement made a part hereof by reference, and that anyone making any claim against any of said Development Property in any manner whatsoever shall be fully advised as to all of the terms and conditions of the Agreement, and any amendments thereto, as if the same were fully set forth herein.

3. That a copy of the Agreement and any subsequent amendments thereto, if any, shall be maintained on file for public inspection during ordinary business hours in the office of the City Clerk, West Des Moines, Iowa.

IN WITNESS WHEREOF, the City and Developer have executed this Memorandum of Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

CITY OF WEST DES MOINES, IOWA

\_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

\_\_\_\_\_  
Ryan T. Jacobson, City Clerk

(SEAL)

STATE OF IOWA            )  
  ) SS  
COUNTY OF POLK        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Iowa, and that the seal affixed to the foregoing instrument is the seal of the City of West Des Moines, Iowa, and that said instrument was signed and sealed on behalf of said City of West Des Moines, Iowa by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said City of West Des Moines, Iowa, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

MICROSOFT CORPORATION,  
a Washington corporation

By: \_\_\_\_\_  
Suresh Kumar  
Corporate VP, Cloud Infrastructure &  
Operations

STATE OF WASHINGTON    )  
  ) SS  
COUNTY OF KING        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me the undersigned, a Notary Public in and for said State, personally appeared Suresh Kumar, who, being by me duly sworn, did say that he is the Corporate VP, Cloud Infrastructure & Operations of Microsoft Corporation, and that said instrument was signed on behalf of said corporation; and that the said Suresh Kumar, Corporate VP, as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by him voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington

**EXHIBIT G**

<b>Description of Urban Renewal Project</b>	<b>Est. Time Period</b>	<b>Estimated cost to be reimbursed by tax increment financing</b>
<p>Veterans Parkway – West of SE Adams Street to SW Grand Prairie Parkway            Public street construction, reconstruction, and/or widening and related activities including right-of-way acquisition, related utilities and sewers, storm water conveyance structures, bridges, railroad crossings, bike/pedestrian trails and under crossings, traffic signals and signage, turn lanes, medians, landscaping, street lights, and related items.</p>	<p>2016 - 2020</p>	<p>\$35,000,000-\$45,000,000.</p>
<p>S/SW Grand Prairie Parkway – Veterans Parkway to Raccoon River Drive            Public street construction, reconstruction, and/or widening and related activities including right-of-way acquisition, related utilities and sewers, storm water conveyance structures, bridges, railroad crossings, bike/pedestrian trails and under crossings, traffic signals and signage, turn lanes, medians, landscaping, street lights, and related items.</p>	<p>2016-2020</p>	<p>\$20,000,000-\$25,000,000</p>

<b>Description of Urban Renewal Project</b>	<b>Est. Time Period</b>	<b>Estimated cost to be reimbursed by tax increment financing</b>
<p>SW 60<sup>th</sup> Street* (WDM)– North of G14 to SW Adams Street</p> <p>Public street construction, reconstruction, and/or widening and related activities including right-of-way acquisition, related utilities and sewers, storm water conveyance structures, bridges, railroad crossings, bike/pedestrian trails and under crossings, traffic signals and signage, turn lanes, medians, landscaping, street lights, and related items.</p>	2016-2020	\$5,000,000-\$7,000,000
<p>SE 50<sup>th</sup> Street* (WDM) – Veterans Parkway to north of Polk County Line</p> <p>Public street construction, reconstruction, and/or widening and related activities including right-of-way acquisition, related utilities and sewers, storm water conveyance structures, bridges, railroad crossings, bike/pedestrian trails and under crossings, traffic signals and signage, turn lanes, medians, landscaping, street lights, and related items.</p>	2016-2020	\$2,000,000-\$5,000,000

<b>Description of Urban Renewal Project</b>	<b>Est. Time Period</b>	<b>Estimated cost to be reimbursed by tax increment financing</b>
SE and SW Adams Street – SE 50 <sup>th</sup> Street* to SW 60 <sup>th</sup> Street*  Public street construction, reconstruction, and/or widening and related activities including right-of-way acquisition, related utilities and sewers, storm water conveyance structures, bridges, railroad crossings, bike/pedestrian trails and under crossings, traffic signals and signage, turn lanes, medians, landscaping, street lights, and related items.	2016-2020	\$2,000,000 - \$5,000,000
Water System Improvements- West of SE and SW Adams Street to Grand Avenue. Extend and construct water lines to connect existing water supply distribution system to new areas of development.	2016-2020	\$17,000,000 - \$21,000,000
Sanitary Sewer Improvements - Middle Creek Sewer to west of I-35 Extend and construct sewer lines to connect existing sanitary sewer system to new areas of development; may also entail other effluent “treatment” options.	2016-2020	\$3,000,000 - \$4,000,000
Financing of debt/debt issuance costs.	2016-2037	\$7,000,000- \$10,000,000
<b>Subtotal</b>		<b>\$91,000,000– \$122,000,000</b>

**EXHIBIT H**  
**DEVELOPER ANNUAL CERTIFICATION**  
(due annually on or before October 15<sup>th</sup>, beginning October 15, 2018 and ending at Termination Date,  
as required under terms of Development Agreement)

The Developer certifies the following (as of October 1):

During the time period covered by this Certification, the Developer is and was in compliance with the Development Agreement as follows:

(i) all ad valorem taxes on the Development Property then owned by the Developer in the Urban Renewal Area have been paid for the prior fiscal year (and for the current year, if due) and attached to this Annual Certification are proof of payment of said taxes;

(ii) The Minimum Improvements (buildings and land) were assessed on January 1, 20\_\_ (most recent January 1<sup>st</sup>), at an assessment value of \$\_\_\_\_\_;

(iii) The number of Full-Time Equivalent Jobs employed at the Minimum Improvements as of October 1, 20\_\_ and as of the first day of each of the preceding eleven (11) months were are follows:

October 1, 20__ : _____	April 1, 20__ : _____
September 1, 20__ : _____	March 1, 20__ : _____
August 1, 20__ : _____	February 1, 20__ : _____
July 1, 20__ : _____	January 1, 20__ : _____
June 1, 20__ : _____	December 1, 20__ : _____
May 1, 20__ : _____	November 1, 20__ : _____

The "Monthly Average" means the total of the Full-Time Equivalent Jobs as of the 1<sup>st</sup> of each of the 12 months divided by 12. The Monthly Average as of the date of this Certification is \_\_\_\_\_; and

(iv) the undersigned representative of Developer has re-examined the terms and provisions of this Development Agreement and that at the date of such certificate, and during the preceding twelve (12) months, certify that the Developer is not, or was not, in default in the fulfillment of any of the terms and conditions of this Development Agreement and that no Event of Default is occurring or has occurred as of the date of such certificate or during such period, or if the signer is aware of any such default, event or Event of Default, said representative shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

(v) Microsoft's current credit rating is at least "AA-" ("High Grade") as determined by Standard & Poors Financial Services, LLC (or the equivalent rating schedule if an alternative rating agency is utilized in the future). Yes \_\_\_ No \_\_\_

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MICROSOFT CORPORATION  
 By: \_\_\_\_\_

By: \_\_\_\_\_  
 \_\_\_\_\_ )  
 STATE OF WASHINGTON )  
 ) SS  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that they are the \_\_\_\_\_ and \_\_\_\_\_, respectively, of Microsoft Corporation, and that said instrument was signed on behalf of said corporation; and that the said \_\_\_\_\_ and \_\_\_\_\_, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by them voluntarily executed.

\_\_\_\_\_  
 Notary Public in and for the State of Iowa

Attachment: (a) Proof of payment of taxes

EXHIBIT I-1

CERTIFICATE OF COMPLETION

PHASE 1

WHEREAS, the City of West Des Moines, Iowa (the "City") and Microsoft Corporation (the "Developer"), did on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, make, execute and deliver, each to the other, a Development Agreement (the "Agreement"), wherein and whereby Developer agreed, in accordance with the terms of the Agreement, to develop and maintain certain real property located within the City and as more particularly described as follows:

**THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE1/4SE1/4) SECTION 1, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE 5TH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA.**

AND

**PARCEL 1:**

**THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (NW1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

**PARCEL 2:**

**THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER (NE1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA; EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 121; AND EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.**

**PARCEL 3:**

**THE EAST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (E1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA; EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 122; AND EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.**

**PARCEL 4:**

**THE WEST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (W1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

**PARCEL 5:**

**THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW1/4SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

(the "Development Property"); and

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Development Property, and obligated Developer to cause the construction of certain Phase 1 Minimum Improvements (as defined therein) in accordance with the Agreement; and

WHEREAS, Developer has to the present date performed said covenants and conditions insofar as they relate to the construction (or contracting for construction) of said Phase 1 Minimum Improvements in a manner deemed by the City to be in conformance with the Agreement to permit the execution and recording of this certification.

NOW, THEREFORE, pursuant to Section 3.5 of the Agreement, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Developer and its successors and assigns, to construct the Phase 1 Minimum Improvements on the Development Property have been completed and performed by Developer and are hereby released absolutely and forever terminated insofar as they apply to the land described herein. The County Recorder where the Phase is located is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfaction of the covenants and conditions of said Agreement with respect to the Developer's obligation to construct the Phase 1 Minimum Improvements on the Development Property.

All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

(SEAL)

CITY OF WEST DES MOINES, IOWA

By: \_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

By: \_\_\_\_\_  
Ryan T. Jacobson, City Clerk

STATE OF IOWA            )  
  ) SS  
COUNTY OF POLK        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Polk County, Iowa, a Municipality, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa



EXHIBIT I-2

CERTIFICATE OF COMPLETION

PHASE 2

WHEREAS, the City of West Des Moines, Iowa (the "City") and Microsoft Corporation (the "Developer"), did on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, make, execute and deliver, each to the other, a Development Agreement (the "Agreement"), wherein and whereby Developer agreed, in accordance with the terms of the Agreement, to develop and maintain certain real property located within the City and as more particularly described as follows:

**THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE1/4SE1/4) SECTION 1, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE 5TH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA.**

AND

**PARCEL 1:**

**THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (NW1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA,**

**PARCEL 2:**

**THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER (NE1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA; EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 121; AND EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.**

**PARCEL 3:**

**THE EAST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (E1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA; EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 122; AND EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.**

**PARCEL 4:**

**THE WEST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (W1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA,**

**PARCEL 5:**

**THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW1/4SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

(the "Development Property"); and

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Development Property, and obligated Developer to cause the construction of certain Phase 2 Minimum Improvements (as defined therein) in accordance with the Agreement; and

WHEREAS, Developer has to the present date performed said covenants and conditions insofar as they relate to the construction (or contracting for construction) of said Phase 2 Minimum Improvements in a manner deemed by the City to be in conformance with the Agreement to permit the execution and recording of this certification.

NOW, THEREFORE, pursuant to Section 3.5 of the Agreement, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Developer and its successors and assigns, to construct the Phase 2 Minimum Improvements on the Development Property have been completed and performed by Developer and are hereby released absolutely and forever terminated insofar as they apply to the land described herein. The County Recorder where the Phase is located is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfaction of the covenants and conditions of said Agreement with respect to the Developer's obligation to construct the Phase 2 Minimum Improvements on the Development Property.

All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

(SEAL)

CITY OF WEST DES MOINES, IOWA

By: \_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

By: \_\_\_\_\_  
Ryan T. Jacobson, City Clerk

STATE OF IOWA            )  
  ) SS  
COUNTY OF POLK        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Polk County, Iowa, a Municipality, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

EXHIBIT I-3

CERTIFICATE OF COMPLETION

PHASE 3

WHEREAS, the City of West Des Moines, Iowa (the "City") and Microsoft Corporation (the "Developer"), did on or about the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, make, execute and deliver, each to the other, a Development Agreement (the "Agreement"), wherein and whereby Developer agreed, in accordance with the terms of the Agreement, to develop and maintain certain real property located within the City and as more particularly described as follows:

**THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE1/4SE1/4) SECTION 1, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE 5TH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA.**

AND

**PARCEL 1:**

**THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (NW1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

**PARCEL 2:**

**THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER (NE1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA; EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 121; AND EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.**

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**THE EAST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (E1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA; EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 122; AND EXCEPT THAT PART DEEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.**

**PARCEL 4:**

**THE WEST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (W1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

**PARCEL 5:**

**THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW1/4SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

(the "Development Property"); and

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Development Property, and obligated Developer to cause the construction of certain Phase 3 Minimum Improvements (as defined therein) in accordance with the Agreement; and

WHEREAS, Developer has to the present date performed said covenants and conditions insofar as they relate to the construction (or contracting for construction) of said Phase 3 Minimum Improvements in a manner deemed by the City to be in conformance with the Agreement to permit the execution and recording of this certification.

NOW, THEREFORE, pursuant to Section 3.5 of the Agreement, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Developer and its successors and assigns, to construct the Phase 3 Minimum Improvements on the Development Property have been completed and performed by Developer and are hereby released absolutely and forever terminated insofar as they apply to the land described herein. The County Recorder where the phase is located is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfaction of the covenants and conditions of said Agreement with respect to the Developer's obligation to construct the Phase 3 Minimum Improvements on the Development Property.

All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

(SEAL)

CITY OF WEST DES MOINES, IOWA

By: \_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

By: \_\_\_\_\_  
Ryan T. Jacobson, City Clerk

STATE OF IOWA            )  
  ) SS  
COUNTY OF POLK        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Polk County, Iowa, a Municipality, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

EXHIBIT I-4

CERTIFICATE OF COMPLETION

PHASE 4

WHEREAS, the City of West Des Moines, Iowa (the "City") and Microsoft Corporation (the "Developer"), did on or about the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, make, execute and deliver, each to the other, a Development Agreement (the "Agreement"), wherein and whereby Developer agreed, in accordance with the terms of the Agreement, to develop and maintain certain real property located within the City and as more particularly described as follows:

**THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE1/4SE1/4) SECTION 1, TOWNSHIP 77 NORTH, RANGE 26 WEST OF THE 5TH PRINCIPAL MERIDIAN, MADISON COUNTY, IOWA.**

AND

**PARCEL 1:**

**THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER (NW1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA,**

**PARCEL 2:**

**THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER (NE1/4NW1/4) OF SECTION 7, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA; EXCEPT THAT PART DECEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 121; AND EXCEPT THAT PART DECEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.**

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**THE EAST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (E1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA; EXCEPT THAT PART DECEDED TO THE STATE OF IOWA IN BOOK 125, PAGE 122; AND EXCEPT THAT PART DECEDED TO THE STATE OF IOWA IN BOOK 2012, PAGE 10015.**

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**THE WEST HALF OF THE EAST HALF OF THE SOUTHWEST QUARTER (W1/2E1/2SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

**PARCEL 5:**

**THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW1/4SW1/4) OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 25 WEST OF THE 5TH PRINCIPAL MERIDIAN, WARREN COUNTY, IOWA.**

(the "Development Property"); and

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Development Property, and obligated Developer to cause the construction of certain Phase 4 Minimum Improvements (as defined therein) in accordance with the Agreement; and

WHEREAS, Developer has to the present date performed said covenants and conditions insofar as they relate to the construction (or contracting for construction) of said Phase 4 Minimum Improvements in a manner deemed by the City to be in conformance with the Agreement to permit the execution and recording of this certification.

NOW, THEREFORE, pursuant to Section 3.5 of the Agreement, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Developer and its successors and assigns, to construct the Phase 4 Minimum Improvements on the Development Property have been completed and performed by Developer and are hereby released absolutely and forever terminated insofar as they apply to the land described herein. The County Recorder where the Phase is located is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfaction of the covenants and conditions of said Agreement with respect to the Developer's obligation to construct the Phase 4 Minimum Improvements on the Development Property.

All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

(SEAL)

CITY OF WEST DES MOINES, IOWA

By: \_\_\_\_\_  
Steven K. Gaer, Mayor

ATTEST:

By: \_\_\_\_\_  
Ryan T. Jacobson, City Clerk

STATE OF IOWA            )  
  ) SS  
COUNTY OF POLK        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me a Notary Public in and for said State, personally appeared Steven K. Gaer and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, Polk County, Iowa, a Municipality, created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

## RESOLUTION NO. \_\_\_\_\_

**RESOLUTION APPROVING AND AUTHORIZING  
EXECUTION OF A DEVELOPMENT AGREEMENT BY AND  
BETWEEN THE CITY OF WEST DES MOINES AND  
MICROSOFT CORPORATION (PROJECT OSMIUM)**

WHEREAS, by Resolution No. \_\_\_\_\_, adopted November 14, 2016, this Council found and determined that certain areas located within the City are eligible and should be designated as an urban renewal area under Iowa law, and approved and adopted the Osmium Urban Renewal Plan (the "Plan") for the Osmium Urban Renewal Area (the "Urban Renewal Area" or "Area") described therein, which Plan will be filed in the offices of the Polk, Warren, Madison, and Dallas County Recorders; and

WHEREAS, the City of West Des Moines ("City") and Microsoft Corporation ("Developer") propose to enter into a Development Agreement ("Agreement"), wherein the Developer plans to construct a regional data center and associated support infrastructure to house servers and computer equipment to operate large scale web portal services, and when completed the building will include at least 1,701,000 square feet ("Project"); and

WHEREAS, the Developer estimates that the total investment for the Project will total \$981,240,000 and the project is expected to be completed over the next seven years; and

WHEREAS, one of the obligations of Developer relates to employment retention and/or creation; and

WHEREAS, in general, the Agreement obligates the City to make an Economic Development Grant to Developer, and construct Public Use Improvements related to the Project, including but not limited to, roads, utility projects and other public facilities; and

WHEREAS, more specifically, the Developer shall construct the Project, employ employees, and agree to a Minimum Assessment Agreement on the land and new buildings, which Minimum Assessment Agreement provides that the Project will be assessed at various values, with a high of approximately \$313,600,000 in assessed valuation. The Tax Increment (specific property taxes) generated by the construction of the Project will be used to pay the debt service on general obligation City Bonds proposed to be issued to fund the Economic Development Grant and the Public Use Improvements. City Bonds, at an estimated, aggregate face value of \$97,165,000, not including issuance or interest costs, will be used to fund the Economic Development Grant and Public Use Improvements. Projected costs of indebtedness will vary depending on the cost of the Public Use Improvements, timing of sales, sales terms, tax rates and other factors. The incentives provided by the City shall serve as the local match under any Iowa Economic Development Authority Contract which provides state incentives to the Developer for the Project; and

WHEREAS, Iowa Code Chapters 15A and 403 authorize cities to make loans and grants for economic development in furtherance of the objectives of an urban renewal project and to

appropriate such funds and make such expenditures as may be necessary to carry out the purposes of said Chapters, and to levy taxes and assessments for such purposes; and

WHEREAS, the Council has determined that the Agreement is in the best interests of the City and the residents thereof and that the performance by the City of its obligations thereunder is a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the meaning of Chapters 15A and 403 of the Iowa Code taking into account any or all of the factors set forth in Chapter 15A, to wit:

- a. Businesses that add diversity to or generate new opportunities for the Iowa economy should be favored over those that do not.
- b. Development policies in the dispensing of the funds should attract, retain, or expand businesses that produce exports or import substitutes or which generate tourism-related activities.
- c. Development policies in the dispensing or use of the funds should be targeted toward businesses that generate public gains and benefits, which gains and benefits are warranted in comparison to the amount of the funds dispensed.
- d. Development policies in dispensing the funds should not be used to attract a business presently located within the state to relocate to another portion of the state unless the business is considering in good faith to relocate outside the state or unless the relocation is related to an expansion which will generate significant new job creation. Jobs created as a result of other jobs in similar Iowa businesses being displaced shall not be considered direct jobs for the purpose of dispensing funds; and

WHEREAS, pursuant to notice published as required by law, this Council has held a public meeting and hearing upon the proposal to approve and authorize execution of the Agreement and has considered the extent of objections received from residents or property owners as to said proposed Agreement; and, accordingly the following action is now considered to be in the best interests of the City and residents thereof.

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

Section 1. That the performance by the City of its obligations under the Agreement, including but not limited to making of a grant to the Developer in connection with the development of the Development Property under the terms set forth in the Agreement, be and is hereby declared to be a public undertaking and purpose and in furtherance of the Plan and the Urban Renewal Law and, further, that the Agreement and the City's performance thereunder is in furtherance of appropriate economic development activities and objectives of the City within the



meaning of Chapters 15A and 403 of the Iowa Code, taking into account the factors set forth therein.

Section 2. That the form and content of the Agreement, the provisions of which are incorporated herein by reference, be and the same hereby are in all respects authorized, approved and confirmed, and the Mayor and the City Clerk be and they hereby are authorized, empowered and directed to execute, attest, seal and deliver the Agreement for and on behalf of the City in substantially the form and content now before this meeting, but with such changes, modifications, additions or deletions therein as shall be approved by such officers, and that from and after the execution and delivery of the Agreement, the Mayor and the City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Agreement as executed.

PASSED AND APPROVED this 14<sup>th</sup> day of November, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

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

CERTIFICATE

STATE OF IOWA )  
 ) SS  
COUNTY OF POLK )

I, the undersigned City Clerk of the City of West Des Moines, State of Iowa, do hereby certify that attached is a true and complete copy of the portion of the corporate records of the City showing proceedings of the City Council, and the same is a true and complete copy of the action taken by the Council with respect to the matter at the meeting held on the date indicated in the attachment, which proceedings remain in full force and effect, and have not been amended or rescinded in any way; that meeting and all action thereat was duly and publicly held in accordance with a notice of public hearing and tentative agenda, a copy of which was timely served on each member of the Council and posted on a bulletin board or other prominent place easily accessible to the public and clearly designated for that purpose at the principal office of the Council (a copy of the face sheet of the agenda being attached hereto) pursuant to the local rules of the Council and the provisions of Chapter 21, Code of Iowa, upon reasonable advance notice to the public and media at least twenty-four hours prior to the commencement of the meeting as required by law and with members of the public present in attendance; I further certify that the individuals named therein were on the date thereof duly and lawfully possessed of their respective City offices as indicated therein, that no Council vacancy existed except as may be stated in the proceedings, and that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization, existence or boundaries of the City or the right of the individuals named therein as officers to their respective positions.

WITNESS my hand and the seal of the Council hereto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
City Clerk, City of West Des Moines, State of Iowa

(SEAL)

**CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION**

**7(a)**

**Date: November 14, 2016**

**ITEM:** GeAnna Grove, West of Sedona Drive at GeAnna Court – Subdivide property into 20 lots for townhome development and one outlot – Jerry’s Homes – FP-003260-2016

**RESOLUTION: Acceptance of Public Improvements and Approval and Release of Final Plat**

**FINANCIAL IMPACT:** Undetermined.

**BACKGROUND:** Jerry’s Homes requests approval of the GeAnna Grove final plat for property at Sedona Drive and GeAnna Court (see Exhibit II - Location Map and Exhibit III – Final Plat) and approval and acceptance of public improvements for sanitary sewer.

**CITY COUNCIL SUBCOMMITTEE:** The final plat was reviewed by the Subcommittee on November 14, 2016. The Subcommittee had no comments on the plat.

**OUTSTANDING ISSUES:** There are no outstanding issues.

As part of this approval, the City Council is approving and accepting the following:

- Public improvements associated with the construction of public sanitary sewer within the plat boundaries
- Surety in lieu of installation of buffer landscaping
- Storm water facility maintenance agreement and covenant
- Sanitary Sewer Easement

**COMPREHENSIVE PLAN CONSISTENCY:** The project has been reviewed for consistency with the Comprehensive Plan. Based upon that review, a finding has been made that the proposed project is consistent with the Comprehensive Plan in that the project is consistent with all of the goals and policies of the Comprehensive Plan and the land use map of the Comprehensive Plan.

**RECOMMENDATION:** Based upon the preceding review and a finding of consistency with the goals and policies of the Comprehensive Plan, staff recommends the City Council approve and release the Final Plat, GeAnna Grove, to subdivide property into 20 lots for townhome development and 1 outlot and accept public improvements associated with the plat, subject to the applicant complying with all applicable City Code requirements.

Lead Staff Member: Kara V. Tragesser, AICP 

**STAFF REVIEWS:**

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

**PUBLICATION(S) (if applicable)**

Published In	n/a
Date(s) Published	n/a
Letter sent to surrounding property owners	n/a

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	Development and Planning Subcommittee		
Date Reviewed	November 14, 2016		
Recommendation	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Split <input type="checkbox"/>

**ATTACHMENTS:**

- Exhibit I - Resolution: Approval and Release of Final Plat and Acceptance of Public Improvements
- Exhibit II - Location Map
- Exhibit III - Final Plat

Prepared by: KTragesser, City of West Des Moines Development Services, P.O. Box 65320, West Des Moines, IA 50265-0320, 515-222-3620  
When Recorded, Return to: City Clerk, City of West Des Moines, P. O. Box 65320, West Des Moines, IA 50265-0320

**RESOLUTION**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, ACCEPTING PUBLIC IMPROVEMENTS ASSOCIATED WITH AND APPROVING AND RELEASING THE FINAL PLAT, GEANNA GROVE (FP-003260-2016) FOR THE PURPOSE OF PLATTING PROPERTY INTO 20 LOTS FOR TOWNHOME DEVELOPMENT AND ONE OULOT**

**WHEREAS**, pursuant to the provisions of Title 10, Subdivision Regulations and Title 9, Zoning Chapter I et seq, of the West Des Moines Municipal Code, Jerry's Homes, has requested approval for a Final Plat (FP-003260-0016) for that 4.764 acres located at Sedona Drive and GeAnna Court for the purpose of subdividing the property into 20 lots for townhome development and one outlot for private streets, open space, and detention;

**Legal Description**

Lot 2 South Maple Grove Plat 17 an official plat now in and forming a part of the City of West Des Moines, Dallas County, Iowa

**WHEREAS**, studies and investigations were made, and staff reports and recommendations were submitted which are made a part of this record and herein incorporated by reference;

**WHEREAS**, the West Des Moines Plan and Zoning Commission reviewed the Preliminary Plat for GeAnna Grove and recommended approval on May 23, 2016;

**WHEREAS**, the Final Plat that was submitted for review was determined to be generally consistent with the Preliminary Plat for GeAnna Grove that was reviewed and approved by the City Council on May 31, 2016;

**WHEREAS**, on November 14, 2016, this City Council held a duly-noticed meeting to consider the application for GeAnna Grove Final Plat;

**WHEREAS**, the West Des Moines City Council accepts public improvements associated with the construction of public sanitary sewer within the plat boundaries;

**WHEREAS**. The City Council accepts surety in lieu of installation of buffer landscaping;

**WHEREAS**, the City Council approves and accepts the sanitary sewer easement and the storm water facility maintenance agreement and covenant;

**WHEREAS**, the City Council approves and assigns the following addresses:

Lot 1: 9121 GeAnna Court	Lot 11: 9188 GeAnna Court
Lot 2: 9129 GeAnna Court	Lot 12: 9180 GeAnna Court
Lot 3: 9137 GeAnna Court	Lot 13: 9172 GeAnna Court
Lot 4: 9145 GeAnna Court	Lot 14: 9164 GeAnna Court
Lot 5: 9153 GeAnna Court	Lot 15: 9156 GeAnna Court
Lot 6: 9161 GeAnna Court	Lot 16: 9147 GeAnna Court
Lot 7: 9169 GeAnna Court	Lot 17: 9140 GeAnna Court
Lot 8: 9187 GeAnna Court	Lot 18: 9132 GeAnna Court
Lot 9: 9193 GeAnna Court	Lot 19: 9124 GeAnna Court
Lot 10: 9196 GeAnna Court	Lot 20: 9116 GeAnna Court

**WHEREAS**, GeAnna Grove is zoned South Maple Grove Planned Unit Development and meets all requirements of the City's Zoning Code.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:**

**SECTION 1.** The findings of consistency with the Comprehensive Plan as stated in the staff report, or as amended orally at the City Council meeting, are adopted.

**SECTION 2.** Final Plat, GeAnna Grove is approved, subject to compliance with all the conditions in the staff report, including conditions added at the Hearing, if any, and attached hereto as Attachment "A". Violation of any such conditions shall be grounds for revocation of the entitlement, as well as any other remedy which is available to the City.

**SECTION 3.** The City Council accepts public improvements associated with the construction of public sanitary sewer within the plat boundaries;

**SECTION 4.** This resolution does release the GeAnna Grove Final Plat for recordation. The City Council of West Des Moines directs the City Clerk to release said plat for recordation in accordance with said City Council approval of the final plat on November 14, 2016, and Roll Call No. \_\_\_\_\_

### **CERTIFICATE**

I, Ryan T. Jacobson, City Clerk for said City, hereby certify that at a meeting of the City Council of said City of West Des Moines, held on November 14, 2016, among other proceedings, Roll Call No. \_\_\_\_\_ approved said plat on November 14, 2016, and released said Final Plat for recordation.

\_\_\_\_\_  
Ryan T. Jacobson  
City Clerk

**IN WITNESS WHEREOF**, I have hereunto set my hand this 14<sup>th</sup> day of November 2016.

---

Steve Gaer, Mayor

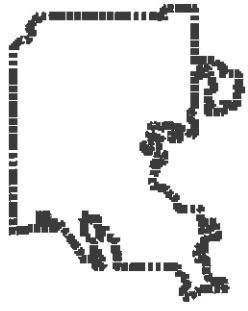
**ATTEST:**

---

Ryan T. Jacobson  
City Clerk

**ATTACHMENT A**  
**Conditions of Approval**

**None**



- Legend**
- Parcels
  - Parks
  - Greenways

# GeAnna Grove Location



1:2,530

Disclaimer: The City of West Des Moines makes no warranties regarding the accuracy or completeness of the data provided herein.  
 THIS MAP IS NOT TO BE USED FOR NAVIGATION







CITY OF WEST DES MOINES  
CITY COUNCIL MEETING COMMUNICATION

DATE: November 14, 2016

**ITEM:** Country Club Office Plaza West Plat 8, 1080 Jordan Creek Parkway – Replat Lot 1  
Country Club Office Plaza West Plat 3 and Outlot B, Country Club Office Plaza West –  
Dallas County Partners – PP-003239-2016

**RESOLUTION:** Approval of a Preliminary Plat

**FINANCIAL IMPACT:** Undetermined.

**BACKGROUND:** Dallas County Partners requests approval of a Preliminary Plat for approximately 13.12 acres located at 1080 Jordan Creek Parkway. The applicant proposes to replat Outlot B Country Club Office Plaza West from an outlot to a buildable lot and include a portion of Lot 1 Country Club Office Plaza West Plat 3. A site plan is forthcoming to construct an office building on the property (see Exhibit I - Attachment B – Location Map and Attachment C – Preliminary Plat).

Plan and Zoning Commission Action:

Vote: 6-0 approval, Commissioner Brown absent

Date: November 7 2016

Motion: Adopt a resolution recommending the City Council approve the Preliminary Plat

**OUTSTANDING ISSUES:** There are no outstanding issues.

The following items of interest are noted in the attached Plan and Zoning Commission report (see Exhibit I):

- Applicant’s Request
- History
- City Council Subcommittee – *Development and Planning (October 17, 2016)*
- Staff Review and Comments
  - *Right-of-way Dedication*
- Comprehensive Plan Consistency
- Findings
- Staff Recommendation and Conditions of Approval
- Owner/Applicant/Applicant Representative Information

**RECOMMENDATION:** Based upon the preceding review and a finding of consistency with the goals and policies of the Comprehensive Plan, the Plan and Zoning Commission recommends the City Council adopt a resolution to approve the Preliminary Plat to replat an outlot and a portion of an adjacent lot for commercial development, subject to the applicant meeting all City Code requirements and the following:

1. The applicant providing final drawings of the preliminary plat which addresses staff remaining comments prior to the final plat proceeding to the City Council for approval.

Lead Staff Member: Kara Tragesser, AICP

**STAFF REVIEWS**

Department Director	
Appropriations/Finance	
Legal	
Agenda Acceptance	

**PUBLICATION(S) (if applicable)**

Published In	N/A
Date(s) Published	
Letter sent to surrounding property owners	

**SUBCOMMITTEE REVIEW (if applicable)**

Committee	Development & Planning Subcommittee		
Date Reviewed	October 17, 2016		
Recommendation	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Split <input type="checkbox"/>

**ATTACHMENTS:**

- |            |   |  |
|------------|---|--|
| Exhibit I  | - | Plan and Zoning Commission Communication             |
|            |   | Attachment A - Plan and Zoning Commission Resolution |
|            |   | Attachment B - Location Map                          |
|            |   | Attachment C - Preliminary Plat                      |
| Exhibit II | - | City Council Resolution                              |

CITY OF WEST DES MOINES  
PLAN AND ZONING COMMISSION COMMUNICATION

**Meeting Date:** November 7, 2016

**Item:** Country Club Office Plaza West Plat 8, 1080 Jordan Creek Parkway – Replat Lot 1 Country Club Office Plaza West Plat 3 and Outlot B, Country Club Office Plaza – Dallas County Partners – PP-003239-2016

**Requested Action:** Approval of Preliminary Plat

**Case Advisor:** Kara Tragesser, AICP

**Applicant's Request:** Dallas County Partners requests approval of a Preliminary Plat for approximately 13.12 acres located at 1080 Jordan Creek Parkway. The applicant proposes to replat Outlot B Country Club Office Plaza West from an outlot to a buildable lot and include a portion of Lot 1 Country Club Office Plaza West Plat 3. A site plan is forthcoming to construct an office building on the property (see Attachment B – Location Map and Attachment C – Preliminary Plat).

**History:** Outlot B Country Club Office Plaza West was platted in 2001 and has not developed since that time. The part of Lot 1 Country Club Office Plaza West Plat 3 has been developed as parking for the building to the west, but the property will be included in this plat and cross parking agreements put in place for the joint use of the parking area. The resulting smaller lot size of Lot 1, Country Club Office Plaza West Plat 3 will still meet all bulk requirements noted in the PUD.

**City Council Subcommittee:** This item was presented to the Development and Planning City Council Subcommittee on October 17, 2016; the Subcommittee was supportive of the development.

**Staff Review and Comment:** This request was distributed to other City departments and other agencies for their review and comment. Staff notes the following:

**Right-of-Way Dedication:** The City's policy has been to acquire additional right-of-way (ROW) based upon the Comprehensive Plan roadway classifications. Jordan Creek Parkway is classified as a Major Arterial requiring 165 feet of total ROW or 82.5 feet of ROW from the centerline to each property. Office Plaza Drive is classified as a Minor Collector roadway requiring 70 feet of total ROW or 65 feet from the centerline to the property. Also as part of the City's policy, the ROW is acquired by dedication of Fee Title Deed. The applicant will be requesting that the City Council approve the use of ROW easements in lieu of fee title deed.

**Comprehensive Plan Consistency:** The project has been reviewed for consistency with the Comprehensive Plan. Based upon that review, a finding has been made that the proposed project is consistent with the Comprehensive Plan in that the project is consistent with all of the goals and policies of the Comprehensive Plan and the land use map of the Comprehensive Plan.

**Findings:** This proposed project was distributed to various city departments for review and comment. Based upon that review, the following findings have been made on the proposed project:

1. The proposed development and use is consistent with the West Des Moines Comprehensive Plan in that the project has been reviewed for consistency with the Comprehensive Plan. Based upon that review, a finding has been made that the proposed project is consistent with the Comprehensive Plan in that the project is consistent with all of the goals and policies of the Comprehensive Plan.
2. The proposed development and use does assure compatibility of property uses within the zone and general area in that this project was reviewed by various City Departments for compliance with the Zoning Ordinance.
3. All applicable standards and conditions have been imposed which protects the public health, safety and welfare in that this project was reviewed by various City Departments and public agencies for compliance with the various state and local regulations. Based upon that review a finding is made that the project has been adequately conditioned to protect the health, welfare and safety of the community.

4. There is adequate on-site and off-site public infrastructure to support the proposed development in that this project was reviewed by various public agencies and City Departments and public utilities to ensure that either the petitioner will construct or the project has been conditioned to construct adequate public infrastructure to serve the development.
5. The proposed development and use has met the requirements contained in the City Code in that this project was reviewed by various City Departments and the project has complied with or has been conditioned to comply with all City Code requirements.
6. The proposed development and use is in keeping with the scale and nature of the surrounding neighborhood in that the proposed project is consistent with the zoning designation and Comprehensive Plan which designates this site as suitable for development such as that proposed by this project.

**Staff Recommendation And Conditions Of Approval:** Based upon the preceding review and a finding of consistency with the goals and policies of the Comprehensive Plan, staff recommends the Plan and Zoning Commission adopt a resolution recommending the City Council approve the Preliminary Plat to replat Outlot B Country Club Office Plaza West and part of Lot 1 Country Club Office Plaza West Plat 3 into one buildable lot, subject to the applicant meeting all City Code requirements and the following:

1. The applicant providing final drawings of the preliminary plat which addresses staff remaining comments prior to the final plat proceeding to the City Council for approval.

**Owner/Applicant:** Dallas County Partners  
1225 Jordan Creek Parkway, Suite 200  
West Des Moines IA 50266

**Applicant Rep:** Olsson Associates  
7157 Vista Drive  
West des Moines IA 50266  
515-331-6517

**ATTACHMENTS:**

Attachment A	-	Plan and Zoning Commission Resolution
Attachment B	-	Location Map
Attachment C	-	Preliminary Plat

RESOLUTION NO. PZC- 16-068

**A RESOLUTION OF THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES, RECOMMENDING TO THE CITY COUNCIL THAT IT APPROVE A PRELIMINARY PLAT TO REPLAT OUTLOT B COUNTRY CLUB OFFICE PLAZA WEST AND PART OF LOT 1 COUNTRY CLUB OFFICE PLAZA WEST PLAT 3 INTO ONE BUILDABLE LOT**

**WHEREAS**, pursuant to the provisions of Title 10, Chapter 1 et seq, of the West Des Moines Municipal Code, the applicant, Dallas County Partners, has requested approval for a Preliminary Plat (PP-003239-2016) to replat Outlot B Country Club Office Plaza West and part of Lot 1 Country Club Office Plaza West Plat 3 into one buildable lot at 1080 Jordan Creek Parkway;

**WHEREAS**, studies and investigations were made and staff reports and recommendations were submitted which are made a part of this record and herein incorporated by reference;

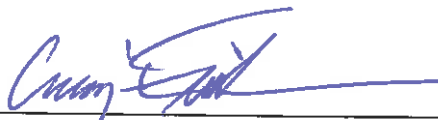
**WHEREAS**, on November 7, 2016, this Commission held a duly-noticed public meeting to consider the application for a Preliminary Plat;

**NOW, THEREFORE, THE PLAN AND ZONING COMMISSION OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:**

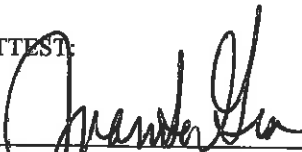
SECTION 1. The findings, for approval, in the staff report or as amended orally at the Plan and Zoning Commission meeting are adopted.

SECTION 2. The Preliminary Plat to replat Outlot B Country Club Office Plaza West and part of Lot 1 Country Club Office Plaza West Plat 3 into one buildable lot is recommended to the City Council for approval, subject to compliance with all the conditions in the staff report including conditions added at the meeting, and attached hereto as Exhibit "A." Violation of any such conditions shall be grounds for revocation of the permit, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on November 7, 2016.

  
\_\_\_\_\_  
Craig Erickson, Chairperson  
Plan and Zoning Commission

ATTEST:

  
\_\_\_\_\_  
Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Plan and Zoning Commission of the City of West Des Moines, Iowa, at a regular meeting held on November 7, 2016, by the following vote:

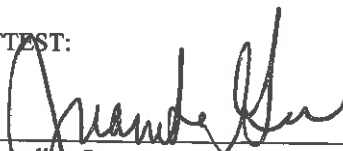
AYES: Andersen, Costa, Crowley, Erickson, Southworth

NAYS:

ABSTENTIONS: Hatfield

ABSENT: Brown

ATTEST:

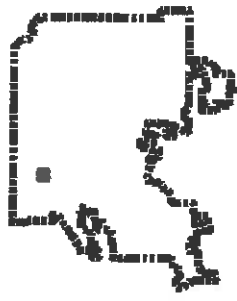
  
\_\_\_\_\_  
Recording Secretary

**Exhibit A**  
**CONDITIONS OF APPROVAL**

1. The applicant providing final drawings of the preliminary plat which addresses staff remaining comments prior to the final plat proceeding to the City Council for approval.



# Country Club Office Plaza West Plat 8



- Legend**
- Parcels
  - Parks
  - Greenways



1: 2,636



**Disclaimer:** The City of West Des Moines makes no warranties regarding the accuracy or completeness of the data provided herein.

**THIS MAP IS NOT TO BE USED FOR NAVIGATION**

NAD\_1983\_StatePlane\_Iowa\_South\_FIPS\_1402\_Feet  
 © City of West Des Moines, Iowa





Prepared by: KTragesser City of West Des Moines Development Services, P.O. Box 65320, West Des Moines, IA 50265-0320, 515-222-3620  
When Recorded, Return to: City Clerk, City of West Des Moines, P. O. Box 65320, West Des Moines, IA 50265-0320

**RESOLUTION**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, APPROVING THE PRELIMINARY PLAT (PP-003239-2016) TO REPLAT OUTLOT B COUNTRY CLUB OFFICE PLAZA WEST FROM AN OUTLOT TO A BUILDABLE LOT AND INCLUDE A PORTION OF LOT 1 COUNTRY CLUB OFFICE PLAZA WEST PLAT 3**

WHEREAS, pursuant to the provisions of Title 10, Chapter 1 et seq, of the West Des Moines Municipal Code, Dallas County Partners requests approval for a preliminary plat to replat Outlot B Country Club Office Plaza West from an outlot to a buildable lot and include a portion of Lot 1 Country Club Office Plaza West Plat 3 for property legally described as:

**Legal Description of Property**

THAT PART OF LOT 1, COUNTRY CLUB OFFICE PLAZA WEST PLAT NO. 3, AN OFFICIAL PLAT IN THE CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT 1; THENCE ON AN ASSUMED BEARING OF N 62°50'38" W, ALONG THE SOUTHERLY LINE OF SAID LOT 1, A DISTANCE OF 134.43 FEET; THENCE N 16°10'31" E, 413.74 FEET; THENCE N 00°50'17" E, 70.93 FEET TO THE NORTHERLY LINE OF SAID LOT 1; THENCE S 87°32'54" E, ALONG SAID NORTHERLY LINE, 56.36 FEET; THENCE EASTERLY 83.83 FEET ALONG A TANGENTIAL CURVE CONCAVE TO THE LEFT HAVING A RADIUS OF 530.00 FEET, A CENTRAL ANGLE OF 09°03'45", AND A CHORD THAT BEARS N 87°55'09" E, 83.74 FEET TO THE NORTHEAST CORNER OF SAID LOT 1; THENCE S 00°50'17" W, ALONG THE EASTERLY LINE OF SAID LOT 1, A DISTANCE OF 62.20 FEET; THENCE S 16°10'31" W, ALONG THE EASTERLY LINE OF SAID LOT 1, A DISTANCE OF 487.37 FEET TO THE POINT OF BEGINNING.

AND,

OUTLOT "B", COUNTRY CLUB OFFICE PLAZA WEST, AN OFFICIAL PLAT IN THE CITY OF WEST DES MOINES, DALLAS COUNTY, IOWA, EXCEPT THAT PART PLATTED AS COUNTRY CLUB OFFICE PLAZA WEST PLAT 6, AND THAT PART DEEDED TO THE CITY OF WEST DES MOINES IN A DEED FILED OCTOBER 16, 2001 IN BOOK 2001, PAGE 12442.

WHEREAS, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference;

**WHEREAS**, on November 7, 2016, the Plan and Zoning Commission recommend to the City Council approval of the Preliminary Plat; and

**WHEREAS**, on November 14, 2016, this City Council held a duly-noticed meeting to consider the application for a preliminary plat.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:**

**SECTION 1.** The findings, for approval, in the staff report for the preliminary plat, or as amended orally at the City Council meeting on this date, are adopted.

**SECTION 2.** The Preliminary Plat to replat Outlot B Country Club Office Plaza West from an outlot to a buildable lot and include a portion of Lot 1 Country Club Office Plaza West Plat 3 is approved, subject to compliance with all the conditions in the staff report, including conditions added at the meeting, and attached hereto as Exhibit "A". Violation of any such conditions shall be grounds for revocation of the entitlement, as well as any other remedy which is available to the City.

**PASSED AND ADOPTED** on November 14, 2016.

---

Steven Gaer, Mayor

ATTEST:

---

Ryan T. Jacobson  
City Clerk

**EXHIBIT "A"**  
**CONDITIONS OF APPROVAL**

1. The applicant providing final drawings of the preliminary plat which addresses staff comments prior to the final plat proceeding to the City Council for approval.