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

**DATE:** May 6, 2019

**ITEM:** Resolution - Approval and Acceptance of First Amendment to the Agreement for the Payment of Fees between King's Landing, LLC and the City of West Des Moines, Iowa

**FINANCIAL IMPACT:** Estimated $360,000

**SYNOPSIS:**

In January, 2017 King's Landing, LLC and the City of West Des Moines entered into an agreement in which the City constructed stormwater improvements adjacent to residential subdivisions being developed by King's Landing and King's Landing provided funding to the City for a portion of the improvements. The agreement enabled King's Landing to proceed with its development as the City's ability to legally fund the improvements through the establishment of a stormwater fee district was being challenged in district court. The attached First Amendment to the Agreement maintains provisions of the Agreement but sets forth additional terms and conditions related to the payment and construction of public roadways.

In reliance upon the initial alignment of South Grand Prairie Parkway established by the City but prior to its construction, King's Landing configured and platted a residential subdivision adjacent to Grand Prairie. Subsequent to the platting, the City changed the alignment of Grand Prairie, affecting the size and value of several of the platted lots. To recognize the reduction in the value of the lots, the parties negotiated the attached Agreement in which the City, rather than King's Landing, would grade and install a portion of both Stagecoach Drive and South Grand Prairie Parkway. The cost of the grading and construction is approximately $360,000, which is roughly the amount of the reduction in value of the lots affected by the realignment. Under the Agreement King's Landing will be required to comply with all other subdivision requirements of the City.

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

**RECOMMENDATION:** Adopt Resolution Approving and Accepting the First Amendment to the Agreement for the Payment of Fees between King's Landing, LLC and the City of West Des Moines, Iowa

**Lead Staff Member:** Brian Hemesath, City Engineer

**STAFF REVIEWS**

| | |
|---|---|
| Department Director | |
| Appropriations/Finance | |
| Legal | Richard J. Scieszinski RJS |
| Agenda Acceptance | |

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

| | |
|---|---|
| Published In | |
| Dates(s) Published | |

**SUBCOMMITTEE REVIEW** (if applicable)

| | | | |
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| Committee | None | | |
| Date Reviewed | | | |
| Recommendation | | | |

**RESOLUTION NO._____**

# RESOLUTION APPROVING AND ACCEPTING THE FIRST AMENDMENT TO THE AGREEMENT FOR THE PAYMENT OF FEES BETWEEN KING'S LANDING, LLC AND THE CITY OF WEST DES MOINES, IOWA

**WHEREAS,** King's Landing, LLC and the City of West Des Moines have negotiated an Agreement for the grading and construction of a portion of Stagecoach Drive and South Grand Prairie Parkway; and

**WHEREAS,** the Agreement sets forth the rights and obligations of the parties, including the terms and conditions under which the public improvements will be installed; and

**WHEREAS,** approval of the Agreement 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 *First Amendment to the Agreement for the Payment of Fees between King's Landing, LLC and the City of West Des Moines, Iowa* is approved.

2. The Mayor is authorized to sign the Agreement and the City Clerk is directed to attest to the Mayor's signature.

**PASSED AND ADOPTED this 6th day of May, 2019.**

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

**Amendment #1**
**to the**
**Agreement for the Payment of Fees by Kings Landing, LLC**
**to the City of West Des Moines, Iowa**
**Related to the Design and Construction of**
**Stormwater Facilities in the Sugar Creek Drainage Basin**

This Amendment #1 ("Amendment #1") is made between Kings Landing, LLC ("Kings Landing") and the City of West Des Moines ("City") to the Agreement for the Payment of Fees by Kings Landing, LLC to the City of West Des Moines, Iowa Related to the Design and Construction of Stormwater Facilities in the Sugar Creek Drainage Basin entered into January 23, 2017 ("Stormwater Facility Fee Agreement").

WHEREAS, Kings Landing has developed Kings Landing Plat 2, has proceeded with development of Kings Landing Plat 3 and desires to clarify and amend certain terms of the Stormwater Facility Fee Agreement.

NOW THEREFORE, in consideration of the above, the mutual promises herein, and other good and valuable consideration, Kings Landing and the City have agreed to the following:

1. Kings Landing shall convey the right-of-way and all necessary easements along Stagecoach Drive and South Grand Prairie Parkway to City on an "as is" basis as shown on the Kings Landing Plat 3 Construction Plans prepared by Civil Design Advantage. Conveyance of the right-of-way and easements by King's Landing to the City shall be free and clear of all title encumbrances.

2. City shall design, construct and install Crossing #17, identified on Exhibit "B" of the Stormwater Facility Fee Agreement, as a public improvement in accordance with the Stormwater Facility Fee Agreement as part of the City's South Grand Prairie Parkway project.

3. As a result of an encumbrance by South Grand Prairie Parkway right-of-way on a portion of Kings Landing Plat 3, the City has agreed to grade for the ultimate construction and install two lanes of Stagecoach Drive adjacent to Kings Landing Plat 3, from S. 100th Street to South Grand Prairie Parkway. City shall be responsible for all Stagecoach Drive construction costs, except Kings Landing shall pay for the following prior to or upon filing the Kings Landing Plat 3 Final Plat:

    i. Kings Landing shall pay MidAmerican Energy for streetlights along the south side of Stagecoach Drive adjacent to Kings Landing Plat 3, from S. 100th Street to South Grand Prairie Parkway, as part of its electric contract with MidAmerican Energy and in accordance with the Construction Plans for Kings Landing Plat 3. It shall be noted on the plans that these streetlights are to be installed at a future date as part of the City's project for Stagecoach Drive and South Grand Prairie Parkway.

    ii. Kings Landing shall pay cash to the City for installation of the sidewalk along the south side of Stagecoach Drive adjacent to Kings Landing Plat 3, from S. 100th Street to South Grand Prairie Parkway, and this cash payment shall satisfy in full Kings Landing's obligations related to installation of this sidewalk. This stretch of sidewalk shall be deducted from the sidewalk bond required to be posted by Kings Landing with the City upon filing of the Kings Landing Plat 3 Final Plat.

iii. Kings Landing shall provide payment or reimbursement to the City for the actual cost of installation of the 12-inch watermain along Stagecoach Drive from S. 100th Street to South Grand Prairie Parkway, such payment or reimbursement estimated to be approximately $99,180.00.

Additionally, Kings Landing shall submit a landscaping buffer plan to be approved by the City upon filing of the Kings Landing Plat 3 Final Plat. The landscaping materials will be installed and maintained by the future homebuilder/homeowner of Lots 4 through 11 in Kings Landing Plat 3, as detailed in the Declaration of Use Restrictions, Covenants and Building Specification to be filed for Kings Landing Plat 3.

4. City shall design, construct and install two lanes of the ultimate five lanes of Stagecoach Drive adjacent to Kings Landing Plat 3, from S. 100th Street to South Grand Prairie Parkway, three lanes of the ultimate six lanes of South Grand Prairie Parkway, and all related improvements as part of the City's South Grand Prairie Parkway project, including but not limited to grade tie-ins onto the back of Kings Landing Plat 3 lots, paving, utility extensions, including but not limited to 12-inch water main and storm sewer along Stagecoach Drive, and all associated roadway and embankment grading and shaping, all as public improvements, whether falling within Kings Landing Plat 3 or otherwise.

5. City shall issue building permits and certificates of occupancy for lots and dwellings within Kings Landing Plat 3 regardless of the status of City's construction of Crossing #17, Stagecoach Drive, South Grand Prairie Parkway, and all related improvements.

6. Except for those set forth in Section 3 of this Amendment #1, Kings Landing shall [B1]have no further monetary obligations or future costs arising from or related to the initial design, construction or installation of Crossing #17, Stagecoach Drive, South Grand Prairie Parkway, or any related improvements, through special assessment or otherwise, and City shall be solely responsible for all such costs. City shall maintain the right to specially assess any future improvements to public infrastructure on or adjacent to Stagecoach Drive and South Grand Prairie Parkway subject to and in full conformance with Iowa Code Chapter 384 or succeeding legislation.

7. City shall not outlet storm sewers from Stagecoach Drive or South Grand Prairie Parkway onto Kings Landing Plat 3.

In all other respects, the terms of the original Stormwater Facility Fee Agreement shall remain in effect. If there is conflict between this Amendment #1 and the original Stormwater Facility Fee Agreement, the terms of this Amendment #1 shall prevail.

Signed this ___ day of May, 2019.

KINGS LANDING, LLC
By: Vista Real Estate and Investment Corp., Its Manager

_____
David J. Harmeyer, President

STATE OF IOWA )
)ss
COUNTY OF POLK )

This record was acknowledged before me this ___ day of May, 2019, by David J. Harmeyer in his capacity as President of Vista Real Estate and Investment Corporation.

_____
Notary Public in and for the State of Iowa

CITY OF WEST DES MOINES

_____
Steven K. Gaer, Mayor

ATTEST:

_____
Ryan T. Jacobson, City Clerk

STATE OF IOWA )
) ss
COUNTY OF _____ )

On this ____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the State of Iowa appeared Steven K. Gaer and Ryan T. Jacobsen, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of West Des Moines, an Iowa municipal corporation; that the record was signed on behalf of the corporation by authority of its City Council as contained in Resolution _____ approved on the _____ day of _____, 2019, and that Steven K. Gaer and Ryan T. Jacobson acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation by it voluntarily executed.

_____
Notary Public