CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: September 16, 2019

ITEM: Motion – Approval of Professional Services Agreement Amendment #2 - Resident Construction Administrative Services – Jamie Hurd Amphitheater (Formerly City Campus Amphitheater)

FINANCIAL IMPACT: Additional not-to-exceed expense of $104,000.00 to be paid from G/L account 500.000.000.5250.490. Funding will be covered out of available funds in the FY 19-20 CIP from the City Campus Amphitheater, (Project No. 0510 096 2017).

BACKGROUND: Staff is recommending approval of an amendment to the agreement with Confluence for resident construction administrative services to be provided by their sub-consultant Larson Engineering. On September 3, 2019 the Council approved an agreement with Larson Engineering. That agreement was mistakenly taken to Council and will not be executed. As Confluence has coordinated all previous design efforts on this project, they will also be coordinating services being provided by Larson Engineering. There is no change in the scope or cost of services from that originally approved by Council

A resolution for the construction of the Jamie Hurd Amphitheater located on the Civic Campus was approved on September 3, 2019. The project consists of three (3) separate divisions, with Division 1 being constructed as an in-kind donation, and Division 2 & 3 constructed by a general contractor. Due to complexities of coordination for the different divisions, City staff is requesting resident construction administration services to help manage the overall construction process through the completion of the project.

OUTSTANDING ISSUES: None

RECOMMENDATION: That the City Council approve the agreement amendment with Confluence.

Lead Staff Member: David Sadler, Superintendent of Parks

STAFF REVIEWS

Department Director	Sally Ortgies, Director of Parks and Recreation
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee			
Date Reviewed			
Recommendation	Yes	No	Split

AMENDMENT NO. 2
TO THE AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This AMENDMENT is made and entered into this 16th day of September, 2019, by and between the CITY OF WEST DES MOINES, a municipal corporation, hereinafter referred to as "City", and Confluence. (Fed. I.D. # 42-1475404), a professional corporation incorporated and licensed under the laws of the State of Iowa, party of the second part, hereinafter referred to as "Consultant", HEREBY AMENDS THE ORIGINAL Agreement dated July 10, 2017 as follows:

1. DESIGN SERVICES SUMMARY

Council Approval	Description	Proposal
7/10/2017	Prof Services Agreement- Parts 1, 2, and 4	$109,840
12/27/2017	Amendment 1 – Parts 3 and 5	$116,600
Total		$226,440

Admin Approval	Description	Proposal
6/26/2018	Add Fee $9,800 for New Architect and Cost Estimate	$9,800
6/27/2018	Add Fee $2,000 for Structural and Bid Packages	$2,000
Total		$238,240

Council Approval	Description	Proposal
9/16/2019	Amendment 2 -Resident Construction Admin Services	$104,000
Total		$342,240

2. SCOPE OF SERVICES

Services provided under this Agreement for the **AMPHITHEATER, RESIDENT CONSTRUCTION ADMININSTRATIVE SERVICES**, shall be as further described in Attachment A (Proposal from Larson Engineering, Inc).

3. SCHEDULE

The schedule as described shall be amended as 'No Change' and further described in Attachment A (Proposal from Larson Engineering, Inc).

4. 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 Attachment A (Proposal from Larson Engineering, Inc).

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

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:_____

CITY OF WEST DES MOINES

BY:_____
Ryan T. Jacobson, City Clerk

Larson Engineering, Inc.
1001 Office Park Road, Suite 120
West Des Moines, IA 50265-2509
515.225.4377
www.larsonengr.com

PROPOSAL

Larson

July 29, 2019

Matt Carlile
Confluence
525 17th Street
Des Moines, IA 50309

PHONE: (515) 288-4875

RE: On-Site Construction Administration Services
West Des Moines City Hall Amphitheater
West Des Moines, IA

Dear Mr. Carlile,

In response to your request, Larson Engineering, Inc. (LEI) is pleased to submit the following proposal to provide construction administration services for the proposed project.

PROJECT DESCRIPTION

The project consists of the construction of a new outdoor amphitheater located to the east of the existing West Des Moines City Hall. The City of West Des Moines has requested on-site construction administration services to manage the construction process through the completion of the project.

It is LEI's understanding that the project will be separated into three contracts. Contract #1 would be performed by the project donor and would include all site work. Contract #2 would include all of the work related to the stage, and Contract #3 would include all landscape and irrigation. The City has proposed a construction start date of October 1, 2019, and it is expected construction would run to the end of summer 2020, with a break in construction between the end of December and March 15 for the winter months.

SCOPE OF WORK

Based upon the approved construction documents provided by the client, LEI will provide the following services…

Construction Administration

- Provide on-site daily observation for 2-3 hours to document project progress and prepare daily observation reports for sharing with the Owner.
- Review material submittals and shop drawings.
- Manage/coordinate testing services as needed.
- Coordination between contractors and architect, electrical, and landscape architecture consultants.

- Direct contractor Requests for Information (RFI's) to appropriate consultant and provide response to contractors.
- Issue Proposal Requests and Change Orders as needed.
- Verify contractor payment requests.
- Conduct the substantial completion and final inspections, and create punchlists.
- Obtain signed and dated warranties from the Contractor(s).

BASIS OF PROPOSAL

This proposal is based upon an email from Matt Carlile (Confluence) received July 24, 2019 requesting on-site construction administration services.

CLIENT RESPONSIBILITY

Prior to or shortly after commencing the design, we request the following information:

- A minimum of one printed, full-size, all-inclusive drawing set at each project milestone.
- Clear indication of changes to architectural drawings during Construction Documents phase.
- A proposed schedule and written notification of any changes to schedule.
- Electronic files of plan drawings, for use as backgrounds, complete with all required reference files, attachments.
- A geotechnical engineering report of the soils in the project area.
- Copies of all construction budgets as soon as they are available.

DUE DILIGENCE

It is understood that due diligence has been performed by others, and that issues of jurisdiction, land use and zoning (including availability of utilities, traffic access, and drainage restrictions, wetlands, air space, Phase I and follow-up environmental studies, and fees for development, licensing, and permitting) have been resolved. Determination of whether wetlands or flood hazard areas exist, and incorporation of such facts into the initial planning is assumed to have been satisfactorily completed at this time, with no anticipated impact on the project.

SCHEDULE

Work to follow a mutually agreed upon schedule at project commencement. LEI's work shall not begin until LEI has received a signed Proposal from Client, and all pertinent information for design.

FEES

Time and Materials

We propose to perform the work described herein at the hourly rates as follows in accordance with our standard Terms and Conditions, with a fee not-to-exceed one hundred four thousand dollars ($104,000.00).

Principal	$255.00/hr	Design Engineer II	$130.00/hr
Project Manager	$160.00/hr	Design Engineer I	$115.00/hr
Project Engineer	$155.00/hr	BIM/CAD Designer	$108.00/hr
Design Engineer III	$140.00/hr	Clerical/Admin	$68.00/hr

ADDITIONAL SERVICES beyond the scope of this agreement including but not limited to:

- Additional Engineering and Drafting due to redesign/relocation of the proposed Amphitheater, parking or grading layouts after the initial layout is prepared as requested by the Client.
- Wetlands Delineation.
- Floodplain/floodway encroachment studies and design.
- Traffic studies.
- Site Development, Construction Documents or Construction meetings beyond those described in the scope of work.
- Additional work due to the introduction of fast-track scheduling or for multiple bid packages.
- Lift stations for sanitary or storm sewage.
- Construction layout/staking.
- As-Built or Record Drawings.
- Special Inspections.
- Utility and roadway plan and profile drawings.
- Roadway turn lane design.
- Layout for additional utilities such as gas, electrical, telephone, cable, etc.
- Irrigation system design or relocation.
- Hazardous materials.

Additional services shall be charged at hourly rates as follows, only after written authorization to proceed is received from Client.

Principal	$240.00/hr	Graduate Engineer	$130.00/hr
Project Manager	$155.00/hr	CADD Tech	$105.00/hr
Registered Engineer	$150.00/hr	Clerical	$65.00/hr
Design Engineer	$130.00/hr	Technician/Intern	$65.00/hr

This Proposal shall remain in effect for 30 days of the date hereof.

TERMS AND CONDITIONS

1. **Invoicing:** Invoices shall be rendered monthly in proportion to services performed.
2. **Payment:** Invoices are due and payable 15 days after Client receives payment from the owner but no later than 30 days after receipt of LEI's invoice. Client shall notify LEI in writing when payment of LEI invoices will exceed 60 days.
3. **Acceptance of Invoice:** Client shall review LEI invoices promptly. Client shall notify LEI of any disputes with invoice within10 business days of receipt of invoice. If Client fails to formally notify LEI of any disputes with any part of any invoice within 10 business days of receipt of invoice, entire invoice shall be deemed accepted. Disputes involving only portions of an invoice shall not relieve the Client of responsibility for prompt payment of any portion of same invoice that is not disputed.
4. **Interest and Unpaid Balance Due:** If any payment is not paid by Client when due, the unpaid balance shall accrue interest at one and one-half percent (1.5%) per month until

paid. (Annual effective rate = 18%). In the event the default interest rate exceeds the maximum rate of interest allowable by law, the balance owing shall accrue interest until paid, at the maximum allowable interest rate.

5. **Attorney Fees and Collection Costs:** In the event it becomes necessary for LEI to refer an unpaid account to any attorney or collection agency, then in addition to any amount due to LEI, LEI will be entitled to recover its costs of collection, which includes reasonable attorney fees. In the event of any litigation arising from or related to the services provided under this Agreement, the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees and other related expenses.

6. **Existence of Prime Contract:** Where Client is not also Owner, Client warrants that Client and Owner have entered into, or intend to enter into, prior to commencement of project, a contractual agreement (Prime Contract) for services including services provided under this Agreement. Client shall identify to LEI the name(s) of the Owner at the time of acceptance of this Proposal. Owner, as defined for the purposes of this Proposal, is one who has improved, intends to improve or has knowledge of proposed improvements to any tract or lot of land in which he/she has such an estate, right or interest.

7. **Document Ownership:** All original calculations, sketches, building models and/or construction documents (Documents) prepared by LEI shall remain the property of LEI unless other terms in writing are agreed upon by both parties. Any copies of Documents held by Client shall be considered instruments of professional services. Client shall not reuse or make any modifications to Documents without the prior written authorization of LEI. Client agrees, to the fullest extent permitted by law, to indemnify and hold LEI harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of Documents by Client or any person or entity that acquires or obtains Documents from or through Client without the written authorization of LEI.

8. **Electronic Documents/Model Files Transfer**: Should Client require electronic drawing/model files be transferred to Owner, contractor and/or subcontractors for their use in or after construction, LEI will require an executed waiver of liability from recipient as well as a nominal transfer fee. Should Client establish a standard nominal transfer fee different from LEI's, LEI shall be notified of such at the time of execution of this Agreement.

9. **Information in a Timely Manner:** LEI reserves the right to withhold documents scheduled for bid/construction release if sufficient design information from Client, required for the production of accurate bid/construction documents, is not provided to LEI in a timely manner. LEI will not be responsible for coordination of information not provided to LEI in a timely manner.

10. **Information Provided by Others:** LEI shall indicate to Client the information needed for the rendering of services hereunder. Client shall provide to LEI such information as is necessary for LEI to perform the Scope of Work defined above. LEI shall be entitled to rely upon the accuracy and completeness of said information. As such, Client agrees, to the fullest extent permitted by law, to indemnify and hold LEI harmless from any claim, liability or cost (including reasonable attorneys' fees and costs of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in the information provided by Client to LEI.

11. **Building Information Modeling (BIM):** If Scope of Work includes BIM, Client shall be responsible for coordination of the BIM models from each Architect/Engineer (A/E) design team discipline and shall provide LEI with background information necessary to develop LEI's portion of the BIM model prior to LEI's commencement of the model. Furthermore, Client shall obtain and provide to LEI, for our records, evidence of an executed agreement between Client and any other party outside of the Project's A/E design team that has been provided the BIM model. Such agreement shall include language indemnifying LEI from any and all claims, suits, liability, demands or costs arising out of or resulting from the use of said model (for purposes including quantity take-offs).

12. **Record Documents:** Client shall provide LEI with a complete set of construction documents (drawings and specifications) at time of bidding/pricing and all subsequent addenda as soon as they are distributed to contractors.

13. **Consequential Damages:** Notwithstanding any other provision of this Agreement, neither Client nor LEI shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by Client or LEI, their employees, agents, sub-consultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

14. **Acceptance By Performance:** The terms of this Proposal shall be considered accepted and shall be enforceable if any Work is provided by LEI upon the verbal or written direction of Client and no other form of agreement has been formally accepted by both parties to this Agreement.

15. **Agreements:** This Proposal represents the entire Agreement between Client and LEI, and supersedes all previous oral and written agreements on the Project. LEI shall not be held to the terms of any other agreements or contracts, unless expressly made part of this Agreement and amended in conformance with the Terms and Conditions of this Proposal. Furthermore, changes to this Agreement are not considered binding unless received in writing and accepted in writing by both original signatories of this Proposal.

16. **Assignments:** Client hereby warrants and represents that they will not transfer or assign this Agreement to any third party, directly, indirectly, by subrogation or operation of law without written consent from LEI. Furthermore, nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either LEI or Client. LEI's services under this Agreement are being performed solely for the benefit of Client. No third party is intended as a beneficiary of this Agreement or of the services being performed by LEI pursuant to this Agreement.

17. **Third Party Beneficiaries:** The parties to this Agreement understand and expressly agree that there are no direct or intended third party beneficiaries to this Agreement. The parties further understand and expressly agree that nothing contained in this Agreement is intended to create nor shall create a contractual relationship with or cause of action in favor of a third party against LEI.

18. **Site Visitations:** If site visits are performed under this Agreement, then said visits are for the purpose of determining whether the construction work associated with this Agreement is in accordance with the Contract Documents. These site visits shall not constitute responsibility on the part of LEI for construction supervision nor construction means and methods nor devising, implementing or enforcing any safety precautions, and shall not relieve the Contractor and/or any subcontractors of any responsibilities in conjunction with their work, unless specifically stated within the Scope of Work of this

Proposal. Unless specifically stated otherwise, site visits shall not be construed as a special inspection as defined by the International Building Code (IBC).

19. **Project Delay:** If the services covered by this Agreement have not been completed within 12 months of the date hereof through no fault of LEI, the amounts of compensation, rates and multiples set forth herein shall be equitably adjusted. Should Project become inactive or LEI be instructed to cease production on our portion of the work for a period longer than six months, a project restart fee shall be negotiated. Should Project be delayed, LEI shall be compensated for the services, including time and expenses accrued up to the point that LEI is notified of Project delay.

20. **Project Cancelation:** Should Project be canceled, LEI shall be compensated for the services, including time and expenses accrued up to the point that LEI is notified of Project cancelation. Accumulated hours up to that point will be billed at hourly rates as outlined above. Upon final payment received by LEI from Client, this Agreement will be considered terminated.

21. **Termination:** This Agreement may be terminated by either party upon not less than seven days written notice should either party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. In the event of termination for convenience by Client, LEI shall be entitled to recover all reasonable costs and expenses incurred up to the date of termination, plus all costs incurred to assemble and close project files and documents.

22. **Liability:** LEI's liability to Client for services performed under this Agreement shall be limited to the amount of the Fee received under this Agreement.

ACCEPTANCE

Please sign and return one copy of this proposal to acknowledge your understanding of our Scope of Services, Fees, and Terms and Conditions and to authorize us to proceed.

We appreciate the opportunity to have prepared this proposal and look forward to working with you on the project. If you have any questions concerning this proposal or our services, please call.

Sincerely,
Larson Engineering, Inc.

Michael A. Murphy, P.E., LEED AP
Regional Manager
mmurphy@larsonengr.com

We (Client) accept the terms of this Proposal

Signature _____

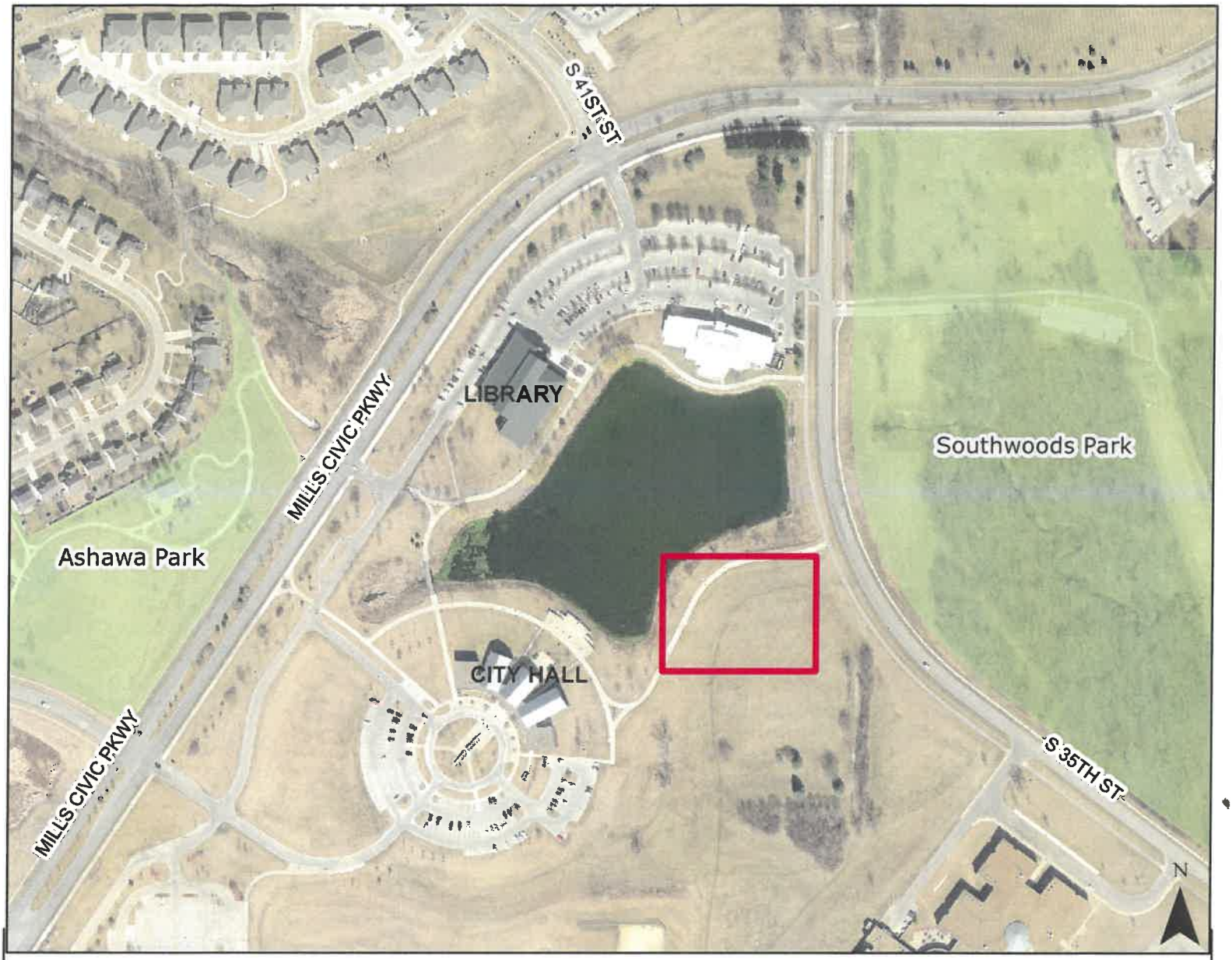
Name (Print) _____

Title _____ Date _____

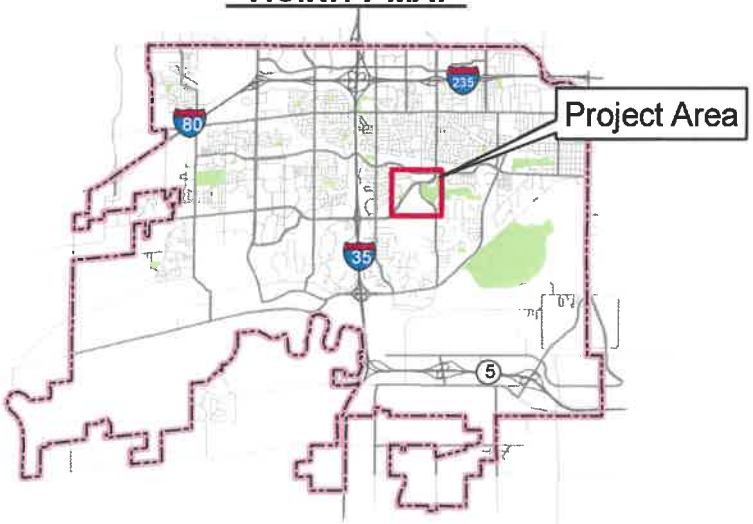
Client Company _____

Billing Address _____

_____



VICINITY MAP



LEGEND

Project Location

THE CITY OF WEST DES MOINES

PROJECT:	JAMIE HURD AMPHITHEATER		
LOCATION:	4200 MILLS CIVIC PKWY		
DRAWN BY: MAA	DATE: 7/30/2019	PROJECT NO.: -	SHT. 1 of 1