CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

ITEM: Approval to execute a Development Agreement between Allied Construction Services, Inc. and the City of West Des Moines

DATE: March 16, 2020

RESOLUTION: Approval of Development Agreement

FINANCIAL IMPACT: Based on the approved Alluvion Urban Renewal Plan and the attached Development Agreement between the City and Allied Construction Services, Inc., the City anticipates providing Public Infrastructure Improvements (street and public water main improvements) with an estimated cost of $2,578,000. The City will use available Incremental Property Tax Revenues derived from the Development Property, from time to time, to repay debt obligations related to the actual cost of the Public Infrastructure Improvements.

BACKGROUND: Allied Construction Services, Inc. is proposing to construct a minimum of a 47,000 square foot office building. This is a new West Des Moines business that is looking to relocate their business from Des Moines. They will be retaining 117 jobs. The construction cost is estimated at $3,500,000; the prospect has proposed a minimum assessment of $2,800,000 for 10 years that will capture tax increment to fund the requested infrastructure.

The project site is within an area that has been added to the Alluvion Urban Renewal Area and Plan. As part of that amendment, additional infrastructure projects were added to the Plan.

This item was taken to the November 20, 2019 Finance and Administration Council Subcommittee meeting for recommendation. The Subcommittee recommended approval of the requested infrastructure.

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: Rachel Wacker, Business Development Coordinator, Community & Economic Development RW

STAFF REVIEWS

Department Director	Clyde Evans, Community and Economic Development Director
Appropriations/Finance	Tim Stiles, Finance Director
Legal	PJS
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	Des Moines Register	
Date(s) Published	March 06, 2020	
Letter sent to surrounding property owners		N/A

SUBCOMMITTEE REVIEW (if applicable)

Committee	Finance & Administration		
Date Reviewed	11/20/2019		
Recommendation	Yes ☒	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Development Agreement
Exhibit II - Resolution

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF WEST DES MOINES AND ALLIED CONSTRUCTION SERVICES, INC.

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 "Urban Renewal Plan" or "Plan") for the Alluvion Urban Renewal Area (the "Urban Renewal Area" or "Area") described therein, which Plan, as amended in 2015, 2016, 2018, and 2019, is on file in the office of the Recorder of Polk County; and

WHEREAS, it is desirable that properties within the Area be redeveloped as part of the overall redevelopment area covered by said Plan; and

WHEREAS, the City has received a proposal from Allied Construction Services, Inc. (the "Developer"), in the form of a proposed Development Agreement (the "Agreement") by and between the City and the Developer, pursuant to which, among other things, the Developer would agree to construct certain Minimum Improvements (as defined in the Agreement) on certain real property located within the Urban Renewal Area as defined and legally described in the Agreement (the "Development Property") and consisting of the construction of a 47,308 square foot warehouse building, together with all related site improvements, as outlined in the proposed Agreement; and

WHEREAS, the Agreement further proposes that the City will construct certain Public Infrastructure Improvements (as defined in the Agreement) in support of the project, under the terms and following satisfaction of the conditions set forth in the Agreement; and

WHEREAS, the Agreement also proposes that Developer and the City will enter into a Minimum Assessment Agreement with the County setting the minimum actual value of the Minimum Improvements for tax purposes at not less than $2,800,000; 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, Code of Iowa, taking into account any or all of the factors set forth in Chapter 15A, Code of Iowa, 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 the construction of the Public Infrastructure Improvements, 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, Code of Iowa, 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 16th day of March, 2020.

_____

Steven K. Gaer, Mayor

ATTEST:

_____

Ryan T. Jacobson, 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 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 meeting 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 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 16th day of March, 2020.

_____

City Clerk, City of West Des Moines, State of Iowa

(SEAL)

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AGREEMENT FOR PRIVATE DEVELOPMENT

By and among

CITY OF WEST DES MOINES, IOWA

AND

ALLIED CONSTRUCTION SERVICES, INC.

_____, 2020

AGREEMENT
FOR
PRIVATE DEVELOPMENT

THIS AGREEMENT FOR PRIVATE DEVELOPMENT ("Agreement"), is made on or as of the _____ day of _____, 2020, by and between the CITY OF WEST DES MOINES, IOWA, a municipality (the "City"), established pursuant to the Code of Iowa and acting under the authorization of Chapters 15A and 403 of the Code of Iowa, 2020, as amended ("Urban Renewal Act") and ALLIED CONSTRUCTION SERVICES, INC., an Iowa corporation having offices for the transaction of business at 2122 Fleur Drive, Des Moines, Iowa 50321 ("Developer"). The City and the Developer are the Parties to this Agreement.

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for the development of an economic development area in the City and, in this connection, is engaged in carrying out urban renewal project activities in an area known as the Alluvion Urban Renewal Area (the "Urban Renewal Area"), which is described in the Urban Renewal Plan originally approved for such area by Resolution No. 19-12-16-20 on December 16, 2019 (the "Urban Renewal Plan"); and

WHEREAS, a copy of the foregoing Urban Renewal Plan has been recorded among the land records in the offices of the Recorder of Polk County, Iowa; and

WHEREAS, Developer is the owner of certain real property located in the foregoing Urban Renewal Area and 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, Developer shall complete the Minimum Improvements, as herein defined, on the Development Property; and

WHEREAS, the City has proposed to undertake the construction of certain public infrastructure improvements in support of the development of the Development Property; and

WHEREAS, the City believes that the development of the Development Property pursuant to this Agreement and the fulfillment of this Agreement are in the vital and best interests of the City and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I. DEFINITIONS

Section 1.1. Definitions. In addition to other definitions set forth in this Agreement, all capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Agreement and all exhibits and appendices hereto, as the same may be from time to time modified, amended, or supplemented.

Annual Certification means the certification that the Developer must complete and submit to the City each year as described in Section 5.6 of this Agreement and attached as Exhibit E.

Area or Urban Renewal Area means the area known as the Alluvion Urban Renewal Area.

Certificate of Completion means a certification in the form of the certificate attached hereto as Exhibit C and hereby made a part of this Agreement.

City means the City of West Des Moines, Iowa, or any successor to its functions.

Code means the Code of Iowa, 2020, as amended.

Commencement Date means the date of 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; the Construction Plans shall be as detailed as the plans, specifications, drawings, and related documents which are submitted to the building inspection division of the City as required by applicable City codes.

Development Property means that portion of the Alluvion Urban Renewal Area described in Exhibit A.

Developer shall mean Allied Construction Services, Inc., an Iowa corporation, and each assignee that assumes in writing all of the obligations of the Developer under this Agreement with the written consent of the City as provided in Section 6.1 of this Agreement, which consent will not be unreasonably withheld.

Event of Default means any of the events described in Section 10.1 of this Agreement that have continued beyond applicable notice and cure periods.

First Mortgage means any Mortgage granted to secure any loan made pursuant to either a mortgage commitment obtained by Developer from a commercial lender or other financial institution to fund any portion of the construction costs and initial operating capital requirements of the Minimum Improvements or all such Mortgages as appropriate.

Incremental Property Tax Revenues means the amount of dollars calculated by: (1) determining the consolidated property tax levy (city, county, school, etc.) then in effect with respect to taxation of the

Development Property; (2) subtracting (a) the debt service levies of all taxing jurisdictions, (b) the school district instructional support and physical plant and equipment levies, and (c) any other levies which may be exempted from such calculation by action of the Iowa General Assembly; (3) multiplying the resulting modified consolidated levy rate times any incremental growth in the taxable valuation of the Development Property, as shown on the property tax rolls of Polk County, above and beyond the base valuation; and (4) deducting any property tax credits which shall be available with respect to taxable incremental valuation of the Development Property.

Minimum Improvements means construction of the Improvements described in Exhibit B to this Agreement.

Minimum Actual Value means the actual value assigned to the Minimum Improvements (including taxable equipment) and the Development Property, pursuant to the Minimum Assessment Agreement entered into between the parties and the County Assessor.

Minimum Assessment Agreement means the minimum assessment agreement in the form of Exhibit G attached hereto.

Mortgage means any mortgage or security agreement in which Developer has granted a mortgage or other security interest in the Development Property, or any portion or parcel thereof, or any improvements constructed thereon.

Net Proceeds means any proceeds paid by an insurer to Developer or a successor in interest to Developer, as applicable, under a policy or policies of insurance required to be provided and maintained by Developer pursuant to Article IV of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds.

Ordinance means Ordinance Number 2401 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 Alluvion Urban Renewal Tax Increment Revenue Fund.

Project shall mean the construction and operation of the Minimum Improvements on the Development Property and the creation and maintenance of jobs as described in this Agreement.

Public Infrastructure Improvements means the public infrastructure improvements described in Section 9.1 hereof.

State means the State of Iowa.

Term means the time period beginning on and including the Commencement Date and ending on and including the Termination Date.

Termination Date means the date of termination of this Agreement, as established in Section 11.8 of this Agreement.

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, or the acts of any federal, State, or local governmental unit (other than acts of the City, with respect to a City-claimed delay).

Urban Renewal Plan means the Urban Renewal Plan, as amended, approved with respect to the Alluvion Urban Renewal Area, described in the preambles hereof.

ARTICLE II. REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City makes the following representations and warranties:

a. The City is a municipal corporation and municipality 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 hereunder.

b. 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 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.

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.

Section 2.2. Representations and Warranties of Developer. Developer makes the following representations and warranties:

a. Allied Construction Services, Inc. is an Iowa corporation, duly organized and validly existing under the laws of 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 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 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 governing documents of Developer or of any contractual restriction, evidence of indebtedness, agreement, or instrument of whatever nature to which 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 threatened against or affecting 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 Developer or which in any manner raises any questions affecting the validity of the Agreement or Developer's ability to perform its obligations under this Agreement.

e. Developer has not received any notice from any local, State, or federal official that the activities of 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). 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 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. Developer shall cooperate 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.

g. Developer shall cause the Minimum Improvements to be constructed in accordance with the terms of this Agreement, the Urban Renewal Plan, and all local, State, and federal laws and regulations.

h. Developer shall obtain or cause to be obtained, in a timely manner, all required permits, licenses, and approvals, and shall 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.

i. The construction of the Minimum Improvements will require a total investment of not less than $3,500,000.

j. Developer has firm commitments for construction or acquisition and permanent financing for the Project in an amount sufficient, together with equity commitments, to successfully complete the Minimum Improvements in accordance with the Construction Plans contemplated in this Agreement.

k. Developer expects that, barring Unavoidable Delays, the Minimum Improvements will be completed by December 31, 2020.

ARTICLE III. CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 3.1. Construction of Minimum Improvements. Developer agrees that it will cause the Minimum Improvements to be constructed on the Development Property in conformance with the Construction Plans submitted to the City in accordance with Section 3.2 below. Developer further agrees that the scope and scale of the Minimum Improvements to be constructed shall not be significantly less than the scope and scale of the Minimum Improvements as detailed and outlined in the Construction Plans, and shall require a total investment of not less than $3,500,000 in construction costs.

Section 3.2. Construction Plans. Developer shall cause Construction Plans to be developed for the Minimum Improvements, which shall be subject to approval by the City as provided in this Section 3.2, and which approval shall not be unreasonably withheld, conditioned or delayed. The Construction Plans shall be in conformity with the Urban Renewal Plan, this Agreement, and all applicable State and local laws and regulations. The City shall approve the Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to the terms and conditions of the Urban Renewal Plan; (iii) the Construction Plans conform to all applicable federal, State and local laws, ordinances, rules and regulations, and City permit requirements; (iv) the Construction Plans are adequate for purposes of this Agreement to provide for the construction of the Minimum Improvements; and (v) no Event of Default under the terms of this Agreement has occurred and is continuing beyond applicable notice and cure periods; provided, however, that any such approval of the Construction Plans pursuant to this Section 3.2 shall not be deemed to constitute approval or waiver by the City with respect to any building, fire, zoning, or other ordinances or regulations of the City, and shall not be deemed to be sufficient plans to serve as the basis for the issuance of a building permit if the Construction Plans are not as detailed or complete as the plans otherwise required for the issuance of a building permit. The site plans submitted to the building official of the City for the Development Property and the surrounding areas where the Minimum Improvements are to be constructed shall be adequate to serve as the Construction Plans, if such site plans are approved by the building official.

Approval of the Construction Plans by the City shall not relieve any obligation to comply with the terms and provisions of this Agreement, or the provision of applicable federal, State, and local laws, ordinances, and regulations.

Approval of Construction Plans hereunder is solely for purposes of this Agreement, and shall not constitute approval for any other City purpose nor subject the City to any liability for the Minimum Improvements as constructed.

Section 3.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, Developer shall cause construction of the Minimum Improvements to be undertaken and completed: (i) by no later than December 31, 2020; or (ii) by such other date 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. All work with respect to the Minimum Improvements shall be in conformity with the Construction Plans approved by the building official or any amendments thereto as may be approved by the building official.

Developer agrees that it shall permit designated representatives of the City, upon reasonable notice (which does not have to be written), to enter upon the Development Property during the construction of

the Minimum Improvements to inspect such construction and the progress thereof, subject to Developer's rules and regulations for the construction site.

Section 3.4. Certificate of Completion. Within fifteen (15) business days after written request by Developer and after issuance of an occupancy permit for the Minimum Improvements, the City will furnish Developer with a Certificate of Completion in recordable form, in substantially the form set forth in Exhibit C attached hereto. Such Certificate of Completion shall be a conclusive determination of satisfactory termination of the covenants and conditions of this Agreement with respect to the obligations of Developer to cause construction of the Minimum Improvements.

The Certificate of Completion may be recorded in the Polk County Recorder's Office at 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 3.4, the City shall, within such fifteen (15) business day period, instead provide a written statement indicating in what respects Developer has failed to complete 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 Developer to take or perform in order to obtain such Certificate of Completion.

ARTICLE IV. INSURANCE

Section 4.1. Insurance Requirements.

a. Developer will provide and maintain or cause to be maintained at all times during the process of constructing the Minimum Improvements (and, from time to time at the request of the City, furnish the City with proof of coverage or payment of premiums on):

i. Builder's risk insurance, written on the so-called "Builder's Risk– Completed Value Basis," in an amount equal to the full replacement cost of the Minimum Improvements, and with coverage available in non-reporting form on the so-called "all risk" form of policy.

ii. Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, and contractual liability insurance) with limits against bodily injury and property damage of at least $1,000,000 for each occurrence. The City shall be named as an additional insured for the City's liability or loss arising out of or in any way associated with the project and arising out of any act, error, or omission of Developer, or either entity's directors, officers, shareholders, contractors, and subcontractors or anyone else for whose acts the City may be held responsible (with coverage to the City at least as broad as that which is provided to Developer and not lessened or avoided by endorsement). The policy shall contain a "severability of interests" clause and provide primary insurance over any other insurance maintained by the City.

iii. Workers' compensation insurance with at least statutory coverage.

b. Upon completion of construction of the Minimum Improvements and at all times prior to the Termination Date, Developer shall maintain or cause to be maintained, at its cost and expense (and from time to time at the request of the City shall furnish proof of coverage or the payment of premiums on), insurance as follows:

i. Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limitation the generality of the foregoing) fire, extended coverage, vandalism and malicious mischief, explosion, water damage, demolition cost, debris removal, and collapse in an amount not less than the full insurable replacement value of the Minimum Improvements, but any such policy may have a deductible amount of not more than $50,000. No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co- insurance provisions or otherwise, without the prior consent thereto in writing by the City. The term "full insurable replacement value" shall mean the actual replacement cost of the Minimum Improvements (excluding foundation and excavation costs and costs of underground flues, pipes, drains, and other uninsurable items) and equipment, and shall be determined from time to time at the request of the City, but not more frequently than once every three years, by an insurance consultant or insurer selected and paid for by Developer and approved by the City.

ii. Comprehensive general public liability insurance, including personal injury liability for injuries to persons and/or property, including any injuries resulting from the operation of automobiles or other motorized vehicles on or about the Development Property, in the minimum amount for each occurrence and for each year of $1,000,000.

iii. Such other insurance, including workers' compensation insurance respecting all employees of Developer in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

c. All insurance required by this Article IV to be provided prior to the Termination Date shall be taken out and maintained in responsible insurance companies selected by Developer, which are authorized under the laws of the State to assume the risks covered thereby. Developer will deposit annually with the City copies of policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article IV, each policy shall contain a provision that the insurer shall not cancel it without giving written notice to Developer and the City at least thirty (30) days (ten (10) days in the case of non- payment of premium) before the cancellation becomes effective. Within ten (10) days of being notified of any modification to the policy by the insurer that would cause a party's coverage to be less than the minimum requirements as set forth in this Agreement, the Developer will provide written notice to the City of the modification. Within fifteen (15) days after the expiration of any policy, Developer shall furnish the City evidence satisfactory to the City that the policy has been renewed or replaced by another policy conforming to the provisions of this Article IV, or that there is no necessity therefor under the terms hereof. In lieu of separate policies, Developer may maintain a single policy, or blanket or umbrella policies, or a combination thereof, which provide the total coverage required herein, in which event Developer shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

d. Developer agrees to notify the City immediately in the case of damage exceeding $25,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. Net Proceeds of any such insurance shall be paid directly to Developer (as applicable to the specific policy), and Developer, as applicable, will forthwith repair, reconstruct, and restore the

Minimum Improvements to substantially the same or an improved condition or value as they existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, Developer will apply the Net Proceeds of any insurance relating to such damage received by Developer to the payment or reimbursement of the costs thereof.

e. Developer shall complete the repair, reconstruction, and restoration of the Minimum Improvements, whether or not the Net Proceeds of insurance received by Developer for such purposes are sufficient.

ARTICLE V. FURTHER COVENANTS OF DEVELOPER

Section 5.1. Maintenance of Development Property. 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, replacements, renewals, and additions.

Section 5.2. Maintenance of Records. Developer will keep at all times proper books of record and account in which full, true, and correct entries will be made of all dealings and transactions of or in relation to the business and affairs of Developer relating to this Project, and Developer will provide reasonable protection against loss or damage to such books of record and account.

Section 5.3. Compliance with Laws. Developer at such time that the Developer has possession and control of the Development Property, will comply with all State, federal, and local laws, rules, and regulations relating to the Minimum Improvements.

Section 5.4. Non-Discrimination. In the construction and operation of the Minimum Improvements, Developer shall not discriminate against any employees or applicants for employment on the basis of age, color, creed, disability, gender identity, national origin, race, religion, sex, sexual orientation, or veteran status and shall include a similarly non-discrimination provision in all agreements associated with their business agreements with the City.

Section 5.5. Available Information. Upon request, Developer shall promptly provide the City with copies of information reasonably requested by City that are related to this Agreement so that City can determine compliance with the Agreement.

Section 5.6. Annual Certification. To assist the City in monitoring the Agreement and performance of Developer hereunder, duly authorized officers of Developer, as applicable, shall provide Annual Certifications to the City.

Until such time as Developer is released from its obligations hereunder, Developer shall annually provide to the City: (i) proof that all ad valorem taxes on the Development Property in the Urban Renewal Area have been paid for the prior fiscal year; (ii) the date of the first full assessment of the Minimum Improvements and the fully assessed value; (iii) proof of occupancy by the Developer of the Minimum Improvements; and certification that such officer is familiar with the terms and provisions of this Agreement and that at the date of such certification, there is no Event of Default by Developer hereunder, or if the signer is aware of any such Event of Default, said officer 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.

Such statement, proof and certificates required above shall be provided not later than October 15 of each year during the Term, commencing October 15, 2021. Developer shall provide supporting information germane to the Annual Certification upon request of the City. *See* Exhibit E for the form required for Developer's Annual Certification.

Section 5.7. Developer Completion Guarantee. By signing this Agreement, Developer hereby guarantees to the City performance by Developer of all the terms and provisions of this Agreement pertaining to their obligations with respect to the construction of the Minimum Improvements. Without limiting the generality of the foregoing, Developer guarantees that: (a) construction of the Minimum Improvements shall be completed generally within the time limits set forth herein; (b) the Minimum Improvements shall be constructed and completed in substantial accordance with the 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.

ARTICLE VI. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

Section 6.1. Status of Developer; Transfer of Substantially All Assets; Assignment. As security for the obligations of Developer under this Agreement, Developer represents and agrees that, prior to the Termination Date, Developer will maintain its existence as a company and will not wind up or otherwise dispose of all or substantially all of its assets or transfer, convey, or assign its interest in the Development Property, Minimum Improvements, or this Agreement to any other party unless: (i) the transferee partnership, corporation or individual assumes in writing all of the then-outstanding obligations of Developer under this Agreement; and (ii) the City consents thereto in writing in advance thereof.

Section 6.2. Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, Developer agrees that the Development Property 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 VII. REAL PROPERTY TAXES; MINIMUM ASSESSMENT AGREEMENT

Section 7.1. Real Property Taxes. 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. Until such obligations have been assumed by any other person, all pursuant to the provisions of this Agreement, Developer shall be responsible for all assessments and taxes.

Developer agrees that prior to the Termination Date:

a. It will not seek administrative review or judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property contained on the Development

Property determined by any tax official to be applicable to the Development Property or Minimum Improvements, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; and

b. It will not seek any tax exemption deferral or abatement either presently or prospectively authorized under any State, federal, or local law with respect to taxation of real property contained on the Development Property or the Minimum Improvements between the date of execution of this Agreement and the Termination Date.

c. The assessment category for the Development Property is commercial/industrial and Developer shall not take any action to request or effect a change in such category.

Section 7.2. Minimum Assessment Agreement. As further consideration for this Agreement, Developer shall execute, contemporaneous with the execution of this Agreement, an Assessment Agreement pursuant to the provisions of Iowa Code Section 403.6(19) specifying the Assessor's Minimum Actual Value of the Development Property, with the Minimum Improvements thereon, for calculation of real property taxes in the form attached as Exhibit G ("Assessment Agreement" or "Minimum Assessment Agreement"). Specifically, Developer, the City, the County Assessor, the holder of any mortgage and all prior lienholders shall agree to a minimum actual value for the Development Property, with the Minimum Improvements thereon, of not less than $2,800,000 upon completion of the Minimum Improvements until the Assessment Agreement Termination Date (as defined below). Such minimum actual value at the time applicable is herein referred to as the "Assessor's Minimum Actual Value".

Nothing in the Assessment Agreement shall limit the discretion of the Assessor to assign an actual value to the Development Property in excess of such Assessor's Minimum Actual Value nor prohibit Developer from seeking through the exercise of legal or administrative remedies a reduction in such actual value for property tax purposes; provided, however, that Developer shall not seek a reduction of such actual value below the Assessor's Minimum Actual Value in any year so long as the Assessment Agreement shall remain in effect. The Assessment Agreement shall remain in effect until December 31, 2030 (the "Assessment Agreement Termination Date"). The Assessment Agreement shall be certified by the Assessor for the County as provided in Iowa Code Section 403.6(19) (2020) and shall be filed for record in the office of the County Recorder, and such filing shall constitute notice to any subsequent encumbrancer or purchaser of the Development Property or part thereof, whether voluntary or involuntary. Such Assessment Agreement shall be binding and enforceable in its entirety against any such subsequent purchaser or encumbrancer, as well as all prior lienholders and the holder of first mortgage, each of which shall sign a consent to the Minimum Assessment Agreement.

ARTICLE VIII. INDEMNIFICATION

Section 8.1. Release and Indemnification Covenants.

a. Developer releases the City and the governing body members, officers, agents, servants, and employees thereof (hereinafter, for purposes of this Article VIII, the "indemnified parties") from, covenant and agree 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 or

Development Property.

b. Except to the extent arising from any willful misrepresentation, gross negligence, or any willful or wanton misconduct or any unlawful act of the indemnified parties, 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 personor entity whatsoever arising or purportedly arising from: (i) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand, or other proceeding brought by Developer against the City to enforce its rights under this Agreement); (ii) the acquisition and condition of the Development Property and the construction, installation, ownership, and operation of the Minimum Improvements; or (iii) any hazardous substance or environmental contamination located in or on the Development Property.

c. The indemnified parties shall not be liable for any damage or injury to the persons or property of Developer or its officers, agents, servants, or employees or any other person who may be about the Minimum Improvements or Development Property due to any act of negligence of any person, other than any act of negligence on the part of any such indemnified party or its officers, agents, servants, or employees.

d. The provisions of this Article VIII shall survive the termination of this Agreement.

ARTICLE IX. CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS

Section 9.1. Public Infrastructure Improvements. The City agrees to construct, at the City's sole expense, the Public Infrastructure Improvements in accordance with this Agreement and the requirements of Chapter 26 of the Code of Iowa. The Public Infrastructure Improvements shall include certain street and water main improvements as further detailed on Exhibit F of this Agreement.

Section 9.2. Authority to Design, Engineer and Construct. The City shall design, engineer, fund, and construct the Public Infrastructure Improvements in accordance with City standards, other applicable design standards, and in accordance with the provisions of the Iowa Code and this Agreement.

Section 9.3. Right-of-Way. The Developer will be required to convey such easements and or right-of-way, including temporary construction easements, and dedicate, at no cost to the City, the right-of-way on land controlled by it, as may be necessary for the construction and operation of all Public Infrastructure Improvements.

Section 9.4. Applicable Codes and Law. The City shall be responsible for assuring that the Public Infrastructure Improvements are constructed pursuant to this Agreement and in compliance with all applicable building, construction and safety codes and all local, State, and federal laws and regulations.

Section 9.5 Funding of Public Infrastructure Improvements. The City shall provide the necessary funding for the construction of the Public Infrastructure Improvements, the cost of which is currently estimated at $2,578,000. The City will use available Incremental Property Tax Revenues derived from the Development Property, from time to time, to repay debt obligations entered into by the City to pay the costs of the Public Infrastructure Improvements

Section 9.6. No Special Legal Entitlement. The Developer recognizes and agrees that all of the Public Infrastructure Improvements shall be owned and maintained by the City for the benefit of the general public; that all use thereof by the Developer and its employees, customers and suppliers shall be on the same basis as the general public; and that the 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 Public Infrastructure Improvements.

ARTICLE X. REMEDIES

Section 10.1. 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 during the Term of this Agreement:

a. Failure by Developer to cause the construction of the Minimum Improvements to be completed and the operations to continue pursuant to the terms and conditions of this Agreement;

b. Failure by Developer to comply with Sections 5.6 and 5.7 of this Agreement, as applicable;

c. Transfer of Developer's interest in the Development Property, Minimum Improvements, or this Agreement in violation of the provisions of this Agreement;

d. Failure by Developer to pay ad valorem taxes on the Development Property or Minimum Improvements;

e. Failure by 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 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 under the applicable Mortgage documents;

g. 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 as bankrupt or insolvent; or if a petition or answer proposing the adjudication of Developer as bankrupt or either entity's 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 Developer or the Minimum Improvements, or part thereof, shall be appointed in any

proceedings brought against Developer, and shall not be discharged within ninety (90) days after such appointment, or if Developer shall consent to or acquiesce in such appointment;

h. Any representation or warranty made by Developer in this Agreement or in any written statement or certificate furnished by 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; or

i. Failure of the Developer or any lienholder to execute or comply with the Minimum Assessment Agreement.

Section 10.2. Remedies on Default. Whenever any Event of Default referred to in Section 10.1 of this Agreement occurs and is continuing, the City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice by the City to Developer and the holder of the First Mortgage (but only to the extent the City has been informed in writing of the existence of a First 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 Developer does not provide assurances reasonably satisfactory to the City that the Event of Default will be cured as soon as reasonably possible:

The City may suspend its performance under this Agreement until it receives assurances from Developer, deemed adequate by the City, that Developer will cure the default and continue its performance under this Agreement;

a. The City may terminate this Agreement;

b. The City may withhold the Certificate of Completion;

c. The City may take any 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 Developer under this Agreement; or

Section 10.3. 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 10.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, 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 10.5. Agreement to Pay Attorneys' Fees and Expenses.

a. Developer shall pay to the City an amount equal to the actual costs incurred by the City in connection with the drafting and execution of this Agreement, including, but not limited to publication fees for legal notices, actual costs associated with City Council meetings, and reasonable legal fees of the City, associated with the preparation and adoption of the necessary amendment to the Urban Renewal Plan and negotiation, drafting and authorization of this Agreement. Payment by Developer of such costs will be made by the Developer to the City within 30 days of the date on which the City presents a statement to the Developer demonstrating such costs.

b. Whenever any Event of Default occurs and the City shall employ attorneys or incur 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 Developer herein contained, and the City prevails in an action to enforce this Agreement, Developer agrees that the defaulting party shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection therewith.

ARTICLE X1. MISCELLANEOUS

Section 11.1. 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 Project 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 Project, 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 Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

Section 11.2. Notices and Demands. A notice, demand or other communication under this Agreement by any 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, and

a. In the case of Developer, is addressed or delivered personally to Allied Construction Services, Inc. at 2122 Fleur Drive, Des Moines, Iowa 50321, Attn: Steve Munger, Vice President;

b. In the case of the City, is addressed to or delivered personally to the City at 4200 Mills Civic Pkwy, PO Box 65320, West Des Moines, Iowa 50265-0320, Attn: Ryan Jacobson, City Clerk;

or to such other designated individual or officer or to such other address as any party shall have furnished to the other in writing in accordance herewith.

Section 11.3. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 11.4. Counterparts. This Agreement may be executed in any number of counterparts, each

of which shall constitute one and the same instrument.

Section 11.5. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

Section 11.6. Entire Agreement. This Agreement and the exhibits hereto reflect the entire agreement among the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written. This Agreement may not be amended except by a subsequent writing signed by all parties hereto.

Section 11.7. Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

Section 11.8. Termination Date. This Agreement shall Terminate on December 31, 2030, or as otherwise provided herein.

Section 11.9. Memorandum of Agreement. The parties agree to execute and record a Memorandum of Agreement for Private Development, in substantially the form attached as Exhibit D, to serve as notice to the public of the existence and provisions of this Agreement, and the rights and interests held by the City by virtue hereof. The City shall pay for all costs of recording.

Section 11.10. No Third-Party Beneficiaries. No rights or privileges of either 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.

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 their names and behalf by their authorized representatives, all on or as of the day first above written.

[Signatures start on the next page]

(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_____, 2020, 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

ALLIED CONSTRUCTION SERVICES, INC.

By: _____
Steve Munger, Vice President

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this 14th day of February, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Steve Munger, to me personally known, who, being by me duly sworn, did say that he is the Vice President of Allied Construction Services, Inc., and that said instrument was signed on behalf of said corporation; and that the said Steve Munger 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 Iowa

NOTARIAL SEAL IOWA
JULIE ANN FISHER
Commission Number 785875
My Commission Expires
September 03, 2020

4846-6637-6366\1

EXHIBIT A

DEVELOPMENT PROPERTY

The Development Property is described as follows:

LOT 1, VETERANS BUSINESS PARK PLAT 1, AN OFFICIAL PLAT IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.

Polk County, Iowa Parcel ID number: 320/04882-515-001

Address: 2825 SE 1st Street, West Des Moines, Iowa

EXHIBIT B

MINIMUM IMPROVEMENTS

Minimum Improvements shall mean the construction of 47,308 square-foot warehouse building. The construction of the Minimum Improvements are expected to be completed by December 31, 2020. Construction costs for the Minimum Improvements are expected to be no less than $3,500,000.

The assessed value of the Development Property after construction of the Minimum Improvements for the purpose of this Agreement is required to be at least $2,800,000 pursuant to the Minimum Assessment Agreement entered into by and among the City, Developer, and the Polk County Assessor.

A preliminary site plan for the Minimum Improvements is attached as Exhibit B-1. A final site plan further describing the Minimum Improvements will be attached as Exhibit B-1 when completed and approved.

EXHIBIT B-1

[Preliminary Site Plan – to be replaced with final upon approval by the City]

EXHIBIT C

CERTIFICATE OF COMPLETION

WHEREAS, the City of West Des Moines, Iowa (the "City") and Allied Construction Services, Inc. (the "Developer") did on _____, 2020, make, execute and deliver, each to the other, an Agreement for Private Development (the "Agreement"), wherein and whereby the 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:

LOT 1, VETERANS BUSINESS PARK PLAT 1, AN OFFICIAL PLAT IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.

Polk County, Iowa Parcel ID number: 320/04882-515-001

Address: 2825 SE 1st Street, West Des Moines, 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 the Developer to construct certain 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 of said 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, this is to certify that all covenants and conditions of the Agreement with respect to the obligations of Developer to construct the 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 of Polk County is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions of said Agreement with respect to the construction of the 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_____, 2020, 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

EXHIBIT D

Type of Document:	**MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT BETWEEN THE CITY OF WEST DES MOINES and ALLIED CONSTRUCTION SERVICES, INC.**
Return Document to:	**Ryan T. Jacobson** **City of West Des Moines** **4200 Mills Civic Parkway, Suite 1A** **West Des Moines, IA 50265**
Preparer Information:	**John P. Danos** **Dorsey & Whitney, LLP** **801 Grand Avenue, Suite** **4100 Des Moines, IA** **50309 (515) 283-1000**
Taxpayer Information:	**N/A**

GRANTORS: N/A

GRANTEES: N/A

LEGAL DESCRIPTION:

LOT 1, VETERANS BUSINESS PARK PLAT 1, AN OFFICIAL PLAT IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.

Polk County, Iowa Parcel ID number: 320/04882-515-001

Address: 2825 SE 1st Street, West Des Moines, Iowa

MEMORANDUM OF AGREEMENT FOR PRIVATE DEVELOPMENT

WHEREAS, the City of West Des Moines, Iowa (the "City") and Allied Construction Services, Inc., an Iowa corporation ("Developer"), did on _____, 2020, make, execute and deliver, each to the other, an Agreement for Private Development (the "Agreement"), wherein and whereby Developer agreed, in accordance with the terms of the Agreement and the Alluvion Urban Renewal Plan (the "Plan"), to develop and operate certain real property located within the City and within Alluvion Urban Renewal Area.

The Development Property is described as follows:

LOT 1, VETERANS BUSINESS PARK PLAT 1, AN OFFICIAL PLAT IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.

Polk County, Iowa Parcel ID number: 320/04882-515-001
Address: 2825 SE 1st Street, West Des Moines, Iowa
(the "Development Property"); and

WHEREAS, the term of the Agreement commenced on the_____day of _____, 2020 and terminates on December 31, 2030, unless otherwise terminated as set forth in the Agreement; and

WHEREAS, the City and Developer desire to record a Memorandum of the 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 for Private Development 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 for Private Development 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 for Private Development on _____, 2020.

[Signatures Start on Next Page]

(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_____, 2020, 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

ALLIED CONSTRUCTION SERVICES, INC.

By: _____
Steve Munger, Vice President

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this 14th day of February, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Steve Munger, to me personally known, who, being by me duly sworn, did say that he is the Vice President of Allied Construction Services, Inc., and that said instrument was signed on behalf of said corporation; and that the said Steve Munger 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 Iowa

NOTARIAL SEAL IOWA
JULIE ANN FISHER
Commission Number 785875
My Commission Expires
September 03, 2020

EXHIBIT E
DEVELOPER ANNUAL CERTIFICATION
(due by October 15th as required under terms of Development Agreement)

Developer certifies the following:

During the time period covered by this Certification, Developer is and was in compliance with Section 5.6 of the Agreement as follows:

(i) all ad valorem taxes on the Development Property 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 were first fully assessed on January 1, 2021, at a full assessment value of $_____, and are currently assessed at $_____;

(iii) The Minimum Improvements are occupied by the Developer.

Please attach proof of occupancy.

(iv) the undersigned officer of Developer has re-examined the terms and provisions of this Agreement and that at the date of such certification, and during the preceding twelve (12) months, certify that Developer is not, or was not, in default in the fulfillment of any of the terms and conditions of this Agreement and that no Event of Default (or event which, with the lapse of time or the giving of notice, or both, would become an Event of Default) is occurring or has occurred as of the date of such certification, or if the signers are aware of any such Event of Default, said officers have disclosed the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

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___.

ALLIED CONSTRUCTION SERVICES, INC.

By: _____

_____
[Name, Title]

EXHIBIT F
PUBLIC INFRASTRUCTURE IMPROVEMENTS

The City will undertake the following Public Infrastructure Improvements on the Development Property:

(1) The installation of a 12-inch water main on and along SE Willow Creek Drive from its intersection with SE Soteria Avenue and continuing east to its intersection with SE 1st Street.

(2) The installation of a 12-inch water main on and along SE 1st Street from its intersection with SE Salix Drive and continuing south to its intersection with SE Willow Creek Drive.

(3) The installation of an 8-inch water main on and along SE Salix Drive from its intersection with Veterans Parkway and continuing east to its intersection with SE 1st Street.

(4) The extension of SE Salix Drive from the intersection of SE Salix Drive and Veterans Parkway and extending east to SE 1st Street

EXHIBIT G

Type of Document:	**MINIMUM ASSESSMENT AGREEMENT AMONG THE CITY OF WEST DES MOINES AND ALLIED CONSTRUCTION SERVICES, INC.**
Return Document to:	**Ryan T. Jacobson** **City of West Des Moines** **4200 Mills Civic Parkway, Suite 1A** **West Des Moines, IA 50265**
Preparer Information:	**John P. Danos** **Dorsey & Whitney LLP** **801 Grand Ave, Ste.** **#4100 Des Moines, IA** **50309 (515) 283-1000**
Taxpayer Information:	**N/A**

GRANTORS: N/A

GRANTEES: N/A

LEGAL DESCRIPTION:

LOT 1, VETERANS BUSINESS PARK PLAT 1, AN OFFICIAL PLAT IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.

Polk County, Iowa Parcel ID number: 320/04882-515-001

Address: 2825 SE 1st Street, West Des Moines, Iowa

MINIMUM ASSESSMENT AGREEMENT

THIS AGREEMENT, dated as of the _____ day of _____, 2020, by and among the City of West Des Moines, Iowa (the "City"), Allied Construction Services, Inc. (the "Developer"), and the County Assessor of Polk County (the "Assessor").

WITNESSED

WHEREAS, the Developer owns the real property, the legal description of which is contained in Exhibit A attached hereto (the "Property"), which is located in the Alluvion Urban Renewal Area in the City; and

WHEREAS, a development agreement (the "Development Agreement"), dated _____, 2020, has been executed between the City and the Developer with respect to the construction of a new warehouse building on the Property (the "Project"); and

WHEREAS, pursuant to Section 403.6(19) of the Code of Iowa, the City and the Developer desire to establish a minimum taxable value for the Property and the improvements to be constructed thereon, which shall be effective as of January 1, 2021, and from then until this Agreement is terminated pursuant to the terms herein and which is intended to reflect the minimum market value of the land and improvements;

NOW, THEREFORE, the parties to this Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

1. Effective January 1, 2021, the minimum actual value which shall be assessed for the Property taking into account the improvements to be constructed thereon, shall be Two Million Eight Hundred Thousand Dollars ($2,800,000) until termination of this Agreement.

2. The Developer hereby agrees that the assessed valuation (hereinafter referred to as the ("Minimum Actual Value") set forth in Section 1 above shall become and remain effective as of January 1, 2021, and throughout the term of this Agreement, regardless of the actual degree of completion or incompletion of the Project, even if construction of the Project is not commenced by such date. Furthermore, the Developer acknowledges that the City has changed its position in reliance on the timeliness of such increase in valuation as set forth in the Development Agreement.

3. The Developer agrees to pay when due, all taxes and assessments, general or special, and all other charges whatsoever levied upon or assessed or placed against the Property, subject to any limitations set forth in the Development Agreement. The Developer further agrees that until this Agreement is terminated it will not seek administrative or judicial review of the applicability, enforceability, or constitutionality of this Agreement or the obligation to be taxed based upon the Minimum Actual Value or to raise any such argument by way of defense in any proceedings, including delinquent tax proceedings.

4. This Agreement, and the minimum assessed valuation established herein, shall be effective until December 31, 2030.

5. Nothing herein shall be deemed to waive the Developer's rights under Section 403.6(19) Code of Iowa, (2020) or otherwise, to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Value.

6. This Agreement shall be promptly recorded with the Polk County Recorder, along with a copy of Iowa Code Section 403.6.

7. All lienholders shall have signed consents to this Assessment Agreement, which consents are attached hereto and made a part hereof.

8. Neither the preamble nor provisions of this Agreement are intended to, nor shall they be construed as, modifying the terms of any other contract between the City and the Developer, including the Development Agreement.

EXHIBIT A

(Legal Description of Property)

Certain real property situated in the City of West Des Moines, Polk County, State of Iowa legally described as follows:

LOT 1, VETERANS BUSINESS PARK PLAT 1, AN OFFICIAL PLAT IN THE CITY OF WEST DES MOINES, POLK COUNTY, IOWA.

Polk County, Iowa Parcel ID number: 320/04882-515-001

Address: 2825 SE 1st Street, West Des Moines, Iowa

(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_____, 2020, 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

ALLIED CONSTRUCTION SERVICES, INC.

By: _____
Steve Munger, Vice President

STATE OF IOWA)
) SS
COUNTY OF POLK)

On this 14th day of February, 2019, before me the undersigned, a Notary Public in and for said State, personally appeared Steve Munger, to me personally known, who, being by me duly sworn, did say that he is the Vice President of Allied Construction Services, Inc., and that said instrument was signed on behalf of said corporation; and that the said Steve Munger 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 Iowa

NOTARIAL SEAL IOWA
JULIE ANN FISHER
Commission Number 785875
My Commission Expires
September 03, 2020

4846-6637-6366\1

LIENHOLDER'S CONSENT, IF ANY

In consideration of one dollar and other valuable consideration, the receipt of which is hereby acknowledged, and notwithstanding anything in any loan or security agreement to the contrary, the undersigned ratifies, approves, consents to and confirms the Minimum Assessment Agreement entered into between the parties, and agrees to be bound by its terms. This provision shall be binding on the parties and their respective successors and assigns.

_____[NAME OF LIENHOLDER]

By: _____
Signature

_____
Date

STATE OF_____)
) SS
COUNTY OF_____)

On this _____ day of _____, 2020, before me the undersigned, a Notary Public in and for said County, in said State, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____, respectively, of _____ and that said instrument was signed on behalf of said Developer, and that the said _____ and _____ acknowledged the execution of said instrument to be the voluntary act and deed of said domestic Developer by them voluntarily executed.

_____
Notary Public in and for the State of _____

[Add additional pages for each Lienholder]

[If no Lienholders exist, this consent will not be completed]

CERTIFICATION OF ASSESSOR

The undersigned Assessor, being legally responsible for the assessment of the above described property upon completion of improvements to be made on it, hereby certifies that the actual value assigned to such land and improvements upon completion, shall be not less than Two Million Eight Hundred Thousand Dollars ($2,800,000) until termination of the Agreement.

_____
County Assessor for Polk County,
State of Iowa

STATE OF IOWA)
) SS
COUNTY OF POLK)

Subscribed and sworn to before me by_____, Assessor for the County of Polk, Iowa.

_____
Notary Public in and for the State of Iowa